

Yeshiva University Center for the Jewish Future
Rabbi Isaac Elchanan Theological Seminary

Sukkot To-Go

5769



Featuring Divrei Torah from

Dr. Shawn Zelig Aster
Rabbi Yosef Blau
Rabbi Chaim Eisenstein
Rabbi Joshua Flug
Rabbi Zvi Lew
Ephraim Meth
Rabbi Aaron Segal
Rabbi Zvi Sobolofsky
Rabbi Daniel Stein
Rabbi Michoel Zylberman



YESHIVA UNIVERSITY

Tishrei 5769

Dear Friends,

It is my sincere hope that the Torah found in this virtual ספר may serve to enhance your יום טוב (holiday) and your לימוד (study).

We have designed this project not only for the individual, studying alone, but perhaps even more for a חברותא (a pair studying together) that wish to work through the study matter together, or a group engaged in facilitated study.

With this material, we invite you to join our *Beit Midrash*, wherever you may be, להגדיל תורה (to enjoy the splendor of Torah) and to engage in discussing issues that touch on a most contemporary matter, and are rooted in the timeless arguments of our great sages from throughout the generations.

Bivracha,

Rabbi Kenneth Brander

Dean, Yeshiva University
Center for the Jewish Future



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 the Millie Arbesfeld Midreshet Yom Rishon present

CONTROVERSIAL FIGURES IN TANACH

A Day of Tanach Learning
 Sunday, November 2, 2008

9:45am

Dr. David Pelcovitz: *Yosef and his Brothers: Insights on Forgiveness from Positive Psychology*

10:15am

Rabbi Hayyim Angel: *Gideon: His Complexity as a Key to Understanding the Transition in Shoftim*

Mrs. Nechama Price: *Shimshon: The Greyest Character in Tanach*

Rabbi Allen Schwartz:

Mordechai: Why Wasn't He Accepted by ALL his Brethren?

Rabbi Jeremy Wieder: *Eisav and Balaam in the Portrayal of Chazal*

11:15am

Dr. Shawn Zelig Aster:

Tzidkiyahu, the Last King of Judah and the Question of his Surrender

Dr. Mordechai Cohen: *Jonah's Struggle with Man and God: A Literary Analysis*

Dr. Shalom Holtz: *Yohanan ben Qareah: From Righteous Avenger to Insolent Man*

Dr. Michelle Levine: *The Sacrifice or Sanctification of Jephthah and his Daughter*

Mrs. Smadar Rosensweig: *Devorah: Prophetess, Political Leader and Judge*

12:15pm

Rabbi Menachem Leibtag: *David Ha'melech- What Makes Him the Paradigm of the Moshiach?*

1:00pm

Rabbi Shalom Carmy: *The Prophet and the Prostitute: A Literary and Midrashic Analysis*

Rabbi Menachem Leibtag: *The Problematic Stories about David ha'Melech and the Prophetic Purpose of Sefer Shmuel*

Rabbi Mitchell Orlan

היוצ' ודוצ' בס'פורי שמשוון

Dr. Shira Weiss: *Pharaoh: Malicious Tyrant or Divine Puppet?*

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Table of Contents

Sukkot 2008/5769

What Were the Ananei ha-Kavod?

Dr. Shawn Zelig Aster

Arba Minim and Sukkah: Is There a Connection?

Rabbi Yosef Blau

Happiness to Go: A Spiritual Plan

Rabbi Chaim Eisenstein

Offshore Oil Drilling

Rabbi Josh Flug

The Message of the Clouds

Rabbi Zvi Lew

The Matzot of Sukkot: History & Agriculture

Ephraim Meth

Withered Fronds and Vibrant Lives

Rabbi Aaron Segal

The Requirement to Sleep in the Sukkah

Rabbi Zvi Sobolofsky

Sukkot on the Go? Traveling During Sukkot

Rabbi Daniel Stein

The Mitzvah of Simcha on Yom Tov

Rabbi Michoel Zylberman

From the Editor

Dear Readers,

Tisha bAv and Sukkot are opposites. On Tisha bAv, happiness and joy are forbidden, while on Sukkot, happiness and joy are obligatory. “Hashem’s ordinances are straight, gladdening the heart.” Learning Hashem’s ordinances, i.e. Torah study, is an ultimate form of joy; hence, Torah study is forbidden on Tisha bAv. By the same token, Torah study is an ultimate fulfillment of the mitzvah to rejoice on Sukkot. We pray that Sukkot-to-Go’s joyous words of Torah complement and crown the joy of your holiday, and that Hashem grant us rejoicing in His rebuilt beit haMikdash, speedily in our days, amen.

We would like to thank Yeshiva University President Richard M. Joel and Rabbi Kenneth Brander, Dean of the Center for the Jewish Future for their vision and support of the To-Go project. We also would like to thank the authors of the articles in this publication for giving so generously of their time. We would also like to thank all the important people who made this publication possible: Rabbi Ronald Schwartzberg, Shalom Silbermintz, Rabbi Phil Moskowitz, Ze’ev Felsen and Chaviva Fischer. A special thanks as well to the Student Organization of Yeshiva.

Chag Sameach,
Ephraim Meth

What were the *Ananei ha-Kavod*?

Dr. Shawn Zelig Aster

Faculty, Yeshiva College Bible Department

At first blush, the Torah's explanation for the *mitzvah* of *sukkah* seems crystal-clear:

In order that your [future] generations should know that I caused the Israelites to dwell in sukkot, when I took them out of Egypt; I am the LORD your God

Vayikra 23:43

למען ידעו דרתיכם כי בסכות הושבתי את בני
ישראל בהוציא אותם מארץ מצרים אני ה'
אלהיכם:

ויקרא כג: מג

But what specific element does the *sukkah* commemorate? What are the “*sukkot*” in which we dwelled when we left Egypt? On this question, we find a disagreement between Tannaim. R. Akiva seems to understand the verse according to its simplest meaning: God caused the Israelites to dwell in booths on their way out of Egypt. In contrast, R. Eliezer's opinion is that the “*sukkot*” in which we dwelled were *ananei ha-kavod* (often, but wrongly, translated “clouds of glory”).¹

Interestingly, Rashi, in his commentary on Chumash (Vayikra 23:43) quotes only the view attributed to R. Eliezer, and omits the simpler view. Why should we not understand the verse as referring to actual *sukkot*? Surely it is simpler to understand the *sukkah* as a commemoration of actual booths, than to understand *sukkah* as a commemoration of *ananei ha-kavod*!

Rashi, in his commentary on the Gemara Sukka 11b, hints at a possible reason for preferring to understand *sukkah* as a commemoration of *ananei ha-kavod*. In commenting on the view “actual *sukkot*,” he notes that “when the Israelites camped during their journey in the desert, **they would build** *sukkot* to shield them from the sun.” In this comment, Rashi implies why he rejects the simple view. If we understand the word *sukkot* in Vayikra 23:43 to mean “actual *sukkot*,” or “booths,” then the word would refer to structures the Israelites themselves built. But the verse clearly states “that **I caused** the Israelites to dwell in *sukkot*, when **I took them out** of Egypt; **I am** the LORD your God.” Rashi is aware of the grammatical emphasis, which shows that the making of the *sukkot* of the desert was a divine act. He therefore prefers the view that interprets the word *sukkot* in this verse as *ananei ha-kavod*, since these were presumably produced by God, whereas the booths of the desert were produced by man.

¹ The names of the Tannaim are recorded differently in different sources; here I have followed the gemara in Sukka 11b.

According to Rashi and at least one Tanna, then, the mitzvah of *sukkah* commemorates *ananei ha-kavod*. This begs the question: what were the *ananei ha-kavod*? The phrase “*ananei ha-kavod*” appears nowhere in the Hebrew Bible. It is a phrase which appears for the first time in the words of the Tannaim. *Ananei ha-kavod* is a construct phrase, composed of two words which appear on their own in Chumash: *anan*, meaning “cloud,” and *kavod*, meaning “Divine Presence” (what Hazal call “*shekhina*”). Hazal repeatedly coin construct phrases by combining two words that stand on their own in Chumash. (Another example is *karnei ha-hod*, which appears in midrashim and is quoted by Rashi on Shemot 34:33.) By coining such phrases, Hazal draw our attention to the *pesukim* in which these words are used. We can identify the specific *pesukim* to which our attention is drawn: on several occasions the words *anan* and *kavod* appear within the same *pasuk* in Chumash. These are the *pesukim* we ought to consult to understand the meaning of *ananei ha-kavod*, and ultimately, the meaning of the mitzvah of *sukkah*.

Two *pesukim*² that contain both the words *anan* and *kavod* are:

And it came to pass, as Aharon spoke unto the whole congregation of the children of Israel, that they looked toward the wilderness, and, behold, the glory of the LORD appeared in the cloud.

Shemot 16:10

וַיְהִי כַּדְּבַר אֶהָרֶן אֶל כָּל עֵדֶת בְּנֵי
יִשְׂרָאֵל וַיִּפְּנוּ אֶל הַמִּדְבָּר וְהָנָה כְּבוֹד
ה' נִרְאָה בַּעֲנָן:
שְׁמוֹת טז:י

And it came to pass, when the congregation was assembled against Moses and against Aharon, that they looked toward the tent of meeting; and, behold, the cloud covered it, and the glory of the LORD appeared.

BeMidbar 17:7

וַיְהִי בַּהֲקָהָל הָעֵדָה עַל מֹשֶׁה
וְעַל אֶהָרֶן וַיִּפְּנוּ אֶל אֹהֶל מוֹעֵד
וְהָנָה כִּסְהוּ הָעֲנָן וַיֵּרָא כְּבוֹד ה':
בְּמִדְבָּר יז:ז

In each of these *pesukim*, the Presence of the LORD (*Kevod Hashem*) is said to appear in (or by means of) a cloud (*anan*). These *pesukim* deal with the period of the Israelite wandering in the wilderness, and each deals with an episode of grumbling among the Israelites.³ As the grumbling reaches a crisis, *Kevod Hashem* appears by means of a cloud, just as the nation is about to turn its wrath on Moses. The appearance of *Kevod Hashem* ends the grumbling, because it forces the Israelites to focus their attention on God's presence and power. On the level of the presented narrative, it shifts the reader's focus from the Israelites' behavior to the divine response.

By connecting the mitzvah of *sukkah* to these *pesukim*, Hazal are encouraging us to examine how the cloud indicating the Divine Presence functions in them. In the story of the *mon* (Shemot 16), the Israelites, fearful of the uncertainty of food supply in the wilderness, demand to return to the fleshpots of Egypt. They accuse Moshe and Aharon of conspiring to starve the Israelites to death in the wilderness, and refuse to acknowledge that Moshe and Aharon acted to deliver them from Egypt. In the story of Korah (BeMidbar 16-17), the Israelites are consumed by their own guilt after the Korah episode. They accuse Moshe and Aharon of having caused the death of

² There are four *pesukim* which contain both the words *anan* and *kavod*. These include Shemot 24:16-17, which speak about Ma'amad Har Sinai; Shemot 40:34-35, which speak about the dedication of the mishkan; and the two *pesukim* discussed here.

³ Very similar narratives appear in BeMidbar 14:10; 16:19; or 20:6, but these do not explicitly mention the *anan*.

the “people of the Lord,” and they refuse to acknowledge that those who died had “made light of Hashem” (BeMidbar 16:30) by denying the hierarchy of Kohanim/Leviim/Israelim that He imposed. In each case, the Israelites refuse to accept the responsibility that comes with being servants of God: they blame Moshe and Aharon for their troubles, and seek to avoid a relationship with God. In the story of the *mon* (Shemot 16), they refuse to accept that having left Egypt, they are now servants of God, and are dependent on Him for their daily bread. Instead, they seek a return to the fictive security of a life in which their daily bread comes from Pharaoh. In the story of Korah (BeMidbar 16-17), those who support Korah’s rebellion refuse to acknowledge God’s right to choose the priesthood. In each of these stories, the appearance of *Kevod Hashem* (in Shemot 16:10 and BeMidbar 17:7) shifts the focus from the people’s complaint to a Divine Sign. In the story of the *mon* (Shemot 16), this Divine Sign is the appearance of manna and quail, which show that sustenance comes from God; in the story of Korah (BeMidbar 16-17), the Divine Sign is the appearance of the flowering rod of Aharon, which shows that God chose the tribe of Levi, and more specifically, the descendants of Aharon.

In both stories, God provides a sign to remind the Israelites that a relationship with God requires acknowledging our dependence on Him. The beginning of this sign is the appearance of *Kevod Hashem* by means of a cloud: these are the *ananei ha-kavod* which God provided in the wilderness.

What does the pasuk “I caused the Israelites to dwell in sukkot, when I took them out of Egypt” (Vayikra 23:43) mean, according to Rashi? That when the Jews in the wilderness grumbled and refused to acknowledge their dependence on God, God provided *ananei ha-kavod* (which should be translated “clouds indicating the Divine Presence”). These saved the Israelites from their own attitude of blaming Moshe and Aharon. They shifted the Israelites’ attention away from their own grumbling, and towards the signs (the manna and quail, and the flowering rod of Aharon) which showed how dependent the Israelites were on God. They served to change the Israelites’ attitude by re-focusing their attention. The *ananei ha-kavod* essentially saved the Israelites from themselves.

But God does not provide *ananei ha-kavod* eternally. Eventually, we need to accept responsibility for shifting our own attitudes, for turning our own attention away from grumbling, for acknowledging our dependence on God without complaint. This is the *mitzvah* of *sukkah*. When God took us out of Egypt he “caused the Israelites to dwell in *sukkot*.” In commemoration of God’s action, we are commanded to perform our own parallel action: we build *sukkot*. Our *sukkot* are not “clouds indicating the Divine Presence,” but they are palpable, physical reminders of our dependence on God. They are built at the time of year “when you gather the products of your labor from the field” (Shemot 23:16), at the time of year when satiety poses the danger that “Your heart shall become haughty and you shall forget the Lord your God who took you out of the land of Egypt, from the house of slavery” (Devarim 8:14). By abandoning “houses filled with all valuables” (Devarim 6:11), in which security comes from human endeavors, and dwelling instead in flimsy temporary structures, we remind ourselves of our dependence on God. The *sukkah* serves the same purpose as did the “clouds indicating the Divine Presence.” They shift our attention towards our dependence on God. Essentially, we are commanded to build our own *ananei ha-kavod*, for all generations.

The interplay of Divine and human action in the following *pesukim* is fascinating: “In *sukkot* **you shall dwell** for seven days, every native born one in Israel shall dwell in *sukkot*, in order that your [future] generations should know that **I caused the Israelites to dwell** in *sukkot*, when I took them out of Egypt; I am the LORD your God” (Vayikra 23:43). We react to God’s action by re-creating God’s action, but God’s action itself was a necessary curb and brake on our own mistaken attitude. The idea of humans creating a brake for themselves, to save themselves from failure to acknowledge God’s Presence, is found in the Rambam’s understanding of the *mitzvot* of *mezuzah*, *tzitzit*, and *tefillin*: “He who has *tefillin* on his head and arm, *tzitzit* on his garment, and a *mezuzah* on his door may be presumed not to sin, for he has many monitors – (these are) angels that save him from sinning, as it is said (Ps. 34:8) ‘The angel of the Lord encamps round about them that fear Him and delivers them’.”⁴ By performing these *mitzvot*, the human being creates his own angels to save him from sinning, just as the Torah commands us to create our own *ananei ha-kavod*. This is the *mitzvah* of *sukkah*.

⁴ Translation from Rabbi Isadore Twersky, *A Maimonides Reader*, 1972.

Arba Minim and Sukkah: Is There a Connection?

Rabbi Yosef Blau

Mashgiach Ruchani, Yeshiva University

The many mitzvot associated with Pesach are clearly interconnected. The Torah links in the same verse the prohibition of eating chametz with the obligation of eating matzoh. Maror, matzoh, and the korban pesach are all integrated into the seder.

In contrast there is no apparent connection between the mitzvot of Sukkot - between the obligation of eating and sleeping in the sukkah, which applies night and day throughout Sukkot, and the obligation to pick up the arba minim and shake them which can only be performed during the day. In fact, biblically this latter requirement exists outside of the Beit Hamikdash only on the first day of the holiday. Although Hassidic custom advocates lifting the arba minim each morning in one's sukkah, thereby providing a connection between these otherwise disparate mitzvot, some opine that this may not be the optimal way of doing the mitzvah since it severs the connection between shaking the four minim at appropriate places during Hallel and saying the brakhah on the mitzvah.

The symbolism associated with the sukkah is related to Hashem's protection of the Jews during their forty year sojourn in the wilderness prior to reaching the land of Israel. Both Tannaitic views - that the sukkah reflects the clouds of glory or actual sukkot - interpret the Jew's living in this temporary abode for a week as reflecting trust that Hashem watches over him. We remain vulnerable wherever we live, whether in our own land of Israel or in America.

In contrast, the lulav, etrog, hadassim, and aravot are all agricultural. Sukkot is also called Chag Ha'asif, the festival of gathering of the crops. There was no agriculture in the wilderness when the Jews ate manna. The Sefer haChinuch associates all four minim with manifestations of joy. Other midrashic interpretations see the four minim as representing the unification of different bodily limbs or different types of people. Joy and unity do not mesh naturally with vulnerability and the need for Divine protection.

Let us examine other aspects of Sukkot besides the mitzvot of sukkah and arba minim. According to the mishna in Rosh Hashana (1;2) the world is judged on Sukkot about water. The ordinary libations of wine are accompanied on Sukkot by the pouring of water (nisukh hamayim). In addition, there was a special manifestation of joy in the temple (simchat beit hashoeva) which is related to the pouring of water (see Talmud Bavli Succah 51a-51b and Rashi on the mishna).

Water is both the source of life and the resource whose availability is most questionable. The world today knows too well the dangers resulting from scarcity of water. Israel, which has a short rainy season, is most vulnerable to a lack of rain. Halakha mandates an elaborate series of fasts of increasing severity exists as a response to a lack of rainfall.

Without water, none of the four species will grow. Strikingly, when it does rain on Sukkot we are freed from the obligation of eating in the sukkah. The absence of water is a tragedy; its abundance produces a bumper crop and great joy. Humans cannot make it rain. We can only pray that Hashem will make it rain. Hence, water signifies human dependence on Hashem's protection and the joy of a successful harvest.

A farmer works hard planting, plowing, nurturing, and harvesting to provide food. At the conclusion of this long process he has the right to enjoy the fruits of his labor. Historically this has led to forgetting that all his efforts would have been in vain if not for the rain that came from heaven.

Celebrating the harvest and acknowledging our vulnerability and dependence on Hashem's protection are complementary themes. We express our joy fully only in the temple, where we take the arba minim all seven days. The Rambam stresses that this extreme expression of joy is performed only by the scholars and the righteous who truly understand that it should reflect joy in serving Hashem.

The symbolism of the mitzvot of the Sukkah and of the arba minim remain different. However the combination of the two creates the proper balance between recognizing our vulnerability and dependence, and joy that we have merited Hashem's protection.

Happiness to Go: A Spiritual Plan

Rabbi Chaim Eisenstein

R"m, Yeshivat Netiv Aryeh

Every holiday taps into a certain power that is relevant throughout the year—not just relevant to the days of the holiday itself. In this article we will see that there are five components to the joy of the holiday of *Sukkos*⁵. These are really 5 distinct steps of joy. The pattern is reminiscent of Maslow's Hierarchy of Needs⁶ where each step builds upon the next, and the pinnacle is a spiritual component of self actualization. Once internalized over the holiday of *Sukkos*, these lessons may be helpful in the cold winter months ahead as well.

Step 1: Thoughtful Joy

At first glance, the Talmud's dictate to fulfill the obligation to be joyous on *Yom Tov* seems simplistic.

A person is required to make his children and the members of his household happy on the Regal, as it says "You shall rejoice on your festival" (Devarim 16:14). With what should you make them happy? With wine. R. Yehuda says, with men (you should make happy) with what is appropriate for them and with women with what is appropriate for them.

Pesachim 109a

תנו רבנן: חייב אדם לשמח בניו
ובני ביתו ברגל, שנאמר (דברים
טז:יד) ושמחת בחגך, במה משמחם
- ביין. רבי יהודה אומר: אנשים
בראוי להם, ונשים בראוי להן.
פסחים דף קט.

⁵ The structure of this article was inspired by a dramatic Sichra delivered by Rav Moshe Shmuel Shapiro z"l (circa 2002 and recorded by his students in *Zehav Mishva*). R. Shapiro delineated 4 stages of joy (I have added a fifth) in broad Halakahic terms. This approach is unique because it sheds light on emotional categories of Avodas Hashem. I find R. Shapiro's methodology very attractive because I also have been inspired by my great teachers in Yeshiva Torah Vodaas and RIETS to analyze a sugya systematically in the tradition of Rav Chaim Soloveitchik z"l, and this is how I study with my students. At the same time, learning with students does not take place in a vacuum. Every talmid, especially in the post adolescent period, is also emotionally growing and changing. Rav Shapiro's approach is very valuable because it is consistent with the rigorous method of the Beis Hamedrash of Rav Chaim z"l but can be used by people of all ages as a tool for religious and emotional growth.

⁶ "Abraham Maslow described ... a hierarchy of needs. As its base are our physiological needs, such as those for food and water. Only if these needs are met are we prompted to meet our need for safety, and then to meet our uniquely human needs to give and receive love and to enjoy self-esteem. Beyond this, said Maslow, lies the highest of human needs: to actualize one's full potential." (David Myers, *Psychology* 6th ed., Worth Publishers, NY, 2001)

Were *Chazal* simply presenting a fact that has not changed in the last 2,000 years that men like to eat meat, women like to shop and kids like candy? The greater one's sensitivity to nuance in Rabbinic literature, the more one realizes that there is more than meets the eye. In order to glean a little more insight, it is appropriate to examine a basic issue discussed by the *Gemarah*.

Gemara Moed Katan (14b) relates that if (G-d forbid) an individual is in mourning when *yom tov* arrives, the *aveilus* is "broken". "The positive commandment which applies to all the Jewish people (to celebrate *yom tov*) pushes away the private commandment (the mourning of a relative)." Rav Soloveitchik noted that the *Gemara*'s rationale seems strange. After all, the two precepts don't really contradict each other. According to Torah law, an individual in mourning can eat meat and drink wine. Why does *aveilus* have to be pushed away altogether?

Despite the fact that the *mitzvah* is presented as an obligation of action, in this case that men should eat meat and drink wine, that is only the technical component of the *mitzvah*. Its primary fulfillment, however, is achieved when the appropriate emotion is experienced. At times, the Rav referred to this primary emotional component as the soul of the *mitzvah*. (For example, see *Al haTeshuvah* where Rav Soloveitchik explains that the Rambam codifies confession as the *mitzvah* of repentance, but the "soul" of the *mitzvah* is the emotion of repentance.) In the case of *Yom Tov*, the crude requirement is the action, but the actual fulfillment is the state of being joyous. Similarly, although during *shiva* the *avel* has certain physical prohibitions (not to bathe or shave), the actual fulfillment is the emotional state of mourning. This explains why *Gemara Moed Katan* assumes that *Simchas Yom Tov* and *aveilus* are mutually exclusive halakhic states - not based on the religious obligations, but on their emotional states. (*shiurim l'zekher Aba Mori*, vol. 2).⁷

Rabbi Moshe Sternbuch extends the thought in an interesting manner. The *Raavad* (*Hil. Chagiga* 1:1), based on *Abaye* (*Kiddushin* 34b) writes that the obligation of joy for women is actually an obligation of the husband to provide for her the things that make her happy. Rav Shternbuch points out that if we would take this to its logical extreme, all single women would not be included in the *mitzvah*. This position does not seem tenable because it is hard to understand why single women would be different than married women, and there is no source that differentiates between the obligation of joy for married and single women. Therefore, Rav Shternbuch concludes that there are two distinct components to the *mitzvah*. Firstly, the action that precipitates the *mitzvah*, and secondly, the emotional state that is experienced⁸. Of course single women have the *mitzvah* of joy. However, the *Raavad* assumes that the responsibility of action is incumbent only on the man of the home to provide the necessary tools, while the "soul" of the *mitzvah* is fulfilled by all when they are happy on *Yom Tov*.⁹

⁷ According to many contemporary authorities, this concept goes so far as to say that as long as one is experiencing joy on *Yom Tov* that is associated with *Yom Tov* (see step 2) one need not fulfill it through the action described by *Chazal*. (see *Moadim uZmanim* vol. 1, and *Contemporary Halakhic Problems*, vol. 3, pg. 248.

⁸ For both methodological and philosophical reasons it is interesting to note that Rav Soloveitchik was much more interested in emphasizing what is the *soul* of the *mitzvah*. Rav Shternbuch seems content in simply presenting the 2 *dinim* or categories.

⁹ Why the Torah, according to the *Raavad*, places responsibility of action specifically on the man of the house is beyond the scope of this article.

Practically Speaking

If one is to make an attempt at true happiness, it cannot be done by simply following mechanical rules. Time and effort must be invested in thinking about what makes ourselves, our wives, and our children content. The first step requires a basic level of self understanding. “What do I truly enjoy that creates a spiritual context of joy for me on Yom Tov”?

Just as significantly, it is the responsibility of men, before every Yom Tov to spend a significant amount of time and effort thinking about what will bring their wives and children joy. It is not always so easy, as John Gray writes in his book, *Men Are from Mars, Women Are from Venus*, “We expect the opposite gender to be more like ourselves ... we desire them to want what we want.” Chazal seem to be emphasizing that there are differences in what make men and women happy, and men have a responsibility to think like “Venusians” and not only as “Martians”.

Rav Shlomo Zalman Aurbach met a student of his who was holding a very expensive etrog on sukkos. He asked the student if he also fulfilled the mitzvah of buying his wife something for yom tov with the same hiddur.

Halichos Shlomo, Moadim, pg. 26

Step 2: Sharing Joy with Others

Even if one has fulfilled the above, according to the Rambam, one has not necessarily fulfilled the mitzvah of Simchas Yom Tov at all.

And when you eat and drink, you are required to give food to (Devarim 16:11) the stranger, orphan and widow among the other poor and unfortunate ones. However, one who locks the doors to his courtyard and eats and drinks with his wife and children, and does not give food or drink to the poor and indigent this is not the joy of a mitzvah, but rather it is the joy of his stomach.

Rambam Hilchos Yom Tov 6:18

וכשהוא אוכל ושותה חייב להאכיל
(דברים טז:יא) לגר ליתום ולאלמנה עם
שאר העניים האמללים, אבל מי שנועל
דלתות חצרו ואוכל ושותה הוא ובניו
ואשתו ואינו מאכיל ומשקה לעניים
ולמרי נפש אין זו שמחת מצוה אלא
שמחת כריסו
רמב"ם הלכות יום טוב ו:יח

Rambam's words speak for themselves. Even religious joy can be self-serving. How is one assured that the entire religious experience is not a selfish one which ultimately becomes nothing more than "the joy of his stomach?" Rambam answers that if we link our joy with the joy of others less fortunate than us, then our joy is elevated to a truly religious experience.

Along with Step 2 emerges a fundamental difference between these steps and the similar secular model of Maslow. While the initial stages of Maslow's Hierarchy of Needs focuses on personal physical needs, the spiritual sphere of joy almost immediately focuses on sharing with others because without it, spirituality would be self-serving.

Practically Speaking

A person who is honest about their self growth often struggles with the question, "How can I become more sensitive to the feelings of others?" Anyone who is part of a family structure constantly has the opportunity to empathize, sympathize, and help others. Chessed begins at home, and home is the training ground for how to behave in the world-at-large.

At the same time, Rambam teaches us that if one's energy is entirely focused at home, then ultimately the chessed at home can be self-serving. Are we truly helping for the sake of being merciful or do we just want our families and homes to be perfect?

Step 3: Joy in Front of G-d

The first 2 steps of joy on *Sukkos* involve sharing spiritual joy with others. Every holiday, and indeed every moment throughout the year, also has a unique angle of man's relationship with Hashem. The spiritual theme of joy for *Sukkos* is expressed in the pasuk, "*And you shall rejoice in front of Hashem, your G-d, for seven days.*" Halakhically, the expression refers to the celebration of *Simchas Beis Hashoevah* which took place throughout *Sukkos* (Succah 41a).

The Sages of Israel, heads of the Yeshivos and the Sanhedrin, Chassidim, Elders and virtuous people were the ones that danced, clapped, sang and were joyous in the Beis Hamikdash during the days of Sukkos, but the rest of the nation would come to see and hear.

Rambam Hilchos Lulav 8:14

גדולי חכמי ישראל וראשי הישיבות והסנהדרין והחסידים והזקנים ואנשי מעשה הם שהיו מרקדין ומספקין ומנגנין ומשמחין במקדש בימי חג הסוכות, אבל כל העם האנשים והנשים כולן באין לראות ולשמור.
רמב"ם הלכות לולב ח:יד

Of all holidays, only *Sukkos* has this added dimension of dancing in the *Beis Hamikdash*. Why does *Sukkos* specifically have this extra component of dancing, and why is it specifically referred to as an expression of being "in front of Hashem?" Before dealing with these basic questions let's examine a common theme that surrounds *Sukkos*.

ענני הכבוד

Generally, a *mitzvah* requires a reasonable amount of exertion and effort or demands a certain spiritual context. The *mitzvah* of *sukkah* seems different in this regard. Simply by eating, drinking and sleeping inside a *sukkah*, one easily fulfills the commandment. How can such a mundane experience be spiritual? With closer examination, we see that the *mitzvah* of *sukkah* does demand something of the individual in a subtle yet large way. The walls and roof of the *sukkah* represent the clouds that protected us in the desert (see *Sukkah* 2a) and the Divine Providence that we have had as a nation throughout the generations.¹⁰ When we dwell in the *sukkah* we are reenacting and reinforcing the idea that G-d is with us in every part of our existence - even when we simply eat, drink, and sleep.

¹⁰ It is not a coincidence that the holiday of *Sukkos* immediately follows Yom Kippur. After Yom Kippur and true repentance, G-d shows that we reestablish our closeness to Him. We manifest this physically through the *sukkah* which represents the clouds of glory that protected us in the desert.

When it Rains, the Sukkah Falls Apart

There is a fascinating *halakha* which exemplifies the idea that the *sukkah* represents Divine Providence. The Vilna Gaon (O.C. 639:5), based on Rashba, writes that when it rains on *Sukkos*, the *sukkah* loses its identity as a *sukkah*. For this reason, on the first night of *Sukkos* when there is an obligation to eat in the *sukkah*, the Vilna Gaon argues that it cannot be fulfilled when it is raining. The source behind the Vilna Gaon's approach is the vivid description of the *Mishna*.

When it begins to rain, at what point can you leave (the Sukkah)? When the makpneh gets ruined. To what can this be compared to? To a servant that tries to dilute a cup of wine for his master, and he throws the pitcher in his face.

Mishna Sukkah 28b

ירדו גשמים, מאימתי מותר לפנות -
משתסרס המקפה. משלו משל: למה
הדבר דומה - לעבד שבא למזוג כוס
לרבו, ושפך לו קיתון על פניו.
משנה סוכה כח:

The *Mishna* seems to suggest that rain is an absolute rejection of our attempt to fulfill the *mitzvah* of *sukkah*. The Vilna Gaon¹¹ explains the symbolic meaning behind the analogy of the servant having the flask of water poured back in his face. Vilna Gaon explains that wine represents absolute judgment, and water represents mercy. In the times of the Talmud, wine was very heavy and dense. It was made more "merciful" by adding water. In our analogy, the servant came to mix water with wine. The master poured the water back in his face, indicating that he was not interested in accepting the water – the mercy – to mitigate the heavy wine – the harsh judgment¹².

This may explain why the *sukkah*, although physically standing, does not halakhically exist when it rains. It is not simply because one is uncomfortable sitting in the *sukkah* during the rain. Rather, the rain represents a distancing of *Klal Yisroel* from *Hashem*, which is the antithesis of the divine protection exemplified by the *sukkah*.

One year, when Rav Soloveitchik was a child, it rained on the first night of *Sukkos* in Chaslovitch. In the middle of the night he felt his father nudging him awake. "Berel, Berel, get up. It stopped raining. We can go eat in the succah." Already a child prodigy, Rav Soloveitchik asked his father, "Father, I don't understand. Isn't the reason we assume that we didn't fulfill the *mitzvah* of eating in the succah earlier this evening is that we were *mitzta'er* when we were sitting in the rain? But it is also uncomfortable now to get out of bed and go outside." Rav Moshe then explained to his son that initially they did not fulfill the *mitzvah* (according to the Gra) because when it rains, the succah loses its identity as a succah.

Harerei Kedem vol.1 chap. 115

¹¹ *Sefer Kol Eliyahu*. See also *Zman Simchaseinu* by Rabbi Dovid Cohen, who finds this idea in other writings of the Vilna Gaon, and applies it to other contexts as well.

¹² This also explains the symbolic significance of water on *Sukkos*, as exemplified by the water libations that took place in front of the altar on *Sukkos*.

A New Paradigm of Lifnei Hashem: Sukkos Following Yom Kippur

The notion of sukkah, as developed above, embodies the notion of surrounding every part of our corporeal existence with Divine presence – “in front of G-d.” The month of Tishrei has a gradual process of service “in front of G-d.” On Yom Kippur the Torah also uses a similar expression, “in front of G-d you shall be purified,” indicating that on Yom Kippur as well the whole body is purified “in front of G-d.” All corporeal desires are denied and the entire body subjugates itself by bowing and falling in front of the Master of the Universe. On Sukkos a similar subjugation of the entire body to the service of G-d takes place. However, on this occasion, after the process of negating the adverse impulses of man during Yom Kippur, those same impulses can now be raised to be used and enjoyed in front of G-d¹³.

Often joy is associated with asceticism. Some believe that a truly spiritual and joyous person is one who encounters G-d in the upper spheres. Sukkos, however, emphasizes that we can elevate all components of the corporeal condition in the service of Hashem.

This may also explain the unique role of dancing on Sukkos. Dancing is a spiritual activity that involves the use of every limb of the body. It is unique to Sukkos because the theme of “joy in front of G-d” is about elevating every part of our physical bodies to be used in the service of Hashem.

Practically Speaking

Recognizing that mundane activities can be a joyous experience with the Divine can transform many of our daily activities into spiritually uplifting ones. Often people who leave the Beis Hamedrash and head off to the workplace resign themselves to a life of spiritual mediocrity. Sukkos emphasizes that this reality is not inevitable. Every component of the human condition can be elevated in the service of Hashem.

This idea is not meant to be taken homiletically. Rav Soloveitchik explained that one who goes to work in the morning and returns to learn at night does not need repeat Birchas Hatorah even if he did not learn the entire day because the entire human condition for an observant Jew, including one’s work day, is constantly being examined from the perspective of Torah. A person who lives according to this ideal is Lifnei Hashem even when he is in Midtown Manhattan.

Step 4: Joy With Hashem

After seven days of rejoicing “in front of Hashem”, another layer of simcha can be added. A higher level of joy can be attained on Shmini Atzeres, which is joy with Hashem.

Once the seven days of Sukkos have finished, Hashem says to the Jewish nation, “Now you and I shall rejoice together, and I will not burden you with more than one cow and one ram”.

Yalkut Shimoni Pinchas 782

וכיון שיצאו שבעת ימי החג אמר
הקב"ה לישראל עכשיו אני ואתם
נשמח יחד ואיני מטריח עליכם
הרבה אלא פר אחד ואיל אחד
ילקוט שמעוני פינחס תשפב

¹³It is interesting to note that 7 days in Kabbalah represents the totality of time (since the entire universe was created in seven days) while a day represents a particular component of universal existence. Yom Kippur may represent a particular component (the ascetic form) of *avodas hashem* and is the holiest day of the year but it does not encapsulate the essence of the challenge of the human condition in the way that Sukkos does.

A person can be cognizant that he is in *front* of Hashem but not necessarily *with* Him. The first seven days of Sukkos emphasize and highlight Divine providence. However, *Shmini Atzeres* represents joy expressed in a personal relationship with G-d. "*Let us rejoice together*" indicates that the quality of the relationship has changed. Until this moment, G-d, the king, is recognized as having a direct impact on our lives, but he has not initiated a desire to have a personal relationship. On *Shmini Atzeres* a bi-directional relationship is reaffirmed. A bi-directional relationship is one that involves true communication. Therefore, a person who truly feels a strong connection to G-d will feel that G-d is rejoicing along with him. Since the joy is no longer simply in *front* of G-d but *with* G-d, we reach a higher level of *simcha*. After all, Hashem is rejoicing with us, too!

Practically Speaking

According to Rabbi Abraham Twerski, MD, the most common psychological malady which troubles many people in our generation is lack of self-esteem. I often find that *talmidim* come up short, both in regards to their academic capabilities of excelling in Torah study as well as excellence in *middos*, because they are entirely unaware of their potential. One reason for this is the lack of awareness that G-d rejoices with us in every step of our growth. Many of us are conscious that Hashem is in front of us, and we even attain some level of mastery over the first 3 levels. However, we often focus on our shortcomings. If we believe that Hashem also focuses on our shortcomings, we will find it hard to mobilize our energy toward improvement. After all, whatever the improvement, there will always be so much more that is lacking. Having the ability to realize that Hashem rejoices with us and revels in our joy of being close to him despite our shortcomings is an extremely powerful emotional and religious tool.

“Where can G-d be found?” asked Rebbe Menachem Mendel of Kotzk. “Anywhere people let him in” he answered.

Step 5: Rejoicing with an Internal G-dliness

Maaseh Rav records the Vilna Gaon's behavior on *Simchas Torah*.

He (the Vilna Gaon) would dance in front of the *sefer Torah*, clapping his hands and dancing with all his might... and when the *sefer torah* was returned to the *Aron*, (his enthusiasm diminished a little) and he rejoiced as if it was a regular *Yom Tov*.

According to *Maaseh Rav*, it seems that *Shmini Atzeres* and *Simchas Torah* constitute 2 different forms of joy. Rejoicing with the Torah, for the Vilna Gaon, had a higher dimension of joy than the joy of *Shmini Atzeres*. What is this joy? According to Rav Moshe Shmuel Shapiro, the joy of *Simchas Torah* is the greatest level of joy because it is celebration of G-d within us.

This notion of internal G-dliness can be best understood as based on an idea developed by Rav Chaim of Volozhin¹⁴. All of us have a G-dly component to us - "*in the image of G-d He created them.*" Rav Chaim explained that this G-dliness is the capacity to join our Divine Image with G-d himself through the internalization of Torah. G-d allows us to become G-dly when we work hard to have his Torah become part of our beings. This is the most intimate celebration of joy with G-d since it is entirely internal. *Simchas Torah* is not actually a celebration of the Torah, but a celebration of the Torah that we have made a part of us. Hence, when rejoicing on Simchas Torah, we are rejoicing with our internal G-dliness¹⁵.

All human beings have struggles that affect them adversely, whether they are deep traumas or small issues that impede happiness. In many modern cultures today, people think that they will achieve happiness if they successfully cope with those traumas or negative components of existence. However, coping simply removes the negative. How is internal happiness achieved? Rejoicing with the Torah that we've learned and accomplished is rejoicing with the G-dly component within us. *That* is internal happiness.

Practically Speaking

Many people get discouraged when they look over their shoulders and see others who have accomplished more in terms of Torah study, and they feel inadequate. The highest state of joy is accessible to all because it is rejoicing in our own internal G-dliness that is accessed through our unique spiritual talents and accomplishments. Rejoicing in the learning of Torah is not uniform. Every individual has his own G-d-given talents. If one has tapped into his internal strengths through analysis of Torah and the passion for mitzvos, then the pinnacle of Simcha can be achieved by rejoicing with our personal internal G-dliness

The 5 steps of joy begin with the most basic form of happiness - personal contentment in the context of G-d's spiritual calendar - and return to the personal plane in a much loftier manner. After one has shared joy with others, rejoiced in Divine providence, and celebrated his personal relationship with Hashem, complete happiness is achieved at the final stage when we access the G-dliness inside ourselves. Spiritual happiness reaches its zenith when there is an inner happiness. *Sukkos*, in particular, and *Avodas Hashem* as a whole, emphasize that inner happiness is not simply a sense of inner peace, of accepting who we are within our social context, but rather involves reuniting our G-dly component to its source. To achieve inner happiness, each individual with his unique capabilities should revel in their toil and accomplishments in Torah. These accomplishments transform the individual into a more caring and more pure person - a true manifestation of G-dliness in our corporeal and turbulent world.

¹⁴ *Nefesh Hachaim* ch. 1.

¹⁵ There is a distinction between the way joy was expressed during the *Simchat Beit haShoeiva* and the way it was expressed in the customs of *Simchat Torah*. The Rambam writes that the dancing of *Simchat Beit haShoeiva* was done only by the leading Torah scholars of the time. Everyone else just watched. However *Simchat Torah* is a holiday that encourages the involvement of the masses. Everyone dances, and everyone gets an aliyah (including the children). Although there may be other explanations as well, it could be suggested that this reflects the distinction between the particularistic joy of *Simchat Beit haShoeiva* which is assessed in objective terms and the pluralistic component of joy of *Simchat Torah* which is actualized in subjective terms.

Offshore Oil Drilling

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Introduction

Sukkot is a holiday where we come in contact with the environment. We leave our homes to sit in an outdoor temporary structure, whose covering must be made of unprocessed vegetation. Sukkot is also called the Chag Ha'Asif, the holiday of harvesting, where farmers get a first glimpse at their economic outlook for the coming year. These two themes, environment and economy, are themes that dominate the presidential campaigns of both major candidates, especially on issues where the two themes converge.

As we approach the elections, the country finds itself in the middle of a major oil crisis. Over the past few months, the price of oil has risen to record levels, causing the cost of almost all goods and services to rise. High oil prices are a result of a combination of tight supply, high demand, and speculation in the energy markets. The problem is exacerbated by our country's dependence on foreign oil. According to the U.S. government's Energy Information Administration, in June 2008, the U.S imported 9.994 million barrels of oil each day, which amounted to 66% of the total oil supply.¹⁶ Dependence on foreign oil has a major economic and political impact on our country.

A plethora of solutions have been touted to solve this problem, including limiting consumption, developing alternative energies, and designing motor vehicles that are more energy efficient. One solution that is currently being debated is whether to conduct oil exploration in the Outer Continental Shelf as well as the Alaska National Wildlife Reserve (ANWR). According to Minerals Management Service, there is an estimated mean of 85.9 billion barrels of undiscovered technically recoverable oil on the outer continental shelf.¹⁷ According to a 1998 United States geological survey there is an estimated mean of 10.4 billion barrels of oil in area 1002 of ANWR.¹⁸

For twenty-six years, there have been executive and congressional moratoria on any additional offshore drilling and drilling in ANWR. With the recent increase in the price of oil, the president as well as congress have allowed the moratoria to expire. However, it is likely that a ban on offshore drilling and drilling in ANWR will be debated after the elections.¹⁹ Proponents of the ban claim

¹⁶ http://tonto.eia.doe.gov/dnav/pet/pet_sum_crdsnd_adc_mbbldpd_m.htm.

¹⁷ <http://www.mms.gov/revaldiv/PDFs/2006NationalAssessmentBrochure.pdf>

¹⁸ <http://pubs.usgs.gov/fs/fs-0028-01/fs-0028-01.pdf>.

¹⁹ According to the New York Times "Both sides say the future of offshore will be decided by the next president." See "House Passes Stopgap Spending Bill, Delaying Major Decisions," available at www.nytimes.com/2008/09/25/washington/25spend.html.

that offshore drilling will harm whales and fish and exploration of ANWR will threaten populations of polar bears, caribou, muskoxen, and birds. They also point to the potential for oil spills which have been proven to cause adverse health effects in humans. Those in favor of lifting the ban claim that the benefits of oil exploration in these areas outweigh the losses and risks associated with oil exploration.

The debate about whether to lift these bans has become one of the key issues in this year's presidential election. In this article, we will attempt to present a Jewish perspective on certain aspects of the debate. We will focus on three aspects of the debate. First, we will discuss the claim that one should not drill for oil at the expense of harming wildlife. Second, we will discuss the extent that one must be concerned about endangering humans. Third, we will discuss the claim of residents of coastal regions that the local harm caused by offshore drilling outweighs the benefit to the nation as a whole. These discussions are not meant to influence anyone's election decision. Rather, they are an opportunity to learn Torah utilizing a topic of current interest.

Before we proceed, it is important to note that each side of the debate presents a different set of facts on questions such as the potential output of offshore drilling and the potential extent of damage to wildlife caused by oil drilling. In this presentation, we will assume that these facts remain unknown.

White Polar Bears v. Black Gold

Judaism certainly values proper treatment of all of G-d's creatures. The verse states:

The LORD is good to all; and His tender mercies are over all His works.

Tehillim 145:9

טוב ה' לכל ורחמיו על כל מעשיו.
תהלים קמה:ט

If G-d has mercy, on all of his creatures, we too should display mercy towards all creatures.²⁰ Rambam explains numerous mitzvot based on the concept that we must treat all creatures properly:

Since, therefore, the desire of procuring good food necessitates the slaying of animals, the Law enjoins that the death of the animal should be the easiest. It is not allowed to torment the animal by cutting the throat in a clumsy manner, by pole-axing, or by cutting off a limb whilst the animal is alive. It is also prohibited to kill an animal with its young on the same day (Lev. xxii. 28), in order that people should be restrained and prevented from killing the two together in such a manner that the young is slain in the sight of the mother; for the pain of the animals under such circumstances is very great. There is no difference in this case between the pain of man and the pain of other living beings, since the love and tenderness of the

וכאשר הביא הכרח טוב המזון להריגת בעלי חיים כונה התורה לקלה שבמיתות ואסרה שיענה אותם בשחיטה רעה ולא בנחירה ולא יחתך מהם אבר כמו שבארנו, וכן אסר לשחוט אותו ואת בנו ביום אחד, להשמר ולהרחיק לשחוט משניהם הבן לעיני האם, כי צער בעלי חיים בזה גדול מאד, אין הפרש בין צער האדם עליו וצער שאר ב"ח, כי אהבת האם ורחמיה על הולד אינו נמשך אחר השכל רק

²⁰ Chatam Sofer, Shabbat 154b, states that the source for the prohibition against cruelty to animals is this verse.

mother for her young ones is not produced by reasoning, but by imagination, and this faculty exists not only in man but in most living beings. This law applies only to ox and lamb, because of the domestic animals used as food these alone are permitted to us, and in these cases the mother recognizes her young. The same reason applies to the law which enjoins that we should let the mother fly away when we take the young. The eggs over which the bird sits, and the young that are in need of their mother, are generally unfit for food, and when the mother is sent away she does not see the taking of her young ones, and does not feel any pain. In most cases, however, this commandment will cause man to leave the whole nest untouched, because [the young or the eggs], which he is allowed to take, are, as a rule, unfit for food. If the Law provides that such grief should not be caused to cattle or birds, how much more careful must we be that we should not cause grief to our fellowmen.

Guide for the Perplexed (Friedlander Translation) 3:48

אחר פעל הכח המדמה הנמצא ברוב בעלי חיים כמו שנמצא באדם, והיה זה הדין מיוחד בשור ושה, מפני שהם מותר לנו אכילתם מן הבייתות הנהוג לאכלם, והם אשר תכיר מהם האם את הולד, וזהו הטעם ג"כ בשלוח הקן, כי הביצים אשר שכבה האם עליהם והאפרוחים הצריכים לאמם על הרוב אינם ראויים לאכילה, וכשישלח האם ותלך לה לא תצטער בראות לקיחת הבנים, ועל הרוב יהיה סבה להניח הכל, כי מה שהיה לוקח ברוב הפעמים אינו ראוי לאכילה, ואם אלו הצערים הנפשיים חסה תורה עליהם בבהמות ובעופות כל שכן בבני אדם.

מורה נבוכים ג:מז

The most extensive discussion in the Talmud regarding treatment of animals appears in Baba Metzia 32a-33a, regarding the following verse:

If thou see the donkey of your enemy lying under its burden, you shall forbear to pass by him; you shall surely release it with him.

Exodus 23:5

כי תראה חמור שנאך רבץ תחת משאו וחדלת מעזב לו עזב תעזב עמו.

שמות כג:ה

The Gemara questions whether the requirement to remove the load from the donkey is based on the principle of tza'ar ba'alei chayim, the suffering of creatures, or whether it is based on the obligation to help the owner of the donkey. The Gemara states that this is contingent on whether we are biblically obligated or only rabbinically obligated to prevent tza'ar ba'alei chayim. Many Rishonim assert that the conclusion of the Gemara is that we are biblically obligated to prevent tza'ar ba'alei chayim.²¹ Other Rishonim conclude that we are only rabbinically obligated to prevent tza'ar ba'alei chayim.²²

Rambam's position on the status of tza'ar ba'alei chayim is somewhat puzzling. As we noted earlier, Rambam explains numerous mitzvot based on the concept of proper treatment of all creatures. Yet, regarding removing the load from a donkey, Rambam states:

The enemy mentioned in the Law does not mean a foreign enemy but an Israelite one. How can an Israelite have an Israelite enemy when Scripture says, "Thou shalt not hate thy brother in thy heart?" The Sages decreed that if one all alone sees another

השונא שנאמר בתורה הוא מישראל, לא מאומות העולם, והיאך יהיה לישראל שונא מישראל והכתוב אומר לא תשנא את אחיך בלבבך, אמרו חכמים כגון שראהו

²¹ Ramban, Shabbat 154b, s.v. Ha, Rashba, Baba Metzia 33a, s.v. U'Linyan, and Maharam MiRutenberg, in his responsa (Prague edition) no. 49.

²² See *Sefer Yerei'im* no. 142.

committing a crime and warns him against it and he does not desist, one is obligated to hate him until he repents and leaves his evil ways. Nevertheless, even if did not yet repent, if you find him occupied with his load there is a positive commandment to remove the load and help him move it and you should not leave him to die, for there is the possibility that he will remain there in order to secure his property and become endangered etc.

Rambam Hilchot Rotzeach 13:14

לבדו שעבר עבירה והתרה בו ולא חזר הרי זה מצוה לשנאו עד שיעשה תשובה ויחזור מרשעו. ואע"פ שעדיין לא עשה תשובה, אם מצאו נבהל במשאו מצוה לפרוק ולטעון עמו ולא יניחנו נוטה למות שמא ישתהה בשביל ממונו ויבא לידי סכנה.
רמב"ם הל' רוצח יג:יד

Rambam clearly does not explain the mitzvah to remove the load from the donkey as based on the concept of tza'ar ba'alei chayim. Rather it is based on the obligation to help the owner of the donkey.

One can question Rambam's position: If in fact tza'ar ba'alei chayim is a rabbinic concept, why does Rambam explain certain mitzvot based on the concept that we must treat all creatures properly? Furthermore, Rambam, in presenting the idea of cruelty to other creatures, states:

There is a rule laid down by our Sages that it is directly prohibited in the Law to cause pain to an animal, and is based on the words: "Wherefore hast thou smitten thine ass?" etc. (Num. xxii. 32). But the object of this rule is to make us perfect; that we should not assume cruel habits: and that we should not uselessly cause pain to others: that, on the contrary, we should be prepared to show pity and mercy to all living creatures, except when necessity demands the contrary: "When thy soul longeth to eat flesh," etc. (Deut. Xii. 20). We should not kill animals for the purpose of practicing cruelty, or for the purpose of play.

Guide for the Perplexed (Friedlander Translation) 3:17

ואמנם אמרם צער בעלי חיים דאורייתא, מאמרו על מה הכית את אתונך וגו', הוא על דרך ההשלמה לנו, שלא נלמד מדת האכזריות ולא נכאיב לבטלה ללא תועלת, אבל נכון אל החמלה והרחמנות, ואפילו באי זה בעלי חיים שיזדמן, אלא לעת הצורך, כי תאוה נפשך לאכול בשר, לא שנשחט ע"ד האכזריות או השחוק.
ספר מורה הנבוכים חלק ג:יז

Rambam does not derive the source for proper treatment of creatures from the verse relating to removing the load from the donkey. Rather, he derives the source for proper treatment of creatures from the fact that Bilam was chastised for hitting his donkey. Why doesn't Rambam derive tza'ar ba'alei chayim from the same source as the Talmud?

R. Ya'akov Kamenetzky (1891-1986) answers:

It is puzzling that [Rambam] derives on his own the source for tza'ar ba'alei chayim from Bilam. He also does not mention in the Guide, the discussion in Baba Metzia regarding removing the load and reloading it which is where we derive the concept of tza'ar ba'alei chayim. Perhaps [Rambam] is of the opinion that when one actively causes suffering to the creature, that is a biblical prohibition. However, regarding removal of the load from the donkey, where the suffering is happenstance, that is what the Gemara debates and Rambam concludes that it is

תמוה מה שחידש מדעתו מקור לצעב"ח מהא דבלעם, וגם לא הביא במורה נבוכים הסוגיא בבבא מציעא לגבי פריקה וטעינה שמשם ילפינן לאיסור צער בעלי חיים. ואפשר שסובר דהיכא דהוא מצערה בידים זה הוי איסור דאורייתא, אבל גבי פריקה דהצער הוא ממילא - בזה הוא דשקיל וטרי בפרק אלו מציאות, ושם דחינו לה, ופסק דאין זה אלא מדרבנן ודו"ק.

According to R. Kamenetzky, there are two instances of the suffering of creatures. One instance is where a human being intentionally causes suffering to the creature. Causing suffering to a creature constitutes a biblical violation whose source is the verse that chastises Bilam for hitting the donkey. The second instance is one where a creature is already suffering. The Gemara that presents the dispute as to whether tza'ar ba'alei chayim is a biblical concept or a rabbinic concept refers to the second instance, i.e. whether there is a biblical obligation to act to alleviate the suffering of a creature.

R. Kamenetzky's analysis builds a framework for further discussions about the parameters of tza'ar ba'alei chayim. When dealing with the halachic parameters of tza'ar ba'alei chayim, we must note whether the case at hand is one where the suffering is directly inflicted or whether it involves merely alleviating the suffering of a creature.

Tza'ar Ba'alei Chayim for Human Benefit

One of the most relevant discussions concerning tza'ar ba'alei chayim is the discussion about tza'ar ba'alei chayim that provides some human benefit. R. Yisrael Isserlin writes:

May one remove feathers from live geese: is it similar to shearing sheep, or is it considered tza'ar ba'alei chayim? Also, may one cut the tongue of a bird in order to allow it to speak, or cut the ears or tail of a dog in order to beautify it? It would seem that there is no prohibition against tza'ar ba'alei chayim; he does so for his benefit or service because the creatures of the world were created to serve man, as it states in the last chapter of Kiddushin. You should know that in the second chapter of Baba Metzia, removal of a load from a donkey is considered tza'ar ba'alei chayim, but one might question: how is it permissible at the outset to load the donkey with a heavy load to travel from place to place? Is this not considered tza'ar ba'alei chayim? ... From these proofs, it seems that in the aforementioned cases there is no prohibition, but many people are nevertheless cautious and do not do so. It is possible that they refrain because they do not want to behave cruelly to the creatures.

Terumat HaDeshen, Pesakim U'Ketavim no. 105

אם למרוט נוצות לאווזות חיים, אי דומה לגיזת כבשים או אי הוּו צער בעלי חיים גם לחתוך לשון העוף כדי שידבר, ואזנים וזנב מכלב כדי ליפותו, נראין הדברים דאין אסור משום צער בעלי חיים אם הוא עושה לצורכיו ולתשמישיו. דלא נבראו כל הבריות רק לשמש את האדם, כדאיתא פרק בתרא דקידושין. ותדע דבפ' ב' דב"מ חשיב פריקה צער בעלי חיים, וא"כ היאך מותר משא כבד על בהמתו להוליכו ממקום למקום הא איכא צער בעלי חיים ... ומתוך הלן ראיות הוה נראה קצת דליכא איסור בכה"ג, אלא שהעולם נזהרים ונמנעים, ואפשר הטעם לפי שאינו רוצה העולם [לנהוג] מדות אכזריות נגד הבריות. תרומת הדשן פסקים וכתבים ס'קה

R. Isserlin implies that tza'ar ba'alei chayim is permissible if there is any human benefit. Even cropping the tail and ears of a dog for cosmetic purposes (a procedure still taught at some veterinary schools) is permitted. R. Isserlin proves this from the Torah's permission to place a load on a donkey. Certainly the donkey suffers from the load, and nevertheless it is permissible

to place the load on the donkey because human benefit is involved. However, R. Isserlin notes that it is nevertheless common practice to refrain from cruelty towards other creatures.

R. Isserlin's comments are codified by Rama (1520-1572):

Anything that is for health purposes or other purposes, there is no concern for tza'ar ba'alei chayim. Therefore, it is permissible to pluck feathers from live geese and there is no concern for tza'ar ba'alei chayim.

Nevertheless, many people refrain because it is cruel.

Rama, Even HaEzer 5:14

כל דבר הצריך לרפואה או לשאר דברים, לית ביה משום איסור צער בעלי חיים. ולכן מותר למרוט נוצות מאווזות חיות, וליכא למיחש משום צער בעלי חיים ומ"מ העולם נמנעים דהוי אכזריות.
רמ"א אהע"ז ה:יד

However, some Acharonim assert that Rama's allowance has limitations. R. Eliyahu Klatzki, Imrei Shefer no. 34, states that Rama's permission to cause suffering is limited to situations serving health purposes. If there is a pressing situation that requires one to cause suffering to a creature, one may do so. However, if it is just for the purpose of earning profit, Rama does not allow any activity that causes suffering to creatures.

R. Avraham D. Wahrman (1771-1840), Ezer Mekudash 5:14, takes the opposite approach. He discusses the practice of plucking feathers from live geese to make them fatter. It is clear from his description of the case that he doesn't believe that it really works. He thinks that it is a feel-good activity so that people don't agonize over the growth of their geese. He nevertheless permits plucking the feathers because tza'ar ba'alei chayim for any purpose, even to appease the minds of people who think that removing feathers from a goose will produce a fatter goose, is permitted. However, he did not allow this practice to take place in his own home.

R. Ya'akov Etlinger (1798-1871) implies that one must consider what type of suffering is caused to the creature and what type of human benefit is produced:

Certainly whatever is done for one's own benefit does not violate tza'ar ba'alei chayim, and we prohibit amputating an animal's hooves only because there is no benefit. Similarly it is prohibited to place a bechor in confinement (without feeding it) because of tza'ar ba'alei chayim because there is no direct benefit, just a removal of additional work or damage. It is also possible that the reason that these are prohibited is that these two practices involve great suffering ... Therefore, inflicting a wound that does not involve great suffering and has a direct benefit because now the animal is permissible to eat, certainly does not violate tza'ar ba'alei chayim.

Teshuvot Binyan Tzion no. 108

אלא ודאי שמה שעושה לתועלתו לית בי' משום צער בעה"ח ומה דאסרינן ע"ז (דף י"א) לעקור הבהמה הוא דוקא משום ששם אין לו תועלת וכן מה שאסרו להכניס בכור לכיפה משום צער בעה"ח שם ג"כ הטעם שאין לו תועלת מוחלט רק שלילות שינצל מטורח או מהזק או אפשר ג"כ שבאילו יש צער גדול וכבר חילק הריטב"א בזה שפי' דמה דאמרינן (שם) עיקור שיש בו טרפה אסור ושאין בו טרפה מותר דבאין בו טרפה אין צער גדול כ"כ ולכן י"ל דבעשיית מום שאין בו צער גדול וגם יש בזה תועלת מוחלט שע"ז יותר הבהמה לאכילה לכ"ע אין בזה משום צער בעה"ח.
שו"ת בנין ציון סימן קח

According to R. Etlinger, one may only cause suffering to a creature if the nature of the suffering is minor and there is direct benefit. R. Etlinger's conditions indicate that one must weigh the

benefits against the costs. If there is great benefit and minor suffering, it is certainly permissible. If there is great suffering and only a minor or indirect benefit, it is prohibited.

This approach is implicit in the comments of Tosafot. The gemara mentions that when a king died, we would cripple all of his animals, because it would slight the deceased king's honor if someone else were to use his animals. Tosafot ask:

Why does the Gemara not question this practice based on tza'ar ba'alei chayim? One can answer that the honor of the king is different because it represents the honor of the entire Jewish People, and the honor of the public overrides tza'ar ba'alei chayim.

Tosafot, Avodah Zarah 11a. s.v. Okrin

וא"ת ואמאי לא פריך והאיכא צער בעלי חיים ... וי"ל דשאני כבוד המלך שהוא כבוד לכל ישראל ואתי כבוד רבים ודחי צער בעלי חיים. תוספות עבודה זרה יא ד"ה עוקרין

According to Tosafot, an action that would be considered tza'ar ba'alei chayim for an ordinary individual is permissible for the honor of the king, which ultimately honors the entire Jewish People. Ostensibly, tza'ar ba'alei chayim is only forbidden when suffering outweighs benefit. However, when there is great benefit, such as the honor of the entire nation, the benefit outweighs the suffering. This approach will require a careful assessment of how to gauge benefits and suffering.

- Question: How can we apply these sources to the debate about offshore oil drilling?

If one follows the approach of R. Isserlin and R. Avraham Wahrman, it is certainly permissible to drill for oil at the expense of wildlife, even if the immediate impact only provides "psychological benefit."²³ According to R. Klatzki, monetary benefit alone does not justify causing suffering to wildlife. However, it is possible that R. Klatzki's ruling is only applicable to simple profit of one individual. The proponents of oil drilling claim that oil drilling will have a major impact on the national economy. Perhaps R. Klatzki will agree that if such a claim is true, tza'ar ba'alei chayim is permissible. According to R. Etlinger, one must weigh the benefits of oil drilling against the suffering that might be caused. Proponents of drilling will argue that the benefits certainly outweigh the caused suffering, while opponents will argue the opposite. An objective assessment on this matter is required. One must also keep in mind that R. Isserlin and Rama both recommend refraining from actions that cause suffering to creatures even when there is human benefit.

There are a number of additional considerations to address regarding tza'ar ba'alei chayim and oil drilling. First, as we mentioned earlier, according to Tosafot, something of national interest is governed by a different set of rules regarding tza'ar ba'alei chayim.

Second, R. Ya'akov Reisch, Shevut Ya'akov 3:71, writes that although R. Isserlin and Rama recommend refraining from causing suffering to creatures even for human benefit, their recommendation only applies if the suffering is caused immediately by one's actions. If one

²³ See "Obama Assails Remarks by McCain on Offshore Oil Drilling" at www.nytimes.com/2008/06/25/us/politics/25campaign.html

performs an action whose long term result is the suffering of a creature, one need not be as concerned. Hence, one must explore whether oil drilling causes immediate harm to wildlife or whether the harm to wildlife is a long-term effect.

Third, R. Moshe Sofer, Chatam Sofer, Shabbat 154b, notes that monetary benefit only overrides tza'ar ba'alei chayim when the monetary benefit cannot be procured by another means.

Proponents of drilling claim that this is the only means of significantly lowering fuel prices and achieving national oil independence. Opponents of drilling claim that we should explore alternative energies and we should not view drilling as the last resort to lowering fuel prices.

Risk to Humans Due to an Oil Spill

One of the arguments against offshore oil drilling is the risk to humans due to an oil spill. According to the U.S. Department of Health and Human Services, the most severe risks of an oil spill include a small increase in the risk of skin cancer when oil comes in contact with skin and toxicity due to ingestion. Reversible dermatitis is also a risk factor.²⁴

In Shavuot-To-Go 5766, we discussed the prohibition against self-endangerment. The question of allowing oil drilling with a potential risk to humans is similar to self-endangerment in that the government, as representatives of the nation, is debating whether to allow actions that may potentially harm a portion of the nation. We will therefore reproduce the relevant portions of that article. It is important to keep in mind two major differences between self-endangerment of an individual and public danger. First, we are concerned with the welfare of every individual and we would not want anyone to be harmed by a public activity. An activity that only bears a slight risk may be considered safe for a single individual, but in a public context, it is more likely that someone will be harmed. Second, the benefit of a public service is much greater than the benefit that one individual receives from an activity. As we noted in the aforementioned article, weighing the benefits against the risks is critical to this discussion.

The usual questions of self-endangerment involve activities where the risks are quantifiable, or potentially quantifiable. There are statistics available to guide one's decisions in cases of potential danger in order to determine whether the benefits of a given action outweigh the risks. The risk of an oil spill is an unquantifiable risk. There is no way to determine the risk factor. It is entirely possible that there will never be an oil spill that affects humans and it is also possible that one or more oil spills will occur as a result of an increase in offshore oil activity. How does one treat such a potential hazard?

Let us explore the following question regarding the prohibition of self-endangerment: Is the prohibition of self-endangerment a function of a positive commandment to actively guard and protect one's health, or is it a function of a negative prohibition to participate in activities that are dangerous?

According to most Rishonim, the source for the prohibition against self-endangerment is a section in Devarim:

²⁴ Source: <http://www.bt.cdc.gov/disasters/hurricanes/katrina/murphyoil>.

However, be careful and guard yourselves very well, so that you do not forget the things you saw with your own eyes and that they are not removed from your heart your entire lifetime, and you shall inform your children and grandchildren of them ... You shall be very careful of yourselves, since you did not see any image on the day the ETERNAL spoke to you at Chorev from within the fire.-

Devarim 4:9,15 (Feldheim Translation)

רק השמר לך ושמר נפשך מאד
פן־תשכח את־הדברים אשר־ראו
עיניך ופן־יסורו מלבבך כל ימי
חייך והודעתם לבניך ולבני בניך
... ונשמרתם מאד לנפשתיכם כי
לא ראיתם כל־תמונה ביום דבר
ה' אליכם בחרב מתוך האש.

דברים ד:ט-טו

The Gemara states:

(He who curses) himself (is culpable) as it is stated "You shall be very careful of yourselves," as per the statement of R. Avin in the name of R. Illa who stated 'Any place where the words hishamer, pen or al are mentioned, it connotes a negative commandment.'

Sh'vuot 36a

עצמו דכתיב רק השמר לך ושמור
נפשך מאד כדרכי אבין אמר רבי
אילעא דאמר כל מקום שנאמר
השמר פן ואל אינו אלא לא תעשה.
שבועות לו.

One can only receive lashes for violation of a negative commandment. The Gemara, in explaining why someone receives lashes for cursing himself, bases itself on the premise that the word "hishamer" used in the context of the prohibition of self-endangerment connotes violation of a negative commandment.

This ruling is codified by Rambam:

One who curses himself receives lashes (in the same manner) as if he cursed others as it is stated "be careful and guard yourselves very well."

Rambam, Hilchot Sanhedrin 26:3

המקלל עצמו לוקה כמו שקלל
אחרים שנאמר השמר לך ושמור
נפשך.

רמב"ם הל' סנהדרין כו:ג

Does this necessarily lead one to the conclusion that the prohibition of self-endangerment is a negative commandment? Let's see another ruling of Rambam:

Any hazard that is potentially lethal there is a positive commandment to remove it and to beware of it and to be extremely cautious in this matter as it is stated "be careful and guard yourselves very well." And if one does not remove them or places obstacles that lead to danger one has violated a positive commandment.

Rambam, Hilchot Rotzei'ach 11:4

כל מכשול שיש בו סכנת נפשות
מצות עשה להסירו ולהשמר ממנו
ולהזהר בדבר יפה יפה השמר לך
ושמור נפשך, ואם לא הסיר, והניח
המכשולים המביאין לידי סכנה,
ביטל מצות עשה.

רמב"ם הל' רוצח יא:ד

How does this passage differ from the previous passage? Does this passage lead one to the conclusion that the prohibition of self-endangerment is a positive commandment?

R. Yerucham F. Perlow (19th-20th century) SeferHaMitzvot LaRasag, Aseh no. 1 and Aseh no. 77 offers two approaches to resolve the apparent inconsistency in the rulings of Rambam. R. Chanoch H. Eiges (Marcheshet 3:29) offers a third approach.

Approach #1:

Rambam is of the opinion that *hishamer l'cha ush'mor nafshecha me'od* is a negative commandment. That which Rambam states "Any hazard that is potentially lethal there is a positive commandment to remove it," does not refer to the verse *hishamer l'cha ush'mor nafshecha me'od*, but rather to the mitzvah of *ma'akeh*, the positive obligation to build a fence around the roof of one's house (Devarim 22:8). [The entire chapter 11 of Hilchot Rotzei'ach deals with this mitzvah.] Rambam then states "and to beware of it and to be extremely cautious in this matter as it states '*hishamer l'cha ush'mor nafshecha me'od*,'" as a tangential matter referring to the negative violation of self-endangerment. Rambam never meant to associate the verse *hishamer l'cha ush'mor nafshecha me'od* with any positive commandment.

Approach #2:

Hishamer l'cha ush'mor nafshecha me'od is a positive commandment. The Gemara that states that there is a negative violation for cursing oneself does not refer to the violation of *hishamer l'cha ush'mor nafshecha me'od*, but rather to the general negative violation of using G-d's name in vain. The positive commandment of *hishamer l'cha ush'mor nafshecha me'od* serves to expand the prohibition of using G-d's name in vain to include cursing oneself. Had there been no violation of self-endangerment, cursing oneself might be considered a permissible form of using G-d's name. However, since there is a positive commandment to guard one's life, and cursing oneself constitutes a transgression of that commandment, use of G-d's name to curse oneself constitutes a violation of using G-d's name in vain.

Approach #3:

When the situation requires one to be proactive in eliminating hazards, one who fails to do so is in neglect of a positive commandment. Therefore, Rambam in Hilchot Rotzei'ach records a positive commandment for failure to remove dangerous obstacles. However, when the situation requires one to avoid danger, one who actively places himself in a dangerous predicament is in violation of a negative commandment. Therefore, Rambam in Hilchot Sanhedrin records a negative commandment for one who curses himself.

We can now address the issue of unknown risk. If the prohibition of self-endangerment is a function of a positive commandment to guard and protect oneself, one would be required to be proactive in guarding one's health. One must know that an activity is safe before partaking in it. If the prohibition of self-endangerment is a function of a negative violation, the violation may only apply to dangers with quantifiable risks. If the risks are not known, perhaps it is not considered a dangerous activity.

Applying this discussion to offshore drilling, two perspectives exist. One can argue that one should not place the public in a situation of potential danger in order to drill for oil unless there is a certain degree of certainty that it will not cause harm. One can also argue that oil drilling is not inherently dangerous, because proper measures will be instituted to reduce the risk of an oil

spill and if it does occur, proper measures will be taken to avoid harm, and therefore, one should proceed with drilling.

Not in My Backyard

The term NIMBY is an acronym for "not in my backyard," and is used to describe someone who opposes a project because of the close proximity of the project to one's locale. Politicians are often accused of nimbyism when they oppose projects planned for their local district. In the offshore drilling debate, politicians who represent coastal states and cities are accused of nimbyism for opposing offshore drilling.²⁵ Michaud, et al., note that a litmus test to determine whether an opposition to drilling is due to nimbyism or environmentalism is whether the individual also opposes drilling in ANWR.²⁶ If someone who represents a coastal area opposes offshore oil drilling but supports drilling in ANWR, his position is likely motivated by nimbyism.

In this section, we will deal with the claim of a nimby. Does the local community have a claim when they oppose projects that are in the best interests of the nation as a whole? Should the local community be compensated for housing such a project? As we present the relevant sources on this topic, bear in mind that the sources do not represent U.S. law and are for comparative purposes only.

In Biblical times, the Land of Israel was under autocratic rule. The king was given the authority to confiscate property in order to build roads necessary for waging war.

He can open an area in order to build a road and one cannot protest. The road of the king has no fixed size; he may build it according to his needs. He does not curve the roads because of this one's vineyard and that one's field. Rather, he walks a straight path to wage war.

Rambam, Hilchot Melachim 5:3

ופורץ לעשות לו דרך ואין ממחין בידו,
ודרך המלך אין לה שיעור, אלא כפי מה
שהוא צריך, אינו מעקם הדרכים מפני
כרמו של זה או מפני שדהו של זה, אלא
הולך בשוה ועושה מלחמתו.
רמב"ם הלכות מלכים ה:ג

Rambam implies that a king has a very expansive right to seize property. Nevertheless, R. Moshe Zacuto (ca. 1620-1697), Teshuvot HaRamaz, no. 46, notes that despite the king's legal rights to seize property, King David did not seize the property of Aronah HaYevusi in order to bring a sacrifice. He would not even accept the property as a gift and insisted on paying for it.²⁷ R. Zacuto further states that the legal right for the king to seize property only applies in situations similar to war where there is no option other than to seize the property. He admits that it is appropriate to seize property for national interests when there is no other option and when the property owners are compensated properly.

²⁵ See for example, "Energy Ideas, New and Old," *Washington Times*, June 27, 2005, available at <http://washtimes.com/news/2005/jun/27/20050627-090226-7199r/>.

²⁶ Michaud, Carlisle, and Smith "Nimbyism vs. Environmentalism in Attitudes Toward Energy Development", *Environmental Politics*, 17:1 (2008): 20-39.

²⁷ Shmuel II, Chapter 24.

There are times when seizure of property for the local public good is permissible just as seizure for nation public good if permissible.

That which you asked regarding the leaders of the community who want to change the tax structure and issue a tax on land similar to the tax on money - In all of these lands, taxes are not paid with land ... We do not allow changing the practice without unanimous approval on something that benefits one person and is detrimental to another, where there is no cause for punitive measures ...

Mordechai, Baba Batra no. 481

וששאלתם על ראשי הקהל שבאו לשנות ולהטיל מס על שוה ליטרא קרקע כמו על ליטרא מעות בכל מלכותינו אין נותנין מס מן הקרקעות ... לשנות שלא מדעת כולן במידי דאיכא רווחו להאי ופסידא להאי ולא מיגדר מלתא היא אין שומעין להן לעשות תקנה לעצמו שלא כתורה.

מרדכי בבא בתרא ס' תפא

R. Avraham Y. Karelitz (1878-1953) Chazon Ish, Baba Batra no. 4, explains Mordechai's opinion based on the assumption that the local leaders have the same authority as the beit din (the rabbinical court). The beit din has the authority to seize property for punitive measures or for the betterment of society (tikkun olam). Under normal circumstances, the local leaders cannot impose a tax requiring the citizens to pay a portion of their land because it does not represent tikkun olam.

If the public wants to widen the road and they find that it will benefit the city, one can question whether they can seize the property of private individuals who live on the sides of the roads using the powers of the seven elders of the city that have the status of a beit din for the purpose of seizing property. The point of doubt is that it is possible that this is similar to taxation of land and is not necessarily considered betterment of society. It all depends on the leaders to determine the importance of the project. Nevertheless, in all instances, the individual does not incur a loss and the public must reimburse him for his loss ... If the seven appointed elders of the city are not proper leaders and their intentions are not altruistic, but rather their actions depend on the influence of certain individuals, their decisions are not binding.

Chazon Ish, Baba Batra no. 4

אם הצבור רוצא להרחיב את הרחוב ומוצאים הדבר לתיקון העיר, יש לדון אם יכולים להפקיע קרקעת היחידים שעל מצר הרחוב בכח ז"ט העיר שהן כב"ד להפקיר ממונו של היחיד [כמבואר במרדכי] ומקום הספק דאפשר דזה כמס מן הקרקעות וכיו"ב ולא חשיב תיקון העולם כל כך והכל לפי ראות עיני הדיין עד כמה נחיצת הדבר, ומיהו בכל אופן אין היחיד צריך להפסיד ממונו אלא הציבור חייב לשלם לו הפסדו שהרי אין היחיד חייב לעשות צרכי הציבור משלו ... ואם ז"ט העיר שנבררו אינם טובים באמת ובני העיר שבררו אותם לא היתה כונתם לשם שמים אלא כפי קירוב דעתם לאנשים מסויימים, אין להנבררים שום כח.

חזון איש בבא בתרא ס' ד'

According to Chazon Ish, seizure of property in order to build a road is permissible for the betterment of society as long as the leaders determine that building the road is more important for the city than the displacement of those whose property will be seized. Furthermore, the property owners must be compensated for their loss. Chazon Ish places special emphasis on the motives of the local leaders. Seizure of property is only permissible if it is clear that their actions are motivated by their interest in the betterment of their constituency. If their actions are motivated by the influence of lobbyists, their actions are ineffective (because we cannot trust their objectivity in determining what it considered tikkun olam).

Regarding property seizure, the nimby can claim that the project in his locale does not serve the greater interests of the people. The validity of his claim must be carefully examined by the leaders of the people. The nimby can further claim that he is entitled to compensation for his losses.

Offshore oil drilling does not involve seizure of property. Rather, the claim of the coastal residents is primarily a claim of unsightly drilling rigs and potential pollution. Rambam, Hilchot Shecheinim 11:1-2 and Shulchan Aruch, Choshen Mishpat 155:34, both rule that a private individual who produces pollutants may not produce these pollutants if the wind will blow these pollutants onto his neighbors' property. However, if he does produce pollutants that travel to the neighbor's property, the neighbor is not entitled to compensation. Therefore, from a halachic perspective, the coastal communities do not have a claim for monetary compensation against the government or the oil drilling companies.

Final Thoughts

In this article we focused on three aspects of the debate about offshore oil drilling. We discussed the concept of tza'ar ba'alei chayim as it relates to situations that involve human benefit. We discussed the human risk factor and how it relates to unquantifiable risks. We also discussed the claims of those who live in coastal regions and object to drilling because of the specific impact it can potentially have on their region.

Some may describe the debate about offshore oil drilling as part of a broader conflict between capitalism and environmentalism. Those in the capitalist camp place economic interests ahead of environmental concerns. Those in the environmentalist camp are concerned about the welfare of the environment, even at great economic cost.

There is an allusion to the conflict between capitalism and environmentalism in R. Yosef D. Soloveitchik's *The Lonely Man of Faith*.²⁸ R. Soloveitchik notes that in chapter one of Genesis, Adam is told:

'Be fruitful, and multiply, and replenish the earth, and subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that creepeth upon the earth.'

Genesis 1:28

פרו ורבו ומלאו את הארץ וכבשה ורדו בדגת הים ובעוף השמים ובכל חיה הרמשת על הארץ:
בראשית א:כח

In the words of R. Soloveitchik, the quest of Adam the first (Adam as described in the first chapter) is "to harness and dominate the elemental natural forces and to put them at his disposal."

By contrast, the second chapter of Genesis states:

And the LORD God took the man, and put him into the garden of Eden to dress it and to keep it.

Genesis 2:15

ויקח ה' אלהים את האדם וינחהו בגן עדן לעבדה ולשמרה:
בראשית ב:טו

²⁸ R. Joseph B. Soloveitchik, *The Lonely Man of Faith*, Doubleday Publishing (2006): 9-14.

In the second chapter, Adam's mandate is to watch and guard the Garden of Eden. R. Soloveitchik notes that the mandate in this chapter contrasts to Adam's mandate in the previous chapter to conquer the land. R. Soloveitchik's idea is supported by a comment of the Midrash:

When G-d created Adam, he showed him all of the trees of the Garden of Eden and said to him 'See my works how beautiful and praiseworthy they are and everything that I created, I created for you. Make sure that you don't ruin and destroy my world.

Kohelet Rabbah 7:13

בשעה שברא הקב"ה את אדם הראשון
נטלו והחזירו על כל אילני גן עדן ואמר
לו ראה מעשי כמה נאים ומשובחין הן
וכל מה שבראתי בשבילך בראתי, תן
דעתך שלא תקלקל ותחריב את עולמי.

קהלת רבה ז:יג

Man's duty is to conquer the earth, while at the same time preserving it for future generations. Our job is to find the right balance between conquest and preservation. We have to realize the long-term environmental impact of our conquests, but with an understanding that sometimes tikkun olam can be achieved by destroying a forest in order to build a nuclear power plant.

The Message of the Clouds

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The Talmud in Masechet Sukkah cites a dispute between Rabbi Akiva and Rabbi Eliezer in regards to the *sukkot* in the desert. Rabbi Akiva was of the opinion that the *sukkot* were actual huts that *B'nai Yisrael* used as their residence for the duration of their journeys in the desert. Rabbi Eliezer, on the other hand, was of the belief that the *sukkot* that we sit in for seven days are a representation of the *ananei hakavod*/the clouds of glory. The Shulchan Aruch at the beginning of *hilchos sukkah* agrees with the opinion of Rabbi Eliezer and states that *l'chatchilah* one must be thinking about the clouds of glory in order to properly fulfill the *mitzvah* of sukkah.

There are two questions that arise from the Shulchan Aruch's statement. The first problem is why did the Shulchan Aruch follow the opinion of Rabbi Eliezer when we never follow his *p'sak*? Secondly, it is very unusual for the *mechaber* to choose a philosophical reasoning for a law in his great work on *halacha*.

It seems that one can answer these two questions based upon the opinion of the Mabit. The Mabit noticed that the only constant miracle in the desert that was granted a holiday is that of the clouds of glory. However, the miracles of the *be'er* (the well of water that followed the Jews) and the manna that sustained *B'nai Yisrael* in the desert for forty years are left without celebration. The Mabit explains that if we had not eaten the manna and had not had to drink from the *be'er* we would not have been able to survive. On the other hand, the clouds glory was an unnecessary miracle. If we were not privileged to experience the *ananei hakavod*, we would have been denied a luxury (lack of exposure to the sun and the elements), nothing more. Why then did Hashem provide us with these clouds? He wanted to show the people of *K'lal Yisrael* that He loves so much that He is willing to go to great lengths just to provide us with a little extra comfort.

At this point, we can answer our original two questions. The Shulchan Aruch felt that this underlying idea behind the *ananei hakavod* is of such great import to the Jewish psyche that he felt compelled to put it into print. Most of us never view our relationship with Hashem as one of an abundance of love but, rather, as a relationship of fear and decrees. We have to have the realization that Hashem loves us more than we can possibly imagine. This is also why it made no difference to the *mechaber* whether he follows the opinion of Rabbi Eliezer or that of any other great rabbinical figure.

This explanation of the Mabit can also help us to understand other laws and concepts behind the holiday of Sukkot. Why does Sukkot have to immediately follow the *Yamim Noraim*? The explanation is that Rosh Hashanah and Yom Kippur are the “days of awe” where we view Hashem as a king who is feared and exalted. We need to begin viewing Hashem in the light of a loving and close G-d. We need to have a relationship of *ahava* and not just of *yirah*.

This also helps shed light on the fact that a *mitztaer* (someone who is very uncomfortable) is not obligated in the *mitzvah* of sukkah. If one is feeling discomfort, how can they experience Hashem’s love? Also, if it rains on the first night of Sukkot, it is compared to a king pouring water over the head of his servant. This is to represent the fact that we are unable to feel G-d’s love which is the entire purpose of the *mitzvah* of sukkah.

May we all approach the holiday of Sukkot this year with a true understanding of how much Hashem really loves all of *K’lal Yisrael*.

The Matzot of Sukkot: History & Agriculture

Ephraim Meth

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History and Agriculture

The shalosh regalim each have historical and agricultural themes. Pesach is the anniversary of our redemption from Egypt, and also corresponds to the barley harvest. Shavuot is the anniversary of matan Torah, and also takes place at the start of the wheat harvest. Sukkot commemorates our sojourn in the desert, and also corresponds to the time of gathering produce from fields and orchards.

Each regel has mitzvot particular to both its themes. On Pesach, we eat *matzah* and abstain from chametz because our dough did not rise as we left Egypt. We also offer the *korban omer*, a barley-flour offering, on account of the barley harvest. On Shavuot, we customarily study Torah all night to atone for our late awakening on the day of revelation. We also offer the *shte haLechem*, a wheat-bread offering, because of the newly begun wheat harvest. On Sukkot, we dwell in *sukkot* to symbolize the clouds of glory that Hashem shielded us with in the desert. We also take the four *minim*, products of the land, on account of the gathering of produce.

A Matter of Timing

The significance of Sukkot's dual themes is reflected in a dispute about Sukkot's timing. Why do we celebrate Sukkot in Tishrei, rather than another time of year? The Tur, who connects Sukkot primarily to our redemption from Egypt, believes that Sukkot really should be celebrated in Nissan, on the anniversary of our redemption.

Although we left Egypt in Nissan, He did not command us to make Sukkot at that time, since that time is summertime when everyone makes sukkot for shade, and people would not realize that we are making sukkot because of Hashem's mitzvah. Therefore, He commanded us to make sukkot in the seventh month, the time of rain, when everyone leaves their sukkot to dwell at home, and we leave our houses to dwell in sukkot; this shows everyone that it is our King's command to make it.

Tur Orach Chaim 625

ואע"פ שיצאנו ממצרים בחדש ניסן לא צונו לעשות סוכה באותו הזמן לפי שהוא ימות הקיץ ודרך כל אדם לעשות סוכה לצל ולא היתה נכרת עשייתנו בהם שהם במצות הבורא יתברך ולכן צוה אותנו שנעשה בחדש השביעי שהוא זמן הגשמים ודרך כל אדם לצאת מסוכתו ולישב בביתו ואנחנו יוצאין מן הבית לישב בסוכה בזה יראה לכל שמצות המלך היא עלינו לעשותה.
טור אורח חיים סימן תרכה

In contrast, Rashbam connects Sukkot primarily to the gathering of produce, and therefore believes that Sukkot belongs in Tishrei, at the conclusion of the produce gathering season.

Sukkot was established at the time gathering produce for this reason: to prevent our hearts from pride for our "houses full of good," lest we say 'our hands [and not Hashem's] gained us this wealth.'

Rashbam Vayikra ch. 23

ומפני הטעם הזה קבע הק' את חג הסוכות בזמן אסיפת גורן ויקב, לבלתי רום לבבם על בתייהם מלאים כל טוב פן יאמרו ידינו עשו לנו את החיל הזה.
רשב"ם ויקרא פרק כג

Hence, the Tur emphasizes Sukkot's historical dimension while Rashbam emphasizes Sukkot's agricultural element.

Sharing Mitzvot

According to the Midrash, logic would have demanded that we dwell in Sukkot on Pesach in addition to eating matzah, and that we eat matzah on Sukkot in addition to dwelling in sukkot.

Shouldn't one learn this by a kal vaChomer (a fortiori argument); this [Pesach] does not need a sukkah but needs matzah, so certainly Sukkot that needs sukkah should need matzah ... therefore, the verse says "this" [i.e. only this, Pesach, needs matzah] ... Shouldn't one learn this by a kal vaChomer; this [Sukkot] does not need matzah but needs a sukkah, so certainly Pesach that needs matzah should need a sukkah ... therefore, the verse says "this" [i.e. only this, Sukkot, needs a sukkah].

Torat Kohanim 9:11(2), 12:14(2)

והלא דין הוא, ומה אם זה שאין טעון סוכה טעון מצה, חג הסוכות שטעון סוכה אינו דין שיטעון מצה ... תלמוד לומר, הזה... והלא דין הוא, ומה אם זה שאין טעון מצה טעון סוכה, חג המצות שטעון מצה אינו דין שיטעון סוכה ... תלמוד לומר, הזה.
תורת כהנים ט:יא(ב), יב:יד(ב)

At first glance, this Midrash seems astounding. Matzah is the unique mitzvah of Pesach, and sukkah is the unique mitzvah of Sukkot; how can we imagine mandating both mitzvot on both holidays?

The historical themes of Pesach and Sukkot are similar; both holidays commemorate our redemption from Egypt. Only the agricultural themes of the holidays are distinct. Hence, it is sensible that the historic-themed mitzvot should be common to both holidays, and only the agricultural-themed mitzvot should be distinct. The Midrash therefore suggests that matzah and sukkah, the mitzvot that commemorate our redemption, should be shared by Pesach and Sukkot. The Midrash does not suggest that korban omer or the four minim should be common to both; these mitzvot represent the distinct themes of barley harvest and produce-gathering. This idea is alluded to by the Korban Aharon, a medieval commentary on Torah Kohanim:

The idea is that these holidays are for remembrance of leaving Egypt, and therefore I would have said that each one should need both of these things, to commemorate what was done [as we left Egypt].

Korban Aharon, ad loc.

וענין זה כי שני החגים הללו זכר ליציאת מצרים ולזה הייתי אומר שיטעון כל אחד מהם שני דברים האלו שהם זכרון למה שנעשה בו
קרבן אהרן שם

The ultimate halakhah, i.e. that we do not eat matzah on Sukkot or dwell in sukkot on Pesach, seems to contradict the Korban Aharon's assumptions. This may indicate one of four things. Perhaps it indicates that the agricultural themes of Pesach and Sukkot are primary; since these themes are primary and distinct, the holidays too must be distinct. Alternately, it may indicate that these holiday's historical themes are as distinct as their agricultural themes; our redemption from Egypt is not as connected to the desert sojourn as we initially thought. A third possible inference to draw from the final halakhah is that the mitzvot of matzah and sukkah are not solely historical, but have agricultural components as well; hence, they are uniquely suited to the holidays they are connected to. Alternately, the halakhah may reflect some other value that militates for distinguishing between Pesach and Sukkot. Regardless, the initial logic of the Midrash must have been informed by the assumption that matzah and sukkah reflect an historical theme common to both Pesach and Sukkot.

Withered Fronds and Vibrant Lives

Rabbi Aaron Segal

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The Gemara cites a dispute between R' Yehuda and the Chachamim regarding the case of a Lulav Ha-yavesh – a desiccated lulav. The Chachamim disqualify the *lulav* for use on Sukkot, while R' Yehuda allows it to be used. In the context of this dispute, R' Yehuda relates a story, to which the Chachamim respond in a fascinating manner:

“Did we not learn in a B’raitā: The four species of the Lulav, as there must not be less, so nothing shall be added to them. If one did not find a citron, he cannot replace it with a lemon or a pomegranate, or anything else; and if they are withered they are valid, but if dried, then invalid. R. Yehudah, however, said: Even when dry, they are valid. And he also said: The inhabitants of great cities (B’nei Krachin) used to transmit their Lulavs to their grandchildren. And they answered him: “Times of emergencies cannot be used as proof.”

Sukka 31a

והתניא: ארבעת מינין שבולב, כשם שאין פוחתין מהן - כך אין מוסיפין עליהן. לא מצא אתרוג לא יביא לא פריש ולא רמון ולא דבר אחר. כמושין - כשרין, יבשין - פסולין. רבי יהודה אומר: אף יבשין. ואמר רבי יהודה: מעשה בבני כרכין שהיו מורישין את לולביהן לבני בניהן. אמרו (להם) [לו] משם ראייה? אין שעת הדחק ראייה. סוכה דף לא.

Can One Fulfill His Obligation with a Lulav haYavesh?

The Chachamim’s response can be interpreted in two, fundamentally different ways. The Rabad (of Posquieres), both in his lengthy exposition on Hilchot Arba Minim (in his Responsa, section 6), as well as in his glosses on the Rambam (Sukka 8:1), takes the Chachamim’s response to mean as follows: in fact, the B’nei Krachin did not make a blessing on taking this lulav since it was unfit for use (according to the Chachamim); they took the lulav hayavesh just so that they wouldn’t forget the mitzvah of lulav! On the other hand, many Rishonim dispute this understanding, and take the Chachamim to mean that indeed the B’nei Krachin took the lulav hayavesh to fulfill their obligation and therefore made a bracha. The normative implication would be that in any sha’at had’chak (lit. narrow time, i.e. when no moist lulav is available), one can take a lulav hayavesh and make a blessing.

The Rabad explains his position in the following way²⁹:

²⁹ In his glosses on the Mishne Torah, there is a slightly different emphasis. “I do not say this, since the said yavesh is pasul, and pasul is always pasul even l’bdieved”. In this comment, the main motivation seems to be semantic –

Now, in the context of the foregoing, whether it is a time of emergency or not, one cannot use a dried lulav to fulfill his obligation nor can one make a blessing on it; rather, in a time of emergency, one takes such a lulav in hand, so as not to forget the mitzvah of lulav and etrog; and this is what was meant by "Times of emergencies cannot be used as proof." In other words, they only took the lulav so as not to forget the Mitzvah of Lulav; this is how it appears to me in truth, since a dried lulav is like a dead lulav, and as if it has no magnitude and as if non-existent; **and how could it be that in a time of emergency, one can use such a lulav to fulfill his obligation, and one can recite a blessing even l'chatchila, and in a time when there is no emergency, even l'bdieied he does not fulfill his obligation with such a lulav?**

Rabad Teshuvot and Psakim #6

עתה לפי הענין בין במקום הדחק בין שלא במקום הדחק אין יוצאין ביבש כלל ואין מברכין, אלא שנוטלין אותן בידיהן במקום הדחק כדי שלא תשכח מהן תורת לולב ואתרוג, וזהו שאמרו אין שעת הדחק ראייה כלומר שלא עשו כן אלא כדי שלא תשכח מהן תורת לולב, כך נ"ל באמת כי היבש כמת הוא וכמו שנכתת שיעורו ואיננו, ואיך יתכן זה להיות שבמקום הדחק יוצאין בו ומברכין עליו לכתחלה ושללא במקום הדחק אפילו דיעבד לא יצא רב"ד תשובות ופסקים סימן ו

The Rabad points out that we never find that an object is disqualified for use even l'bdieied, and yet one can use that object in sha'at hadechak³⁰. We often find that an object is unfit l'chatchila, but considered fit l'bdieied, and in such cases, the poskim will invoke the principle that *kol sha'at hadechak kb'dieied dami* – which would mean that in a sha'at hadechak, one could use that object (even l'chatchila). However, as the Rabad notes, the case of lulav hayavesh is different. In the case of lulav hayavesh, under non-extenuating circumstances, someone who took a lulav hayavesh would not fulfill his obligation even l'bdieied; thus, as the Rabad points out, there seems to be no precedent to allow its usage (with a blessing) in a sha'at hadechak³¹.

that is, the Mishna and Gemara will never use the word 'pasul' if they mean to permit the use of that object in some case or another. However, it is clear from the comment he makes in his Chibur Hilchot Lulav that he (also) has a much more fundamental motivation for his position.

³⁰ The only exception to this rule would be a case where a minority opinion, which was not accepted as halacha, allows such an object to be used. Since we are allowed to rely on a minority opinion in a sha'at hadechak, we would be permitted to use such an object in a sha'at hadechak. However, as is implicit in the Rishonim here, this cannot be the basis of the Chachamim, since they were the disputants of R' Yehuda, and the disputants themselves cannot rely on their minority opponents. However, see Hagahot Oshri who does seem to explain the Chachamim this way, but the sources of the Hagahot Oshri (Or Zarua, Raavya) clearly viewed this consideration as relevant only to us, not to the Chachamim themselves.

³¹ One might object that we find many times in Halacha that some situation presents an *isur* even l'bdieied, but in a tzorech gadol, or hefseid gadol, or sha'at hadechak, it is permitted. Examples abound in hilchot taarovot of food that is ne'esar (l'bdieied) in the course of some event, but its consumption is permitted b'sha'at hadechak. However, while these are superficially similar, it seems to me that they are incomparable. In that case, "l'bdieied" refers to the point in time after one has created such a situation, but still prior to having engaged in the "questionable" maaseh isur. It may very well be that in every such case (where we permit its consumption b'sha'at hadechak), were a person to consume the food when it was not a sha'at hadechak, we would not view him *ex post facto* as having violated an isur. In the case of lulav hayavesh on the other hand, the ruling is that, in a non-sha'at hadechak, even after one engaged in the "questionable" maaseh hamitzvah, he is not viewed as having fulfilled the mitzvah.

What Distinguishes Sha'at Hadechak from B'dieved?

The Rabad's question is indeed a powerful one. This led to several attempts, on the part of those who argued with the Rabad, to close, or at least reduce, the conceptual gap between our halacha of lulav hayavesh, and what we find elsewhere.

- (1) The Chacham Tzvi (9) argues that the Chachamim permitted one to take a lulav hayavesh with a blessing, even on the first day of Sukkot (when the obligation is Biblical even outside the Mikdash), because such a lulav could be used to fulfill one's Rabbinic obligation that applies for the rest of Sukkot³². Where one cannot fulfill his Biblical obligation, the first day is like all other days, when a lulav hayavesh is Rabbinically acceptable³³. According to this explanation, sha'at hadechak is not directly serving as the basis of the (re)qualification of the lulav hayavesh; rather, it simply serves as the background to why one would be performing the Rabbinic obligation on the first day.

The most serious difficulty with this explanation is that there are several Rishonim who are of the opinion that a lulav hayavesh is pasul all seven days of Sukkot and still maintain, *contra* Rabad, that a blessing can be made on a lulav hayavesh³⁴.

- (2) The Ritva (Sukka 14b) says that the Chachamim allow one to make a blessing on any pesul that is *d'raban*, because the Sages chose to waive their own pesul if it would entail the non-observance of the mitzvah of lulav for that year³⁵. In this way, the Ritva seeks to minimize the uniqueness of this halacha in our case. However, this approach is quite difficult, as the Ritva simply assumes, without adducing any evidence, that the pesul of lulav hayavesh is

³² This is a matter of dispute; see further on. What is especially relevant is that the Rabad himself holds that a lulav hayavesh is pasul all seven days, and the Chacham Tzvi suggests that this is the entire point of contention between the Rabad and the other Rishonim; that is, everyone agrees that those objects which could be used to fulfill one's Rabbinic obligation, could in turn be used on the first day in a sha'at hadechak – the whole dispute boils down to the question of whether a lulav hayavesh is kosher or pasul for the purposes of fulfilling one's Rabbinic obligation. This would have the far-reaching consequence that even the Rabad would agree regarding other pesulim, such as pesule hadar, that one could use them (even on the first day) b'sha'at hadechak, since the Rabad is of the opinion that "pesule Hadar" do not apply to the Rabbinic obligation. [Incidentally, one could arrive at a similar conclusion for an entirely different reason, and that is to suggest that the Rabad limited his psak to Yavesh because he held, based on the Yerushalmi, that a lulav hayavesh is "as good as dead" and "as if nonexistent". I wrote "similar conclusion" rather than "identical conclusion" because this reason would limit the Rabad even further than the first – according to this reason, any other pesul, even those that apply all seven days of Sukkot, such as Mitzvah Haba'a B'avera, could be used b'sha'at hadechak. The Chacham Tzvi cites this second reason as well, but does not distinguish it clearly from the first.] However, the Chacham Tzvi himself notes that this seems inconsistent with the Rabad's own sweeping remarks about what the word 'pasul' implies, etc.

³³ This would seem to be the major thrust of the responsum. However, at one point, the Chacham Tzvi writes "*Shelo Yehe Yom Rishon Kal Mishear Yamim*" "that the first day should not be more lenient than the other days" - this may imply that there is a Rabbinic obligation independent of the Rabbinic obligation of *zecher l'mikdash*, that takes effect when one cannot fulfill the Biblical obligation, so as not to make the first day more lenient than the rest. However, it seems to me that the Chacham Tzvi is more plausible if he is understood in light of the responsum as a whole, which, as I said, seems to imply that the obligation on the first day would simply be identical to the Rabbinic obligation regarding the rest of the days.

³⁴ See for example the Rosh, Sukka Chapter 3, Simanim 3 and 14.

³⁵ The Sefer Hashlama similarly infers from the Chachamim's response that pesule hadar for *lulav* are only *d'raban*.

d'rabanan. This seems to be quite problematic, as the Gemara derives the pesul of lulav hayavesh from its assumption that the requirement expressed by the words in the verse, 'peri etz hadar', applies to all four species³⁶. There is no hint of it being d'rabanan³⁷.

- (3) An explanation which is hinted at in the Rosh (Sukka 3:14), and fully developed in the Or Sameach, is that with regard to *pesule hadar*, i.e., those pesulim that are due to a failure to meet the requisite standard of beauty, the definition of 'hadar', is relative. In his words:

The Rosh wrote (Siman 14) ... all these pesulim were given over by the Torah to the Chachamim, and they said that in regular times, one does not fulfill his obligation even ex post facto, so that the People of Israel will be scrupulous regarding mitzvot, but in a time of emergency, they validated [such a lulav]; and in truth, his words are sensible, because the issue of beauty is relative, and when there is a more beautiful one, then it is not considered beautiful, but when there is not, that is itself beautiful...

Or Sameach Hilchot Lulav 8:1

הרא"ש כתב (סוכה פ"ג) בסימן י"ד אבל מודו רבנן דבשעת הדחק מברכין כו', אלא כל הני פסולי מסרו הכתוב לחכמים, והם אמרו שלא בשעת הדחק אפילו דיעבד לא יצא, כדי שיזהרו ישראל במצות, אבל במקום הדחק הכשירוהו כו', ובאמת דבריו מסתברים, דגוף הענין של הדר אינו רק הסכמי, ובמקום שיש מהודרים אז אינו הדר, ובמקום שאין אחר הוא הדר ...
אור שמח הלכות לולב פרק ח

That is, in the absence of a lulav/etrog that meets the usual standard of being *hadar*, the lulav/etrog that one does have is considered hadar. This would have very interesting consequences. The Or Sameach points out the following two consequences:

- (a) If one used a lulav hayavesh due to a sha'at hadechak, then even if one were to later (the same day) obtain a perfectly good lulav, he would be under no obligation to perform the mitzvah again, because the first lulav he used was in fact hadar.
- (b) If one is in a situation where he has no lulav that meets the standard requirements of *hadar*, and he has two lulavim, one worse than the other, then he would be obligated to take the more beautiful one, because only that one would qualify as hadar. Presumably, if one took the worse one, he would not fulfill his obligation even l'bdieved, despite the fact that it he is in a sha'at hadechak.

The Or Sameach does not address the following point, but I think one could argue that it too would be a consequence of his explanation:

- (c) If one were in a situation in which a perfectly good lulav was present, but not available for use, then one would not be permitted to use a lulav hayavesh (with a bracha) since the lulav hayavesh in neither absolutely nor relatively beautiful³⁸.

³⁶ However, see Rashi on 29b. The Meiri (Sukka 31b) asks precisely this question and therefore argues with the position of the Sefer Hashlama and Ritva.

³⁷ Furthermore, the Ritva himself, in the beginning of Lulav Hagazul, states explicitly that the pesul of lulav hayavesh is based on 'hadar' and is mid'oraisa!

³⁸ One could argue that accessibility/availability is a factor in determining whether it is even considered present, and thus in this case, the lulav hayavesh would indeed be considered hadar (since the other lulav is not present), but I find this very difficult. What I would grant is that according to the variation on the Or Sameach that we will see in R' Moshe Feinstein (footnote 44), the subject's ability to make use of a better lulav is the determining factor, rather

Etrog is not Kosher in a Sha'at Hadechak

In any case, it would seem that this explanation is not universally accepted as the basis of the position that you can make a blessing on a lulav hayavesh (even excluding the aforementioned Chacham Tzvi and Ritva). This can be seen when we turn to two issues of scope: To which of the four species does the allowance to make a blessing in a sha'at hadechak apply? And to which pesulim does the allowance apply?

The Rambam writes as follows:

And in a time of emergency or a time of great danger, a dried lulav is valid, but not the other species.

Rambam Hilchot Lulav 8:1

ובשעת הדחק או בשעת הסכנה לולב היבש
כשר אבל לא שאר המינין
רמב"ם הלכות לולב ח:א

The Rambam circumscribes the allowance given in a sha'at hadechak by saying that it applies to lulav, and lulav only³⁹. The Bach explains that lulav is (physically) unique because even if it is desiccated, it is still somewhat *hadar*, whereas the other species are such that if they are dried out, they are no longer *hadar* at all. Thus, the other species can in no situation be considered *hadar* if they are desiccated, but a lulav can be considered *hadar*, in a situation when no moist lulav is available. However, the Rambam might mean something entirely different. It is possible that he is specifically excluding *etrog* (whereas *hadasim* and *aravot* would also be kosher in a sha'at hadechak), and the reason would be as follows⁴⁰: if we assume that the attribute of *hadar* is essential to an *etrog's* being an *etrog*, such that if an *etrog* is not *hadar*, it is not an *etrog* at all⁴¹ – it would have the same halachic status (for the purpose of four species) as a lemon; whereas, beauty is not essential to a lulav/*hadas*/*arava*, such that a lulav (or *hadas* or *arava*) that is not

than the objective (although relative) beauty of the lulav; therefore, in this case, he would be able to use the lulav hayavesh and make a blessing on it.

³⁹ The Meiri (ibid.) seemingly understands that the Rambam means that one takes the lulav hayavesh, but without a bracha, in order to not forget the mitzvah. Based on this, the difference between lulav and other species is how much we have to be concerned for the possibility that people will then begin to believe that the pesul is not really a pesul, and they will use the pasul object even when a kosher one is available. Thus, a lulav, which is not visibly dried out, would not lead people to deduce anything regarding the pesul of yavesh. However, this is a very difficult interpretation, given that the Rambam says that it is kosher, and clearly the Rabad did not understand the Rambam that way.

⁴⁰ The Sefer Hashlama (footnote 36) arrives at the same conclusion but for a different reason; he says that the pesul of *hadar* is Biblical regarding *etrog*, but not regarding the other species.

⁴¹ The Ramban (Vayikra 23:40, and in his glosses on the Rabad's Chibur Hilchot Lulav) writes that 'peri etz hadar' is the *name* of the species that we refer to as *etrog*. In his commentary on the Torah, he can be understood as saying that the name picks out that species (because that species is generally quite beautiful and has the attributes of *hadar*), but this would not entail that those attributes are necessary for a particular *etrog* to be a member of the *etrog* species – a certain botanical relationship would be sufficient. However, in his glosses on the Rabad's Chibur Hilchot Lulav, it is clear that he believes that the attributes are indeed essential, as he employs the claim that 'hadar' is part of the name to justify why pesule hadar are pasul all seven days (in the Mikdash). However, the Ramban "overshoots" for our purposes, since he seems to imply that the attributes of *hadar* are essential regarding all the species. However, the Meiri (in his lengthy response to the Ramban's glosses on the Rabad, in his Magen Avot) points out that this is quite difficult, and if we are going to say that the attributes of *hadar* are essential, they will only be so regarding *etrog* (pg. 109-110).

hadar is still a lulav (albeit a lulav pasul); then we can argue that the Torah was willing to waive a *pesul* in a sha'at hadechak, i.e. the *pesul* of lack of hadar by lulav, but it was not willing to allow one to use a lemon instead of an etrog, i.e. the *pesul* of lack of hadar by etrog⁴²! This explanation finds support from the Ritva's language:

It would seem to me that only with regard to cases where they are invalidated because they are not hadar, in an emergency situation we chose not to be particular about that, but any pesul which is because of a lack of requisite size, such that it no longer has its original name [we cannot forego that requirement]... and even with regard to the pesul of yavesh, we only forego the requirement with regard to lulav, hadas, and arava where the word 'hadar' does not appear explicitly, rather it is learned from etrog, but with regard to etrog, where the Torah says explicitly that it should be 'hadar', the Torah demonstrated that it was insistent upon being hadar, and as such, one cannot use such an etrog even in an emergency situation.

Ritva Sukka 31b

ונראה לי דוקא (ד) כל שפסול
שלהם לפי שאינו הדר דבשעת
הדחק לא קפדינן ביה אבל כל
שפסולו מגופו מפני מיעוט
שיעורו שאין שמו עליו... וביבש
נמי דוקא בלולב והדס וערבה
דלא כתיב בהו הדר בפירוש אלא
דגמרי ליה מאתרוג, אבל באתרוג
דכתיב ביה הדר בפירוש הא קפיד
ביה קרא וכל שאינו הדר אין
יוצאין בו ואפילו בשעת הדחק
ריטב"א סוכה לא:

However, if this is the explanation of the halacha, it would be very difficult to maintain that the “relativity of hadar” plays any role. After all, if in the absence of anything better, the object is considered hadar, then why should it matter how essential the attribute is? It might be an essential attribute, but this etrog is hadar! Thus, it would seem that in fact the lulav hayavesh is not considered hadar; the Torah simply waived *pesulim* in a sha'at hadechak, but would not forgo the requirement for using the correct species⁴³.

Other Pesulim are also Kosher in a Sha'at Hadechak

A further confirmation that there are opinions that hold that the “relativity of hadar” is not the explanation of the Chachamim, or at least not the entire explanation, comes from a discussion regarding which *pesulim* the allowance applies to. Obviously, the “relativity of hadar” would only explain why *pesule* hadar are kosher in a sha'at hadechak, not *pesulim* of other types. It is

⁴² Several Rishonim explicitly make the last point (that if the object no longer even qualifies as the proper species, then it cannot be used besha'at hadechak), including the Ritva that we will now cite.

⁴³ However, there is an interesting variation on the Or Sameach that one could square with our distinction between etrog and other species. This variation is suggested by Rav Moshe Feinstein (1:187); he explains the position of those who argue with the Rabad as follows: hadar would be relative if it is an application of the general principle of beautifying mitzvot, of “Ze Keli V'anvehu” – Hitnaeh Lefanav B'mitzvot (Shabat 130a), and this requirement is transmuted, by 'hadar' to be absolutely necessary regarding the four species. According to Rav Moshe, the requirement of beautifying mitzvot would be satisfied by “doing the best one can”; if nothing else is available, then this is considered to be a fulfillment of beautifying mitzvot. According to Rav Moshe's explanation, it could very well be that neither the *lulav hayavesh* nor the *etrog hayavesh* are considered hadar; but this is only insurmountable regarding *etrog*, where hadar is part of the definition of the species. However, regarding lulav, 'hadar' simply transmutes the requirement of beautifying mitzvot to be absolutely necessary, and in a sha'at hadechak, then even by using a lulav hayavesh one fulfills the requirement of beautifying mitzvot.

true that a good number of Rishonim make explicit mention of pesule hadar (and nothing else) when discussing the Chachamim's position⁴⁴. However, this is not true of all Rishonim. For example, the Shibolei Haleket (349) makes no mention of Pesule Hadar, and mentions that an etrog missing a piece can be kosher in sha'at hadechak. Whether a missing piece is an extension of hadar is a dispute in the Rishonim⁴⁵. More strikingly, we find several shitot who are of the opinion that even if the object is not the requisite size, it is still kosher (and one can make a blessing) b'sha'at hadechak! R' Yeshaya d'Trani (the Rid) was asked in a responsum (114) whether one can use a lulav that is only three t'fachim tall, rather than the required four t'fachim, in a case where no other lulav is available. He answers that one can use such a lulav and make a blessing. One could claim that the Rid only meant this in the particular case of a lulav that is at least three t'fachim tall, since the Mishna in Sukka says that the extra tefach (the fourth tefach) is so that one can do na'anui, and thus perhaps we can forgo that tefach in a sha'at hadechak⁴⁶. However, none other than the Or Sameach himself says explicitly that in all minim and all shiurim, we forgo the requirement for the appropriate size in a sha'at hadechak!

It would seem to me that not only pesule hadar, with regard to which the Rosh argued that the Torah gave the definition to the Chachamim, and if there is no other, this is hadar, [and is valid in a time of emergency]... but also those objects that are invalidated because they are not the requisite size, a requirement that stems from lekicha tama, even those can be used in a time of emergency.

Or Sameach Hilchot Lulav ch. 8

ולדעתי נראה, דלא מיבעי פסולי הדר שכתב רבינו אשר (רא"ש סוכה פ"ג סימן י"ד) דהתורה מסרה אותן לחכמים, ואם אין כאן אחר איהו הוי הדר ... אלא דגם פסולין מחמת חסרון השיעור, דנגעו בה משום ולקחתם לקיחה תמה, אפילו הכי בשעת הדחק שאין להשיג אחר נוטלין אותן
אור שמח הלכות לולב פרק ח

Thus, it is clear that the Or Sameach thinks that the Chachamim are not only based on the “relativity of hadar”; again, the Torah seems to have simply waived certain requirements of arba minim in a sha'at hadechak.

If the fact that the pesulim of the four species are waived in a sha'at hadechak cannot be explained based on some other, more basic, halachot within the mitzvah of arba minim (such as a mitzvah d'rabanen that would apply on the first day, or the “relativity of hadar”), then it would indeed seem to be a brute fact that the allowance of pesulim in a sha'at hadechak is unique to the mitzvah of the four species. However, can we give any rationale as to why the Torah would have

⁴⁴ Ritva cited before, Raavya (2:697), Or Zarua (2:306).

⁴⁵ See Tosfos 29b and Rosh 3:3, who assume that a missing piece is not an instance of pesulei hadar, whereas the Ramban and Rabad implicitly assume that a missing piece is based on Hadar.

⁴⁶ This is the claim of the Binyan Tzion (Siman 33). Whether this undermines the proof from the Rid (that we extend the allowance beyond pesule hadar) depends on the justification for distinguishing between the fourth tefach and the other tefachim. The Binyan Tzion's argument is that the extra tefach is only required mid'rabanen. If this is so, this indeed makes the Rid far less significant. However, I would suggest that even if the Rid is limited to the extra tefach, it is not because the extra tefach is mid'rabanen; rather, it is because the fourth tefach doesn't play a role in defining the lulav as a lulav; its role is to serve a certain function, and that means a lulav that can't fulfill its ideal function (of na'anui) is pasul – but it is still a lulav! Thus, the Rid would still be waiving a pesul d'oraita that has nothing to do with hadar; he would just be unwilling to waive the requirement to have a lulav!

waived these pesulim in a sha'at hadechak, whereas in other mitzvot the Torah did not do this⁴⁷?

Sha'at Hadechak as a Simile for Humankind's Existential Inadequacy

I would suggest, perhaps *al derech haderush*, that the halacha of sha'at hadechak is critically important in understanding the mitzvah of lulav and etrog, particularly as it integrates into the Yamim Noraim.

We learned in a B'raita: For two and a half years, Bet Shammai and Bet Hillel has a dispute; one side said that it would have been better for man had he not been created than that he was created; and the other side said that it was better for man that he was created than that he would not have been created; they convened and ruled that it would have been better for man had he not been created than that he was created, however, now that he has been created, he should examine his deeds, and there are those that say he should consider the actions he is about to engage in.

Eruvin 13b

תנו רבנן: שתי שנים ומחצה
נחלקו בית שמאי ובית הלל,
הללו אומרים: נוח לו לאדם
שלא נברא יותר משנברא,
והללו אומרים: נוח לו לאדם
שנברא יותר משלא נברא. נמנו
וגמרו: נוח לו לאדם שלא נברא
יותר משנברא, עכשיו שנברא -
יפשפש במעשיו. ואמרי לה:
ימשמש במעשיו
ערובין יג:

The conclusion of the Gemara is startling! If taken as a serious evaluative claim, this would seem to border on the blasphemous. Could we really claim that, as a matter of fact, Hashem should not have created us? Perhaps it should be taken instead as an expression of the despair that periodically visits every human being as he ponders his own existence in front of Hashem. As Ecclesiastes tells us, "There is no righteous man on this earth who does only good, and does not sin". Everyone falters and fails to meet certain expectations. In such a condition, a religiously sensitive individual is bound to feel, at least at times, that he would have been better off had he not tried. But of course, we have no choice in the matter – "al Korchach Ata Nolah," "you are born against your will" (Mishna Avot 4:22). Given our predicament, it would seem that the Gemara's response is the only one – be mefashfesh (or memashmesh) b'maasecha. Do the best you can; try to correct what you've done wrong and avoid all pitfalls. But you still know full well that you will never measure up. We are in an existential sha'at hadechak, and it seems that everything we do is only l'bdieved. However, is that the only response we can give?

We can look to Yamim Noraim for an answer. They seem to follow the pattern of life as described by the the Gemara in Eruvin. We commemorate our birth, the birth that was "coerced", on Rosh Hashana; and immediately, we are judged⁴⁸. We cannot claim to have met

⁴⁷ I am not asking how Chazal knew that the Torah waived these pesulim (assuming the local considerations are not responsible for the uniqueness), although that is also a very interesting question.

⁴⁸ The themes of our (annual) rebirth on Rosh Hashana and Rosh Hashana as Yom Hadin, as well as the relationship between these two themes, are elaborated upon in the Pesikta de-Rav Kehana (Piska 23). A careful reading of that Piska reveals different conception of the relationship between the themes, and my suggestion aligns more closely with the beginning of the Piska in this regard.

Hashem's expectations. What then can we do, other than be mefashfesh b'ma'aseinu – we therefore engage in tshuva during the ten days of repentance, and this process culminates on Yom Kippur. However, on the heels of Yom Kippur comes the holiday of sukkot, and with it, the mitzvah of Arba Minim. A message of the mitzvah of Arba Minim is that we should not feel as though we live a l'bdieved life in our avodat Hashem. Although we should periodically feel inadequate before Hashem, the message of the Arba Minim is that we can experience true, unadulterated simcha in standing before Hashem – as the verse says, “U'lkachtem Lachem Bayom Harishon ... Usmachtem Lifne Hashem Elokeichem”, “take for yourselves on the first day ... and **rejoice** before Hashem your G-d.” But how can we experience such joy, when we know deep down that our avoda does not meet the expectations? Perhaps the answer is that while we may find ourselves in an overarching sha'at hadechak (because of our inadequacy), this should not taint everything we do. Once we find ourselves in the human predicament, we are given the license to view the avodat Hashem that we do manage to engage in, as l'chatchila. Thus, it is only appropriate that regarding the mitzvah of arba minim, the Torah would recognize that in a sha'at hadechak, that which would otherwise be considered inadequate (pasul l'bdieved), can in fact be taken l'chatchila.

The Requirement to Sleep in the Sukkah

Rabbi Zvi Sobolofsky

Rosh Yeshiva, RIETS

We are commanded during the week of Sukkot to dwell in the Sukkah just as we dwell in our homes during the course of the year.

You shall dwell in booths [sukkot] seven days; all that are home-born in Israel shall dwell in booths.

Vayikra 23:42

בסכת תשבו שבעת ימים כל האזרח בישראל ישבו בסכת.

ויקרא פרק כג: מב

"You shall dwell" similar to your living-dwelling. Hence, all seven days one should make the Sukkah a permanent dwelling and the home a temporary one. How is this done? If one has nice utensils... nice bedding, they should be brought to the Sukkah. One should eat, drink, walk around, and learn in the Sukkah.

Sukkah 28b

תשבו כעין תדורו. מכאן אמרו: כל שבעת הימים עושה אדם סוכתו קבע וביתו עראי. כיצד? היו לו כלים נאים - מעלן לסוכה, מצעות נאות - מעלן לסוכה, אוכל ושותה ומטייל בסוכה, ומשנן בסוכה.

סוכה כח:

Included in this requirement to dwell in the Sukkah as if it were our year-round home are the acts of eating and sleeping. Just as all year one eats and sleeps in one's house, during Sukkot these activities must take place in the Sukkah.

Sleeping in the Sukkah has a dimension of stringency that even eating does not have:

One can eat a snack (achilat arai) outside the Sukkah, but not take a quick nap outside the Sukkah. Why is this? Rav Ashi says: because one may fall into a deep sleep.

Sukkah 26a

אוכלין אכילת עראי חוץ לסוכה, ואין ישנים שינת עראי חוץ לסוכה. מאי טעמא? אמר רב אשי: גזרה שמא ירדם.

סוכה כו.

Chazal distinguish between *achilat kevah*, a significant meal, in contrast to *achilat arai*, an insignificant snack. Only *achilat kevah* must absolutely be performed in the Sukkah. Concerning sleep, there is no distinction between *kevah* and *arai*. One is obligated to sleep in the Sukkah regardless of the length of the sleep.

Nevertheless, there are many people who do not sleep in the Sukkah. Let us carefully analyze the obligation to sleep in the Sukkah in order to understand why so many people do not fulfill what appears to be an absolute requirement:

Regarding the contemporary leniency regarding sleep, i.e. that people do not sleep in the Sukkah except those that are careful about mitzvos:

- Some say it is because of the extreme cold, since it is uncomfortable to sleep in cold places.
- I say it is because the mitzvah is for a man to sleep together with his wife the way he does the rest of the year, and in a situation where that is not possible, since they do not have a private Sukkah, he is exempt.

Rama OC 639:2

ומה שנוהגין להקל עכשיו בשינה, שאין ישנים בסוכה רק המדקדקין במצות:

- י"א משום צנה, דיש צער לישן במקומות הקרים (מרדכי פ' הישן).
- ולי נראה משום דמצות סוכה איש וביתו, איש ואשתו כדרך שהוא דר כל השנה, ובמקום שלא יוכל לישן עם אשתו, שאין לו סוכה מיוחדת, פטור.

רמ"א אורח חיים תרל"ט:ב

The Rama suggests that a married man is only obligated to sleep in the Sukkah if it is feasible for his wife to join him. Historically, it was not practical for men and their wives to sleep in sukkot because Sukkot were built in public areas and hence generated *tzniut* concerns; therefore, many married men did not sleep in the Sukkah. The Rama bases his suggestion that married men must only sleep in the Sukkah if their wives can join them on the phrase "*teshvu k'ein taduru*," that Sukkah-dwelling should be the same as year-round dwelling. A married man who always sleeps in the same room as his wife is not obligated to sleep alone in the Sukkah. Although the Rama was referring to a specific situation in which it wasn't practical for a woman to sleep in the Sukkah for reasons of modesty, presumably the reasoning of the Rama would apply if there are other reasons one's wife will not join him in the Sukkah.

The Vilna Gaon and the Magen Avraham, (ibid.) however, question the Rama's assumption that the halachic principle of *teshvu k'ein taduru* exempts one who cannot fulfill *yeshiva b'Sukkah* with his wife. They claim that this innovative application of *teshvu k'ein taduru* has no source in Chazal.

Although the Magen Avraham disagrees with the reasoning of the Rama, he concedes that sometime a married man may be exempt based on another consideration. A *mitztaer*, one who is uncomfortable, is exempt from the mitzvah of Sukkah. Tosafot (Sukkah 26a s.v. *holchei*) explain that the exemption of *mitztaer* is derived from *teshvu k'ein taduru*, since during the year one does not live in a place where one is uncomfortable. For married men, sleeping alone is uncomfortable, and hence married men are exempt from sleeping in the Sukkah because they are *mitztaer*. In contrast to the reasoning of the Rama, which would exempt a married man at all times, the suggestion of the Magen Avraham would only apply when one's wife is *muteret*, and the issue of *mitztaer* is relevant.

The Rama suggests a second reason to exempt one from sleeping in the Sukkah. If one lives in a cold climate, one will be *mitztaer*, physically uncomfortable, sleeping outside.

This leniency could potentially cause another problem concerning the fulfillment of the mitzvah of Sukkah.

- If one made [the Sukkah] in a place that one would be uncomfortable to eat, drink or sleep;
- or where he cannot perform one of the above acts because

- ואם עשאה מתחלה במקום שמצטער באכילה או בשתייה או בשינה,
- או שא"א לו לעשות אחד מהם

*of the fear of robbers,
one does not fulfill [the mitzvah] with that Sukkah at all,
even with those actions that are not uncomfortable, because it
is not similar to living-dwelling [in a house] where one can
perform all his needs.*

Rama O”C 660:4

בסוכה מחמת דמתיירא מלסטים או
גנבים כשהוא בסוכה,
אינו יוצא באותה סוכה כלל, אפי'
בדברים שלא מצטער בהם, דלא הויא
כעין דירה שיוכל לעשות שם כל צרכיו
(מרדכי פרק הישן).

רמ"א אורח חיים תרמ:ד

Only a Sukkah which is fit for all aspects of living can qualify as a place of living. If the Sukkah is not fit for one aspect of living, halacha disqualifies it. Thus, if the Sukkah is too cold to sleep in, and hence is disqualified, how can one fulfill the mitzvah of eating in such a Sukkah?

The Mishna Brurah quotes two reasons to distinguish between a Sukkah that is too cold to comfortably sleep in and a Sukkah that is too dangerous to sleep in.

*In the cold places, one fulfills his obligation with eating even
though he is unable to sleep there:*

- *since it is impossible [to sleep warmly] anyhow;*
- *and also since [a Sukkah in a cold place] is considered
fit for sleeping if one has sufficient blankets and sheets.*

Mishna Brurah 640:18

במקומות הקרים יוצא ידי חובתו באכילה
אף על גב דלא יוכל לישן שם:

- דאי אפשר בענין אחר וממילא מקרי
שם כעין תדור;
- וגם מקרי ראוי לשינה אם היה לו כרים
וכסתות כראוי.

משנה ברורה או"ח תרמ:יח

A Sukkah that is specifically built in an area that is dangerous but an option existed to build it in a safe location cannot be considered a place of dwelling. Nobody would build a house in a way that it cannot be slept in if an alternative exists. A Sukkah in a cold climate is still considered fit for living (at least concerning eating) since *any* Sukkah built in such a climate will be unfit for sleeping. If one has no other option, one would construct a home in a way that enables him at least to eat in comfort.

Moreover, a Sukkah that is too dangerous to sleep in cannot be rectified. In contrast, a Sukkah that is too cold could theoretically be made comfortable if one had sufficient blankets. Because the discomfort due to cold can be rectified, the Sukkah itself is still considered a place of dwelling. The person is exempt from sleeping in such a Sukkah because of his discomfort, yet he still can fulfill the mitzvah of eating in such a Sukkah. In contrast, a Sukkah that is too dangerous is no longer considered a place fit for living and as such is disqualified entirely for use as a Sukkah.

One must assess in each situation whether the two exemptions of the Rama apply. If it is not uncomfortable because of cold, and one's wife can join him in the Sukkah, and safety is not a concern, according to all opinions one would be obligated to sleep in the Sukkah. Similarly, if one wants to take a nap during the day, these reasons often don't apply. The dissimilarity to living-dwelling and the discomfort of sleeping alone presumably don't apply during the day. The issues of cold and safety have to be evaluated in each case.

Many of the halachot of Sukkah revolve around the halacha of *teshvu k'ein taduru*. The correct application of this principle will determine practically how we may and must perform the mitzvah of *yeshiva b'Sukkah*

Sukkot on the Go?

Traveling During Sukkot

Rabbi Daniel Stein

Halacha L'Maaseh Program Coordinator, RIETS

For many families, *yom tov* in general and *chol ha-moed* specifically have become sacrosanct times for visiting family or for taking family excursions. However, traveling on Jewish holidays presents a variety of dilemmas. On *Pesach*, travelers must contend with what to eat on the road, while on *sukkot* they must contend with where to eat. Despite the recent innovations in *sukkah* technology, where to eat and sleep en route can still be worrisome.

Our discussion will focus on the *halachot* pertaining to the traveler, and will address the following questions:

- Are there any exceptions to the obligation to eat in a *sukkah* for the traveler?
- If yes, why? Under what circumstances may they be utilized?
- May one embark on a journey knowing that there will be no *sukkah* along the way?
- Is there a difference between snacking versus eating a meal?

The Traveling Exemption

Those who travel by day are exempt from the sukkah by day, but are obligated at night. Those who travel at night are exempt from the sukkah at night, but are obligated by day. Those who travel both by day and by night are exempt from the sukkah both by day and by night. Those who are traveling for a mitzvah purpose are exempt from the sukkah both by day and by night, as was the case with R. Hisda and Rabbah bar R. Huna, when they would travel on the Sabbath of the festival to the home of the Reish Galuta they would sleep on the riverbanks of Sura. They defended their actions: We are engaged in a mitzvah mission and are exempt from the sukkah.

Sukkah 26a

הולכי דרכים ביום פטורין מן הסוכה ביום וחייבין בלילה, הולכי דרכים בלילה פטורין מן הסוכה בלילה, וחייבין ביום. הולכי דרכים ביום ובלילה פטורין מן הסוכה בין ביום ובין בלילה. הולכין לדבר מצוה פטורין בין ביום ובין בלילה, כי הא דרב חסדא ורבה בר רב הונא, כי הוו עיילי בשבתא דרגלא לבי ריש גלותא הוו גנו ארקתא דסורא, אמרי אנן שלוחי מצוה אנן ופטורין. סוכה כו.

The Gemara distinguishes between the regular traveler and one traveling for a *mitzvah* purpose. The regular traveler is exempt from *sukkah* only during the day but obligated at night, while the *mitzvah* traveler is exempt both by day and by night.

- Why is the *mitzvah* traveler exempt both by day and by night?

Traveling for a *mitzvah* purpose serves to exempt the traveler because of the principle of “one already engaged in a *mitzvah* is exempt from a secondary *mitzvah*”.

- Why is the regular day traveler exempt by day and why is the night traveler exempt by night?

Tosfot resolve this question:

This is derived from the principle of teishvu ke'ain ta'duru; just as one who lives in a house is not restricted from traveling [one who lives in a sukkah is not restricted from traveling.] This is also the reason why one who is uncomfortable was exempted from the sukkah because of teishvu ke'ain ta'duru, for no one dwells in an unpleasant environment.

Tos. Sukkah 26a s.v. Holchei

כל זה נפקא מתשבו כעין תדורו
שכשם שאדם בביתו אינו נמנע
מלצאת לדרך וכן מצטער דפטרו לעיל
מן הסוכה היינו מתשבו כעין תדורו
דאין אדם דר במקום שמצטער.
תוס' שם ד"ה הולכי דרכים.

In explaining the dispensation granted the traveler, *Tosfot* invoke the principle that “dwelling [in the *sukkah*] should be similar to living [in the home].” The verse states, “You shall dwell in *sukkot* for seven days; all that are born in Israel shall dwell in *sukkot*.” (Lev. 23:42) The language used to describe dwelling in the *sukkah* is “*teishvu*.” R. Baruch ha-Levi Epstein, *Torah Temimah* ad. loc. n. 168, claims that the unique connotation of “*teishvu*” is a permanent dwelling.⁴⁹ Hence the Gemara, *Sukkah* 28b, derives from the usage of the word “*teishvu*” regarding the *sukkah* dwelling that the *sukkah*-lifestyle must resemble a permanent-house-lifestyle. This means that the fine dishes and linens used in the home must be transferred to the *sukkah*, and all activities normally performed in the home should be performed in the *sukkah*. This obligation is referred to as *teishvu ke'ain ta'duru*.

Therefore, any compromised or uncomfortable dwelling in the *sukkah* undermines the nature of the *mitzvah*, which is patterned after the normal cushy home-style dwelling. *Tosfot* argue that traveling is a normal activity for which people abandon their permanent home. Hence, one may leave the *sukkah* as well in order to travel.

- Why is the daytime traveler only exempt by day, but not by night? Why does the principle of “*sukkah*-dwelling like home-dwelling” not exempt such travelers from the *mitzvah* even at night?

⁴⁹ R. Epstein claims that “*teishvu*” can most literally be understood as “sitting.” In that light, he vindicates the opinion of Rambam, *Hil. Hametz u-Matzoh* 6:12 cited by the *Shulchan Aruch Orakh Hayyim* 643:1, that in order to properly fulfill the blessing recited prior to eating in the *sukkah*, “*leishaiv ba-sukaah*” one must be sitting as opposed to standing.

R. Mordechai Jaffe, *Levush Malkhut* sec. 640, argues that the principle of *teishvu ke'ain ta'duru* is actually active even at night, and daytime travelers may dwell along the way without a *sukkah*. However, when the traveler finishes for the day he must seek search for and sleep in a *sukkah* if one is available. In contrast, the traveler is not obligated to search for a *sukkah* during the day.

It is interesting to note, that while the explanation of *Tosfot* is clearly the normative approach, R. Joseph Engel, *Gilyonei ha-Shas* ad. loc., cites R. Samuel Eliezer ha-Levi Edels, *Maharsha, Taanit* 10b, who expands this halachah into a global exemption freeing the traveler from all positive *mitzvot* and not specifically the mitzvah of *sukkah*. Clearly *Maharsha* feels that this dispensation accorded the traveler is not because of *teishvu ke'ain ta'duru* which is local to *sukkah*, but rather for some other reason.

R. Engel proposes that *Maharsha* must suppose that all travelers are too preoccupied with the turbulence of travel that they are not physically able to fulfill the *mitzvot*. This would endow them with the status of an *oneis* - one who is incapable of performing a given mitzvah, and therefore not held accountable. While this approach is provocative, R. Engel claims it is not sustained by the sources. The Gemara states that the traveler is “exempt” from the mitzvah of *sukkah*; according to *Maharsha*, the traveler is not technically “exempt” from the mitzvah of *sukkah*, rather he is simply unaccountable for it.

Business or Pleasure?

Are all travelers included in the exemption from *sukkah*?

When *Rashi* elucidates the aforementioned passage in the Gemara, he curiously adds, “A traveler - for business purposes.” This seems to include travelers for business, but exclude travelers for pleasure. Hence, R. Moshe Feinstein writes:

Regarding traveling for pleasure to a place where there will be no sukkah would seem to me to be prohibited, for the dispensation given to travelers in the Gemara Sukkah 26a etc. is only when they are traveling for business which is a real need. Business universally causes all people to leave their house, and therefore in this context as well one is allowed to leave the sukkah. However, to travel for pleasure inherently fulfills no pressing need. It is irrelevant that he would have left his house to travel for pleasure, since it is only satisfying a desire and giving pleasure; he is not leaving for any purpose.

You should note, a person may many times decide to sleep outdoors because he enjoys it more than sleeping indoors. Would that be sufficient grounds to sleep outside of the sukkah because he would leave his house under the same circumstances? If yes, why did Rava state that only one who is uncomfortable is exempt from the sukkah; he should rather have said that one who enjoys the

ובדבר לצאת לטיול ולתענוג בעלמא למקום שלא יהיה לו סוכה מסתבר לע"ד שאסור דהולכי דרכים שאיתא בסוכה דף כ"ו וכו' כשהולכין למסחר וכיוצא שהוא צורך ממש וגם הוא לכל אדם שבשביל זה היה צריך לצאת גם מביתו שלכן באופן זה מותר לצאת מהסוכה, אבל לטיול ולתענוג בעלמא שאין לזה שום צורך אינו כלום מה שבשביל תאוות והנאות היה יוצא מביתו כיון שלא היתה יציאתו אף מביתו לצורך. והגע עצמך אדם שיש הרבה פעמים שישן בחצרו תחת כפת השמים משום שנהנה בזה יותר מבבית הכי יפטר מסוכה משום שמביתו יצא בשביל זה, וא"כ למה אמר רבא מצטער פטור מן הסוכה הי"ל לומר מי שנהנה לישב בחצר יותר מבבית

outdoors more than indoors is exempt from the sukkah....

Moreover, Magen Avraham 640:14 writes, that one who will not sleep well in the sukkah, and will be tired the next day, and as a result will not be able to do the mitzvah properly, is exempt from the sukkah. The implication is that for the enjoyment of restful sleep alone, one would not be allowed to leave the sukkah for the house.

Furthermore, in times of anger, God punishes those who search to be excused from the positive commandments. This has its source in the Gemara, Menahot 41a, which recounts that even though R. Ketina wore garments that were excluded from tzitzit for pleasure, and not for the purpose of avoiding the mitzvah, [he was punished]. Therefore, it is prohibited to leave the sukkah in order to travel for pleasure.

Iggerot Moshe OH, III, no. 93

והסוכה פטור מן הסוכה ... וגם מפורש במג"א סימן תר"מ ס"ק י"ד דאם אין יכולין לישן כל כך בטוב בסוכה ויהיו יגיעים למחר ולא יוכלו לקיים המצוה כראוי פטורין, הרי דבשביל הנאת השינה יותר אסור וכו'. וגם בלא זה הא נענשין על עשה בעידן ריתחא כשמבקש טצדקי למיפטר מהמצוה כשמבקש טצדקי למיפטר מהמצוה כדאיתא במנחות דף מ"א אף באופן שהיה לו הנאה בלבישת בגדים הפטורין מציצית דודאי לא בכונה ליפטר מציצית לבש רב קטינא לסדינא וסרבלא הפטורין מציצית. לכן מסתבר דליילך לטיול ולתענוג למקום שליכא סוכה אסור.
אגרות משה או"ח ח"ג סי' צ"ג

R. Feinstein posits that the exemption afforded the traveler only pertains to the business traveler or one traveling for some other *mitzvah* purpose. Therefore, he concludes that it is prohibited to travel for pleasure when that entails forgoing the mitzvah of *sukkah*. R. Feinstein bases his position on two main arguments.

First, traveling for pleasure would not be subsumed within the reason for exempting travelers of *teishvu ke'ain ta'duru*. Despite the fact that people regularly leave their own homes to take vacations, since the traveler is not compelled to leave the *sukkah*, it should not be included in *teishvu ke'ain ta'duru*.

Second, the Gemara, *Menahot* 41a, implies that punishments are doled out to those who squander opportunities to perform positive commandments. The Gemara records that R. Ketina was reprimanded by the Rabbis for wearing linen garments, which are exempted from the *mitzvah* of *tekhelet*. Similarly, traveling for pleasure during *sukkot* would be punishable because it involves conscious forgoing of a *mitzvah*.

R. Yosef Sholom Elyashiv criticizes R. Feinstein's contention:

R. Moshe Feinstein in *Iggerot Moshe* makes a very original statement, that the exemption of travelers from the mitzvah of *sukkah* is reserved to those traveling for business.

He has two primary arguments, the first is that it is not included within *teishvu ke'ain ta'duru* etc. His reasoning is difficult to understand. Since today it has become commonplace to travel for pleasure, why should it be different than traveling for business? Since it is the normal way to do so, it should be incorporated within *teishvu ke'ain ta'duru* and be exempted from *sukkah*.

והנה הגר"מ פיינשטיין זצ"ל באגרות משה יצא בחידוש גדול דהולכי דרכים דפטורים היינו דוקא בדרך סחורה וכו', וכתב זאת משני טעמים, חדא דזה לא הוה בכלל תשבו כעין תדורו וכו', ולכאורה דבריו אינם מובנים, דמכ"מ כיון דהיום הדרך הוא לצאת לטיול א"כ מאי גרע מסחורה, דכיון דהוה דרכו הוה בכלל תשבו כעין תדורו ופטור מהסוכה.

Additionally he argues to obligate pleasure travelers in sukkah based on the Gemara, Menahot 41a, regarding tzitzit, etc. However, the issue at hand seems unrelated to the proof text. There, [R. Ketina] wore linen garments, which are exempt from tzitzit, for an extended period of time. This gave the impression that he was trying to avoid the mitzvah. Here, however, [the traveler] was in the sukkah and only temporarily excused himself for a trip, and it says, *teishvu ke'ain ta'duru*. This is comparable to one who steps outside of the sukkah to converse with a friend, who would not be accused of avoiding the mitzvah.

When it was stated [by Rashi] that the travelers were on business, it was not exact, and not meant to exclude traveling for pleasure. Moreover, the other rishonim do not explain [like Rashi], but rather are silent.

He'arot le-Masekhet Sukkah p. 114

עוד טעם כתב לחייב בסוכה מטעמא דהגמ' במנחות (מא.) לגבי ציצית וכו', ולכאורה אין הנידון דומה לראיה כלל, דהתם הרי לבש לתקופה ארוכה סדין שפטור מציצית א"כ מראה עצמו כמפקיע המצוה, אבל כאן היה בסוכה ורק באקראי יוצא גם לטיול, ותשבו כעין תדורו כתיב. ודמי לשח עם חבירו חוץ לסוכה דלא נאמר דיש כאן הפקעת עשה וכו'. ונראה דמש"כ הולכי בדרך סחורה לא בא לאפוקי הולכים בטיול בעלמא והא דנקיט סחורה לאו דוקא נקט, ועוד דהרי הראשונים לא פירשו כן כלל אלא סתמו.
ס' הערות למס' סוכה עמ' קי"ד

R. Elyashiv sees no basis for R. Feinstein's allegation that the traveler must be forced to travel in order to be included in *teishvu ke'ain ta'duru*. Logically, even one traveling for pleasure should be included within *teishvu ke'ain ta'duru*, since most people normally travel in that manner away from their home. Additionally, he argues that temporarily traveling outside of the *sukkah* should not be compared with R. Ketina who regularly avoided the *mitzvah* of *tzitzit* by donning only linen garments.

Hence, R. Elyashiv is not opposed to temporarily traveling for pleasure to a place where there is no *sukkah*, but R. Feinstein would not allow such travel.

Business Class

As R. Elyashiv notes, even though R. Feinstein's position is supported by *Rashi*, the other *rishonim's* silence on the issue is curious. R. Elyashiv does not develop the point further. However, in light of the *rishonim's* comments in another context, perhaps their silence here could be more significant.

The Gemara, *Shabbat* 19a, states that one is not allowed to embark upon a boat voyage during the three days prior to Sabbath unless it is for a *mitzvah* purpose. In defining what constitutes a *mitzvah* purpose, *Mordekhai, Sabbath* sec. 258, cites the opinion of *R. Tam* that traveling for livelihood is considered a *mitzvah* purpose. R. Menahem Mendel Kasher, *Divrei Menahem*, II p. 246, finds midrashic basis for this opinion:

"Six days you shall work" (Ex. 20:9), *Rebbi* said, this constitutes another command: in the same way that Israel was commanded in the positive commands of Sabbath, so too they are commanded to work [during the week].

Mekhiltah de-Rashbi Ex. 20:9

ששת ימים תעבוד, רבי אומר הרי זו גזירה אחרת, שכשם שנצטוו ישראל על מצות עשה של שבת כך נצטוו על המלאכה. מכילתא דרשב"י שמות כ:ט

R. Eliezer said, how great is work, for the same way Israel was commanded regarding Sabbath, they were commanded as well regarding work, as it says, "Six days you shall labor, and finish all your work" (Deut.5:13).

Avot de-R. Natan, ch. 21

רבי אליעזר אומר גדולה היא מלאכה שכשם שנצטוו ישראל על השבת כך נצטוו על המלאכה שנאמר ששת ימים תעבוד ועשית כל מלאכתך.
אבות דר' נתן נז"ב פכ"א

Rema codifies this comment of *R. Tam* that travel for business is permitted within three days of Sabbath. *Rema* adds a comment of *Ravyah*, *Sabbath* sec. 198 p. 261, that it is permitted to embark on a boat within three days of Sabbath for visiting friends :

There are those who say, anytime one travels for business or to see a friend it is considered a *mitzvah* purpose. It is only considered optional traveling when traveling solely for pleasure.

Rema, OH 284:4

יש אומרים כל מקום שאדם הולך לסחורה או לראות פני חבירו חשוב הכל דבר מצוה ואינו חשוב דבר הרשות, רק כשהולך לטייל.
רמ"א או"ח סי' רמ"ח סע' ד'

Assuming the definition of "*mitzvah* purpose" for Sabbath and for *sukkah* is the same, R. Feinstein's position becomes untenable. The Gemara *Sukkah* cited previously said that *mitzvah* travelers and generic travelers can be exempt from *sukkah*. If business trips are considered *mitzvah* travels, then generic traveling must by default refer to pleasure trips. Hence, the other *rishonim* were silent because they felt that even a pleasure traveler is exempt from *sukkah*.

However, *Beit Yosef*, *Orakh Hayyim*, 248, disagrees with *R. Tam* and argues that earning a livelihood is not a *mitzvah*, since if earning a livelihood were a *mitzvah* then the entire population will continually be exempt from *mitzvot* due to the principle of "one engaged in a *mitzvah* if exempt from performing other *mitzvot*."⁵⁰ *Rashi* may have shared the *Beit Yosef's* attitude, and therefore defined the generic traveler as one traveling for business, as opposed to one traveling for a genuine *mitzvah* purpose. Strangely, R. Feinstein's approach is only viable within the position of *Beit Yosef* but not within the position of *Rema*.

R. Feinstein tacitly defends his position when he writes elsewhere, *Iggerot Moshe*, *Orakh Hayyim*, I, no. 127, that the entire prohibition to begin a voyage close to Sabbath is only rabbinic. This is evidenced by the fact that there is a leniency for a *mitzvah* traveler. If beginning a voyage was a bona fide Biblical prohibition, it could not be dismissed simply because the violator has a commendable itinerary. (This point is also made by the *Taz*, 284:5.) Because traveling close to Sabbath is only a rabbinic prohibition, even minimal *mitzvot* may be sufficient to suspend the prohibition. Hence, for R. Feinstein, it is impossible to extrapolate to other areas of halakhah

⁵⁰ R. Kasher ad. loc. rebuts the attack of *Beit Yosef*. He explains that everyone is obligated to cease work in order to fulfill *mitzvot*. The rule that "one engaged in a *mitzvah* if exempt from performing other *mitzvot*." only applies when it is impossible to perform both *mitzvot*. One who could interrupt his first *mitzvah* to do the second *mitzvah*, then return to the first *mitzvah* having lost nothing, is not permitted to avoid the second *mitzvah*. However, one traveling to do a *mitzvah* is outside of his or her normal surroundings, and would not be able to pause activities and then resume them willy nilly.

from the fact that business is a *mitzvah* regarding traveling close to Sabbath . [See R. Hershel Schachter, *Be'ekvei ha-Tzon*, pg. 153, who disagrees with R. Feinsstein's assertion].

In truth, the entire discussion regarding exemptions from the *sukkah*, relates only to those activities which absolutely require a *sukkah*. While it is commendable to perform all of one's regular activities in the *sukkah*, only eating a meal or sleeping demand a *sukkah*. *Shulhan Arukh, Orakh Hayyim*, 639:2 states that eating less than a *ke-beitzah* - "an egg's worth," of bread, or less than a *ke'viat seudah* - "a meal's worth," of grain items (such as cookies or cake) constitutes a snack, and may be eaten outside the *sukkah*.⁵¹ Bearing this in mind, we can suggest that even those who choose to follow the stringent opinion of R. Feinstein may be lenient with regards to eating halachic "snacks" while traveling on any extended trip. To assume otherwise might constitute a double stringency.

The Last Leg

Rema ad. loc. also cites the position of *Ravyah* that visiting a friend is considered a *mitzvah* purpose. If a comparison can be made, (R. Feinstein's latter stance notwithstanding,) traveling to visit family would also exempt one from the *mitzvah* of *sukkah* while traveling. However, even in the original context of traveling prior to Sabbath, *Rema* expresses hesitation regarding this ruling; therefore to extend it to other areas is tenuous. Nonetheless, traveling to visit parents, where the *mitzvah* of honoring one's parents is present, should universally be viewed as a *mitzvah* purpose, and would exempt the traveler from the *sukkah* while on the road.

Shulhan Arukh, Orakh Hayyim, 248:4, writes in the context of taking a boat trip before Sabbath, that traveling to the Land of Israel is considered a *mitzvah* purpose. *Magen Avraham*, 248:15, cites a dispute amongst the authorities whether this is limited to those moving to the Land of Israel permanently, or even applies to those merely vacationing there. The position that even a visit constitutes a *mitzvah* is based on the statement of the Gemara, *Ketubot* 111a, that one who walks four cubits in the Land of Israel is awarded atonement for his sins. R. Abraham Pyetkovski, *Piskei Teshuvah*, II, p. 73-74, promotes a compromise position, and distinguishes between visiting for less than thirty days or twelve months versus visiting for a longer period of time.⁵²

In application to the present discussion, relocating entirely to the Land of Israel during *sukkot* is considered by all authorities a *mitzvah* trip. However, to only visit the Land of Israel would be subject to a dispute amongst the *poskim*. According to R. Elyashiv going to the Land of Israel should be no worse than any pleasure trip which exempts one from the *mitzvah* of *sukkah* while traveling. However, for R. Feinstein, who believes that only business and *mitzvah* travel can excuse the traveler from the *sukkah*, traveling to the Land of Israel would be subject to the this argument cited by *Magen Avraham*.

⁵¹ *Mishne Berurah*, 639:15, cites the dissenting opinion of *Magen Avraham* that grain products also have the *ke-beitzah* standard which is a smaller amount than a *ke'viat seudah*.

⁵² This opinion is also cited by R. Hershel Schachter, "The Mitzvah of Yishuv Eretz Yisrael," *The Journal of Halacha and Contemporary Society* 8, p. 25. Interestingly, R. Schachter reports that R. Bezalel Zolti suggested that the dispute cited by *Magen Avraham* depends on another dispute between *Rambam* and *Ra'avad* about whether the prohibition to allow non-Jews to live in Israel includes visits and tours or is limited to permanent residents only.

In summary, while the Gemara exempts travelers from the *mitzvah* of *sukkah*, there is a dispute between R. Feinstein and R. Elyashiv whether only the business or *mitzvah* traveler is excluded, or any traveler. By extension, in interpreting the Gemara's distinction between the generic traveler and the *mitzvah* traveler R. Feinstein expresses a more constricted view of "*mitzvah* travel." He identifies the business traveler as the generic traveler, presumably excluding business trips from the category of *mitzvah* travel. This might imply that traveling to visit friends has no unique status whatsoever, while others might view both business travel and social visits as *mitzvah* related travel.

The Mitzvah of Simcha on Yom Tov

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One of the defining elements of our Yomim Tovim is the requirement to experience simcha – joy or happiness. The Torah presents the obligation of simchat Yom Tov most extensively in the context of Sukkot.

Rejoice in your festivals ... and you should be exceedingly happy.
Devarim 16:14,15

ושמחת בחגך ... והיית אך שמח:
דברים פרק טז:יד-טו

When there is a Beit Hamikdash, one fulfills the Biblical obligation of Simchat Yom Tov through eating the meat of shalmei simcha - special offerings.⁵³ How do we fulfill simchat Yom Tov absent the Beit Hamikdash? Is there an objective way of demonstrating simcha, or does the mitzvah assume a more subjective nature?

The gemara in Pesachim introduces us to other applications of Simchat Yom Tov.

The Rabbis taught: A person is obligated to make his children and the members of his household happy on Yom Tov, as the verse says, and you shall be joyous in your holiday. And how does he make them happy? With wine. Rebbe Yehuda said: men with what is appropriate for them and women with what is appropriate for them. Men with what is appropriate for them - with wine. And women with what? Rav Yosef taught: in Bavel with colored clothing and in Eretz Yisrael with pressed flax clothing. We learned in a Braitā: Rebbe Yehuda ben Beteira said: when the Beit Hamikdash is standing simcha is only with meat, as the verse says and you shall slaughter peace offerings and eat them there and be joyous in front of Hashem your G-d, and when the Beit Hamikdash is not standing simcha is only with wine, as the verse says, and wine shall gladden the hearts of man.

Pesachim 109a

תנו רבנן: חייב אדם לשמח בנו ובני ביתו ברגל, שנאמר (דברים טז) ושמחת בחגך, במה משמחם - ביין. רבי יהודה אומר: אנשים בראוי להם, ונשים בראוי להן. אנשים בראוי להם - ביין, ונשים במאי? תני רב יוסף: בבבל - בבגדי צבעונין, בארץ ישראל - בבגדי פשתן מגוהצין. תניא, רבי יהודה בן בתירא אומר: בזמן שבית המקדש קיים - אין שמחה אלא בבשר, שנאמר (דברים כז) וזבחת שלמים ואכלת שם ושמחת לפני ה' אלהיך. ועכשיו שאין בית המקדש קיים - אין שמחה אלא ביין, שנאמר (תהלים קד) ויין ישמח לבב אנוש.
פסחים קט.

⁵³ See Pesachim 109a and Rambam, Chagigah 1:1

While Tosafot (Moed Katan 14b s.v. Aseh) are of the opinion that the Biblical obligation of Simchat Yom Tov can only be fulfilled through shalmei simcha, Rambam, following the implication of the above gemara, assumes that other forms of simcha fulfill the Biblical imperative as well.

Even though the simcha mentioned here refers to the korban shlamim as we explain in Hilchot Chagigah, included in this simcha is to make his children and members of his household joyous, each one according to his means. How? For children one gives roasted kernels and walnuts and candies. For women one buys clothing and pleasant jewelry based on what one can afford. And men eat meat and drink wine, for simcha is only with meat and wine.⁵⁴

Rambam Hilchot Yom Tov 6:17-18

אף על פי שהשמחה האמורה כאן היא קרבן שלמים כמו שאנו מבארין בהלכות חגיגה יש בכלל אותה שמחה לשמוח הוא ובניו ובני ביתו כל אחד ואחד כראוי לו. כיצד הקטנים נותן להם קליות ואגוזים ומגדנות, והנשים קונה להן בגדים ותכשיטין נאים כפי ממונו, והאנשים אוכלין בשר ושותין יין שאין שמחה אלא בבשר ואין שמחה אלא ביין
רמב"ם הלכות יום טוב ו:יז - יח

Rambam here indicates that even when there is a Beit Hamikdash there are alternative ways of fulfilling simchat Yom Tov. While the most basic element of simchat Yom Tov involves consuming kodshim meat, other manifestations of joy are subsumed under this mitzvah as well. As Shaagat Aryeh (65) explains, simchat Yom Tov is distinct from all other mitzvot in this regard. Classic mitzvot involve a defined religious act – be it taking arba minim and sitting in a succah on Succot, or eating matzah on Pesach. Whether a person is rich or poor, undernourished or overweight, he must take the same arba minim and eat the same kezayit of matzah. Simchat Yom Tov, however, has a unique subjective component. Everyone has to attain a state of joy, but the way that one does so may depend on his ability, wealth, and personal preferences. For men it may be through eating meat and drinking wine; for women it may be through getting new clothing; and for children it may be through new toys.⁵⁵

Along these lines, Rav Soloveitchik (Shiurim L'zecher Aba Mari Vol. II) demonstrates that the thrust of Simchat Yom Tov (the kiyum hamitzvah, the fulfillment of the mitzvah) is the emotional state of joy. The technical mechanisms of achieving that state (the ma'aseh mitzvah), which are objectively defined when we have a Beit Hamikdash and are more subjective

⁵⁴ It is interesting to note that the Beit Yosef (Orach Chaim 529) understands the gemara in Pesachim literally and asks why the Rambam includes the eating of meat as a method of fulfilling simchat Yom Tov nowadays, given that the gemara in Pesachim lists only wine. Apparently, for this reason Shulchan Aruch (529:2) makes no mention of eating meat. Maharshal (Yam shel Shlomo Beitzah 2:5) suggests that the gemara only includes wine because eating meat is an obvious form of simchat Yom Tov that does not need to be stated.

⁵⁵ Shaagat Aryeh notes that a number of rishonim explain Beit Hillel's allowance of carrying a baby in a public domain of Yom Tov (Beitzah 12a) as being predicated on simchat Yom Tov. (See, for example, Mordechai Beitzah 658.) The ability for families to take walks together outside can enhance their simchat Yom Tov. This is another clear example of a subjective type of simchat Yom Tov. There is no halacha that families must take walks together on Yom Tov, but if doing so enhances their Yom Tov experience then the activity is commendable.

nowadays, are merely a means towards that goal and are not inherently significant.⁵⁶ As proof to this, Rav Soloveitchik cites another source in Rambam.

Even though there is a mitzvah to rejoice on all of the festivals, on Succot in the Beit Hamikdash there was a day of added joy, as the verse says, "and you will be happy in the presence of Hashem your G-d for seven days."

Rambam Hilchot Lulav 8:12

אף על פי שכל המועדות מצוה לשמוח בהן, בחג הסוכות היתה שם במקדש שמחה יתירה שנאמר (ויקרא כ"ג) ושמחתם לפני ה' אלהיכם שבעת ימים.
רמב"ם הלכות שופר וסוכה ולולב ח:יב

The Rambam expresses the same idea in Sefer Hamitzvot.

Included in the verse, "and you shall rejoice in your festival," is what they said as well to rejoice in all forms of joy, and based on this to eat meat on the festivals and to drink wine and to wear fine new clothing ... and to rejoice with musical instruments and to dance only in the Beit Hamikdash, and this is the Simchat Beit Hashoevah, and all of this is subsumed under "and you shall rejoice in your festivals".

Rambam Sefer Hamitzvot Aseh 54

וכולל באמרו ושמחת בחגך מה שאמרו ג"כ שמח בכל מיני שמחה. ומזה לאכול בשר בימים טובים ולשתות יין וללבוש בגדים חדשים ולחלק פירות ומיני מתיקה לקטנים ולנשים. ולשחוק בכלי ניגון ולרקוד במקדש לבד והיא שמחת בית השואבה. זה כולו נכנס תחת אמרו ושמחת בחגך.
ספר המצוות לרמב"ם מצות עשה נד

It is obvious that there is no objective religious value to playing musical instruments and dancing. Just like the acts of playing musical instruments and dancing in the Simchat Beit Hashoevah constitute Simchat Yom Tov, all activities associated with simchat Yom Tov - from consuming kodshim meat to buying new clothing to shaking the lulav⁵⁷ - are simply a means to achieving an emotional state of simcha.

Based on our presentation of the Rambam and Shaagat Aryeh, it may follow that if a person enjoys other kinds of food more than meat, he may fulfill his obligation of simchat Yom Tov with the foods that he enjoys. Darkei Teshuvah (89:19) discusses this possibility in the context of the widespread minhag to eat dairy foods on Shavuot. While the Rama (494:3) refers to a minhag of eating dairy and then following the dairy with meat, many people have the practice of eating exclusively dairy meals. Darkei Teshuvah acknowledges that according to Shaagat Aryeh, if a person prefers dairy to meat he may eat an exclusively dairy meal. However, he quotes the Divrei Chaim (Sanz) as taking issue with Shaagat Aryeh's reasoning and opposing the practice of eating dairy meals on Shavuot.

⁵⁶ Rav Soloveitchik employs this idea to explain the gemara in Moed Katan (14b) that says that a mourner does not practice his aveilut on a Yom Tov because the communal positive commandment of simchat Yom Tov pushes away the individual positive commandment of aveilut. If simchat Yom Tov is merely the eating of meat and drinking of wine, activities that a mourner may perform, there should be no reason that aveilut and simchat Yom Tov could not coexist. Rather, the critical component of simchat Yom Tov is the emotional state, which is irreconcilable with the emotional state of aveilut.

⁵⁷ See Yerushalmi Succah 3:11.

For those of us who prefer to eat meat as the primary means of attaining simchat Yom Tov (or if we assume an objective element to Simchat Yom Tov nowadays), how often do we need to eat meat on Yom Tov? Presumably our obligation to eat meat should be patterned after the obligation in the time of the Beit Hamikdash. Chazon Ish (Kodshim 129 – p. 446, commentary to Pesachim 71a) is uncertain as to whether in the time of the Beit Hamikdash the meat of shlamim had to be consumed once in the daytime and once at night or whether it was sufficient to eat the meat once in every twenty-four hour period. Shaagat Aryeh (68) writes that the obligation applies both in the daytime and at night.

Even if we assume that once in a twenty-four hour period suffices, it is unclear how to calculate that twenty-four hour period. On the one hand, in the Jewish calendar, the day generally follows the night, such that if one ate meat on the night of the nineteenth of Tishrei he would not have to eat meat during the following day. However, in the world of korbanot, the night follows the day, and the meat consumed on the night on the nineteenth would not fulfill the obligation of the next day.⁵⁸

Rav Hershel Schachter⁵⁹ presents a novel suggestion that there is a fundamental difference between the obligation of simcha on the yom tov of Succot and on the yom tov of Pesach. The gemara in Arachin (10a) raises the following question.

Why is it that on Succot we recite (the entire Hallel) on every day and on Pesach we do not recite (the entire Hallel) on every day? Every day of Succot has its own korban, whereas the days of Pesach do not have their own unique korbanot.

Airchin 10a⁶⁰

מאי שנא בחג דאמר' כל יומא, ומאי שנא
בפסח דלא אמרינן כל יומא? דחג חלוקין
בקרבתיהן, דפסח אין חלוקין
בקרבתיהן.
ערכין דף י.

Rav Soloveichik explained that the gemara is not merely highlighting a technical difference between Succot and Pesach, but rather a fundamental distinction between the sanctity of the two Yomim Tovim. Whereas every day of Succot has its own unique kedushat hayom (sanctity), as evidenced by each day's distinct korbanot, Pesach has one singular kedushat hayom that covers all seven days of the festival. Since the recitation of hallel is a form of expressing simcha, if every day of Succot has its own kedushat hayom, each of those days must include the recitation of hallel. On Pesach, however, the recitation of hallel on the first day suffices for the entire Yom Tov. Based on this understanding, suggests Rav Schachter, it should follow that whereas on Succot simchat Yom Tov is a daily obligation, on Pesach it is sufficient to fulfill simchat Yom Tov on the first day, and one would not need to consume meat on Chol Hamoed.

⁵⁸ Rav Hershel Schachter (B'ikvei Hatzon 15:12) concludes that the kodshim calendar should be relevant for defining the obligation of simchat Yom Tov.

⁵⁹ *ibid.*

⁶⁰ Shiblei Haleket (174), after citing this gemara, quotes a medrash that suggests an additional reason for the limited recitation of hallel on Pesach. Since the Egyptians drowned in Yam Suf on the seventh day of Pesach and we do not wish to appear as rejoicing over the downfall of our enemies, we restrict the hallel on Pesach to the first days of Yom Tov.

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Rabbi Dr. Norman Lamm

IS TORAH KNOWLEDGE ENOUGH TO QUALIFY AS JEWISH EDUCATION?

10:30 pm

TORN – A TEENAGER'S SEARCH FOR MEANING IN JUDAISM

A play by Rabbi Chagai Lubber, Aspaklaria Theater Group

Followed by a panel discussion

Rabbi Kenneth Brander
Dean,
YU Center for the Jewish Future

Dr. Eitan Eckstein
Director,
Retorno Center

Ms. Tova Rhein
Director Overseas Program,
Midreshet Lindenbaum

12:30 am

Rabbi Assaf Bednarsh

KIBBUD AV V'EM

1:30 am

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