

## Lamdan November 2013-All

### Inyana de'Yoma

#### Chanukah Lights that Blew Out

Rabbi Eliakim Koenigsberg

The Gemara (Shabbos 21a) cites a dispute between Rav Huna and Rav Chisda as to whether a person is responsible to rekindle the Chanuka lights if they go out before having burned for the minimum amount of time (which the Rishonim understand to mean half an hour). Do we say *kavsa zakuk lah*, that one is responsible to relight the candles, or *kavsa ein zakuk lah*? The Gemara (21b) clarifies that everyone admits that it is necessary to put enough oil in the cup so that it can burn for the full half hour. The disagreement relates only to whether one has to rekindle the light if it goes out before it has burned for half an hour. Regarding this issue, we pasken like Rav Chisda that one is not obligated to do so.

At first glance, this opinion of Rav Chisda that one is not obligated to relight the candle seems difficult. After all, how can one fulfill his obligation of lighting *neiros Chanuka* if they fail to burn for the requisite amount of time?

The Chasam Sofer, in his *chiddushim* to the Gemara Shabbos 21a, suggests that the dispute between the Amoraim relates to the very nature of the mitzvah of ner Chanuka. Rav Huna claims *kavsa zakuk lah* because he understands that in order to fulfill the mitzvah of ner Chanuka a candle must burn for the minimum amount of time. So if it goes out before the half hour is completed, no mitzvah has been fulfilled. But Rav Chisda maintains that *kavsa ein zakuk lah* because he believes that the mitzvah is fulfilled through the act of lighting (*ma'aseh hadlakah*). As long as a person lights a candle which has the potential to last half an hour, he has fulfilled the mitzvah, even if in reality the candle goes out before it had a chance to burn the whole time.

This also seems to be how the Shulchan Aruch understood this idea of *kavsa ein zakuk lah*. The Shulchan Aruch, Orach Chaim (673:2), writes: "The lighting of the candle is the mitzvah; therefore if the candle goes out prematurely, there is no need to relight it." The source of this halacha is a Teshuvah HaRashba (vol. 1 #539), who seems to maintain that the mitzvah of ner Chanuka is fulfilled with a *ma'aseh hadlakah*, and therefore once the candle is lit, as long as it has the potential to burn for half an hour, the mitzvah has been completely fulfilled. That is why there is no need to relight the candle even if it goes out prematurely, because the mitzvah has already been fulfilled.

The Rashba adds that based on this logic, it shouldn't matter whether the candle went out by itself or was extinguished accidentally when the person who lit it tried to fix the wick after it was lit. Either way, as long as initially the candle was lit properly, and it had the

potential to burn for the full time, there is no need to relight it even if it goes out within half an hour of the original lighting.

In addition, according to this reasoning, there should not even be a *mitzvah le'chatchila* to relight a ner Chanuka which blew out before it burned for half an hour, because once the candle was lit properly, with the potential to burn for the full time, one has fulfilled the *mitzvah le'chatchila*. This, in fact, is the position of the Pri Megadim (Orach Chaim 673, Mishbetzos Zahav, no. 1).

But the Maharshal (Teshuvos #85) disagrees on both points. He claims that if a person extinguished the candle accidentally while trying to fix it, he is obligated to relight it, even if originally he had lit the candle in such a way that it had the potential to burn for the full half hour. What's more, writes the Maharshal, even if the candle blew out by itself, without any human intervention, there is still a *mitzvah le'chatchila* to relight it if it has not yet burned for the full half hour.

How can we understand the position of the Maharshal? Why should there be any *mitzvah* to relight a ner Chanuka which blew out if the person already fulfilled the *mitzvah* completely by lighting a candle which had the potential to burn for a full half hour? Apparently, the Maharshal felt that even Rav Chisda who holds *kavsa ein zakuk lah* admits that the *mitzvah* of ner Chanuka is fulfilled completely (*b'shleimusah*) only if the candle burns for half an hour. But nevertheless, Rav Chisda understood that if the candle goes out prematurely, there is no obligation nor even a *mitzvah le'chatchila* to relight it.

Perhaps the Maharshal's reasoning is similar to that of R. Shlomo Kluger, who explains in his glosses Chochmas Shlomo on the Shulchan Aruch, Orach Chaim (673:2), that Rav Chisda felt that since a person already started to fulfill the *mitzvah* of ner Chanuka once the candle burned for a short time, Chazal did not force him to bother to relight the candle even if it blows out before it has burned for at least half an hour. We find in other areas of Halacha that *onus Rachmana patreih*, a person who was forced into a situation beyond his control and did an aveirah is exempt from any punishment. A similar notion can apply to neiros Chanuka. If a person lit the candle properly, and it burned for a short time but then blew out, the person is an *onus* because the candle went out due to circumstances beyond his control, and *onus Rachmana patreih*. Perhaps that is why he does not have to relight it even though he has not yet fulfilled the *mitzvah* completely.

This can help explain the two statements of the Maharshal. First of all, if the ner Chanuka blew out by itself, there is a *mitzvah le'chatchila* to relight it because even Rav Chisda admits that until the candle burns for half an hour, the *mitzvah* has not been fulfilled completely. Therefore, it is appropriate to relight the candle in order to fulfill the *mitzvah b'shleimusah*. Moreover, if a person actually extinguished the candle, even if

he did so accidentally, he is obligated to relight it, because such a person is defined as a *shogeg*, not an *onus*, and the only reason one is exempt from relighting a ner Chanuka that blew out is because *onus Rachmana patreih*, an *onus* is not held responsible for his actions. A *shogeg*, however, is responsible for his actions, and he therefore must relight the neros.

## **Chanukah: When Little Things Count**

### **Yitzzy Radner**

On a Biblical level, the concept of “*Rov*” dictates that we follow a quantitative majority. For example, should members of Sanhedrin be in disagreement regarding the most appropriate halachic ruling, “*Rov*” dictates that the verdict follows the opinion of the majority of members. Similarly, if a piece of horse meat cannot be identified among multiple pieces of kosher meat, “*Rov*” dictates that the horse meat’s presence can be disregarded as the quantitative majority drowns out the horse meat.

However, Chazal revolutionized the boundaries of “*Rov*” declaring that we must heed not only to quantitative significance, but also to qualitative significance. Namely, the **quantitative** majority cannot render the minority as *batul*, meaningless, if the minority is **qualitatively** significant. Now, while qualitative significance can include multiple halachic categories (for example, foods with a higher level of *kedusha*, or *issur*, such as *orlahor avodahzarah*,) let us focus on qualitative significance in a monetary sense. When discussing qualitative significance monetarily, there is usually one basic case on the table: “*Davarshe’be’Minyan*”, something that is singly valuable on the market, which warrants (always) being sold individually or by number – Snickers candy bars, for example – as opposed to items sold by weight, which have no individual significance – Cheerios, for example. Subsequently, if a bottle of non-Kosher wine cannot be identified among one hundred bottles of Kosher wine, the non-Kosher wine’s presence cannot be disregarded on the basis of the overwhelming quantitative majority; for, if a diamond ring fell into a swimming pool, would we say that the diamond ring’s presence is drowned out by the overwhelming quantitative majority of the water?

R. Yisrael Issrelein, (author of the *Terumat HaDeshen*,) addresses the following query: We know that it is forbidden to make use of the light offered by a single Ner Chanukah. But what about if the Ner Chanuka is lost among multiple Shamesh candles? Does the Ner Chanukah become *batul* because of the countering majority of non-mitzvah candles (and, thereby, allow for making use of their light), or not? The *Terumat HaDeshen* explains that by lighting a very specific number of Nairot each night, we are essentially counting them on an individual basis over the course of the eight days of Chanukah; since “counting” is usually employed for things of individual importance, our “counting” transforms each *nershel mitzvah* into a *davarshe’be’Minyan*, bestowing each *ner* with qualitative significance. Thus, even though candles are of negligible value on the general market (as candles were sold by weight in 15<sup>th</sup> century Austria,) we create a new context, a local, halachically-oriented standard that renders

Nairot Chanuka to be of individual rank. And, therefore, the single but qualitative *Ner Chanukah* cannot be trumped by the quantitative majority of the non-sacred candles.

But the Terumat HaDeshen makes a curious assumption that cannot be ignored. The reason that diamonds are valuable is not that we sell them individually; we sell diamonds individually because they are valuable. So how can the Terumat HaDeshen assume that merely counting candles can bestow value? Would counting Cheerios one by one at the checkout counter confer upon them increased value?

There are two possible ways to understand the Terumat HaDeshen. Perhaps “counting” demonstrates particular care for an item and is, therefore, one of many ways to imbue an item with *chashivut*. Thus, perhaps stowing away an individual candle could just as well bestow significance upon the candle. (This idea is perhaps paralleled in the context of *Hilchot Shabbat* in regards to transporting items of worth in order to be in violation of *ho'tza'ah*; in addition to the amounts assessed by Chazal as significant, one can be liable for transporting an item he considers valuable upon stowing it away.) An alternative understanding of the Terumat HaDeshen is once an activity has been defined via the items it usually involves; the activity assumes a specific character and continues to maintain its integrity regardless of alternate items introduced. Moreover, R. Isserlein innovates that once the activity assumes a particular character, the character connotes a relationship between the activity and items involved – regardless of whether the item is typical or not. So since “counting” is usually done for things with value, counting becomes a way of connoting that items of value are at hand, and can even bestow importance upon items of trivial worth. However, if this second approach is correct, then “counting” – a *particular* activity associated with items of value – is *not* arbitrary, and is the only method to confer *chashivut* – as opposed to stowing away or similar activities, which have no such relationship with significant items.

## **Masechta**

### **Is It Muttar to Gaze at *Battei Avodah Zarah*?**

Shlomo Zuckier

Is it permitted, within Jewish law, to view houses of idolatry that have been described as beautiful or artistic structures, intending to derive benefit from them? In this article answering that question, I do not intend to deal with the issue of entering such a house of worship to see artwork inside, which relates to a different siman in Shulchan Aruch (see Yoreh Deah 149 and 150), but only to the issue of deriving visual benefit from *battei avodah zarah* themselves. [I will note parenthetically that, following the overwhelming

majority of Rishonim and Poskim, this applies to many religious sites of worship, both in New York, Europe, and all over the world, that people commonly visit.]

This is an interesting sugya that touches upon discussions in several Masechtas, although space only permits a partial entrée into this issue, which we will pursue beginning from the posekim on the issue and will arrive at Shabbos 149a, the *locus classicus* for this discussion.

The Shulchan Aruch in Yoreh Deah (142:15), quoting Rabbenu Yerucham (Netiv 17 Chelek 5 Siman 159) writes:

*Asur lishmoa klei shir shel avodas kochavim o lihistakel binoyei avodas kochavim keivan sheneheneh bire'iyah.*

He thus prohibits listening to music of Avodah Zara or looking at decorations of Avodah Zara, based on the Gemara in Pesachim 26a that sounds and sights of hekdesch have no me'ilah, although they still are significant enough to be prohibited. It thus seems to be the case that it would be prohibited to look at a building of Avodah Zara, such as a church, with intent to derive hana'ah from its putative beautiful design.

However, the Shach (YD 142:33) understands the Shulchan Aruch differently. He writes:

*Binoyei elilim – peirush be'elilim atzمام shene'evdu asur lihistakel bahen lir'os noyan aval tzuros shena'asu linoy vilo la'avod mevo'ar bitosfos viharosh dimutar.*

What is prohibited, according to the Shach, is looking not at the beauty of decorations of the idol, but at the beauty of the idol itself!

However, this Shach is somewhat difficult to accept, as his reading of the Shulchan Aruch is surprising. One must note the parallel in the Shulchan Aruch between listening to musical instruments of avodah zara and looking at decorations of avodah zarah. It would be entirely unreasonable to explain that the Shulchan Aruch was only prohibiting listening to music from *an idol* (do any such musical idols exist?), and thus in the parallel case of sight it would similarly be unreasonable to explain that the Shulchan Aruch only prohibits looking at an attractive idol!

Furthermore, the two sources cited by the Shach – the Tosfos and Rosh – similarly appear not to agree with his point upon closer reflection. The sources he cites are based on the sugya in Shabbos 149a, which rules that it is prohibited to look at deyukna'os (three-dimensional images) at any time. Tosfos there (Shabbos 149a) write:

*Vedeyukni atzمام af bichol asur – nir'eh dibishavyah lishem avodas gilulim amar aval linoy mutar*

If these images are for avodah zara they are prohibited, while if they are for decoration they are permitted, Tosfos argue; Rosh (23:2) writes similarly. It appears that the Shach is reading these sources as distinguishing between images made as idols or as decoration *for idols*, and thus he is lenient in the latter type of cases. However, it may be that Tosfos and the Rosh were distinguishing instead between images made as idols or as decorative images *generally*, having no connection to idols whatsoever. If this is the proper reading of the sources, the Shach lacks support in the Rishonim.

As the Shach seems to be arguing against the simple reading of the Shulchan Aruch, and the Rishonim he bases his position on arguably should be read differently, it appears difficult to rely upon this Shach. (It certainly will be difficult to claim that there is some “*tzorech gadol*” involved in viewing architectural artistry.)

As the Shu”t Shevet ha-Levy (8:47) points out, following the Ramo (142:15), the only prohibition here is gazing at these institutions of idolatry in order to view their beauty. This Halacha does not dictate that anyone change their path when walking to their intended destination to avoid encountering the building, as the Ramo points out that *ein miskavein* is permitted.

### **Are Unintended Consequences of Any Consequence?/ Ephraim Meth**

Among the many controversies surrounding the concept of psik reisha (unintended yet inevitable consequence of one’s actions) is the safeik psik reisha leShe’avar, psik reisha due to uncertainty regarding a pre-existing state of affairs, first introduced by the Taz (316,3), who ruled permissively, and R. Akiva Eiger (YD 87,6), who ruled stringently. The Taz addressed a case (not discussed in the Talmud or Rishonim) of closing a box on Shabbos where flies might or might not be, and R. Akiva Eiger addressed a case of igniting a flame beneath a pot that might or might not have absorbed particles (beli’os) of milk and of meat. Both cases share the same three characteristics:

- 1) the desired result (a safely closed box or a warm flame) can be achieved independent of the forbidden action (trapping on Shabbos or cooking milk and meat);
- 2) the forbidden action may not occur (if there are no flies in the box or no milk and meat particles in the pot);
- 3) but, the forbidden action may inevitably occur (if there *are* flies in the box or there *are* particles in the pot).

The title *safeik psik reisha le'She'avar*, with its emphasis on uncertainty and on the past, is a misnomer. Were it correct, even the most paradigmatic case of *psik reisha*, where one drags a bench along the unpaved ground, would qualify as *safeik psik reisha le'She'avar*, as it shares the same three characteristics. Observe: the desired result (moving the bench from one location to another) can be achieved independently of the forbidden action (making a furrow). The forbidden action may not occur (if the bench or the force exerted is light enough, or the ground firm enough), but it may inevitably occur (if the bench is too heavy, the force exerted too strong, or the ground too soft). How, then, does dragging a bench differ from closing a box or igniting a flame? (Rabbi S.Y. Gelber, in *Nesivos Shalom* 10,3, writes that R. Shimon Shkop, in *Shaarei Yosher* 3,25, alludes to this question.)

Rather than distinguish between *safeik* and *vadai* (uncertainty and certainty) or between past and future, we should distinguish between *safeik* rooted in actions and *safeik* rooted in objects, or, alternately, between uncertainty that can be easily resolved and uncertainty that cannot be easily resolved.

With these criteria, the difference between the bench and the box or flame is readily apparent. Regarding the bench, the uncertainty pertains both to the object and the action (the bench's weight, the ground's softness, and the person's exertion of force are all unknown), and the uncertainty cannot be easily resolved (since the person cannot know in advance how much force he will exert, only how much force he plans to exert). In contrast, regarding the box and the flame, the uncertainty pertains only to the object, and not to the action, and the uncertainty can be easily resolved (since one has but to check the box for flies, or ask the pot's owner whether or not it contains milk and meat *beli'os*).

[It should be acknowledged, however, that applying the "easily resolved" criterion is not a simple matter, and one can convincingly argue that the bench uncertainty can be easily resolved while the pot uncertainty cannot. For this reason, it seems to me that even uncertainties that *can* be easily resolved might be permitted. Moreover, the logical basis for differentiating "action," i.e. movements of limbs, from their context, i.e. the object upon which the movements are performed and the movements' forbidden result, is slightly tenuous. Therefore, it seems to me that even uncertainties that do not pertain to actions might be permitted.]

Based on this, it is necessary to differentiate between two proofs adduced by the Mishnah *Berurah* (BH 316,3 s.v. *ve'Lachein*) that *safeik psik reisha le'She'avar* is permitted. The first proof: one may remove berries from a *hadas* branch, even though, should he ultimately need this branch to fulfill his *mitzvah* of *lulav* and *esrog* on *Sukkos*, removal of its berries would constitute *tikkun mana* and be forbidden. In this case, the uncertainty cannot be easily resolved, but it pertains to the future, as well as to the object. Inasmuch

as it pertains to the object, it is a safeik psik reisha leShe'avar akin to the box with flies. But inasmuch as it cannot be presently resolved, it does not resemble that case.

The second proof: one may pour cold water into a metal container, even though this may cause the container to become stronger, which would constitute tikkun mana. In this case, the uncertainty pertains to the past, to the object, and may be easily resolved. Hence, this case shares all relevant characteristics that pertain to the box with flies.

## The YU Ethicist

### To Judge Favorably or Justly?/ Yitzi Diskind

On an almost daily basis, we witness people taking actions of a morally questionable nature. What do the *Torah* and *Chazal* dictate regarding how we should relate to these people? Perhaps the most widely known principle relating to this issue can be found in *Pirkei Avot*. The *mishna* (1:6) states "ViHavei Dan et Kol HaAdam Le Kaf Zechut," which has become a widely quoted mantra that one must judge everyone favorably. This is all well and good, except for the fact that people rarely quote the later *mishna* (1:8) which states "U'KiSheYihiyu Baalei Dinin Omdim Lifanecha, Yihiyu BiEinecha KiRishaim." It seems obvious that a judge must evaluate a case as impartially as possible, but why does the *mishna* use such a harsh term as *rishaim*, which seems dissonant with the statement it made only two *mishnayot* earlier? In the *Maharal's perush* on *Pirkei Avot*, *Derech Chaim*, he contemplates this exact issue. Why couldn't the *mishna* have written that a judge should assume both of the *Baalei Dinin* are *tzaddikim*? The *Maharal* answers that if the judge assumes the people standing in front of him are *tzaddikim*, he is not as likely to delve into the case before him with the requisite attention to details, preferring to judge both of them favorably, as one is wont to do with *tzaddikim*.

But does the mere fact that one is inclined to judge *rishaim* unfavorably warrant such a judgment according to *halacha*? *Rabbeinu Yonah*, in *Shaarei Teshuva* (*Shaar Shlishi*, 218), suggests that this is how one should act. *Rabbeinu Yonah* says that one should judge a *tzaddik* favorably, even if the situation seems to suggest he is doing something wrong. Regarding a *beinoni* who fears sin, one should also judge favorably, and he quotes the *mishna* in *avos* (1:6) in support of this. If the majority of a person's actions are bad, however, or it is known that he lacks the fear of heaven, *Rabbeinu Yonah* tells us that we should be skeptical of his actions and judge him strictly [\[S1\]](#). The *Maharal's* interpretation of the *mishna's* usage of the word *rishaim* fits with *Rabbeinu Yonah's* explanation [\[S2\]](#).

What is especially interesting is that both teachings from the *mishnayot* in *Pirkei Avot* utilize the same exact scriptural source. The *gemara* in *mesechet Shavuot* (30a) quotes the *pasuk* in *Vayikra* (19:15), which says *BiTzedek Tishpot et Amitecha*.



The *gemara* interprets this in two different ways: The first is a commandment that a judge treat both of the *baalei dinin* equally; one cannot stand while the other sits, they both need to be given an opportunity to speak, etc. The other explanation is directed at the common man, that he must judge everyone's actions favorably. The *Sefer HaChinuch* (235) cites this *l'halacha*, quoting both of these aspects as part of one *mitzvah*, *Mitzvat Shofet SheYishpot BiTzedek*, even though he never links the two separate aspects.

That there is an interplay between these two *mishnayot* is perhaps clearest when we consider the fact that both the *Rambam* (*Sanhedrin* 23:10) and the *Shulchan Aruch* (*Choshen Mishpat* 17:10) quote both aspects of the *mishnayos* in a single paragraph. Regarding the commandment to equate the two litigants, they both use the language of the *mishna* ruling that the litigants should be considered *rishaim* during the *din torah*, but at the end of the paragraph, once the *din* has been reached, they write that the *dayan* should judge them both favorably. This seems strange, considering the judge has just ruled against one of them. The *Sema* (17:24) explains that even if a judge has ascertained that someone made a completely false claim during the *din torah*, the judge should consider that there may have been an extenuating circumstance involved that caused him to make this claim.

I believe that this imperative directed at the *dayanim* teaches us an important lesson on how to relate to those who act improperly. *Havei Dan et kol ha'adam Le Kaf Zechut* is not a concept that is asking us to bury our heads in the sand and act in a naïve fashion. Sometimes, we need to accept that a person is acting improperly, just as the *dayanim* will *pasken* against someone. Still, we should not condemn him overmuch. The *Yalkut Shimoni* on *Tehillim* (625) recounts that even *David*, who sinned with *Bat Sheva* and was seemingly *chayav mita*, was able to rebound and rise from this low point, and others can rise from their sins, as well.

### **The Mitzvah to Honor One's Rebbe: To Close for Comfort?/ Rafi Aspir**

The *Rambam* in *hilchos deios* (6:2) writes "it is a *mitzvat aseh* to attach oneself to *chachamim* and their students in order to learn from their actions like it says 'ubo tidbak', and is it possible for a person to attach himself to the *shechinah*? Rather the *chachamim* taught that it means to attach himself to *chachamim* and their *talmidim*; therefore a person must try to marry the daughter of a *talmid chacham* and marry his daughter to a *talmid chacham* and to eat and drink with *talmidei chachamim* and do business with *talmidei chachamim*.."

In this *halacha* the *Rambam* very clearly outlines the parameters of the *mitzvah* of 'ubo tidbak', clinging to *Hashem*, as involving oneself in everyday matters with *talmidei chachamim* in order to learn from their ways and understand how they go about their daily lives. One example which the *Rambam* gives is that one should eat and drink

with *talmidei chachamim*. However, the Rambam seems to contradict himself in *hilchos Talmud torah* (4:5), where he writes "...it is not fitting for a rav to behave lightheartedly in front of his students and not to joke in front of them and not to eat and drink with them in order that the rav's fear be upon them and learn from him quickly."

These two *halachot* of the Rambam seem to be at direct odds with each other; on the one hand in *hilchos de'ot* the Rambam not only writes that it is permissible, but even a *mitzvah*, to eat with *talmidei chachamim*, yet in *hilchos Talmud torah* the Rambam writes that is inappropriate for a *rebbe* to eat with his *talmidim*. How can these two *halachot* coexist?

I think that the answer to this apparent *stirah* is related to exactly who the parties involved in this dining experience are. The Rambam in *hilchos Talmud torah* seems to be dealing specifically with a *rebbe* and *talmid*, while the Rambam in *hilchos deiot* is dealing with *talmidei chachamim* and people in general, without a specific *rebbe-talmid* relationship. There are many proofs to buttress this distinction. First, the *lashon* of the Rambam in *hilchos Talmud torah* is very specific in that he writes a rav 'in front of his *talmidim*' while in *hilchos de'ot* the Rambam makes no mention of there being a *rebbe-talmid* relationship. Second, the Rambam puts this *Halacha* in *hilchos Talmud torah*, indicating that this somehow relates to *limud hatorah*. And even more specifically the Rambam places it in *perek bet* which deals with topics relating to a *rebbe* and *Talmud*, such as which *talmidim* a *rebbe* should teach and how to teach etc. Lastly, the Rambam finishes off the *Halacha* in *Talmud torah* with the reasoning that a rav shouldn't eat with his *talmidim* "in order that his fear should be upon them and they will learn from him quickly"-this reasoning does not imply that there would be any lack of *kavod harav* by eating with 'common folk' but rather that it is a *din* specific to the *rebbe-talmid* relationship; that in order for a *talmid* to be able to optimally learn from his *rebbe* he must have a certain level of fear of him, which would be difficult to achieve if the *talmid* spent too much 'leisure time' with his *rebbe* and saw him in mundane contexts.

Assuming this mahalach in the Rambam is correct, it still leaves us with the question of where exactly did the Rambam get this *din* from? Maybe we can suggest that the Rambam has a *makor* to this *din* from the sugya in brachot (22a) which discusses the *din* that a *baal keris* is *assur bedivrei torah*, which says, "*detanya, vehodatam levanecha vilivnay vanecha uksiv basray yom asher amadeta lifnei Hashem elokecha bechorev, mah lehalan be'aima u'veyirah u'veseses u'vezeyyah af kan be'aima u'vyirah u'veseses u'vezeyyah.*" The *gemara* makes a *hekesch* connecting *har Sinai* to *limud hatorah*, that just like we stood at *har Sinai* with awe, fear, and shaking so too when we learn *torah* we must be in a similar state (and thus a *baal keris* is *assur bedivrei torah*). It seems logical, then, that the Rambam could deduce from this *gemara* that a *rebbe* must maintain a certain level of respect and grandeur in his *talmidim*'s eyes in order that they constantly be in a state which is most receptive to learning *torah*, just like at *klal yisrael's* first class

taught by none other than *the Ribono Shel Olam* himself. And performing mundane tasks and daily activities such as eating and drinking with his *talmidim* may infringe on this boundary.

Based on the aforementioned *gemara* in *berachot* maybe we can also explain, *al pi drush*, a *gemara* in *pesachim* (22b). The *gemara* in *pesachim* learns from the *passuk* ‘*et Hashem elokecha tirah*’ to learn out the *mitzvah* to fear *talmidei chachamim*. Maybe *chazal* drew a parallel, so to speak, between *Hashem* and the *chachamim* in that they both are the teachers of the *Torah* and just like it was necessary to fear *Hashem* in order to be *mekabel* the *Torah* at har sinai, similarly we must fear our *Rabbeim* to properly receive the *Torah* generation after generation. (Rashi on that *gemara* comments ‘*moreh rabecha*’ and not ‘*moreh chachamim*’ must be on you, possibly alluding to this unique nature of the *rebbe-talmid* relationship).

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### “Who Are We to Judge”, True or False?

#### Elchanan Poupko

One of the more positive and healthy attitudes that have been brought about by the modern day system of values is the ability and value of being able to interact with another person without judging them, their decisions, way they dress, etc. Although this attitude is many times concomitant with contemporary moral relativism and the refusal to recognize that certain values and behaviors are objectively true and binding, a belief that runs contrary the Jewish belief in an absolute set of moors and values, nevertheless, this attitude is one that Judaism has long promoted.

One of the six hundred and thirteen *mitzvot* we have is “*be’tzedek tishpot et amitecha*-you should judge your fellow favorably”(vayikra 19:15) This commandment is understood by the *gemara* (Shvu’ot 20a) and codified by the Rishonim to be not only an obligation for judges who judge people in a formal context but also as an obligation for each and every person to judge their fellow favorably(Rambam, Sefer Hamitzvot, *Esseh* 177, and Sefer Hakhinukh 235). What this obligation includes is that if we see someone doing something that can be understood in different ways we should assume that they are doing the right thing rather than try and find guilt in what they do; we are to give them the benefit of the doubt and assume that they are engaged in positive activities even though that is not the immediate implication of what they are doing. If, however, they are doing something that is outright wrong, however, no positive judgment needs to follow as what they are doing is clearly wrong. A wrongdoer is to be judged for what he is and there is no room for positive judgment as there is clearly no place for such judgment.

The mishna in Pirkey Avot(2:5), however takes this a step further and tells us “*al tadin et chavercha ad shetagia limkomo*” do not judge your friend until you reach his place. This mishnah is clearly talking about a situation where the friend has clearly done something that lacks merit that would render it as apposite and worthy action. Nevertheless, the mishnah tells us that we are not to judge them as we do not know what might have been the circumstances that lead to such an inappropriate behavior and we should therefore not assume that we would have done the same had we been under those same circumstances.

The exceptionally non judgmental theme reflected here seems to run contrary to many other, more judgmental messages that are echoed throughout Jewish sources. Another mishna in Pirkey Avot(1:7) tells us “*al titchaber la'rasha* -do not become close with the wicked” and so on many sources that teach us of the different and inferior status a person receives by engaging in actions that are beyond the scope of legitimate and whose morality is questionable. The question thus becomes, why is it that in some cases we find a highly non-judgmental approach in Judaism while at the same time we find that people are constantly being judged, evaluated, and ascertained based on their actions or lack thereof?

The answer to this conundrum may be found in a beautiful explanation of Rabbi Yehudah Leib Diskin(in his commentary on Chumash ibid.) to the reason laying behind the Torah imperative to judge others favorably. While the simple and understandable explanation for this commandment is so that people be able to live in peace and harmony as many commentaries do maintain(Sefer Charedim, 12:54, Rabbi Shlomo Luria, Shut Maharshal 66), Rabbi Diskin explains another possible rationale that lays behind this obligation. One of the benefits society and a communal lifestyle has to offer is that people's trust in each other becomes a self fulfilling prophecy; people expect certain standards of behavior and a certain code of ethics from one another and that expectation leads to the same kind of behaviors. The fact that people expect nothing less than decent behavior serves as an impetuous and imperative for ethical and standardized behavior. Once, however, people become suspicious of one another and question their integrity and morality then that too can become a self fulfilling prophecy. As good behavior becomes less expected and less taken for granted then indeed that behavior will slowly but surely fail to show itself. Thus, the Torah obligation to judge people favorably is not only an imperative for fair judgment but is also a way by which we enable and ennoble our society with high standards and norms of behavior. A person who clearly fails to meet these standards of behavior and observance can clearly not be regarded as a right doer; if what this person has done is clearly wrong and inappropriate there is no reason to assume that what that person has done is right. In fact quite to the contrary, such a behavior must be reprimanded and highlighted as a wrong and inappropriate behavior.

While we must regard the behavior as wrong and inappropriate we must also remember that as individuals it is entirely possible that being faced by these same circumstances we may have also stumbled and we do not know the extent of temptation that the person has faced. We must be reprehensive of the person's behavior while understanding that on a personal level the person may have been faced by a particular set of challenges and temptations and should the person consider a reversal of their behavior we must be open to re embracing them as a part of our community and society.

Giving others the benefit of the doubt is an essential Jewish imperative. Making sure that others have a fair chance to represent themselves without being judged negatively if they have failed to make the right decision. This, however, does not mean that we change the standards of what is right and wrong. Judaism provides a clear set of right and wrongs that must be followed. At the same time, while not compromising the standards of morality, right, and wrong, we must realize that every individual faces a complex set of challenges and difficulties and that if they have clearly committed a wrong, while that behavior must remain unacceptable, we must be open to the idea of re embracing that individual upon his return as we do not know how we would we reacted had we been faced by the same set of variables.

### **Rabbinic Reflections on the Limits of Tolerance/ Josh Halpern**

Tolerance is often identified as among the foundational features of a liberal democracy. The first amendment of the US constitution, for example, champions tolerance by protecting US citizens' rights to lead diverse religious lifestyles and hold conflicting political viewpoints. Yet, like every tolerant political community, the US faces the paradoxical problem of establishing the limits of toleration. Consider the famous 1977 case of National Socialist Party of America v. Village of Skokie, in which the NSPA defended their right to wear Nazi uniforms and display swastikas on the streets of Skokie, Illinois by appealing to their first amendment right to freedom of assembly. Should tolerant societies defend the rights of the intolerant, of those Nazi totalitarians who outwardly attempt to subvert the tolerance presupposed by American legal and political discourse? In what follows, I read the famous Aggadic story of "Not in Heaven" as Talmudic meditation on the limits of toleration.

Nearly every page of the Talmud is riddled with legal controversy. The famous Talmudic adage “these and these are the words of a Living God” (BM 59b) appears to ground the Talmud’s tolerance for dissent in a pluralistic conception of halakhic truth. Likewise, in the fifth chapter of the *Be’er Hagoleh*, Maharal M’Prague (16<sup>th</sup> C. Poland) claims that: “he who says impure and he who says pure have both learned torah, and each has a unique aspect. God created everything; he created a thing that has two dimensions.” In other words, we ought to tolerate and even celebrate halakhic controversy because it reflects not only the pluralistic nature of halakhic truth but the plural nature of reality itself.

While the above sources express the halakhic tradition’s commitment to legal pluralism, the Aggadic story of “Not in Heaven,” tempers the scope of Talmudic tolerance. The story centers on a halakhic dispute between R. Eliezer and R. Yehoshua about whether a particular vessel is susceptible to impurity. Seeing that R. Yehoshua and the rabbinic majority refuse to waiver in their position, R. Eliezer chooses to appeal directly to a *bat kol* (*heb.* divine voice) to demonstrate that his position reflects the singular divine will: “If the halachah is like me from the heaven it will be proven.” Yet, R. Yehoshua rejects the halakhic authority *bat kol* by audaciously “standing on his feet and declaring: ‘It is not in heaven’ (Deuteronomy 30:12).”

R. Eliezer and Joshua’s conflicting positions reflect a basic dispute about the source of halakhic authority. In R. Eliezer’s view, we ought to consult God directly to ensure that halakha most closely approximates the singular divine will. But R. Yehoshua maintains that at Mount Sinai God authorized the rabbinic community to interpret the divine word and establish halakha. Hence, the torah is “not in heaven:” rabbinic interpretation has supplanted the express divine will as the new locus of halakhic authority.

Strangely, R. Yehoshau and the rabbinic majority do not merely overrule R. Eliezer, but go so far as to excommunicate him from the rabbinic community. One might wonder: does this tyranny of the rabbinic majority not run counter to the Talmud’s tolerance of legal dissent? Why must the rabbis resort to such seemingly intolerant measures?

I believe that the excommunication reflects the Talmudic approach to the question of intolerance in a tolerant society. R. Eliezer’s method of consulting God to access the divine intention is antithetical to a rabbinic culture that celebrates disputation. For R. Eliezer, the divine will provides the single right answer to every halakhic question. Thoroughgoing halakhic disagreement simply obfuscates halakhic truth and is, therefore, intolerable. But for the rabbinic majority, because divergent halakhic opinions each serve as individual pieces in the broader puzzle of halakhic truth, healthy dissent is not only tolerable but desirable. R. Eliezer’s disdain for dissent, thus, threatens to undermine the

common language of legal pluralism that unifies the rabbinic community. While the rabbis might celebrate first-order halakhic disagreements, Eliezer's intolerant second-order stance threatens to corrode the foundation of the halakhic community.

Ultimately, the story of Eliezer's ban delineates the limits of rabbinic tolerance: rabbinic tolerance of particular legal disputes need not imply tolerance toward the intolerant. Liberal democracies might take their cue from the rabbinic tradition and curtail the freedoms of intolerant social groups like the NSPA whose totalitarian ideologies threaten the foundation upon which the liberal democratic political process is predicated.