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THE BENJAMIN AND ROSE BERGER TORAH TO-GO®

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in the Age of Innovation



ישיבת רבנו יצחק אלחנן
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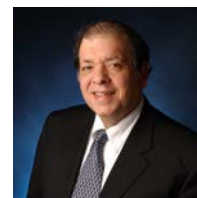
Heritage and Innovation

The Torah's Views on Changes over the Ages



21st Century Challenges

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Mourning the Loss of a Friend

A Tribute to Rabbi Ozer Glickman z"l

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Yeshiva University Center for the Jewish Future

500 West 185th Street, Suite 419, New York, NY 10033 • office@yutorah.org • 646.592.4101

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Table of Contents **Shavuot 5778**

- 4** **Rabbi Yaakov Glasser:** Introduction

Heritage and Innovation

- 5** **Rabbi Hershel Schachter:** Observing Torah in an Age of Innovation
- 10** **Mrs. Karen Lavner:** The Religious Innovation of Nadav and Avihu

21st Century Challenges

- 14** **Rabbi Zvi Sobolofsky:** Electricity and Shabbos: Past, Present and Future
- 17** **Rabbi Mois Navon:** Ethical Dilemmas on the Road to Redemption
- 21** **Rabbi Edward Reichman MD and Shmuel Reichman:** The Definition of Maternity Revisited and the Double Helix (Spiral) of Torah and Mada
- 26** **Ms. Elisheva [Ellie] Levi:** The Tower, the Ziggurat, the Mountain and the Race to Reach the Sky
- 30** **Dovid Lichtenstein:** Facebook, Cambridge Analytica and the Right to Privacy: A Halachic Overview

Shavuot Study Guide

- 35** **Rabbi Daniel Z. Feldman:** A Tribute to Rabbi Ozer Glickman, z"l
- 37** **Rabbi Joshua Flug:** Contemporary Business Ethics: A Shavuos Night Study Guide



Shavuos commemorates the Har Sinai experience, the most defining moment of Jewish history. This was the moment when the Jewish people received their mandate to live lives of sanctity and purpose, and to serve as a moral light to the nations of the world. The hundreds of mitzvos HaTorah serve as a framework for us to discover our own personal potential in developing as servants of G-d, and contribute to the larger national ambition of propelling this world towards redemption. The Torah (Devarim 4:9-10) describes the importance of embedding this iconic moment within the consciousness of our people:

רק השמר לך ושמור נפשך מאד פן תשכח את הדברים אשר ראו עיניך ופן יסורו מלבבך כל ימי חייך והודעתם לבניך ולבני בניך. יום אשר עמדת לפני ה' אלקיך בחרב בארמון ה' אלי הקהל לי את העם ואשמעם את דברי אשר ילמדון ליראה אתי כל הימים אשר הם חיים על האדמה ואת בניהם ילמדון.

But take utmost care and watch yourselves scrupulously, so that you do not forget the things that you saw with your own eyes and so that they do not fade from your mind as long as you live. And make them known to your children and to your children's children: The day you stood before the Lord your G-d at Horeb, when the Lord said to Me, "Gather the people to Me that I may let them hear My words, in order that they may learn to revere Me as long as they live on earth, and may so teach their children."

The Ramban, in his list of mitzvos, counts this as one of the 613 Mitzvos:

שנמנענו שלא נשכח מעמד הר סיני ולא נסיר אותו מדעתנו אבל יהיו עינינו ולבנו שם כל הימים והוא אמרו יתעלה (ואתחנן ד ט - י) השמר לך ושמור נפשך מאד פן תשכח את הדברים אשר ראו עיניך.

We are prohibited from forgetting the gathering at Sinai and from eliminating it from our memories. Rather, we must

focus on it every day. This is what is meant by the verses "But take utmost care and watch yourselves scrupulously, so that you do not forget the things that you saw with your own eyes etc."

Ramban, Shich'chas HaLavin no. 2

Other commentaries assume that the Torah is relating a general expectation to internalize the overall prominence and centrality of the mitzvos HaTorah. However, for the Ramban, this is a specific directive to remember the experience of Sinai. The Ramban himself challenges his own thesis by quoting the Gemara in *Kiddushin* 30a:

בניכם מנין ת"ל והודעתם לבניך ולבני בניך.
"And you shall teach them to your children" I only know that you must teach your children. What is the source for teaching grandchildren? The verse states, "And make them known to your children and to your children's children."

The Gemara employs this very verse as the source for the mitzvah to teach one's grandchildren, not for remembering the Sinai experience. The Ramban, however, explains that the intent of this Gemara is in fact to convey the particular requirement to teach one's grandchildren about the Sinai experience.

Why would teaching one's grandchildren be distinguished in any way from our overall requirement to study Torah, and teach it to the next generation? Perhaps, the Ramban is alluding to a specific challenge that we often encounter in our quest to pass on the values and commitments of Torah to subsequent generations. Parents and children often overlap in their overall encounter with the world. However, grandparents and grandchildren are often growing up and living in two entirely different worlds. The evolving nature of science,

technology, and society widens the generation gap. The Torah is teaching us that the experience of Sinai is eternally relevant and resonant to our lives. Despite the changes we see in the world around us, our halachic system, is positioned to ensure that the ideals of Torah can be applied and understood in the face of all progress and innovation — by those who guide its development. The voice of Sinai heard by our grandparents is just as powerful and formative for us today.

There are voices within the Jewish community that seek to portray the halachic system as archaic and out of touch with the values that our society has accepted. The Ramban reminds us that our Sinai experience echoes beyond the moment of Sinai and remains a vital and central part of our consciousness forever. No matter what the generation gap may be, the values and principles of Torah are relevant and applicable to our reality.

This issue of *Torah to Go* features a number of articles that explore how the wisdom of Torah impact upon our era's most extraordinary innovations. Beyond the fascinating details of how passages in the Gemara about muzzling an animal can inform us regarding the halachic status of an Alexa on Shabbos, these articles stand for something larger. A confidence and certitude that the experience of Sinai — in its entirety — is never forgotten. That each and every detail remain core to our national identity and our ultimate destiny.

Wishing you a chag sameach,



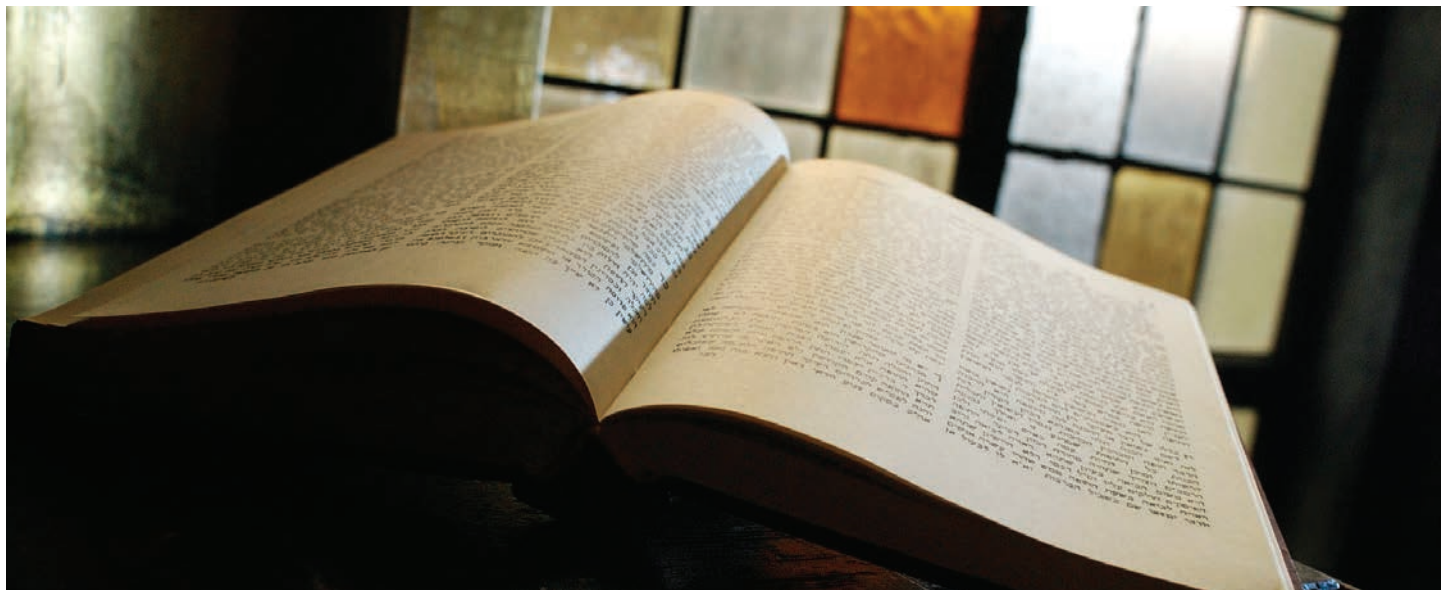

Rabbi Yaakov Glasser
 David Mitzner Dean, YU Center for the Jewish Future and Rabbi, Young Israel of Passaic-Clifton

Heritage and Innovation

Rabbi Hershel Schachter

Rosh Yeshiva and Rosh Kollel, RIETS

Rabbi Schachter, a noted Talmudic scholar, has had a distinguished career with RIETS for over 40 years. He joined the faculty in 1967 at the age of 26, the youngest rosh yeshiva at RIETS. Since 1971, Rabbi Schachter has been rosh kollel in the Marcos and Adina Katz Kollel (Institute for Advanced Research in Rabbinics) and also holds the Nathan and Vivian Fink Distinguished Professorial Chair in Talmud. In addition to his teaching duties, Rabbi Schachter lectures, writes and serves as a world renowned decisor of Jewish law. A prolific author, he has written more than 100 articles, in Hebrew and English for such scholarly publications as *HaPardes*, *Hadarom*, *Beth Yitzchak* and *Hamizrach*. His books include *Eretz HaTzvi*, *B'ikvei HaTzon*, *Nefesh HaRav*, *MiPinei HaRav* and *Ginat Egoz*. At age 22, Rabbi Schachter was appointed assistant to the renowned Rabbi Joseph B. Soloveitchik.



OBSERVING TORAH IN AN AGE OF INNOVATION

In Parashas Toldos, we find that Yitzchak Avinu tried his best to continue the legacy he received from his father Avraham Avinu. He even dug the same wells his father did and called the wells by the same names. When there was a famine, Yitzchak thought that the best course of action was to go to Egypt, just as his father did when he experienced famine. However, Hashem told Yitzchak not to go but to remain in Eretz Yisrael. Rashi (26:2) tells us why Hashem wanted him to remain in Eretz Yisrael:

”אל תרד מצרימה” - שהיה דעתו לרדת למצרים כמו שירד אביו בימי הרעב אמר לו אל תרד מצרימה שאתה עולה תמימה ואין חוצה לארץ כדאי לך.

“Don’t go down to Egypt” — because [Yitzchak] thought to go down to Egypt just as his father did in times of famine. [Hashem] said to [Yitzchak], “Don’t go down to Egypt because you are [sanctified like] a burnt offering without blemish and you do not belong outside of the Land of Israel.

Yitzchak thought that going to Egypt would be a continuation of his father’s legacy. But Hashem told Yitzchak that he was living in different times under different circumstances. For Avraham, the proper course of action was to leave Eretz Yisrael and go to Egypt. But, said Hashem, you were consecrated as an offering at Akeidas Yitzchak. You cannot leave Eretz Yisrael because for you, leaving would

not be a continuation of Avraham’s legacy but a violation of it.

The same conversation took place between Hashem and Yehoshua. When Yehoshua defeated Yericho, he placed a *cherem* (ban) on the spoils. Achan didn’t listen and partook of the spoils, unbeknownst to Yehoshua. As a result, the Jewish people were defeated at Ai. The Gemara, *Sanhedrin* 44a, states that when Yehoshua asked Hashem why they were defeated, Hashem replied “*atah garamta lahem*,” it is your fault because you shouldn’t have placed a *cherem* on the spoils of war.

The Maharsha, *ad loc.*, asks: Why did Hashem blame Yehoshua? He was simply following the actions



In describing Matan Torah, the verse (Shemot 20:15) states:

וְכָל הָעָם רָאִים אֶת הַקּוֹלֹת וְאֶת הַלְפִידִם
וְאֶת קוֹל הַשּׁוֹפָר וְאֶת הַהָר עֹשֵׂן וַיֵּרָא הָעָם
וַיִּנְעוּ וַיִּעַמְדוּ מֵרָחֵק.

The whole nation saw the thunder and the lightning and the sound of the shofar and the mountain smoking. The nation saw and they trembled and stood from afar.

How is it possible to see the sounds of the thunder? R. Chaim Tzanzer, *Divrei Chaim* to Yitro suggests that the reason why we normally can't see sounds is because there are too many other sensations we are feeling at the same time; we are distracted. At Matan Torah, the Jewish people reached the level of a prophet who is able to block everything else out and actually hear the sounds with the clarity as if actually seeing it. From this perspective, Matan Torah serves as the paradigm of distraction-free learning.

Torah To Go Editors

of his rebbe, Moshe Rabbeinu. The same passage in the Gemara states that when Moshe led Bnei Yisrael to war, he placed a *cherem* on the spoils on three different occasions and Achan violated all three of those bans as well. Why, then, was Yehoshua criticized for placing a *cherem*? The Maharsha answers that the circumstances were much different. Before the Jewish people entered Eretz Yisrael, the responsibility of one Jew for another — *kol Yisrael areivin zeh bazeh* — wasn't yet in effect. As such, when Achan violated the *cherem*, only he was punished. However, once the Jews crossed into Eretz Yisrael and *kol Yisrael areivin zeh bazeh* set in, each Jew was responsible for the actions of another and the Jewish people were punished for the sin of Achan. The principles that Yehoshua learned from Moshe Rabbeinu remained the same, but he lived in different times and those same principles applied differently to the new circumstances.

The Torah Never Changes

The Siddur contains a summary of the Rambam's "Thirteen Principles of Faith." The ninth one is:

אֲנִי מֵאֲמִין בְּאֵמוּנָה שְׁלֵמָה שְׂזֵאת הַתּוֹרָה לֹא
תֵּהָא מִחֻלְפָּת וְלֹא תֵּהָא תּוֹרָה אַחֲרַת מֵאֵת
הַבּוֹרֵא יִתְבָּרַךְ שְׁמוֹ.

I believe with full faith that this Torah will never change and there will never be another Torah from the Creator, His name shall be blessed.

Why is it that the Torah can never change? Why can't Hashem send us prophecies in later generations with new ways to serve Him? The explanation is given by the author of the Tanya as well as by Rav Chaim of Volozhin who both develop the

identical theme. The Torah is not merely a collection of laws. In its entirety, it constitutes a description of G-d's essence. Of course we can't really comprehend His essence. One of the Jewish philosophers of the Middle Ages (cited in *Derashos Haran* no. 4) commented that, "if I would understand Him, I would be Him." The only One who can understand *Elokus* (Divinity) is G-d Himself. Nonetheless, He gave us the Torah which by way of *moshol* (analogy) constitutes a description of *Elokus*. It is for this reason that the Torah is described as "The *Moshol HaKadmoni*," the *moshol* of *Hakadosh Baruch Hu* (see Rashi to Shemos 21:13). Rav Chaim of Volozhin comments that it would probably be more accurate to say that the Torah is a *moshol* of a *moshol* of *Elokus*, as opposed to assuming that it is a direct *moshol*.

The prophet Malachi (3:6) tells us that G-d's essence never changes. Everything in the creation is subject to change, but G-d the Creator never changes. Since our tradition has it that the Torah is a description (even if only by way of *moshol*) of *Elokus*, and the prophet Malachi tells us that G-d's essence cannot be affected by change, it therefore follows that the laws of the Torah can never change.

Rabbi Soloveitchik suggested that if he were formulating these principles, he would have added a fourteenth principle — a corollary to the ninth principle. This fourteenth principle is that the Torah is meaningful in every generation and to every society. The laws of the Torah are not subject to change. Technological advances and societal norms cause the circumstances to change, and the rabbis in each generation have to

figure out how to apply those same laws and principles to its generation.

When we learned the laws of kosher in *Yoreh De'ah* with Rabbi Soloveitchik, we encountered the case of a non-kosher utensil that was mixed with many kosher utensils. Based on the principle of *rov* (majority), the mixture of utensils should all be considered kosher since the non-kosher utensil represents a minority of this mixture. However, this case appears in a *siman* (chapter) dealing with the rule of *davar sheyesh lo matirin* — the rule that if the mixture can become permissible without applying the principle of *rov*, then the principle of *rov* cannot be applied. Should we assume that since the mixture of utensils can become permissible by *kashering* the entire mixture in boiling water, that the *davar sheyesh lo matirin* rule should be applied? Rav Yosef Karo, *Yoreh De'ah* 102:3, rules that since it is expensive to *kasher* all of the utensils, it is not considered a *davar sheyesh lo matirin*. Therefore, all of the utensils are permissible. Rabbi Soloveitchik pointed out that Rav Yosef Karo lived in a time when there was no modern plumbing or water-heating methods. He lived in the hills of Tzfat where finding water and heating was in fact costly. However, with the advent of plumbing, water heaters and modern stoves, the cost of *kashering* all of the utensils is negligible and in today's times, if such a situation would arise, we would be required to *kasher* all of the utensils.

Often there is a *siman* in *Shulchan Aruch* that deals with a single topic. The Vilna Gaon, who usually cites the Talmudic sources for the ruling in *Shluchan Aruch*, will point out that the source for the ruling in some

of the later *se'ifim* (subsections) is the same source as the ruling in the first *se'if*. Essentially, there is one principle for that *siman*, but there are different situations where that principle is applicable, and depending on the situation, the ruling will be different. When new technologies are introduced, a rabbi's job is to figure out the component parts of each *se'if* and what makes us apply the principle one way in situation A and another way in situation B. By doing so, he should be able to determine which *se'ifim* are applicable to the question that he is dealing with.

Scientific Innovation and Halachic Determinations

There are many scientific innovations such as chemical analysis and DNA testing that allow us to find out information that wasn't available in previous generations. Can we use scientific findings to make halachic determinations?

There is a dispute among the Tannaim as to whether rice can become chametz or not. Most of the rabbis were of the opinion that it does not become chametz, while Rav Yochanan ben Nuri held that it does become chametz. The Yerushalmi, *Pesachim* 2:4, asks: Why didn't they perform an experiment and see whether it becomes chametz? The Yerushalmi answers that they did perform an experiment. Most of the rabbis saw the results of the experiment and determined that what they were looking at wasn't chametz but rather *sirchon*. Rav Yochanan ben Nuri looked at the same results and classified it as chametz.

We see from the Yerushalmi the importance of using the best

information available in order to arrive at a halachic decision. Rabbi Soloveitchik used to contrast the Rabbinic approach with the Greek approach. The Greeks felt that using their hands to experiment was not for the noble class. Only servants use their hands. Therefore, they would philosophize about various topics — why fire goes up, why water goes down, why water puts out fire — without performing any experiments to back their claims. By contrast, halacha requires that the *posek* has the best information available. This is illustrated by a comment of Dovid Hamelech (in *Berachos* 4a), who said that while the kings of all the other nations sit on their thrones, his hands are dirty from studying blood of miscarried fetuses in order to permit women from their *niddah* status.

The Ramban (*Chiddushim* to *Chullin* 42a and *Milchamos, Shabbos* 48a) follows the principle of the Yerushalmi and notes that Chazal didn't arbitrarily take positions on facts that could be determined based on experimentation. If we find a dispute that seems like a dispute about facts, we should assume that Chazal did experiment and that the dispute is about how to interpret the results.

When Rav Yitzchak Herzog was the Chief Rabbi of Israel, a dispute arose in the *beis din* about a paternity case in which the ex-husband of a divorced couple claimed that he wasn't actually the father of the child. A blood test was performed and based on the blood types of the ex-husband and the child, it was determined that he could not possibly be the father of the child. Some of the rabbonim on the *beis din* were reluctant to accept the blood test as evidence. They claimed that halacha doesn't recognize a blood test as a

form of evidence. Rav Herzog wrote a letter stating:

לא אכחד כי כמעט בושתי ונכלמי מדברי
כ"ג ... ביחס של ביטול כלפי בדיקת
הדם מהבחינה השלילית, כלומר מבחינת
האפשרות שיש לה לברר שאין זה בנו של זה.
מה שייך לדבר על נאמנות הרופאים בדבר
שנתקבל לברור מכל גדולי המדע הרפואי
בכל העולם כולו ... חבל שבעוד שהמדע
הולך וכובש עולמות ומגלה סודי סודות, אם
כי גם הוא טועה לפרקים, אנו בקשר לעניני
מדע הנוגעים לתורה"ק משקעים ראשינו בחול
כהעוף הידוע, ותו לא מידי. הכרחי שנעמיד
מתוך הישיבות הק', מהעילויים שבהם,
אנשי מדע בכל מקצוע כזה ולא נהי' זקוקים
לאחרים בעניני פיזיולוגיה, כימיה, חשמל ובכל
הנוגע לתורה"ק.

I do not deny that I was almost embarrassed ... by what you wrote ... in such a deprecating manner towards blood tests, from a negative aspect. That is, with regard to the possibility that [a blood test can] clarify that X is not the son of Y. How can there be a question of the credibility of the doctors in a matter which has been clearly accepted by all the masters of medicine throughout the entire world! ... It is unfortunate that while science is progressively conquering worlds and discovering all sorts of secrets, although it too errs at times, we, like ostriches, bury our heads in the sand. It is imperative that we encourage the ablest students of the yeshivot also to be educated as men of science in each discipline, so that we should not need to turn to others in matters of physiology, chemistry, electricity, etc. concerning things that relate to our sacred Torah.¹

Chazal always based their halachic rulings on the science that was prevalent in their time. They followed the consensus of scientists and doctors and we have to apply our halachic rulings based on the science of our times.

New York State has laws that ban proprietors from selling non-kosher foods and labelling them as kosher. Rabbi Sholom Rubin was an inspector for New York State and used chemical tests to determine that a certain proprietor who was labelling his meat as kosher was not salting the meat. At the hearing, the proprietor claimed that the chemical test was invalid because according to Rabbi Soloveitchik, one cannot use chemical tests for halachic evidence. The proprietor's claim is preposterous and totally inconsistent with Rabbi Soloveitchik's worldview.

Even when accepting scientific evidence, we must use halachic principles to determine how much weight to give to the evidence.

Even when accepting scientific evidence, we must use halachic principles to determine how much weight to give to the evidence. Sometimes scientists can determine something with 100% certainty and sometimes their determinations are based on statistics or assumptions. In these situations, halachic principles such as *rov* (statistical majority) and *safek* (doubt) must be applied.

Innovations in Torah Ideas

While the Torah never changes, the Torah is dynamic and there is still room for "*chiddushei Torah*," innovations in Torah ideas. The Gemara, *Menachos* 29b, teaches us that when Moshe Rabbeinu was receiving the Torah at Sinai, he

was shown a vision of Rabbi Akiva teaching his students and offering interpretations of the Torah based on the crowns on top of certain letters. Moshe Rabbeinu felt faint because he couldn't understand anything that Rabbi Akiva was saying.

How is it possible that Moshe Rabbeinu didn't understand Rabbi Akiva's teachings? Isn't it a fundamental principle of faith that the entire Torah was given to Moshe Rabbeinu? The answer can be found in the next part of the story. Moshe Rabbeinu felt better when he heard a student ask Rabbi Akiva, "What is the source of a certain halacha?" and Rabbi Akiva responded that it was a "*halacha leMoshe miSinai*." In other words, all of the Torah, even in the days of Rabbi Akiva as well as today, is a legitimate development of Toras Moshe, based on the use of the "*middos shehaTorah nidreshes bahem*" — the hermeneutical principles that were given to Moshe in order to interpret the Torah, and therefore everything is implicitly "included" in what was given to Moshe. He was given the text with the "*middos*," and when applying these "*middos*" to the text, all the details of the halacha as we know it today follow automatically. The "*middos*" simply guide the rabbis in their task of reading "in between the lines" to obtain a fuller picture of each mitzvah.

Rabbi Soloveitchik (*Uvikashtem Misham* pg. 49) noted that there are two terms that have similar meanings but connote different ideas: *shinui* and *chiddush*. *Shinui* is a decision to stray from our tradition. *Chiddush* is innovation that works within our tradition and adds new depth to it. Torah literature is replete with "*chiddushim*," ideas that build upon the

chiddushim of previous generations but are wholly rooted in our tradition, both in form and in substance. These *chiddushim* further perpetuate our tradition. When innovation is not rooted in our tradition, it is considered *shinui*.

In a certain sense, Torah is the one area ripest for innovation. Rashi on Koheles (1:9), commenting on the verse “*ein kol chadash tachas hashemesh*” — there is nothing new under the sun, writes:

בכל מה שהוא למד בדבר שהוא חליפי השמש אין בו חידוש לא יראה אלא מה שהיה כבר שנברא בששת ימי בראשית אבל ההוגה בתורה מוצא בה תמיד חדושי טעמים.
In whatever he learns, in a matter that is an exchange for the sun, there is nothing new. He will see only that which already was, which was created in the six days of creation. But one who engages in the study of Torah constantly finds new insights therein.

The Chazon Ish was asked regarding this Rashi, isn't the opposite true? The world is full of innovation. Every day there is a new invention and the world today looks totally different than it did even one generation ago. However, the Torah that we learn is the same Torah that we have learned for generations. What does Rashi mean? The Chazon Ish answered that all of the innovations that we see in today's world were available to us from the creation of the world. We didn't discover them until recently, but we always had the ability to produce

them using the laws of nature that were part of creation. However, in each generation, there are novel Torah ideas that didn't exist in previous generations. These ideas reflect the will of Hashem, but they don't enter this world (*tachas hashemesh*) until the idea is expressed by a *talmid chacham* (*Pe'er HaDor* Vol. III pg. 79).

The Chazon Ish's comment echoes the idea that true *chiddushei Torah* aren't necessarily a reflection of how the Torah was understood when given to Moshe Rabbeinu. They are new ideas that didn't exist previously, but rooted in the “*middos*.” This idea also emerges from a comment of the Chida, in his commentary to Megillas Rus (*Simchas Haregel* 4:12). Chazal (*Yevamos* 77a) teach us that until Boaz married Rus, it was presumed that the prohibition against marrying a Moabite convert applied both to male and female converts. Shmuel Hanavi and his *beis din* interpreted the verse to mean that it only refers to males and not to females. Does this mean that from the time the Torah was given, there was never a prohibition against marrying a female Moabite convert? The Chida suggests that perhaps Moabite women were prohibited until the time of Shmuel Hanavi and it was only after his interpretation that Moabite women were permitted. The permissibility of marrying a Moabite woman was an innovation that didn't exist in previous generations.

Shavuot celebrates *ma'amad Har Sinai*, when the entire Torah was

A number of reasons are given as to why Megillat Rut is read on Shavuot. One suggestion (see R. Yehuda Leib Maimon's *Chagim UMoadim* pp. 271-272) is that Megillat Rut is a symbol of the Oral Tradition. While the Torah (Devarim 23:4) prohibits Moabites from marrying into the Jewish people, our rabbis (*Yevamos* 77a) teach us that this is only true of Moabite men, not Moabite women. By reading the megillah on Shavuot, including the last few verses, that state explicitly that King David was a product of the marriage of Boaz and Rut, we are affirming our belief in the Oral Tradition. The Oral Tradition that allowed Boaz to marry Rut, against the simple meaning of the text, is an equal partner with the Torah text and both were given together at Matan Torah.

Torah To Go Editors

given to Moshe Rabbeinu. While the Torah is the same Torah, it continues to speak to us and convey Hashem's message. The *chiddushei Torah* of each generation reveal aspects of *Elokus* that we can relate to in our generation. May we all be *zoche* that our study of Torah and how it applies in this generation will lead to a greater appreciation of the Divine.

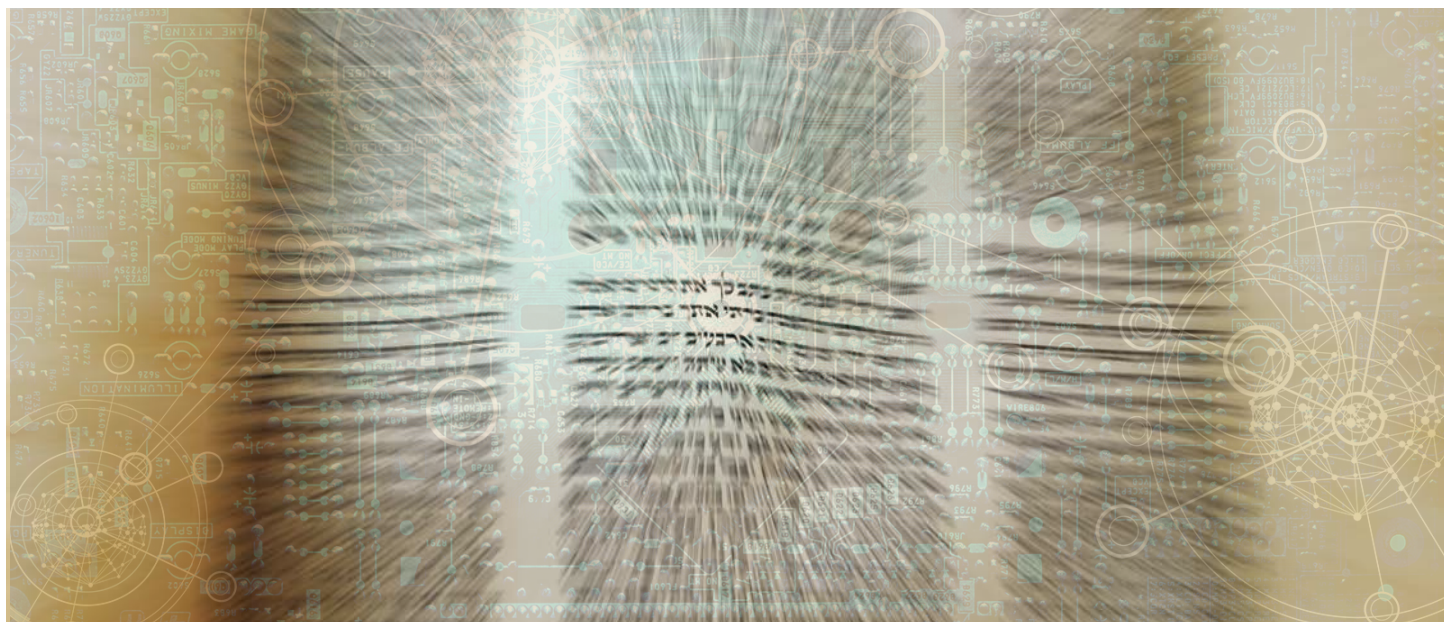
Endnotes

1 The letter appears in an article by Prof. Dov Frimer, *Assia* vol. 35. The translation is taken from an English version of the Prof. Frimer's article in *Assia*'s English language publication.



Find more shiurim and articles from Rabbi Hershel Schachter at https://www.yutorah.org/Rabbi_Hershel_Schachter

Mrs. Lavner teaches Chumash and Jewish History at the YU High School for Girls. She also serves as junior grade level coordinator. In the past, Mrs. Lavner served as the faculty advisor for the Names, Not Numbers® Holocaust Memorial Project. Mrs. Lavner is a summa cum laude graduate of Stern College with a B.A. in Judaic Studies and Psychology. She was awarded the Belkin Scholarship for Academic Excellence, the Miriam Araten Memorial Award for Excellence in Bible, and the Ida Lampert Hurowitz Memorial Award for Excellence in Psychology. She also served as coordinator of the Peer Counseling Program at Stern College for Women. Before coming to YUHSG in 2007, Mrs. Lavner worked in psychology research at the Mount Sinai School of Medicine.



THE RELIGIOUS INNOVATION OF NADAV AND AVIHU

A brief study of the Torah's account of the death of Nadav and Avihu leaves us with a major unanswered question: What, exactly, did they do wrong? This question is exponentially amplified when we consider that their sin resulted in an immediate death penalty. In what way did they so grievously err that such a harsh punishment was meted out on the spot? How did it come to pass that the *yom hashemini*, the day that was

supposed to be a joyous occasion, turned into a day of tragedy and mourning? A thorough analysis of Nadav and Avihu's actions will not only shed light on the nature of their sin, but can provide insight into the Torah's attitude toward religious innovation.

To begin, we will review the *psukim*:

וַיִּקְחוּ בְנֵי אַהֲרֹן נָדָב וַאֲבִיהוּא אֵישׁ מִחַתָּתוֹ
וַיִּתְּנוּ בָהֶן אֵשׁ וַיִּשְׂימוּ עָלֶיהָ קֶטֶרֶת וַיִּקְרְבוּ לִפְנֵי
ה' אֵשׁ זָרָה אֲשֶׁר לֹא צִוָּה אֹתָם. וַתִּצַּא אֵשׁ
מִלִּפְנֵי ה' וַתֹּאכַל אוֹתָם וַיָּמָתוּ לִפְנֵי ה'.

Now Aaron's sons Nadab and Abihu each took his fire pan, put fire in it, and laid incense on it; and they offered before Hashem alien fire, which He had not enjoined upon them. And fire came forth from Hashem and consumed them; thus they died at the instance of Hashem.
Vayikra 10:1-2

The reader is immediately confronted by one observation: the entire story, consisting of 31 words from the beginning of their service until their ultimate demise, does not explicitly

This article is written *L'ilui Nishmat* Malka bat Aharon Yitzchak, on the occasion of her 12th yaahrtzeit.

reveal Nadav and Avihu's precise sin. The midrash in *Vayikra Raba* presents a wide range of opinions as to what exactly it was.

The Explanations of Rashi and Rashbam

In his commentary, Rashi quotes two opinions from the midrash:

ותצא אש. ר' אליעזר אומר לא מתו בני אהרן אלא על ידי שהורו הלכה בפני משה רבן, רבי ישמעאל אומר שתויי יין נכנסו למקדש, תדע, שאחר מיתתן הזהיר הנוטרים שלא יפגשו שתויי יין למקדש, משל למלוך שהיה לו בן בית וכו', פדאייתא בויקרא רבה:

And There Went Out Fire — Rabbi Eliezer said: the sons of Aaron died only because they gave decisions on religious matters in the presence of their teacher, Moses. Rabbi Ishmael said: they died because they entered the Sanctuary intoxicated by wine. You may know that this is so, because after their death he admonished those who survived that they should not enter when intoxicated by wine. A parable! It may be compared to a king who had a bosom friend, etc., as is to be found in Leviticus Rabbah 12:1. Rashi, Vayikra 10:2

According to Rabbi Eliezer, we learn that Nadav and Avihu were seemingly disrespectful of Moshe, presenting halachic rulings in Moshe's presence, where deference was mandated. According to Rabbi Yishmael, we learn a new facet of the story not explicitly present in the text; in fact, Nadav and Avihu were intoxicated at the time they brought their fire pan offerings. This midrashic explanation is rooted in the juxtaposition of the Nadav and Avihu narrative with the laws detailing the prohibition to enter the mikdash while intoxicated, which follows their punishment in the very same chapter.

The opinions cited by Rashi are not *pshat*-based explanations. Rather, Chazal are “reading between the lines” in developing these approaches. We might suggest that Rashi, a *parshan* who regularly incorporates both *pshat* and *derash*, adopted the approaches rooted in *derash*, given the significant challenges presented by the text in taking a purely *pshat*-based explanation.

Also taking on the challenge of understanding this passage, Rashbam offers his own explanation.

ויקחו בני אהרן נדב ואביהוא - קודם שיצא האש מלפני ה' כבר לקחו איש מחתתו להקטיר קטורת לפנים על מזבח הזהב, שהרי קטורת של שחר קודמת לאיברים, ונתנו בהן אש זרה אשר לא צוה אותם משה ביום הזה, שאעפ"י שבשאר ימים כת' ונתנו בני אהרן הכהן אש על המזבח, היום לא צויה ולא רצה משה שיביאו אש של הדיוט, לפי שהיו מצפים לירידת אש גבוה, ולא טוב היום להביא אש זרה, כדי להתקדש שם שמים שידעו הכל כי אש בא מן השמים, כמו שאמר אליהו ואש לא תשימו, לפי שהיה רוצה לקדש שם שמים בירידת האש של מעלה:

Now Aaron's sons Nadab and Abihu each took — before the fire went out from before G-d, they each took their firepan to offer incense ... and they brought a foreign fire that Moshe did not command them to bring that day. Even though on the other days, it states that the sons of Aaron brought a fire on the altar, on this day, Moshe did not command [this] and Moshe did not want a human to bring the fire because they were waiting for a heavenly fire to descend. Today was not a good day to bring a foreign fire because [the goal of the heavenly fire] was to sanctify the name of Heaven by everyone knowing that the fire came from Heaven ...

Rashbam, Vayikra 10:1-3

Rashbam explains that the sin of Nadav and Avihu lies in the timing of

their offering. A prototypical *pashtan*, Rashbam connects Nadav and Avihu's act in the very beginning of chapter 10 to the conclusion of chapter 9. To fully understand Rashbam's analysis of Nadav and Avihu's sin, we must understand what transpired in this preceding chapter:

ויבא משה ואהרן אל אהל מועד ויצאו ויבכו את העם וירא כבוד ה' אל כל העם ותצא אש מלפני ה' ותאכל על המזבח את העלה ואת החלבים וירא כל העם וירגזו ויפלו על פניהם.

Moses and Aaron then went inside the Tent of Meeting. When they came out, they blessed the people; and the Presence of Hashem appeared to all the people. Fire came forth from before Hashem and consumed the burnt offering and the fat parts on the altar. And all the people saw, and shouted, and fell on their faces.

Vayikra 9:23-24

As detailed in chapter 9, the ultimate climax of the eight-day dedication ceremony of the Mishkan was the planned revelation of Hashem's *Shechinah* on *yom hashemini*. After Moshe and Aharon exited the Ohel Moed and blessed the nation, the Heavenly fire descended for Bnei Yisrael to witness. We can assume that this fire is the manifestation of the *Shechinah* in front of the nation. Bnei Yisrael cry out and fall on their faces, clearly awestruck by this revelatory moment.

Armed with this necessary understanding of the events of *yom hashemini*, we can now thoroughly appreciate Rashbam's interpretation of Nadav and Avihu's action. According to Rashbam, Nadav and Avihu erred and brought their fire prior to Hashem's Heavenly fire on *yom hashemini*. This interpretation of Rashbam takes a more forgiving view of Nadav and Avihu, as he explains that their action would seemingly have

been appropriate on any other day. The instructions for the dedication ceremony of the Mishkan were outlined quite clearly for Moshe and Aharon. At no point was there a commandment for Nadav and Avihu, or any of the kohanim, to bring an *aish shel hedeyot*, an ordinary, manmade fire. There was only supposed to be the miraculous fire from the Heavens, seemingly a sign of Divine acceptance of the *korbanot* of *yom hashemini*. By preempting Hashem's fire, Nadav and Avihu detracted from a moment whose sole purpose was to be *mekadesh shem Shamayim*, sanctifying G-d's name. The miracle of a fire descending straight from the Heavens in front of Bnei Yisrael was diminished. Therefore, Rashbam understands that at its most basic level, the sin of Nadav and Avihu was rooted in the timing of their fire offering.

It is of note that, according to Rashbam, the sequence of events is seemingly out of order; the story in the very beginning of chapter 10 actually transpired in chapter 9. Perhaps Rashbam believes that the Torah records the events in the sequence that it does in order to actually present the moment of the *gilui Shechinah* (Divine revelation) as it should have been, without any minimizations or detractions. The *kiddush shem Shamayim* appears for Bnei Yisrael in the Torah, in all its glory, as it was intended to be.

The Explanation of Rav Shamshon Rafael Hirsch

Rav Shamshon Rafael Hirsch also sets out to explain the exact nature of the sin of Nadav and Avihu. Whereas Rashbam sees an error, albeit a tragic miscalculation, within Nadav and

Avihu's action, Rav Shimshon Rafael Hirsch points to an inherent character flaw as the underlying cause. Rav Hirsch draws upon the general theme of arrogance, as represented in many of the midrashim. He examines each phrase in our pasuk and demonstrates how every fragment of the *pasuk* reflects wrongdoing. For example, "bnei Aharon" indicates that Nadav and Avihu considered themselves above seeking advice because of their pedigree, yet they should have consulted their worthy and knowledgeable father. "*Ish Machtato*" reflects how the two brothers were not even united in their *cheit*; instead, each one took his fire pan individually, lacking solidarity even in sin.

To a degree, the idolater is a religious innovator; when he approaches his god, the worshiper independently determines in what manner and with what tools he will serve. In contradistinction, a Jew seeks to demonstrate his subservience to the will of Hakadosh Baruch Hu, setting aside his personal predilections, his self-interests and deepest desires.

Above all, Rav Hirsch stresses the significance of the phrase "*asher lo tzivah otam*." While we can infer errors on the part of Nadav and Avihu

from the various phrases in the *pasuk*, these other sins were ancillary to the brothers' true miscalculation. It is the *asher lo tzivah otam* characterization of their actions that is the key aspect of their sin. As Rav Hirsch elucidates, by virtue of the fact that this action was unbidden, it renders it forbidden:

Now we understand the deaths of Aharon's sons. Their death at the time of the first dedication of the Sanctuary is a warning to all future kohanim. It bars all arbitrariness, all personal caprice, from the precincts of the Sanctuary, whose whole purpose is to be a Sanctuary for the Torah! In Judaism, the priest's function is not to introduce innovation in the Service, but to carry out God's command.

Rav Hirsch, Parshat Shemini

As Rav Hirsch states, the function of the kohen is to be an executor of Hashem's commands. There is no room at all for creativity or nuance. There are no opportunities for impulsive additions or improvisations in the Mishkan. Even if their desire was to serve Hashem, Nadav and Avihu deviated from the prescribed method of service in devising their own type of *korban*.

In this regard, Rav Hirsch draws a sharp contrast between the offering of a pagan and between the offering of a Jew. When an idolater brings his sacrifice, he seeks to subjugate his god to his own will. The offering is an appeal to the gods to satisfy the desire of the person offering the sacrifice. To a degree, the idolater is a religious innovator; when he approaches his god, the worshiper independently determines in what manner and with what tools he will serve.

In contradistinction, a Jew brings a *korban* with the intention of placing himself in the service of Hashem.

The *makriv* seeks to demonstrate his subservience to the will of Hakadosh Baruch Hu, setting aside his personal predilections, his self-interests and deepest desires, embracing the will of Hashem and engaging in service in the manner prescribed by his Creator.

The Broader Message Regarding Innovation in the Service of Hashem

Moving past the narrower discussion of the Torah's account of Nadav and Avihu, a larger question arises: if kohanim are mandated to follow G-d's command with no innovation, we must ask — is this the broader message of the Torah? Is that our collective mandate? Is the individual who seeks *kirvat Elokim* presented with only one singular method by which he can serve Hashem?

To a large degree, the answer is obviously “yes.” Any elementary student of the Torah and the halachic system is immediately confronted with a legal code, which seemingly does not present various alternative avenues for the *oved Hashem*. At first glance, we might conclude that there is no room for individual self-expression or innovation in the Torah.

In considering this question, it behooves us to highlight a passage that we recite in *tefilah* every morning, following *Birchot HaTorah*, from a mishnah in *Masechet Peah*.

אלו דברים שאדם אוכל פרותיהם בעולם הזה והקרו מיקמת לו לעולם הבא. ואלו הן. כבוד אב ואם. וגמילות חסדים. והשכמת בית המדרש. שחרית וערבית. והכנסת אורחים. ובקור חולים. והכנסת כלה. ולוית המת. ועיון תפילה. והבאת שלום בין אדם לחברו. ותלמוד תורה כנגד כלם:

These are the precepts whose fruits a person enjoys in this world, and

nevertheless the principal exists for him for the World-to-Come, and they are: Honoring one's father and mother, acts of kindness, attendance at the house of study morning and evening, hospitality to guests, visiting the sick, providing for a bride, escorting the dead, absorption in prayer, bringing peace between a person and another, and Torah study is equal to all of them.

In this mishnah, we are exposed to a wide array of avenues through which we enjoy success in this material world, as well as meriting an eternal share in *Olam Haba*; the paths range from honoring our parents, to Torah study in the *beit midrash*, to careful introspection in *tefilah*. The mishnah acknowledges that the Torah is comprised of multiple core values through which we can serve Hakadosh Baruch Hu. While on one day we may achieve spiritual growth through visiting the sick, on a different occasion we find ourselves rewarded for being immersed in Torah study.

What emerges from this observation is that the Torah's attitude toward innovation is more nuanced than we may have originally surmised. After studying the account of Nadav and Avihu's sin and the lessons of Rav Hirsch, we might have jumped to the conclusion that there is no latitude whatsoever for individuality in our service of Hashem. If Nadav and Avihu were punished so swiftly, perhaps there was no flexibility for them to choose how and in what manner they would attain closeness to Hashem.

We live in a world where innovation is all around us. New technologies, new ideas and new perspectives are introduced regularly and we are being pressured to provide some innovation to Judaism. In the final analysis, while

it is certainly true that the array of options within *avodat Hashem* may be limited and not open to unfettered innovation, nevertheless, there are a variety of ways to serve Hashem. Judaism allows for some level of self-expression, provided that it remains within the context of our treasured *mesorah*.

As we celebrate *zman matan Torateinu*, we take pride in our staunch belief that the Torah ultimately prescribes the method by which we approach and serve the *Borei Olam*. We categorically reject religious subjectivity and unbridled creativity that would allow the individual to choose any and all methods of religious worship. The story of Nadav and Avihu demonstrates the dangers of serving outside of the framework of Hashem's instructions. At the same time, the Torah embraces various forms of serving Hashem, from comforting a mourner, to arising early for *tefilat shacharit*, to *hava'at shalom bein adam l'chaveiro*, simply bringing peace between two individuals. The earnest person who approaches Hakadosh Baruch Hu through acts of *limud haTorah*, *gemilut chasadim*, and *kavanah in tefilah*, is promised to enjoy the fruits of his labors in this world and the next.

As we enter Chag HaShavuot and reenact *matan Torah*, may we wholeheartedly accept *ol malchut Shamayim*, thereby achieving lasting closeness to Hakadosh Baruch Hu.

21st Century Challenges: Home Automation

Rabbi Zvi Sobolofsky

Rosh Yeshiva, RIETS and Rabbi, Congregation Ohr HaTorah, Bergenfield, NJ

Rabbi Sobolofsky studied at Yeshivat Kerem B'Yavneh and Yeshiva University and received semikha from RIETS and earned a Master's degree from the Azrieli Graduate School of Jewish Education and Administration. He was a fellow of the Gruss Kollel Elyon and then went on to teach in YU's Stone Beis Medrash Program before being appointed as a Rosh Yeshiva. He is the author of *Reishis Koach* on Maseches Bechoros and *The Laws and Concepts of Niddah*. He also lectures at the Bergen County Beis Medrash Program (BCBM) housed at Congregation Bnai Yeshurun in Teaneck, NJ.

Compiled by Elly Deutsch



ELECTRICITY AND SHABBOS: PAST, PRESENT AND FUTURE

The Torah (Shemos 35:3) teaches us “*loh siva'aru aish b'chol moshevosaychem b'yom HaShabbos*” — a flame shall not burn in your midst on Shabbos. We cannot kindle a flame on Shabbos. This prohibition, based on a commandment from Hashem many years ago, has ramifications today and will continue to be relevant in the future. Hashem transcends all time and therefore, when He uttered these words to Klal Yisroel, it included everything from the sticks and stones of the days of Matan Torah, to the lightbulbs of Thomas Edison, to whatever new inventions the future has in store for us.

Past

What did the prohibition in this verse refer to in the past, at the time of Matan Torah? In ancient times, fire was created by rubbing two sticks or stones together. Chazal (*Pesachim* 54a) tell us that this is how the first fire was created by Adam HaRishon. The basic notion of “*aish*” was the lighting of a flame, whether its source of fuel is oil, wood or something else. To start such a flame or to add to such a flame on Shabbos is an outright Torah prohibition. The question as to what exactly constitutes *aish* became more complicated when people stopped lighting their homes with candles and

began using lightbulbs instead. Does the prohibition of “*loh siva'aru aish*” include such innovations as well? If an electric light is the equivalent of *aish* in the Torah, then turning on an electric light on Shabbos would be a violation of the *melacha* of *hav'arah*. If, however, an electric light is not the equivalent of *aish*, then perhaps it is permissible to turn on such lights on Shabbos.

In order to determine whether electric lights constitute the Torah's definition of *aish*, we have to go back to the basics and figure out the defining aspects of *aish*. What is it about “*loh siva'aru aish*” that is

prohibited? We can understand this in one of two ways. It could be that *aish* is anything that gives off light or provides heat. Alternatively, it could be that another crucial element of *aish* is that there is something that's being visibly consumed by the fire. Is this second dimension of fire, that the fuel is being consumed, an integral aspect of *aish* or not? The practical difference is whether turning on an electric light violates the *melacha* of *hav'arah*. When you turn on a light, there is nothing being visibly consumed, so if consumption is an essential component of *aish*, we could theoretically argue that an electric light does not constitute *aish*.

To address this question, Chazal (*Shabbos* 42a) describe a piece of metal that is so hot that it is glowing. The glowing hot metal is not consumed, and yet according to many of the Rishonim is considered to be *aish*. Indeed, this is the opinion that we follow as a matter of halacha (Rambam, *Hilchos Shabbos* 12:1 and *Avnei Nezer*, O.C. 229). This is the closest example in Chazal to the modern incandescent lightbulb, which involves lighting a filament that is a glowing piece of metal. As such, the fact that the metal is not being consumed is irrelevant, and this constitutes *aish* on a level of D'Oraisa.

In terms of halacha, when electric lights were invented, there was a clear consensus view among the Gedolim in Europe that it is an absolute Torah prohibition to turn on an electric light on Shabbos. This question became a little more complicated as the years went on because fluorescent bulbs and LED lights don't have a metal filament in them to provide light. Many fluorescent bulbs do use heated metal as part of their starter mechanism and

as such, turning on a fluorescent bulb might also constitute a *melacha* on the level of D'Oraisa.

Regardless of whether lighting the particular light constitutes *aish*, it is nevertheless prohibited to turn on any electric device, including lights. According to the *Chazon Ish* (O.C. 50:9), completing an electric circuit violates the Torah prohibition of *boneh*, while many other poskim assume that the violation is only rabbinic in nature. According to these poskim, turning on a light that contains glowing hot metal is a Torah prohibition (*hav'arah*), while turning on other devices is a rabbinic prohibition. This is an important distinction that is relevant for the next section.

Present

Over the last few decades we have faced another layer of complexity. In earlier times, if someone wanted to get something done, a physical action was necessary in order to get the desired result. For example, if a person wanted to light a fire or turn on a light, that person actually had to strike a match or flip a switch. However, with the rising popularity of motion sensors, a person can turn on a light without taking any physical action. A person can walk near a sensor, which automatically turns on the light. Is this passive action also included in the prohibition of "*loh siva'aru aish*," or is this something else? Moreover, when a person walks past a sensor, he may not even want to turn on the light. Does the intention to achieve a particular result make a difference?

This is a general question when it comes to *Hilchos Shabbos*: What happens if I perform action A and

then action B occurs as a result?

There is a *machlokes haTanoim* (*Shabbos* 133a) between Rebbe Yehuda and Rebbe Shimon that is a running theme throughout *Maseches Shabbos* in regard to a *davar she'ayno miskavein*. A *davar she'ayno miskavein* is when a person performs action A which is permissible, but which then unintentionally results in B, which is prohibited. The classic example of *davar she'ayno miskavein* is dragging a bench on the ground outside. Assuming that there is an *eiruv*, there would not be an inherent problem with dragging the bench. However, when a person drags the bench, it is possible that he could also dig a hole in the ground. Digging a hole is a violation of the *melacha* of *choresh* (plowing). If the person who is dragging the bench knows of the possibility of the hole being made, but does not intend to make a hole, then that is called a *davar she'ayno miskavein*. According to Rebbe Yehuda, a *davar she'ayno miskavein* is prohibited, but Rebbe Shimon argues that it is permissible. We follow Rebbe Shimon's opinion and therefore, it would be absolutely permissible to drag the bench.

The Gemara (*Shabbos* 103a) quotes Abayei and Rava who qualify this and say that a *davar she'ayno miskavein* is only permissible if the person is not certain that B is going to happen. If, however, the person knows that B is going to happen or, according to some opinions, even if he is fairly certain that it's going to happen, then Rebbe Shimon agrees that it is prohibited. This is known as *p'sik reisha*.

The Gemara then expands on this by trying to determine when something is really considered a *p'sik reisha*. If you do A and you know that B is

going to happen and are content with outcome B, then that's called a *p'sik reisha d'nicha lei*. In this situation, it is as if you performed action B intentionally. But what if it's a *p'sik reisha d'lo nicha lei* — it is unintended and unavoidable, but you don't really care about the result?

This is the subject of a dispute among the Rishonim. The *Sefer HaAruch* (s.v. *Savar* no. 5) says that a *p'sik reisha d'lo nicha lei* is permissible. However, many of the Rishonim, including Tosfos (*Shabbos* 103a s.v. *Lo Tzricha*), disagree with him and say that a *p'sik reisha d'lo nicha lei* is not totally permissible, and is prohibited on a rabbinic level. As a matter of halacha, we generally follow the view of Tosfos.

How does this play out in terms of walking past a sensor on Shabbos? When a person walks past a sensor knowing that it is there, and it turns on a light, that is a *p'sik reisha*. The question is whether the person cares that the light was turned on or not. If he turned on the light in a dark place, then he is probably content with the light turning on, and so it's considered a *p'sik reisha d'nicha lei* and is prohibited. But if the light was turned on in a place that is not so dark, and the person did not really care to have the light on, then it's considered a *p'sik reisha d'lo nicha lei*. This is still problematic. However, there is a *machlokes haRishonim* regarding a *p'sik reisha d'lo nicha lei*, in which the unintended result is itself only a rabbinic violation. If the light that turns on is an incandescent bulb or a halogen bulb, this *machlokes* is not relevant and it would be prohibited. But if the light is an LED light, and the unintended result is only rabbinic in nature, then there would be more room to be lenient in such a case.

There are a number of different opinions regarding this type of a situation.

Future

Motion sensing devices are fairly ubiquitous in contemporary society and questions surrounding *p'sik reisha* are asked regularly, with new permutations as new technologies emerge. The *p'sik reisha* questions relate to the relationship between our actions and their unintended results. Yet there is a new category of technology emerging that causes us to question what is considered an "action." Voice recognition devices such as Amazon's "Alexa" allow us to turn lights on by simply saying "turn on the lights." The popularity of this technology is growing. If our interactions with electricity in the future will be with our voices, it is important to explore what halacha says about this. Does speaking constitute an action that is prohibited on Shabbos?

The Gemara in *Bava Metzia* (90b) talks about the prohibition against muzzling an animal to prevent it from eating while it is working (Devarim 25:4). What is the halacha if you don't physically muzzle the animal, but "muzzle" it in that whenever it is about to eat, you scream in order to frighten it and thereby prevent it from eating? We follow the opinion of Rav Yochanan who says that one would receive lashes for doing such a thing. To be culpable for *malkos* (lashes), one must perform a *lav she'yaish bo ma'aseh* — a physical action. Chazal say that the action in this case is the moving of the lips. This is a tricky statement, because we know that in other areas of halacha this is not true. Sometimes speaking is not considered

an action. Tosfos (ad. loc. s.v. Rav Yochanan) explain that if moving the lips results in an action happening, then that's called an action in halacha and therefore, if a person screamed in order to prevent his animal from eating while working in the field, he would be culpable.

It would seem that we could apply what we learn from this case to turning on lights by way of speech. If a person speaks and the moving of the lips results in the lights turning on, then we could argue that it is called an action and would be prohibited on Shabbos.

There are other issues involved in turning on lights via speech, such as the prohibition of "*daber davar*." The verse in Yeshaya (58:13) says that we are not allowed to speak about doing melacha on Shabbos. This is one of the reasons why it is prohibited to ask a non-Jew to perform *melacha* on Shabbos. As such, speaking about turning on lights would seem to be another issue that applies here.

The words "*loh siva'aru aish b'chol moshevosaychem b'yom HaShabbos*" were given to us at Har Sinai and they still apply today. On January 1, 2000, *The New York Times* published an edition of what they thought *The New York Times* would look like on January 1, 2100 and on the bottom of the front page, there was a reminder for Jewish women to light Shabbos candles. They knew that in the future, Jewish women would still be lighting Shabbos candles on Fridays. The reason there is a specific mitzvah to light Shabbos candles is because we can't light candles on Shabbos. The words "*loh siva'aru aish*" are as true today as they were in the days of Moshe Rabbeinu, and will be true in the future as well.

21st Century Challenges: Autonomous Vehicles

Rabbi Mois Navon

Rabbi Mois Navon designed the Mobileye System-On-a-Chip - the “brain” enabling autonomous vehicles. He also gives a weekly Torah U’Madda shiur at the Jerusalem College of Technology. This essay is a synopsis of one of those shiurim.



ETHICAL DILEMMAS ON THE ROAD TO REDEMPTION

To fix the world in the name of God

Our world is about to change. Dramatically. Computing technologies, with artificial intelligence at their core, are revolutionizing our world. Leading the charge to this brave new world are autonomous vehicles, or “self-driving cars.” They have been called the most disruptive technology to ever hit humanity. Autonomous vehicles are not just going to change the way we commute — they are going change

the way we live. Here is a short list of just some of the areas that are going to be revolutionized:

Transportation: People will no longer need to have their own cars, since robo-taxis will be ubiquitous and inexpensive. Furthermore, classes of people who were less mobile will now be able to get around like the rest of humanity — e.g., the elderly, the seeing impaired and children.

Traffic and Pollution: There will be far fewer cars on the road due to

the multi-use of a single car. Some estimate that by 2035, there will be 80% fewer cars in the world.

Commute Time: Since all cars will know exactly where all other cars are and will be able to respond to changes immediately, cars will be able to travel at speeds unimaginable for human drivers limited by human reaction times.

Real Estate: As a result of faster transportation (less traffic, higher travel speeds), people will be able to

live farther from city centers. City centers will also be transformed since robo-cars will not need to park in the city center, where real estate is at a premium. Massive parking lots in buildings will now be available for apartments, offices, stores, etc. The sprawling parking lots not in buildings will be freed up for other uses, such as parks.

Accidents: The World Health Organization reports that over 3,400 people die in traffic accidents every day, and that between 54,000 to 136,000 people are injured daily on the world's roads. These numbers will approach zero when only computers are driving.

Insurance: As result of the negligible accident rate, car insurance will also approach zero.

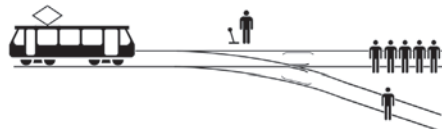
Car Body Parts: This now one-trillion-dollar industry is also going to virtually vanish due to the extremely low accident rate.

Traffic Tickets: With cars programmed to obey traffic laws, traffic tickets will become a thing of the past. Municipalities that depended on this revenue may have to seek it elsewhere (e.g., toll roads). On the other hand, the World Health Organization estimates that road accidents cost countries 3% of their GDP — this will now be a boon to governments that should offset any lost penal income.

Price of Goods : A significant component of the goods we buy are due to the costs of delivering them. With robo-trucks, goods will be delivered faster and cheaper than by drivers limited to eleven hours of driving per day. Furthermore, it is estimated that energy consumption will be greatly reduced, since

computer-driven cars will operate at consistent and optimal speeds, avoiding the inefficiencies of human drivers. And on top of this, trucks will be able to “freight-train” themselves one to the other to reduce wind drag.

While all these changes, as well many others, will vastly improve our world, there will also be challenges. For example, there is a significant social question: What will happen to all the people whose livelihoods are dependent on driving — i.e., drivers, truck stop owners, etc.? This is an issue that governments and big business will have to address to soften the transition to the autonomous culture. In addition to the societal issues raised by autonomous vehicles, there are ethical issues that demand consideration. Perhaps the most talked about is: How should autonomous vehicles be programmed if they encounter the infamous Trolley Dilemma?



The Trolley Dilemma, formulated as an ethical thought experiment in 1967, describes a trolley hurtling down its track upon which five men are tied. A bystander watching can throw a track switch that will divert the trolley from its current track to a parallel track thus saving the five. The dilemma arises when the bystander realizes that on the parallel track is tied a single man. What is the right thing for the bystander to do?

This question has divided respondents into two camps:

Those who look at the “utility” of the outcome — in this case, saving more people — and are known as

utilitarians; those who make their decision based on rules — in this case “though shalt not murder” — and are known as deontologists (*deon* being Greek for duty).

While the utilitarian approach is appealing, for saving as many people as possible always seems like a good thing, we enter murky territory when we begin to attach names or titles to the people on the track. For example, what if the single man is the head of state — should he take precedence over five ordinary citizens? Before tackling this problem, let's look at a “simpler” version of the problem, known as the Tunnel Dilemma. Here a driver approaching a single-lane tunnel sees a pedestrian in the road. The driver does not have time to brake and is left only with the choice of running over the pedestrian or killing himself by driving into a wall.

In pitting one individual against another, we have removed the quantitative element from the dilemma, thus allowing us to focus on the qualitative aspect — i.e., the value of the individual. Regarding such an evaluation, the Mishna (*Ohalot 7:6*) teaches that man does not have the wherewithal to judge between individuals, and so: “one life is not set aside for another.” While most people are quite comfortable with this egalitarian stance, they get apprehensive when, as in the Tunnel Dilemma, the question gets personal. That is, if the choice is running over a stranger or sacrificing your own life, what do you do?

The Talmud (*Pes. 25b*) formulates this dilemma as follows: The governor of a city said, “Go and kill Ploni or you will be killed.” What do you do? The Talmud responds that one must give his own life rather than commit

murder, for, “in what way do you see that your blood is redder than his? Perhaps his blood is redder?” Egalitarianism, then, applies even when it gets personal.

That being said, the Tosafot (*San. 74b, ve’ha*) note that self-sacrifice is demanded only when one will *actively* murder another. However, they explain, if the governor said, “allow me to throw you unto a baby such that you will end up crushing him to death,” one would not be demanded to sacrifice one’s own life, “for one did not do an action.”

This brings us to another Talmudic scenario (*Baba Metzia 62a*) that pits one individual’s life against another:

שנים שהיו מהלכין בדרך וביד אחד מהן קיתון של מים אם שותין שניהם מתים ואם שותה אחד מהן מגיע לשוב דרש בן פטורא מוטב שישתו שניהם וימותו ואל יראה אחד מהם במיתתו של חבירו עד שבא רבי עקיבא ולימד וחי אחיך עמך חייך קודמים לחיי חבירך.

Two people are walking in the desert and only one of them has a canteen of water. If both drink, they will [both] die, but if only one drinks, he can reach civilization. Ben Petora taught: It is better that both should drink and die, rather than that one should behold his companion’s death. [And so it was] until R. Akiva came and taught: “that your brother may live with you” [means] your life takes precedence over his life.

R. Yosef Babad (*Minhat Hinuch*, 295-296, #1) writes that R. Akiva’s position reflects the conclusion of the Tosafot,

namely, that one is not required to save his friend at the expense of his own life. R. Babad claims this is also the position of the Rambam. These assumptions, however, are roundly rejected by R. Haim of Brisk (*Hidushei R. Haim, Hil. Yesodei HaTorah*, Ch. 5). First, R. Akiva did not here allow for passive killing but simply removed the obligation to actively save a life at the expense of one’s own life. Second, while the Tosafot argue that since all people are equal, one can simply remain passive (*shev v’al taseh*) in effecting the other’s death, the Rambam uses the same argument to come the opposite conclusion. That is, precisely because all people are equal there is no justification to set aside one life for another (*ain ba din dehiyah*) and, as such, there is no difference between actively killing or passively killing — in all cases one must sacrifice oneself. That being said, one is not obligated to actively kill himself (i.e., commit suicide) to avoid passively killing someone else.

With these sources in mind we can now return to the Tunnel Dilemma, which has two sub-cases to be considered: (1) passive and (2) active. (1) If the street is perfectly straight and the driver is holding the steering wheel straight, this is considered passive killing and the driver would not be obligated to actively take his own life. (2) If, on the other hand, the street is curved such that the driver must actively turn the wheel into the

curve, this would be considered active killing and the driver would have to give his own life (passively driving the car straight) to avoid running over the pedestrian.

The above scenarios were originally discussed in a soon-to-be-published book in Hebrew: “Halachic, Ethical and Governmental Challenges in the Development of the Autonomous Vehicle” (Editor: R. Y. Sprung, Kollel R. Asher Weiss). There, the authors also note an important mitigating factor: the legality of the pedestrian. That is, if the pedestrian is not legally permitted to be in the street, for whatever reason, he then has no right to cause another person (i.e., the driver) to give his life and thus all would agree that the driver need not sacrifice his own life.

Having gained a better understanding of the value of the individual via the “one against one” Tunnel Dilemma, let us now approach the “one against many” Trolley Dilemma. The primary source for this discussion is the Jerusalem Talmud (*Terumot 8:4*):

סיעות בני אדם שהיו מהלכין בדרך פגעו להם גוים ואמרו תנו לנו אחד מכם ונהרוג אותו ואם לאו הרי אנו הורגים את כולכם אפילו כולם נהרגים לא ימסרו נפש אחת מישראל.
A group of people were traveling, and marauders chanced upon them saying, “Hand over one of your group or we will kill you all.” Even if all will be killed, they may not hand over one soul.

This source unequivocally rejects utilitarianism, which leads to uncomfortable implications when applied to a driver on the road confronted with the Trolley Dilemma. In grappling with this issue, the *Hazon Ish* (*San. 25*) says that utilitarianism could possibly be applied if we could frame the dilemma as “saving” people as opposed to “killing” people.



In the end, he himself remains unconvinced that it is possible to reframe the Trolley Dilemma and thus concludes that the issue needs more investigation (*tzarich iyun*). R. Asher Weiss (*Minhat Asher*, Pes. 28) discusses the Hazon Ish's proposal and, noting that there can be no justification for killing an individual, concludes that the issue needs more investigation (*tzarich iyun*). Finally, the *Tzitz Eliezer* (15:70) rejects outright the Hazon Ish's suggestion and, referring explicitly to a car driver caught in the Trolley Dilemma, states that "in a case of definite killing we ... do not say that the many are preferred."

The weight of halachic opinion, then, is clearly deontological, demanding that one drive straight over the many to avoid actively killing even only one person. While this may be hard for us to swallow, perhaps it helps to know that underpinning this deontological approach is the inviolable and inestimable value of the individual. Indeed, attributing infinite value to the individual is one of the great gifts that Jewish thought brought to a pagan world that was literally sacrificing individuals for the sake of the many. And so Rav Kook explains, "We do

not have the wherewithal to estimate the infinite value of the individual against the infinite value of many individuals" (*Mishpat Cohen* 143).

Before we jump to conclusions and apply the above understanding to the programming of the autonomous vehicle, we must ask if there is not some difference between a human driver and a computerized driver. Initially most would be inclined to say that there is certainly no difference. However, if we take a step back, as did the rabbis who wrote the above-mentioned "Halachic, Ethical and Governmental Challenges in the Development of the Autonomous Vehicle," we will notice an important difference between the two cases. In the case of a human driver, the person is faced with the life and death decision to either passively run over, say, five people in his current lane, or actively switch lanes and run over, say, a single person. On the other hand, in the case of the autonomous vehicle, there is no driver, there is a program that is being executed according to some predetermined code. That code was written, days, months, or, in all likelihood, years before it encountered this Trolley Dilemma. When the programmer sat in front of

his computer, was he facing a decision to kill five versus one? Could we not say that the *modus operandi* of the programmer of an autonomous vehicle, in all scenarios, is to *save lives*? Could we not say that even in this extreme Trolley Dilemma case the *modus operandi* remains to save lives and thus he is facing a decision to *save five versus save one*? Could we not say that this is the legitimate reframing of the dilemma that the Hazon Ish was looking for?

The final word on this issue is still being debated and much is left to be said. However, without diminishing the importance of arriving at a decision on how to ethically program autonomous vehicles, two points must be stressed. One, the occurrences of the Trolley Dilemma, the Tunnel Dilemma or other ethical dilemmas will, in reality, be few and far between. Two, the autonomous vehicle will undoubtedly save millions of lives, improve the quality of life, and serve, along with all the other phenomenal advances in artificial intelligence, to fix the world and set the stage for the very redemption of creation.

On that day He and His name will be one.

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Rabbi Edward Reichman, MD is a Professor of Emergency Medicine at Einstein College of Medicine and received his semikhah from RIETS. He writes and lectures widely in the field of Jewish medical ethics. Shmuel Reichman is a semikhah candidate at RIETS and is pursuing an interdisciplinary master's degree in Jewish Philosophy and Jewish Education at Revel and Azrieli.



THE DEFINITION OF MATERNITY REVISITED AND THE DOUBLE HELIX (SPIRAL) OF TORAH AND MADDA

We all experience life, and all the chagim, through the medium of time. Events that happened yesterday, are currently happening today, and will most probably continue happening tomorrow. Every holiday we experience represents a unique point in time. But to truly tap into the holiday experience, and to appreciate the nature of innovation, we must

first understand the nature of time itself.

The most widely accepted understanding of time is that it moves in a straight line. Hashem created our world of space and time, and since its inception, time has been moving inexorably forward. The line of time creates the past, present and future. We all experience

our lives in the present. If we move backward on the line of time, and peer into our history, we can find Avraham Avinu at the Akeida, Moshe Rabbeinu accepting the Torah, and the Rambam writing the *Mishneh Torah*. However, there is a major problem with this theory. There is a *piyut* in the Haggadah (*UV'chen Va'amartem*) that says that Avraham Avinu served matzah to the three

We would like to dedicate this article *l'zecher nishmas* our dear respective parents and grandparents, Rav Baruch ben Yitzchak Isaac and Rebbetzin Raizal Shoshana bas Aharon Yosef, *zichronam livrachah*. We hope that these divrei Torah will be an *aliyas neshamah* for them.

malachim because it was Pesach. Rashi agreed, and writes that Lot did the same for the *malachim* who visited Sodom (Bereishis 19:3). How can this be? The mitzvah of matzah originates from *yetzias Mitzrayim*, and this would not occur for another few centuries.

The answer requires us to develop an even deeper understanding of time. Time doesn't move in a straight line, but rather, in circles. As the Ramchal explains, Hashem created time to move in thematic circles, where each point in the year represents certain unique spiritual energies. Rosh Hashanah, Yom Kippur, Succos, and all the chagim are associated with unique spiritual themes and energies.

This understanding completely transforms our perspective of time. We don't celebrate *zman cheiruseinu*, the time of our freedom, because the Jews were redeemed on the 15th of Nisan. Rather, the Jews were redeemed on the 15th of Nisan *because* it was *zman cheiruseinu*. The time of freedom is what allowed them to escape the slavery of Mitzrayim. This is why Avraham and Lot were eating matzah long before the actual *ge'ulah*. They were tapping into the spiritual waves of time, not commemorating a historical event. Time is thus a circle, not a straight line.

Each Shavuot, we reaccept the Torah and recreate the experience of *Matan Torah*. We are not simply trying to experience what already occurred, however; we are trying to take it one step further, ascending the spiral, reliving the experience anew, on a different spiritual plane. *Kabalat ha-Torah* this year is on a higher level of the spiral than last year. So in a real sense, we are receiving the Torah anew, in a new dimension of time and spiritual energy.

However, even the circle analogy is limiting. Time is not a recreation and repetition of the past. We don't want to re-experience the past every year. Returning to the same point on the circle would be pointless. Instead, every single year, when we return to a point on the circle, our goal is to expand upon what we created last year. Each Rosh Hashana should be a new Rosh Hashana; each Pesach, a new Pesach; each Shavuot, a new Shavuot. We must convert the two-dimensional circle into a three-dimensional *spiral*. We maintain the circularity while allowing for ascension.

This theme expresses itself in many different areas of our lives. For example, each Shavuot, we reaccept the Torah. This is why, as the Rav famously explained, there is a *minhag* to stand during the Torah reading — because we are trying to recreate the experience of *Matan Torah*. We are not simply trying to experience what already occurred, however; we are trying to take it one step further, ascending the spiral, reliving the experience anew, on a different spiritual plane. *Kabalat ha-Torah* this year is on a higher level of the spiral than last year. So in a real sense, we are receiving the Torah anew, in a new dimension of time and spiritual energy.

As we continually rise in our spiritual world, so too do we rise in the material world. Each year as we read the phrase, “*U-milu ha'aretz vi-chivshuhah*” (Bereishis 1:28), we rededicate ourselves to conquering and harnessing the powers of the natural world for the good of man. Each year's “*vi-chivshuhah*” surpasses that of the previous year. In the same way, fields of science, medicine and technology evolve with the passage of time, building on previous discoveries.

It is perhaps no coincidence that the very building blocks of the human being, the DNA, are helical or spiral in structure. Our double helix, if you will, is the parallel ascension of Torah and *madda* in tandem. Indeed, Chazal (*Zohar*, Parashas Terumah) teach us that “*Kudsha Berich Hu istakel b'oraissa u-bara alma*,” Hashem used the Torah as a blueprint for the creation of the world, and DNA is the blueprint for the creation of the human being. This notion that Hashem used the Torah to create the physical world may hold the key to our ability to address innovations in medicine from a halakhic perspective.

In connection with the chag of Shavuot, we will briefly discuss some innovations relating to one specific area of medical halakhah. Chazal explain that on Shavuot, Bnei Yisrael married Hashem; *yetzias Mitzrayim* was the *eirusin*, and *Matan Torah* was the *nesuin* (see the introduction to *Sefer HaMakneh*). Shir Ha'Shirim reflects this love story between Klal Yisrael and Hashem. *Pru urvu*, the mitzvah to procreate, is an essential component of marriage. As we metaphorically marry Hashem on Shavuot, let us briefly explore new challenges to the definition of maternity in halakhah. Our objective

is not to provide a comprehensive halakhic analysis, but rather to raise the issues that will require and enable us to reapply the Torah anew.

With modern reproductive technology it is now possible for one woman to provide the genetic contribution, the seed/DNA, and another to provide the nurturing environment required for the growth or expression of the seed (i.e., gestation). Which one of these women, if either, is considered the halakhic mother?

Moshe Rabbeinu foreshadowed this debate in his cry to Hashem, alluding to both conception and gestation as being identified with maternity:

הָאֲנֹכִי הָרִיתִי אֶת כָּל הָעַם הַזֶּה אִם אֲנֹכִי
יִלְדֶתֶיהוּ כִּי תֹאמַר אֵלַי שְׂאֵהוּ בְּחִיקָךְ כְּאִשָּׁר
יִשָּׂא הָאִמּוֹן אֶת הַיֶּלֶד עַל הָאֲדָמָה אֲשֶׁר נִשְׁבַּעְתָּ
לְאֲבוֹתָיו.

Did I conceive all this people, did I bear them, that You should say to me, "Carry them in your bosom as a nurse carries an infant," to the land that You have promised on oath to their fathers?

Bamidbar 11:12

To be sure, this debate is not new, and surrogate motherhood has become commonplace in the Jewish community. However, new innovations force us to revisit the issue, requiring the advocates of the two major halakhic positions to reapply the age-old principles of the Torah to even newer circumstances.

According to the *poskim* who consider genetics to be the determinant of halakhic maternity, behold the following two innovations:

Mitochondrial Transfer

While most of our DNA resides in the nucleus of the cell, a small

percentage is found in a small structure in the fluid of the cell called the mitochondria. The mitochondrial DNA is transmitted exclusively through the mother. Mutations in this gene can cause severe and sometimes fatal disease. It is now possible for a woman possessing defective DNA in her mitochondria to produce a healthy child through the process of mitochondrial transfer. Through this process an egg is created with the woman's nuclear DNA and the healthy mitochondrial DNA of a donor. The composite egg is then fertilized with the seed of the woman's husband to produce the child, who has three genetic parents.

For those authorities who consider genetics the determinant, who would be the halakhic mother in such a case? Is it possible to have two genetic mothers? Would we invoke the principle of *rov* (majority)? Or is the mitochondrial DNA a *davar hama'amid*, a substance of too great significance to be nullified. Perhaps the paradigm of *bitul*, or nullification, simply has no role in the determination of maternal status.

What if the mitochondrial donor is not Jewish — does the child need a conversion? Is the conversion primary, such that if it were a female child she would be precluded from subsequently marrying a kohen? If the nuclear donor is a Yisrael, but the mitochondrial donor is a daughter of a Kohen, would the child require a *pidyon haben*?

Artificial Reproductive Seed

Another development that will require a reevaluation of the position that considers genetics paramount is the creation of so-called artificial

reproductive seed. While no child has yet been born through this process, scientists have demonstrated proof of concept to be able to cultivate a gamete (reproductive cell) from a bone marrow stem cell. It would be possible for both men and women to each produce either eggs or sperm. A man could therefore produce an egg cell, which could then be fertilized with natural male reproductive seed. Who would be the halakhic mother in this case? Neither Chazal, nor any scientist, has ever conceived of anyone other than a woman contributing the egg to reproduction. Would a man fulfill the mitzvah of *pru urvu* by creating an artificial egg? If a man were a mamzer and contributed artificial male (or female) seed to the production of a child, would the child be considered a mamzer?

Neither of the two aforementioned advances would present an issue for the authorities who consider the gestational carrier to be the halakhic mother. There is, however, another innovation that challenges this position.

The Artificial Womb

Scientists recently successfully gestated a goat removed from its mother's womb in an artificially created womb for eight weeks. The ultimate conceptual objective of this research is to facilitate ectogenesis — the gestation of a fetus completely outside the womb from conception to complete development. Ectogenesis raises a plethora of halakhic issues, including even whether the product enjoys human status.

Assuming the humanity of the progeny, who would be its halakhic mother? For those who consider

genetics the determinant of maternity, the artificial womb bears no impact. Those who consider the gestational or birth mother to be the halakhic mother, however, may need to rethink their position. In the absence of a woman gestating the fetus, would maternity default to the genetic donor, or would the fetus simply have no halakhic mother? Inanimate objects, such as test tubes, petri dishes and ziplock bags (artificial wombs), are presumably disqualified from maternal consideration.

The approach to the artificial womb by authorities who consider the birth or gestational mother to be the halakhic mother may depend on their particular analysis.

- For those who are in doubt and out of *safek* (doubt) consider both mothers to have claim on maternity, here there is only one candidate. Perhaps the genetic mother should be the sole halakhic mother.
- For those who maintain that the sources specifically reflect gestation as the determinant (e.g., agricultural sources, *Yevamot*, Midrash of Rachel and Leah), absent a gestational (or birth) mother, there would perhaps be no halakhic mother.

As an additional thought experiment, if we combine the technologies and use artificial male and female reproductive seed to produce a fertilized egg, which is then placed in an artificial womb, all positions would be challenged! All would be forced to apply the Torah anew.

Since these innovations could not possibly have been anticipated by our predecessors, it is precisely in the fields of medicine and technology

True, the Torah may not specifically mention artificial wombs, mitochondrial DNA, or artificial seed, yet, all the key principles are found within it. By delving into the Torah, and deeply understanding Hashem's wisdom, we can apply it to every situation that arises in the modern world. *Hafoch ba vi-hafoch ba d'chola ba* — search in it and search in it because all is in it (*Avos 5:22*).



that many wonder how legal halakhic precedent can be found.

The solution lies in the notion of principle-based learning. As the Ramchal maintains, true wisdom requires us to always seek the key underlying and fundamental principles and concepts. All the details and applications stem from these key principles. True, the Torah may not specifically mention artificial wombs, mitochondrial DNA, or artificial seed, yet, all the key principles are found within it. By delving into the Torah, and deeply understanding Hashem's wisdom, we can apply it to every situation that arises in the modern world. *Hafoch ba vi-hafoch ba d'chola ba* — search in it and search in it because all is in it (*Avos 5:22*).

The question remains, however, why is this true? Perhaps Torah principles themselves are not sufficient to address these new advances? The answer lies in the ultimate source of all wisdom. All the wisdom of science,

medicine, and technology stems from the Torah, as the physical world itself is an expression and emanation of the Torah and the spiritual world. As we mentioned above: "*Kudsha Berich Hu istakel b'oraisa u-bara alma*," Hashem looked into the Torah, and used it to create and form the world. When we understand the deep principles of Torah, we can see them expressed within science, medicine, psychology, mathematics, and all other forms of *madda*. Since all sciences are derivatives of the Torah, we can surely find sources from within this very Torah to address any attendant halakhic issues. Therefore, the innovation of the Torah is inextricably linked to the innovation of science; they are parallel spirals or helices.

We have the minhag of placing trees and other plants in our shuls on Shavuot. Perhaps it would be more appropriate to place seeds. Man is compared to the tree (*ki ha'adam etz ha-sadeh*). When we view the grown tree, we must remind ourselves of its

ultimate origins. We must source all expression back to its root, back to its seed, back to the DNA. Just like we are trained to source ourselves back to Hashem, we must also train ourselves to source *madda* back to its roots in Torah.

This requirement to source back to the root may be reflected in an enigmatic Mishnah in *Avos* 3:7. The Mishnah says that if a person is learning Torah, stops upon encountering a tree, and comments “*Ma na’eh ilan zeh* — How beautiful is this tree!” he is *mischayiv bi’nafsho* — liable for his life. The commentaries struggle to explain the egregious nature of this seemingly innocuous act. The simple understanding is that he wasted time from his Torah study. But according to R’ Shimshon Raphael Hirsch, the deeper understanding is that he failed to see the beauty of the physical world as an integral expression of the Torah and spiritual world. *He stopped* his learning, and then admired nature. The ideal is to see the beauty of the physical as the manifestation and emanation of the *spiritual beauty*, and not as a separate and distinct idea that requires discontinuing one’s learning.

We might suggest an alternate interpretation. Perhaps his sin was admiring the finished product, the “*ilan*,” without acknowledging the seed/DNA from which it came. Failing to appreciate, acknowledge, and source it back to its original seed is indeed a crime for which one is *mischayev bi’nafsho*.

Shavuot is also known for its agricultural name, *Chag Hakatzir*. As we harvest the fully ripened produce, we must likewise remember that it is ultimately sourced back to its DNA, as we source ourselves back ultimately to our source, Hashem and His Torah.

This is also integrally related to the process of learning Torah. Whenever we learn any *sugya* of Gemara, we invariably begin by looking for a Torah source. This is not just an intellectual exercise. It is because everything and anything we are learning or thinking about must find its roots in the Torah, for everything in the world stems from that blueprint and foundation.

This could likewise be the philosophical underpinning of the maternity debate. Whom do we value more? The one who provides the seed/DNA, or the one who produces the expression of the seed, the finished product? If we view the completed child without appreciating its origin from DNA, perhaps we would be *mischayev bi’nafsho*.

From one perspective, new medical innovations simply create more work, questions, and doubts among halakhic Jews and rabbinic authorities. This may be misguided. Perhaps we can suggest a different perspective. Instead of being a problem, every new innovation in the modern world gives us the *opportunity* for constant innovation in Torah. It forces us to think in new ways, so that we can truly master the principles of Torah in order to apply them to these new circumstances. This is the very essence

of *kabbalat ha-Torah*. Not to reaccept what we’ve already accepted, but to take it to the next level in the spiral, the next rung of the double helix. As the helix of *madda* continues to ascend, its complementary helix of Torah ascends in consonance, bound together as one. Whatever innovations are developed in the future, we will continually reaccept the Torah by applying its principles to every new circumstance.

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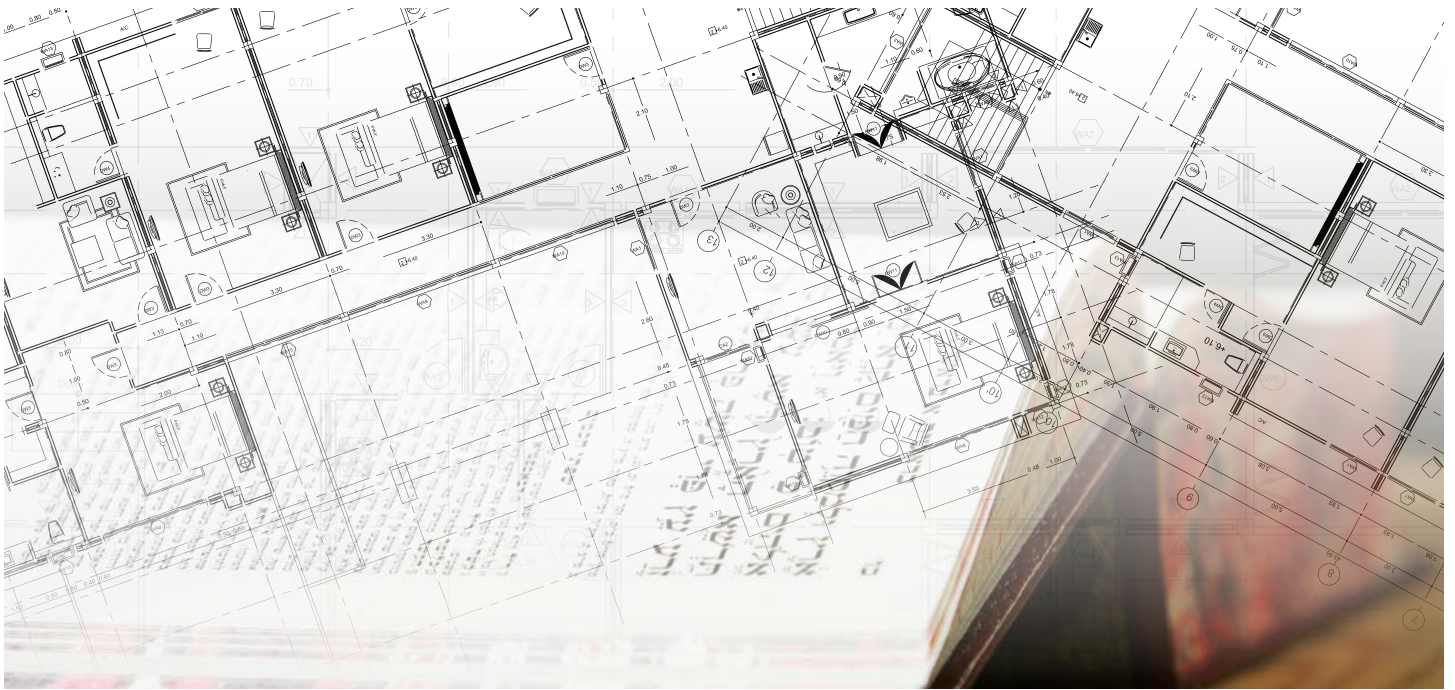


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21st Century Challenges: Architecture

Ms. Elisheva [Ellie] Levi

Ellie Levi is a licensed architect in the state of NY. She also serves as the Director of the American Friends of Bat Melech, a domestic violence shelter for religious women in Israel. She is life-long student of Torah and a popular Torah lecturer including many engagements at Yeshiva University's Midreshet Yom Rishon program.



THE TOWER, THE ZIGGURAT, THE MOUNTAIN AND THE RACE TO REACH THE SKY

From time immemorial, architects have engaged in a “race to reach the sky.” This race is expressed by a desire to erect the tallest building that can possibly be engineered to withstand the forces of wind and the movement of the earth. The modern skyscraper was born after the Great Chicago Fire of 1871, which decimated Chicago’s city center. Connecting the East and West Coasts, Chicago was the country’s economic lynchpin at the time, a thoroughfare for vast amounts of goods. There was,

therefore, plenty of financial incentive to rebuild quickly. But land was expensive, so maximizing density was key. At the same time, the invention of fireproof steel and improvements to elevators, air conditioning and electric lighting combined to make the modern skyscraper a reality.

One of the first skyscrapers was Chicago’s Home Insurance Building, built in 1885 and stood a proud ten stories (about 132 feet) high. Less than a hundred years later, the Sears Tower¹ in Chicago, erected in

1973, held the record as the tallest skyscraper in the world at 110 stories (1,450 feet) high for a quarter of the 20th century, until it was bested by a fast string of towers that were built in the 1990s. The current record holder is the Burj Khalifa in Dubai at over 160 stories (2,717 feet) high. And now, from Kuala Lumpur to New York to Taipei, the race is on to build ever taller and higher.² As innovation in architecture provides us with unprecedented designs, what Torah values can we apply?

Skyscrapers and Towers

As it turns out, architects have been racing to reach the sky for many thousands of years. Let us turn the clock back to Genesis 11:1-9, which tells the story of the *Dor Haflaga* as it engages in a massive building project: the erection of the *Migdal Bavel*. Their intentions are described as follows: “*Hava nivneh lanu ir u’migdal, v’rosho ba’shamayim,*” come let us build a city and a tower whose top will reach the sky.³

We should note that this situation parallels our 19th-century industrial forebears. In this postdiluvian generation, their world had recently been destroyed. Their building project seemed an appropriate and natural response to the situation. In fact, it seemed even to have fulfilled God’s command to Noach and his sons after they survived the *Mabul*: “*u’pharu v’ravu et ha’aretz*” — “multiply and fill the earth.”⁴ This command, in turn, is of course reminiscent of God’s original declaration of our first mandate — “*p’ru u’rvu u’milu et ha’aretz v’chivshuha*” — “be fruitful and multiply and fill the earth and conquer it.”⁵ The decimated city center of turn-of-the-century Chicago was the tabula rasa for builders,

engineers and real estate developers to dream big. The empty world and vast open plains of Shinar was the tabula rasa for the *Dor Haflaga*. Additionally, both generations used improved technology to build their skyscraper construction projects; for the *Dor Haflagah* it was kiln-fired brick.⁶

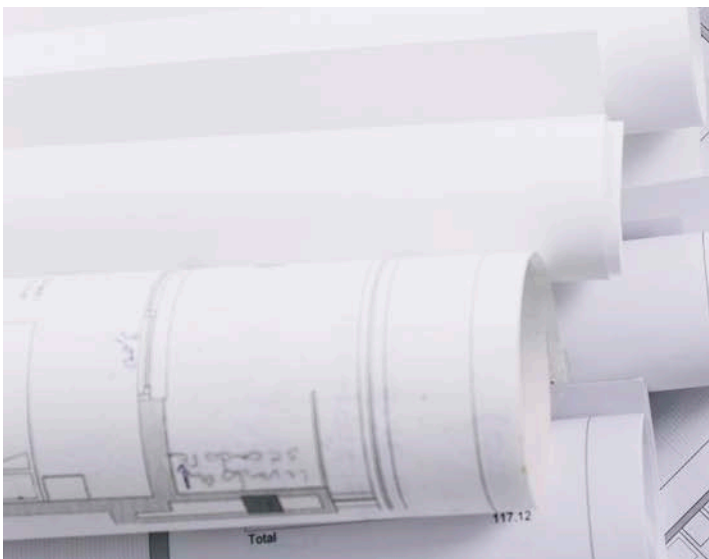
So why does God disapprove? What, precisely, was the sin for which He wrecks their building plans, confuses their language and disperses them as punishment?⁷ To amplify this question, we should note that the *Dor Haflagah* was distinctly united in their actions. The text is written in the plural and continuously describes a communal effort. The Gemara in *Sanhedrin*⁸ and other commentaries explain this as an intentional response to the lack of unity or “*hamas*” (interpreted as corruption, robbery or violence), which characterized the previous generation that was destroyed by the *Mabul*. How could human bonding be despicable in the eyes of God? Was it not a manifestation of social progress?

The Gemara in *Sanhedrin* goes on to analyze the sin and punishment of the tower undertaking within the framework of three distinct groups whose objectives differed. The first

group intended merely to live in a tower as a safety measure — i.e., traumatized by the cataclysmic *Mabul*, they meant to escape another one and elected to live well above the reach of the floodplain.⁹ The second group intended the tower as a direct assault on God’s power, using this perch as a setting for idol worship. And the third group intended the tower to serve as a fortress from which to wage war.

For each of these groups, the Gemara assigns a distinct element of the punishment measure for measure. Those foolish enough to believe that they could run from the reaches of God are cast down and dispersed. Those foolish enough to misuse their tongues and words in service of false gods are forcibly mixed up in their language skills. And those whose desire was for violent dominance over other human beings, especially when the world at this tender new beginning begs for social unity, are punished by being removed from the human family — i.e., they were sentenced to become apes and various non-human spirits.¹⁰

However, what really sets off the commentaries as the crux of this generation’s sin is evident in the following statement: “*v’naaseh lanu shem,*” and we will make for ourselves



Architecture is always a product of teamwork, and as an ideal is a social act: buildings should be for the shelter, welfare and entertainment of people. But it is no secret that great works of architecture also broadcast design and engineering prowess for its own sake and for the sake of its designers. The architect’s struggle between hubris and humility as it turns out, is Biblical.

a name.¹¹ The entire undertaking of erecting the *Migdal Bavel* goes awry because in fact, the intention of its builders was not for the sake of fulfilling a heavenly command, but for the sake of self-aggrandizement.

As an architect, I find this humorous, predictive of what is yet to come — or what obviously has always been the core of the building project — a desire for fame and glory. Architecture is always a product of teamwork, and as an ideal is a social act:¹² first and foremost, buildings should be for the shelter, welfare and entertainment of people. But it is no secret that great works of architecture also broadcast design and engineering prowess for its own sake and for the sake of its designers. The architect's struggle between hubris and humility as it turns out, is Biblical.

In Sefer Dvarim, when discussing the bounty of a farmer's crop, the Torah anticipates outright this dangerous human tendency to be arrogant about our own accomplishments and to forget our role only as God's partner in creation. The Torah cautions us against the mentality of "*kochi v'otzem yadi asa li et ha'chayil hazeh*"¹³ — "my own might and strength has yielded this abundance." The elaborate laws and seemingly drastic measure of *shmittah* compels the greatest believers into a cessation from productivity. This, the Torah tells us, is the healthiest course of action for a person who perceives himself as a servant of God — not his coequal who can outsmart Him as the *Dor Haflagah* attempted.

While the Torah text is silent on the fate of the tower structure itself, the Gemara in *Sanhedrin* paints a vivid picture of its end: The top tier where the flood-fearing set took shelter was

burned.¹⁴ The lower half where the warriors set up their fortress sunk into the ground; and the middle tier which hosted the idol worshippers remained standing for all to behold as a mere shadow of its original grandeur.

We are left with a truncated tower that is a remnant of an aborted plan of arrogant and foolhardy men. The message of this morality tale is clear: No, you cannot reach God nor could you have ever done so. Indeed, the entire tone of the episode is rather satirical.¹⁵ One textual manifestation of sarcasm is that when God emerges to see the tower, the verse reads: "*Va'yered Hashem lirot et ha'ir v'et ha'migdal*," God comes down to see the city and the tower.¹⁶ Note that even before it is destroyed into its one-third reality as the Gemara leaves it, God must *descend* to see it — so puny must it have stood to begin with!

Towers and Tents

The *Migdal Bavel* saga comes at a particularly important juncture in Jewish history, when, as midrashic sources inform us, *Avraham Avinu* was alive. As Avraham passed by their construction site, the *Dor Haflagah* tried to recruit him to participate in their building project. He chastised them by saying: "you chose to substitute a tower made of bricks instead of Hashem who is the real tower."¹⁷ But the people only mocked him in response.¹⁸ These sources elucidate what the sin of this generation actually was: they already knew of Avraham's monotheistic teaching, but rebelled against it via the tower. Other midrashim identify this tower as the brainchild of Nimrod, Avraham and monotheism's arch enemy. The Netziv even states that the fire referred to in the text as their

means of burning bricks was the very fire that Nimrod thrust Avraham into.¹⁹

But perhaps this turns out to be the very reason why the Torah chooses to include this rather odd and tangential episode describing the *Migdal Bavel* at all. It formulates the background for the exceptional story of the Jews, whose singular identity is about to be born under the aegis of Avraham, who, alone among his peers, paved the path for proper Jewish worship as monotheistic.²⁰ It launches our unique history: there will be no geographic center or physical monuments that establish our nascent nation. We will neither dig deep nor build high like other nations do, but instead our story will begin — and continue for hundreds of years to come — as a journey of self-discovery, spreading God's light before we reach our promised land and can build anything physically imposing and permanent.²¹

If a mighty tower that reaches the sky is the architectural symbol of Nimrod, then a lowly tent that can be easily erected and dismantled for the sake of this journey is the symbol of Avraham in these times, and of the wandering Jews in times to come.²² The Gemara, leaving the *Migdal Bavel* in ruins while Judaism is alive and well, emphatically communicates this idea: God rejects massive building projects — be they towers, temples or fortresses — as expressions of nationhood. Great monuments do not beget great nations.²³

Ziggurats and Mountains

Architectural history has more to teach us about the *Migdal Bavel*. Some historians identify it as a possible description of the famous

Ziggurat of Marduk.²⁴ A ziggurat is a stepped pyramid form that gradually rises in height. If, in fact, they are one and the same, it should be noted that this “tower” was only 300 feet high. Nevertheless, for the ancient world this was an imposing structure that loomed large physically and embedded itself in the psyche of all who beheld it. According to architectural history, ziggurat pyramids were erected as places of worship, designed to echo the shapes of mountains that merged the landscape and the sky. In this way, men could ascend to the heavens via a man-made structure.²⁵

If the *Migdal Bavel* is indeed a man-made mountain, then it stands in stark contrast to the mountain that represents Judaism at this time of year. On Shavuot we celebrate the giving of the Torah on Har Sinai. But as we well know, not only is the text silent on its precise location, but the most famous midrash regarding it states outright that Har Sinai was neither the tallest nor the mightiest mountain, but was instead the most modest.²⁶ The deemphasis of the mountain prevents our coming to worship it instead of remembering what occurred there.

Just as the Jewish nation is born homeless and wandering without physical manifestations as symbols of our nationhood, we will not use Har Sinai as a signifier of our dominion either. It will not function as our Everest or Kilimanjaro or Mont Blanc. It will live on in our collective memory only as the site that launched our unique service of God. Har Sinai will remain only a metaphor for Judaism — we value not physical might and greatness, but modesty, holiness and service.

Conclusion

The message of the *Migdal Bavel* saga is that humankind may have been commanded to rule the earth and may have been endowed by God with the gift of ingenuity — engineering and building some of the most dazzling expressions of human progress throughout every generation in world history — but only as expressions of the divine. Our mandate is not to create godless structures by which we can “make for ourselves a name.” Our mandate is to build only those structures that will serve the greater good as manifestations of our roles as servants of God. In this way, we can truly reach the sky.

Endnotes

With thanks to Rabbis Josh Flug and Rob Shur who encouraged me to write this article — and now can attest to the truism that every architect seeks a deadline extension. Thanks to Rabbi Flug for several ideas that informed this article as well.

1 This is now called the Willis Tower.

2 Spiro Kostoff, *A History of Architecture, Settings and Rituals*, Oxford University Press, 1995, p.7; pp. 660-667; Leland M. Roth, *A Concise History of American Architecture*, Harper and Row, 1979, pp.160-162; Wikipedia article on skyscrapers.

3 Genesis 11:4.

4 Genesis 8:17.

5 Genesis 1:28.

6 Genesis 11:2.

7 Genesis 11:8

8 *Sanhedrin* 109a.

9 This reflects the opinion of the Maharshah.

10 Paging Charles Darwin.

11 Genesis 11:4.

12 Spiro Kostoff, *A History of Architecture, Settings and Rituals*, Oxford University Press, 1995, p.7.

13 Deuteronomy 8:17; in verse 14, we are warned against “*v’ram l’vavecha*” — and you become arrogant.

14 Giving them a different natural element to fear.

15 Nahum Sarna, *Understanding Genesis: The World of the Bible in the Light of History*, Schocken Books, NY, 1966, p. 64.

16 Genesis 11:5.

17 *Pirkei D’rebbe Eliezer* 24.

18 *Midrash Rabbah* 38:6.

19 See *Ha’amek Davar* commentary on Genesis 11:3, quoting the accepted midrashic teaching that Nimrod thrust Abraham into a *kivshan ha’eish*.

20 Midrashic sources state that Noah, Shem and Eiver were all alive at this time and also did not participate in the tower construction project. However, it is only Abraham who actively spreads the message of monotheism, which is why God chooses him to be our first forefather.

21 The *Midrash Rabbah* 38:6 plays on the words “*u’dvarim achadim*” — commonly translated as “they were of one tongue,” as a reference to this generation’s mocking the “unique ones” — Abraham and God. I, in turn, am maintaining that there are other features of Judaism at this juncture that are unique, aside from our monotheism.

22 For an analysis of the architectural typologies that typify each Biblical generation, listen to my shiur entitled “Architecture in the Torah: Building the Universal and the Particular” on www.yutorah.org recorded on February 26, 2017.

23 For a related discussion on the topic of how Judaism has outlasted the building monuments of our many conquerors, listen to my shiur entitled “Pitom and Raamses, In Search of a Jewish Architectural Legacy” on www.yutorah.org, recorded on March 25, 2018.

24 Nahum Sarna, *Understanding Genesis: The World of the Bible in the Light of History*; p. 70; Schocken Books, NY, 1966. Sarna states that the geography, time period and means and methods of construction correspond.

25 Vincent Scully, *Architecture: The Natural and the Manmade*; p. 23.

26 *Midrash Rabbah*, Bamidbar 13:3.

Dovid Lichtenstein is the founder and CEO of The Lightstone Group, one of the largest privately held real estate companies in the United States. He studied for five years in the Mir Yeshiva. He is the author of two volumes of the *Headlines: Halachic Debates of Current Events* (OU Press) and the host of the popular Halacha Headlines radio program.



FACEBOOK, CAMBRIDGE ANALYTICA AND THE RIGHT TO PRIVACY: A HALACHIC OVERVIEW

The recent Facebook data scandal, which broke this past March when several news outlets reported on Facebook's alleged sharing personal data of its users with Cambridge Analytica, a British political consulting firm, sent shockwaves throughout the world, serving as an alarming reminder of just how easily accessible our online personal information is. Social media

consumers in particular have a great deal of personal information online which they do not wish to be made public, and the illicit sharing of that information against their will is, understandably, a great cause of concern.

While we all instinctively find the unauthorized disclosure of private information distasteful and

inappropriate, it is worth exploring the specific halachic prohibitions involved. Which halachic prohibitions forbid a person from relaying private information about his fellow to somebody else? Must one assume that all personal information is private? If the subject never specified his desire to have the information kept confidential, may it be disseminated?

This article is an adaptation of the first chapter of this author's book *Headlines*, volume 2 (OU Press, 2017). In that chapter, there is an additional section relating to uncovering one's private information without sharing it.

Harei Hu B'Bal Ye'amer

The Gemara in *Maseches Yoma* (4b) explicitly establishes that one may not share a conversation he had with somebody without that person's consent. In the Gemara's words, *harei hu b'bal ye'amer* — the contents of the conversation may not be shared until permission is granted. The Gemara infers this concept from the fact that God related His commands to Moshe *leimor* — to then be told to *Benei Yisrael*. God expressly instructed Moshe to relay His commands to *Benei Yisrael* because otherwise, he would have to keep this information to himself. This demonstrates that when somebody is told something by his fellow, he may not pass it on to others without that person's expressed permission.¹

The Chafetz Chayim (*Hilchos Lashon Ha'ra* 2:13; *Be'er Mayim Chayim*, 27) notes that as this law is inferred from Moshe's prophecies, it must apply even when the disclosed information will not cause any harm to the individual. After all, God cannot be "harmed" in any way, and yet, it would have been forbidden for Moshe to relay the information told him to by God if God had not explicitly authorized him to do so. Necessarily, then, the law of *harei hu b'bal ye'amer* applies to everything told to a person, even if sharing it would not cause any harm to the speaker.

The question arises as to the relationship between this prohibition and the more famous prohibition of *lashon ha'ra*. The Rambam, in *Hilchos Dei'os* (7:5), defines *lashon ha'a* as spreading information about somebody which could cause him harm or distress:

המספר דברים שגורמים אם נשמעו איש מפי איש להזיק חברו בגופו או בממונו ואפילו להצר לו או להפחידו, הרי זה לשון הרע.

One who tells matters that, if they are heard one person from another, cause physical or monetary damage to his fellow, or even cause him distress or to be frightened, this constitutes lashon ha'ra.

The Chafetz Chayim asked, why did the Torah introduce a separate prohibition of *lashon ha'ra*, if sharing private information of any kind is already forbidden by force of the law of *harei hu b'bal ye'amer*? Once telling any personal information about somebody is forbidden, then what is added by the special prohibition against spreading negative information?

The Chafetz Chayim suggests that the rule of *harei hu b'bal ye'amer* was not stated as an outright prohibition, but rather as a guideline of etiquette and propriety (*middah tova b'alma*). The Torah prohibition of *lashon ha'ra* applies only to information that could cause a person harm or distress, but basic courtesy dictates that even other personal information should not be shared. The Chafetz Chayim observes that the Rambam makes no mention of *harei hu b'bal ye'amer* in his code of law, likely because he did not regard this rule as a bona fide halachic prohibition.²

The Chafetz Chayim also advances a second approach, proposing that even if the law of *harei hu b'bal ye'amer* constitutes an outright halachic prohibition, it perhaps applies only when the information was shared in private, indicating the speaker's desire for confidentiality. God conveyed His laws to Moshe inside the *Mishkan*, and ensured that His voice would not be heard outside.³ Under such circumstances, when a

person made a point of speaking to his fellow in private, expressing his desire for secrecy, then his fellow may not share the information with others, even if the information would not pose any risk of harm or distress. The prohibition of *lashon ha'ra*, by contrast, applies even when the information was not conveyed secretly, and forbids sharing it if it would cause the speaker any sort of damage or angst.

It thus emerges that sharing the content of personal correspondence may be halachically forbidden if there is reason to assume that the individual wants the content to remain private, and it might be deemed inappropriate (albeit not halachically forbidden) even if there is no reason to make such an assumption.

Lo Selech Rachil B'Amecha

Revealing private information may also likely fall under the halachic prohibition of *Lo selech rachil b'amecha* ("You shall not go about gossiping among your people" – Vayikra 19:16), which the *Semag* (*lo sa'aseh* 9) defines as revealing information spoken to a person in private. It stands to reason that according to the *Semag*, this would apply not only to information which was told by somebody, but also to information which one discovered through other means, such as by searching through his computer or overhearing his private conversations.

This also appears to be the view of the Rambam, in *Hilchos Dei'os* (7:2), where he defines the term *rachil* to mean:

זה שטוען דברים והולך מזה לזה ואומר כך אמר פלוני, כך וכך שמעתי על פלוני, אע"פ שהוא אמת.



Why do we eat Dairy on Shavuot?

והנה המלאכים ביקשו שיתנו להם התורה ... ומשה רבינו נצחם ועיקר הנצחון היה במה שהמלאכים אינם יכולים לקיים מצות שבגוף ומש"ה בעצרת צריך לקיים המצוה דלכם מה שאין המלאכים יכולים לקיימה ... וזהו הענין שנוהגין בעצרת לאכול מאכל חלב, ועיקר הכוונה בזה דביר"ט מצוה לאכול בשר ... ובעצרת אוכלין גם חלב מקודם כדי לקיים ההבדל והזריזות שיש בין אוכל חלב לבשר והוא הקינוח והדחת הפה כדי לקיים מצוה שבאכילה, ועיין במדרש תהלים (מזמור ח) על פסוק מפי עוללים ויונקים יסדת עוז וע"ש שמסדר הויכוח של המלאכים על נתינת התורה ולבסוף אמר ה"ל אמר הקב"ה והלא אתם כשירדתם אצל אברהם אכלתם בשר בחלב ... ותינוק שלהם כשבא מבית הסופר ואמו נותנת לו פת ובשר וחלב ואומר היום לימדני רבי לא תבשל גדי בחלב אמו ... ומכאן יצא המנהג לאכול חלב כדי להראות הזריזות וההרחקה שבין אכילה זו לאכילת הבשר ולא כמו שעשו המלאכים שאכלו תיכף זה אחר זה.

The angels requested to receive the Torah ... and Moshe Rabbeinu defeated them (i.e. their claims), and his defeat was based on the fact that angels cannot fulfill commandments that require physical activity. For this reason, on Shavuot, the emphasis is on the physical, the aspects of Judaism that the angels cannot fulfill ... This is the idea behind eating dairy products on Shavuot. On the holidays, there is a mitzvah to eat meat ... but on Shavuot, we eat dairy products beforehand in order to fulfill the requirements between eating dairy and meat — wiping one's hands and rinsing one's mouth. The midrash states, regarding the dispute between the angels and God about God giving the Torah to humans, that God said to them: "When you went down to visit Avraham, you ate meat and milk ... but even a young child of theirs knows that when he comes home from school and his mother gives him meat and milk, that he won't eat it." ... From here developed the practice to eat dairy to show the care and caution between eating milk and meat, not like the angels who ate one right after the other.

Beit Halevi, Parshat Yitro

One who carries information and goes for one person to another saying, "So-and-so said such-and-such"; "I heard such-and-such about so-and-so" – even though it is true.

According to the Rambam, spreading private information about people transgresses the Torah prohibition of *Lo selech rachil b'amecha*.⁴

Similarly, the Meiri (*Sanhedrin* 31a) writes:

אף בכל דבר שמחבירו לחבירו חייב אדם שלא לגלותו ושלא להביא דבר מזה לזה, ועל כולם נאמר לא תלך רכיל בעמך.

Also in every matter from one person to his fellow, a person is obligated not to reveal it and not to bring information from one person to another. Regarding all of these it is said, Lo selech rachil b'amecha.

Rashi likewise seems to adopt this understanding of the prohibition of *Lo selech rachil b'amecha*. Commenting on the term *lishna t'lisai* with which the Gemara in *Maseches Arachin* (15b) refers to gossip, Rashi writes:

לשון הרכיל שהיא שלישיית בין אדם לחבירו לגלות לו סוד.

The tongue of the gossip, who is the third party, coming in between a person and his fellow to reveal his secrets to him.

The term *rachil*, according to Rashi, refers to a person who reveals other people's secrets, and thus revealing private information would, seemingly, violate the prohibition of *Lo selech rachil b'amecha*.

A different conclusion, however, appears to emerge from Rashi's Torah commentary (*Vayikra* 19:16), where he interprets *rachil* as referring to:

הולכים בבתי רעיהם לרגל מה יראו רע או מה ישמעו רע לספר בשוק.

Those who go to their friends' homes to check what negative information they see or hear which they can tell in the marketplace.

Here, Rashi appears to limit *rechilus* to negative personal information, such that disclosing personal information which is not unflattering would not fall under the prohibition of *Lo selech rachil b'amecha*.

In any event, according to the aforementioned *Rishonim*, disclosing a person's private information would violate the Torah prohibition of *Lo selech rachil b'amecha*. Support for this view may, at first glance, be drawn from the Mishna's ruling in *Maseches Sanhedrin* (29a) that after a *Beis Din* issues its decision, a judge should not publicize the fact that he felt the defendant was innocent while the majority determined he was guilty. Although this announcement does not entail negative information about his colleagues, a judge should not publicize this fact, as his colleagues likely prefer keeping their decisions

private. The Gemara (31a) cites as the source of this prohibition the verse *Lo selech rachil b'amecha*, clearly indicating that this verse forbids disclosing other people's personal information which they prefer keeping secret.⁵

We may, however, refute this proof, and distinguish between the case of a judge revealing his colleagues' decisions and other cases of *rechilus*. Publicizing a judge's opinion could evoke the ire of the defendant or losing party, thereby potentially endangering the judge. Hence, the application of *Lo selech rachil b'amecha* in such a case does not necessarily dictate that it applies to information which poses no harm to the individual. Second, the Rambam, in his commentary to the Mishna (there in Sanhedrin), explains this halacha as intended to ensure that people look upon judges fondly and admiringly. As such, no conclusions can be reached on the basis of this halacha with respect to general situations of disclosure of private information.

Regardless, at least according to several *Rishonim*, one who discloses somebody's personal information which he presumably wishes to be kept private transgresses the Torah prohibition of *Lo selech rachil b'amecha*.⁶

Revealing Secrets as an Ethical Breach

Beyond the strict halachic prohibitions entailed, numerous sources indicate that disclosing private information constitutes a severe breach of Torah ethics.

Rabbenu Yona writes in *Sha'arei Teshuva* (3:228):

והייב אדם להסתיר הסוד אשר יגלה אליו
חברו דרך סתר אעפ"י שאין בגילוי ההוא ענין
רכילות, כי יש בגילוי הסוד נזק לבעליו וסבה
להפר מחשבתו... והשנית כי מגלה הסוד אך
יצא יצא מדרך הצניעות והנה הוא מעביר על
דעת בעל הסוד.

A person is obligated to conceal a secret revealed to him by his fellow in a secretive manner, even if revealing it would not involve rechilus, because revealing the secret causes damage to the owner and results in the foiling of his plan... and, secondly, one who reveals a secret deviates from the path of modesty and violates the wish of the secret's owner.

Rabbenu Yona writes explicitly that irrespective of any practical harm caused by disclosing private information, it constitutes a breach of trust and violates appropriate standards of *tz'nius* ("modesty," or discretion).

Another relevant source is a responsum of Mahari Weil⁷ addressing the case of a person who revealed to a number of people disparaging information about his wife, and then strictly ordered them not to disclose the information. Mahari Weil ruled that those who heard the report were required to come testify before *Beis Din*, because *divrei harav divrei hatalmid divrei mi shom'in?* — their obligations to the Almighty supersede their pledge to the husband. The underlying assumption, of course, is that their pledge of secrecy was binding, albeit it was overridden by the halachic requirement to give testimony. Clearly, then, disclosing information about a person which he wants kept secret is forbidden, either as a strict halachic prohibition or on the level of general ethical conduct.

Perhaps the most striking expression of Chazal's condemnation of

spreading private information appears in a Midrashic passage (*Bamidbar Rabba*, Masei 23) discussing the disturbing story of King David and Uriya, a soldier in his army. As we read in *Sefer Shemuel II* (11), King David ordered his general, Yoav, to assign Uriya to the front lines during a fierce war against Amon, in order that Uriya would be killed. After Uriya's death, the Midrash relates, the military officers were incensed at Yoav for causing Uriya's death, and threatened to kill him. Yoav defended himself by showing them the note he had received from David, ordering him to place Uriya in the front lines. The Midrash comments that Yoav deserved to be punished for publicizing a personal letter from the king. Although this was done in self-defense, the Midrash nevertheless censures Yoav for disclosing personal information. This underscores the severity with which Chazal viewed violating one's fellow's trust by sharing personal information with others.⁸

Violating Privacy for Public Safety

We should note that numerous sources state explicitly that revealing somebody's secrets is allowed to protect other people. Commenting on the sixth of the Ten Commandments — *Lo tirtzach* (Shemos 20:12) — Ibn Ezra writes that the Torah prohibition against murder applies even to certain forms of indirect murder, including withholding secret information which is needed to save lives:

או שנגלה לך סוד שתוכל להצילו מן המות אם
תגלהו לו, ואם לא גלית אתה כמו רוצח.
*Or, if a secret was revealed to you and
you can save someone from death by
revealing it to him — if you do not reveal
it, you are like a murderer.*

Additionally, several commentators⁸ note that the Torah (Vayikra 19:16) juxtaposes the prohibition against gossip (*Lo selech rachil b'amecha*) with that of *Lo sa'amod al dam rei'echa* – sitting idly while one's fellow faces danger – to teach that the former is suspended for the sake of the latter. If a person has confidential information that could save a life, he is required to divulge it.

Accordingly, Rav Moshe Sternbuch (*Teshuvos Ve'hanhagos*, 1:869) ruled that if a doctor determined that his patient is physically unfit to drive – such as in the case of an ophthalmologist who diagnoses his patient with a visual impairment that compromises his ability to drive safely – he can and must inform the relevant government authorities. Although medical information is confidential, the doctor must break his trust of confidentiality for the sake of public safety. Rav Ovadia Yosef (*Yechaveh Da'as*, 4:60) issued a similar ruling concerning a patient with epilepsy. If the doctor determines that this condition makes it unsafe for the patient to drive, he must notify the authorities.

Another fascinating – albeit tragic – modern-day application of this ruling is the controversy that arose in the wake of the devastating shooting attack at the Inland Regional Center in San Bernardino, California in December, 2015. The perpetrators – Syed Farook and Tashfeen Malik – were found and killed by police in a shootout that same day, and two months later, on February 9th, the FBI announced that it had recovered Syed's iPhone, but was unable to unlock the device in order

to find clues of the shooter's possible accomplices and other important contacts. This information, the FBI claimed, was vital to the Bureau's ongoing investigation into the terrorists' motives and modes of operation. The FBI asked that Apple disable the phone's security system to enable them to access Mr. Farook's information, but the company refused, arguing that it needed to strictly uphold its commitments not to compromise its customers' security. The FBI then appealed to a federal judge, and a court order was issued ordering Apple to comply with the FBI's demands by February 26th. The brief legal battle came to an anticlimactic end on March 28th, when the Department of Justice announced that it succeeded in unlocking the device.

It stands to reason that given the international threat of Islamic terrorism, and the vital importance of intelligence information in identifying and capturing potential attackers and their accomplices, accessing the information on a terrorist's device would certainly appear to fall under the category of public safety, which, as noted, overrides the prohibition against invading privacy.

Endnotes

1 There is some discussion among the *Acharonim* as to whether this inference is made from the oft-repeated Biblical verse, וידבר ה' אל משה לאמר, or, as indicated by the version found in common editions of the Talmud, from the opening verse of Sefer Vayikra: וידבר ה' אל משה מאהל מועד לאמר.

2 Indeed, the Meiri, who generally adheres to the Rambam's rulings, writes explicitly in his commentary to *Maseches Yoma* that this rule was intended as a guideline for

refined conduct, and not as an actual halachic prohibition.

3 Rashi, Vayikra 1:1.

4 Surprisingly, the Chafetz Chayim (*Hilchos Lashon Ha'ra* 1:1, *Be'er Mayim Chayim* 4) understands the Rambam as referring specifically to somebody who tells people what others have said about them, as opposed to general personal information. This does not, however, appear to be the implication of the Rambam's remarks.

5 The Mishna and Gemara also cite a second source for this prohibition, namely, the verse in Mishlei (11:13), *holech rachil megaleh sod* ("One who goes around gossiping reveals secrets"). The citation of two Scriptural sources challenges us to identify the precise relationship between them. One possibility emerges from the Vilna Gaon's interpretation of *holech rachil megaleh sod* in his commentary to Mishlei: מנוועו, לזכר דלוחל המוד אוה דוס הלגמה – הוש – "One who reveals secrets resembles one who goes around gossiping, and their iniquity is equal." This might mean that the verse in Mishlei introduces a new prohibition against disclosing private information, which is likened in severity to the prohibition of *rechilus*. Accordingly, we might explain that the Gemara cites both verses because the actual prohibition which one violates is *holech rachil megaleh sod*, but it is considered as grievous an infraction as a violation of *Lo selech rachil b'amecha*.

6 The *Midrash Gadol U'gedula* (published by Aharon Jelinek, vol. 3, p. 126) likewise comments, "Concealing a secret is great, for whoever reveals his fellow's secret is considered as though he shed blood, as it says, *Lo selech rachil b'amecha*."

7 *Nimmukei Rav Menachem MiRizburk, Dinei Boshes*.

8 *Moshav Zekeinim, Or Ha'chayim*, Netziv (*Ha'amek Davar*), and others.

Rabbi Feldman is a Rosh Yeshiva at RIETS, as well as an instructor in the Sy Syms School of Business and the Wurzweiler School of Social Work, and serves as the Executive Editor of the RIETS initiative of YU Press. He is the author of *The Right and The Good: Halakhah and Human Relations* (Jason Aronson, 1999; expanded edition, Yashar Books, 2005); *Divine Footsteps: Chesed and the Jewish Soul* (Yeshiva University Press, 2008); *False Facts and True Rumors: Lashon Hara in Contemporary Culture* (YU Press/Maggid Books, forthcoming); as well as three volumes of Talmudic essays entitled *Binah BaSeferim*. Rabbi Feldman is the co-editor of more than ten volumes of Talmudic essays and Jewish Thought and serves on the editorial board of Tradition, and has also written for publications such as Jewish Action, The Orthodox Forum, and the Oxford Handbook of Judaism and Economics. He is the spiritual leader of Ohr Saadya of Teaneck, NJ, where he resides with his wife, Leah, and their children.

MOURNING THE LOSS OF A FRIEND: RABBI OZER GLICKMAN, Z”L

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There have been and will be many words used to describe Rav Ozer Glickman, z”l, since his sudden passing early this week. Scholar, rabbi, father, teacher, husband, investment banker, wordsmith, grandfather, risk management expert, composer, linguist, trader, conversationalist, sports fan, philosopher, ethicist, chazzan, wit, lecturer, moral guide, Renaissance man; all of these descriptions are accurate.

However, when I struggle to find the appropriate word—in my shocked, stunned, dumbfounded state—the term that comes to mind most persistently is “friend.” Reb Ozer was, first and last, a friend.

Yes, in the most basic sense, he was a friend to many—people from all walks of life immediately connected with him and were befriended by him. To me personally, he was an associate, a confidant, a colleague, a resource, a dear, cherished, treasured friend for decades. Generationally, he was a bridge between me and my father, z”l, and considered his relationship with both of us to be one seamless connection.

Just a few hours before he was tragically taken from us, he attended a rabbeim meeting at Yeshiva University, and in seven minutes of conversation before it

started, we probably covered as many topics of mutual interest. As a sad irony, these included his optimistic attitude about his health, and our plans to travel together to an upcoming simcha.

However, calling him a “friend” here means more than that—he was not only a friend to specific individuals, but he was a friend in his essence.

A friend, a chaver, perceives the value of being connected to others, of seeking out goodness in people and joining with them in amity. For Reb Ozer, among many, many other involvements, that instinct brought him ultimately to Yeshiva University, where many of his talents found expression in a number of departments. He delighted in being a friend, a colleague, to the Yeshiva faculty. The fact that he was counted among the Roshei Yeshiva, a group that included so many Torah scholars he deeply admired, was a great joy to him.

Of course, he was unique within that group. His distinctive background and profile could have set him apart and made him an outsider. In actuality, it did the opposite: it enabled him to serve as an ambassador, articulating the views he shared with his colleagues in contexts that others could not access. He eagerly embraced this role, spoke of it often, and was extremely effective in it.

He was greatly honored by his friendship with rabbinic leaders such



as Rav Hershel Schachter, whom he admired for his learning and his character, and would frequently refer to lessons he derived from those attributes. The recognition was mutual; over the years I directly heard from Rav Schachter and from his family of their appreciation of and recourse to his interpersonal abilities and their applications.

Of course, being who he was, his distinguished associations extended to realms outside the Torah world as well. He counted among his acquaintances figures such as the behavioral economists Richard Thaler and Daniel Kahneman. Readers of the works of statistician/scholar Nassim Nicholas Taleb can find quotations from “my friend Anthony Glickman, a rabbi and Talmudic scholar-turned option trader, then turned-again rabbi and Talmudic scholar (so far).” (*Antifragile*, p. 184).

He was also a “friend” in the sense of “classmate.” His life was one continuous educational experience, his world one

giant classroom and Beis Midrash. He moved from one intellectual accomplishment to another, both in Torah and in secular realms.

He adored teaching, but did so with the mindset of a supportive peer rather than an instructor. The mishnah (Avot 1:10) warns that one should “hate the rabbanut.” Commentaries explain that surprising phrase to mean that one should love rabbinic service, but hate the “rabbanut” over people that sometimes accompanies it. That describes Reb Ozer’s attitude; he would be instructive, inspirational, and pastoral, but eschew any authoritative position or demeanor.

Reb Ozer was a friend in that he truly wanted the best for those around him. To come into his orbit, whether casually or formally, briefly or over many years, was to have him proactively absorb your needs and aspirations. Registering in his class meant you acquired not only a professor, but an advocate, career counselor, agent, and personal advisor.

Speaking personally, in the past few months alone I received so many communications from him seeking to assist me in various ways, things that I never asked him for but I recognized as greatly beneficial. This past Shavuot, he volunteered to give a drasha at my shul, knowing that would be valuable to me, despite the fact that it was at least a 45 minute walk to and from his house. He did this as a favor, without any compensation. As a genuine friend, he shared of himself with no sense of competition.

As I prepared to leave for his funeral, a student I was with lamented that he had never met him. “That’s a shame,” I said. “You would have liked each other.” I realized, of course, that I could have said that to anyone.

Reb Ozer was a friend in the sense that he was always aware that he was a member of society. He was passionate and fearlessly

outspoken about the responsibilities that came with such membership.

He tirelessly spoke up on behalf of honesty, integrity, and Kiddush Hashem. He hated injustice, and among other involvements provided vital service to ORA, the Organization for the Resolution of Agunot. He would travel great distances and endure insults and personal attacks to do what he could to relieve the suffering of those involved. (“They call me when they need someone who speaks Yiddish,” he would say with a smile).

The last Shabbat of Reb Ozer’s life was Parshat Vayikra. Chazal (Vayikra Rabbah 1:15), commenting on the beginning of the parsha, express an appreciation of Moshe Rabbeinu for not being a “Talmid chacham without de’ah,” which is a apparently a terrible thing to be.

The commentaries struggle with the meaning of the word de’ah. In context, it seems to refer to derech eretz, to manners and to civil refinement. Civil discourse was in fact a passion of Reb Ozer; he never gave up believing in the possibility of nuance and respect even within intense disagreement. To be a gentleman was as important as being a scholar.

Some understand de’ah to be a sense of gratitude. Reb Ozer was constantly expressing his appreciation for the many blessings he recognized his life to include. First and foremost were his beloved wife, children, and grandchildren, and all of his family, his most cherished assets. He was vocally grateful for all the opportunities he had, primarily to live a life of learning, teaching, compassion, and service to God and humanity.

Some interpret de’ah to mean the willingness and motivation to share their learning with others. By this definition too, Reb Ozer was the consummate “*talmid chacham sheyesh*

bo de’ah”; he was constantly finding new venues and arenas to share his learning and to inspire. And how fitting it is that this great “friend”, with no lack of formal teaching positions, should become the outstanding educational and moral voice of social media? In this often contentious setting, he boldly but carefully elevated the environment with his thoughtful participation.

Reb Ozer was a friend, a vital member of our communal “chaburah.” The Talmud (Shabbat 105b) warns that when one of the chaburah dies, all the members of the chaburah should worry. The sudden and shocking nature of Reb Ozer’s passing certainly justifies a literal application of that statement.

But it seems in this context a homiletic interpretation is fitting too. When this singular member of the chaburah is taken from us, we all must worry: who could replace him? Who could do what he did? How sorely are we lacking, are we deficient, without him.

At Reb Ozer’s funeral, there was mournful reference to the fact that he did not have time in his life to write. This is true but not completely; at the time of his passing, he was involved in several literary endeavors. Perhaps others will be able to bring some of his writings to the public. And of course, his social media postings have been recognized as the gems they are and will continue to inspire and edify as they are preserved and shared.

But the fact is he was writing his entire life, if not on paper. He wrote for himself a fascinating and magnificent internal odyssey. And he wrote for others as well, and more so: the many multitudes from all walks of life who are more educated, more inspired, more enlightened, more morally aware, more self-confident, more comforted, more prepared to achieve their potential in the eyes of society and the eyes of G-d—all because they had the good fortune to count him as a friend.

Rabbi Joshua Flug graduated YC in 1998 and RIETS in 2001. He then continued his rabbinic studies in the Wexner Kollel Elyon. After spending a year teaching at SCW and IBC, he moved with his family to Boca Raton to serve as rosh kollel of the Boca Raton Community Kollel. He currently serves as Director of Torah Research at CJF, where he develops Torah content for continuing rabbinic education programs and serves as the general editor of the Torah To-Go® series. Additionally, he is the Director of Get Proceedings for the Beth Din of Florida.

CONTEMPORARY BUSINESS ETHICS: A SHAVUOS NIGHT STUDY GUIDE

On the 3rd of Iyyar (April 18th), students at Yeshiva University gathered for a memorial service to honor the memory of our dear rosh yeshiva, Rabbi Ozer Glickman. Rabbi Glickman distinguished himself as a member of two worlds: He was both a *talmid chacham* par excellence and a leader in the financial industry. His classes in business ethics were a bridge between those two worlds. As part of the memorial service, students spent a half-hour studying cases in business ethics using the study guide below (the third case was not included and was written for this publication). These cases highlight our ability to apply the Torah's values to the most contemporary of situations. The guide was designed for study with a *chavrusa* (study partner) or in a group setting.

Case Study #1: The New York City Taxi Commission vs. Uber

New York defeats taxi owners, lenders in lawsuit over rules, Uber (Reuters, March 30, 2017)

A federal judge on Thursday dismissed a lawsuit by taxi owners and lenders accusing New York City and its Taxi and Limousine Commission of jeopardizing their survival by imposing burdensome regulations and letting the Uber ride-sharing service take passengers away. U.S. District Judge Alison Nathan in Manhattan said credit unions, medallion owners and trade groups failed to show they were denied due process or equal protection by having to obey rules on fares, who they can pick up, vehicle equipment, and access for disabled people that Uber drivers need not follow. While the city's ground transportation industry "may well, as plaintiffs allege, be rapidly evolving," the differences in how yellow cabs and ride-sharing services serve passengers, including whether rides are hailed on the street or by smartphone, "easily justify" such distinctions, Nathan wrote. The growth of services such as Uber and Lyft in New York has caused the value of a medallion, essentially the right to operate a yellow cab, to fall by more than half from its \$1.3 million peak in 2014, according to recent sale listings.

Background: Owners of NYC taxi medallions invested a lot of money for the rights to pick up customers off the street. Without a medallion, the only other legal means of having a paid ride service is to order it in advance. Before Uber and other similar services, this meant that the only way to get a cab on demand was to hail a yellow taxi with a medallion. When someone purchased a medallion, it was a purchase of certain exclusivity rights that other ride services do not have. With the advent of Uber and other services, a customer can essentially "hail" an Uber through a smartphone and be in the car seconds later.

Discussion Starter: From a Jewish law perspective, who has a stronger claim, the medallion owners or Uber?

Source #1

אמר רב הונא האי
בר מבואה דאוקי
ריחיא ואתא בר מבואה חבריה וקמוקי גביה
דינא הוא דמעכב עילויה דא"ל קא פסקת ליה
לחיותי... תנאי היא דתניא כופין בני מבואות
זה את זה שלא להושיב ביניהן לא חייט ולא
בורסקי ולא מלמד תינוקות ולא אחד מבני
בעלי אומניות ולשכנו אינו כופיהו רשב"ג
אומר אף לשכנו כופיהו אמר רב הונא בריה
דרב יהושע פשיטא לי בר מתא אבר מתא

אחריתי מצי מעכב ואי שייך בכרגא דהכא לא
מצי מעכב בר מבואה אבר מבואה דנפשיה
לא מצי מעכב בעי רב הונא בריה דרב יהושע
בר מבואה אבר מבואה אחרניא מאי תיקו.
Rav Huna said: There was a certain
resident of an alleyway who set up a
mill in the alleyway and earned his
living grinding grain for people. And
subsequently another resident of the
alleyway came and set up a mill next to

his. The halakha is that the first one may prevent him from doing so if he wishes, as he can say to him: You are disrupting my livelihood by taking my customers...The Gemara answers: This entire matter is a dispute between tanna'im, as it is taught in a baraita: The residents of an alleyway can compel one another to agree not to allow among them in that alleyway a tailor, a tanner, a teacher of

children, nor any type of craftsman. They can bar outside craftsmen from plying their trade in that alleyway. But one cannot compel his neighbor, i.e., one who already lives in the alleyway, to refrain from practicing a particular occupation there. Rabban Shimon ben Gamliel says: One can even compel his neighbor not to conduct such work in the alleyway. Rav Huna, son of Rav Yehoshua, says: It is obvious to me that a resident of one town can prevent a resident of another town from establishing a similar business in the locale of the first individual. But if he pays the tax of that first town, he cannot prevent him from doing business there, as he too is considered a resident of the town. The resident of an alleyway cannot prevent a resident of his alleyway from practicing a particular trade there, in accordance with the opinion of the Rabbis in the baraita, and contrary to the opinion of Rabban Shimon ben Gamliel. With these conclusions in mind, Rav Huna, son of Rav Yehoshua, raises a dilemma: With regard to a resident of one alleyway protesting about a resident of another alleyway conducting business there, what is the halakha? No answer was found, and the Gemara states that the dilemma shall stand unresolved.

Bava Kama 116a

(Translation: The William Davidson digital edition of the Koren Noé Talmud)

Discussion Questions:

1. What do you think is the point of contention between those who restrict outsiders from setting up shop in town and those who permit them to do so?
2. Uber’s drivers are local, but the company itself is not based in NYC. Does that make Uber a local company or an outsider? Why?

Source #2

פי' הר"י בן מג"ש ז"ל
דהיינו דוקא היכא דלא

מוחלי תרעא טפי אז אמרינן דמצו מעכבי אבל אי מוחלי טפי הא איכא תקנת לוקחים דההיא מתא [אם ישראל ניהו] לא מצו מעכבי ונראה דעת הרב ז"ל בזול גדול אבל להחיל מעט יותר ממוכרי העיר ודאי מצו מעכבי דאם לא כן לעולם לא מצו מעכבי שאי אפשר שכשיש שם הרבה מבני אומנות שלא יחול השער ובשביל דבר מועט כזה לאו כל כמיניה לבר מתא אחריתי דליפסיד להאי וליתקן להאי דאי בעו בני מתא דלחיל גבייהו או יתנו על השערים או ישיבו אחר מעירן כן נראה דעת הרמב"ן.

R. Yosef ibn Migash explained that the ability for local sellers to prevent outside competition only applies when the outsiders won't cause the price to be lowered. In that case, the locals can prevent outside competition. However, if they lower the price more, then it is beneficial for the local (Jewish) customers and one cannot prevent outsiders. It seems that the opinion of our teacher is to accept this qualification [of R. Yosef ibn Migash] only if there is a major discount of prices. However, if they are only selling at a slightly lower price, the locals can prevent the outsiders because when there are extra competitors there is a guarantee that the price will decrease slightly (and as such, the case where outsiders may not compete must be one where there is a minimal price decrease). For a small amount, it is not worthwhile to allow the outsiders to cause a loss to the locals in order to benefit the local customers because if the locals want the discounted prices, they can set up more local competitors. This seems to be the opinion of Ramban.

Nimmukei Yosef, Bava Basra 11a

Discussion Questions:

1. How does Nimmukei Yosef balance the rights of the local buyers with the rights of the local sellers?
2. How do you think this discussion applies to Uber?

Source #3

בדבר הנהוג בבעלי חנות של אחד יש לו ליסענטץ

ופורע המס מחנותו כנהוג והאחר הסמוך לו אין לו ליסענטץ ושותקים לו מושלי העיר אם רשאי זה שיש לו ליסענטץ למסור אצל אדונים או שבא באופן אחר להעמיד חובטים במקלות שלא יניח למכור בחנותו וכן אחד שיש לו זכות למכור י"ש הקעלישעק שהשיג בתחבולה על שם הנכרי וכדומה והשני אין לו רשיון ע"ז ומוחג בחשאי אם רשאי זה למנוע אותו ע"פ ד"ת שלא ימוזג על הקעלישק או שיהי' מונעו בכל מסירה וכיוצא בו ... אחר העיון נלפע"ד דזה דוקא אם הי' סך קצוב כמה יהי' בעיר בעלי חנות או מוכרי מזיגה והוא בבל תוסיף חנות או מוכרי מזיגה אף בכסף מלא שייך לומר קפסקי' לחיותא והוה דומיא דבני עיר אחרת או בני מבוי אחת דמסתמא נקצב כמה אנשים יש בעיר או כמה פאמילנטין במבוי זו אבל באם שיכול להיות כמה חנות או מוכרי מזיגה רק שיש לאדון כך וכך א"כ אינו פוסק לחיותו דהא אם היה משלם היה גם הוא רשאי להיות בעל חנות וכדומה ורק שאינו משלם אם כן מזלו גורם שאינן משגיחים עליו ומה לאחר בזה ... אמנם לפענ"ד נראה דזה יכול לעכב אם מוחיל המקח עי"ז שלא צריך לשלם א"כ פשיטא דעכ"פ דיהיה עדיף מיניה בודאי אינו נכון

... Regarding a store owner who has a license to sell and pays taxes for that license, and if someone opens a store without a license, the government closes the store. Is it permissible for the store owner with the license to report the competitor without a license to the government? Similarly, if one purchased a liquor license which permits one to mix drinks and the competitor does not, and mixes drinks in a clandestine manner, is it permissible to force the competitor through a din Torah to stop mixing or to report the individual? ...

It seems to me that if there are a limited number of licenses for store owners or pubs and nobody else can enter the market even if he is willing to pay, then the license owners can claim "you are disrupting my livelihood" similar to the outsiders of a town or of an alleyway, as there are a limited number of potential competitors in a town or in an alleyway. However, if the

government sells unlimited licenses, then the seller who does not have a license is not disrupting the livelihood of the one who does ... Nevertheless (even when there are unlimited licenses), if the cost of the license forces the seller to sell at a higher price and the one without the license is able to sell at a lower price because he doesn't pay the license, then this is certainly not proper.

R. Yosef Shaul Nathanson, Shoel UMeishiv Vol. I 1:20

Discussion Questions:

1. Given that there are a limited number of taxi medallions, how do you think R. Nathanson would deal with the dispute between the medallion owners and Uber?
2. If Uber can undercut NYC taxi drivers because they don't have to pay for medallions, does that play a role?

Concluding Questions:

1. Uber can provide a much cheaper rate for its customers but it does so by circumventing the fees that medallion taxis pay. How do the sources above deal with this conflict?
2. The federal judge ruled in Uber's favor because Uber's service is fundamentally different. Instead of hailing a cab, you order one on your smartphone. How would you apply the sources above to this argument?

Case Study #2: The Printer Warranty

Discussion Starter: Reuven and Shimon share the costs of renting an office space. To save on costs, they share certain equipment including a high-speed printer. When the printer was purchased for \$1,000, Reuven wrote a check to Shimon for \$500 and Shimon went to the store to pick it up. At checkout, the cashier asked Shimon if he wanted to purchase a five-year extended warranty for \$50 that would cover 80% of the replacement cost if the machine ever broke. He purchased the warranty and put the paperwork in a drawer, forgetting about it. A few years later, the machine broke and they agreed to buy the same printer which was still selling for \$1,000. Shimon then remembered about the warranty. He was given a new printer, and with 80% of the cost covered by the warranty, he paid only \$200. Upon returning to the office, he told Reuven what had happened. Reuven said, "I guess I owe you \$25 for the original warranty cost and \$100 for the replacement printer." Shimon said, "Actually, you owe me \$500. If you would have paid for your half of the warranty, then we would have split the cost of the replacement printer, but now that you didn't, you pay for your half of the printer and I will pay for my half through my warranty purchase." Who is right?

Source #1

שטף נחל חמורו וחמור חבריו שלו יפה מנה ושל חבריו מאתים והניה זה את שלו והציל את של חבריו אין לו אלא שכרו ואם אמר לו אני אציל את שלך ואתה נותן לי את שלי חייב ליתן לו.
If a river washed away his donkey and the donkey of another, and his donkey was worth one hundred dinars and the donkey of the other was worth two hundred, and the individual with the less valuable donkey abandoned his donkey and instead salvaged the donkey of the other, he has the right to collect only his wage, i.e., compensation for the effort he put into salvaging his fellow's donkey. But if he said to the owner of the more valuable donkey: I will salvage your donkey and you will pay me the monetary value of mine in exchange, the owner of the more valuable donkey is obligated to pay the rescuer compensation for his donkey.

Mishna Bava Kama 115b

Translation: The William Davidson digital edition of the Koren Noé Talmud

Discussion Questions:

When the owner of the more valuable donkey agrees to pay the rescuer for his donkey, is he purchasing the donkey or is he paying the rescuer for his services at a higher rate? What do you think is the practical difference?

Source #2

בעא מיניה רב כהנא מרב ירד להציל ועלה שלו מאליו מהו א"ל משמיא רחימו עליה
Rav Kahana raised a dilemma before Rav: If one descended into the river to rescue another's donkey instead of his own after stipulating that he would be compensated for the loss of his own donkey, and his own donkey emerged from the river by itself, what is the halakha? Is the rescuer still entitled to payment from the owner of the donkey that he saved, despite the fact that he did not suffer a monetary loss? Rav said to him: The rescuer is still compensated

because it was from Heaven that mercy was bestowed upon him, and his good fortune does not affect the stipulation.

Bava Kama 116a

Translation: The William Davidson digital edition of the Koren Noé Talmud

Discussion Questions:

1. How does Rav view the nature of the arrangement between the rescuer and the owner of the valuable donkey?
2. Can we compare the purchase of the new printer (where Reuven agreed to pay his half) to the rescue of the valuable donkey and the warranty to the less valuable donkey's self-rescue? Why or why not?

Source #3

נשאלתי באחד ששכר בית מחבירו וקיבל עליו אחריות מדליקה, ואח"כ הלך המשכיר והבטיח ביתו בחברת האחריות, ונשרפה הבית, מי מצי השוכר לומר כיון דלית לך פסידא, דדמי ביתך

את נוטל מן החברה, אדעתא דא לא קבלתי אחריות ... ונראה לי לדון, דהשוכר חייב בתשלומי אחריותה, דכמו כן שנינו בפרק הגזול ומאכיל (ב"ק דף קט"ז ע"א) במשנה דשטף נהר חמורו וחמורו חבירו כו', ואם אמר לו אני אציל את שלך ואתה נותן לי את שלי חייב ליתן לו, בעא מיניה רב כהנא מרב ירד להציל ועלה שלו מאליו מהו, א"ל משמיא רחימו עלה, אלמא דהא דקיבל אחריות הוא משום דמחמת דמציל את של חבירו מפסיד חמור של עצמו, ולסוף לא הפסיד את של עצמו, דעלה מאליו, לא מצי אמר אדעתא דא לא מחייבנא נפשאי באחריות חמורך, דמצי אמר ליה מאי איכפת לך במה דמשמיא רחימו עלי, כש"כ כאן, שע"י מה שנותן שכר קצבתו לחברת האחריות הרויח בתשלומי ביתו, ודאי דבזה לא נפטר השוכר מתשלומי אחריות שקבל עליו.

I was asked regarding an individual who rented a house from his friend and accepted upon himself responsibility for fire damage. The landlord purchased an insurance policy, and subsequently the house burnt down. Can the renter claim that since the landlord will collect from the insurance company, the renter is exempt from payment because he never intended to accept responsibility under these conditions? It seems to me that the renter is responsible to pay as we find in Bava Kama, "If a river washed away his donkey ... Rav Kahana raised a dilemma before Rav ... " The reason why the owner of the more valuable donkey accepted responsibility to pay was because the rescuer was losing his

own donkey, and even though the rescuer never ended up losing his own donkey and it emerged on its own, the owner of the valuable donkey cannot claim, "I never accepted responsibility under these circumstances." This is because the rescuer can respond, "the fact that my donkey survived is an external matter that is not relevant to you." Certainly, in this situation (regarding the fire insurance), the one who pays the premium for fire-insurance benefits from the compensation and this doesn't exempt the renter from his responsibility.
R. Meir Simcha of Dvinsk, Ohr Sameach, Sechirus 7:1

Discussion Questions:

1. R. Meir Simcha views the insurance arrangement as a secondary external arrangement while the renter bears the primary responsibility. If purchasing insurance were to hold the insurance company primarily responsible for the property, would that strengthen the renter's claim?
2. If the roles were reversed, and the landlord took on the responsibility for fire damage and the renter purchased property insurance that also happened to cover fire damage, who would receive the insurance money in the case of a fire? [See *Ohr Sameach, Sechirus 5:6*]

Concluding Questions:

1. The purchase of a homeowner's policy generally entitles one to compensation for damages even if the homeowner decides not to repair the damages. Warranties generally only cover replacements and do not offer compensation if the customer doesn't want to replace the item. Does that factor into this situation? Does Reuven have a claim in saying that without using his half of the broken printer, Shimon cannot cash in on the warranty? Why or why not?
2. In the presentation of the case, an important detail was left out: what happened after Shimon purchased the warranty? How would the following scenarios affect the case?
 - Shimon forgot to tell Reuven about the warranty and therefore Reuven never had a chance to pay for it.
 - Shimon told Reuven about the warranty and Reuven said "Why did you buy a warranty? These warranties are never worth it. I am not paying my share."
 - Shimon told Reuven about the warranty and Reuven agreed to pay but forgot to do so.

Case Study #3: The Disputed Bitcoin Transaction

Discussion Starter: Dan is a regular customer at Cohen's Bistro and an avid Bitcoin user. He was taking out his family one evening and was glad to see a sign that said "We now accept Bitcoin payments. Complimentary dessert for anyone paying with Bitcoin." When they ordered the food, Dan mentioned that he would be paying with Bitcoin and would like the complimentary dessert. At the end of the meal, he received the bill. The price of Bitcoin that day was \$5,000 and his bill was \$150, making his amount due .03 Bitcoins. He tried to pay using an app on his phone but the service that processed his account was down. Mr. Cohen came over and said "Don't worry. I trust you, you can send me the Bitcoins later." Dan never got around to sending the Bitcoins. Two weeks later, he walked into the restaurant and Mr. Cohen reminded him that he has an outstanding bill of .03 Bitcoins. At that point, the price of a Bitcoin had spiked to \$8,000. Dan said that he would prefer to pay the bill in cash and took out \$150. Mr. Cohen said, "I am sorry, but we agreed that you would pay .03 Bitcoins. If you don't want to pay in Bitcoins, you should pay me the monetary equivalent of .03 Bitcoins which is \$240." Is Mr. Cohen correct?



Background: Several years ago, Bitcoin was introduced as a cryptocurrency (i.e., based on encryption) to be used as an alternative to standard currency. Bitcoin is not backed by any government or central bank and does not require any third-party institution to complete the transaction. A Bitcoin has no physical properties; it is a digital entity. Furthermore, there is no inherent value to Bitcoin. It currently is accepted as a form of payment in a limited number of online and brick and mortar stores. Most stores still do not accept Bitcoin for payment.

In Jewish law, the purchase of (movable) goods takes place when the buyer takes possession of the goods. If the buyer has not yet paid, the money owed is assumed to be a debt that the buyer owes the seller. If the money was paid prior to the buyer taking possession, either party is legally entitled to cancel the sale (though it is not proper to do so).

Source #1a

הדינרין של זהב לגבי מטבעות של כסף הרי הן כפירות וכן המעות של נחשת כמו פירות לגבי מטבעות של כסף. כיצד נתן לו דינר של זהב בעשרים וחמשה דינר של כסף נקנה הכסף אע"פ שעדיין לא בא הכסף לידו וחייב ליתן לו עשרים וחמשה דינר של כסף כמו שפסק עמו אם חדשים חדשים אם ישנים ישנים אבל אם נתן לו עשרים וחמשה כסף בדינר זהב לא קנה עד שיקח הדינר של זהב וכל אחד יכול לחזור בו. *Gold dinars vis-à-vis silver coins are considered commodities and similarly copper coins are like commodities vis-à-vis silver coins (because these coins don't circulate as well as silver). How is this applied? If A gave B a gold dinar in exchange for 25 silver dinars, A acquired the silver, even though it has not reached his hand, and B must give A 25 dinars of silver exactly as specified; if they specified new coins, he must give new coins, if old coins, he must give him old coins. However, if B gave A 25 dinars of silver for a gold dinar, the transaction is not complete until B takes the gold dinar and each party is legally entitled to back out. [This is because acquisitions involving commodities require transfer of the commodity from the seller to the buyer. Merely paying for the commodity with money is insufficient.]*

Rambam, Hilchos Mechira 6:3-4
Codifying discussions in Bava Metzia 44-45

Source #1b

ברם צרכיני לברורי דלאו כל דינרי דהבא הוו טיבעא לגבי פירי אלא דינרין דסגין בההוא אתרא וחבני ומזביני בהו אינשי הוא דהוו טיבעא אבל דינרי דמיפסלן ולא זבני ומזביני

בהו אלא מאן דמזבני בהו אזיל בהו לבי טיבעא א"נ אזיל בהו לדוכתא אחריתא דסגין בה או דמזבין להו למאן דאזיל בהו התם כגון הני ודאי לא הוו טיבעא כלל אלא פירא נינהו. *One must clarify that not all gold is considered currency vis-à-vis other commodities. Only gold coins that are used in that location for transactions are considered currency. However, gold coins that are not in circulation and are not used for transactions such that if one wants to transact with them, he must either go to a money changer or go to a place where they are in circulation or sell them to someone who is going to that location, those coins are not considered currency at all and are considered commodities.*

Rif, Bava Metzia 26b

Discussion Questions:

1. Does Bitcoin meet Rif's criterion to be considered a currency? What other criteria should be used to determine whether Bitcoin qualifies as currency?
2. According to Rambam, if the purchase of a commodity was done with the understanding that a specific type of currency would be used for payment, one must use that payment method. Do you think the same would apply if they agreed that the payment would be with another commodity? How would you apply this question to our case study? Does it matter if Bitcoin is considered a currency or commodity?

Source #2a

ודכוותיה במטלטלין שמי שמשך חפץ מחברו והתנה ליתן לו כור חטים חדשים חייב ליתן לו כמו שפסק. *The same rules apply to an exchange of two commodities. If A took possession of an item from B and agreed to provide a barrel of fresh wheat as payment, he must provide the barrel of wheat, as specified. Nimmukei Yosef, Bava Metzia 27a [See, Taz, Yoreh De'ah 162:1 and Chavos Da'as 162:1, regarding the prohibition of ribbis and why it doesn't apply in this case if the price of wheat rises.]*

Source #2b

השוכר את הפועל ופסק עמו לתת לו כור חטים זה או בגד זה אם רצה לחזור חוזר ויהיב ליה מידי אחרינא דהא מיחסר משיכה וכדאמרי' הכא גבי טלה זה והא מחסרא משיכה ואפשר נמי דאפילו פסק עמו חטים סתם אינו חייב לתת לו חטים אלא נותן לו שכרו במעות ... כשפסק עמו חטים כיון שאין סתם שכירות בחטים אלא שבא לדון עליו מפני שהתנה עמו בכך לא קנה שהרי לא משך אבל מ"מ נראה שחייב ליתן לו דמיו שאע"פ שגוף הדבר לא נקנה מ"מ הרי מתחייב השוכר בשוויו. *If one hires a laborer and they agreed that the laborer would be paid with this specific barrel of wheat or this specific garment, if the employer wants to, he can back out of this commitment and pay something else because [the laborer] didn't take possession of the item. It is possible that even if they agreed to a generic barrel of wheat, there is no requirement to give wheat, but rather, he may pay with cash ... When one sets*

wheat as the terms of payment, since it is unusual to pay with wheat, and the only reason to require payment with wheat is because those were the terms, there is no commitment because the laborer didn't take possession of it. However, the employer must pay the laborer his wages. Even though the laborer didn't acquire the specific item, the employer is nevertheless obligated to pay the value [of the item specified for wages].

Rabbeinu Nissim, Avodah Zarah 30b

Discussion Questions:

1. Nimmukei Yosef writes that if the terms of the sale are to pay a barrel of wheat, one must pay a barrel of wheat. Rabbeinu Nissim writes that if the terms of the employment are to pay the laborer a barrel of wheat, there is no requirement to pay a barrel of wheat. Is there a dispute between Nimmukei Yosef and Rabbeinu Nissim or are they dealing with two different scenarios?
2. Rabbeinu Nissim states that even when the employer doesn't have to pay for the item, he must "pay the value" of the item specified for wages. What if the value of the item goes up in the interim?

Source #3

כתב בנימוקי יוסף
ודכותה במטלטלין ...

ואחי הרב המופלג מוהר"ר יהודה הכהן ש"ן הקשה ממ"ש הר"ן ... שהשוכר את הפועל והתנה ליתן לו בשכרו כור חטים זה או אפילו כור חטים סתם, אינו חייב ליתן לו חטים אלא מעות ומשום דמחסרא משיכה ... ולכן נראה לענ"ד ... דאפילו מחייב עצמו ליתן זהב עבור כסף לא מהני, וא"כ אפילו פירי סתמא אינו מתחייב עבור מעות, והיינו דינא דהר"ן דמעות אינו קונה אפילו להתחייב בכור חטים סתמא, ומש"ה בשוכר את הפועל [אינו חייב ליתן לו חטים] דמלאכת הפועל אינו אלא כמו נתינת מעות, אבל מי שמשך בפירות והתנה ליתן לו חטים במקום דמי הפירות שפיר מתחייב כמו שהתנה.

Nimmukei Yosef wrote, "The same rules apply to an exchange of two commodities etc." My brother, the esteemed R. Yehuda the kohen, may his light shine, asked from a comment of Rabbeinu Nissim ... that if one hires a laborer ... one does not have to pay in wheat ... It seems to me ... that even if one specifically obligated oneself to pay gold in exchange for the acquisition of silver, it does not work and as such, one cannot be bound by a promise of a generic commodity in place of money. This is the law described by Rabbeinu Nissim that currency cannot be used for a purchase, even to obligate oneself to pay a generic barrel of wheat and for this reason, if one hires a laborer, he is not obligated to pay in wheat because the wages of a laborer are considered like money. However, if one acquired commodities with the understanding that he would receive

wheat in exchange for the value of those commodities, the terms are legally binding.

Ketzos HaChoshen 203:4

Discussion Questions:

1. According to Ketzos HaChoshen, the physical acquisition of an item has the ability to "lock in" the terms of payment associated with that acquisition, whereas the generation of an obligation to pay a laborer does not. Do you think this distinction applies more broadly to the difference between purchase of goods and purchase of services? Why or why not?
2. When one receives a restaurant bill, what percentage of the bill goes toward the food and what percentage goes towards the service? If the customer and restaurant owner worked out in advance to pay with a commodity, according to Ketzos HaChoshen, are those terms binding?

Concluding Questions:

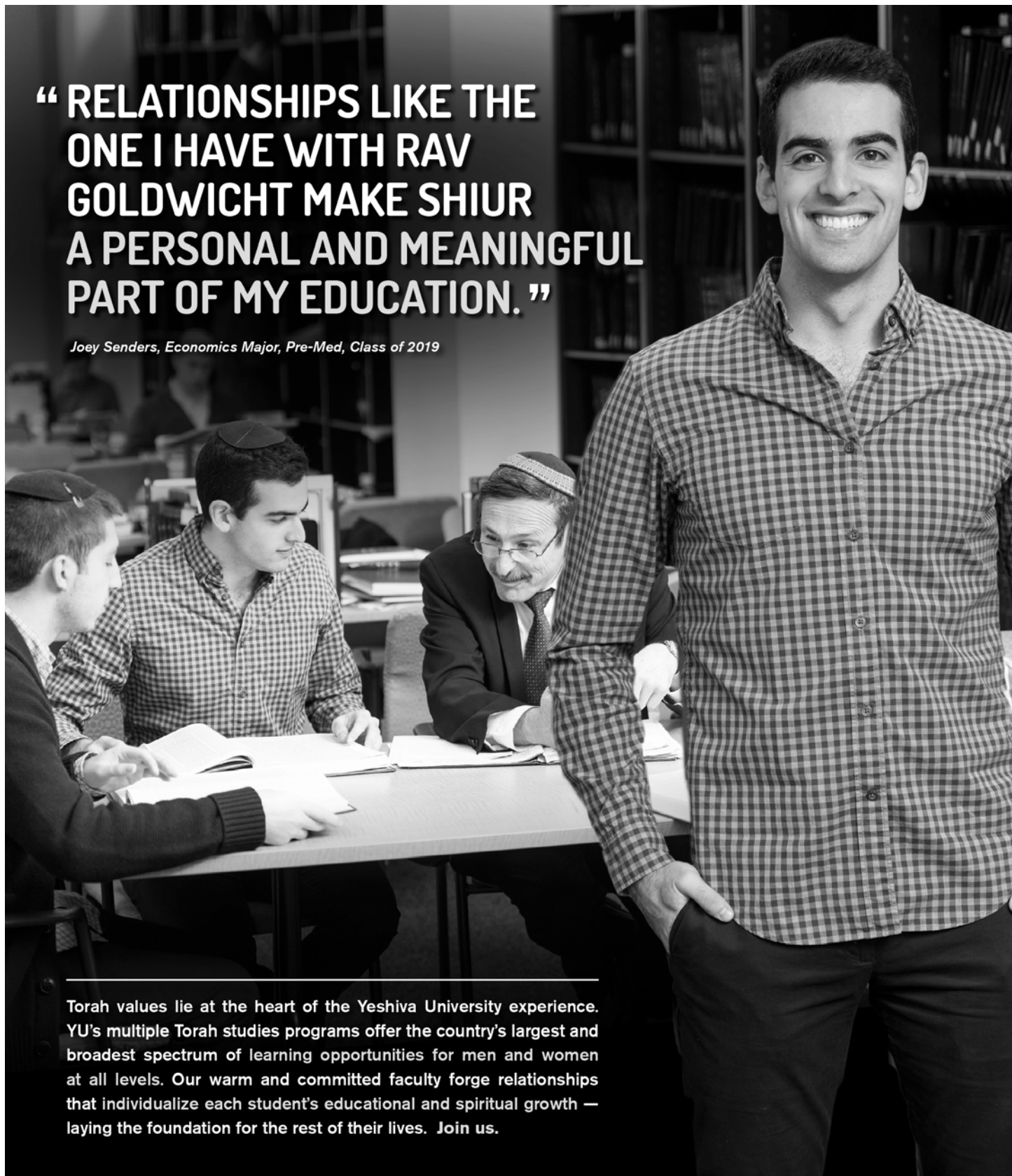
1. Dan received a complimentary dessert when he decided to pay in Bitcoin. Does that play a role in this case? Why or why not?
2. Does the fact that Dan attempted to pay right away but was unable to affect the case? Why or why not?



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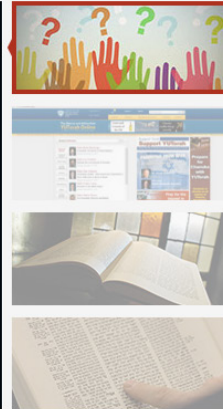
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