

# DEGEL

תורה וחכמת ישראל מקהילת עלי ציון  
TORAH AND JEWISH STUDIES FROM ALEI TZION

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שנת ה'תשע"ה  
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# שנה טובה

**RABBI DANIEL AND NA'AMAH ROSELAAR  
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# DEGEL

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## *Notes from the editor*

There exists a subtle interplay in the relationship between the individual and the community which is in evidence throughout the liturgy of the days of Awe. On the one hand, the majority of our prayers are in the plural and we beseech the Almighty for blessings and forgiveness for the community as a whole. On the other hand; key passages (such as *U'Netaneh Tokef*) highlight the judgement and reckoning facing the individual as a singular and solitary being.

A careful reading of Maimonides (Hilkhot Teshuva) highlights that whereas redemption for the individual is far from certain and rests on the strength of personal repentance, redemption for the communal entity as a whole is assured and can be secured simply through the service of the day of Yom Kippur itself. Rav Soloveitchik notes that in order for the individual to take advantage and profit from the benefit of communal redemption, one has to be integrated with and contribute to the community (*On Repentance* Aronson:1996 ed. Peli p.97-125). Whilst it is possible to consider this message of the importance and benefit to the individual in identifying with the community from an abstract or metaphysical perspective, it seems appropriate to extend this message into the practical arena as well.

Over the past few months we have experienced the isolation of the Jewish community both in the UK and abroad. We are troubled by the continued assimilation, indifference and divisions within our community. There is much to be done and much that can be done.

This year, the Alei Tzion community is celebrating its tenth anniversary. In ten years, the community has blossomed and flourished, establishing vibrant services, educational programmes, communal hesed projects and more. Personal involvement with any of these aspects of the congregation is a practical way for each one of us to take action and identify with the community as well as personally benefitting from the experience.

In this tenth anniversary year, we look forward to communal celebration as well as development and rededication to the core values of the community and you are invited to join us and actively participate in this.

With respect to this edition of *Degel*, there are a range of topics for consideration. Rafi Ganz provides a survey of classical opinions on the reasons for the mitzvot. Aron White offers a perspective on the principle of *Dina DeMalkhuta Dina* and the nature of sovereignty. Rabbi Roselaar has analysed key topics from tractate *Megilla* including the obligation to read the megilla, the absence of Hallel on Purim, the number of people called up to the Torah and the content of the festival Torah readings. David Sher offers a multifaceted view on the halakhic debate surrounding Synagogal Weddings. Yoni Weiner explains how an understanding of chemistry gives us an insight into practical Kashrut. Finally, Miri Jeffay provides some personal reflections on living in Israel during operation Protective Edge.

I want to close by expressing a personal thanks to all the authors, our sponsors and the editorial team without whom *Degel* would simply not exist.

We welcome feedback and future submissions. Please contact us at [degel@aleitzion.co.uk](mailto:degel@aleitzion.co.uk)

With best wishes for a K'tiva v'Hatima Tova to one and all.

Shana Tova U'Metuka.

ELANA CHESLER

# *The Reasons for the Mitzvot*

RAFI GANZ

In studying the writings of rabbinic scholars from the medieval times through to the twentieth century, it is possible to trace a variety of approaches as to the nature and purpose of the mitzvot. I will try to present my understanding of a number of viewpoints and explore some of the differences. When discussing each approach, I will begin with some broad strokes before presenting some nuances and convergences.

## *The rational approaches*

### *a) The causalistic<sup>1</sup>*

To outline the causalistic approach, we will quote its most famous proponent – the Rambam. The Rambam writes in the Guide to the Perplexed as follows:

There are persons who find it difficult to give a reason for any of the commandments, and consider it right to assume that the commandments and prohibitions have no rational basis whatever... Far be this! On the contrary, the sole object of the Law is to benefit us. Thus we explained the Scriptural passage, "for our good always, that He might preserve us alive, as it is this day" (Deut. 6:24) and "which shall hear all those statutes, and say, surely this great nation is a wise and understanding people" (ibid. 6:6). He thus says that even every one of these "statutes" convinces all nations of the wisdom and understanding it includes... But the truth is undoubtedly as we have said, that every one of the six hundred and thirteen precepts serves to inculcate some truth, to remove some erroneous opinion, to establish proper relations in society, to diminish evil, to train in good manners or to warn against bad habits. All this depends on three things: opinions, morals, and social conduct.<sup>2</sup>

The Rambam appears to be of the opinion that the primary function of mitzvot is to improve society and to impart knowledge of G-d and monotheistic beliefs. The significance of the mitzvot is therefore in the resulting mindset or benefit which is achieved, rather than the objective action.

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*The Rambam is of the opinion that the primary function of mitzvot is to improve society and to impart knowledge of G-d*

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Perhaps the most famous example of the Rambam's viewpoint is in relation to sacrifices<sup>3</sup>. Recognising the similarity between the korbanot and elements of pagan culture, and, considering the sacrificial regime to be remote from the philosophical ideal, the Rambam asserts that sacrifices were a concession to the times. Their purpose and function was to wean people off their deeply entrenched pagan attitudes towards a purer form of monotheism. The Rambam continues:

It would have been comparable to a prophet appearing today, calling today for the service of G-d, declaring that G-d now commands you not to pray to Him, not to fast and not to seek his help in time of distress, but your service of Him should be in meditation without any deeds whatsoever.<sup>4</sup>

It is worth emphasising that, in as much as sacrificial practice was legitimised (and sanitised) by the Torah, it formed the authentic expression of worship; the channel through which a person was to communicate with G-d. It was a positive evolutionary step providing a structure for worshipping G-d directly, rather than via various intermediaries and supernatural forces which was common in pagan cultures<sup>5</sup>. The idea is similar to a child who begins to crawl as a significant milestone on the way to walking.

Nevertheless, if the point of the sacrifices was to wean people off idolatrous practices and beliefs, then the sacrifices themselves cannot be said to be intrinsically significant. Rather, they are an important trigger for encouraging sincere worship which is an internal intellectual activity. In other words, the spiritual world is not wired to require sacrifices to sustain it, but man was wired to require sacrifices to spiritually mature.<sup>6</sup>

The rationalist view is not limited to halakha, but extends to other spheres as well, as Menachem Kellner writes:

...holiness is not a property but an institutional status for Maimonides; that Hebrew, the holy language, is not holy in any essentialist, ontological sense; that the distinction between ritual purity and impurity reflects no extra-halakhic reality; that Jews and non-Jews are distinguished by nothing beyond history, belief and behavior....<sup>7</sup>

Another important proponent of the rationalist approach was the Meiri. He frequently reinterprets aggadic passages which are suggestive of metaphysical realities as being constructs and metaphors used by the sages to illustrate and reinforce certain ideas. As an example, the Meiri interprets the concept of *neshama yetera* ('additional soul') to mean that since man is freed from his material pursuits on Shabbat, his spiritual experience is enhanced and becomes more powerful as if he had an extra soul. The shift is from the objective and metaphysical to the subjective and psychological.<sup>8</sup>

#### **b) The symbolic**

The Ramban takes sharp issue with this approach. In his commentary on the Torah he writes as follows:

(Heaven) forbid that there is no benefit and purpose (to sacrifices) other than negation of idolatry and foolish ideas.<sup>9</sup>

The Ramban proceeds to provide an alternative explanation involving seeking out symbolisms in the rituals which correspond to the three components of sin - thought, deed and action.<sup>10</sup>

In a variation of the symbolic approach, the Sefer HaHinukh looks for the benefits which the mitzvot provide without identifying and extrapolating these to be the primary cause:

...even though there are mitzvot which we cannot know the full depth and scope of, due to the limitations of our knowledge, we have not held back from writing about them with regards to all that we can understand as to the benefit which results from performing them.<sup>11</sup>

R. Samson Raphael Hirsch also utilises this approach and systematically applies it to all the mitzvot in his monumental work Horeb. In his penultimate letter of The Nineteen Letters, he levels strong criticism at the Rambam's methodology:

It is to this great man alone that we owe the preservation of practical Judaism until the present day. By accomplishing this and yet, on the other hand merely reconciling Judaism with the ideas from without, rather than developing it creatively from within, and by the way in which he effected this reconciliation, he gave rise to all the good that followed- as well as all the bad. His trend of thought was Arab-Greek, as was his concept of life. Approaching Judaism from without, he brought to it views that he had gained elsewhere, and these he reconciled with Judaism... During this whole period, only very few stood with their intellectual investigations completely within Judaism and built the interpretation of Judaism entirely upon its own premises. Among these the author of the Kuzari and the Ramban excelled...<sup>12</sup>

In R. Hirsch's view the mitzvot and all the details express deep symbolic messages, which impart to us the spiritual and moral values that God wished us to implement in our daily life.

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### *In R. Hirsch's view, the mitzvot and all the details express deep symbolic messages*

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For example, in Horeb he says that it is prohibited to eat cruel and vicious animals as it causes one to subconsciously internalise and associate with their undesirable characteristics.<sup>13</sup>

Despite the differences, it is important to note the common denominator between the causalistic and the symbolic approach, insofar as both emphasise the rational and subjective outcome rather than the metaphysical effects of the action itself.

R. Soloveitchik also raised sharp objections to the causalistic approach. His primary problem lay in its method of making inferences as to the causality of the mitsvot by analysing systems external to it. This process, he felt, strips religion of its autonomy.<sup>14</sup> In addition, whilst not denying the historical circumstances surrounding the mitsvot, he considered the process of causality in regards to these matters too complex and sensitive to uncover.<sup>15</sup>

Instead, R. Soloveitchik proposes the methodology of “reconstruction”. By investigating the mitsvot with all their halakhic detail he believed it is possible to extrapolate the spiritual and conceptual ideals contained within.

R. Soloveitchik brings a number of examples to illustrate the difference in methodology. The first example relates to the mitsva of Shofar and is taken from Rambam's Mishneh Torah (which according to R. Soloveitchik, in total contrast to the Guide the Perplexed, reflects the methodology of reconstruction):

Although the blowing of the shofar on Rosh Hashana is a decree from the Torah, nevertheless there is a hint to it, as if saying, you that sleeps, awaken from your sleep, and you that slumber, awaken from your slumber. Examine your conduct, return in repentance and remember you Creator.<sup>16</sup>

There is no attempt to uncover the reason for the mitsva. The emphasis is on the “effect (the *what*)” not on the “reason (the *why*)”. In contrast to his methodology in the Guide, the Rambam in the Mishneh Torah addresses the meaning inherent within the mitsva and its effect on a believing Jew.

R. Soloveitchik contrasts this to the causalistic approach of Rav Saadia Gaon.

Had Maimonides adopted Saadia's reason for the sounding of the shofar and held that it is reminiscent of an ancient nomadic period when it served as either a signal for alarm or as a summons to a joyous celebration, he would have been trapped in the same causal maze as that of his Guide.<sup>17</sup>

R. Soloveitchik aims to extract from the mitsvot their eternal meaning. The starting place is the analysis of the halakha, the result is the universal meaning unconfined to a specific time and culture.

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### *Rav Soloveitchik aims to extract from the mitsvot their eternal meaning.*

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R. Soloveitchik argues that this is a distinctive feature of the Mishneh Torah in contrast to the Guide. The Mishneh Torah works from within the halakhic system and gives religion its autonomy, whilst the Guide looks from the outside inwards. Thus it was the Mishneh Torah which established the Rambam's legacy for believing Jews and not the Guide. By applying the causalistic methodology in the Guide, he was drawn to “historical-genetic” explanations which “neither edify nor inspire the religious consciousness”<sup>18</sup>.

One may of course wonder as to the reason behind the difference in focus between the Mishneh Torah and the Guide. It appears that when writing to the masses in Mishneh Torah, it was especially important for the Rambam to place primary emphasis on the unconditional binding nature of the command before suggesting any reasons or symbolisms which may be perceived as a limitation in the mitsva, either in concept or application.

An alternative approach is also possible. In addressing the question of cause, in general, the Rambam's methodology presents us with very strong arguments. In the Rambam's view, the need for a transitional approach to true monotheism meant that a system of korbanot (as well as other mitsvot) *had* to be integrated into the mitsvot. If we accept the requirement of a staggered approach, then in determining cause, this becomes much more persuasive than speculative symbolism. Thus, when suggesting the symbolism of the mitsva of shofar, the Rambam is more hesitant to assert that this provides the ultimate basis of the command.

### *The mystical approaches*

Until now we have explored two different approaches both rational in nature. We will now turn to some of the mystical approaches.

#### *a) The metaphysical*

As an example of this approach, the Ramban, as well as many others, claimed that G-d prohibited certain non-kosher food due to the metaphysical properties of the food which gives rise, among other things, to bad character traits.<sup>19</sup>

R. Asher Weiss links this notion to the Ramban's general position regarding the requirement to bring

a *hatat* offering in the case of an inadvertent transgression.<sup>20</sup> The Ramban explains that this is due to:

- a) The apparent carelessness of the transgressor in not applying sufficient safeguards to prevent the transgression.
- b) The inherent “contaminating” effects (*timtum halev*) of the sin require cleansing even when inadvertent.<sup>21</sup>

It seems from the second point of the Ramban that there is a negative spiritual effect of a sin, even when the person bears no responsibility for the transgression. Of course this would make sense if indeed there were innate metaphysical consequences underpinning the commandments in the first place.<sup>22</sup>

It is interesting to consider how the “majority” principal is consistent with this approach. When a piece of non-kosher meat is mixed with a majority of kosher meat, most opinions rule that it is permissible for one person to eat all the pieces even though he will inevitably eat the non-kosher one. On the basis of the Ramban’s approach this is difficult to understand as surely one will still be ingesting the contaminated food. Presumably, the Ramban would agree that the process is more dynamic and perhaps the metaphysical is respondent to halakhic norms such that there are times when the prohibition and all its negative consequences are overridden to conform to the halakhic system, as after all, “the Torah was not given to angels”.<sup>23</sup>

R. Asher Weiss points out that the earliest source for the concept of *timtum halev* is a gemara in Yoma 39a which applies the concept to sins in general, rather than mimising it to the area of kashrut.<sup>24</sup> Presumably the rationalists would ascribe a psychological reality to *timtum halev* along the lines of the statement of Rav Huna that, “after one sins twice it become permissible in his eyes”.<sup>25</sup> In this sense it is possible to say that the heart has become “blocked” or “contaminated”.<sup>26</sup>

It is important to point out that even within this approach the prohibitions appear primarily as a means of avoiding the negative mystical effects. It is also worth noting that there are occasions where the Ramban was content with adopting rational reasons. In his commentary on the Torah, the Ramban argues that the purpose of *shiluah hakan*, of sending away the mother bird, is in order to distant us from actions which would otherwise develop cruel habits within us.<sup>27</sup> The Ramban disagrees with the Rambam’s approach that the mitsva is due to compassion for the mother bird,

not due to its rational basis, but due to its assertion that G-d’s mercy extends to the animal kingdom.

The Ramban quotes two relevant Talmudic passages:

If someone says, “Your mercy extends upon the nest of birds” we silence him... Because he is making the attributes of the Holy One into mercy, whereas they are nothing other than decrees.<sup>28</sup>

What does it matter to the Holy One, Blessed be He, that an animal is slaughtered by cutting its neck from the back or front? Say therefore that the commandments are given only to purify man.<sup>29</sup>

The Ramban explains these as follows:

...These aggadot which presented difficulties for the Rav (Ramban), in my view have a different meaning. They mean to say that there is no benefit in the mitsvot to the Holy One himself, but rather the benefit is for man, to prevent him from being harmed, or from a false belief or a deplorable attribute... Similarly, that which they said, “Because he is making the attributes of the Holy One into mercy, whereas they are nothing other than decrees,” means to say that G-d did not have compassion on the bird’s nest, and His mercy did not extend to “the animal and its young,” for His compassion does not extend to animals to prevent us from fulfilling our needs with them; for if so, He would have prohibited their slaughter. Rather, the reason for the prohibition is to teach us the trait of compassion.<sup>30</sup>

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*There is no benefit in the mitsvot to the Holy One himself, but rather the benefit is for man*

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#### **b) The transcendental**

Some mystical sources assert that there is an inherent value even in a mitsva like *shiluah hakan*. This argument can come from one of two directions:

- a) Based on the workings of the spiritual world, the performance of this mitsva

essentially arouses G-d's mercy and compassion towards Israel.<sup>31</sup>

- b) Mitzvot are fundamentally beyond human understanding and are required for the perfection of man as determined by the spiritual roots of the human soul which we do not comprehend.

The second position is represented by the Maharal.<sup>32</sup> The Maharal disagrees with both the Ramban's and the Rambam's explanation of *shiluah hakan* based on a variety of philosophical, theological and technical questions. Without going into the details of his questions, he posits that the soul of a person is comparable to a seed which is programmed to grow into a certain type of tree and produce specific fruit as a result of the "genetic" information contained in the seed. In the same way that different seeds require specific nutrients to bring out the potential, so too man requires specific mitzvot to bring out his spiritual perfection and these fundamental reasons transcend any subjective and rational reasons.

He is highly critical of the idea that the mitzvot serve to merely improve and shape one's characteristics and outlook.

As for kashrut, the Maharal argues the cause and effect exactly in reverse. If non-kosher food does indeed contaminate then that it is only an external manifestation of the prohibition. The mitzva is not a means to an end but an end in itself. Whilst it should be apparent from the view of the Ramban that eating something non-kosher, even in circumstances when it is permitted, can be spiritually damaging, the Maharal's view of this interaction is less clear. It could well be that the metaphysical effects are only a consequence of the prohibitive act, but not an automatic result from the consumption of the prohibited item. If this were the case, there would be no concern of any side effects for eating non-kosher food in permissible circumstances.

In summary, the specific acts of performing mitzvot are fundamental to the spiritual growth and perfection of man, and as such one cannot ask questions from the perspective of the physical world as to why a certain act is required, as the answer lies in the spiritual world. Any physical adverse consequences of sin are an effect not a cause.

### ***Expansions of the mystical approach***

One interesting view which would appear to be a

radical expansion of the Maharal's view is the idea that nature continuously shapes itself around the spiritual world as set out by halakha.

A prime example can be found in the Piskei Teshuvot, a famous commentary on the Mishna Berura. In his discussion on the reading of parshat Zakhor, he claims that we have a constant mitzva to remember to destroy Amalek. The fact that it suffices to read parshat Zakhor only once per year is due to the premise that reading something once every 12 months is an adequate step to remembering all year round. He then addresses the question as to how this can work during a leap year in which there is an extra month? He answers that since nature is subservient to halakha, a person's memory is correspondingly enhanced to allow for the extra month so that the obligation is fulfilled during these years too. Clearly this methodology blurs the gap between cause and effect when it comes to the interaction of halakha and nature.<sup>33</sup>

Also worth mentioning in this context is a famous Beit ha-Levi which totally reverses our sense of cause and effect.<sup>34</sup> He quotes the Zohar, "The Holy One, Blessed be He, gazed into the Torah, and created the universe"<sup>35</sup>. The Torah is the blueprint of creation. History was pre-programmed to correspond to the mitzvot rather than the other way round.

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## ***History was pre-programmed to correspond to the mitzvot rather than the other way round***

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Thus we find according to the midrash that Avraham ate matsa on Pesah even before *Yetsiat Mitsrayim* occurred. The causation is thus the reverse - the mitzvot preceded and caused the events. R. Haim Soloveitchik (the son of the Beit Ha-Levi) is quoted as having said that even the commandments which appear to be based on moral reasoning are only so because G-d commanded them. In other words, the moral sensitivity is an outcome of the mitzva and not the other way round (similar to the way we described *timtum halev* according to the Maharal).<sup>36</sup>

### ***Hybrid approaches***

The Ritva, in his work *Sefer HaZikaron* defends the Rambam from the attacks of Ramban. In relation to the Rambam's view of *korbanot*, he writes:

"Our Master (Nahmanides) of blessed memory, rejects the explanation of the sacrifices offered in the Guide for the

Perplexed. We need not here repeat his words. It is my opinion that the genuine (kabbalistic) tradition concerning the sacrifices and Maimonides' apparently feeble rationale caused the Master (Nahmonides) to criticise him (Maimonides) for the sake of the sanctity of the Torah and God's holy Name, in the context of the sacrifices. However, Maimonides chose his many explanations of the commandments in order to provide them with some meaning and to furnish the masses with some rationale arguments against heretics, rather than believing these to be the principal reasons... With all due respect to our great Master (Nahmanides) and his divinely inspired words, his zeal confused him and prevented him from examining thoroughly Maimonides' statement. There is no doubt, in my opinion, that Maimonides' explanations contain some elements which do not accord with those of the kabbalists or other scholars. However, there is neither error nor contradiction in the method he follows, for his carefully presented arguments are full of wisdom and logic.<sup>37</sup>

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*Whilst the Ritva applauded the cogency of the Rambam's explanation, he nevertheless understood that the Rambam was not attempting to provide the "principal reasons" for the mitsvot*

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It is interesting to note that whilst the Ritva applauded the cogency of the Rambam's explanation, he nevertheless understood that the Rambam was not attempting to provide the "principal reasons" for the mitsvot. Such a position is common amongst other rabbinical scholars who have provided rational reasons for the mitsvot while at the same time asserting that there are deeper reasons which we do not comprehend. R. Saadia Gaon writes:

Similarly, if one were to follow up *most* of these revealed precepts, one would discover that they are, *to a large extent at least*, partially justified and possess much utilitarian value, although the wisdom and the view that the Creator had in mind in

decreeing them is far above anything that men can grasp, as Scripture says *For as the heavens are higher than the earth, so are My ways higher than your ways.*<sup>38</sup>

The Kuzari presents a more reserved variation of the dual approach:

I do not, by any means, assert that the purpose of the service is the order expounded by me. On the contrary, it entails something more secret and elevated. And I say that it is G-d's Torah. He who innocently accepts it without scrutiny or argument is better off than he who investigates and analyses.<sup>39</sup>

### ***Illustrative examples***

I will try to highlight some of the famous examples which will further illustrate some of the differences discussed so far.

#### ***a) Mezuzah***

The gemara in Menahot gives two reasons as to why the mezuzah needs to be positioned in the outermost *tefah* of the doorframe. The first explanation is so that a person encounters the mezuzah as soon as he enters. This reason is subjective and psychological in nature. The second explanation, "so that it will guard it [the house]", is more metaphysical in nature.<sup>40</sup>

The Rambam prefers the first explanation and expresses the essence of the mitsva as follows:

A person must show great care in [the observance of the mitsva of] mezuzah, because it is an obligation which is constantly incumbent upon everyone. [Through its observance,] whenever a person enters or leaves [the house], he will encounter the unity of the name of the Holy One, blessed be He, and remember his love for Him. Thus, he will awake from his sleep and his obsession with the vanities of time, and recognize that there is nothing which lasts for eternity except the knowledge of the Creator of the world. This will motivate him to regain full awareness and follow the paths of the upright.

Whoever wears tefillin on his head and arm, wears tzitzit on his garment, and has a mezuzah on his entrance, can be assured that he will not sin, because he has many

reminders. And these reminders are the true angels who will prevent him from sinning, as it states: "The angel of God camps around those who fear Him and protects them."<sup>41</sup>

Thus the Rambam shifts the focus from the metaphysical protection to the psychological subjective benefits of having a reminder of one's commitment to G-d constantly surrounding him. The Rambam would presumably understand the second explanation as expressing a metaphor. The purpose of placing the mezuzah on the outside is to internalise the idea that G-d sustains and protects us. The mezuzah is thus not placed there *because* it protects, but rather it is set there so that it symbolises G-d's protective power so that we are conscious of our dependency. In this context it is important to note that the gemara was coming to address the specific point as to why the placement on the outside is preferred to the inside (where it could be more frequently encountered). The fact that man requires physical representation to internalise spiritual ideas is inherent to his physical nature.

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*The purpose of placing the mezuzah on the outside is to internalise the idea that G-d sustains and protects*

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**b) Netillat yadaim**

There is a famous dispute in the Rishonim as to the purpose of washing hands and reciting the blessing of Al Netillat Yadaim in the morning.

According to the Rosh the purpose of washing hands in the morning is as follows:

Since the hands are active, and it is not possible to have avoided contact during the night with soiled flesh, a blessing was instituted prior to one's recitation of Shema and Amida.<sup>42</sup>

According to the Rashba, the purpose is to identify with the Kohen in the temple times, who was required to wash his hands from the Kiyor prior to commencing the Avoda. The refreshing of a person through the washing of the hands reflects the sense of renewed dedication to personal Avoda each morning.<sup>43</sup>

Both of these explanations are rational and contain positive psychological benefits. In contrast, the

Zohar says that when a person sleeps, his soul leaves him and an unclean spirit rests on him, but: when the soul returns to the body that unclean spirit leaves him. However, it is taught that the hands retain the contamination<sup>44</sup>



Depiction of Kohen washing hands in the Kiyor

**c) Tuma**

According to the Rambam, the purpose of the laws of tuma is to restrict one's access to the place of the Beit Hamikdash. The purpose is so that we do not overly familiarise ourselves with the Beit Hamikdash so as to retain a sense of awe which would otherwise be eroded. Presumably he would say a similar thing with respect to the halakhot of Nida, the period of separation creating a sense of renewal and freshness in the union, as indeed the gemara in Nida suggests.<sup>45</sup> The Ramban on the other hand places an objective status of impurity on a Nida with metaphysical implication which, as a consequence, requires separation.<sup>46</sup>

**Some difficulties**

There are several difficulties which are encountered with the causalistic approach (some of which have already been touched upon).

We can find many places in the gemara which suggest that there is indeed a metaphysical consequence of a transgression even when the sin was performed under unavoidable or permissible circumstances.

The gemara in several places repeats the following line:

G-d protects even the animals of the righteous from sin, how much more so the righteous themselves.<sup>47</sup>

This appears to imply that there is an inherent negative effect of a transgression against which the righteous are protected. This seems more in line with the metaphysical approach.

In commenting on this passage, Tosfot asks why there was no such protection afforded when a certain sage sentenced someone to death on the basis of a misapplication of a halakha, and how it was possible that another sage inadvertently ate at a time when it was prohibited to do so (i.e. before *Havdala* was made). Tosfot responds that it is not as “shameful” to have eaten something at a prohibited time as it is to eat an intrinsically prohibited food. Some have understood Tosfot to be distinguishing between food which is intrinsically prohibited, which causes *timtum halev*, and food which is consumed only at a prohibited time. The latter is merely a prohibited action but no *timtum halev* caused.

However, a close reading of Tosfot appears to negate this understanding. Tosfot refers to the inadvertent transgression as a “genai” meaning “shameful”. This appears to point to a difference in human perception between having eaten something which is intrinsically prohibited and something which is inherently permitted but eaten at a prohibited time. Thus the protection afforded to the righteous is to protect their reputation and self-esteem rather than suggestive of a fundamental negative consequence.

In another example which appears to support the metaphysical approach, the gemara relates that a pregnant woman who determined for herself that she needed to eat on Yom Kippur (such that it would have been halakhically permissible to eat) gave birth to a child who turned out to be wicked, whilst a second pregnant woman, who did not eat, gave birth to a child who grew up to be a talmudic sage<sup>48</sup>. The apparent implication is that the first woman’s assumed “transgression” caused negative spiritual side effects even though the food was consumed under permissible circumstances.

However, it is possible, that given the potential for abuse of this particular law due to its subjective and personal determination, this could have been a fictional warning for people to be honest and integral in their self-assessment in regards to these laws.<sup>49</sup>

There are also some more fundamental questions on the causalistic approach.

If the reasons for the mitzvot are, as the Rambam claims, outgrowths of historical circumstances, to “inculcate some truth” or “remove some erroneous opinion”, what reason is there to keep the mitzva when those circumstances no longer apply?

To understand the basic answer, let us consider the way any law system operates. The Rambam famously writes that as a fundamental quality of law, the Torah cannot adapt itself to every person, place and circumstance. Unless it is applied equally to everyone, the general benefit would be loss. Thus to preserve the universal benefit, there could be no exceptions to the rules. Similarly, in order to preserve the “basic norm” of the Torah as the ultimate authority, the Torah had to prevent the possibility of change even by a Beit Din, with the commandment, “You shall not add... nor shall you detract”.

Concerning a *zaken mamrei* (rebellious elder): Since G-d knew that the laws of the Torah will always need to be applied in every place and time, in accordance with the changes of place and events and the circumstances, requiring additions in some cases and detractions in others, He therefore cautioned against such additions and detractions, saying, “You shall not add to it, nor shall you detract from it” – because this would lead to the collapse of the entire system of the Torah’s laws and to the belief that it was not given by God.

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*Torah law is protected from change not because there is no positive justification for change, but rather the opposite*

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The Rambam states that the Torah is strict with its rules for change, and sets down, “You shall not add to it, nor shall you detract from it” (Devarim 13:1) specifically because from a philosophical point of view (i.e., from the perspective of the reasons for the mitzvot) there is justification for change and development in the Torah. In other words, Torah law is protected from change not because there is no positive justification for change, but rather the opposite: it is specifically because such justification is easily perceived, but its implementation on the normative level would violate the principle of the Divinity of the Torah.<sup>50</sup>

To add another layer of meaning, let us consider another question.

Although the Rambam provides us with elaborate reasons for the mitzvot in general, how does he account for the many minutiae of halakha, which don’t seem to fit within the wider purpose he ascribed to the mitzva?

The Rambam addresses this problem in the Guide as follows:

But no cause will ever be found for the fact that one particular sacrifice consists of a lamb and another a ram and that the number of the sacrifices should be one particular number. Accordingly, in my opinion, all those who occupy themselves with finding causes for something of these particulars are stricken with a prolonged madness.<sup>51</sup>

The Sefer HaHinukh suggests a similar idea, albeit more hesitantly, in regards to the details of the sacrifices.<sup>52</sup>

Although we have noted the Rambam demanded a rational purpose on a general level, this is not necessarily true when it comes to the detail.

The Maharal sharply disagreed with this approach:

And there is certainly no justification for this explanation, for it is about the entire Torah that the verse states: "And what nation is there so great, that has statutes and judgments so righteous as all this Torah" (Devarim 4:8); and it says: "Keep them therefore and do them; for this is your wisdom and your understanding in the sight of the nations, who shall hear all these statutes [and say, Surely this great nation is a wise and understanding people]" (ibid., v. 6). Surely then every matter in the Torah, general rule as well as particular, are all words of wisdom. And it is not as he [Rambam] thought that the particulars have no reason whatsoever, for that would not be a Torah of wisdom.<sup>53</sup>

In his criticism of the Rambam's approach, R. Hirsch points out the irony that Rambam, author of the greatest halakhic code, did not integrate the halakhic system into his philosophical speculations. R. Hirsch compares this to a scientific theory which doesn't stand up to the observable facts.

To obtain a better understanding of the Rambam's position it might help to consider the introduction to the Sefer HaHinukh. Although the work conjectures as to the ideas underlying each of the mitsvot, in the introduction the author deals with the broader question of the essential purpose of the mitsvot. He answers that the very fact that the opportunity exists for man to carry out the will of G-d is fundamentally beneficial for man as it allows him to forge a connection with G-d. The

world was thus created in a way that would necessitate the system of mitsvot.

Although the mitsvot may have originated for rational reasons, once formalised as divine commands and incorporated into the Torah, those commands obtained a purpose which transcends the specific rationale behind the command. By virtue of being a divine command, the command now becomes an end in itself as it provides a system through which man can carry out G-d's will and thereby subjugate himself to Him. From this perspective the more details that can be added to the framework of the mitsva, the more of a connection is forged and the more of a commitment is established, thus there need be no inherent reason for the details.<sup>54</sup> When a parent asks a young child to help them with a certain task, sometimes the reason for the request might appear superficially as a mere means to assist them with their request, but the true purpose in the request might be to bond with the child through working towards a common goal. Of course, in order for the mechanism to work it has to be a request to which the child can relate. Applied to the mitsvot, it is the intensity and rigidity of halakha which intensifies this effect. Thus the Rambam writes that the details were "imposed to test man's obedience".<sup>55</sup>

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### *There is intrinsic significance to the commitment demonstrated in the performance of a mitsva itself*

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Taking this a step further, and to explain the universal and eternal application of the mitsvot, it is possible to say that even when the direct reason falls away there is good reason to continue one's adherence. Once the historical importance is established, the mitsva is not arbitrary in its origination and retains everlasting significance by virtue of the intrinsic significance of being a divine command. Thus even the Rambam may accept the idea that there is intrinsic significance to the commitment demonstrated in the performance of a mitsva itself.

It is also possible that the monotheistic revolution which the commandments induced made them eternally significant for the ongoing struggle which they represent. The battle against paganism may undergo paradigm shifts as cultures change and progress, but the underlying dispositions, which prioritise mechanistic self-centred systems over introspection, are part of the inherent human nature conditioned by the natural mechanistic world. It is

a universally accepted norm to preserve in national memory the breakthroughs which led and drove revolutions, even though we have moved and progressed further since. It expresses humility in the acknowledgement of the fact that we are “sitting on the shoulders of giants”. In this case, it could well be that by remaining attached to the commandments which drove the monotheistic revolution we continue to propel that development.

Finally, we can also suggest, as R. Moshe Shamah writes, that “the symbolism invested in the rituals at the very beginning, despite their having been a reaction to past idolatrous practices which are presently irrelevant, possesses a richness that renders the rituals ever-meaningful”.<sup>56</sup>

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### *More than the Jews have kept the Shabbat, the Shabbat has kept them*

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As well as richness of symbolism, it is also worthwhile considering some ever-meaningful practical benefits latent in some of the mitzvot. In this context let us consider the different aspects of Shabbat. In parshat Yitro the focus is on resting from labour to commemorate creation, whereas in Vaethanan the emphasis is on social justice. Yet, it also does not seem unintended that the existence of Shabbat has helped the Jewish people retain their identity throughout history, indeed, ‘more than the Jews have kept the Shabbat, the Shabbat has kept them’<sup>57</sup>. What this intends to illustrate is the multi-dimensional nature of the Torah, the establishment of a particular cause, or particular reason, does not negate other timeless ideas and benefits, some of which the people living at the time may not even have been aware of.

### **Concluding thoughts**

In conclusion, I’d like to consider some common ground between the two systems.

Consider the following powerful words from R. Kook describing the significance of space and time in Torah thought:

The holiness of space fills the entire world, yet it remains hidden and invisible, and the secret waves of holiness push endlessly forth towards their destined revelation, until they find expression through the Land of Israel, the pinnacle of all the dust of the universe, and from there to the holy spot, the holy Temple, and the

Rock of Foundation, ‘Out of Zion, the epitome of beauty, God has appeared.’ The holiness of time spreads across eternity, daily expressing benediction, and the rays of holy light are drawn along a secret path, until they are revealed at the holy times, through the holiness of Shabbat, which is the origin of all the holy times and emanates with holiness toward the entire world and toward Israel; and through the holiness of the holidays, which serve as receptacles of holy emanation; and through the Jewish people, who sanctify the holidays.<sup>58</sup>

I am unsure whether R. Kook’s powerful words describe a metaphysical reality, or whether he uses a metaphor or allegory for what really is a psychological perception. If the latter, then clearly he considers this as part of G-d’s elaborate design of mankind to enable him to encounter the divine. For a believing Jew, the effects of Shabbat on his spiritual cognition, either from a metaphysical or psychological standpoint, are “real” in every sense of the word. It reminds one of Copernicus’ theory that the nature of how the world and its movement are perceived depends on the position of the observer.<sup>59</sup> Whether there is an underlying metaphysical system to which our souls are wired which expresses itself in our world through the consciousness of man, or whether the mitzvot were designed to channel our natural psychological senses is of little consequence. The question of causation and process does not negate purpose and does not alter the effects we experience. By contemplating the design of man, his interaction with the world and his spiritual engagement with the mitzvot, one can discern and sense purpose in the system.

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<sup>1</sup> Term coined by R. Joseph B. Soloveitchik in “The Halakhic Mind” Seth Press New York NY 1986

<sup>2</sup> Maimonides, Guide to the Perplexed 3:31 trans. Friedlander

<sup>3</sup> Maimonides, M. Guide to the Perplexed 3:32 trans. Friedlander

<sup>4</sup> Ibid

<sup>5</sup> See Devarim 32:17

<sup>6</sup> How this might be consistent with the principal of immutability of the law will be discussed later.

<sup>7</sup> Kellner, M., Maimonides’ Confrontation With Mysticism, p44

<sup>8</sup> Hibbur Ha-Teshuva. For further examples see Louis Jacobs, “Demythologizing the Rabbinic Aggadah: Menahem Meiri”

<sup>9</sup> Ramban Vayikra 1:9

<sup>10</sup> The Ramban, in concluding his symbolic explanation of the Korbanot, writes: “these are acceptable and attractive explanations like the words of aggadah. But the true (Kabbalistic) path has an elusive mystical reason for korbanot...”. According to the commentator Rabbeinu Bahya ben Asher, Ramban is alluding to the fact that G-d requires sacrifices for “the sake of *yihud*,” to unify the ten divine sefirot. This corresponds to the more mystical approach which the Ramban often adopts.

<sup>11</sup> Sefer HaHinukh, Mitzva 545

<sup>12</sup> Hirsch, S.R., The Nineteen Letters, Letter 18, Joseph Elias edition. There is another interesting difference: as opposed to the Rambam who saw many of the mitzvot as a means to an end of enhancing metaphysical knowledge and rooting out paganism, R. Hirsch’s philosophy of the mitzvot was more practical in nature. In his words, “Judaism has no regard for the kind of speculation that does not aspire to contribute to active productive life” (Letter 15).

<sup>13</sup> Hirsch, S.R., Horeb, Chapter 68, Paragraph 464

<sup>14</sup> Soloveitchik, J.B., The Halakhic Mind, Seth Press, New York NY, 1986

<sup>15</sup> Rav Chaim Navon, Philosophy of Halakha, lecture 16b from <http://vbm-torah.org/philhalak.htm>

<sup>16</sup> Maimonides, Hilkhos Teshuva 3:4

<sup>17</sup> Soloveitchik, J.B., The Halakhic Mind, Seth Press, New York NY, 1986 Note 14, p95

<sup>18</sup> Ibid p92

<sup>19</sup> Ramban, Shemot 22:30; Devarim 14:21. See also Mesillat Yesharim ch.11, however there he is not dealing with the reasons for the mitzvot only the effects.

<sup>20</sup> Maimonides, Hilkhos Teshuva 46

<sup>21</sup> Ramban, Shaar Hagemul

<sup>22</sup> It is possible to understand the *timtum halev* discussed in Shaar Hagemul as distinct from the metaphysical effects discussed in his commentary on the Torah; the former being a function of sin, the latter being an innate property of the food.

<sup>23</sup> Kiddushin 54a

<sup>24</sup> Minhat Asher, parshat Shmini

<sup>25</sup> Sota 22a and other places

<sup>26</sup> It is in theory possible to explain the purpose of the mitzvot rationally, yet maintain the view of a real contaminating consequence of transgression (to a certain extent this appears to be the position of the Ramban).

<sup>27</sup> Even in the case of *shiluah hakan*, the Ramban suggests at the end that there is a “sod” (mystical secret) to the mitzva

<sup>28</sup> Berakhot 33b

<sup>29</sup> Bereishit Rabba 44

<sup>30</sup> Ramban, Devarim 22:7. See Sefer HaHinukh 545 who understands this aggada to mean that G-d’s mercy is not inherent but rather He chooses to act in this way.

<sup>31</sup> R Bahya 22:7

<sup>32</sup> Tiferet Yisrael, ch. 6-8

<sup>33</sup> Hatam Sofer Even Haezer 119

<sup>34</sup> Parshat Bo

<sup>35</sup> Parshat Teruma 161

<sup>36</sup> In direct contrast to this, Meiri, Avot 1:1 understood the saying that G-d looked into the Torah to create the world to mean that G-d foresaw that He was to give the Torah that would keep mankind on the right path and He therefore created the world.

<sup>37</sup> Sefer Hazikaron, Parshat Vayikra

<sup>38</sup> R. Saadia Gaon, Book of Beliefs and Opinions, Rosenblatt/Yale page 145

<sup>39</sup> Kuzari, II, 26

<sup>40</sup> Menahot 33b

<sup>41</sup> Maimonides, Hilkhos Mezuzah 6:13

<sup>42</sup> Rosh, Berakhot 9:23

<sup>43</sup> Teshuvot I, 191

<sup>44</sup> Gordon, Martin L., “*Netilat Yadayim Shel Shaharit: Ritual of Crisis or Dedication?*”, 8 Gesher 26, 1981

<sup>45</sup> Maimonides, Guide to the Perplexed 3:47. See Nida 31b

<sup>46</sup> Ramban, Bereishit 31:35

<sup>47</sup> Gittin 7a and other places

<sup>48</sup> Yoma 82b. Minhat Asher, Parshat Shmini brings this as an apparent proof for the Ramban.

<sup>49</sup> Alternatively, the behaviour of the second woman reflected a superior commitment which would have been transmitted to the child during its upbringing.

<sup>50</sup> Rav Tamir Granot, *Rav Kook’s letters – development of halakha* lecture 19a from <http://vbm-torah.org/archive/igrot/20a-igrot.htm>

<sup>51</sup> Maimonides, Guide to the Perplexed 3:26

<sup>52</sup> Sefer HaHinukh, Mitsva 95 and 104

<sup>53</sup> Tiferet Yisrael 7

<sup>54</sup> Sefer HaHinukh, Mitzva 95 and 104. He also emphasises the benefit of having a rigid structure to the mitzvot. Despite the suggestions, ultimately he prefers to defer to the “mekubalim” on the details. It is interesting that R Moshe Shamah, who systematically adopts the Ramban’s formulations regarding the “monotheistic revolution” in accordance with modern research, nevertheless argues “modern Bible research strongly supports the position that what may appear to be relatively minor particulars of the sacrificial cult invariably do have symbolic meaning. This appears to be the case with all rituals of the Torah. The study of the

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extensive literature of the ritual practices of the contemporary neighbouring cultures and the comparison to the Torah has highlighted distinctive meaning in numerous particulars of the Torah. In addition, many sophisticated patterns and intertextual linkages involving minutiae as well as symbolic associations run through the Torah and betoken a purpose for the details.” (*Recalling the covenant - Maimonides in Sacrifices and Related Matters*, p542)

<sup>55</sup> Maimonides, Guide to the Perplexed 3:26.

However, R Moshe Shamah has pointed out a glaring question, that, the Rambam in the same chapter provides reasons for some of the details which he surmised to be unanswerable earlier on.

<sup>56</sup> R.Moshe Shamah, *Recalling the covenant - Maimonides in Sacrifices and Related Matters* , p.543

<sup>57</sup> Attributed to the Zionist thinker Ahad Ha'am, Asher Ginsberg

<sup>58</sup> Orot Hakodesh 2:303

<sup>59</sup> Moring, G. *The Complete Idiot's Guide to Understanding Einstein*, p23

# *Of Halakha and Hobbes*

ARON WHITE

In this article, I wish to compare and contrast Halakha's understanding of the basis of the authority of rulers to govern with that presented by the political philosopher, Thomas Hobbes. To do this, I will compare the halakhic principle of Dina DeMalkhuta Dina, (the law of the kingdom is law) with some of the ideas presented by Thomas Hobbes in his magnum opus, *Leviathan*. A number of striking similarities emerge, together with a crucial difference between their respective approaches to understanding government.

## *The Emergence of the Dina DeMalkhuta Dina Principle*

The third century C.E. saw a major geographic relocation of the centre of Rabbinic leadership from Israel to Babylonia. The Tannaim lived in the Land of Israel when the Mishna was composed, however diaspora centres of Torah learning were subsequently established. Rav moved to Babylonia from Israel in the year 218 C.E., and set up a Yeshiva in Sura which lasted for eight hundred years<sup>1</sup>. Shmuel, one of the preeminent leaders of the generation, was a Rosh Yeshiva in Nahardea<sup>2</sup>.



A depiction of R. Ashi teaching at the Sura Academy

This was an important development in the new era of Jewish history that had been dawning since the destruction of the Beit Hamikdash and the Bar Kokhba revolt. The Jewish nation was no longer going to be a polity, creating its own rules in its own land as it had been intermittently for a thousand years. The Jewish nation was now to exist entirely within host societies, a state of affairs which would remain for almost two thousand years.

In the 3<sup>rd</sup> century, Shmuel laid down a halakhic principle that was to be central to interactions between Jews and their host societies - Dina DeMalkhuta Dina<sup>3</sup> – the law of the Kingdom is law. As Jews moved through Babylonia, North Africa, Western Europe and then Eastern Europe, this principle was to be the starting point of their relationship with their rulers – namely, that the rule of the sovereign was halakhically binding.

There were many ramifications of this principle which were duly considered: Are all laws of government considered binding by halakha? If a country is ridden by war and revolt, who is considered to be the government? What happens when the law of the land clashes with halakha? Each host culture had its own unique circumstances, providing new scenarios to analyse. Over the centuries, there developed an ever expanding corpus of halakhic writing on the subject of Dina DeMalkhuta Dina. This forms part of the literature available to piece together principles of Judaic political philosophy.

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*As Jews moved through Babylonia, North Africa, Western Europe and then Eastern Europe, the principle of Dina DeMalkhuta Dina was to be the starting point of their relationship with their rulers*

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## *Political Philosophy*

The field of political philosophy has a long history of its own. It seeks to answer many questions: Who should govern, over whom, and by what means? How do we stop abuse of power by those in power? Should government be “large” or “small”?

The field has numerous famous protagonists, but Thomas Hobbes is noteworthy for his influence. Hobbes was born in 1588, and lived through one of the most turbulent times in British politics. The English civil war (1642 – 1649) pitted opposing religious and political ideologies against each other; it also took

place against the backdrop of the Protestant Reformation and religious wars that had swept through Europe over the previous century.

Thomas Hobbes' most famous work is *Leviathan*, written in 1651<sup>4</sup>. In it, he develops his ideas about a whole range of issues, but all focused around his philosophy of sovereignty and the state. His style, in which he broke the state down into component parts and analysed them, was more scientific than previous political philosophers, and was one that became popular with later philosophers. Some of his ideas, especially his idea of a "social contract," were to be debated and developed by generations of future intellectuals.

### ***Hobbesian understanding of the basis of government***

In the course of *Leviathan*, Hobbes presents two radically different approaches to government. According to one approach, government is something that we choose. In the other, it is something that is forced upon us.

Hobbes is most famous for the first approach in which he shows that government is something beneficial, which we choose. Hobbes develops this approach in an innovative way. Rather than ask what functions a state should perform, as previous philosophers had done, he asks a totally different question – What would life be like without the state? He tries to imagine how humans would exist in their "state of nature," namely, in a world without any political system. He presents a very cynical picture of what life would look like. There would be nothing to stop people fulfilling their own selfish needs. People would let greed, jealousy and anger dictate their interactions, and would steal, attack and murder in their quest to satisfy their desires. In this famous passage, he summarises how terrible man's condition would be:

In such condition, there is no place for industry; because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, no use of the commodities that may be imported by sea; no commodious buildings; no instruments of moving, and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death: and the life of man, solitary, poor, nasty, brutish and short.<sup>5</sup>

He uses this to explain why governments exist. People realised that life was unliveable in such conditions, and agreed with each other to form a government who will create law and order. Humans make a "social contract,"

giving up on some of their rights, and creating a sovereign over themselves. This approach is called "Sovereign by Institution" – the sovereign is something that people chose to establish as a logical choice to make life better.

However, Hobbes also provides another totally different explanation of our subservience to a sovereign, which he calls Dominion by Conquest<sup>6</sup>. Hobbes notes that when a sovereign conquers a new area, he has the ability to kill anyone who lives there. Therefore, when he does not kill the people, they are obligated to listen to his command, as they are only alive at his behest. People do not choose this form of rule – they are simply forced to keep the king's rule by the circumstances in which they find themselves.

Thus Hobbes provides two options. The first, that government is something that is societally agreed upon, mutually beneficial to everyone; the second, that individuals must listen to the government against their will, out of recognition of what the sovereign could have done to them.

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***Hobbes' first option is that government is something that is societally agreed upon, mutually beneficial to everyone; the second option is that individuals must listen to the government against their will***

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### ***The basis of Dina DeMalkhuta Dina***

Does halakha have an opinion as to why we should listen to the sovereign? Halakha is primarily a legal, rather than a philosophical system – it states clearly that we must listen to the sovereign, but can we learn from halakhic sources why this is?

Whilst still staying within the legal discourse, the discussion of Dina DeMalkhuta Dina by the classical commentators does contain elements that could be defined as political philosophy, which can help us develop a halakhic understanding of why we should listen to the sovereign.

The law of Dina DeMalkhuta Dina appears in four different places in the Babylonian Talmud<sup>7</sup>, but never with a source. The commentators debated the source for the rule, pondering whether it was a Biblical or Rabbinic commandment.

Different theories developed. Some said that there exists a Biblical list of the legitimate rights of the king

in the Book of Shmuel<sup>8</sup>, of which this principle was an extension. Others said that the existence of a sovereign is part of the Noahide commandment to have a legal system<sup>9</sup>. However, Rav Nissim of Girona (the Ran) and Rav Asher Ben Yehiel (the Rosh) present another option. They say that the rule of the sovereign is forced upon a person, and he has no choice but to agree to it.

The Ran writes<sup>10</sup>:

The Law of the sovereign is Law, because the land belongs to the sovereign, and he can say "If you do not listen to my rules, I will throw you out of my land.

The Rosh presents a similar idea<sup>11</sup>.

The reason why the law of the sovereign is law is because the land belongs to the king. Even when a regular person owns land, another person cannot benefit therefrom, except on the terms of the owner of the land.

This is a less strong formulation of the same idea of the Ran - because the land belongs to the king one must obey his rules. (He does not explicitly say that it is because the person can throw him out; rather it is simply based on the fact he is living on someone else's property.)

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*The Ran and Rosh say that the law of the land is forced upon people, rather than being something to which they freely agree*

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The explanation of the Ran and the Rosh of Dina DeMalkhuta Dina is very similar to Hobbes' second explanation of government. The threat that the subject is faced with is somewhat different for each of them. For Hobbes, the king has the ability to kill his subjects. For the Ran, the king has the ability to throw them out of their land. For both, it is the agreement of the sovereign not to take such extreme actions against his people that obligates them to obey his laws.

This explanation of Dina DeMalkhuta Dina is not merely theoretically interesting, but has a very significant ramification according to the Ran<sup>12</sup>. If the basis of Dina DeMalkhuta Dina is the ability of the king to eject a subject from his land, the rule of Dina DeMalkhuta Dina does not apply to Jewish rulers in the land of Israel. This is because Israel belongs to all Jews, and no Jewish government can tell Jews to leave any part of the Land of Israel. Seeing as there is no ability to eject people from the land, the basis of Dina DeMalkhuta Dina does not exist. (This naturally feeds

into the debates about Disengagement and Land for Peace, which are beyond the scope of this article.)

We can see that the Ran and Rosh say that the law of the land is forced upon people, rather than being something to which they freely agree, just like Hobbes' second explanation of sovereignty.

However, other commentators provided an alternative basis for Dina DeMalkhuta Dina. Rather than Dina DeMalkhuta Dina being binding against people's will, these commentators said that the law of the land is binding, because people agree to it of their own accord. Rav Shmuel ben Meir (the Rashbam) in Bava Batra explains the basis for Dina DeMalkhuta Dina in this way<sup>13</sup>:

All laws of taxes and systems of justice that kings commonly use in their kingdom are law, because all the people willingly accept the laws of the sovereign.

The Hatam Sofer<sup>14</sup> expands upon this statement of the Rashbam and says that having a system of law is beneficial for society. This is similar to Hobbes' first argument; the existence of sovereignty and law is something everyone wants, and is made by our choice, not by coercion.

The Hatam Sofer goes one step further<sup>15</sup>. He argues that even those who subscribe to the view that Dina DeMalkhuta Dina is something we accept against our will, will agree that there also exist examples of Dina DeMalkhuta Dina that are based on a free choice agreement of citizens for the betterment of society. As mentioned above, the Ran, by saying that Dina DeMalkhuta Dina was based on the ability of a sovereign to eject his people, had said that there is no Dina DeMalkhuta Dina in the land of Israel.

The Hatam Sofer writes<sup>16</sup>:

It appears to me that (the Ran) only differentiates (between the land of Israel and other places) with regards to taxes that are against the people's will..... but the Ran would agree that rules of the sovereign like that one in Bava Batra (a legal ruling about the sale of fields), are binding everywhere, because they are beneficial for society (and thus are binding due to the fact that people agree to them).

The Hatam Sofer differentiates between the sovereign instituting a system of taxation and instituting a system of law. Taxes may very well be against someone's will – therefore, according to the Ran, they would not be binding in the land of Israel. However, a legal system is beneficial for everyone, and this would be binding

everywhere. With this type of law, there is no difference between Israel and anywhere else.

The Rashbam and Hatam Sofer contend that the basis for *Dina DeMalkhuta Dina* is the free choice agreement to something mutually beneficial, like Hobbes' first argument. It must be pointed out that the Rashbam and Hatam Sofer do not explicitly state *why* it is mutually beneficial. Hobbes had stated that people fear a life of total chaos in the absence of such a system. The Rashbam and Hatam Sofer say that people accept the law of the land because it is mutually beneficial, but do not express an opinion as to whether life would be unliveable without such a system. John Locke famously argued with Hobbes – he claimed that having a sovereign is indeed beneficial, but life is not unliveable in the absence of one<sup>17</sup>.

### ***The limitations of Dina DeMalkhuta Dina – the case of taxation***

Until now we have seen that the two directions taken by Hobbes to explain sovereignty - as something we agree to, or as something we are forced into, are similar to two major schools of thought explaining the principle of *Dina DeMalkhuta Dina*. However, in this next section, we will see a divergence.

A major area of discussion existant in the Talmud itself, is the limits that are placed upon the sovereign. The Talmud writes that if the tax that the King collects is not a set amount, but rather the tax collector has free reign, it is not considered a binding rule of the King – the “*Dina DeMalkhuta*” is not “*Dina*”<sup>18</sup>. The Rambam says that taking extortionate amounts from taxpayers is legally defined as theft<sup>19</sup>. The question of the legitimacy of extortionate tax was certainly not merely a theoretical question, but something that was a reality at many points in Jewish history. Jews were often forced to pay large taxes, either annually or as a one-off. In fact, this reached such an extent, that the Maharik writes that if a King places a higher tax on Jews than non-Jews, that in itself is not enough to justify it as extortionate, as it is normal practise<sup>20</sup>! Nevertheless, the basic idea that taxes must not be extortionate is clear – in fact, the phrase coined by the commentators is that “*Dina DeMalkhuta Dina*” the law of the kingdom is law, but “*Chamtenuta DeMalkhuta*”<sup>21</sup>, the theft by the kingdom, is not “*Dina*,” binding law.

Other limitations were also discussed. Some said that laws must be somewhat similar to the laws of other countries to be legitimate<sup>22</sup>. Others said that only laws that are fixed, rather than one off acts, are considered legitimate laws<sup>23</sup>.

For Hobbes, any such discussion is anathema. He advocated for a total sovereign, with no limitations,

legal, economic, or even moral, on his sovereignty<sup>24</sup>. Hobbes writes that because people create the sovereign, then they are legitimising anything that he does. They created him to be sovereign over them, and even as he takes their money and acts violently, he is merely fulfilling his mandate to act as sovereign, a mandate he was granted by the people.

This view of Hobbes has been criticised by many. John Locke argued that even after the creation of a sovereign, citizens maintain their inalienable rights to life, liberty and property<sup>25</sup>. Halakha also differed from Hobbes' view in this area. Halakha believed that we must listen to the laws of the sovereign, but there are many limitations on what the sovereign can legislate legitimately.

### ***In Summary***

This article compared the principle of *Dina DeMalkhuta Dina* with core ideas presented in Hobbes' *Leviathan*, highlighting some similarities and one difference. Rabbinic thought recognised that there are two ways of perceiving government – as something we create, and as something we are forced to accept. This duality is analogous to Hobbes' presentation of Sovereign by Institution and Dominion by Conquest. However, whereas Hobbes advocated for total sovereignty, Halakha places numerous limits upon the sovereign.

### ***Modern Relevance***

Numerous articles have been written about Judaism and politics covering Jewish approaches to freedom<sup>26</sup>, liberalism<sup>27</sup> and democracy<sup>28</sup>.

There are two reasons why this subject is increasingly important. Firstly, for the first time in two millennia, the Jewish people now have a state of their own which requires an engagement with the world of politics in a far more significant way than before.

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### ***The Jewish people now have a state of their own which requires an engagement with the world of politics in a far more significant way***

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Is there a Jewish view on electoral systems, government structure, the division of religion and state, social policy and a whole host of other issues that pertain to the running of a state? What does Judaism have to say about different systems of governance (theocratic, democratic, monarchic, etc.) and different political philosophies (liberalism, conservatism,

libertarianism etc.)? Judaism in the past has engaged with many areas of non-Jewish wisdom - philosophy and science stand out in particular. This century, with its gift of a State of Israel, obligates us to engage with politics in the hope of building a State in a successful, and Jewish, way.

Secondly, it cannot be ignored that in the diaspora Jews have reached a level of political significance that is possible unrivalled at any point in Jewish history. In recent times in the UK there have Jewish members of government and of the opposition as well as members of the House of Lords. A few years ago, 12 out of 100 Senators in Congress were Jewish<sup>29</sup>. There have been numerous Jewish staffers in the White House - Barack Obama's former political strategist, David Axelrod, and former Chief of Staff, Rahm Emmanuel, are both Jewish. Thus the potential for a Jewish contribution to non-Jewish society is at a historic high, and should be seen as an opportunity.

Understanding Judaism's view on government, the function of the state and the construction of societies, can help us develop our own state, and contribute to those states in which we reside, in keeping with Jewish tradition. Understanding Jewish views on politics are vital if we are to fulfil our religious mandate to engage in Yishuvo Shel Olam, bettering the world.

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<sup>1</sup> Letter of Rav Sherira Gaon

<sup>2</sup> TB Beitsa 16b

<sup>3</sup> TB Bava Kama 113a

<sup>4</sup> Hobbes, T., "*Leviathan, or the Matter, Forme, and Power of a Commonwealth, Ecclesiasticall and Civil*", 1651 (known henceforth as *Leviathan*)

<sup>5</sup> Hobbes, T., "Of the Natural Condition of Mankind, as Concerning their Felicity and Misery," (Chapter 13), *Leviathan*

<sup>6</sup> Ibid "Of Dominion Paternal and Despotical" (Chapter 20)

<sup>7</sup> Bava Kamma 113a, Gittin 10a, Nedarim 28a, Bava Batra 54b (all in the Talmud Bavli)

<sup>8</sup> Kiryat Sefer, Gezeila Chapter 5

<sup>9</sup> Even Ha'Azal, Nizkei Mamon 8:5

<sup>10</sup> Ran, Nedarim 28a

<sup>11</sup> TB Nedarim 3:11

<sup>12</sup> Ibid.

<sup>13</sup> Rashbam, Bava Batra, 54b

<sup>14</sup> Shut Hatam Sofer, Choshen Mishpat 44

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Locke, John, Essay two, Chapter three – "Of the State of War", *Two Treatises of Government*, 1689

<sup>18</sup> TB Bava Kamma 113a

<sup>19</sup> Rambam, Hilkhos Gezeila VeAveida 5:11

<sup>20</sup> Quoted in Shulhan Arukh Hoshen Mishpat 269:6 by the Rema.

<sup>21</sup> See for example, Shut Tsits Eliezer, 16:49

<sup>22</sup> Nimmukei Yosef, Bava Batra 54b

<sup>23</sup> Ramban, Bava Batra 55a

<sup>24</sup> Hobbes, T. "Of the Rights of Sovereigns by Institution," *Leviathan*, 1651

<sup>25</sup> Locke, John, Essay Two, Chapter Nine – "Of the Ends of Political Society and Government", *Two Treatises of Government*, 1689

<sup>26</sup> For example Fania Oz Salzberger, "The Jewish Roots of Western Freedom," *Azure Journal* (Issue 13), 2002, p. 88-132

<sup>27</sup> For example, Allan Arkush, "Theocracy, Liberalism and Modern Judaism," *The Review of Politics* (Volume 71, Issue 4), 2009

<sup>28</sup> For example, Prof Yedidya Stern, "State, Law and Halakha" *Israel Democracy Institute Policy Papers*

<sup>29</sup> Faith on the Hill, *Pew Forum Religion and Public Life Project* (2011)

# Shiurim from Tractate Megilla

RABBI DANIEL ROSELAAR

Rabbi Roselaar delivers an in-depth gemara shiur every Shabbat afternoon on a topic that emerges from the previous week's daf yomi cycle. The following two topics are a summary of two shiurim that discussed topics from Tractate Megilla, which concluded in Av 5774.

## *Women's Obligation to Read the Megilla (4a)*

The requirement to read the Megilla on Purim is a positive time-bound mitzva and as such we should expect that women are not bound by this mitzva. However, the Gemara (4a) states that women are obligated in the mitzva of Megilla because they were also included in the miracle – אף הן היו באותו הנס. The way in which women were included in the miracle is the subject of debate amongst the Rishonim. Tosafot<sup>1</sup> cites the explanation of Rashbam that the Purim miracle occurred as a result of Esther's intervention. Because of the role that a woman played in securing the victory, women are included in the requirements to celebrate. Tosafot challenge this interpretation on the grounds that the expression אף הן implies that the women were *also* part of the miracle, but it doesn't imply that they played a critical role. They thus suggest that women have an obligation regarding Megilla because they were also *beneficiaries* of the miracle – because they were under threat as much as the men they were also obliged to celebrate their deliverance.

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## *Because of the role that a woman played in securing the victory, women are included in the requirements to celebrate*

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Despite the seemingly unambiguous statement that women must participate in the reading of the Megilla, there is discussion amongst the Rishonim regarding the extent of this obligation. Tosafot presume this means that women have the same degree of obligation as men have and that consequently, women may read the Megilla on behalf of men. This position is supported by the Gemara at the beginning of Massekhet Arakhin that states that the expression in a braita that everyone is allowed to read the Megilla [for others] includes women and that the most

straightforward understanding of that statement is that women may read the Megilla on behalf of men<sup>2</sup>.

However, Tosafot, as well as several other Rishonim, cite the view of Behag who maintains that women cannot read the Megilla on behalf of men. This view is supported by the Tosefta<sup>3</sup> which rules that an androgynous person cannot read the Megilla on behalf of men (since he may not have the halakhic status of a male) and thus the same rule should also apply to a woman (who clearly does not have the halakhic status of a male).

Rambam<sup>4</sup>, and several other Rishonim, rule in accordance with the Tosafot that a woman may read the Megilla for a man. The Shulhan Arukh quotes the Rambam but also cites the alternative view – *yesh omrim* – that women cannot discharge the mitzva for men<sup>5</sup>. According to the normal rules of psak the first opinion is the normative view and Rav Ovadiah Yosef rules accordingly<sup>6</sup> and the Arukh Hashulhan<sup>7</sup> also indicates that this is the halakha. However it seems to be that in practice the second opinion is generally followed and unless there are exceptional circumstances women do not generally read the Megilla for men.

Numerous Rishonim and Aharonim question why Behag hold that women cannot read the Megilla on behalf of men. Since the straightforward understanding of the sugya is in accordance with Tosafot's opening comments, what compelled Behag to reach a different conclusion?

According to some of the Rishonim, the Behag himself explained why women cannot read for men. Rashba<sup>8</sup> and Rosh<sup>9</sup> quote him as saying that women's obligation is limited to *listening* to the reading of the Megilla, and they do not have an obligation to actually *read* it. [According to R' Hananel it is not a *hiddush* of the Behag but the Gemara itself explicitly states that women have an obligation of hearing the Megilla and not reading it.<sup>10</sup>] However, we still need to understand why this should be the case. If אף הן היו באותו הנס obligates women in the mitzva of Megilla, why should they have a lesser level of obligation – hearing rather than reading – than men? Arukh Hashulhan suggests that this would be because the very expression אף הן, that women *also* have a duty, implies that their obligation is a sort of addendum to the obligation that men have and thus necessarily lesser in quality. A further implication of this view concerns the

correct text of the brakha that women should recite when reading or listening to the Megilla. According to this understanding of the Behag they should not recite *al mikra Megilla* since they don't have an obligation to read it and instead they should recite *lishmoa megilla*<sup>11</sup> and the Rama codifies the halakha accordingly<sup>12</sup>.

Other Rishonim endorse the Behag's halakhic conclusion, but for a very different reason. Ritva writes that this is because it is incompatible with congregational dignity<sup>13</sup> (*kavod hatzibbur*) for women to read the Megilla for men<sup>14</sup>. Tosafot in Massekhet Sukka (38a) make a similar observation and the Magen Avraham<sup>15</sup> and Arukh Hashulhan<sup>16</sup> appear to concur. In theory it should thus be permissible for them to do so in a private context, but nonetheless the restriction is extended to all contexts in order to achieve uniformity of practise. Furthermore, according to this reason women should recite the same brakha that men recite since they do have an obligation to read.

The Turei Even maintains that women are required to fulfil the mitsva in exactly the same manner as men, but the level of their obligation is lower. He argues that the concept of *אף הן היו באותו הנס* only generates a Rabbinic obligation. Men are obliged to read the Megilla *midivrei kabbala*, which is almost the same as a Torah obligation. Women were initially excluded from this obligation because it is a positive time-bound mitsva. However Hazal subsequently imposed a Rabbinic requirement they participate in the mitsva because of their association with the miracle that is being commemorated. Accordingly, the reason why women cannot read Megilla for men is simply because of the general rule that a person with a Rabbinic obligation cannot fulfil a mitsva on behalf of someone else with a Biblical obligation. [According to this approach also women would recite the normal brakha of *al mikra Megilla*.]

The Or Sameah maintains that it is because of a difference in the nature of their respective obligations that women cannot discharge the mitsva on behalf of men. Whilst both men and women have an obligation to read the Megilla, women may "read" it by heart, whilst men must read it from a text. He reaches this conclusion because of the Gemara (17a) which derives the obligation to write the text of the Megilla (and thus to read that text) from an association with the mitsva to write the mitsva of eradicating Amalek. Since (according to Sefer HaHinuch) women are not obliged to eradicate Amalek, they are thus not obliged to write the text of the Megilla and consequently they may recite it by heart. Therefore the reason why women cannot read Megilla for men is because they only have a mitsva to recite the Megilla, whereas men have a mitsva to read it from a text.

The Marheshet (OH 22) notes that the Gemara explains that Hallel is not recited on Purim because the requirement to give thanks and praise to the Almighty is discharged through the reading of the Megilla – *kriata zu*

*hilula*. Thus for men, the reading of the Megilla accomplishes two mitsvot – Megilla and Hallel. Women are exempt from reciting Hallel and thus cannot read the Megilla on behalf of men – not because of the Megilla dimension of the reading but because of the Hallel dimension of the mitsva. Accordingly, *in extremis* where a man does not have the opportunity to read the Megilla himself or to hear it from another man, perhaps he could hear it from a woman.

Tosafot states explicitly that even according to Behag a woman is able to discharge the mitsva on behalf of other women and such a view is consistent with the previous discussions<sup>17</sup>. Contradicting this, the Magen Avraham<sup>18</sup> cites a Midrash to the effect that a woman cannot even read the Megilla for herself and the Mishna Berura appears to endorse this, only noting that if there is no man available to read the Megilla to her, a woman should read it herself<sup>19</sup>. Rav Soloveitchik (Hararei Kedem 1:200) suggests that this view is based on the opinion of Haghahot Maimoniot and a passage in the Yerushalmi that indicates that a man has an obligation (perhaps of *pirsumei nisa*?) to read the Megilla to the women in his family. Accordingly, in principle, a woman does not have any independent requirement to hear the Megilla on Purim and her obligation to do so is only as a function of her husband's obligation to read it to her. Thus it would follow that she can only fulfil her mitsva by being tertiary to someone else's reading<sup>20</sup>. However, it would appear that this view represents a minority opinion which is not in accordance with how most Rishonim understand the sugya.

### *The Absence of Hallel on Purim (14a)*

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*Both Hanuka and Purim have a shared emphasis on thanking and praising the Almighty for the miracles that he wrought and the concept of pirsumei nisa, as well as the recitation of Al Hanisim and the brakha of She'asa Nisim*

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There are a number of obvious parallels between Purim and the other festivals in general, such as the mitsvot of simha and seuda, and between Purim and Hanuka in particular. Both Hanuka and Purim have a shared emphasis on thanking and praising the Almighty for the miracles that he wrought and the concept of *pirsumei nisa*, as well as the recitation of Al Hanisim and the brakha of She'asa Nisim, is unique to these festivals<sup>21</sup>. Thus it is somewhat surprising that Hallel, which is recited on all other festivals, is not recited on Purim. The Gemara (Megilla 14a) suggests three explanations as to why this is the case –

i) Because the Purim miracle took place outside of Erets Israel and after the Jewish people entered Erets Yisrael miracles that occurred in any other lands were not valid as motivators for Hallel.

ii) Because the mitsva of Hallel is discharged with the reading of the Megilla – *kriata zu hilula* (Rav Nahman).

iii) Because even though the Jews of Persia were saved from annihilation they remained subservient to King Ahashverosh – *akatei avdei Ahashverosh anan* – and thus could not proclaim in Hallel that they were exclusively servants of Hashem (Rava).

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### *There are a number of practical implications that emerge from the dispute between Rav Nahman and Rava*

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The first of these reasons is rejected within the sugya itself, because of a braita that states that it does not hold true after the Jewish people were exiled from Erets Israel and thus at the time of the Purim story miracles that occurred elsewhere were valid motivators for Hallel. The second and third reasons are the subject of a dispute between the Rishonim as to which is the authoritative explanation. Rosh and Rif indicate that Rava's explanation is definitive, particularly since their versions of the sugya present this view as an unrefuted challenge to Rav Nahman, combined with the consideration that Rava was a later Amora than Rav Nahman and thus regular halakhic principles would indicate the the halakha should follow this view<sup>22</sup>. On the other hand, Rambam rules in accordance with Rav Nahman<sup>23</sup>.

Which explanation should be regarded as authoritative will generate halakhic implications as follows –

i) Meiri agrees with Rambam that in principle there is a requirement to recite Hallel on Purim but that *kriata zu hilula*<sup>24</sup>. Accordingly, he suggests that a person who finds himself without a Megilla on Purim should therefore recite Hallel. Whilst he will clearly not have in any way fulfilled the mitsva of reading the Megilla, he will have at least fulfilled one aspect of it, i.e. the requirement to give praise to Hashem for the miracles that occurred. The Shaarei Teshuva on the Shulhan Arukh references this view but notes that it is not given halakhic credence by other poskim<sup>25</sup>. He suggests how it might be possible to dismiss the Meiri's opinion even if one accepts the Rambam's ruling that *kriata zu hilula*. *Kriata zu hilula* doesn't mean that in principle there is an obligation to recite Hallel, which is discharged by reading the Megilla. Rather, it means that Hazal never enacted a requirement that Hallel should be recited on Purim, since normally the reading of the Megilla is a valid substitute<sup>26</sup>. His

conclusion is that in the absence of a Megilla one should recite Hallel, but without a brakha.

ii) Even though Megilla is a positive time-bound mitsva, the Gemara (4a) asserts that women are still obliged to read it because they were part of the Purim miracle. The Behag holds that even so, they cannot read the Megilla on behalf of men<sup>27</sup>. As noted in the previous *shiur*, various reasons are advanced as to why this should be so. The Marheshet suggests that the reason is because *kriata zu hilula*<sup>28</sup>. The mitsva of Megilla has two components – the specific mitsva of reading the text of the Megilla, as well as the recitation of Hallel. Though women are included in the first component, they are excluded from the second component because it is a regular time-bound positive mitsva. Accordingly, since one who is exempt from a particular mitsva cannot perform that mitsva on behalf of one who is obligated with the mitsva they cannot read the Megilla for men<sup>29</sup>. However, if the omission of Hallel on Purim is because *akatei avdei Achashverosh anan*, women would be able to discharge the mitsva of Megilla on behalf of men.

[It is also relevant to consider whether the concept *kriata zu hilula* means that mitsva of Hallel is fulfilled by reciting the Megilla, or whether it means that because we read the Megilla there is no further requirement to recite Hallel. If the latter is the case the *nafka mina* of the Marheshet becomes moot, as do the implications discussed in the rest of this *shiur*.]

iii) The Klausenberger Rebbe<sup>30</sup> suggests that the dispute between Rav Nahman and Rava might serve as the background to a dispute between the Shulhan Arukh and the Rama<sup>31</sup> about when a Brit Mila should be performed on Purim. The Shulhan Arukh maintains that it should take place at the very end of the service, as is usually the case. But the Rama holds that it should take place after the *leining* from the Torah and before the reading of the Megilla. Amongst several other suggestions (some more plausible than others), he suggests that the Shulhan Arukh might hold that the reading of the Megilla also fulfils the mitsva of Hallel and since ideally there should be no significant break between the Amida and Hallel (based on a Tosefta in Menahot), a Brit Mila should be delayed until the end of the service. On the other hand, Rama might require the Brit to be performed between the Amida and the Megilla precisely in order to reject the notion that *kriata zu hilula*.

iv) R' Betsalel Zolty (Mishnat Yaavets) notes that according to the Tur the Megilla should ideally be read whilst standing<sup>32</sup>, though other Rishonim maintain that it is equally legitimate to read it sitting down. He suggests that the Tur's opinion might be a function of *kriata zu hilula* since Hallel ought to be recited whilst standing<sup>33</sup>.

v) Rav Y D Soloveitchik (Hararei Kedem 1:192) references the view of the Shulhan Arukh<sup>34</sup> that if a minyan is not present, if possible, each individual should

read the Megilla for himself, rather than listen to the reading of a shaliah tsibbur. The Magen Avraham contests this ruling and prefers that in all instances one person should read on behalf of all present because of the concept of *berov am hadrat melekh*<sup>35</sup>. However, he explains that the view of the Shulhan Arukh is that in this regard the Megilla has the same rules as the Amida prayer where the shaliah tsibbur cannot recite the tefilla on behalf of a competent person in the absence of a minyan. Rav Soloveitchik concurs with this methodology but maintains that the comparison should actually be with Hallel rather than tefilla, because of the principle of *kriata zu hilula* (and thus if the halakha is in accordance with Rava the concern of the Shulhan Arukh would be redundant).

vi) Rav Soloveitchik suggests a further implication of maintaining *kriata zu hilula* in explanation of the minhag that the congregation recite four verses of the Megilla out loud before they are repeated by the shaliah tsibbur. Though some Rishonim<sup>36</sup> suggest that this is in order to ensure that the congregation remains alert<sup>37</sup>, Rav Soloveitchik advanced an alternative explanation. A characteristic of Hallel is that parts of it are recited responsively by the shaliah tsibbur and the congregation (perhaps so that everyone takes an active part in praising Hashem for His kindnesses). If the Megilla has the status of Hallel then it too requires a responsive dimension, fulfilled by the recitation of these verses.

### **Number of Olim Called to the Torah (21a)**

The Mishna at the beginning of the third perek of Tractate Megilla<sup>38</sup> lists the number of people who are called to the Torah on the various occasions when there is *leining*. On Monday and Thursday mornings, as well as on Shabbat afternoon, three people are called up. On Rosh Hodesh and Hol Hamoed four people are called. Five are called on Yomtov, six on Yom Kippur and seven on Shabbat mornings. The Mishna is very clear that on all occasions no fewer people than the number mentioned may be called up. It is also clear that when three or four people are to be called to read this number cannot be exceeded. Likewise, it is clear that on Shabbat morning more than seven people may be called up. However, there is some ambiguity about whether more than the statutory number may be called up on Yomtov and Yom Kippur. The exact formulation of the Mishna is –

On Yomtov – five, on Yom Kippur – six, on Shabbat – seven. We don't call up fewer than that number, but we may exceed it, and we read a haftara from the Prophets.

The question, and point of contention amongst the Rishonim, is whether the final clause – “but we may exceed it” – refers only to Shabbat, or also to Yomtov and Yom Kippur.

Rashi explains that on the occasions when three or four people are to be called up this number cannot be

exceeded because of *bittul melakha* – people need to hurry to work and cannot tarry in shul whilst the service is extended. This implies that on festivals, when there is no concept of *bittul melakha* because people are obviously not hurrying to work, more people can be called to the Torah. This conclusion fits well with the text of the Mishna since the final clause cited states that a haftara is read from the Prophets. Since this is true on Yomtov and Yom Kippur as well as on Shabbat it is logical to suggest that the previous clause, that we may exceed the minimum number of call-ups, also applies to all the occasions mentioned.

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*On festivals, when there is no concept of bittul melakha because people are obviously not hurrying to work, more people can be called to the Torah*

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Ran cites the view of Rashi, but also cites an alternative opinion to the effect that extra people may be called up only on Shabbat and not on any other occasions<sup>39</sup>. The reason for this is a belief that the number of people called up on each occasion is a reflection of the relative sanctity of the day and that days with greater sanctity must be observed by calling up a greater number of people. Were additions to be made on Yomtov or Yom Kippur, it wouldn't be clear that they have a lesser sanctity than Shabbat.

Rambam rules in accordance with Rashi<sup>40</sup>. Rama in the Shulhan Arukh cites the permissive view of Rashi and Rambam, as well as the restrictive view of the Ran<sup>41</sup>. He writes that the minhag is in accordance with the latter opinion, except on Simhat Torah when many people are called to the Torah.

Two suggestions could be advanced to explain why the Rama is more lenient on Simhat Torah than on any other occasion. Most simply we could say that essentially he believes that the halakha is in accordance with Rashi and Rambam. Even though the minhag is in accordance with the dissenting view, this will only apply when there are no compelling reasons to follow the more permissive approach. Since everyone in shul wants to receive an aliya on Simhat Torah, and since the reason to call everyone up is a function of *kavod haTorah*, it is appropriate in such circumstances to follow the essential halakha and to disregard the minhag.

An alternative approach, based on comments attributed to R. Y D Soloveitchik, is to suggest that in a certain sense the *leining* on Simhat Torah has the status of a Shabbat *leining* (for which additional people may be called up) rather than a Yomtov *leining* (for which the number of call-ups is restricted). A general characteristic of the

Yomtov *leining* is that it reflects the motifs of the day. E.g. on Shavuot we read about *Matan Torah* and on Pesah we read about *Yetsiat Mitsrayim*. On the other hand, the characteristic of the Shabbat *leining* is that it begins where the previous week's sidra concluded. The kria haTorah on Simhat Torah does not seem to reflect any of the motifs of the day and is actually a direct continuation of the reading on the last (normal) Shabbat. Thus it may have the status of a Shabbat sidra and consequently additional people may be called to the Torah<sup>42</sup>.

Significantly, though the statutory number of olim may be exceeded on Shabbat, the Magen Avraham<sup>43</sup> quotes the view of the Rashbats that this rule might have been limited to the Mishnaic era when the only brakhot on the Torah were recited by the first and last people to be called up, each reciting one brakha. However, since Talmudic times all the olim recite two brakhot and the introduction of extra call-ups would result in an unnecessary increase in brakhot. The Magen Avraham himself writes that this theory is implausible because the Rishonim make reference to additional aliyot, even though in their times it was already a well-established practise for all the olim to recite both brakhot. Nonetheless, he does counsel that unless there are compelling reasons additional aliyot are best avoided<sup>44</sup>.

According to both Rashi and the Ran it would seem quite clear that at least on regular weekdays and also on Rosh Hodesh and Hol Hamoed the number of people to be called up is fixed and cannot be exceeded. However, the Hagahot Maimoniot<sup>45</sup> cites the Riva who says that if there are multiple hatanim in shul on a Thursday morning then an extra aliya can be made in order to accommodate them all. The reason given for this is because as far as the hatanim are concerned their wedding day (or sheva brakhot period) is like a festival and on festivals more people are called to the Torah! Astonishing though this view is, Rama codifies it in the Shulhan Arukh (OH 135:1). However, most Aharonim reject this position. The Taz<sup>46</sup> objects to it on the grounds that whilst it may be a festive occasion for the hatanim involved the festivities are limited to those individuals and are not shared by the rest of the congregation, so it seems strange that the Yomtov of individuals should define the practise for the everyone who is in shul. Furthermore, whilst there is no *bittul melakha* for the hatanim, that is clearly not the case for the rest of the people in shul who would be delayed by the addition of a further aliya<sup>47</sup>.

Rav Soloveitchik advances a further reason why the Rama's ruling is so roundly rejected. He proposes that even on Shabbat and Yomtov there needs to be a halakhic reason to justify additional aliyot and suggests that increased involvement in the mitsva of Talmud Torah (by calling up more people) is a function of the requirements of honouring, enjoying and rejoicing that apply on these occasions. In other words, additional aliyot are not permitted simply because it is a festival, but because they

reflect the intrinsic sanctity of the day. Accordingly it becomes clear why the presence of a hatan cannot justify additional call-ups. Even though it is a Yomtov for him (and even if the whole congregation were to be somehow included in his Yomtov), it is only a festival in a limited sense, i.e. that he has to relax and enjoy himself with his new wife. Unlike on conventional festivals, there is no requirement for him to have an enhanced engagement with Hashem and thus there is nothing to justify additional readings from the Torah.

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*Even though it is a Yom tov for the hatan, there is no requirement for him to have an enhanced engagement with Hashem*

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Only the Arukh Hashulhan<sup>48</sup> defends the ruling of the Rama in this case, commenting that the takana of Hazal can be disregarded on an occasional basis with the agreement of the congregation.

### **The Yomtov Leinings (30b)**

The Mishnayot at the end of Tractate Megilla discuss the *leinings* on various occasions throughout the year. The list as it appears in the Mishna (30b) is somewhat different to what we are familiar with and our practice is in accordance with the braita that appears in the accompanying Gemara (31a). The difference between the two lists is noteworthy in that the readings dictated by the mishna are those passages which prescribe the observance of the festivals, whereas the readings dictated by the braita are (generally) descriptive of events that took place on the festivals which are being observed.

It is further noteworthy that both lists indicate that only one passage is read on each occasion, and there is no reference to a second Sefer Torah being utilised for a sacrificial reading from Parshat Pinhas. Tosafot<sup>49</sup> and other Rishonim comment on this and state that the earliest source for our additional Maftir reading is in the siddur of Rav Amram Gaon. A homiletical reason is proposed for why it was introduced. According to the Gemara on 31b the Almighty told Avraham that if the Jewish people were to sin in the future they would be able to repent and bring a sacrifice as atonement. Avraham responded to this assurance by asking what would happen if the people were unable to offer *korbanot* because of the absence of the Beit Hamikdash. The answer that he was given was that they would be able to read the sacrificial passages from the Torah and would thus be forgiven. Accordingly, we have a model for reading the sacrificial passages in lieu of actually offering the sacrifices.

With reference to the practise of reading the sacrificial passage the Ran<sup>50</sup> asks why we don't do so every Shabbat

of the year and presents four possible answers to this question –

i) The homiletical model cited by Tosafot states that the purpose of reading the *korbanot* is in order to achieve atonement. The Shabbat offering is unique amongst the Musaf offerings in that it makes no reference to a sin-offering or atonement. Consequently it doesn't fit the model and there is no reason to read it.

ii) The passage detailing the Shabbat Musaf offering is only two verses long. Since we never read less than three verses from the Torah there is no way that we could *lein* this portion. The Ran writes that we could not read the preceding or succeeding verses because they are not relevant to the occasion. However, this explanation is difficult to accept because the preceding verses describe the daily *korban* which certainly was offered on Shabbat, so there is no reason why those verses could not be read in addition to the two verses of the Musaf offering.

iii) Since there is a requirement that the haftara should always share a common theme with the portion that was read from the Torah, reading about the Musaf sacrifice every Shabbat would mean that the haftara would always need to be related to Shabbat. Since this would severely limit the number of passages that could be chosen as a haftara, no such reading was instituted. This explanation is also difficult since there are many occasions when the haftara is not related in any way to the *leining*, e.g. Mahar Hodesh when the next day is Rosh Hodesh, as well as the seven haftarot of consolation.<sup>51</sup>

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*Sephardi custom is consistent in that only korbanot that won't be leined from the Torah are recited at the beginning of the service*

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iv) Really there is no reason to read the Musaf offering on any occasion. However, in post-Talmudic times it was introduced on festivals to compliment the other festival-related passages that were being read. Since no other Shabbat-related passages are read on regular Shabbatot there is no particular reason to *lein* the Musaf offering on Shabbat.

Interestingly enough, even though we don't *lein* the sacrificial passages on Shabbat or weekdays, we do read them in the prelude to the daily Pesukei Dezimra. Sephardi custom is consistent in that only *korbanot* that won't be *leined* from the Torah are recited at the beginning of the service. But Ashkenazi practise has an inconsistency in that the Rosh Hodesh sacrifice is also read, but festival sacrifices are not read. The Rama explains that this is in order to further publicise the fact that it is Rosh Hodesh (perhaps in order that people

should remember what additions to make in the *davening*)<sup>52</sup>.

Whilst the Mishna only addresses the *leining* for Yom Kippur morning, the braita tells us that at Minha the passage dealing with the *arayot* is read. There is no obvious thematic link between Yom Kippur and this passage and it is not immediately obvious why it was chosen for this sacred moment of the year. Rashi comments that Yom Kippur is a time when people must abandon their sins. Since the *arayot* are common sins this passage is read as a timely reminder to the congregation. Tosafot offer two explanations –

i) On Yom Kippur the women are dressed in fine clothes in honour of the occasion. Such displays of beauty might lead the men into temptation so therefore the *arayot* are read to remind them not to stray into prohibited relationships<sup>53</sup>.

ii) The Midrash suggests that reading the *arayot* conveys a coded message to the Almighty – just as we are not supposed to reveal the nakedness of certain people, we don't want Him to reveal our nakedness by exposing our sinfulness<sup>54</sup>.

R. Y D Soloveitchik suggests that these two explanations might reflect two different approaches to the status of the *leining* on Yom Kippur afternoon and that there might be a practical difference between them<sup>55</sup>. The first explanation implies that the purpose of the reading is to effect a rebuke of the people, warning them not to sin. The second explanation implies that the reading serves as a form of prayer to the Almighty that He should not judge us harshly. Accordingly, the first explanation means that the *leining* on Yom Kippur afternoon is akin to the *leining* on any other Taanit Tsibbur, whereas the second explanation means that the *leining* reflects the special sanctity of the day. The practical difference between these two positions could be reflected by the dispute between the Shulhan Arukh and Rama about whether the fourth *brakha* after the haftara is recited at Minha<sup>56</sup>. If the *leining* (and haftara) fulfil the function of a regular fast-day reading, then this *brakha* should not be recited. But if it is a function of the special *kedushat hayom* of Yom Kippur then the fourth *brakha* (of *kedushat hayom*) should be recited. Ashkenazi practise, as codified by the Rama is not to say the fourth *brakha*. Rav Soloveitchik suggests that the conclusion of the discussion might explain why the regular cantillation notes are used for this *leining*, rather than the special cantillation notes for the *Yamim Noraim*.]<sup>57</sup>

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<sup>1</sup> Rashi, TB Megilla 4a s.v. she-af

<sup>2</sup> TB Arakhin 2b

<sup>3</sup> Tosefta Megilla, ch. 2

<sup>4</sup> Hilkhhot Megilla 1:1

<sup>5</sup> OH 689:2

<sup>6</sup> See Yalkut Yosef Purim 289:5

<sup>7</sup> OH 289:5

<sup>8</sup> Ad loc

<sup>9</sup> Rosh, Megilla; 1:4

<sup>10</sup> Ad loc

<sup>11</sup> Or according to some, *lishmoa mikra Megilla*.

<sup>12</sup> OH 689:2

<sup>13</sup> Ad loc

<sup>14</sup> Orkhot Hayim / Kolbo cites a view that women cannot read for men because of the prohibition of kol isha

<sup>15</sup> Magen Avraham, OH 689:1, sk. 5

<sup>16</sup> Arukh HaShulhan OH 689:1

<sup>17</sup> Mishna Berura (Shaar Hatziyun) cites the view of the Korban Netanel who derives from Tosafot in Massekhet Sukka that it is inappropriate that a woman should read the Megilla for a group of women. Rav Y H Henkin has addressed this issue in his teshuvot and articles and demonstrates that this is not an accurate understanding of Tosafot. Nowadays many communities, including Kehillat Alei Tzion, have Megilla readings where women read for women and though this shiur has focused on the lomdut of the sugya it has also demonstrated the incontrovertible halakhic legitimacy of this practise.

<sup>18</sup> Magen Avraham, OH 689:1, s.k. 6

<sup>19</sup> Mishna Berura, OH 689:1, sk. 8

<sup>20</sup> Accordingly, one could suggest that a single woman does not have any obligation whatsoever. Nonetheless, Chazal clearly imposed an obligation on all women to hear the Megilla, presumably as some sort of extension of the original obligation

<sup>21</sup> Though it should be noted that Rishonim do reference the concept of *pirsumei nisa* in the context of the mitzva of the four cups of wine at the Seder and there is also a suggestion that the *brakha* of Asher Ge'alanu is in lieu of the *bracha* of She'asa Nisim

<sup>22</sup> Rif 4a / Rosh 1:8

<sup>23</sup> Hilkhhot Hanuka 3:6

<sup>24</sup> Ad loc

<sup>25</sup> Shaarei Teshuva OH 693:3

<sup>26</sup> Rav Hutner (Pachad Yitzchak – Purim 33) suggests that the Hallel of Purim is actually embedded in the Megilla and that it would be inappropriate to recite the usual text of Hallel. Purim is the celebration of a “concealed” miracle and thus it is correct to praise Hashem for the miracle in a “concealed” manner.

<sup>27</sup> See Tos 4a, Megilla, s.v. nashim

<sup>28</sup> OH 22

<sup>29</sup> According to the Marheshet, a woman may read the Megilla at night on behalf of a man since the Hallel dimension is only applicable during the day

<sup>30</sup> Divrei Yatsiv OH 296

<sup>31</sup> YD 262

<sup>32</sup> OH 690

<sup>33</sup> Like the Marheshet cited in the previous footnote, Rav Zolty also observes that this requirement would only apply to the daytime reading

<sup>34</sup> OC 689:5

<sup>35</sup> Magen Avraham, OH 689:5, s.k. 5

<sup>36</sup> Hagahot Maimoniot and Mordekhai

<sup>37</sup> This explanation has always puzzled me – why do we need to ensure that that the congregation is alert for the final verse of the Megilla?

<sup>38</sup> TB Megilla 21a

<sup>39</sup> Ran on Rif 12b

<sup>40</sup> Hilkhhot Tefilla 12:16

<sup>41</sup> OH 282:1

<sup>42</sup> In Harerei Kedem (1:152) Rav Soloveitchik suggests that Parshat Vezot Habrakha is a *Yomtov leining*. One of the defining features of Shmini Atseret (Simhat Torah) is the *brakha* that the king would give to the people. This is alluded to in the *leining* with the words *Vayehi bishurun melekh* which, according to some mefarshim, is a reference to Moshe Rabbenu in his capacity as king.

<sup>43</sup> OH 282 sk 1

<sup>44</sup> The Mishna Berura also suggests caution in this regard, albeit for another reason. He notes that excessive additions can be an unwelcome imposition on the congregation, though this sometimes needs to be balanced with people's expectations to receive an *aliya*.

<sup>45</sup> Hilkhhot Tefilla 12:16

<sup>46</sup> OH 135 sk 2

<sup>47</sup> The Birkhei Yosef suggests that the time lost due to the extra *aliya* is compensated for by the omission of *tahanun*

<sup>48</sup> OH 135:4

<sup>49</sup> 30b sv Ushe'ar

<sup>50</sup> Ran on Rif 10b

<sup>51</sup> When this *shiur* was delivered, Dr Martin Glasser suggested that maybe the rule is that the haftara must relate to either the Torah reading or to the specific occasion. If the haftara for the sidra were to be read when the Maftir reading was for Shabbat neither of these requirements would have been fulfilled.

<sup>52</sup> OH 48:1

<sup>53</sup> See however the Mishna Berura (610 sk 16) who writes that even though one should wear nice garments on Yom Kippur the women shouldn't wear their festive jewelry because of the fear they should have of the judgment that is to be decided.

<sup>54</sup> The Hatam Sofer questions the veracity of this explanation because of the meaning of the word *erva*. Rather than meaning “nakedness”, he suggests that it means “intertwined” (*me'urin*) and thus the link made by Tosafot is not appropriate.

<sup>55</sup> Hararei Kedem 1:60

<sup>56</sup> OH 622:2

<sup>57</sup> R' Akiva Eiger (Resp. 1:24) also discusses the nature of the *leining* on Yom Kippur afternoon with regard to whether it is permitted to call up a sick person who is unable to fast. If the *leining* is because it is a fast day he cannot be called up, but if it is because of the *kedushat hayom* he can be called up.

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כתיבה וחתימה טובה

# *Synagogal Weddings from a Halakhic Viewpoint*

DAVID SHER

One of the foremost Anglo-Jewish customs is the convention of performing weddings in synagogues, often with both floral and choral complements. The custom has proliferated wherever the British Empire has extended and is the prevalent *minhag* (custom) in former imperial strongholds such as Johannesburg, South Africa. Indeed Rule 73 adopted in the 1915 Bye-Laws of the United Hebrew Congregations of Johannesburg at the much-loved Great Synagogue on Wolmarans Street declared: “The solemnisation of Marriage shall take place in the Synagogue unless application be made that it shall take place elsewhere...”. To this day, the wording of the latest edition of the celebrated ‘Singer’s Prayer Book’ of the United Hebrew Congregations of the Commonwealth reflects the prevailing Anglo-Jewish custom of synagogal weddings. It cites the tradition of singing ‘*Baruch HaBa*’ – (‘Blessed is one who cometh’<sup>1</sup>), “As the bride enters” which intimates as she enters the synagogue as opposed to her arrival at an al fresco location. The same prayer book also recalls the custom for “words of blessing to be addressed to the couple” under the bridal canopy (*Hupa*) and that afterward “the officiant pronounces the blessing”<sup>2</sup> of the Priestly Benediction.<sup>3</sup> Earlier editions of Rev. Simeon Singer’s (1846 – 1906) eponymous *Authorised Daily Prayer Book of the British Empire* recall that at “choral” weddings Psalm 150 is intoned to mark the termination of the service<sup>4</sup>.

## *Divergent Views*

Conversely, the indoor wedding custom is not accepted by many strictly-Orthodox communities worldwide, yet is tenaciously adhered to in the Germanic *Haredi* communities. The clash has meant some individuals, whose ancestors have long had the custom of an indoor wedding, are in certain cases in fits of somewhat meretricious fastidiousness deleteriously opting to forego this solemnisation practice. Why do such diverging viewpoints exist?

To address this issue it would be prudent to follow the lead of Rabbi Samson Raphael Hirsch (1833 - 1904), who opined that in Torah study one must eternally “learn the Torah out of itself” by reviewing the original sources<sup>5</sup>. The sources in this article have been translated on an almost word-for-word basis by the author of this work,

who acknowledges that fully rendering some abstruse terms from Hebrew into the vernacular is nigh on impossible and that readers should consult both an ecclesiastical halakhic authority and the original Hebrew text for a final ruling on this matter. Where necessary, I have inserted a word or phrase to make the meaning of the literal translation of the florid old Hebrew easier to comprehend. Such additions have been demarcated with parentheses.

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*The indoor wedding custom is not accepted by many strictly-Orthodox communities worldwide, yet is tenaciously adhered to in the Germanic Haredi communities*

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## *Sources opposing a Synagogal Wedding*

There are three primary sources *against* having a wedding in a synagogue, which are as follows:

The first, most widely touted one, is the gloss of Rabbi Moshe Isserles, which declares:

There are those that say to make a *Hupa* beneath the heavens for a good sign (*siman tov*)<sup>6</sup>

The next is the Hatam Sofer who wrote in his commentary:

Those who do not desire blessing and wish to distance themselves from it, who intend to learn from the way of the nations of the world who are not blessed with the stars and wed themselves in their house of prayer, shall be like them<sup>7</sup>

The final is an objection raised inter alia by Chief Rabbi Yitzchak Isaac Halevi Herzog, Chief Rabbi of Ireland and then of Israel. It is worth quoting his fascinating responsum dealing with the subject in full. He commences his response to the Sephardi Chief Rabbi (known as the *Rishon LeZion*) Rabbi Ben-Zion Meir Chai Uziel (1880-1953) thus;

Behold in Poland, land of my birth, and in Lithuania and according to what is known to me in all the nations which were included in Russian rule until World War I, they had the custom to make the *hupa* under the covering of the heavens and there was no place for this question, only generally they would beautify [the *mitsva*] by having it in the synagogue courtyard or near the synagogue.

And when my father, my enlightener, of blessed memory came to the country of England, and brought me with him, there we found that they have the *hupa* in the synagogue. Nonetheless, his opinion was not entirely happy with this, yet it was not within his power to alter [the custom], for they had already abided by this custom for many years. And also I, after him, may I be distinguished from him for a good and long life, when I was appointed to my first Rabbinate in the city of Belfast I found the same custom in Ireland and I was unable to change it in any way; however, I did not allow them to acclimate themselves to play during the *Hupa* with a ‘pas harmonium’ or even a piano.

Yet here in our Holy Land...we do not have this bad *minhag* and whosoever changes [from the status quo], he has the bottommost hand. Not only the Ashkenazim should not change from their *minhag* to have the *hupa* beneath the cover of the heavens but even amongst the Sephardim who are not particular about this and make the *hupa* in the house, it is definitely upon us [and them] to be against any innovations to make the *hupa* in our small *Beit haMikdash* [term to denote a synagogue].<sup>8</sup>

Here the Chief Rabbi quotes the Sde Hemed, (Section 7, *Marekhet Hatan v'Kalla*) who provides several reasons not to have an indoor wedding. He continues thereafter:

And I add, that it is prohibited to kiss even small children in the synagogue<sup>9</sup> and with a *hupa* it is impossible to prevent degrading kissing [from occurring], that not only the bridegroom and bride kiss but even relatives and friends, men and women, and enough disgrace and wrath (Hebrew: *ketsef*) and a literal prohibition of closeness to immoral relationships and *Nidda* [prohibition regarding spiritual contamination] in a house hallowed for worship of the L-rd. And I constantly warned in the Diaspora in written and spoken word [for them] not to kiss and on occasion they listened to me, but numerous times they did not listen and I was aggrieved due to this.

And so too [was present] the great transgression in that men and women mixed and although in

the earlier days which were better than these it was possible to arrange that only the mother of the bridegroom and bride entered [the synagogue], or the marriage-attendants [*shoshvinim*] in their place, as is brought in the Maharil, nonetheless today it is impossible to set boundaries in this [of only attendants entering the main sanctuary], and annulled is the great rectification that they instituted at that period, already in the times of the Temple, and our small *Beit haMikdash* has been desecrated by this.

Blessed be the L-rd that I have merited to come to our Holy Land and my eyes have ceased seeing these desecrations, at least in holy venues. And we are pained by the former ones [i.e. former desecrations] and now they have come to initiate innovations. It is certain that we need to stand by any means against these innovations. For “out of Zion shalt go forth the Torah”, and it is for the Diaspora to learn from the Land of Israel, and not that we [in the Holy Land] learn from innovations that were done in the lands of Western Europe of which our hearts were sick over them and we lacked the wherewithal to prevent them.

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*Blessed be the L-rd that I have merited to come to our Holy Land and my eyes have ceased seeing these desecrations, at least in holy venues*

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And if their intention is to add to the wedding ceremony the addition of ‘holiness of the surrounds’ it is fitting for them to institute to hold it [the *hupa*] in the synagogue courtyard. And it is also possible to erect a variety of structure in the synagogue courtyard that will open above the location of the *hupa* in a way that it will be under the covering of the heavens. And it will be done with the addition of the ambience of a holy surround and the Sephardim are not concerned with it being open above [i.e. under the heavens] but nonetheless [it is fitting] that there should be in the unique structure - in the ‘courtyards of the House of the L-rd’ - a variety of the wedding halls which were previously found in all Jewish cities, as is found in *Hoshen Mishpat*, *Siman* 163, but under no circumstances [are we to permit] to have the *hupa* in the actual synagogue. And He who sanctifies His nation Israel may He sanctify us with a heavenly holiness and purify our hearts to serve Him in truth.

## *Responses to Concerns regarding Synagogal Weddings*

The first point regarding the Re'ma's suggestion of an outdoor wedding is addressed by the saintly Rabbi Samson Raphael Hirsch who in *Siman* [section] 80 declares after opening salutations and comments to his correspondent that he will be forthright,

regarding my custom from the time of my appointment to minister in holiness, to orchestrate the weddings in the synagogue as I have seen it to be the custom in many districts of Germany [lit. Ashkenaz] and this custom is founded in holiness in days of yore. And although the Re'ma writes in *Even HaEzer*, *Siman* 61:1 "there are those that say to have a *Hupa* under the heavens for a positive sign [*siman tov*]", nonetheless he does not write "for **thus** is the custom" or "**thus it is to have** the custom", and au contraire, now that you have commented on this...in *Yoreh Deah*, *Siman* 391:3 it appears incontrovertible that also in the days of the Re'ma it was the custom to have the *Hupa* in the synagogue...

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## *A prevalent custom in the days of the Re'ma was to have a wedding within a synagogue sanctuary*

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Here Rabbi S.R. Hirsch continues to bring several other sources proving the ancient halakhic provenance of holding weddings in synagogues; we shall return to these shortly. It is worthwhile examining the section of the Re'ma that Rabbi S.R. Hirsch refers to, which conclusively proves that even in the Re'ma's days the custom was to hold synagogal solemnisation of marriages. The Re'ma discusses the prohibition of mourners entering houses filled with joy due to weddings and the like; and he declares:

...however he should not enter the house at all when they are preoccupied with wedding issues of a bridegroom and bride and thus is the custom in Germany [lit. Ashkenaz] and in these [i.e. Poland and surrounding areas] countries, and all this [applies] in a house where they make the *chathuna* [wedding], for they eat and drink and rejoice there, however with a *Hupa* **which they have in a synagogue** where **they bless there** the betrothal and wedding blessings [*birkhat erusin v'nisuin*] and there is no rejoicing at all, there it is permitted [for the mourner] immediately after the *shiva* (mourning period)...and there are places where they are stringent for the mourner to stand all twelve months outside **the synagogue to hear the benedictions** and

nonetheless it appears that the mourner is allowed to bless the betrothal and wedding benedictions **beneath the *Hupa* which is in the synagogue**<sup>10</sup>

Here we have indisputable proof that a (if not *the*) prevalent custom in the days of the Re'ma was to have a wedding within a synagogue sanctuary.

The second issue of the Hatam Sofer's pronouncement regarding those holding their weddings indoors is addressed by the revered Rabbi Moshe Feinstein, a product of Lithuanian Jewry who came to the United States of America in later life. In his commentary on *Even HaEzer*, Volume 1, *Siman* 93, he addresses a responsum to Rabbi Samuel HaKohen Roth who inquired if it was permitted for a rabbi to officiate at a wedding in a synagogue and also if it was allowed due to the possibility that the synagogue's wardens would fire the rabbi for not officiating. Rabbi Feinstein responded in Hebrew:

It is obvious and clear that even without the possibility that they would fire him, not only is it permitted to go, rather it is even an obligation to go for upon him rests [the duty] to oversee that the marriage is conducted according to Torah Law and also because of his obligation to his congregation, for this is of the obligations [incumbent upon] a rabbi to his congregation. And thus did great Rabbis and *Geonim* (great sages), also in New York, [where] also there are those that make the *hupa* in houses and they [the esteemed rabbis] went there to conduct the marriage and also for [attendance at weddings] of relatives and friends." Rabbi Feinstein continues; "for to have a *hupa* under the heavens is only something that was a custom for a *siman* (sign) of blessing and **this is not an institution of the sages** and also **not a custom due to any *Din***, or possibility of prohibition, **or a subject of *mitsva*** that you will consider someone who goes against this – and makes the *hupa* in a house - to be a transgressor. And the custom [of an outdoor wedding for a 'sign of blessing'] is no better than the blessing the sages instituted to marry on Wednesday....and it is clear at the commencement of Tractate Ketubot in the Tosafot [a Talmudic commentary] that [for not following an activity advised "for blessing"] one is not considered a transgressor. For it is **merely general good advice** and all the more so are custom(s) which are only advised for blessing and [of which] there is no source from our sages; it is certain that they are only an entity of good advisement and [refusing to follow them is] not called a transgression. And also that which is written regarding an outdoor wedding being a *siman* [sign] of blessing, this is the same status of blessing of which the Re'ma writes in *Siman*

64:3 and also the *Mehaber* in *Yoreh Deah* 179 to only marry at the commencement of the month, that virtually the entire world are not cautious in this, only individuals are [particular to follow this point], and so Heaven forbid to consider them [those holding synagogal weddings] as transgressors! So it is permitted to go to such a *hupa* even without considering the possibility of monetary loss by dismissal [of the Rabbi who refuses to attend]. And the Hatam Sofer in *Siman* 98 **also did not say over there to prohibit [synagogal weddings] only if it was their intention to learn from the ways of the nations** and also on them he **did not say it is prohibited** rather he said upon them “and those who do not desire blessing and wish to distance themselves from it, who intend to learn from the way of the nations of the world who are not blessed with the stars and wed themselves in their house of prayer shall be like them” for this wording is not a prohibition, rather [it indicates] that the sages’ opinion is not pleased with them. And the matter is logical that the Hatam Sofer **did not write this only in his place** where there began the evil entitled Reform to uproot all customs of Israel and many primary matters of the Torah and because of this they wanted to customise to [hold weddings] in synagogues and to change the custom [to conduct a wedding] under the heavens. Therefore he wrote upon them “and those who do not desire blessing”.



Depiction of a Jewish wedding

**However if [the reason one] does not wish [to hold his wedding] beneath the heavens is not with reformist intentions he did not say this.** And thus we do not find it that he says this on those who marry at the end of the month that “he does not desire blessing”: au contraire; surely even a *siman* [sign] of blessing that the Sages *instituted* we lack in our time and also [lacked] in the time of the Rishonim...for surely a woman is wed in our time on *any* day as it says in the Code of Jewish Law *Siman* 64, and ‘for blessing’ it should [according to this reasoning] be upon us to marry on Wednesday. The Pnei Yehoshua stood firm on this and Pithei Teshuva

*Siman* 106 brings...that **we are not particular** even for a blessing instituted by the sages and if so, **all the more so for *Simanim* [signs] of blessing which were customised a great deal of time after the Geonim** for in the days of Tosafot and the Rosh **there was no such custom** [of a wedding to be held under the heavens] as in the Tosafot and the Rosh, Tractate Sukka 25 they write that **only on occasion**, even in a city square - when the people are numerous and unable to enter the house – [only then] we may bless the wedding benedictions... And so, **one should not prohibit holding [a wedding] in a synagogue** because the gentiles have their weddings in their house of prayer because this is not like them as this is our synagogue and the main services [held in the synagogue] prove this [that it is no imitation of gentiles]. As we have seen the ancients [great sages, lit. ‘*kadmonim*’] **held their main wedding solemnisations in a synagogue** i.e. a *hupa* with blessings on the *bima* [elevated reading desk] as the Hatam Sofer himself brings. All in all, even according to the Hatam Sofer there is no prohibition for the Rabbi to arrange a wedding with a *Hupa* in a synagogue. **Only in his time, in his location** where there was a slight concern of Reform he mentioned only a withholding of blessing on the bridegroom and bride and parents. **And in our times this does not apply** and so the rabbi is obligated to go and arrange the marriage for he is obligated from the side of his obligations and on the side of overseeing it is done according to Law. And [attendance] even for [weddings of] relatives and friends there is no prohibition and no saintly conduct not to go. From your friend, Moshe Feinstein.”<sup>11</sup>

R. Feinstein’s response renders nugatory the notion that a contemporary synagogue wedding conducted with people with no reformist predilections is included in the excoriation of the Hatam Sofer. Rather, R. Feinstein makes clear, it was a measure elicited due to the extreme exigency facing the Hatam Sofer with volatile and heretical reformists and was applicable “**only in his time, in his location**”.

### ***Other Key Responses on Synagogal Weddings***

Another key responsum of R. Hirsch on the subject is addressed to R. Aaron Halevy Green who had been approached by congregants desirous of having their wedding in the synagogue<sup>12</sup>. The Jews were being mocked by the gentiles when they had their weddings outdoors and the hygiene levels in the road were not adequate. Rabbi Green was loathe to sanction the request. The community tension was running inordinately high and R. Hirsch was contacted by the Rabbi to deliver a halakhic ruling. The undisputed leader of German Jewry,

whilst asking forgiveness for being forthright in his response declared:

According to my humble opinion **there is not a trace of prohibition** in it, rather, au contraire, **it is beautiful and fitting to bless the “Who createth man” benediction in the House of the Creator of man.** For surely the holding of a *hupa* in the synagogue is an extremely old custom of our ancient [sages] the geonim

R. Hirsch also quoted from a foremost scholar of the Middle Ages, the Maharil:

And this is the wording of the Maharil in the laws of marriage; “and they bring the bride with musical instruments until the entrance of the synagogue and she waits there until the Rabbi walks the bridegroom to the *Almemar* [elevated reading desk] of the synagogue etc. And afterwards the Rabbi goes, and important personages with him and brings the bride. And the Rabbi would hold her by her clothes and walk her and stand her to the right of the bridegroom etc. and he would stand beyond them to the north and their faces [were turned] to the south and the mother of the bridegroom and of the bride would walk and stand next to her on the *Almemar* at the time of the blessing, or other relatives in [their] place.<sup>13</sup>”

Rabbi Hirsch then explains how the Kerem Shlomo wished to prove from a Tosafot in Kiddushin Folio 52b that it is not correct to marry in a synagogue; the matter appeared “au contraire” to Rabbi Hirsch, indeed this particular source and others across the Talmud prove that there would be no issue with conducting a wedding even in the Temple *Azara* [part of the Temple grounds]. He also clearly illustrates the way the halakhic authority Beit Shmuel (*Siman 30 Seif Katan 9*) regards the synagogue as a typical venue to have a wedding. Rabbi Hirsch concludes his convincing argument thus;

Therefore it appears to me that it is definitely a correct *minhag* [custom], a *minhag* of our ancients [*kadmonim*], to hold a *hupa* in a synagogue.... We should be an iron pillar and copper wall against all the transgressors in the people when there is truly an issue of sin and destruction of religion. However with any matter where there is no trace of prohibition we should be as flexible as a reed and not stiffen our necks and then also to our reprimanding on sin...they will incline an ear...and if the sons and daughters of his congregation wish to be blessed in the synagogue then bless the covenant of their youth with a desirable heart and you will reach blessings and fullness of happiness from the G-d of Peace.

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*Therefore it appears to me that it is definitely a correct minhag ... to hold a hupa in a synagogue*

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### ***The Situation Today***

The worry about emulating the gentiles in synagogue service was not unfounded. In the *Authorised Daily Prayer Book of the British Empire*'s commentary (1946 edition) appears the following.

The Marriage Service proper is usually preceded by a special prayer offered by the minister or by a brief address on the sacredness of the occasion and the solemn duties of Holy Wedlock. The readiness of the bridegroom and bride to assume those duties is sufficiently indicated by their presence for the marriage ceremony. Still, there are those who desire verbally to express their consent, and their acceptance of the undertaking set forth in the Ketuba. To them the minister may put the following questions, either before or after his address:-

*Minister*-“You (A) and (B) are about to be wedded according to the Law of Moses and Israel.”

“Will you (A) take this woman (B) to be your wedded wife? Will you be a true and faithful husband unto her? Will you protect and support her? Will you love, honour and cherish her?”

*Bridegroom*-“I will.

*Minister*- “Will you (B) take this man (A) to be your wedded husband? Will you be a true and faithful wife unto him? Will you love, honour and cherish him?”

*Bride*-“I will”.<sup>14</sup>

Sceptics will almost hear the bells of Westminster Abbey chiming in the background of these marriage vows. They will be infuriated at how, despite the fact averred by the British Chief Rabbi Joseph Herman Hertz<sup>15</sup>, that Christians plagiarised virtually all the principle concepts of marriage from Judaism, some in the Jewish faith introduced some suspiciously church-like customs into wedding services. Nonetheless, it may be noted that by and large, coating every aspect of the United Synagogue in severe Anglicisation was a factor historians held pivotal in ensuring that 75% of British Jewry remained, nominally at least, within an Orthodox synagogal framework:

Adlerian Orthodoxy meant traditional Jewish content dressed up in English packaging: top hats and dog collars and canonicals worn by clergy, professional cantors leading choral services in an aesthetically pleasing

environment. ‘Decorum’ in the synagogue was calculated to appeal to English-born Jews. The recipe was effective; it staved off the inroads of Reform...until well into the twentieth century”<sup>16</sup>

All the reasons to continue synagogue weddings as offered by the great sage R. Samson Raphael Hirsch appear to be in halakhic quandary if certain conditions are not met. Obviously R. Samson Raphael Hirsch’s strictly-Orthodox congregants would not embrace each other in the synagogue and neither would the bride and bridegroom.

The first condition that would have to be imposed to enable halakhically compatible synagogal weddings would be that the bridegroom and bride may not to kiss or hug at all in the synagogue. Chief Rabbi Lord Immanuel Jakobovits (1921-1999) insisted upon this in synagogues’ under his jurisdiction:

I have always endeavoured to prevail on young couples after I solemnised their marriage, to leave the show of their affections until they met privately following the ceremony. Only one expression of love belongs in the synagogue!<sup>17</sup>

Chief Rabbi Immanuel Jakobovits was himself married in Tammuz 5709/ July 1949 in Paris’ Rue de Cadet Synagogue (that of his father-in-law R. Elie Munk), clad in morning dress and top-hat and *seated* beneath his wedding canopy in the synagogue as per Parisian custom<sup>18</sup>

R. Hirsch introduced the ancient custom of holding synagogal weddings in the Jewish community of Moravia which he served and he also had the Rabbi address the newlyweds under the *hupa*, a custom he continued in Frankfurt. To this day *Authorised Daily Prayer Books of the British Commonwealth of Nations* indicate that during the marriage service, the Rabbi is to deliver a ‘Prayer or Address’ to the couple. It is vital to note however that apart from the accompaniers of the bride or bridegroom, no women in R. Samson Raphael Hirsch’s congregation were allowed on the ground floor; the women viewed the ceremony from the well-placed women’s gallery. Indeed on one occasion in Nikolsburg, in the middle of Rabbi Samson Raphael Hirsch’s address under the *hupa* a group of women entered the men’s section of the synagogue. R. Samson Raphael Hirsch interrupted his speech and insisted they leave immediately<sup>19</sup>.

Hence, the second proviso for a synagogue wedding would be that the men and women (apart from those accompaniers of the bride and groom) are separated during the wedding service and do not embrace (or similar) at any point. Indeed even in Great Britain’s exceedingly anglicised synagogues, including Western Marble Arch, New West End and Higher Crumpsall, the men and women sit apart during the service. Photographs from the Great Synagogue of Johannesburg indicate that

for gatherings convened for purposes other than a wedding, the guests followed the separate custom as practiced in England<sup>20</sup>. It is a most regrettable fact that in South Africa to this day all guests at the wedding service sit completely mixed and emotional embracing of men and women -including married to unmarried individuals-take place, thereby contravening *halakha*. It would be a relatively simple matter for the present South African Chief Rabbi to uphold Orthodox practice by following the institution upheld in Great Britain for many years.

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Another factor worthy of cogitation is whether Lithuanian Jews who originally did not have the custom of synagogal weddings are obliged to have an outdoor wedding. Nonetheless, several modern synagogues have overcome the never prohibitive issue of the wedding taking place “beneath the heavens” altogether. In Budapest a *Habad* Rabbi installed a roof that opens within the synagogue to fulfil this extra opinion for directing the service. The colossal Jerusalem Great Synagogue has installed a similar device, above the *Almemar*, and so weddings are held upon the synagogue *Almemar* and beneath the sky to accommodate having the solemnisation underneath “*kipat hashemayim*” – the cover of the heavens.

This article has proven that those synagogues upholding the custom of a synagogue wedding even without the skylight device are certainly not engaging in an apotheosis of an anachronism. Indeed we have extensively documented the ineluctable fact that the custom is a rabbinic tradition extending to the medieval period. Given that the question involves following one’s *minhag*, if all halakhic requirements are met it is incontrovertible that synagogal weddings will be on the scene in both Britain and countries once part of Great Britain’s extensive Empire for the foreseeable future.

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<sup>1</sup> Psalms 118:26

<sup>2</sup> Jonathan Sacks, Chief Rabbi, *Authorised Daily Prayer Book of the United Hebrew Congregations of the Commonwealth*, 4<sup>th</sup> edn, London, Harper Collins Publishers, 2006, pp790-792,

<sup>3</sup> Num. 6:24-26

<sup>4</sup> Joseph Herman Hertz, Chief Rabbi (ed.), *The Authorised Daily Prayer Book of the British Empire*, London, Shapiro Vallentine & Co, 1946, p1009

<sup>5</sup> Isadore Grunfeld, Dayan Dr, 'Introduction' in Samson Raphael Hirsch, Rabbi, *Pentateuch with Translation and Commentary by Rabbi Samson Raphael Hirsch: Genesis*, trans. Isaac Levy, 2<sup>nd</sup> edn, Gateshead, Judaica Press, 1989

<sup>6</sup> *Shulhan Arukh, Even HaEzer* 61:1

<sup>7</sup> Hatam Sofer, *Even Haezer, Siman* 98

<sup>8</sup> Yitzchak Isaac Halevy Herzog, Chief Rabbi, *Pesakim Uktavim - Responsa of Chief Rabbi Yitzchak Isaac Halevy Herzog*, Jerusalem, Mossad HaRav Kook, 1996, vol.7, simn 83, p495

<sup>9</sup> *Shulhan Arukh, Arakh Hayim, Siman* 95, *Se'if* 1

<sup>10</sup> *Yoreh Deah, Siman* 391:3

<sup>11</sup> Moshe Feinstein, Rabbi, , *Igroth Moshe, Responsa of Rabbi Moses Feinstein*, (Hebrew), New York, Noble Book Press Corp, 5719/1959 *Even HaEzer*, Volume 1, *Siman* 93 (Hebrew rendered into English by author)

<sup>12</sup> Eliyahu Meir Klugman (ed.), *Shemesh MeRapeh, Responsa of Rabbi Samson Raphael Hirsch*, New York, Mesorah Publications, 1992, *Siman* 79 and 80, pp95-97 (Hebrew rendered into English by author)

<sup>13</sup> *Hilkhhot Nisuin*, Laws of Marriage, *Siman* 3

<sup>14</sup> Joseph Herman Hertz, Chief Rabbi (ed.), *The Authorised Daily Prayer Book of the British Empire*, London, Shapiro Vallentine & Co, 1946, p1009

<sup>15</sup> Joseph Herman Hertz, Chief Rabbi (ed.), *Pentateuch and Haftorahs*, 2<sup>nd</sup> edn, London, Soncino Press, 1960, p932

<sup>16</sup> Sharman Kadish, *The Synagogues of Britain and Ireland*, Yale, Yale University Press, 2011, p68

<sup>17</sup> Meir Persoff, *Immanuel Jakobovits: a Prophet in Israel*, London, Vallentine Mitchell, 2002, p87

<sup>18</sup> Michael Shashar, *Lord Jakobovits in Conversation*, London, Vallentine Mitchell, 2000, p33

<sup>19</sup> Eliyahu Meir Klugman, *Rabbi Samson Raphael Hirsch- Autobiography*, 3<sup>rd</sup> edn, New York, Artscroll-Mesorah Publications, 1998, p103

<sup>20</sup> A photograph of what appears to be the King David School 'Bnot Mitzva' service held at the Great Synagogue in Wolmarans Street, Johannesburg, testifies to this fact.

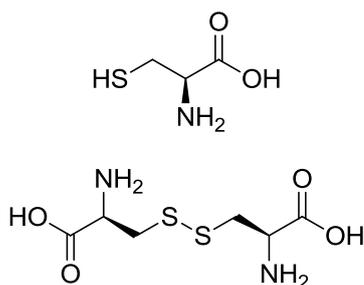
# Kosher Chemistry

YONI WEINER

Rather than depict the relationship between science and religion as strained, I would suggest that in some respects it is only through a proper appreciation of both that we can live our lives as Jews in the modern era.<sup>1</sup> There is probably no greater example of this than in the relationship between kashrut and chemistry. Both of these disciplines are interested in understanding the interactions between constituents of a mixture and how these interactions are affected by various processes. In this article I will review a couple of common ingredients found in many foods which have interesting chemical and halakhic implications.

Once upon a time most things were prepared at home and we could be certain as to the provenance of all our foods. Now even simple foods are often mass produced through complicated procedures and originate from many sources across the world.<sup>2</sup> To enable large scale production and long life for the foods, additives such as flavour enhancers, preservatives and colourings are often included. This means increased convenience, lower costs and a more consistent product for the consumer, but from a kashrut perspective this can make things very complicated as each ingredient and process has to be assessed to ensure that it doesn't render the final product treif.<sup>3</sup>

One particularly interesting chemical from a halakhic perspective is L-cysteine.<sup>4</sup> This molecule is an amino acid found commonly in many vegetables (such as onions, garlics, peppers) and animal sources (such as chicken and eggs). In the body the L-cysteine acts as an antioxidant and is an important component in skin and nails as well as being a constituent of respiratory medications. In the food industry L-cysteine is used as a dough conditioner<sup>5</sup> and as flavour enhancer, where it reacts with certain sugars to produce meaty flavours.



The chemical structure of L-cysteine and L-cystine

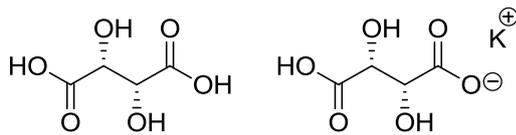
From a halakhic perspective L-cysteine is problematic because the main industrial source for it is L-cystine which is a related chemical found in animal hair and feathers. Until recently the majority of L-cysteine in the global market was produced from human hair, generally from Asian countries.<sup>6</sup> Human hair isn't actually halakhically considered to be food so there is no intrinsic kashrut problem, but the source of the hair can be an issue.

Initially there were concerns that hair was being sourced from dead bodies, and products from dead bodies are *assur behana'a* (forbidden to gain benefit from).<sup>7</sup> Later it was suggested that in fact the hair is taken from pagans who cut off their hair as part of a ritual, this could be a problem of *tikrovet avoda zara* (forbidden items derived from idol worship).<sup>8</sup> In the end, investigations revealed that the hair was being sourced from mainly Chinese barber shops, removing any kashrut concerns.<sup>9</sup> However, in the meantime the EU has banned the use of human hair for the production of L-cysteine limiting the source of manufacture to either chicken and duck feathers or pig bristle.

Pig bristle (the fluffy material covering a pig's skin) is equivalent to human hair and probably has no kashrut issues<sup>10</sup>. However, bird feathers, which are nowadays the source of over 80% of L-cysteine, are possibly problematic.<sup>11</sup> Feathers from a bird, even one slaughtered in a not – kosher manner, are permissible, but in order to remove the feathers from the flesh, the slaughtered birds are dipped in boiling water.<sup>9</sup> This is effectively cooking the feathers with a treif bird<sup>12</sup> (and blood) which is explicitly forbidden in the Shulhan Arukh.<sup>13</sup> The feathers are treated afterwards with hydrochloric acid to extract the L-cystine and the acid is then neutralised with caustic soda. Since the strong acid renders the L-cystine inedible some have suggested the product is no longer considered to have any status. This is rejected by the OU who hold it remains treif from having been cooked with a treif bird since once the acid is removed it regains its edible status. Ultimately, since the resulting product goes through several chemical purification steps before then being recrystallized as L-cysteine, the OU holds that when derived from bird feathers, L-cysteine is in fact approved kosher.<sup>14</sup> This is also the position of the London Bet Din.<sup>15</sup>

Other methods to manufacture L-cysteine do exist, using either enzymes or microbial fermentation. However these methods are both more expensive and the resulting product is labelled as an artificial additive. So food manufacturers, which prefer to use solely 'natural additives' for marketing reasons, have little reason to abandon the feathers method.

Another noteworthy additive is tartaric acid. Tartaric acid<sup>16</sup> (or when in its potassium salt form known as 'cream of tartar') is a common ingredient that has been in use for hundreds of years and is still found in the modern kitchen as a leavening agent or as a constituent to help stabilise whipped eggs and cream. Industrially tartaric acid is also used in many products including fruit juices, sweets and ice cream. Tartaric acid is traditionally produced from the crystalline sedimentation (in its 'cream of tartar' form) found on the bottom of wine barrels after fermentation and this is still the main source of commercial tartaric acid today.<sup>17</sup>



The chemical structure of tartaric acid and 'cream of tartar'

As such, tartaric acid is a product of *stam yenam* (not-kosher wine) which has both an *issur akhila* and an *issur hana'a* (both consuming it and deriving benefit from it is forbidden). So one might expect to find that commercial tartaric acid is forbidden outright. However the Gemara<sup>18</sup> discusses certain leniencies with regard to side products of wine making and rules that the dregs leftover from wine making are permissible once they have been dried out for 12 months.<sup>19</sup> Rabeinu Efraim (one of the Baalei HaTosefot) adds a further leniency and notes that if it were dried out in an oven this would be also permitted and one need not wait 12 months.<sup>20</sup> The Shulhan Arukh rules that crystals that form on the side of the wine barrels are permissible once they have been washed and dried out for 12 months as then it is no longer considered as wine but as dust.<sup>21</sup> However the Sefer Beit Meir questions whether there is a distinction between inadvertently using cream of tartar (by reusing barrels from wine making), which seems to be the case mentioned by the Shulhan Arukh and purposely taking cream of tartar and adding it to other foods.

The issue of tartaric acid is still contentious, based partly on discussions as to the industrial method of production.<sup>22</sup> Whilst the London Bet Din and the OU amongst others are lenient and permit any tartaric acid or cream of tartar, certain *mehadrin hekhsherim* in Israel are more stringent and forbid it.<sup>23</sup> The OK kashrut authority has recently started collecting the sediment from kosher wine production to make undisputed 'mehadrin' tartaric acid<sup>24</sup>.

Although it is also possible to produce tartaric acid synthetically, alleviating all kashrut issues, this is not a straightforward issue from a chemistry perspective. Naturally occurring tartaric acid has two of the atoms pointing backwards, however when prepared synthetically, half of the molecules are formed in the mirror image with the atoms pointing forwards.<sup>25 26</sup> Incredibly our tongues are able to distinguish between these two molecules and synthetic tartaric acid actually has a different taste.

It is possible to separate the mirror image molecules, but commercially it is more economical to just use the waste product from the wine industry, so synthetic tartaric acid isn't commonly found in our foods.

These are just two examples of ingredients found in our food which illustrate the importance of understanding chemistry in order to properly determine the kashrut status of food in our times.

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<sup>1</sup> Rabbi Eli Gersten of the OU notes how this cooperation is symbolised by the Soloveichik family, where R' Joseph Ber was a Rosh Yeshiva at YU where his brother Prof. Samuel Soloveichik was professor of chemistry.

<sup>2</sup> Even something such as "100% Orange Juice" is industrially produced from mixtures of different orange juices and flavour enhanced with orange peel extracts see <http://christinescottcheng.wordpress.com/2010/05/19/tropicana-orange-juice-flavor-packs-and-food-industry-lies>  
<sup>3</sup> [http://www.crcweb.org/kosher\\_articles/moderne\\_technology.php](http://www.crcweb.org/kosher_articles/moderne_technology.php)

<sup>4</sup> This part of the article is based partially on an article by Rabbi Blech, *Like Mountains Hanging By A Hair - Kosher Issues in L-Cysteine*, MK News and Views Volume IV, Issue 6, May 2003.

<sup>5</sup> Rabbi Blech sees L-cysteine as a chemical manifestation of the brakha of *Yashan Noshan*. *Ibid*.

<sup>6</sup> Jeanne Yacoubou, *Everything You Ever Wanted to Know about L-Cysteine but Were Afraid to Ask*, Vegetarian Journal 2008, Issue 1.

<sup>7</sup> Yoreh De'ah 349:1. Although the Rambam actually excludes hair from this, the Shulhan Arukh rules against the Rambam.

<sup>8</sup> Even this might not be an issue here as hair isn't considered a proper sacrifice as it wasn't offered in the Beit Hamikdash. A similar discussion has been had with regards to sheitels.

<sup>9</sup> <http://oukosher.org/blog/consumer-kosher/what-could-be-wrong-with-l-cysteine/>

<sup>10</sup> As far as the author is aware. A search for ‘pig bristle’ on [www.isitkosher.org.uk](http://www.isitkosher.org.uk) returned no results and the KLBD has stated that more information would be needed.

<sup>11</sup> Jeanne Yacoubou, *Everything You Ever Wanted to Know about L-Cysteine but Were Afraid to Ask*, Vegetarian Journal 2008, Issue 1.

<sup>12</sup> Technically speaking this is a *neveila* not a *treifa*

<sup>13</sup> Yoreh Deah 68:10,11.

<sup>14</sup> See <http://oukosher.org/blog/consumer-kosher/what-could-be-wrong-with-l-cysteine/> for a full explanation of Rav Schechters logic.

<sup>15</sup> Personal Correspondence with Rabbi Conway.

<sup>16</sup> This part of the article is based largely on an article by Y. Aba-Shaul, *Tartaric Acid*, Tehudat Kashrut, April 1995, Volume 5/6, p.38 and also R’ E. Gersten, *Byproducts of Wine*, The Daf Hakashrus, May 2009, Volume 8, p.57

<sup>17</sup> Kassaian, J.M., *Tartaric Acid*, Ullmann's Encyclopedia of Industrial Chemistry. 2000, Vol 35, p.671

<sup>18</sup> Avoda Zara 34a

<sup>19</sup> There is a dispute between the Tashbets and the Rashba as to whether the “dregs” that the Gemara discusses is referring to just the leftover grapeskins and seeds, which in theory have never been wine – and hence permissible, or all sedimentation including the tartaric acid which has been produced from the wine fermentation itself which is more of a hiddush.

<sup>20</sup> *Ibid.* Rabbi Belsky from the OU notes that it would need to reach an equivalent moisture level to that of 12 months drying, which he assesses to be 7%.

<sup>21</sup> Yoreh De’ah 123:16

<sup>22</sup> See <http://www.ok.org/v1/Content.asp?ID=167>

<sup>23</sup> Personal correspondence with Rabbi Conway from the KLBD.

<sup>24</sup> <http://www.kosherspirit.com/Article.asp?Issue=13&Article=157>

<sup>25</sup> This phenomenon is known as chirality. In fact it is through the sodium ammonium salt of tartaric acid that a lot of the early work on chirality was discovered. In 1848 Louis Pasteur famously used a magnifying glass and a tweezers to painstakingly distinguish the mirror image crystals to perform the first separation of chiral mixtures. See H. D. Flack, *Louis Pasteur's discovery of molecular chirality and spontaneous resolution*, Acta Crystallographica A, 2009, 65 (5), p.371–389.

<sup>26</sup> The mixture is known as racemic acid from the Latin word for grapes, the word racemic is now used as the general term for a 1:1 mixture of chiral molecules.

# *Personal Reflections on being in Israel during Operation 'Protective Edge'*

MIRI JEFFAY

**B**y the time you read this it is possible that 'Protective Edge' could be just a distant memory. The last few weeks have certainly been an emotional roller coaster.

Early in the summer, my women's community choir organised a charity fund-raising evening for the community here in Modiin. Women with local business offered their services and sold their products, and my choir provided the entertainment. With over a hundred women in attendance and over 3000 shekels raised, the night was looking to be a blinding success. Then the news started to trickle in that the bodies of Eyal, Naphtali and Gil-ad had been found. The room was plunged into grief and we had to make the decision whether or not to continue with the event. With a few introductory words from one of the singers, we decided to sing and despite the entire room being on the cusp of tears, by the last song this room full of women of our community had created a remarkable atmosphere. Whilst the evening was not as we had imagined it, it was truly a memorable experience of closeness and togetherness, which has come to symbolise so much of what being in Israel means to me.

On Shabbat we sat in the park in the afternoon, marvelling at how lucky we were that in Modiin we had not had any 'red alerts' yet. Whilst we were all somewhat tense, we were able to sit outside and enjoy the sunshine together, watching our children play. On Motsei Shabbat, our peaceful existence was shattered. With two sirens at 10pm and 10.30pm followed by another at 6am, the calm and quiet life we had become used to had gone on hold.

There is an indescribable feeling of tension and constant anxiety that a siren might come at any time. Do you take a shower? Should you sleep next to your daughter so that you can grab her and run to the safe room? Our experience is nothing compared to those living in the South, where the rockets are far more constant and most people aren't fortunate to have a safe room in their home. On the other hand, when my Israeli neighbour whose husband has been called up

asked me, in all seriousness, if I was ready to go back to England, she was surprised when I answered in the negative. I strongly believe that there is something in me that feels that I have to be here. I am living through this and it is a part of my reality, but this is not what Israel means to me. It will not continue like this and with everything that is going on, despite my numerous anxieties, I do feel safe here. It is the same feeling that led me to leave my job, my friends, my family, and the security of my London life to start all over again in a foreign land because ultimately there is something comforting being in a place which really is home.

Five happy years in Alei Tzion prepared us well for our aliya. The community helped us stay tuned into the dream of aliya and the constant flow of families to Israel made the move seem achievable and real. Walking to shul on Shabbat morning we are accompanied by some of the familiar Alei faces and the children's service even has the Rabbi's favourite song (even if it has been translated into Hebrew).

The unpredictability of life in Israel is a constant reminder that we are in the midst of a rebuilding process. The home of the Jewish people has been in ruins for two thousand years and we are honoured to be the generation tasked with rebuilding it. Whether it is the threat from outside or the difficult rifts we have on the inside, Israel is standing in a place where there is much to be improved and so much yet to be built.

Everything else is on hold, but in the eleven months we have been here we have been welcomed into the community, we have made friends, we have found work, we have got more confident with the language and we have started to build our new home in Israel. All of the things that I worried about before we came have been unfounded and whilst we are still on our aliya journey and things are far from straightforward, there is nowhere else I would rather be.

*Now living in Modiin, Miri Jeffay studied Music at Leeds University and completed a PGCE. She can be reached via her website [www.musicwithmiri.com](http://www.musicwithmiri.com)*

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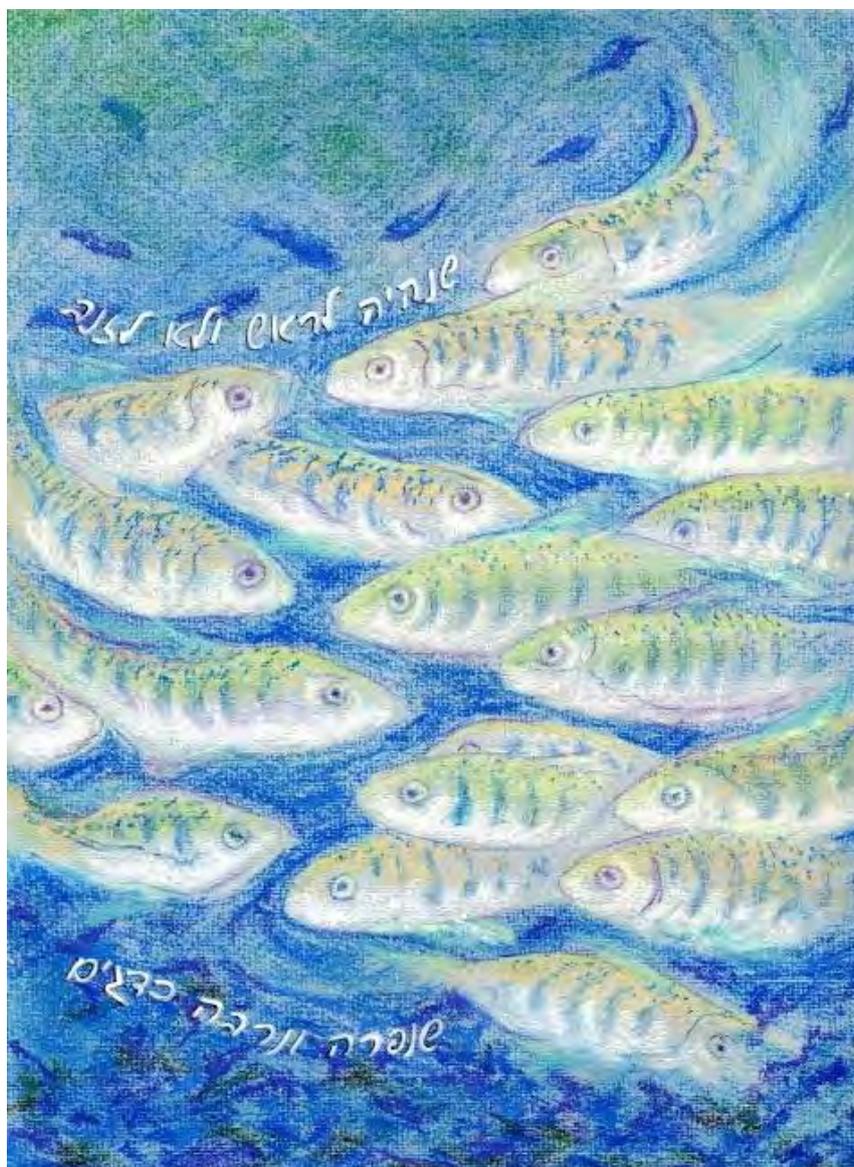
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