



## From The Editor

As a result of a personal misunderstanding and a general lack of communication, I mistakenly condoned the printing of an essay regarding women and Judaism in the April 1995 issue of Hamevaser. The essay was, both in tone and in content, inappropriate for the pages of Hamevaser. In addition, although unintended, many statements in the issue either offended some of our readers or appeared to mock Torah concepts. Hamevaser apologizes for all the aforementioned, as well as any comments in any of our issues that may have slighted our readers.

Present circumstances compel me to inform our readership of the following, which I hoped had been self-evident: The editorial board of Hamevaser does not endorse, nor has ever endorsed, any viewpoint that limits the perennial relevance of any of the moral or social philosophies upon which Halakha is based.

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# "And you shall teach your children"

by Rebecca Rosen

Assimilation has become a major problem facing Jews today. Even within the world of yeshiva day school, there are graduates rejecting Judaism primarily because they perceive it to be too simplistic. How will the teachers of tomorrow address this problem? A look at the goals of Jewish education, educators' treatment of these goals, as well as the expectations of students, may shed light on the issue.

Two of the most important goals of Jewish education are the instillation of awareness of Jewish ideals and belief in God. Usually, elementary school teachers try to engender both faith as well as knowledge of Judaism in their students. However, at times these goals can conflict. When a child asks a philosophically challenging question, how does the teacher respond? The teacher must decide what is most important to her: to inform her students, or to instill faith within them. She has three options. She could provide a calming yet ambiguous answer, give a simplified version of a truthful answer, or supply a complex analysis of the issue.

The teacher may choose to pacify the child's fears with an inaccurate answer for a number of reasons. Perhaps the teacher has no answer; she too finds the issue challenging. Maybe the teacher feels it unfair to relate a complex answer to a child unable to understand it sufficiently, but does not feel capable of simplifying things to the point that vital pieces of truth remain intact. Conceivably, the teacher may put more emphasis on faith than on information, preferring that the child find peace with the issue for now, and confront the issue when more mature both mentally and emotionally. Perhaps the child has asked a question which has no known answer.

Alternatively, the teacher may be able to find a simplified answer which will be elaborated at a later date, but which contains enough truth and accuracy in order to maintain both her own integrity as well as that of the religion.

However, the teacher might decide that the student is asking a serious question, deserving an answer which fully addresses the issue. She recognizes that she became a teacher in order to enlighten her students. She is not there to mislead, but to educate, elaborate, and explain. She views this as an opportunity to deal with some of the intricacies of the Jewish religion and takes advantage of it.

In all three of these responses, the teacher may ideally understand her roles of imparting faith and knowledge as equally important. However, when faced with a dilemma of this kind, the teacher must evaluate which one is more important for her to impart upon her students at that stage in their lives.

However, each one of these options has potential problems. How can a teacher deliberately misinform a student while maintaining her own integrity, not to mention that of the subject at hand? Judaism is such a rich religion, does it not contain within it truthful answers suitable for children? Even more frightening, if there are no answers to some questions, is a teacher's only recourse to mislead her pupils? Is the instillation of faith based upon falsehoods the kind of foundation upon which observance should be based? Furthermore, what will happen when the student discovers that he was misled by his teacher?

On the other hand, how can a teacher present issues to a student incapable of understanding them sufficiently? Perhaps the teacher is reading into the student's question, not what he intends, but the issues with which she herself is dealing. Does the teacher have the right to read into a simple question all the knowledge and com-

plexities which could only come with age? Even if the child comprehends many of the implications of his doubts, if the child is not capable of dealing with such issues, his faith may be shaken. Is candor for the sake of knowledge worth such a price? But how does a teacher find the happy medium, the perfectly simple answer which contains truth within?

Aside from these serious questions, there are further problems which arise from the decision to either misinform or provide a simplistic answer to a student. Either of these types of answers must be modified at a later date. The danger is that often they are not. Frequently, high school and college teachers do not address the same issues as those encountered in elementary school. Thus the child grows into adulthood with the unrefined or inaccurate answers they received in elementary school. This adult who has cultivated knowledge and ideas on secular topics has left his religious notions undeveloped; this adult perceives religion as simplistic.



Worse still, when the answer is revised in adulthood, the person may lose respect for the teacher, for other things the teacher has taught, and sometimes, for the religion itself.

How do teachers answer their students' questions when the students may not be able to handle the complex solutions, and yet prevent them from regarding religion as simplistic and worthless later on in life?

Perhaps elementary school is not the source of adult repudiation of Judaism. Should it be the elementary school teacher's responsibility to add to the long-term effects of her answers on her students to her pedagogic concerns? She, of course, has a responsibility to the student sitting before her, to teach and instruct him according to his capacity, but beyond that, what are her obligations? Aaron Rabinowitz, in a Ten Da'at article entitled "Psychological Insights and Humash: A Program for Understanding and Teaching," wrote that "we must...teach our students...that the simple immature approaches of our youth must give way, in a never-ending evolution, to higher levels of intellectual complexities." Perhaps, the resolution lies beyond the elementary school teacher, to high school and, ultimately, to the students themselves.

One solution may be for important religious issues to be addressed in high school when the student is more equipped to deal with them. Continue to teach Chumash, Navi, Gemarah, and Halakha, but provide ad-

ditional classes on Jewish philosophy and the important issues facing Jews today. Or perhaps within other classes, a teacher may make a "planned tangent," as Rabbi Spiegelman phrased it in a Ten Da'at article entitled "The Truth of Torah: The Role of Text Transmission" in another context, to allow for the discussion of issues with which students are grappling.

An additional solution is for the mature student to reevaluate his conceptions of Torah and education. Firstly, he must recognize that not every problem has been resolved. Judaism is a faith, with all its implications.

Secondly, an adult has a responsibility as to the development and direction of his own education. He cannot just sit back and expect others to supply wisdom, as he was able to years before; he must go out and learn on his own. Thus, when an adult looks at Judaism as simplistic, is it the elementary or high school teacher's fault? Many adults have the unfair expectation that the answers given them in elementary school paint a complete picture of religion. Does an adult look at the mathematics learned in first grade as math in its full sense? Of course not; the adult recognizes that first grade math is the first level upon which higher stages of math are built. Rather than rejecting Judaism due to dissatisfaction with rudimentary answers received at a young age, a person should acknowledge that Judaism is multifaceted and should search for further answers within that pool of knowledge.

Although high school teachers may work on troubling philosophical issues with their students, and adults may reevaluate their perspective of school and Torah, how may teachers answer the elementary school student's philosophical question in the best way?

There is no easy answer to this question. Of course, it depends upon the capabilities of the students, that of the teacher, and the teacher's views of her role in the classroom. This is an extremely complex issue, and as mentioned above, none of the options are completely satisfying. Thus, the adult who discovers that his teacher misled him must recognize the complexities of the issue and the hard balancing act which the teacher is called upon to perform in order to instill faith as well as knowledge into her students. He must accept responsibility for his continuing Jewish education and endeavor to find the answers to his questions. He must also recognize that there are some philosophical dilemmas which have no answers.

Just as an adult commits himself to learning the ins and outs of a body of knowledge for a profession, he should explore the body of truth within Torah. Does the elementary school teacher have the obligation to meet the child's spiritual needs as he reaches maturity? That is a question in need of much reflection. Nonetheless, whatever route the teachers of the past have taken, each adult has an obligation to himself to delve into what he has already learned and what he has yet to learn in search of the truth. Continuing the development of one's own knowledge and faith is the adult's responsibility. The torch has been passed from teacher to student; Jewish education is in your hands, do with it what you will.

# Yom Tov Strolls Through Pardes

## The Vilna Gaon On The Moadim

by Chaim Eisenstein

The breadth of R. Eliahu of Vilna's knowledge in all areas of Judaic law and thought render even an elementary study of his works in any one given subject both difficult and exciting. In researching the Gaon's approach to the Moadim in their Biblical context, one cannot overlook his treatment of the Moadim in his commentary on the Shulkhan Arukh. It is also inevitable that in his explanations of certain Biblical passages, the Gaon will be influenced by basic Kabbalistic theorems. It is this interdisciplinary style that makes the Gaon's work so complex but at the same time quite unique.

We were encouraged to view the Gaon's work in this manner when we questioned his emphasis on Kabbala in the latter stages of his life and the pivotal role it plays in his understanding of Tanakh. Apparently, the Gaon spent a considerable amount of time studying Kabbala. The significance attached to this study seems inconsistent with the emphasis his student, R. Hayyim Volozhiner, in his monumental work *Nefesh ha-Hayyim*, places on the normative study of Halakha. If the reading of other religious material (e.g. *musar* or *kabbala*) is inferior to Halakha and Talmud in the hierarchy of *mitzvat talmud Torah* and borders dangerously on the sin of *bitul Torah*, how could the Gaon (and R. Hayyim as well) spend so much of their time learning Kabbala?

It can be suggested that the Gaon emphasized a methodology of learning which called for all concepts to be considered and scrutinized from a wide perspective. The use of intrabiblical exegesis seems narrow when compared to the Gaon's consistent use of Pardes in his study of both *Torah she-bi-khetav* and *Torah she-ba'al pe*. Hence, if the Gaon utilized all elements of Pardeis in the study of Halakha, he did not view his study of Kabbala in a lonely vacuum. To the Gaon, Kabbala was the study of Halakha or Tanakh from the perspective of Sod.

Although this approach seems very similar to the often quoted Chazal of *shiv'im panim la-Torah*, we think the Gaon's intensive use of Pardes in all areas of Torah illustrates that his understanding of this talmudic dictum is more literal than the common explanation. *Shiv'im panim* can be understood as a validation of many approaches in the study of any single issue. This does not assume that there is any relationship between the differing approaches. We will try to show that within the indubitably precise world of the Gaon, these differing approaches unite.

### Pesach: Prohibition of Leaven

The prohibition of owning leaven on Pesach is mentioned twice in Exodus, once in the *pesach le-dorot* segment of ch. 12, and again in ch. 13 in the section of *bi'at ha'aretz*. The gemarah in Pesachim 5b notes the repetition of this prohibition and explicates that the word in ch. 13, "yera'e," seeing, would not denote the prohibition of hiding one's own leaven in his property. The language in ch. 12 "ye-matzei," found in your

house, includes leaven that cannot be seen. From this passage, the gemara also determines the prohibition of accepting the leaven of a non-Jew. After some further discussion over the necessity of each passage, the gemara stipulates that the prohibition of possessing a non-Jew's leaven only exists when one accepts *acharayut*, the responsibility of assuming the custody of another's leaven. Thus, the impression that the presence of another individual's leaven in one's property is permissible insinuated by the passage in ch. 13 (*ba'at yera'e*) is not entirely

attribute any outside force to God's honor or being...the praise (i.e. the Haggadah) is not hung upon Moshe but on God alone."

In the same passage, the Gaon writes in his pronoun-faced style, "He (i.e. God) did not command him (i.e. Moshe) or send him to do it (i.e. the *korban pesach*) during the redemption; instead the Israelites together, did God's command with the *pesach, matza* and *maror*." On a practical level, the *korban pesach* for each Jew seems superfluous. Essentially, Moshe could have slaughtered a sheep, spread the blood on every Jewish doorpost, and have eaten the *matza* and *maror* in front of Pharaoh. Thus, the plague of the firstborn was different than the other plagues for two reasons. It emphasized the direct providence of God and it required the involvement of the Jews as a national unit to emphasize this providence and thereby minimize Moshe's role.

The second of these two principles might explain the prohibition of having another Jew's leaven in one's possession even when not assuming the responsibility of custody. Since Pesach represents the birth of a nation, "*lo yera'e lecha*" might not refer to the individual alone but rather to the nation as a whole. Therefore, when the Gaon writes that the Jews performed the *mitzvot* together as a whole, this may refer to fulfilling the *mitzva* of assuring that the entire union of *am yisrael* was not in possession of leaven. In this manner as well, the Jews observed the commandments as one unit, symbolizing their birth as a nation.

### Lekhem Oni

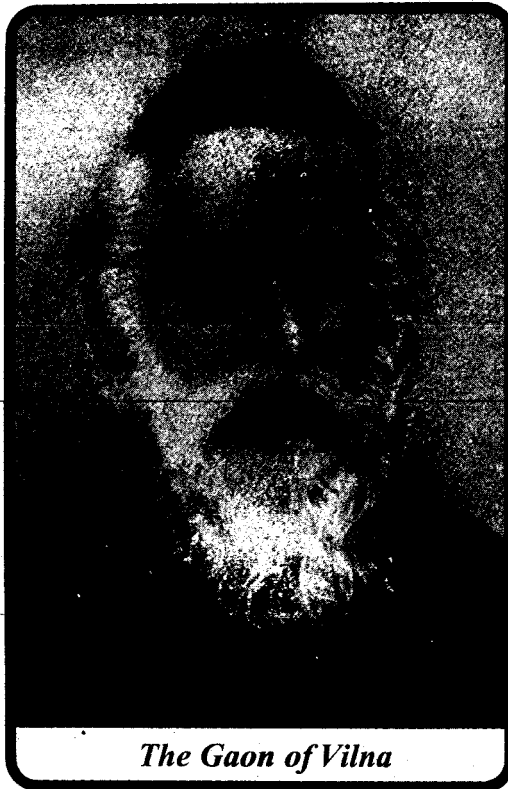
Since the Gaon views Pardes in a tightly woven manner, we suggested above that Halakha and *peshat* are determined with the aid of Kabbalistic ideas. In the case of *lekhem oni*, the Gaon connects the elements of *derash* with *sod*. The gemara (Pesachim 115b) quotes three opinions to explain the enigmatic passage in Deuteronomy 16 which refers to *matza* as *lekhem oni*. Shmuel says that the word "*oni*" refers to the word "*onin*" and the passage refers to *matza* as the bread which encourages discussion about the exodus. Another *derasha* contends that *oni* refers to a poor person. This opinion points out that just as a poor person eats only a piece of bread, so too on Pesach we only eat from a piece of *matza*. A third opinion says that the written meaning teaches us that the process of baking must be done in a brisk manner, the same way a poor person would bake.

At the conclusion of his commentary on the Hagaddah, the Gaon quotes four opinions. The first two are based on the opinion in our text that *lekhem oni* refers to a piece of *matza*. One opinion maintains that *lechem oni* is coming to exclude cake. The other quotes the prohibition of *matza ashira* (*matza* made with wine or oil). The remaining opinions are similar to the other two mentioned in the gemara.

To explain these four *derashot*, the Gaon introduces the four properties inherent in every object: *chomer, tzura, tachlit* and *po'el*. He proceeds to demonstrate that each *derasha* corresponds to a different property represented in this kabbalistic hierarchy. The exclusion of wine and oil refers to the *chomer*. The exclusion of a cake-like substance refers to the *tzura* of the *matza*. The *po'el* is the expedient method required to be used in the baking process. Finally, the *tachlit* is to discuss the exodus over the *matza*.

### Sukkot: Ananei ha-Kavod and Suka

In his *bi'ur* on the Shulkhan Arukh (O.C. 725), the Gaon discusses the gemara in Sukka 11b which mentions



The Gaon of Vilna

dismissed even after the second passage is introduced. The second passage only serves to prohibit the acceptance of the custody of another's leaven. Bakh and Magen Avraham rule in this manner (O.C. 443). They write that one has not transgressed if the leaven of another individual enters one's property without the acceptance of custody.

In his commentary on the Shulkhan Arukh, the Gaon dissents. He writes that the *heter* applies exclusively to non-Jews and *hekdesh*. The leaven of another Jew remains prohibited even without the acceptance of custody. This opinion of the Gaon appears enigmatic. After all, the gemara seems to differentiate between the individual who accepts responsibility and one who is merely in custody, without distinguishing at all between Jew and non-Jew.

In his commentary on the Haggadah, the Gaon quotes the Chazal that states that the passage in Deuteronomy 26:8, "God took us out of Egypt with a strong hand and outstretched arm," is emphasizing that it was God and not an angel or messenger that took the Jews out of Egypt. The Gaon notices that the conspicuous absence of mention of Moshe in the Haggadah is consistent with this chazal. Moshe is not mentioned in the Haggadah because *yetsi'at mitsrayim* underscores the direct providence of God. The Gaon goes on to say "it is prohibited for us to

# Kiddush Hashem ba-Goyyim Ta'amin?

by Emily J. Shapiro

The gemara in Sanhedrin includes various discussions on the status of Bnei Noach and their seven mitzvot. One specific issue is addressed on 74b:

"Ba'v minei me-Rav Ami, benei noach metzvuve al kiddush ha-shem o en metzvuve al kiddush ha-shem?"

The question is raised whether or not non-Jews are obligated in martyrdom for their respective mitzvot. The Gemara continues:

"Amar Abaye, ta shema: sheva mitzvot nitztavu benei noach, ve-im ita-tanne havin! Amar'ei Rava: inhu ve-chol avazriehu."

The argument here seems clear. Abaye is of the opinion that it is impossible to obligate *benei Noach* in *kiddush ha-shem* since our *masoret* delineates only seven Noachide Laws. *Kiddush ha-shem*, according to Abaye, is to be considered a *mitzva* in its own right and therefore in no way can it be required in addition to the seven dictated laws. However, Rava believes that *kiddush ha-shem* is not to be viewed as a distinct obligation, but rather as a component or detail of the individual *mitzvot* themselves ("ve-chol avazriehu"). Consequently, according to Rava, the obligation of *yehareg ve-al ya'avor* would be incumbent upon the non-Jew. The Gemara concludes by citing an example from Melakhim II in which Neaman, the servant of the king of Aram, is granted special allowance by Elisha to participate in the worship of *avoda zara*. Although this anecdote seems to support the opinion of Abaye, the gemara concludes, "ha be-farhesya, ha be-tzin'a."

The example is rejected as a full proof because Neaman was only permitted to be "ya'avor ve'al ye'hareg" in this specific case since the act was done "be-tzin'a" - in private. However, a *safek* remains in reference to a non-Jew's obligation to or exemption from dying "al kiddush ha-shem be-farhesya." It is unclear what conclusion, if any, is to be derived from this *sugya*.

Tosafot on the page seems to view this discussion as a commentary on the nature and essence of the *mitzvot*. This *machaloket* concerns the interpretation and application of the Pasok -

"asher ya'ase otam ha-adam va-chay bahem (Vayikra 18:5)."

and the subsequent *derasha* of Chazal -

"va-chay bahem - ve-lo she-yamut bahem."

There are two fundamentally different insights into "va-chay ba-hem." The first suggests that the *mitzvot* were initially given to be fulfilled under all conditions and circumstances. In their pristine state, the *mitzvot* require *mesirat nefesh* to an unlimited extent. However, the phrase "va-chay ba-hem" is brought only to make a special exception for Jews in the case of death. According to this interpretation, non-Jews, who are not included in either the *passuk* or its *derasha*, would therefore be obligated to be *moser nefesh* under all circumstances and conditions -- including those with fatal consequences.

The second interpretation of "va-chay ba-hem" rejects this definition of the *mitzvot*. Rather, the *mitzvot* never included any obligation to die in order to fulfill them. "va-chay ba-hem" is not the exception, but the rule. It was only necessary for Chazal to comment here in order to "outweigh" a *hekesh* made elsewhere in Tractate Sanhedrin which stated that one is sometimes obligated to kill another who is on the verge of sin. "va-chay ba-hem" simply comes to clarify that in essence the *mitzvot* do not obligate anyone to literally sacrifice his life. Since neither the *hekesh* or the *derasha* apply to *benei noach*, they are obviously not required to sacrifice themselves in such a way.

This *machaloket* between Abaye and Rava is later reflected in the writings of Rishonim. Rambam in *hilchot melakhim* 10:2 clearly states:

"Ben noach she-anso ones la-avor uchat mitzvotav -- mitar lo la-avor... she'einan metzuvim be-kiddush ha-shem."

Apparently, Rambam believes that the *maskana* of the Gemara followed Abaye's opinion.

However, Rambam in *Milchamot Hashem* writes: "aval al kiddush ha-shem be-farhesya, she-hu davar ha-nahug ba-chol ha-mitzvot -- nitztavu."

Rambam interprets the last line of the gemara as a final *maskana*. *Benei noach* are not obligated in *kiddush ha-shem* in private, but are fully obligated in public.

According to the "Chemd' le-Shlomo," this entire *machaloket* must be viewed in conjunction with another *machaloket* found in Tractate Avoda Zara 54a. There, Rav Zeira concludes that any *avera* done *be-ones* -- under duress -- is not considered an action at all. However, Rava states that an *avera*, even when done *be-ones*, is always considered a sinful action. In reference to our gemara in Sanhedrin, it seems that Abaye follows the opinion of Rav Zeira: "she-be-ones ein ze ma-ase avera." When one is forced to sin, it is as if there is no actual sin whatsoever. Therefore, the only thing which obligates an individual to refrain from such an act is the *separate* mitzvah of *kiddush ha-shem*. Since this separate mitzva is not included in the list of Noachide laws, it cannot be required of a *ben noach*. Likewise, Rambam in *hilchot issurei mizbe'ach* also rules like Rav Zeira and therefore he must cite extrinsic reasons to explain why *Bnei Yisrael* must die *al kiddush ha-shem*, which in no way apply to *benei noach*.

On the other hand, Rava holds that even in cases of *ones*, the sinful act still exists legally. Therefore, with

the exception of those mitzvot which are included in "va-chay ba-hem," a Jew's obligation to die *al kiddush ha-shem* is not a distinct mitzva in and of itself, but rather it is an intrinsic aspect of the individual *mitzva* given *be-ones*. This quality in *mitzvot* is equally applicable to the seven *mitzvot* of *benei noach* and thus, so is the obligation of *kiddush ha-shem*. Again, the Rambam would concur with this understanding of both the essence of *mitzvot* and *kiddush ha-shem*.

It is this last point, whether or not an *avera be-ones* acquires the status of an action at all, which reveals the true distinction between the *ben noach* and the *ben yisrael*. Rambam states that neither a Jew nor a non-Jew is held accountable for sins committed under force. Despite this principle, Rambam rules that a Jew must die rather than partake in any one of the three cardinal sins -- *avodah zara*, *she-fichut damim*, or *gilluy arayot*, whether in private or public. However, Rambam completely exempts the non-Jew from any such obligation. The paradox is obvious. If in the end, there is no actual *ma'ase avera*, why would the Torah ever obligate a *ben yisrael* to be *moser nefesh* under such circumstances? Furthermore, why does Rambam make such a sharp distinction between the commitment to *sheva mitzvot benei noach* and *taryag mitzvot benei yisrael*?

Maharal in the fourth chapter of

Continued on page 8

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# Holier Than Thou: An Investigation Into The Modern Day Phenomenon of Chumrot

by  
Yaakov  
Weinstein

"Are you *makpid* on *cholov yisroel*?"  
"What do you mean you don't hold from *glatt*?"  
"You don't wash for *seudah Shlishis*?"  
"Where is that *kutzo shel yud*?"

What is a *chumra*? Simply stated, a *chumra* entails going beyond the letter of the law. By being *machmir*, one shows himself to be meticulous in the performance of *mitzvot* and conscientious of the various Halakhic discussions surrounding them. But is being *machmir* so simple? Should one suddenly decide to observe every semi-plausible *chumra* that is thought of?

Before discussing the various types of *chumrot*, let us examine a typical *machaloket*, in which one side is *machmir* and one is *mekil*. A *machaloket* will not always be limited to a single case. Sometimes, the disparaging viewpoints will manifest themselves in more than one instance, prompting us to define the parameters of the *machaloket*. Such a situation arises in Betza (2a-b), where the gemara extends the discussion of the mishna, which debates whether an egg laid on Yom Tov is allowed to be eaten on that day, to include the question of the chicken itself. Why then, questions the gemara, does the mishna not relate the argument in regard to the chicken? The gemara attempts to answer, "*ko'ach de-hetera adif*," the power to be lenient is stronger. Rashi and Tosafot explain, that since one can be *machmir* without reason, it is imperative that the battlefield of the *machaloket* be positioned where the leniency of the *mekil* view is most pronounced. By giving the *mekil* view the "home-court advantage" we see the gemara attempting to avoid undue, unnecessary stringencies.

Now that the arena is set, and he battle is ready to begin, who must defend his view? The mishna in Yadayim (4:3) tells us, "*alecha re'aya she-ata machmir*," upon you is the burden of proof since you are the more stringent. This concept is not restricted to theory alone, it is implemented in deciding practical Halakha; by *derabbanan* according to Chacham Tzvi (*teshuva* 116), and, according to Tashbetz (1:1, 2:141), also by *de-orayas*, such as forced *gittin* and *shevu'ot*. Tashbetz insists that one cannot be *machmir* by something not mentioned in the gemara unless he brings substantial proof. "Just to be on the safe side," does not suffice; there must be sound reasoning behind it.

Ha'amek Davar, at the end of *parshat Shemini*, goes one step further. He declares that if a Halakhic ambiguity should arise and there exists the possibility of elucidating the situation, one cannot be *machmir* until such action is taken. Just as one may not be lenient until a situation is clarified, one may not be *machmir*, as well, without taking the proper steps to resolve the issue. "*Le-havdil ben ha-tamei u-ven ha-tahor*," (Vayikra 11:47) teaches us that we cannot leave Halakha in a nebulous state, even if we want to be *machmir* because we are not sure. We must clarify the Halakha as much as possible.

Why be *machmir*?

R' Moshe Chayyim Luzatto in chapter 14 of the *Mesilat Yesharim* (*Sha'ar ha-Perishut*) describes the behavior of one who has reached the level of *perishut*, separation. Such a person takes only what he needs from *olam ha-ze*, limiting his activities that may lead him to *averot*, though the actions themselves are allowed, and is follows stricter *shitot* if their reasoning makes sense (*ta'amo nir'e*). In other words, *chumrot* are part of every individual's growth. When a person has reached a certain level, he or she may feel the need to accept upon himself or herself an aspect of *lifnim me-shurat ha-din*.

A similar approach is championed by R. Aharon Lichtenstein, explaining that Judaism was never meant to be a monochromatic religion, binding everyone to the same standards; rather there must be room for personal enrichment. A *chumra* you accept, must be attuned to you. It

must reflect your personal level, your religious goals, and your spiritual creativity. Accepting *chumrot* in an indiscriminate manner does not aid in one's spiritual growth. A *chumra* accepted this way, does not reflect that one realizes his spiritual level, where he lies his strengths and where he needs improvement.

Both of these approaches relate to *chumrot* as personal choices, decisions obviously not to be taken lightly. One must think carefully before making such a decision, rather than blindly follow the masses because it is the "in" thing to do.

R. Moshe Sternbuch, in his *moadim u-zemanim*, views *chumrot* from an entirely different perspective. Throughout the book he regards *chumrot* as a type of *hiddur mitzva*, a way of beautifying our actions (see D. Horowitz, Tradition, Fall 1982): "*ze keli ve-anvehu*," similar to buying a nicer esrog. By employing this idea, he applauds the *minhag* of R. Chayyim Brisker to take more than one esrog on Succot, even though one is possibly grafted, in order to fulfill the *mitzva* with as beautiful an esrog as possible.

Shelah advocates a radically different approach (see Haga'ot ve-Hanhagot by H.H. Ben Sasson : 19-21). At the time of *matan Torah*, only *de-orayas* were prohibited. As time passed, the spirituality of the Jew deteriorated and the venom of the *nachash* (serpent) spread. In order to counter this, more *issurim* are needed to be added from the *ma'ayan nove'a*, the flowing well of Torah. According to this last approach, the *issurim* and *chumrot* decreed now serve the same purpose as the ones actually written in the Torah, namely, to stop the spread of the serpent's poison. This view raises the significance of our question beyond the realm of mere *chumrot*, extending the question to the new restrictions of our time.

The numerous *chumrot* affecting every aspect of our Jewish observance can be broken down into two distinct categories. The first category includes obligating oneself to things that are unquestionably not required, and refraining from things that are undoubtedly permissible. This includes eating foods inside a *succa* even if one cannot be *kove'a se'uda* on them (Succa 28b), women fulfilling *mitzvot ase'i she-hu-zeman gerama*, fasting, and taking a vow to become a *nazir*. While there seems to be nothing wrong with doing "extra," we will see that, Halakhically, the issue is not so simple.

Some of the most popular *chumrot* fall into the second category of *chumra*, trying to be *yotzei* as many *shitot* as possible. This idea has been extremely prevalent among the Briskers (Nefesh ha-Rav : 20-21). They cite Kohelet Rabba, on the *pasuk* (7:18), "*Ki yir'ei elokim yetzei et kulom*," [for he who fears the Lord will discharge of them all]. The commentators explain this as a reference to R. Avahu's *gezera* (Rosh Hashana 34a) that the *shofar* on Rosh Hashana, which is to sound like our crying, be blown as a *teru'a*, *shevarim*, and *shevarim-teru'a*, because he did not know which type of cry we are supposed to convey; a short shrieking cry, or a longer sob. R' Avahu believed that when we have a doubt as to the proper way to perform a *mitzva*, we should try to cover all the bases.

Nevertheless, this idea is inherently problematic. How far can we extend this? Should we light a second *menora* on Channukah and start with eight candles the first night in order to be *yotzei* the *shita* of Bet Shammay (Shabbat 21b)? Perhaps we should eat four *se'udot* on Shabbat in order to follow the view of R. Chidka? Besides, do we have the right to disregard the accepted Halakha?

Netziv in the introduction to the Ha'amek She'ela (18) discusses two types of rejected *shitot*. All opinions in a *machaloket* glow with an internal light, an Or Torah. However, yet not all shine with equal radiance. One will be accepted as Halakha and will flame into a raging fire. Some rejected opinions, such as the opinion of Doeg ha-Edomi that women from Ammon and Moav are unacceptable as converts, will lose their radiance altogether, and their sun, their Ohr Torah, shall set. Many rejected

opinions, though not accepted as Halakha, retain their Ohr Torah, not only to be relied upon *be-sha'at ha-dechak*, but also to illuminate other areas of Halakha, and, perhaps, to explain the thought process behind the opinion we do accept. As an example, the Netziv quotes the *machaloket* at the beginning of Berakhot over the latest time to recite *shema* in the evening. R. Eliezer believes that we can recite *shema* until the end of the first watch, because that is when people go to sleep. Although rejected, R. Eliezer's opinion establishes the end of the first watch as a significant Halakhic time frame. Moreover, the gemara entertains the idea that the Chachamim, who say *shema* can be recited until midnight, actually agree with the reasoning of R. Eliezer, that *Shema* must be recited when people are going to sleep, and merely disagree as to what is the exact time that people retire!

Drawing on this idea, R. Michael Rosensweig (see *Elu ve-Elu Divrei Elokim Chayyim: Halakhic Pluralism and Theories of Controversy*) determined which *shitot* one may accept, though they extend beyond the *pesak halakha*. A *shita* that accentuates a certain facet of a *mitzva*, without contradicting the accepted view, can be followed. As an example of this phenomenon, R. Rosensweig turned to the explanation of R. Hai Gaon in regard to being *machmir* for all variations of *teru'a*, when we blow shofar on Rosh Hashana. R. Hai Gaon states that, actually, we would be *yotzei* with any of the sounds of the blowing of the *te'rua*. However, since each sound represents a different type of weeping, blowing all of them adds an extra dimension to the *yom teru'a* aspect of Rosh Hashana.

As we have seen, accepting a *chumra* upon oneself is not as simple as it may seem. Beyond the fact that a *chumra* should be a personal choice, attuned to one's own spiritual needs, there are certain rules that must guide our choice of *chumrot*.

From "*lo titgodedu*," (Devarim 14:1) literally do not make tears in your skin, the gemara (Yevamot 13b-14a) learns that you should not split into many groups (*agudot agudot*) when performing an action of religious significance. Rashi explains, that by doing so it appears as if *benei yisrael* are following two different Torahs. Rema

(Orach Chayyim 493:3) encodes this *pasuk* while explaining that there should be only one *minhag* of the time when the mourning period of the omer is observed in each city. When one is *machmir*, and thereby creates a variance in practice, it causes an appearance of two Torahs, he violates the Torah prohibition of "*lo titgodedu*."

Rambam (*hilchot akum* 12:14) offers another reason for this prohibition, namely to minimize *machaloket* among *kelal yisrael*. This somewhat overlooked idea presents itself in *perek makom she-nahagu* (Pesachim 51b-52a). The gemara discusses a situation where someone who has a *minhag* not to work on *erev Pesach* travels to a place where people do work on *erev Pesach* and vice-versa. The gemara says that in the former case one has permission not to do work, even though everyone around him is working, because people will assume that he couldn't find any work to do, not that he purposely refrained from working. By implication, if not for the reason that people will think he has no work to do, he would be required to break his own *minhag* and follow the *minhag* of the town, though he is *mekil*, so as not to cause *machaloket*! In fact the Vilna Gaon postulates (Orach Chayyim 468) that in all things that are not *de-orayta*, a person must follow the *minhag hu-makom*, in order to avoid strife! Perhaps this idea would apply to the direction one should face during *shemoneh esrei* if the *aron kodesh* is not facing *eretz yisrael*.

Do not be a fool! The gemara in Rosh Hashana (14b) quotes a *berayta*, "Really the Halakha is like Bet Hillel and one who wants to may follow Bet Shammai... One who follows the leniencies of Bet Hillel and the leniencies of Bet Shammai is a *rasha*, and one who follows the stringencies of Bet Hillel and the stringencies of Bet Shammai in this regard, the *pasuk* states (Kohelet 2:14), "And the fool walks in darkness." Rashi explains that this refers to a case where the *machaloket* will yield a *kula* in one case and a *chumra* by another. For example, the Mishna in Ohalot (2:3) relates a *machaloket* regarding how many vertebrae must be missing from the spine in order that it will not be *metamei be-ohel*. Bet Shammai says two, while Bet Hillel requires only one. Clearly, Bet Shammai is *machmir*. However, this same *machlokes* will

apply to the amount of vertebrae necessary to make an animal a *tereifa*, and thus unfit to eat. In this context, Bet Shammai, who allows two to be missing, advocates the more lenient view. In such a situation, says Rashi, one who is *machmir* both by *tum'a* and by *tereifa* is a fool because the *chumrot* are contradictory. But with two unrelated arguments, one may be *machmir* for either the opinion of Bet Shammai or for that of Bet Hillel (the same would hold true for any two people arguing in more than one case). Tosafot (Rosh Hashannah 14b) adds that even if a person is aware of the *pesak halakha* and wants to be *machmir* nonetheless, he is considered a fool because he is contradicting himself. This *berayta* is also cited in Eruvin (6b) and Chullin (43b). In both of these instances the gemara deals with a case where according to each party separately there is no *pesul* and only by overlapping two arguments and being *machmir* for both stringent *shitot* would a problem develop. In such a case one who is *machmir* is considered a fool because according to each party separately there is absolutely no problem.

The Yerushalmi in Berakhot (2:9) makes an astounding assertion. Anyone not obligated to do something who does it anyway, is called a *hedyot*. This gemara is not "just" *aggada*. Rema refers to it (Orach Chayyim 639:7 in regard to eating in a *succa* while it is raining. Also see Tosafot *ad loc.* that one cannot eat in a *succa* in the rain because it's not *teshvu ke'en taduru*), as does Magen Avraham (Orach Chayyim 32:8, in regards to one who is not required to lean during the seder, and 472 in regard to adding extra lines onto *kelaf*), and Peri Megadim (*pesacha le-hilchot tzitzit*), who invokes this rule also when one does not do something. This gemara declares all actions beyond pure Halakha unnecessary and

*Continued on page 12*



*Following Bet Shammai in Hilchot Kriat Shema*



- Continued from page 5

## "And You Shall Teach Your Children"

Netzach Yisrael suggests a powerful answer to this apparent paradox in Rambam. Maharal explains that these three sins -- *avoda zara*, *sheichut damim* and *gilluy arayot* -- are infused with *tum'a* (see Shavuos 7b). Although legally and technically there is no "*ma'as'e avera*" or punishment in such cases, the acts themselves are nonetheless *metameh hanefesh*. This idea is similar to one that is found in Rav Solovetchik's *Al ha-Teshuvah*. Rav Solovetchik describes two different aspects of *teshuvah*: *kapara* (acquittal) and *tahara* (purification). He explains that both these elements of *teshuvah* are necessary in direct response to both the liability and defilement of sin. Although the element of liability may not be present when these sins are committed *be-ones*, the element of *tum'a* remains present. Therefore, *benei yisrael*, who are called "*mamlechet kohanim ve-am kadosh*," must always be *moser nefesh* for these three sins rather than become defiled by them.

This answer also serves to clarify the Rambam's exemption of *benei noach*. The Jew's obligation to be *moser nefesh* for these three mitzvot stems from the strength of *kedushat yisrael*. However, *benei noach* were not commanded in "*kedoshim teh yu*." They were rather

only obligated in "*dinim*" and not "*kedusha*." Thus, *benei noach* are not held accountable for *tum'a* as explained in *Nazir* 60a: "*Kol she-yesh lo tahrush, yesh lo tum'a*." *Tum'a* can only exist within something that has already acquired a certain level of *kedusha*. *Benei noach*, who have never attained such a status of *kedusha*, are consequently not obligated in preventing *tum'a*. The *ben noach's* exemption from *kiddush ha-shem* reflects another important distinction between his lifestyle and character and that of a *ben yisrael*. Rama in his *She'elot ve-Teshuvot* 10 writes that although *benei noach* and *benei yisrael* have seven *mitzvot* in common, there is an essential difference in our relationships to them. "*Benei noach kove'a ha-teva. Benei yisrael kove'a ha-halakha*." The existence of *benei noach* is based on physical and worldly matters. Therefore, his obligation is merely to fulfill natural and societal standards. Nevertheless, the life of a *ben yisrael* is meant to rise beyond the confines of nature, time, and the senses. Therefore, he is governed by laws that are unique to a Torah lifestyle. Maharal, in chapter seven of *Tiferet Yisrael*, writes that the number seven symbolizes "*olam ha-teva*," the natural world, as it was completed in the seven days of creation. The seven *mitzvot* of *ben noach* parallel this idea functioning only as a protection of the natural human order. In contrast, *benei yisrael* are given a multitude of *mitzvot*, because they are not only concerned with the preservation of the natural but also with the elevation of the spiritual. The natural instinct within man is to survive. It is not within human nature for one to sacrifice himself "*al kiddush ha-shem*." For this reason, *benei noach*, who are

limited to a natural-existence, are not expected to perform such an act. Nevertheless, *benei yisrael* are expected to achieve a supernatural commitment to Torah and *mitzvot*.

This definition of *mitzvot benei noach* as exclusively preventative or protective laws can even be applied to the opinion of Ramban that *benei noach* are obligated to die "*al kiddush ha-shem be-farhesya*." Although Ramban's ruling seems to give a more equal status to *benei noach* and *yisrael*, this is not necessarily the case. *Benei yisrael's mitzva* of *kiddush ha-shem* is connected to their supernatural and *kadosh* level of existence and therefore they must die even *be-tzin'a* for the cardinal sins. Nevertheless, *benei noach's* obligation to die in public is not connected to this lofty spiritual level, but rather only to the negative commandment of "*lo techalelu*." The only reason *benei noach* are obligated in martyrdom in public is to prevent causing *chillul ha-Shem*. This idea corresponds to the negative character of *mitzvot benei noach* in general. Tractate Sanhedrin teaches that all of the Noachide laws are considered negative commands (*shev ve-al ta'ase*), as opposed to the 248 positive and active *mitzvot* of *benei yisrael*. To varying degrees, both of these Halakchic possibilities -- one which totally exempts *benei noach* from dying *al kiddush ha-shem* and one which does require such action in a public forum -- address these fundamental distinctions between the nature of *mitzvot benei noach* and *mitzvot benei yisrael*. These distinctions also reflect the difference in the intrinsic spiritual level of *benei Noach* and *benei Yisrael*.

- Continued from page 6  
Strolling in Pardes

the argument as to whether the *sukkot* in Deuteronomy 16 refer to *sukkat mamash* or the *ananei hakovod*. The gemara's conclusion seems to lean toward the position of R. Akiba who argues that the passage means *sukkat mamash*, the Gaon proves from the Talmud Yerushalmi that the correct understanding of the Bavli is not consistent with R. Akiba's opinion and the passage refers to the *ananei ha-kavod*.

Based on the gemara, it seems that the question of "*sukkat mamash* or *ananei hakovod*" does not lead to any practical Halakchic distinctions. It is for this reason that the Rambam does not rule on the issue. The strong interrelationship between Halakha and Pardes for the Gaon might explain why he deems it important to discuss this issue in a traditional Halakchic context. If Pardes is often interconnected with Halakha and is viewed with the same authority, then each of its conclusions must stand up to the same rigorous scrutiny. The idea that the *sukka* commemorates the *ananei ha-kovod* of the Sinai dessert is very important to the Gaon, to the extent it might even determine the date of the obligation of the *mitzva*.

In his commentary on Shir ha-Shirim, the Gaon questions why we dwell in *sukkot* on the fifteenth of Tishrei, if the *ananei hakovod* appeared for the first time in Nissan. The Gaon responds that *mitzvat sukka* does not commemorate the first appearance of the *ananei ha-kovod*. Rather, it celebrates the return of the *ananei hakovod* to the camp. The clouds disappeared when the children of Israel sinned with the golden calf and only returned when they began to build the Mishkan. The Gaon, through a calculation, argues that the building of the Mishkan began on the fifteenth. Moshe came down on Yom Kippur with the second set of *luchot*. On the eleventh of Tishrei, Moshe commanded the Jews to build the Mishkan. On the twelfth and thirteenth they brought donations for the building and on the

fourteenth, Moshe commanded them to cease construction. Therefore, they began building on the fifteenth, thus restoring the *ananei hakovod*.

## Gashmiyyut and Hashgacha

In his book, *Zeman Simchatenu*, based on the thought of the Gaon, R. Cohen discusses the Gaon's symbolic understanding of the *sukka*. A similar yet distinctive notion is expressed in the Gaon's commentary on Jonah. The *sukka* functions, R. Cohen writes, to demonstrate that *am yisrael*, unlike the other nations, is supervised directly by God's providence.

The world's course generally follows the path set by the constellations. One of the primary stars which determines destiny is the sun. It is for this reason that Halakha requires that the *sukka* have more shade than sunlight. The shade of the roof, which blocks the rays of the constellations, is symbolic of the physical revelation of God's direct providence in the desert represented by the *ananei ha-kovod*. Therefore, *mitzvat sukka* today emphasizes the absence of *mazal* ("*ein mazal be-yisrael*") and highlights the direct relationship of God with Israel.

In Jonah, the Gaon interprets this Halakchic requirement as a rejection of materialism. The Gaon writes that the sun represents material prosperity. The Gaon writes "All richness and good on this world comes from the sun." The *sukka* emphasizes the rejection of this materialism and the acceptance of Torah. The Gaon derives this notion from the passage in Deut. 16:13, which the gemara (*Sukka* 12a) employs to determine the nature of the roof of the *sukka*. The passage explains that the holiday of Sukkot is celebrated when one gathers one's grain from the field. The gemara writes that the passage teaches us that the undesirable remains of the harvest should be used for the *sukkah*. It is these scrubs, says the Gaon, that are glorified in its use for the *sukkah*. For the Gaon, the Halakchic requirement of "*gidulei karka*" (objects grown from ground), as deduced from the passage by the Talmud, is the conscious choice of the passage in order to illustrate that the *sukkah* rejects the fat of the world and accepts only its scrubs. The Gaon claims that this should be a model for man's approach to life as well.

Shemini Atzeret: *Chatzi Lashem V'chatzi Lochem*  
When discussing Shemini Atzeret, the scripture

is ambiguous about the nature of the holiday. In regard to the *atzeret* of Pesach in Deut. 16:8, the Torah describes it as "*atzeret* for Hashem, your God". In Numbers 29:35, the *atzeret* of Sukkot is described as "*a day for thee*." The gemara (*Pesachim* 68b and *Beitzah* 15b) explains that both passages are the same according to the drasha of R. Yehoshua and teach that one half of the day is for God and the other half is for yourselves. In Kol Eliyahu, the Gaon is quoted as explaining the *derasha* and its Halakchic implications with the aid of *gematria*, the prime method used in the world of *remez*. Half of the numeric value of the word "*la-shem*" is 28 and half the numeric value of the word "*de-lachem*" is 45. The sum of these half values is 73, the *gemateria* of Yom Tov.

In this case, the Gaon does not simply use Pardes to elucidate the Halakchic explanation of the scripture. In his commentary on Yeshayah, the Gaon inquires why the Torah refers to Shemini Atzeret in contradictory tones. The Gaon explains that the scriptural language is varied in order to highlight different Kabbalistic notions which are expressed by Pesach and Sukkot. The Gaon notes that the seven days of Sukkot symbolically descend through the seven heavenly states of the *rakia*, and Shemini Atzeret corresponds to the eighth level which is the earth. Therefore, on a purely kabbalistic level, it should be celebrated as a day for ourselves, since the land was given to man (*Psalms* 115:16). However, in the case of Pesach, the Torah calls the seventh day *atzeret*. It therefore corresponds to the seventh level of the *rakia*, representing the notion that the heavens belong to God (*Psalms* 24:1). Consequently, scripture sets aside this day of *atzeret* as being categorically devoted to God.

The Gaon does not ignore the discrepancy between the Kabbalistic conclusion and the Halakchic one. He notes that Zohar on *parshat teruma* (139) will resolve the justification of the Halakchic conclusion in Kabbalistic form, as to be expected. This comes as a result of the general approach of the Gaon, to view Halakha and Kabbala as both sharing equal significance. On a broader level, we have illustrated that the Gaon views all forms of Pardes and Halakha as one whole unit which must always be consistent. They are not products of dissociated and unrelated methodologies. Rather, they represent parts of a greater composite picture of Torah.



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## Divided We Stand Mechitzot Examined

by Jordona Schassel

Many of us have walked into a *shteibel*, and we couldn't help but notice the ten inch thick, ten foot high wall that separates the men and women. We have also walked into many "modern" synagogues and observed *mechitzot* that reach our waist, three and a half *amot* high. What is the source for this blatant difference of opinion regarding the measurement of *mechitzot*? The nature of this disagreement, as seen from the primary sources, stems from a difference of opinion as to the nature and purpose of the *mechitza*, which in turn influences its practical application.

The earliest source for the Halakha of separation is found in the Mishna (Succah 5:2), which deals with the Water Drawing ceremony that occurred in the temple during the holiday of Succot. The Mishna says, "whoever did not see the Water Drawing ceremony has never seen rejoicing in his lifetime. At the conclusion of the first day of Succot, they descended to the women's section where they had made a great improvement." The gemara in Succah 51b tells us that this "great improvement" was the creation of a balcony for the women to sit in, above the men. The gemara states that originally, the women sat inside while the men sat outside, but this led to unwanted frivolity. They tried to reverse the locations and put the men inside and the women outside, but this also led to frivolity. Finally, the balcony was established to separate the genders.

The gemara asks: how are we allowed to "make an improvement" on the structure of the Temple? According to Chronicles 28:19, when Gad the Seer and Nathan the Prophet were transmitting the instructions for building the *Bet ha-Mikdash*, they were told, "all is in writing from the hand of the Lord" and that they must build the Temple exactly the way Hashem had instructed them. The gemara responds that the people who made this improvement did not create this idea of a separation; rather, this concept originated in Zecharia 12:12: "And the land shall mourn, every family apart; the family of the house of David apart, and their wives apart." The gemara derives from this *pasuk* that in the future, men will mourn apart from women. Mourning is considered a time when our evil inclination has little power over

us; certainly, it is more likely to overpower us when we are engaged in rejoicing. From here, Chazal determined that a separation was necessary to prevent any frivolity amongst the people.

Based on the Mishna in Succah, we can infer that in the Temple, separation was a necessary precursor to a gathering. Nevertheless, from where do we derive the Halakha of separation in our shuls? The synagogue is

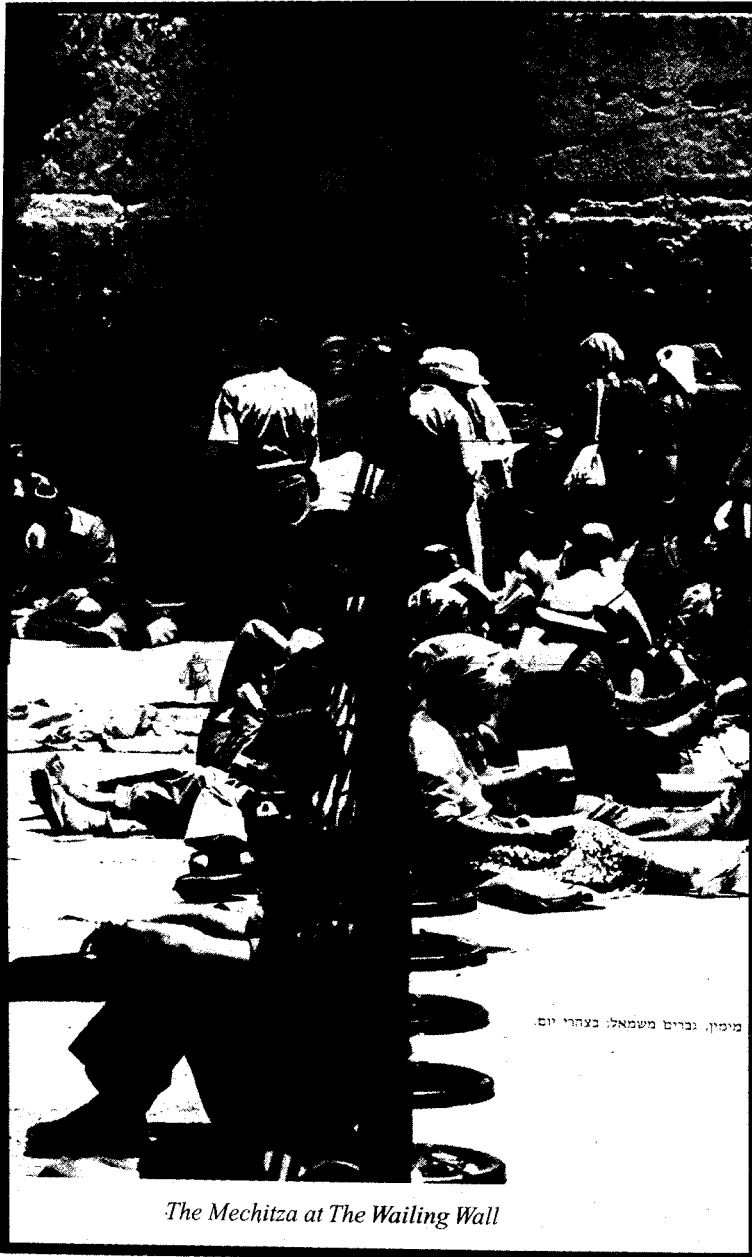
faces of the temple. In Berachot 26b, R. Yehoshua ben Levi said, "[the men of the Great Assembly] instituted the prayers to correspond to the daily burnt offering."

What is the reason for *mechitza*? There is a disagreement that stems from two sources in Rambam, each presenting a different motivation for the *mechitza*. In Mishna Torah (*hilchot lulav* 8:12), Rambam writes, "they would erect in the Temple a raised section for women and a lower section for men so that the two groups will not mingle." Yet, in Rambam's commentary to the *mishna Succah*, he writes, "the women section was higher than the men's section so that the men would not look at the women." What does Rambam maintain is the reason for the *mechitza*? Is it to prevent mingling or is it to prevent the different sexes from seeing each other? What is the difference in the practical application of these divergent views?

During the period of Rishonim, there are very few references to *mechitza* and the women's section of the synagogue. Surprisingly, the Halakhic codes do not specifically address the Halakha of *mechitza*. Perhaps we can infer the reason for this apparent oversight from a different source in Rambam. In his commentary to the Mishna Menachot 4:1, he explains why the Mishna did not discuss the particulars of *tzitzit*. He says that it is because the details of *tzitzit* were common knowledge at the time the Mishna was composed, and therefore did not need to be written down. Rambam writes, "they were known and practiced by the entire people, and not one detail was beyond anyone; therefore the redactors saw no reason to speak of them". According to Baruch Littvin in The Sanctity of the Synagogue, this rule of common knowledge can be applied to *mechitza* as well, thereby justifying why the Halakhic codes left this Halakha out.

There is no mention of an obligation of *mechitza* in the codes, yet there are discussions in Rishonic literature which imply the existence of a women's gallery as a legal requirement. R. Jacob ben Moses Moellin, who lived in Kremona in the late fourteenth century, mentioned *mechitza* in Sefer Maharil 50b when discussing whether women should bring children to shul. He concludes that if a woman must bring them to shul, she should keep them in the women's synagogue.

A later decision which implies the existence of a women's gallery as a legal requirement is given by Rabbi



The Mechitza at The Wailing Wall

called a "*mikdash me'at*", a miniature temple. In the Talmud Yerushalmi Berachot 51, R. Yochanan said "he who prays in the synagogue in the present world, it is as if he were praying in the ancient Temple." In fact, our standard prayers were instituted in correspondence with the sacri-

Moses Isserles in Shulchan Aruch, Yoreh De'a 265.

Other than these few references, the requirement to put up a *mechitza* was not stated as law until as recently as the nineteenth century. Since then, there have been an abundance of literature discussing the particulars of the *mechitza* structure. What brought about the this burst of Halakhic literature on this subject? What are the particulars of this structure? In order to understand why the *mechitza* became such an important issue in recent times, it is necessary to look at some historical background.

The Enlightenment was the major European intellectual movement of the eighteenth and nineteenth centuries. One of the central ideas of the Enlightenment was the power of man to understand the universe and improve his own condition. This movement in the secular world toward emancipation and equality affected the Jewish communities in the ghettos in Europe. According to Michael Silber in "The Historical Experience of German Jewry and its Impact on Haskalah and Reform in Hungary," the Jews had been struggling with equality within the rigid social divisions of Hungarian society as in other countries. Thus, the Haskalah movement was born in the 1880's, as the Jewish course to this newfound freedom and equality. Unfortunately, this new freedom led to assimilation of many Jews. To them, assimilation was seen as a precondition to and integral element within this emancipation.

As a response to the changed political and cultural conditions brought about by this newfound freedom, in the early 1800's, Reform Judaism was born. These reformers were primarily laymen whose major concerns were the blatant absence of western standards of aesthetics and decorum in the traditional manner of Jewish worship. They wanted reform, and began with changes in the Synagogues services. They introduced the delivery of sermons in the vernacular, choral singing with organ accompaniment, and supplementing the standard Hebrew prayers with prayers in the vernacular. In 1851, for the first time in history, the *mechitza* was removed from a synagogue in America.

Due to the Enlightenment, the Haskala, and the emerging reform movement, the observant leaders of the generation fought fiercely against the reforms in the Tradition and law of the Torah. It is here that the discussions

about the issue of *mechitza* emerged. However, as the issue surfaced, two different schools of thought developed regarding the reason for the *mechitza*, and thus a difference in practical application as well.

Maharam Schick, R. Moses Ben Joseph, was one of the forerunners in *pesak* in the fight against reform. While in Hus, he wrote many *responsa* prohibiting reforms of the Jewish tradition and Law. One such *responsum* is found in Orach Chayyim 77, where he deals with a *mechitza* that was removed from the synagogue. He says that the Jewish law requires a separation between men and women during worship. He claims that the purpose of this separation is that the men not see the women, as it leads to frivolity. Hence, it is logical to set the required height of the *mechitza* to be tall enough that the men and women cannot see each other.

Tzitz Eliezer, in *responsum* 10:7, stresses that the reason for having a partition is "so that the men will not look at the women, and therefore the *mechitza* must be high enough that the men and women will not see each other." He quotes R. Shlomo Ganzfried, author of the Kitzur Shulchan Arukh, who said, "it is forbidden to erect any partition that allows the men to gaze upon the women."

R. Moshe Feinstein wrote a *responsa* regarding the required height of a *mechitza*. According to Rav Moshe in Orach Chayyim volume 1 Responsa 39, the *mechitza* was created to preclude any possible frivolous mood. Therefore, the *mechitza* need only to reach shoulder height, which is about three *amot*, approximately five and a half feet. The *mechitza* has the same Halakhic requirement of any other dividing wall. The Mishna in Kilayim 6:1 speaks of a wall of separation that is ten *tefachim* high. Therefore, the *mechitza* which acts only as a wall of separation in order to avoid frivolity, is required to be only ten *tefachim* high.

The opinions of Maharam Schick, Tzitz Eliezer and R. Shlomo Ganzfried develop from the view that a *mechitza* must be tall enough that it will prevent men and women from seeing each other. This view is based on Rambam in his commentary on Mishna *Succa*, where the *mechitza* was set up to prevent the men and women from seeing each other. Yet, the opinion of Rav Moshe that the

*mechitza* need only to be shoulder length, is in keeping with Rambam in *hilchot lulav* 8:12 where the *mechitza* was erected to prevent the mingling of the sexes. It is these two conflicting comments of Rambam that have inspired the two divergent views of the requirements of *mechitza*. The next question is: which Rambam does Rambam maintain as the Halakha? Rav Moshe, in *responsum Orach Chayyim* 1:31 deals with the issue of the conflicting interpretations. He said that the Rambam in *hilchot Lulav* is the Halakha and Rambam from his commentary on Mishna *Succa* is only a commentary and not to be followed as Halakha. Rav Moshe explains that the Rambam wrote his Mishna Torah with the aim of providing legal ruling, and therefore that is what we should follow. Furthermore, Rav Moshe proves that the *mechitza* was never erected to prevent seeing. Originally in the Temple, the men were on the outside and the women on the inside. Despite the fact that the men and women could see each other, nothing was said about that, rather the reason given for the erecting of a balcony was because the sexes were mingling.

The last remaining question is why Maharam Schick and the others follow Rambam's commentary on the Mishna? According to Rav Gitsel Ellinson author of *Hatzne'at Lechet*, the vociferous opposition of the Rabbis of the nineteenth century was most likely based on their distrust of the active reformers of their time. Maharam Schick and Rav Shlomo Ganzfried fought bitterly through their *responsa* to prevent the Reform movement from changing the custom, in order to prevent the Reform movement from changing the Jewish Laws. Today, after the Reform movement has already been established for many years, Tzitz Eliezer accepted the *pesak* of Maharam Schick in regard to the *mechitza*'s height, and ruled that the *mechitza* must prevent the men from seeing the women.

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*Chumrot*

The Yerushalmi in Berakhot recounts an additional restriction, that one can only be *machmir* if his actions do not embarrass others, namely, if he is alone. Be'er Hetev invokes this restriction regarding wearing the *tefillin* of Rabbenu Tam. To wear the *tefillin* (Orach Chayyim 34:6) in front of the congregation constitutes *yuhara*, haughtiness, and should be avoided. In our pursuit of self perfection, we must not overlook the feelings and sensitivities of others. Trampling others is a legitimate way to raise ourselves. Instead, we should neglect our own advancement for the sake of peace.

R'Yehuda ha-Chasid in Sefer ha-Chasidim (362) takes this one step further. He deals with a case where, by being so *machmir*, one turns others off completely. In such a case, the point in being *machmir* disappears, because via the stringencies, others refuse to follow anything. Again, ones own self-advancement must bow to the spiritual needs of others.

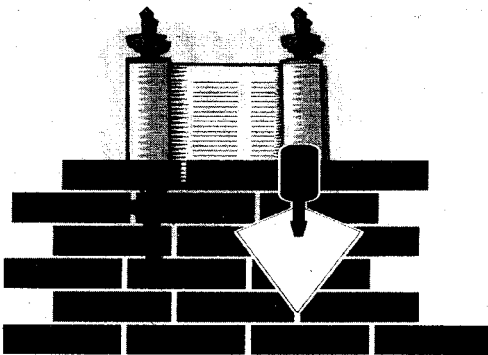
The gemara in Gittin (5b) rejects a possible new *chumra* for a Get, reasoning that people may say that the old Gittin, which do not employ this *chumra*, are invalid (*motzi la'az*). Something, or someone, that follows *pesak halakha* but may not follow a *chumra*, is just as good as one who does follow the *chumra*. This rationale is explicit in Ritva, Ran, and Meiri on *Succa* (25a). Though one may not be *machmir*

to eat even things that are not *mezonot* in the *succa*, that does not mean he is not careful in the fulfillment of *mitzvot*, nor should such a person be looked down upon. One who does not follow a *chumra* is not excluded from your requirement of, "*ve-ahavta le-re'akaa ka-mokha*."

The Tosefta in Shabbat (17:4) relates a *machaloket* Bet Shammai versus Bet Hillel as to one what should do

Roman emperor (see Maharsha), he caused the burning of the Bet ha-Mikdash. This rather harsh statement stems from the gemara in Gittin (56a), the story of Kamtza and Bar Kamtza. Ultimately, it was this same R. Zerachya who refused to bring the *korban* because it had a blemish, which rendered it unfit for the *mizbe'ach*. It was understood by the Romans as a slap in the face and eventually caused the Great Revolt which led to the destruction of the second Bet ha-Mikdash. But what does all this have to do with this *machaloket* regarding Shabbat? Why should this fly out of left field into this Tosefta?

The Tosefta in Shabbat teaches us an important lesson. The refusal of R. Zerachya to offer the Roman's *korban* was not a one time show of stringency that may have been caused by outside factors. Rather, he wanted to start the revolt. Being as stringent as possible, beyond normative Halakha and even beyond the extreme *shittot*, was part of R. Zerachya's nature. Such a trait, warns the Tosefta, is dangerous. Do not listen to the part of you that says, "Oh, I'll just worry about everything and play it safe." Once that happens, logic goes out the window and then even if following the *chumra* will have catastrophic consequences, people will blindly follow.



with the garbage left on the table after a Shabbat meal. After relating the argument, the Tosefta relates that Zerachya ben Avkilas was more stringent than both opinions. The Tosefta concludes with the statement of R. Yosi, that since R. Zerachya did not bring the *korban* of the

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worthless! This immediately raises numerous questions. According to this gemara, no one can do anything extra! Accepting a *ra' amit* or *shavua'*, women fulfilling *mitzvat asef she-ha-zeman gerama*, all are in vain!

Maharshah (Orach Chayyim 639) attempts to place this gemara in the proper context. He brings a Mishna in Succa (26b) which states, "It happened that they brought R. Yochanan ben Zakai a cooked dish to taste... and he said everyone to the succa." The gemara explains that really there was no need for R. Yochanan ben Zakai to eat this in the *succa* since he could not be *kove'a se'uda* on it. But didn't he directly contradict the Yerushalmi? To resolve this quandary, Maharshah invokes the great schism. If the person is required to do something, he may imbue the object with greater import than it actually has (*achshe-vei*). Therefore, R. Yochanan, who would be required to eat *mezonot* in a *succa*, had the legal right to treat any food as if it were a *mezonot*. However, if the person has no requirement and nevertheless performs the action, such a person is called a *hedvot*.

While Maharshah's distinction does indeed rectify this particular situation, it does not totally alleviate the problem. After all, the Yerushalmi implies that one cannot do anything above and beyond normative requirements. Why then, do Rambam and Tosafot (Rosh Hashana 33a) argue whether women can make a *berakha* on a *mitzvat asef she-ha-zeman gerama*, when the debate should revolve around whether they can perform the *mitzva* at all (see Rashi on Rosh Hashana 33a, s.v. *ha-nashim*)?

To attempt to answer this question, it becomes necessary to make another distinction between *chumrot* regarding *mitzvat*, as opposed to *chumrot* that one makes up for himself. The Rambam (Devarim 22:6) declares that *mitzvat* are not merely *gezerot ha-melekh*, statutes that Hashem said we must do for no reason other than to demonstrate our loyalty to him, rather, they have reasons as well. Rambam (*hilkhot melakhim* 10:10) says that even when a non-Jew wants to do a *mitzva* in order to gain a reward, we do not restrain him (see Radvaz).

The Yerushalmi in Nedarim (9:1) refers

to taking promises and decrees, "Is it not enough what the Torah disallowed you to do, that you also want to prohibit other things?" This question is brought to the fore in the Bavli's Nedarim (10a also Nazir 19a). The *pasuk* (Bamidbar 6:11) states that when one finishes the time he swore to become a *nazir*, he must bring a *korban chattat*, a sin offering. The obvious question is why; what did the *nazir* do wrong? R. Elazar ha-Kapar explains that because the *nazir* troubled himself by withholding wine, he is called a sinner. If so, we can certainly infer that one who restrains himself from all food and drink is a sinner (Ta'anis 11a)! (Tosafot explains that though he may be called a sinner, the reward he gets for the *mitzva* of fasting outweighs the sin.)

Rambam, however, rules like R. Elazar (*hilkhot devot* 3:1 see Lechem Mishna who explains Rambam as *de-rabbanan*). "If one goes to an extreme until he does not eat meat (vegetarianism), or drink wine, or get married... or any similar thing, like the priests of idolatry do, he follows a bad path, [one] that is not allowed to be followed, and one who follows it is called a sinner." Rambam then goes on to codify both the position of R. Elazar and that of the Yerushalmi in Nedarim! (This lack of respect for abstinence seems to have many pillars of support. Besides the gemaras already discussed and the Yerushalmi in Berakhot, The Yerushalmi in Kiddushin (4:12) tells us that in the future a person will be held accountable for all the worldly pleasures in which he does not partake, because through these pleasures one can praise Hashem for what He has created for us. *Valkut Torah* (parshat Re'ei 891) reveals that since Hashem loves *benei yisrael*, He therefore commanded us not to trouble ourselves and will reward us for that (Also see Horayot 10b, Tanna De-vei R. Elazar 14, and Torah Temima Bamidbar 6:11). All this advocates the philosophy that a Jew has no right to abstain from more than the Torah proscribes except under extreme circumstances or where we find clear precedence.

### Common Sense

A *chumra* must follow what common sense dictates and common sense must be utilized when being *machmir*. The classic case of ignorance is the *chasid shoteh* (Sota 21b). The gemara describes a person who is so scrupulous in his performance of *mitzvat* that if he sees a woman drowning in the sea he will not save her because he may see her nakedness. While such a case is an extreme formulation, as no one would think of not saving the woman, many precious things (such as peoples feelings, as we will discuss later) simply fall by the wayside in our unrelenting quest to be as *machmir* as possible.

To further explore this idea, we turn to Berakhot

(11a). The gemara relates that R. Tarfon, while traveling, endangered himself by lying down in order to recite *keri'at shema* at night, in accordance with the view of Bet Shammai, instead of relying on the view of Bet Hillel, who allows the recitation of *keri'at shema* in any position. When he related the incident to the Chachamim, they replied, "You deserved to be hurt, for not following the words of Bet Hillel." This story is very difficult. What harm is there in being *machmir* for the *shita* of Bet Shammai (see Tosafot Yom Tov on Shabbat 1:9)? Furthermore, R. Tarfon did fulfill the *mitzva* according to Bet Hillel, as they believe that *shema* can be recited in any position! R. Rosensweig suggests that R. Tarfon had every right to be *machmir* for the more stringent *shita*. But he should not have endangered himself in order to observe a *chumra*. By doing so, far R. Tarfon showed that to him, lying down for *shema* must not be just a *chumra*; he must believe that this is the actual Halakha. Therefore, the Chachamim said he deserved to be harmed. One must recognize the difference between what is the *chumra* and what is the required Halakha, and must be sensitive to the circumstances when adherence to the *chumra* ought to be suspended.

Being able to distinguish between a *chumra* and actual law played an integral part of the first sin ever committed. Rashi, (Bereshit 3:3-4) quoting Bereshit Rabba, recounts how Adam told Chava not even to touch the *etz ha-da'at* so that she would not come to eat from it (see Sifsei Chachamim 3). He did not inform her that this was an extra precaution that he had devised personally thereby allowing Chava to think that this too was the word of Hashem. The snake, while trying to persuade Chava to eat from the tree, pushed her against the tree and reasoned, "Just like there was no death from touching, there will be no death from eating." Chava listened (Rashi 3:6), "She saw the words of the snake." Had Chava been able to distinguish the law from the *chumra*, she would have realized the falsehood in the words of the snake. Nevertheless, she did not. As a result, she assumed that if one part turns out to be false, she might as well disregard the whole thing.

Besides the inherent dangers to one who follows a *chumra*, there is also the matter of how a *chumra* will affect ones relationships with others. This problem manifests itself in what the gemara calls *yuhara*, haughtiness. A person may not show off his ability to be *machmir* unless he is a great man, one who we would expect to worry about every minute detail (Bava Kamma 59b). At times, the gemara finds it necessary to tell us that one may follow this particular *chumra* and not be considered haughty (Succa 26b).

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