

Humrah and Kulah: The Halakhic Process, Levels of Obligation

Rabbi Jacob J. Schacter

The Jewish Center
New York City

There are a number of different categories of law in the system of halakhah. Our tradition speaks, for example, of Biblical commandments (*mizvot de-'orayta*), rabbinic laws (*mizvot de-rabbanan*), decrees (*gezerot*), ordinances (*takkanot*) and customs (*minhagim*).¹ But while all are obviously very important and the halakhah mandates that we observe each one of them, not all are equally binding in the same way. Our rabbis (Bezah 3b) teach us that *sfeika de-'orayta le-humrah*, a doubt in a matter of Biblical law is resolved in the direction of stringency while *sfeika de-rabbanan le-kula*, a similar doubt in the case of rabbinic legislation is resolved in the direction of leniency. Jewish law consists of a hierarchy of obligations and it is important to understand the category to which a particular requirement belongs in order to assess its place in the continuum of normative religious legislation.

There is a tendency among certain segments in the contemporary Jewish community to ignore these important distinctions and thereby distort this essential feature of Jewish law. There are those who treat a *humrah* as if it were

a *de-'orayta*, endowing it with the force of Biblical law and insisting upon it as a necessary and mandated mode of behavior. At the opposite extreme, there are those who treat a *de-'orayta* as if it were only a *humrah*, diminishing its significance and dismissing its normative character. I would like to address myself to both these tendencies in the hope of sharpening the distinction between the different levels of obligation as they emerge out of an analysis of the halakhic process.

There are those today who are *maḥmir* by adopting patterns of religious behavior not required by the halakhah. In itself this is a positive, welcome phenomenon. If someone is already a fully observant Jew, totally fulfilling all the *mizvot de-'orayta*, *de-rabbanan*, *gezerot*, *takkanot* and *minhagim* that have been mandated by Jewish law and yet wants to raise his or her spiritual level to even greater heights by adding more requirements or stringencies in their observance, *tavo 'aleihem berakhah!* After all, the purpose of *mizvot* is to help us develop a relationship with God and if we can deepen that relationship by an even stricter and more comprehensive Torah observance, then we should be encouraged to do so. There is, indeed, a striking passage in the *Mesillat Yesharim* discussing the spiritual benefit of *perishut* or abstinence even from that from which the Torah allows one to benefit:

The category of *perishut* (abstinence) is reflected in the rabbinic statement, "קדש עצמך במותר לך"—sanctify yourself by (abstaining even) from matters permitted to you" (Yevamot 20a) . . . This refers to someone who considers a permissible object as prohibited to him. The reasoning behind this is that a person should distance and separate himself from anything that can eventually give rise to evil consequences, even though at the moment it does not lead to it nor is it in itself evil . . . If you will say, "What authority do we have to add prohibitions one on top of another? Did not our rabbis say, 'Are not the things which the Torah has forbidden enough for you that you come to forbid for yourself other matters?' (Yerushalmi, Nedarim IX:1)" . . . The answer is that *perishut* is certainly necessary and required. Our sages have exhorted us regarding it when they said, "Be holy, be abstinent (Sifra to Lev. 19:2)."²

It is clear from this and other references that *humrah* per se, emerging out of a sensitivity to the importance of *halakhah* and practiced by those already committed to the totality of the halakhic system, is laudible and praiseworthy.

But at the same time we recognize that not every person is on the requisite spiritual level required for adopting *humrah* as standard, normative behavior. On the contrary, it is a level attained only by a limited few. There are certain principles regarding *humrah* that govern its adoption even by individuals. For example, the Talmud (Baba Kamma 81b) discusses various *takkanot* instituted by Joshua. One of them allowed people to walk on the narrow strip of private property abutting a public thoroughfare when pegs obstructed the public domain making it difficult to walk there. Joshua essentially considered that narrow strip as *hefker*; allowing the traveller free access to it under those conditions. The Talmud relates that when R. Judah ha-Nasi and R. Hiyya were once taking a walk, they found it difficult to proceed in the *reshut ha-rabbim* and detoured to the side, taking advantage of Joshua's ruling. In front of them they saw R. Yehudah b. Kenusa continuing to walk along in the middle of the street, ignoring the alternative allowed by Joshua. R. Judah asked R. Hiyya, "Who is this person who is showing off in our presence by acting like he is a very pious person (*yerei shamayim me'od*) when in fact his behavior smacks of haughtiness (*meḥzi ki-yohara*)?"³ R. Hiyya responded that perhaps it is R. Yehudah b. Kenusa, his student, all of whose activities are motivated only *le-shem shamayim*. When, in fact, it turned out to be him, Rebbe said that, "Had it been someone else I would have excommunicated him for such behavior." In his commentary, R. Shlomoh Luria noted that R. Judah originally wanted to excommunicate R. Yehudah because he was "excessively stringent (*maḥmir yoter*)" and continues:

וא"כ מהכא מוכח שראוי לנדות בר בי רב שהוא מתייר בדין ומחמיר בדין שפשט היתר בכל ישראל . . . ואפילו היכא שאינו פשוט כל כך להתיר אל יחמיר אדם אדברי רבו אם לא שיש לו ראייה לסתור דבריו.⁴

Someone who adopts a *humrah* must be very careful that,

like R. Yehudah b. Kenusa, all his actions are *le-shem shamayim* and that he cannot be accused of *yuhara*, or acting out of haughtiness or any other ulterior motive. This critical criterion is not always the case today and many have the sense that the proliferation of *humrot* (almost in the form of a "*humrah* of the month club")⁵ is a result of other, less altruistic considerations. Furthermore, there is a danger when *humrot* as a whole become not just an expression of one's personal *yir'at shamayim* but are foisted as normative upon the entire community; when "*ha-maḥmir; tavo 'alav berakhah*" becomes "*ha-mekil, tavo 'alav kellalah . . .*"⁶

There is an interesting historical precedent for this kind of misplaced piety from the eighteenth century. It is well known that the origin of the prohibition of *kitniyot* on Passover is shrouded in confusion. Scholars have struggled to explain how this prohibition developed in light of the explicit Talmudic ruling allowing its use.⁷ Indeed, because early rabbinic *pesak* allowed the use of *kitniyot* on Passover, attempts were periodically made to dispense with the prohibition on a variety of grounds. One of the most famous attempts was made by Ḥakham Zevi Ashkenazi (d. 1717) and his son R. Jacob Emden (1698–1776) who considered it "a *humrah* that has no basis whatsoever." R. Emden recorded his father's and his own opposition to this custom in the second volume of his commentary to the *Tur*, entitled *Mor u-Kezi'ah*, published in the winter of 1767–1768.⁸ In 1769, he received a letter from a R. Jacob ha-Kohen living in Hamburg in support of his position, and expressing the hope that other scholars would agree to it. R. Jacob ha-Kohen, however, was skeptical that such a consensus would ever be reached in his generation where peoples' sense of halakhic priorities was skewed:

ומסופקני אם יבוא הדבר פעם אחת על מכונו בדור הזה שגברה הקנאה. ויראים יותר מן המנהגים כמפני גופי תורה.

In his response, R. Emden echoed R. Jacob's wish as well as his assessment of the contemporary situation,

שנתקיים בעו"ה ואברה חכמת חכמיו ואמסר עלמא בידא דטפשא . . .
 עושה טפל עיקר ועיקר טפל . . . ויפה אמר אב"ד גדול בדורנו רב בקהלה
 מפורסמת לבני קהלתו, הפסד גדול הוא שלא נכתבו עשרת הדברות בפנקס
 שלכם.⁹

I believe that the reference here is to R. Aryeh Leib of Metz who was alleged to have responded this way when the members of his community insisted upon reciting Akdamut after the first *pasuk* of the Torah reading on the first day of Shavuot even though some rabbinic authorities considered it to be a *hefsek*. When they based their refusal to deviate from their community's custom on the grounds that it had become an accepted procedure there, R. Aryeh Leib is alleged to have responded that *halevay* they would be as concerned with the Ten Commandments as they are concerned with a small detail found in their communal register.¹⁰

But this tendency to expand the canon of normative religious practice on the part of some segments in the observant community is hardly the burning issue confronting the Jewish world today. On the contrary, it is a lack of an even elementary commitment to any component of Jewish law—whether it be *mizvot de-'orayta*, *de-rabbanan*, *gezerot*, *takkanot* or *minhagim*—that threatens the future of Judaism in contemporary times. Yet, even the non-observant community suffers from the tendency to distort the hierarchy of obligations in Jewish law by inflating the importance of some *halakhot* while rejecting those much more important. In my experience, the most common example of this is laws relating to death. For various reasons, even the most non-observant Jew who has no compunction about *hillul shabbat* or *akhilat trefot* will ask all sorts of serious *she'elot* when it comes to this subject. Can I go to a birthday party during *shloshim*? Do I say Yizkor during the first year? What time do I light the memorial candle on the night of my *yahrzeit*? My favorite *she'elah* came to me two years ago when someone in my neighborhood asked me if Jewish law would allow the cremation of his sister to take place on the second day of Shavuot!

There is a remarkable example of "a bintel brief" which reflects this sentiment, written to the editor of a Yiddish

newspaper in 1908. I found it very interesting and reproduce it here in full:

Worthy Mr. Editor,

Please help us decide who is right in the debate between friends, whether a Socialist and freethinker should observe *yohrzeit*?

Among the disputants there is a Socialist, a freethinker, who observes his mother's *yohrzeit* in the following manner: He pays a pious man to say the *kaddish* prayer for the dead, and burns a *yohrzeit* candle in his home. He himself doesn't say *kaddish*, because he doesn't believe in religion. But his desire to respect the memory of his mother is so strong that it does not prevent him from performing this religious ceremony.

Among the debaters there are those who do not want to know of such an emotion as honoring the dead. But if one does desire to do so, one should say *kaddish* himself, even if he does not believe in it.

Therefore, our first question is: Can we recognize the beautiful human emotion of honoring the dead, especially when it concerns one so near as a mother? The second question: If so, should the expression of honor be in keeping with the desires of the honored? Third: Would it be more conscientious and righteous if the freethinker said *kaddish* himself, or if he hired a pious man to do it for him?

Being convinced that this matter interests a great number of people, we hope you, Mr. Editor, will answer us soon.

With regards,
 The Debating Group

ANSWER:

Honoring a departed one who was cherished and loved is a gracious sentiment and a requisite for the living. And everyone wants to be remembered after his death. Socialists and freethinkers observe the anniversaries of their great leaders—just recently they commemorated the twenty-fifth anniversary of the death of Karl Marx.

Saying *kaddish* is certainly a religious rite, and to pay someone to say *kaddish* is not the act of a freethinker. But we can understand the psychology of a freethinker who feels that hiring someone else is not as much against his own convictions as to say *kaddish* himself.¹¹

I do not mean to suggest that these details of 'avelut are unimportant. *Has ve-shalom!* I only mean to point out how many contemporary Jews have accepted the importance of certain types of halakhot over others, stressing what in many cases are only *humrot* while at the same time neglecting *mizvot de-'orayta*.

NOTES

1. For an explication of these terms and their significance see R. Zevi Hirsch Chajes, "Mevo ha-Talmud," *Kol Kitvei Maharaz Hayyot I* (Jerusalem, 1958), 281f.; translated into English by J. Schachter as *The Student's Guide Through the Talmud* (New York, 1960).
2. R. Moshe Hayyim Luzzatto, *Mesillat Yesharim* (Philadelphia, 1966), Chapter XIII, 239–41.
3. See Rashi, *ad. loc.*, s.v. *gedulato*.
4. R. Shlomoh Luria, *Yom shel Shlomoh*, Baba Kamma VII:41. My thanks to my colleague Rabbi Saul Berman for bringing this source to my attention.
5. See C. Silberman, *A Certain People* (New York, 1985), 260.
6. For a description of the current tendency towards *humrah*, see S. Elberg, "Bnei Brakism," *ha-Pardes* XXXVIII:3 (December, 1963), 5, and a forthcoming paper by C. Waxman, "Toward a Sociology of Psak."
7. See Pesahim 35a; Rambam, *Mishneh Torah*, Hil. Hamez u-Mazah V:1.
For brief histories of this issue, see R. Shlomoh Y. Zevin, *ha-Mo'adim ba-Halakhah* (Tel Aviv, 1949), 255–62; M. J. Rosenstein, "Legumes on Passover," *CCAR Journal* XXII:2 (Spring, 1975), 32–40; A. S. Cohen, "Kitniyot in Halachic Literature, Past and Present," *Journal of Halacha and Contemporary Society* VI (Fall, 1983), 65–77.
8. See R. Jacob Emden, *Mor u-Kezi'ah* II, Hil. Pesah, #453, 47a. For the date of publication of this volume, see *ibid.*, 97a.
9. R. Jacob Emden, *She'elat Yavez* II:147:4, 150.
10. For the debate over Akdamut, see *Sefer Maharil* (Jerusalem, 1969), 22a; R. David ha-Levi, *Taz*, Orah Hayyim #494:1; R. Ephraim ha-Kohen, *She'elot u-Teshuvot Sha'ar Ephraim*, #10; R. Jacob Emden, *Siddur Sha'arei Shamayim* (Altona, 1747), 64a.
For the tradition regarding R. Aryeh Leib, see R. Judah L. Maimon, *Hagim u-Mo'adim* (Jerusalem, 1950), 265; cited in N. H. Tzelnik, *Sefer 'Azeret* (Jerusalem, 1987), 195–96.
This story also has a modern version. In discussing the ethical shortcomings of some Orthodox Jews, Gershom Scholem is alleged to once have remarked that an Orthodox acquaintance told him that God erred by placing *lo tignov* in the Ten Commandments; he should rather have arranged for it to appear as a gloss to a gloss on the Rama which would have said, "*Yesh nohagin shelo tignov*." See D. Berger, "Symposium—The State of Orthodoxy," *Tradition* XX:1 (Spring, 1982), 11.

11. I. Metzker, *A Bintel Brief* (New York, 1971), 74–75. My thanks to my colleague Rabbi Kenneth Hain for bringing this source to my attention.

After delivering this talk, I came across an important article directly relevant to this theme. See M. Weinberger, "Keeping Up With the Katz's: The Chumra Syndrome—An Halachic Inquiry," *Jewish Action* (Rosh Hashana, 5749), 10–19.

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