

We noted over the past few weeks that the first *Tosafos* in *brachos* (d"h *m'aimasai*) offers a perplexing suggestion of R"t that *pre-tzeis mincha/maariv minyanim* are acceptable because they follow the opinion of *R' Yehudah* that *mincha* ends and *maariv* begins at *plag*. This R"t instigates many formidable questions about *zmanei tefillah* which we will be covering as we learn the *masechta*. For our purposes, we were very focused on how the evening *krias shma* (KS) recited at this early *maariv* could fulfill the obligation of the evening KS as the Torah states "*b'shochvecha*". Clearly, it is hard to imagine that KS recited in broad daylight could be regarded as being recited "*b'shochvecha*". As we noted, *Rashi* dismisses the KS recited at early *maariv* as counting for any *mitzvah d'oraissa* for this reason.

Tosafos, who we pointed out agrees in principle to the position of R"t, somehow sees a meaningful link between the *mitzvah* of the evening KS and the *shita* of *R' Yehudah*. As such, he allows for KS to be recited *after plag*. The question we asked was, what is the connection between *Rav Yehudah* and "*b'shochvecha*"? After all, *R' Yehudah* at best is establishing when *halachik layla* (night) begins. "*B'shachvecha*", in contrast, requires not only *halachik* night, but actually "going to bed", which presumably can only take place after *tzeis*. This we pointed out was the question raised by the *Rashba* on *shitas Tosafos* when he states that after *plag* will suffice for *maariv*, but for KS we require "*zman shechiva* (bedtime *zman*)".

Last week we introduced one classical stream of thought posed by many *achronim* to answer this question. Namely, that when the *pasuk* states "*b'shochvecha*", it is not literally talking about "going to bed", it is merely poetically alluding to *layla* (nighttime). As such, any time that can be regarded as halachikally night, would qualify for "*b'shochvecha*". If one follows *R' Yehudah*, they may recite the evening KS once "halachik night" begins, at *plag*. You might ask (as we did last week), *plag* is hardly "halachik night" for most *dinei d'oraissa*. For example, would anyone suggest that one can perform *melacha* after *plag* on *shabbos* day? We will address this question.

To be fair, there are some spots in the *sugya* where there seems to be evidence of this fundamental split in the interpretation of the *pasuk* as the classical *mehalech* suggests. One example of such evidence is the *Tosafos* On 2b. *Tosafos* quotes the gm in which *R' Yehudah* is puzzled by how *R' Meir* could hold that the evening *zman* KS begins when the *kohanim* are *tovlin* for *terumah*, as it is still day. *Tosafos* asks, why is *R' Yehudah* taking issue with *R' Meir*? Doesn't *R' Yehudah* himself hold that KS can be recited after *plag* while it is still day? *Tosafos* then answers that *R' Yehudah*, unlike *R' Meir*, allows for KS after *plag* because he isn't *doresh* "*b'shachvecha*". This *Tosafos* is extremely difficult to understand. What does *Tosafos* mean when he says that *R' Yehudah* is not *doresh* "*b'shachvecha*"? Many have suggested truly novel interpretations. According to the classical raid cited above, the *Tosafos* reads quite cleanly. The point of the *Tosafos* is that *R' Meir*, by virtue of being *doresh* "*b'shachvecha*", literally requires a "bedtime *zman*" which must be when it is already dark out, whereas *R' Yehudah*, who is not *doresh* the *pasuk* literally, only requires a "halachik night *zman*" that could in theory be at any time after *plag*.

Another prime piece of evidence for the existence of this

"classical" split is the *shita* of *Rav Acha* in the gm on 2b. The guideline attributed to *R' Acha* on 2b is "at the hour that most people enter their houses to eat". *Tosafos* \ RI (2a) d"h *m'aimasai* suggest that this is the earliest of the times recorded in the gm; a time when there is still daylight (*m'beod yom*) that falls within the boundaries of "halachik night". The *Rashba* we already pointed out does not accept *Tosafos'* assertion that KS could be recited after *plag* (according to *R' Yehudah*). He had stated that after *plag* is not *zman shechiva* (bedtime *zman*) according to anyone. It is then no wonder that he does not accept *Tosafos'* "daylight" version of *Rav Acha*, as it is not "*zman shechiva*", when people go to sleep. The *Rashba* (2b d"h *R' Chanina*) accordingly maintains that *Rav Acha* is referring to a time after *tzeis*, which is an appropriate "*zman shechiva*" (bedtime *zman*).

The essential difficulty in the classical approach is that once you view the *machlokes Rashba/Tosafos* as diverging interpretation of "*b'shachvecha*", you would expect the *Rashba* to only be concerned with "bedtime" and *Tosafos* to only be concerned with "halachik night" in determining the time for evening KS. You would expect there to be no *shita* in the gm according to the *Rashba* that allows for the KS to be recited before it is dark out, as nobody actually goes to sleep then. Conversely, you would expect that *Tosafos* be concerned only with when "halachik night" is, as the *zman* of actual bedtime is totally irrelevant if you are not *doresh* "*b'shachvecha*".

Having conceded that there are points in the *sugya* where the clean split in the interpretation of "*b'shachvecha*" seems to be at play, *R' Saffer* continued with a frontal assault on this assertion. As we carefully combed through the *Rashba* and *Tosafos* it became clear to all that they do not adhere to this split in any consistent fashion. The *Rashba* for example, has *shitas Rav Eliezer* in our gm as being from *shkia rishoina*, which is 4 mil (app. 72-96 minutes) before *tzeis*. It seems unlikely that such a time in which it is still light outside would be considered "actual bedtime" for most people. Moreover, the *Rashba* records *Rav Chanina's* anecdotal bedtime criteria in the gm on 2b of "when a poor person enters his house to eat" as being an appropriate gauge for "*zman shechiva*". The *Rashba* then records *R' Acha's* criteria of "when most people enter their houses" as being later than *Rav Eliezer's zman*. Now I ask you, if the *Rashba* held that *Rav Chanina's z'man* represented a "*zman shechiva*" that literally means "bedtime" for most people, how is it that most people are only entering their houses moments later at *R' Acha's* time? It seems clear from many sources, that the notion of "*zman shechiva*" within the *Rashba* is not quite as literal as we thought.

Upon further review, *Tosafos's* notion of "halachik night" also does not seem as ironclad as we thought. *Tosafos* can leave you with the impression that KS after *plag* is no problem for *R' Yehudah* because that hour is considered "night" halachikally. We pointed out earlier that, while it is possible that *plag* could be considered "halachik night" for some halachos such as *tosefes shabbos*, or *halachos d'robonon* such as *k'riyas meggilah* on *purim* and *hadlakas neiros* on *chanukah*, it is clearly impossible to believe that this time is literally viewed as "*layla* (night)" for all *halachos*, especially not such a night-dependent *d'oraissa halacha* as *kriyas shma* according to *Tosafos*. In truth, *Tosafos* himself concedes that a *pre-tzeis* time is "*m'beod yom*" in his description of *Rav Acha's* position in our gm.

When you examine *Tosafos* and the *Rashba* closely, more peculiarities emerge. It seems that the *Rashba*, who is supposedly operating within the concept of *zman shechiva*, makes numerous references to “*zmanei laila*”. On the other hand, *Tosafos*, whom we said is only concerned with “halachik night”, has no problem utilizing the term “*zmanei shechiva*” in describing the *zmanei* KS. On 2b the gm evaluates when *R' Chanina*'s anecdotal time falls out in the context of the evening. *Tosafos* (2b) d”H *haynu*, explaining the gm insists that it cannot fall out before *tzeis* because the accepted *zmanei shechiva* of *shkiyah* (*R' Eliezer*) and pre-*bein hashemashos* (*R' Meir*) have already been expressed and would thus make the position of *R' Chanina* redundant. What is startling is that *Tosafos* seems to be joining up with the *Rashba* in describing pre-*tzeis zmanim* as “*zmanei shechiva*”. What happened to *Tosafos*' “halachik night” as *zman* KS? Even more shocking is how either of them can describe a *zman* as early as *shkia rishoina* (72-96 min. before *tzeis*) as a *zman shechiva*. Plus, once we are already calling pre-*tzeis zmanim*, “*zmanei shechiva*” why would *R' Chanina* be any more redundant in a pre-*tzeis zman* than in a post-*tzeis zman*.

We were all left scratching our heads when *R' Saffer* pointed out the gm's conclusion that there is a post-*tzeis zman* of *R' Chanina* “when the poor man enters to eat his meal”. Isn't this proof positive that *Tosafos* must agree that “*zman shechiva*” is the definition of *zman* KS. Since when is their a “halachik night” category of “when the poor man enters to eat his meal”. At this point things began to look bleak as *R' Saffer* succeeded in creating one big “chulent”. We were no longer able to clearly see any difference between the potatoes and the beans, between *Tosafos* and *Rashba*.

R' Saffer, physically and emotionally drained after weeks of overexertion in finding bedrock *pshat* in this *Tosafos*, explained as follows: There is no major *machlokes* between *Tosafos* and the *Rashba*. While there might be some “minor” disagreements about the existence of certain “*zmanei* KS” (such as *plag* and the “*m'beod yom zman*” of *Rav Acha*), it is not reflective of a fundamental substantive *machlokes*. The most reasonable approach that emerges from a scrupulous reading of both *Rashba* and *Tosafos*, is that they both adhere to the principles alluded to in the gm; that post-*tzeis zmanim* are anecdotal, and pre-*tzeis zmanim* are tied to pre-existing parameters of halachik night. How is “*b'shachvecha*” to be understood within such an approach? Simple. Both *Rashba* and *Tosafos* (R”T \RI) are looking to determine “*zman shechiva*”. That is, after all, what the *pasuk* says. The issue is, how do you determine *zman shechiva*?

When *chazal* determined the earliest possible time for the evening KS, what was their criteria? In order to stay true to the literal meaning of the *pasuk* did they determine the time “people go to sleep”, as the earliest time KS can be recited?

It is clear from the gm that that is not the case. Consider the anecdotal post-*tzeis* time frames recorded in the gm, “when people enter their house to eat..”, “when the poor man enters to eat his meal..”, “when men enter the house on *erev shabbos*..”. These people aren't tucking under the covers, they are going inside to first eat dinner! They haven't even brushed their teeth yet. How could this be viewed as actual bedtime? We are absolutely forced to say that the post-*tzeis* criteria of KS includes a short-period when one is preparing for and getting ready to go to bed. *R' Saffer* coined this as “pre-bedtime”. This makes sense, because, don't forget, we are talking about the evening KS, which understandably can not be said when you are fast asleep.

What we have seen then is that *zman shechiva* (ZS) is a time that must be inclusive of “pre-bedtime”, as well as bedtime. This being the case, one critical question remains. What is the rationale for the pre-*tzeis zmanim*? Apparently, those *deios* in the gm that held of the pre-*tzeis zmanim* opted to follow pre-existing halachik parameters of evening as the determining factor of when

zman KS could be. This also makes sense. Having established that “*zman shechiva*” is not actual bedtime but expansive to pre-bedtime, it is logical that there would be opinions who would argue and utilize “night-time” as their expanded “*zman shechiva*” time frame. Why add on an arbitrary pre-bedtime *zman*, when an “expanded” *halachik zman* associated with bedtime already exists in the form of *layla* (halachik night).

What emerges is both a subtle and crucial modification of the classical raid. The issue at hand is not whether “*b'shachvecha*” means “say KS at bedtime” or “say KS at *layla* (night)”. Rather, all agree that “*zman shechiva* – halachik bedtime” is the one and only *m'chayev* of KS. However, opinions in the gm vary as to whether that *zman shechiva* is determined by the times that people are going to bed, or by pre-existing *zmanai layla*.

R' Saffer then proceeded to add support and clarity to this idea. Where else do we see such a notion that “conceptual” *layla* (night) is not the *m'chayev*, yet at the same time there is utilization of “*layla* (night)” for the parameters of sleep-time (*zman shechiva*)? He pointed to last years “*Milchanta Shel Torah*” shiurim in which a fascinating approach to the *issur d'oraissa* of “wearing tefillin at night” was developed. One approach to the *issur* was that “*lishmor chukav*” (the source of the *issur*) demanded *shemira* (protection) of the *kedushas ha'tefillin*, by not wearing them during *zman shechiva* (sleep-time). When is this *zman shechiva*? According to most opinions *zman shechiva* begins at “*layla*”. Now while these opinions prohibit wearing *tefillin* at halachik night (such as *tzeis and bein hashemashos*), it is clear that the *issur* has nothing to do with “conceptual” “*layla*”. It is only *layla* as “the *zman* people sleep” that generates the *issur*. Clearly, *zman shechiva* the *zman* in which *kedushas hatefillin* can not be protected, is what was prohibited

Having already dealt with most of our difficulties we will now spell out the for all to see the answers to our questions, utilizing the idea developed above. We were originally bothered by *Tosafos*' usage of the terminology of “*zmanei shechiva*” for pre-*tzeis zmanim*. This is no longer difficult as we now know that “*zmanei shechiva*” also utilize halachik night for its parameters. We also can explain why *R' Chanina* will be more redundant in a pre-*tzeis zman* than in a post-*tzeis zman*, even while describing them both as *zmanei shechiva*. It is simple, even though both pre and post *tzeis zmanim* are *zmanei shechiva*, post-*tzeis zmanim* can in theory, be numerous, as they are anecdotal indicators of when people actually go to sleep. The pre-*tzeis zmanim*, in contrast, are limited to pre-established halachik time slots because nobody is going to sleep at that time.

In the spirit of full disclosure, there is another type of *zman shechiva* we developed to explain the *machlokes Rashba* and *Tosafos*. The *Rashba* could accept even *Shkia Rishoina* as a type of *haschalas halayla*, and thus a viable *zman shechiva*. He could not, however, accept *plag* according to *R' Yehuda* or the *m'beod yom* version of *R' Acha* as acceptable *zmanei shechiva*. *Tosafos* (R”T \RI) would argue that true neither *plag* nor is *R' Acha*'s “*m'beod yom zman*” is *haschalas halayla*. However, they are **pre-layla zmanim**. “Pre-*layla*”, in *R' Acha* is clear as *Tosafos* describes it as the time right before *layla*, *m'beod yom*. *Plag*, is the classical pre-*layla zman* (at least according to *R' Yehuda*) as *Tosafos* on 27a point out that *Tosefes Shabbos* can start no earlier than *plag*. Now you might ask what rationale is there for pre-*layla* being included in the definition of *zman shechiva*? “*Layla*” itself is already an expanded form of *zman shechiva*, as people are not actually going to bed yet. For this *R' Saffer* was *mechadesh* that pre-*layla* can indeed be a form of *zman shechiva*. What must be said though is that according to *Tosafos* the halachik time slot of *layla* has **metamorphosed** into “actual” *zman shechiva* (ie. bedtime). Therefore, like post-*tzeis zmanei shechiva* which we said includes pre-bedtime, so too pre-*tzeis zmanei shechiva* will now include the pre-*layla zmanim* as it too is defined as pre-bedtime.