

PESACH TO GO 5766

Daf Yomi Insights for the Dapim covered over Pesach

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- Above the Shul
- Accepting Lashon Hara
- Advantageous Exile?
- All for the Children
- Elevation Through Negation
- The Nature of Minui
- Calling it a Day Halfway
- Jewish Jails
- Women, Matzah, and More
- Insisting on Rabbinical Law
- Growing Up Between the Passovers
- Halakhic Night

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86a

Above the Shul

The Talmud (Pesachim 86a) discusses the status of the section above the Kodesh haKadoshim and introduces the general issue of the sanctity of roofs and upper areas above holy places. While the Talmud states the upper floors of the azarah were not sanctified, the Mordechai (Shabbat I, 228) writes, in the name of R. Meir, that the level above a shul should not be used for an undignified purpose on a regular basis. He notes two possible sources for this idea: the statement of the Talmud (Shabbat 11a) condemning the existence of structures higher than the shul, which is limited to structures that are put to use (according to some interpretations); and the statement of the Talmud (Pesachim, *ibid*) that the upper levels of the heikhal were sanctified, and the heikhal may be the best model for the synagogue, which is called “mikdash me’at”. This concept is recorded in Shulchan Arukh (O.C. 151:12), where it is stated that regular, undignified usage must be avoided, while other types of usage is an open question.

Poskim discuss the relevance of this idea to modern synagogues that have apartments above them. The Magen Avraham (150:2) notes that the practice has been to build such apartments, despite the Shulchan Arukh’s ruling. Several possible leniencies may be relevant:

a) In reference to the statement concerning structures higher than the shul, the Meiri (Shabbat 11a) writes that the only concern is regarding a structure that is high in order to be impressive. If the reason for the height is to allow for extra rooms, this would be permissible. It would emerge from his position (which is at variance with that of the Mordechai, cited above, and the Rosh, Shabbat, I, 23) that not only is it permitted to make use of the area higher than the shul, but that the utilitarian concern is itself a justification. This view would also seem to be consistent with the words of the Rambam (Hil. Tefilah 11:2).

b) R. Natan Gestetner (Resp. L’Horot Natan, I, 8) notes, in reference to the concern based on the comparison to the heikhal, that grounds for leniency may exist if the above apartments are owned by

different people than those involved with the shul. This is due to the principle of “ein adam oser davar sh’eino she’lo”, that one is unable to confer a status of “forbidden” (through intent) upon an object that is not his own.

c) He notes as well that the Rambam (Hil. Beit Ha-Bechirah 6:7) rules simply that roofs and above regions are not sanctified, and makes no distinction between the azarah and the heikhal. The Tzlach (Pesachim 86a) explains his position as being that the only upper compartments that would be sanctified are those that open up into the heikhal itself. If so, the concept would be of limited practical relevance (see also Resp. D’var Yehoshua, II, 20:16).

d) The Rama (O.C. 151:12) quotes, in the name of the Mahari Veil, that the prohibition to make personal use of the roof of a synagogue would apply only to a situation where the building was originally constructed as a synagogue, and not in a situation where a pre-existing building was later utilized for that purpose. Further, the Taz (#4) adds that if an apartment was built at the same time, the area where it is located was perforce never sanctified. The Pri Megadim, Mishbetzot Zahav, 4, understands this to be a function of “t’nai”, conditional sanctification.

Nonetheless, the Magen Avraham (#18) recommends avoiding such an arrangement, and the Taz himself attributes great misfortune to residing above a synagogue. R. Gestetner (L’Horot Natan, I, 9), noting that some of the above leniencies only address one of the two issues, concludes that the safest approach is that the initial construction of a synagogue that will have personal usage above should be done without the intent of conferring the sanctity of a synagogue structure at all.

The Mishnah Berurah, in the Biur Halakhah, asserts that the Shulchan Arukh’s possibility that other types of usage (other than regular, undignified) may be permissible above a synagogue is only relevant to activities taking place inside of a room, and thus concealed from public view. However, on the roof, where activities are visible, there is greater stringency (as indicated by the Mishnah in Megilah 28, which he cites).

R. Shmuel Wosner (Resp. Shevet HaLevi, VI, 18; see also I, 27; IX, 28; X, 35) takes issue with this assumption, noting the Shulchan Arukh’s sourcing in the words of the Mordechai, which compared the synagogue to the heikhal. The Maharit (Responsa, Y.D.,

4) challenged the Mordechai, assuming that the heikhal was uniquely affected by Scriptural decree (gezerat ha-katuv). In any event, in the case of the heikhal an attic was more sanctified than the roof, which only had sanctity on a lower level, comparable to the rest of the Holy City. He concludes that undignified activity is prohibited objectively, regardless of visibility.

In another responsum (V, 21) R. Wosner adds to the analysis by posing the question of how sanctity would attach to the roof of the azarah. He considers two possibilities: a) that at the time of the initial sanctification of the azarah, the air above it was explicitly included; b) the airspace was never explicitly sanctified, but draws sanctity from being exposed to the azarah. He suggests that this issue is implicit in a dispute between the Ra'avad and Tosafot. The Ra'avad (in the end of the first chapter of Massekhet Tamid) writes that the area above the roof of the azarah, that is considered unsanctified, is only treated as such as far as what was in place during the initial sanctification (which then stopped at the roof). However, something built afterwards would be inserting itself into a continually sanctified area. Tosafot (Makkot 12a), however, were of the opinion that even something built later would not be considered sanctified.

(See also Resp. Minchat Yitzchak IV, 43 and VII, 8; Resp. Maharsham, I, 35, Resp. Imrei Yosher, II, 12; Resp. Divrei Chaim O.C. 3; Resp. Beit Yitzchak, Y.D. II, kuntres acharon 1:5; Resp. Beit Shlomo, O.C. I, 28; Resp. Levushei Mordechai, 4:5; Beit HaOtzar, I, 22:23.)

87b

Accepting Lashon Hara

The Talmud makes reference to a correlate prohibition of lashon hara, known as kabalat, or "receiving" lashon hara. (Pesachim 87b and 118a; see Rambam, Sefer HaMitzvot 181 and Hil. Sanhedrin 21:7; Sefer HaChinukh, 74; Sha'arei Teshuvah, 303:211.) However, this application requires some definition, as it is rare that the listener will be warned in advance that he is about to be told lashon hara. (As to the question of the necessity of avoiding the physi-

cal act of listening, see Mishpetei HaTorah p.221, n. 27).

The nature of this definition is the topic of dispute among later authorities. R. Yisrael Meir Kagan, in his classic treatise on the laws of lashon hara, Chafetz Chayim (Klal 6, ch. 10) rules on this question in a far-reaching manner. It is granted that one may protect himself and others by taking into consideration the possibility that the information is true. Beyond the needs of protection, though, the listener must remain internally convinced that the information is false.

A contemporary author of responsa, R. Moshe Shternbuch, questioned the feasibility of such a position (Respona Teshuvot V'Hanhagot, I, 555). The Torah has been placed in the realm of human beings; it is unlikely that mortals can exert such active control over their recognition of a well-known associate's credibility. If a trustworthy individual conveys an item of news, the listener knows with near-certainty that the item is genuine.

Rather, suggests R. Shternbuch, it must be assumed that the prohibition of kabalat lashon hara is relevant not to internal perceptions but to actions. The imperative would be to guarantee that one's behavior toward the subject not change as a consequence of the shared information. The mental acceptance, though, would be understood to be unavoidable and forgivable.

It appears that the center of this dispute is a fundamental question as to the nature of Lashon Hara as a prohibition. One view may be that the transgression is one of personality traits, an exhortation not to exhibit or indulge in the unsavory characteristics of a gossip. Another view, possibly hesitant to assign a prohibition in the realm of character, would understand Lashon Hara to be directed at an action, i.e., the conveying of information that has the potential to harm.

The Chafetz Chayim seems to be reasoning from the perspective of character traits. The vice of gossip is a shared experience; the listener and the speaker play equal roles. That granted, if the prohibition of kabalat lashon hara teaches that lashon hara must not be allowed to "succeed", the responsibility becomes the halting of the process in its tracks. Thus, even on a mental level, the gossip must not be accepted at all.

88a

All for the Children

R. Shternbuch, however, may be interpreting the prohibition as action focused, forbidding harmful speech. Thus, the responsibility not to receive lashon hara would translate into the listener ensuring that no damage ensues as a result of hearing the information.

An interesting hypothetical posited by R. Yechezkel Michaelson (Responsa Tirosh ViYitzhar, 57) may also be indicative of the above analysis. What reaction would be required, he asks, of someone approached with an offer of gossip, when the prospective listener, unbeknownst to the speaker, is actually the subject of the gossip. R. Michaelson apparently assumes that the subject is too gentle to inform the speaker of this fact, and thus allots two options to the subject. One approach would be to treat the offer like any other invitation to lashon hara, and firmly decline to participate.

The other possibility would be to assume that the potential for harm in this case is limited, as the listener is also the subject. Thus, it might be advantageous to listen silently to the information, and thus acquire the Heavenly praise the Talmud ascribes to those who “are insulted and do not insult in return, hear their disgrace and do not respond.” It would seem, again, that the two possibilities are dependant on the above question.

Advantageous Exile?

The Talmud states that the purpose of sending the Jews into exile was to increase the number of converts. While this may convey the impression that the exile is thus possessed of an advantage over a non-exilic state, the Maharam Shick (Bereishit 28:1-4) explains the matter differently. He observes that a large flame is able to give heat from farther away, while a small flame needs to be brought closer to give warmth. Thus, had the Jews been worthy, they would presumably have been able to have the same impact on the world while still maintaining their presence in the land of Israel (see also his comments to Esther, 3:8, printed in the volume to Shemot.)

The Tosafot (Pesachim 88a, s.v. seh) maintain that even though it is forbidden to actively feed a minor prohibited foods (Yevamot 114a), it can be permitted in an instance where the motivation is the education (chinukh) of the child (the subject is feeding from the korban Pesach outside of its counted members). The ramifications of this idea, which is cited by the Magen Avraham (O.C. 343), are discussed widely by Poskim.

R. Yitzchak Blazer (Resp. Pri Yitzchak, II, 13; see also I, 11) emphasizes that this license is extended only because the action is beneficial to the child; an action meant to service an adult would not be covered by this principle.

R. Tzvi Pesach Frank (Resp. Har Tzvi, Y.D. 234) discusses this Tosafot in considering whether it is appropriate for a teacher of children to write the letters indicating “b’ezrat Hashem” on a blackboard, which would later be erased, due to the educational value. He begins the discussion by noting that strictly speaking, there is no prohibition to erase those letters, and avoiding doing so would be only an extra act of piety (hiddur). In light of Tosafot allowing a biblical violation for the purposes of education, this would certainly be permitted.

However, he goes on to note two differences between the situation in Tosafot and the subject he is discussing: a) in Tosafot, the transgression is performed by the child, while in the latter case the undesirable act is performed by the teacher; b) in the case of Tosafot, the act itself is also the instrument of education, while the erasing provides no educational value.

[Distinction a), however, seems somewhat difficult to understand, in light of the fact that Tosafot’s initial question was not based on the child’s transgression but on the separate transgression of feeding a child prohibited substances. Further, as that prohibition itself is presumably connected to the obligation of proper education, it may be that it is only that pro-

hibition that is suspended for educational needs, as opposed to others. That, however, may be R. Frank's point: that only a prohibition committed by the child, thus creating a related prohibition of "feeding" upon the adult, is subject to this license.]

R. Frank continues to note what he feels is a more relevant source, the halakhah that a child is taught berakhot in their complete text, even though by reciting them a berakhah l'vatalah is created (Rambam, Hil. Berakhot 1:15, and Shulchan Arukh, O.C. 215:3). The Mishnah Berurah (#14, and Sha'ar HaTziyyun, 13) notes that even the adult teacher is permitted to pronounce the berakhah. However, as he points out, the second difference mentioned above would appear to apply here as well.

R. Natan Gestetner (Resp. L'Horot Natan, XII, 49) builds on the idea in Tosafot to allow a child to recite a berakhah on lighting Chanukah candles, even though it would technically be a berakhah l'vatalah, as the child would fulfill the actual obligation through the father's lighting. See also Resp. Chatam Sofer, VI, 13, and Resp. L'Horot Natan, VI, 21.

R. Shlomo Fisher (Beit Yishai, 34) brings a different perspective to the statement of Tosafot by noting that the education involved would seem to be counterproductive, as there is no mitzvah involved in feeding from the korban Pesach outside of its counted members. He explains that the obligation of chinukh in regards to Korban Pesach is fundamentally different than with other mitzvot. In the case of other mitzvot, the notion of chinukh causes a child to be included within an obligation from which he would normally be exempt. In the case of Korban Pesach, however, the nature of the chinukh is that the father is obligated to extend the minui to the child as well, who normally could eat without minui (see Nedarim 36a, and Ran; see also, for another perspective, Moadim U'Zmanim, III, 237).

886

Elevation Through Negation

The Talmud relates a case in which the skins from the korban Pesach of five different groups became mixed together, and it was discovered that one of

the five has a disqualifying blemish. The ruling is that all five must be burned (although the groups are exempt from having to make up the obligation on Pesach Sheini, for technical reasons).

This passage figures prominently in discussions of halakhic authorities in considering the question of the power of "bitul" to grant positive status. It is understood that in certain cases, a majority (rov) of a permitted substance can overwhelm a lesser amount of prohibited substance and make the entire unit permitted. However, the possibility of using the same process not only to cancel a negative but to grant an affirmative status is the topic of some debate.

R. Akiva Eiger (Responsa, 14) discusses this question in regards to tzitzit, in a situation where a string that was not made with the necessary proper intent (l'shmah) is mixed in with many others that were properly made. Based on the above passage, he rules that bitul cannot confer positive status (in that case, the status of a valid korban Pesach) and is ineffective in making that string "l'shmah". (See also his glosses to Shulchan Arukh, O.C., 11:1, where he pursues a different line of reasoning). Similarly, he writes, a mixture of chametz and matzah, with a majority of the latter, can become permissible to eat on Pesach, but not valid to fulfill the obligation of eating matzah. (This is also the view of the Minchat Chinukh, 10:6; See, however, R. Yosef Engel, Beit HaOtzar II, 18:9, who suggests a proof to the opposite position.)

The Responsa Oneg Yom Tov (O.C., 4) goes further in explaining the Talmud's passage. Not only does korban Pesach status not attach, but even to permit consumption as food is impossible, because, as sanctified material, the animals would have to go through the entire korban process to be permissible to eat. Since the animal was disqualified throughout, this process is ineffective in permitting it at all.

The Chavvat Da'at (Y.D. 101:5) offers another reason why the rule of "bittul" is not implemented. In his understanding, the skin represents an independently significant unit (chatikhah hariuyah l'hitkabbed) and is thus ineligible for bittul. R. Elazar Moshe Horvitz (glosses to Pesachim), however, rejects this possibility, noting that at least parts of the animal should not receive that designation. The Resp. Torat Chesed (I:47) takes issue with the Chavvat Da'at for a number of other reasons, and offers his own approach as

to why bittul is ineffective in the case of Pesach. (See also Resp. Shevet HaLevi, III, 104.)

The Resp. L'Horot Natan (I, 2) after a lengthy analysis, concludes that tzitzit in the above case cannot acquire the status of "l'shmah" through bittul. See also Resp. Meishiv Davar, O.C. 34, who distinguishes between cases in which validity would be necessary for all the parts of a given unit (such as the Divine Name written in a Torah scroll, when it may not have been written with the proper intent) and instances in which each individual part can be looked at by itself and stand alone, presumed to be valid (such as matzah baked without intent of l'shmah, mixed in with those that were). (See also Ohr Sameach, Tzitzit 1:11, and Hil Ma'achalot Asurot, ch. 15.)

89

The Nature of Minui

The Talmud (Pesachim 89b) relates that if one sells his olah, or any other korban shelamim, the sale does not take effect. Rashi explains that the reference is to one who wishes to transfer the atonement of the olah to another. This is ineffective, as the korban is only offered on behalf of its original ba'alim.

This is true in spite of the fact that the Talmud (Bava Kama 76a) identifies sacrifices offered on the altar as continuing to be "the ox of Reuven", i.e., the property of the individual ba'al. The Tosafot (Bava Kama 79a) explain this to mean that the korban is brought to atone for the ba'alim, is slaughtered on their behalf, and thus their name is attached. Thus, the association with the ba'alim is not monetary ownership to be transferred, but rather a spiritual connection, that is by definition not transferable.

The nature of the association between the ba'alim and the korban, as noted above, is relevant to a question many authorities consider in regard to korban Pesach. To be a part of a given chaburah for that purpose, one must become a member through "minui". The nature of minui, however, seems to be an open question: it may refer to a simple verbal declaration of intent, or it may require a more for-

mal acquisition of monetary rights, or kinyan, in the korban.

Tosafot (Pesachim 89b, s.v. v'zeh) implies that it would be impossible to include anyone in the chaburah of a korban Pesach after the hekdesch (dedication), unless the hekdesch was broadly phrased to include those who would come along afterward.

The Resp. L'Horot Natan (I, 24) explains this idea as reflecting the fact that there are two components to the obligation of korban Pesach: offering the sacrifice, and eating from it. If the only purpose of minui were to make one eligible for eating, this would apparently suffice with a verbal declaration after the hekdesch. The aspect of joining in the sacrifice, however, would require involvement at the time of hekdesch.

The Imrei Binah (Pesach, 2, s.v. v'ktzat), writes that an indication that minui requires monetary ownership can be found in the verse (Shemot 12:21), "miskhu u'k'chu" ("draw forth or buy for yourselves"). L'Horot Natan, however, questions this proof, noting that the verse may be taken as addressing only the head of each group, who must actually be the animal. The members, however, may not be addressed by this instruction. He concludes his discussion, though, by bringing support to the idea that minui does require a kinyan. (See also R. Avraham Loftiber, Zera Avraham, 6:9).

90b

Calling it a Day Halfway

The Talmud teaches that all who need immersion (tevilah) for purification may do so during the day, with the exceptions of the nidah and the yoledet, who immerse at night. The Talmud provides Scriptural basis for this.

R. Herschel Schachter (B'Ikvei haTzon 38:7), citing R. Soloveitchik, explains this distinction as a function of the proper application of the principle of "miktzat ha-yom k'kulo" (a part of the day is considered as the whole day; Moed Katan 19b), which allows the last day of the process to "end" while it is still daytime. This principle is only relevant to a process that requires actions over a period of time,

and not merely the passage of time itself. Since that action can be done during the last day with time remaining, the process can be said to be complete. However, if all that is required is for the day to pass, then it is necessary for the entire day to pass.

This distinction is relevant to the application within the sphere of *aveilut* (mourning) as well. *Miktzat ha-yom k'kulo* is applicable to *shivah* and to *shloshim*, but not to the twelve month mourning period for a parent. This is due to the fact that the first two are accompanied by active practices of grief. The last, however, is merely a term of abstention from certain expressions of joy, and thus is not subject to *miktzat ha-yom k'kulo*.

As R. Schachter notes as well (*ibid*, 17), the application of *miktzat ha-yom k'kulo* to issues of mourning and impurity as opposed to, for example, *Shabbat* and *Yom Tov*, can be explained by two other attributes of *miktzat ha-yom k'kulo*: a) it is utilized only for areas that contain undesirable aspects to them, rather than those of holiness and happiness (*Gilyonei HaShas*, *Nazir* 5b, citing *Rama MiFanu*), and b) *miktzat ha-yom k'kulo* is not applied to calendar dates, but only to individual countings that are superimposed upon the calendar.

91a

Jewish Jails

The Talmud (*Pesachim* 91a) makes reference to a “jail run by the Jews”. The role imprisonment plays within the halakhic system is a subject of some debate. Rashi interprets the above references as being one of two possible scenarios: a) compelling one to end an inappropriate marriage; b) preventing someone who has struck another from escaping before the consequences of the incident have been determined. As R. Moshe Tzuriel (*Otzerot HaTorah*, I, pp. 568-9) emphasizes, Rashi is not considering the possibility of prison as a punishment, but only as a temporary measure serving an immediate purpose, which is consistent as well with the Torah’s references to a “*mishmar*” (see *Vayikra* 24:12, *Bamidbar* 15:34).

R. Tzuriel dismisses the possibility that a source for Jewish imprisonment as punishment can be found

in the book of *Ezra* (7:21). There, the King Artaxerxes command the assistance of the people in ascending to the land of Israel, and says that all who do not cooperate should be punished in various ways, including “*l’esurin*”, which seems to be a reference to imprisonment. R. Tzuriel notes two refutations to this source: a) the initiative was from the Persian King, not from *Ezra*; b) the reference may actually be not to imprisonment but to holding someone in one place in order to receive corporal punishment, as indicated by Rashi (*Moed Katan* 16a).

While the Rambam (*Hil. Sanhedrin* 24:9) does explicitly identify “imprisonment in a jail”, R. Tzuriel points out that the context of his words is extraordinary, extrajudicial measures (*beit din makkin v’onshin sh’lo min ha-din*) which are by definition limited and uncharacteristic.

The author of the *Responsa Tzitz Eliezer*, R. Eliezer Yehudah Waldenberg, in an article printed in the journal *T’chukah* (pp. 28-40) considers the viability of imprisonment within a Jewish judicial system. He notes that the Talmud (*Sanhedrin* 81b) talks of placing certain offenders who cannot be dealt with by the penalties described in the Torah into a “*kipah*”. In this confinement, measures were taken to indirectly cause the death of the criminal. However, one of the instances mentioned there does not include that detail. This omission continues in the codification of the Rambam. R. Waldenberg understands this, together with other sources, to mean that there is basis for imprisonment as punishment in and of itself, not only as a method to facilitate other types of punishment. This is also the position of R. Yehoshua Menachem Ehrenberg (*Resp. D’var Yehoshua*, III, *Even HaEzer*, 31).

91b

Women, Matzah, and More

The Talmud teaches that despite the fact that eating matzah would appear to be a “*mitzvat aseh she’ha’zman grama*”, women are nonetheless obligated in the mitzvah, as a consequence of the scriptural linkage (*heikesh*) between the prohibition of eating chametz and the obligation to eat matzah. Thus, all who are prohibited to eat chametz are

likewise obligated to eat matzah on the first night of Pesach.

(In an extremely lengthy responsum, R. Yehoshua Menachem Ehrenberg, Resp. D'var Yehoshua, II, 136, considers the possibility that this principle works in both directions, thus also exempting from the obligation of matzah those who eat chametz on Pesach. The halakhic relevance of such a statement would be predicated on another novel idea: that one can leave the category of "those who are prohibited in eating chametz" by abandoning personal commitment to that precept. If so, this may impact the question of how to apportion limited rations of matzah, when some parties involved consume chametz on Pesach. However, the conclusion of his discussion was lost and is not printed in his Responsa.)

Rashi (s.v. *ela*) assumes that the obligation of maror would go along with matzah, and thus women are obligated in that as well. It appears that the Rambam agrees that women are obligated in maror, but from the linkage to korban Pesach, in which they are also obligated (see his comments in Hil. Chametz U'Matzah 7:12; Hil. Korban Pesach 1:1 and 8:2; Hil. Avodah Zarah, 12:3) (See also Mo'adim U'Zmanim, I, 185, in footnote).

Some acharonim (Maharam Shick Al HaMitzvot, 21; see also Maharal of Prague, *Gevurot Hashem*, ch. 48, p. 196) feel that the obligation of matzah brings with it the obligation of hagadah as well, as a consequence of "lechem oni" being interpreted as "lechem sh'onin alav devarim harbeh- bread upon which many things are said." (Pesachim 36a). Other reasons to include women in this obligation, despite its being a mitzvat aseh she'ha'zman grama (as the Minchat Chinukh, 21, challenges the view of the Sefer HaChinukh, obligating women), include linking the hagadah to the four cups (see Tosafot, Sukkah 38a, s.v. *mi sh'hayah*) in which women are obligated (Pesachim 108a).

92

Insisting on Rabbinical Law

The Talmud (Pesachim 92a) teaches that the Rabbis insisted on obedience to their laws even if it inter-

feres with a positive commandment, but not if it would incur the punishment of karet. In general, the Talmud appears to send mixed messages as to the stringency of rabbinical laws. On the one hand, the general rule seems to be that rabbinical law is more leniently applied than Torah law, as seen in the context of safek (indeterminate circumstances) and other areas. On the other hand, the Talmud states in several places that the Rabbis "strengthened their words more than words of Torah", and in Berakhot 4b we are told a particularly harsh warning, that one who violates rabbinical law is deserving of the death penalty. As the Talmud explains, this severity emanates from the greater likelihood that the law under discussion will be treated lightly, which is also the reason given as to why the Rabbis at times strengthened their laws more than those of the Torah. However, it remains unclear when this attitude is applied. The Muncaczer Rebbe (Resp. Minchat Elazar, III, 38) suggests that the guiding issue is whether or not the rabbinical law in discussion has any source or *asmakhta* in biblical law. If it does, then no strengthening is needed or appropriate. If, however, the law is a wholly rabbinic innovation, extra support becomes necessary. (The actual application of that distinction is still complex and requires further elaboration, and that is the topic of the rest of the responsum.)

93

Growing Up Between the Passovers

The Talmud (Pesachim 93a) poses a question as to the nature of Pesach Sheini, when those who were unable to participate in the korban Pesach at its appropriate time have the opportunity to make up the obligation. The inquiry is whether this constitutes an independent festival, or an extension of the first Pesach that serves as a makeup. Those affected by the question, the Talmud notes, includes a convert who becomes Jewish in between the two occasions, or a minor who reaches adulthood during that time, both of whom were exempt from mitzvot during the first Pesach.

However, this question is posed as well in the Sifre (B'ha'alotekha, 13), where only the case of the convert is mentioned as a possible ramification, and not that of the minor. The Netziv, in his commentary to

the Sifre, explains that this actually represents a third view, to distinguish between the case of the convert and that of the minor. The convert was not Jewish during the first Pesach and thus was completely removed from obligation. The child, however, was included as a Jew in the obligation, enough so to impose a responsibility to bring the korban when it became possible, on the 14th of Iyyar.

As R. Herschel Schachter (Eretz HaTzvi, 83) notes, this type of structure is relevant also to a child who becomes an adult in the middle of the thirty-day period of mourning. The Rosh (end of Massekhet Moed Katan) quotes the Maharam Rotenberg as obligating full mourning practices under the category of “sh’muah k’rovah” (one who hears of the death of a relative within thirty days of the event). The Rosh himself disagrees with this ruling. Apparently, the Maharam Rotenberg’s reasoning is as above: the end of the burial, which begins the shivah period, applied to the child as well, but didn’t take effect until he achieved majority.

R. Schachter discusses other aspects of the theory throughout that essay, including another example from this daf (93b). The definition of one who is considered “far away” for the purposes of korban Pesach is determined based on one who is too far to walk, starting after sunrise, getting to Yerushalayim on time. Thus, even though the actual time for the mitzvah is not until chatzot, the period establishing the obligation begins earlier. (See also B’Ikvei HaTzon, p. 121.)

93/94

Halakhic Night

The determination of “night” in halakhah is a topic that is highly complex and controversial. It is understood that the shift from day to night is a process, thus complicating the issue of pinpointing a moment of transition; further, much disagreement exists as to the identification of the markers of the process; and, as well, different areas of halakhah may use different definitions. (For example, kodashim may use a different standard; see Tosafot, Zevachim 56a, s.v. minayin, and Chiddushei Chatam Sofer, Sukkah 38a, s.v. mi.)

Much of the debate has centered around the resolution of two statements attributed by the Talmud to R. Yehudah. In Shabbat 34b, the period of bein ha-sh’mashot (in between sh’kia and tzet hakokhavim) is identified by R. Yehudah as three quarters of a mil. If a mil is understood to be 18 minutes (a questionable assertion, as will be discussed later), then it emerges that tzet hakokhavim is 13½ minutes after sh’kia.

However, a different impression comes from Pesachim 94a. There, in a discussion concerning the dimensions of the Earth, R. Yehudah states that in between sh’kia and tzet hakokhavim there are four mil. Again assuming an 18 minute mil, that would result in a bein ha-sh’mashot of 72 minutes; quite a difference from the first statement.

The resolution of this contradiction is at the root of a major dispute associated, on the one side, with the geonim and the Vilna Gaon (Gra), and on the other side, with Rabbeinu Tam. According to the first school of thought, of which the geonim (See Resp. Maharam Alashkar, 96, citing R. Sherira Gaon and R. Hai Gaon) and the Gra (see Biur to Shulchan Arukh, 261:2) represent different versions, the statement in Pesachim is not applicable to the halakhah in these cases. Thus, ¾ of a mil after sh’kia is tzet hakokhavim, and the time in between is bein hash-mashot.

Rabbeinu Tam (see Tosafot, Berakhot 2b, s.v. dilma; Shabbat 35a, s.v. trei; Pesachim 94a, s.v. R. Yehudah), however, resolves the issue differently. In his assessment, there are actually two points called sh’kia. The first sh’kia takes place when the sun begins to sink beneath the horizon. The second sh’kia refers to the point once the sun has already sunk. The four mil period refers to the time in between the first sh’kia and tzet, while the ¾ mil period is the time from the second sh’kia until tzet. (A third opinion exists, as well; see Sefer Yereim, 274).

Powerful support exists for both sides. On the one hand, the position of the geonim is effectively expressed by the Gra’s statement that Rabbeinu Tam cannot be right because ha-chush makhchish, “one’s senses contradict it”: a glance outside the window will verify that it is pitch black long before four mil have passed from the time of sh’kia. Indeed, much of k’lal Yisrael in modern times has accepted the position of the ge’onim.

However, Rabbeinu Tam's position also comes with much support, as it is actually the view of many other rishonim as well, up to and including the Shulchan Arukh (Orach Chaim 261:2) and the Rama (see also Magen Avraham, 331:2, and Resp. Chatam Sofer, O.C. 80.). Thus, many are machmir to not end Shabbat until "Rabbeinu Tam z'man", a practice advocated by R. Moshe Feinstein (Resp. Iggerot Moshe, Orach Chaim IV, 64) and considered normative by communities such as Satmar (see Resp. Divrei Yoel, 18). On the other hand, R. Herschel Schachter and R. Mordechai Willig (see Am Mordechai to Berakhot, 2) consider the view of the geonim to be dominant.

That position, though, also has issues of "chush" to be explained, although they are not as stark as those confronting Rabbeinu Tam, and are to some extent already addressed by the Gra himself. If one assumes the period of *bein hashmashot* to be $\frac{3}{4}$ of a mil, and if that is understood to mean 13 $\frac{1}{2}$ minutes, it does not seem to be the case that darkness has already descended once that much time has passed since *sh'kia*. The Gra thus notes that this measurement is not meant to apply to every part of the world, but only to Israel and Babylonia (which share the same latitude). However, R. Yechiel Michel Tukichinsky, in his *Bein HaShmashot*, notes that even in Jerusalem, stars are not visible until about 22 minutes after *sh'kia*. R. Yehudah Levi (*Z'manei HaYom B'Halakhah*) observes that there is a difference in this area between the trained eye and the untrained eye. In Jerusalem (during the month of Nissan) an expert can discern three stars after about 15 minutes, a time not significantly different from $\frac{3}{4}$ of a mil.

It is noteworthy that identifying the exact moment of "night" has two types of ramifications. One the one hand, it indicates when the date, or day of the week, has shifted to the following one. In addition, it also tells when it is "night" for the purposes of halakhah. Thus, when *Bein HaShmashot* is identified by the gemara (Shabbat 34b) as being a *safek*, the connotation would appear to be that there are two undetermined aspects: whether or not it is night, and whether or not the day has changed.

The Radbaz (Responsa, 1442) brings this understanding into a resolution of an apparent contradiction in the words of the Rambam. In *Hilkhos Shabbat* (5:4) he writes that due to the indeterminate nature of *Bein HaShmashot*, one may not work on

Friday night after *sh'kia*. However, in *Hilkhos Kidush HaChodesh* (2:9) he rules that despite the fact that sanctifying the new month can only take place during the day, after *sh'kia* is still acceptable within that definition. The Radbaz thus asserts that perhaps the two issues in defining night are independent of each other. Thus, Friday can [possibly] switch over to Shabbat, while still maintaining the character of "day". (For other resolutions to this problem, see *Chavatzet HaSharon al HaTorah*, Bereishit, p. 8).

R. Moshe Shternbuch (*Moadim U'Zmanim*, II, 155, fn. 1) considers the question of those parts of the world where darkness never actually sets in. He suggests that the day changes at whichever point the distance between those places and the sun is the greatest, but that halakhic "night" does not take effect at all. Thus, one living in those areas would be unable to fulfill any mitzvot dependant on night. He does consider, without a conclusion, that *k'riat shma* might be an exception, as the controlling terminology is not "day" and "night" but rather "lying down" and "rising".