Focus

No. 9 - Fall 2008 - A Yom Kippur Reader

Preface

Focus enthusiasts will recall that in 2004 we published "A High Holiday Reader." Although that volume included articles on Yom Kippur, the rabbis of the JSN have a lot more to say on the topic. Nevertheless, this Yom Kippur Reader is not merely a product of the rabbinic will to teach. It comes in response to a very real need.

On Yom Kippur, Jewish hearts and minds are open. Open to prayer and introspection, open to critical thinking and meaning, open to personal transformation and renewal. Like our ancestors before us and our brethren around the globe, we resolve on Yom Kippur to change, to rise above the mundane pettiness of unconscious living and become better people and better Jews. Bay Area Jews appreciate the critical role Jewish learning plays in this quest and they search for Yom Kippur reading material that is authentic, stimulating and inspiring. This is where this new volume of Focus steps in, offering an array of articles which direct High Holiday yearnings in meaningful and relevant ways.

- In "*A Time to Forgive: Yom Kippur and the Second Tablets*," R. Joey Felsen explores Yom Kippur's historical roots, arguing that the essential nature of the day was defined by the second giving of the Ten Commandments three millennia ago. As his essay demonstrates, this biblical event has profound consequences for our Yom Kippur experience today.

- In "*The Spiritual Road Less Traveled*," R. Daniel Steinberg notes that unlike certain other religions, Judaism does not consider physical pleasure to be inherently in conflict with sanctity. Yom Kippur is the exception that proves the rule.

- In "*God is Your Shadow: Human Forgiveness and Divine Response*," R. Gavin Enoch exposes God's strange mimicking of man's interpersonal relationships and

shows how we may leverage this to our benefit on the Day of Atonement.

☙ In "*Catharsis of the Soul: On the Role of Confession in the Teshuvah Process*," R. Yisroel Gordon ponders the mystery of *teshuvah* and its apparent subversion of Divine judgment. Why do we confess and what exactly does it accomplish?

☙ In "*The Mitzvah to Eat on Yom Kippur*," R. Avi Lebowitz tackles the following Halachic problem: When and how does illness obligate a person to break his Yom Kippur fast? A rare look under the hood of the Halachic process, R. Lebowitz's essay is an erudite yet accessible treatment of this sensitive issue.

In sum, this slim volume is packed with fresh perspectives on the Day of Atonement. Perspectives that awaken the spirit and demand our attention on this most exalted of Holidays.

Wishing you an easy fast, a meaningful and transformative High Holiday season, and a sweet New Year!

Rabbi Joey Felsen
Executive Director, JSN

Rabbi Yisroel Gordon
Editor

Introduction

Holidays come with mitzvot. Passover has its Matzah; Chanukah has its Menorah; and Sukkot, well, Sukkot has Sukkot. Yom Kippur also has a mitzvah. *Teshuvah*, repentance, is the mitzvah of Yom Kippur.

Teshuvah challenges us in many ways. Unlike the mitzvot associated with other holidays, it is neither fun nor kid-friendly. Teshuvah is sobering; it presumes that we are imperfect and guilty of wrongdoings, it tolerates no excuse, ego or pretense, and it forces us to confront our inherent mortal weaknesses. The mitzvah of Teshuvah makes us profoundly uncomfortable, but at the same time, it underscores a fundamental Jewish truth, an inspiring truth. As long as we are alive, we are vested with free will. We can change.

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Commonly translated as "repentance," Teshuvah literally means, "return." However, Rabbi Joseph B. Soloveitchik points out a finer connotation of "Teshuvah" based on the word's usage in scripture, a meaning with profound implications for our mitzvah.

The prophet Samuel was not just a prophet; he was a judge as well. And in his capacity as judge, he would travel the length and breadth of Israel in a yearly circuit, visiting communities and settling disputes:

> Samuel judged Israel all the days of his life. He would travel year after year, circling to Beth-el, Gilgal and Mitzpah, judging Israel in all these places. Then he would return [*u'teshuvato*] to Ramah, for his home was there…
>
> Samuel I 7:15-17

"Teshuvah" means to return home. This is the fundamental nature of our Yom Kippur yearnings. We want to come full-circle. We want to return to the wholesome comforts of home and hearth. But where exactly is our home? And how do we get there?

* * * * *

> Return, O Israel, to God your Lord.
>
> Hosea 14:2

At least, that is the conventional translation of this verse. However, the English word "to" does not capture the full meaning of the Hebrew original.

"*Shuva Yisrael ad Adonai Elohechah*." The Hebrew "*ad*" connotes returning "until" or "all the way to," not merely "to." This is not irrelevant semantics; there is a difference. Listen to the Talmud's take:

> Rabbi Levi taught: Great indeed is Teshuvah for it reaches [all the way] up to the Divine Throne, as the verse states, "Return O Israel, [all the way] to God your Lord."
>
> *Yoma* 86a

Human souls are sacred, the very "breath" of God (cf. Genesis 2:7), but sin sullies the soul and distances us from God. Thankfully, repentance brings us back. This is why the Jewish term for repentance is "*teshuvah*," "return." When done right, Teshuvah returns our souls to the place where they came from – the inner sanctum of God Himself, the "Divine Throne." This explains why Yom Kippur is the one day of the year that the High Priest enters the Holy of Holies, the innermost sanctuary of the Temple, God's terrestrial palace. God's Throne on Earth.

On Yom Kippur, the Jewish soul yearns to reunite with its spiritual source and re-forge its relationship with God,

unmitigated by sin and failure. It yearns to break the chains of mortality and transcend the cruel limits imposed by physicality. This is why we fast on Yom Kippur – to negate the body, "disrobing" as it were, in order to reveal the inner "I," the soul. More spiritual than physical, the Jew on Yom Kippur can reach all the way up to the Divine Throne.

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Rabbeinu Yona (Spain, 13th cent.) authored "*Sha'arei Teshuvah*," a classic work wholly dedicated to the mitzvah of Teshuvah. Early on in the book, he cites a Midrash that describes this mitzvah with the following metaphor.

After spending several years in a medieval dungeon, a few desperate souls plan an escape, tunneling their way to freedom. The next morning, the prison guard arrives to find a freshly dug tunnel and an empty cell – except for one prisoner who remained behind! The guard beats the poor fellow, yelling at him, "You fool! Why didn't you flee?!"

Like the fool who enslaves himself by failing to take advantage of the tunnel, we have enslaved ourselves to bad habits. How do we escape these habits? Through the "tunnel" of Teshuvah.

The sages aptly compared Teshuvah to a dark and frightening tunnel. As we shall see in the following verse, Teshuvah is no less foreboding.

> Let us examine our ways and analyze – and return to God.
>
> Lamentations 3:40

> Let us examine our ways and analyze – and return to You, for Your right hand is extended to accept those who return…
>
> Yom Kippur Prayer

Examine? Analyze? We know what we have done wrong, we know what needs fixing, so why the need for analysis? Why are Teshuvah and God's extended, "open arms" reserved for those who engage in self-examination?

The answer is that the first step in making real and lasting improvements in our lives is to figure out *why* we do what we do. Teshuvah is a tunnel for it involves entering the dark recesses of our hearts, digging up root causes of behavior and confronting our negative drives and self-centeredness. Uncomfortable processes, no doubt, but if we crawl through the muck and reach the true, sacred "I" under it all, we are free. Otherwise, our souls are doomed to remain in the dungeon forever – a dungeon of our own making.

The Midrashic metaphor ends here. However, if we add the Talmud's teaching, we can continue our story.

> Great indeed is Teshuvah for it reaches [all the way] up to the Divine Throne…

When the prisoners come to the end of their tunnel, they find that have tunneled right into the throne room of the king! As we do the mitzvah of Teshuvah, digging inward and revealing the "I" within, we ultimately find ourselves standing not alone, but before the throne of God.

* * * * *

We can do Teshuvah, but in the end, only God can cleanse our sins and purify our souls. The verse puts it this way: "God is the Mikvah (ritual bath) of the Jews" (Jeremiah 17:13; cf. Mishnah, *Yoma* 8:9). The Jew cannot purify himself, he can only immerse in a Mikvah – the Mikvah does the purifying. The analogy is clear. We can return to God and immerse ourselves in

His Presence, but Teshuvah cannot provide atonement until God Himself cleanses our souls. He is our Mikvah.

Jewish holidays mark the transformative events of our history and Yom Kippur is no exception. Yom Kippur is the day on which we received the Second Tablets (cf. Rashi to Exodus 33:11). On that first Yom Kippur, God forgave the sin of the Golden Calf and renewed His covenant with the nation with a second set of Tablets. This biblical event defines the essential nature of the day for all time. Yom Kippur is not merely a day on which *we* do Teshuvah; Yom Kippur is the day on which *God*, in his infinite love and compassion, acts as our purifier, erasing our sins and reestablishing His relationship with us.

Rabbeinu Yona is also the author of an essay on Teshuvah called *Igeret HaTeshuvah*. It contains an original confession which ends with these words:

> And if my abundant and formidable sins deprive me of all advocates on my behalf, then God, *You* dig a path for me from under Your Divine Throne and accept my repentance…

Unbelievable! We distance ourselves from God and how does God respond? *He digs a tunnel for us!*

On Yom Kippur, if we do the difficult shoveling on our end, demonstrating our willingness to change, prying open the innermost chambers of our hearts and laying ourselves bare for sincere introspection and repentance, then on His end God also digs, breaking through the floor of His Palace and creating new pathways to gain entry.

The tunnel is long, dark and winding. It can be painful and frightening. But all day long we crawl and we dig, until, at Yom Kippur's end, the impossible happens. A renewed, pure "I" reaches the Holy of Holies and falls into the King's open arms.

The warm embrace of a return Home.

A Time to Forgive: Yom Kippur and the Second Tablets

RABBI JOEY FELSEN

Yom Kippur is a widely observed holiday. Many Israeli Jews who claim to be completely secular nevertheless admit that they fast on Yom Kippur.[1] Clearly people identify with the idea of limiting one's pleasure for a day as a way to introspect. Life moves at a fast clip and taking time to be alone with one's thoughts constitutes a rational approach to life.

But surely there is more to this day than merely the suppression of appetites and the triumph of self control over self indulgence. Yom Kippur in actuality is the commemoration of a day in history that had an eternal impact on the Jewish people. It was on this day that the ancient Israelites received the second set of tablets from Moses upon his descent from Mount Sinai. Understanding the chronological background to this event and how our sages understood its implications is the key to unlocking the full spiritual potential of this, the holiest day of the Jewish calendar.

Let us begin by providing a short synopsis of the relevant events in the Book of Exodus. Fifty days following the miraculous departure of the Jews from Egypt, they experienced a national revelation of the Divine with the giving of the Torah. At the foot of Mount Sinai, the entire nation heard the voice of God in a fantastic display of sound and light. That day was the sixth day of the Jewish month of Sivan. The very next day Moses was invited up Mount Sinai to learn the rest of the Torah and to receive a set of tablets inscribed with the words that had been revealed to the entire nation. The duration of this stay upon high was forty days and forty nights. On the seventeenth day of the Hebrew month of Tammuz, Moses descended the mountain only to find the nation steeped in the worship of the notorious Golden Calf. Enraged, he thrust the tablets from his hands, smashing them to the ground (cf. Exodus 31:1-19).

Moses then ascends upon high yet again, this time to plead with God to forgive the nation for the grave sin they had committed. A people that had been privy to an experience of national revelation, who had heard God Himself declare that "there shall be no other Gods for you before me" (Exodus 20:2) had nevertheless within weeks fallen into pagan worship. But God forgave the sin of the Golden Calf and Moses was again invited to ascend Mount Sinai to receive a second set of tablets.[2] Moses returned to the repentant people on the tenth day of the month of Tishrei with a tangible expression of Divine mercy and forgiveness, a new set of tablets (cf. Exodus 34:27-28). So went the first Yom Kippur of Jewish history.

Anyone who has experienced the misfortune of having wronged others, or been wronged by others, can easily comprehend that forgiveness does not necessarily happen in an instant; it is often

a process rather than an event. When exactly God forgave the sin, and to what extent that sin was actually forgiven, is a matter open to conjecture. What we do know is that at a certain point Moses was told to revisit Mount Sinai to receive the second set of tablets and that it took another forty days and nights before he returned to the nation with hard evidence that their transgression had been pardoned. Yom Kippur is more than just the day to commemorate a single instance of forgiveness in our history. It is referred to in the liturgy as a day of "Forgiveness, Pardon, and Atonement"—a recurring day when forgiveness, pardon, and atonement come within our grasp with a potency far beyond other days of the year.

How is it possible that a single incident can have a permanent spiritual impact upon a particular time of the year? In the Jewish concept of time, history unfolds in the present based on the imprint of significant events that happened in the past. To use biology as an analogy, a gene can become manifest continually in manifold generations of an organism; were the DNA to have been altered at a particular point, it would still continue to replicate itself with that alteration in future progeny. The tenth day of Tishrei demonstrated most clearly the power of forgiveness and as such Yom Kippur became a day inherently connected to the root source of that forgiveness.

We tend to think of time as being of uniform quality. There is no difference, it is assumed, between the time that occurs on Friday and that which occurs on Saturday. We may choose to perform various activities during those time periods but the time *itself* does not have any distinct quality to it. The Torah, however, has a different take on time. As we move forward through time, particular periods—certain days, weeks, or even years—resonate with their own spiritual reality. Shabbat, festivals, and even sunrise

and sunset are all imbued with an energy that can impact upon us spiritually.

Against this backdrop, we can begin to appreciate how the Sages related to Yom Kippur:

> Rebbe (Judah the Prince, compiler of the Mishnah, b. 135 C.E.) said: "All the transgressions in the Torah are atoned for by Yom Kippur regardless of whether or not one repents."
>
> Talmud, *Yoma* 85b

This is too good to be true! We can clean the slate of our sins, just by living through the day? Is this actually the mainstream Talmudic approach to Yom Kippur?

The above statement, though cited in the Talmud, was never actually codified in the Mishnah. In fact, it is mentioned in counterpoint to a more authoritative Mishnah which implies that Yom Kippur absolves the sins only of those who repent for them. The Talmud cites the statement of Rabbi Judah the Prince to demonstrate his alternative opinion: he clearly states that there is no requirement of active participation on behalf of the individual who has committed a transgression. The discussion in the Talmud then continues with an attempt to reconcile the opinion of Rabbi Yehuda Hanasi with that of the Mishnah. It is suggested that the true intent of the Mishnah was to declare that repentance alone cannot completely absolve someone of their transgressions, but that Yom Kippur is still needed: "Repentance requires Yom Kippur; Yom Kippur does not require repentance" (ibid). That is, repentance is necessary but not sufficient—it needs Yom Kippur to finish the job. As such, the Mishnah never intended to negate the concept that Yom Kippur provides atonement on its own. Rather, it wanted to ensure that people who repent should realize that they still need a Yom Kippur to complete the process of atonement.[3]

How exactly does Yom Kippur complete the process started by repentance? What about the day of Yom Kippur provides the atonement? Just that! Simply by living through this particular day one receives atonement. The spiritual energy of this slice of time has the power to affect one's relationship to previous actions, cleansing the transgressions of the past.

To delve a little further into this idea, it is important to articulate the Jewish conceptions of transgression and repentance. During the time that Moses was on Mount Sinai, he was taught six hundred and thirteen commandments. These commandments, or *mitzvot* in Hebrew, are considered to be the apparatus that allow us to come closer to God. Transgression of these mitzvot naturally has the opposite effect. But the act of repentance allows us to correct our transgressions, ultimately achieving atonement of them entirely. By suggesting that Yom Kippur itself atones for one's transgressions, the implication is that the power of the day alone can repair a severance in our relationship with God. That is certainly encouraging and gives us cause for celebration at the end of the holiday.[4]

Unfortunately, though, this idea comes with a major caveat. As the same Mishnah cited above qualifies, "Transgressions between man and God, Yom Kippur absolves; transgressions between man and man are not absolved until one's friend is appeased." Despite the fact that we acknowledge the incredible power of Yom Kippur to atone for our sins, this idea is limited to sins in the realm of offenses to God. It does not, however, apply to our fellow human beings. In other words, one does not have the prerogative to abdicate his or her own responsibility toward others, relying on the power of Yom Kippur to atone.

This last point may seem obvious, nevertheless it is interesting to explore why one might be tempted to believe that Yom Kippur should have the power to intervene in our interpersonal relationships as well. We know that a significant percentage of the mitzvot govern interactions between people. In fact, if we revisit those tablets that we received on Yom Kippur we will find that one of the two tablets is etched with commandments that affect our relationship to God while the second contains commandments that establish red lines in our responsibilities to fellow people.[5] Ultimately, when one injures, insults, or exploits another person it is considered an offense against God as well. It follows, then, that a pardon is necessary from God even for our anti-social behavior. However, let us not forget that forgiveness by God does not come to the exclusion of mortal forgiveness as well.

Noting this distinction between religious and social commandments, and recognizing the power of Yom Kippur to absolve transgressions of the former sort but not the latter, let us approach the subject from a different angle and ask ourselves a most perplexing question. In our recounting of the events of the first descent from Mount Sinai, we mentioned that upon seeing the Golden Calf Moses thrust the tablets from his hands. Granted he was appalled by the spectacle of idol worship taking place before him, but why did Moses have to destroy both tablets? On the first tablet there was engraved the commandment against idolatry, "There shall be no other gods for you before Me" (Exodus 20:2). Clearly the people had violated this. But the second tablet lists social commandments: the prohibitions of murder, adultery, theft, bearing false witness and coveting. These commandments fall into the arena of governing principles for our interactions with others,

an area unaffected by the worship of the Golden Calf. Why did that tablet have to be smashed along with its twin?

In all references to the tablets, they are described as one unit with two parts. Those parts are indivisible. To blatantly ignore one of the commandments on the first tablet is to undermine the legitimacy of both halves. In fact, the Midrash (*Mechilta*, *Bachodesh* 8) makes the assertion that the five mitzvot on each tablet parallel one another. The Ten Commandments may be understood not only by reading them vertically but by reading them horizontally as well.[6] Moses understood the secret of the tablets, that our obligations towards God are inseparable from those toward fellow people. In order to avoid the pitfall of moral relativism, one not only needs religion but one must also integrate a set of ethics and morality that comes from the Creator of all humankind.

Therein lays the gift of Yom Kippur. The day comes to atone and to absolve us of sins that we committed against our Creator. It is a day that acknowledges our frailty as human beings and carries with it a sense of Divine forgiveness. But it also carries with it the message that both sides of the tablets are inseparable, that we have obligations toward our fellow people just as much as we have toward God. The tablets were presented anew to the people on that day as more than just evidence of God's mercy, but also as a renewal of a covenant that demands we realize that our obligations are multidimensional. Yom Kippur does come as a corrective measure for our transgressions but it cannot absolve us of the crimes against our fellows unless we have actively worked at soliciting their forgiveness. And when we do, we hope that others will relinquish their own pain, give up their grudges, and accept

our apologies. Only then can we proudly uphold the tablets—both of them.

Yom Kippur is the day that carries with it the spirit of forgiveness as evidenced by the renewal of the tablets. Forgiveness comes from beyond our world, but it is conditional upon us making amends in the here and now. Only when we realize this will we experience a day of complete forgiveness, pardon, and atonement.

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[1] Ha'aretz, "Israel at Standstill for Yom Kippur, the Holiest Day of the Jewish Calendar," Sept. 22, 2007.

[2] Whether or not Moses descended from the mountain after the forty days of prayer and before the forty days when he received the second tablets is a matter of dispute among the classical Biblical commentators. Cf. Rashi to Exodus 33:11.

[3] This is just one of a number of interpretations as to the meaning of the Talmud's cryptic resolution of the contradiction between the Mishnah and the statement of Rabbi Judah the Prince (cf. *Tosafot Yeshanim* ad loc. for this as well as other approaches).

[4] Cf. Rabbi Eliyahu Eliezer Dessler, *Michtav Meliyahu*, volume 1, pg. 267.

[5] The first tablet contains the first five of the Ten Commandments: belief in God, not to worship idols, not to take God's name in vein, to keep the Sabbath, to honor one's parents. The second tablet contains the next five: do not murder, do not commit adultery, do not steal, do not bear false witness, do not covet.

[6] For more on this idea, see Rabbi David Fohrman's lecture entitled *The Inner Structure of the Ten Commandments* at www.jewishtextstudy.org.

The Spiritual Road Less Traveled

RABBI DAN STEINBERG

Yom Kippur is indisputably the holiest day of the Jewish year. It would follow, then, that if we wanted to seek out the uniquely Jewish perspective on holiness we would look to the practices and rituals associated with Judaism's most holy day. One would assume that these rituals would serve as our compass, that whatever behavior Judaism dictates on this day obviously would reflect the larger ideal. And the more we conform to this model of behavior in our daily lives all year round, the more holy we would become.

That said, let us commence our journey towards holiness by examining the practices of Yom Kippur. The Torah prohibits five specific activities on this day. They are (1) eating and drinking; (2) bathing for pleasure; (3) sexual relations; (4) wearing leather footwear; and (5) the application of oils or lotions. If it wasn't immediately obvious, the Torah provides a common denominator between all these activities: "in the seventh month, on the tenth of the month, you should *afflict* yourselves" (Leviticus 16:29). In other words, on Yom Kippur we are called upon to abstain from

these five activities, causing ourselves physical distress. That is what Judaism calls for on the holiest day of the year—a suppression of the body's most basic needs and an abstinence from physical pleasures. This, it would seem, is the Jewish definition of holiness.

In and of itself, ascetic behavior as a means to holiness is not such a foreign concept. Many of the world's religions preach that the path to spirituality necessitates an abstinence from physical pleasures and a general disengagement from the physical world. What should strike one as strange, though, is that if Judaism considered asceticism to be a virtue, we would expect to find more instances of such behavior on some of its other holy days. We do not.

Recognizing the uniqueness of Yom Kippur within the spectrum of Jewish holidays forces us to explore the very nature of holiness as conceived in the Jewish tradition. Doing so will help us understand as much about the sanctity of Yom Kippur as it will the rest of the year as well.

II

In descending order of sanctity, the next holiest day in the Jewish calendar after Yom Kippur is Shabbat. It is, after all, the holiday that Yom Kippur is modeled after. That is, when referring to Yom Kippur, the Torah calls it "*Shabbat Shabbaton*," the Sabbath of Sabbaths (Leviticus 23:27). Since Yom Kippur is a sort of super-Shabbat,[1] we would expect to find Shabbat prescribing the same type of austere practices as those of Yom Kippur, albeit perhaps in lesser form. Much to our surprise, though, we find just the opposite. The mitzvot of Shabbat take us in a completely different

direction, and markedly away from asceticism. For example, on Shabbat there is an obligation of *oneg* (lit. pleasure) which specifically advocates indulgence in physically enjoyable activities such as eating fine foods and drinking wine.

Similarly, we find on the other major Jewish holidays that Judaism calls for *simcha* (lit. joy). The Talmud explains this requirement as a reference to the visceral experience of eating meat and drinking wine on Yom Tov.

To be fair, Yom Kippur isn't the only day on the Jewish calendar when we are enjoined to afflict ourselves by abstaining from food, bathing, marital relations and the comforts of leather footwear and lotions. On Tisha B'Av, the national day of Jewish mourning, the five prohibited activities of Yom Kippur are again forbidden. But the asceticism of Tisha B'Av is fundamentally different from that of Yom Kippur. The reason for abstinence on Tisha B'Av is painfully clear and it has nothing to do with holiness, per se. Rather, it stems from the mournful nature of the day. This is the day we recall the national historic tragedy of the destruction of both the first and second Temples. Indeed, the distinction between Yom Kippur and Tisha B'Av is borne out by a popular Jewish folk saying: "On Yom Kippur, who needs to eat? And on Tisha B'Av, who can even *think* of eating?"

Not only do we lack any precedent for abstinence as a mode of holiness, in Judaism the opposite seems closer to the truth. Far from being a virtue, asceticism is actually frowned upon in Judaism. Maimonides writes as such in the beginning of the third chapter of *Hilchot De'ot* (Attitudinal Laws):

> …one might think that he should go to the other extreme and not eat meat and wine, get married, or have a nice house

> and clothing; that he should rather wear sackcloth or hard wool, like the gentile priests. This is a bad way and it is forbidden; one who does so is called a sinner. One who becomes a Nazirite, taking a vow to deny himself wine, needs atonement. How much more so does one who denies himself everything need atonement! Therefore, the Rabbis commanded to refrain only from what the Torah forbids, and not to add prohibitions through vows and oaths. This includes fasting constantly. The Rabbis forbade tormenting the body through fasting….

And if this weren't enough, there is a special mitzvah to eat and drink during the twenty-four hour period leading right up to Yom Kippur![2] What change occurs between the minute before Yom Kippur begins and the minute after? What is the unique nature of Yom Kippur that we suddenly part ways with Judaism's usual attitude of encouraged consumption, engaging rather in seemingly unwarranted abstinence?

III

In order to answer the question above, we look to an unlikely place: the Jewish calendar itself. The very first mitzvah that the Jewish people received as a nation was the mitzvah of *Kiddush HaChodesh*, the sanctification of the new moon. This mitzvah entails establishing a new month at the appearance of the new moon, and to begin counting the months of the year from the month that the Jews left Egypt, namely the month of *Nisan*.

The Torah states,

> This month shall be for you the beginning of months; it shall be the first month of the year for you.
>
> Exodus 12:2

The Midrash comments: "It should be *for you* [the beginning of months], but not for *Adam HaRishon* (the first man)" (*Mechilta*, *Bo* 1). Prior to this mitzvah, Adam and his descendants (that is, all mankind) observed the first of the month of *Tishrei* as the new year (or as we call it, Rosh Hashanah). This date marks the completion of the Creation, and for the rest of the world it functioned as the sole transition of time between one year and the next. But with the advent of the first mitzvah given to the Jewish people as a whole, the Torah is telling the nascent nation to count the months of the year from *Nisan*, in contradistinction to the rest of mankind who use a *Tishrei*-based calendar.

The extent of the significance of this statement may not be readily apparent. After all, it would seem that the primary reason for God's directive to the Jewish people to begin their calendar months from Nisan was because that was the month they left Egypt and became an independent nation. What unique distinction is there between Adam and his descendants on the one hand and the nascent Jewish people on the other that generates a need for two different calendars?

IV

Rabbi Shmuel Borenstein (Poland, 1856-1926), in his classic work, *Shem MiShmuel*, cites a fascinating statement from the Talmud (*Eruvin* 18b) that sheds new light on the history of

spirituality as it developed from the time of Adam until that of Abraham our forefather.

> Adam was a great, pious person… For one hundred and thirty years he fasted, separated from his wife and wore belts of fig shoots on his flesh [to afflict himself].
>
> Talmud, *Eruvin* 18b

The Talmud testifies that Adam was exceedingly pious precisely as a result of his regimen of abstinence. R. Borenstein writes that until Abraham this was how the great people of every generation achieved and maintained their lofty levels of holiness and spirituality, by divorcing themselves from all things physical. Their path to holiness was by way of suppression of physical appetites and isolation from anything or anyone that posed a threat to their holiness, for fear of contamination.

Indeed, Noah was deemed by the Torah a righteous person, "perfect in his generation" (Genesis 6:9). Yet during the one hundred and twenty years it took him to build the Ark, his righteousness did not influence anyone other than his immediate family to repent and be spared from the Flood. He was the proverbial holy man sitting atop a mountain by himself, communing with God and divorced from the world around him.

The practice of asceticism as a means to spirituality was the norm. Only with the advent of Abraham did this path take a sharp turn. Abraham was called "*av hamon goyim*," the father of a multitude of nations (Genesis 17:4-5). He opened his tent and offered hospitality to anyone who happened to pass by, regardless of their spiritual level, in hopes of influencing them for the good and bringing an awareness of God into their lives. It is noteworthy that the Talmud (*Sotah* 10a) explains that Abraham's principle

modus operandi of outreach was to offer his guests food and drink, fulfilling their mundane needs and then asking them to bless God for the sustenance.

Most people believe that Abraham, as the first Jew, made his most significant contribution to the world by introducing it to the idea of ethical monotheism. However, a close study of the Bible shows that monotheism existed even before Abraham came on the scene. The Torah states clearly that "Enoch walked with God" (Genesis 5:24). And a man by the name of Malki Tzedek was a "high priest of God" (Genesis 14:18). Similarly, we find that Noah "walked with God" (Genesis 6:9). An ancient tradition relates that there was even an institute of learning run by Noah's son and grandson, Shem and Ever (cf. Rashi to Genesis 25:22). So even before Abraham, knowledge of one God not only existed but was publicly being taught. So what, then, was Abraham's unique contribution to the world?

Abraham introduced the notion that a person does not have to cut himself off from the physical in order to advance spiritually, that the two are not at all incompatible. On the contrary, the physical can be made to serve as a vehicle to achieve spirituality. This was something completely unheard of up until that point. Abraham taught that it was indeed not God's intention that man should live the life of an ascetic hermit. We can study the wisdom of the creation and the pleasures it bestows upon us as a means to God appreciation.

> The heavens, the heavens are God's domain; but the earth—that He gave to man.
>
> Psalms 115:16

Abraham preached that God wants us to enjoy the world, to live in a community, engage mankind, and yet all the while stay loyal to one's values, tying it all back to God. This is a higher level of holiness than pure asceticism. Instead of transcending this world, it actually brings the heaven down to the earth.

V

This approach explains a puzzling question in the episode of the matriarchs, viz. Rebecca's strange pregnancy. The Torah states that, unbeknownst to her, Rebecca was carrying twins, Jacob and Esau. The two children were *running* inside her womb (Genesis 25:22). Rashi explains the twins possessed conflicting natures. When she passed by a study hall, Jacob would attempt to exit, and when she passed by a house of idol worship, Esau would attempt to exit. Rebecca, unaware there were two fetuses inside her womb, was troubled by this seeming conflict of character in what she thought was a single baby. Hence she sought out some professional advice.

> She went to inquire of God.
>
> Genesis 25:22

Rashi explains that Rebecca went to Shem, the son of Noah, a leading prophet of that generation. Shem explained to Rebecca that there was not one child in her womb with a split personality but rather two children with two diametrically opposed characters. The question is: if Rebecca wanted to seek out the word of God for some explanation about her condition, why did she go to Shem? Why didn't she seek out her own father-in-law's opinion? Abraham was undoubtedly a greater prophet, and he was in the family to boot?

Based on what we explained earlier, the answer is readily understandable. When Rebecca originally approached Shem, she thought there was a single baby in her womb, and it was experiencing a conflict between spirituality (the baby's drive to enter the study hall) and physicality (the baby's drive to enter the hedonistic temples of pagan idol worship). Abraham was a prophet preaching a harmony between the physical and spiritual, that they were *not* diametrically opposed. The situation of conflict that Rebecca was experiencing ran contrary to Abraham's religious outlook. As such, he was not the right person to talk to about it. Only Shem, as a vestige of the earlier generation of holy men who maintained a belief in the body-soul contradiction, could possibly explain to Rebecca the meaning behind her strange experience.

VI

In light of the above, we can now understand the import of the first commandment given to the Jewish people, *Kiddush HaChodesh*, initiating the count of months from the Hebrew month of *Nisan*. If the path to spirituality of the holy men of the earlier generations—Adam, Enoch, Noah, and Shem—began with a suppression of the physical, then it is only appropriate to begin their year from a time when the physical world lapses into inactivity and lies dormant. That time corresponds to the Hebrew month of *Tishrei*, that is, the fall time. At this time of year living things begin to die or go into hibernation. Leaves fall off the trees, snow covers the earth, and the physical world seems to shrivel up and die. *This* is the time of renewal for the primordial spiritual seeker:

as the physical world falls into dormancy, the religious spirit of asceticism is awakened.

The Jewish people, however, follow the path forged by Abraham. We were given a unique task beginning with the mitzvot of *Kiddush HaChodesh* to use the physical world as a means to achieving spirituality, and to infuse it with holiness in the process. That is the significance of starting the calendar year from *Nisan*. *Nisan* occurs in springtime, when the world begins to arise from its slumber and starts to buzz with life and activity. It is a time when flowers and fruit-bearing trees begin to blossom and mating season is in full swing. Thus, *Nisan* is the precise time for a renewal of the Jewish people's mission of embracing the physical world for holy pursuits, when nature comes alive in all of its splendor and glory. We embrace the rebirth of the physical world as a new opportunity to sanctify it.

By now it should become clear that asceticism is not a Jewish approach; on the contrary, it runs counter to the task of the Jewish people. That is why we find no emphasis on it—at least, ninety-nine percent of the time.

VII

Yom Kippur is a clear break from the pattern of Jewish spirituality as it was set up by our forefathers and as taught through the mitzvot of the Torah. There is good reason for this. Directly engaging the physical world à la Abraham is fraught with a certain danger. As a result of the human condition we find ourselves in, there is always the fear that instead of utilizing the bounty of the material world as a means to spirituality, it will become an end in

itself. It can all too easily become a mechanism for the furtherance of our own personal pleasures rather than our spiritual endeavors. In such a case, a person not only fails to reach the desired spiritual heights, but actually ends up falling far below where he started at the outset.

But that is not all. In the introduction to his classic work on Jewish character development, *Mesillat Yesharim* (Path of the Just), Rabbi Moshe Chaim Luzzato (Italy, 1707-1746) writes that "one who is pulled after the world and is drawn further from God not only damages himself, he damages the world along with him." As the pinnacle of creation, man is called upon to use the world for the purpose of his spiritual task, to see through the veil of nature and recognize its Creator. When man sinks into the world rather than rising above it, the physical world fails to achieve the potential for which it was created, namely, to service Man in his spiritual quest.

We see this idea too playing itself out in the lives of our forefathers. Prior to his death, Isaac sought to bless his first-born son, Esau. Rebecca, though, unlike her husband, recognized that Esau was not fit to carry the burden of this blessing. In a daring move, she instructs Jacob to dress up as Esau and trick his blind father into giving him the blessing instead (cf. Genesis 27:6-13).

What was Rebecca's impetus for instructing Jacob to deceive Isaac into giving him a blessing that was originally reserved for his older brother, Esau?

The opening words of this blessing reveal its nature: "May God give you of the dew of heaven, and of the fat places of the earth, and plenty of corn and wine" (Genesis 27:28). Clearly, the blessing was for physical bounty, a vital element to the future task of the

Jewish people to embrace the physical world as a means to spirituality, infusing it with holiness. Rebecca, through a deep understanding of Esau's nature, saw that he would only misappropriate the bounty for himself, to further his own ends. She saw that he would damage himself and damage the world along with him. Hence she designed a ruse to shift the blessing away from Esau and over to Jacob.

VIII

The risk that we may be, in R. Luzzatto's words, "pulled after the world and drawn further from the Creator" would seem sufficient reason to abandon the path of Abraham in favor of the other approach to spirituality, the path of asceticism. Indeed it would, were there not a built-in exception to Abraham's system that serves as a sort of annual immunization shot against this risk, namely Yom Kippur.

After a full year of attempting to engage the physical world towards spiritual ends, it is possible that in the process we may have forgotten ourselves. Perhaps we have begun to identify more with our body and its desires than with our soul and its strivings. That is why on Yom Kippur, the holiest day of the year, we take time out to become reacquainted with the inherently holy part of us, our souls. On this day we rise above the physical. The Midrash actually compares the Jewish people on this day to the angels who have no corporeal needs whatsoever (*Pirkei D'Rebbe Eliezer* 46). This angelic likeness may explain the custom on Yom Kippur to dress all in white, emulating the purity of the celestial beings.

By denying our bodies its basic needs and comforts, we allow the distinction between the body and soul to surface. As we detach from physicality, the soul can observe the body's hunger pangs and its cravings for creature comforts. The demands of the body are felt most acutely when put on hold, even if only briefly. Suddenly the body impresses upon us a feeling of constant pressure to fulfill its demands, even at the expense of our more spiritual aspirations. But this Torah-ordered twenty-four hour respite is an opportunity for the soul to regain perspective and to review the answers to the following questions: What are these urgent demands on me? Why am I not fulfilling them right now? Who am I, after all? What is the real me?

Yom Kippur is the day when we are able to see with clarity where in our lives we have filled the body's needs for its own sake, to the exclusion of the soul, and where we have used them for their intended purpose. Nowhere does this theme emerge more poignantly than with the declaration that inaugurates the arrival of Yom Kippur, the solemn prayer known as *Tefilla Zakka*. Recited by many congregations immediately prior the *Kol Nidre* service, it expresses the regret one might feel having fallen short on the Jewish path to spirituality.

> You created me with a brain in order to think good thoughts… eyes with the power of sight to see the words of Your Torah… ears with which to hear holy words and Torah insights… a mouth, tongue, and teeth with the power of speech which separates man from beast… hands with which to perform mitzvot… and legs with which to walk to do all kinds of mitzvot…
>
> I have inspected all my limbs and found them lacking, from the soles of my feet to the top of my head—nothing is whole.

> I am dejected and too embarrassed to raise my head before You, my Lord, for these limbs and senses that You so graciously bestowed upon me, and the constant life force with which You animated them, I have misused to do bad things in Your eyes and to transgress Your will.
>
> Yom Kippur *Machzor*, *Tefilla Zakka*

Afflicting ourselves in each of the specific ways mandated on Yom Kippur serves to atone for occasions during the year when we happened to overstep acceptable boundaries in those areas.

> Since it is known revealed before You that "there is no man wholly righteous on earth that does good but does not sin" (Ecclesiastes 7:20), therefore You gave us one day in the year—a powerful and holy day—this day of Yom Kippur… upon which to return to You.
>
> Ibid

It may very well be easier or even safer to retreat from the world, neither to do good nor to sin. The Jewish path to spirituality, though it is the one less traveled by the spiritual seekers of the world, nevertheless holds out the hope that all creation be infused with holiness through the acts of man. Yom Kippur, far from being a day of abstinence for its own sake, is actually a day upon which we may reorient ourselves and renew our uniquely Jewish mission to sanctify the world in the year ahead.

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[1] The idea of Yom Kippur being the holiest day of the year is a widely held notion which needs to reconciled with the fact that the Torah prosecutes Shabbat violations more severely than Yom Kippur violations. It also needs to be reconciled with the explicit statement of the Siddur in the Friday night service, "He sanctified it (i.e. Shabbat) more than all other times" (R.Y.G.).

[2] Cf. Talmud, *Yoma* 81b

God is Your Shadow: Human Forgiveness and Divine Response

RABBI GAVIN ENOCH

Upon his deathbed in Paris in 1856, the renowned German Romantic poet, Heinrich Heine, reflected upon a life of professional acclaim and religious apostasy. His parting words, true to form, were: "God will forgive me. That's His occupation." But Heine obviously never learned the following passage in the Talmud.

> Anyone who says that God disregards [sin]—his life shall be disregarded!
>
> Talmud, *Bava Kamma* 50a

Spiritual awareness demands the realization that God holds us responsible for all of our actions. It is appropriate, then, that at least once a year we focus on the fact that nothing goes unnoticed or unaccounted for. Yom Kippur, more so than any other, is the

day that we turn our attention to the difficult task of taking responsibility for our actions. It is a time for deep introspection, honest self-assessment, and ultimately spiritual catharsis.

A serious day, to be sure, but is it all so doom and gloom? Is God's evaluation of us really so critical? Could we not perhaps persuade God to 'lighten up' a little bit? When we look into the Talmud we indeed find a ray of hope for the Heinrich Heine in us all.

One who foregoes acting upon his negative character traits—God will forego all his sins, as it says, "He pardons transgression and overlooks sin" (Micah 7:18). Whose transgression does he pardon? The one who overlooks the sin [committed against him].

> *"One who foregoes acting upon his negative character traits"* does not calculate the exact measure of retribution that his attacker deserves; rather, he tolerantly drops the matter and goes on his way. And since he relinquishes his right to exact retribution for the wrongs done to him, God's Attribute of Justice relinquishes its right to exact punishment for his sins.
>
> Talmud, *Rosh Hashanah* 17a; Rashi ad loc.

Here we find a way to bypass the strictness of judgment that rests so heavily upon us at this time of year. By treating others with a modicum of forbearance God will answer us in kind. More specifically, if we overlook the sins committed against us then God will overlook the sins we committed against Him.

It sounds like a great deal, but how exactly does it work? Either God cares about our actions and takes us to task for them or He does not. Why would God suddenly wax lenient just because we are nice to others? And what, after all, is the connection between our forgiveness of them and God's forgiveness of us? Why should

God's judgment of us have anything to do with the way we humans relate to one another?

Understand the interplay of Divine judgment and human forgiveness will reveal the secret of a spiritual modus operandi by which God imitates man, responding in kind to the kindness of our actions. Accessing this system will prove the best preparation for a successful judgment on Yom Kippur.

II

The first point we must explore is the very concept of judgment as it applies to the High Holidays. Rosh Hashanah and Yom Kippur are both referred to in the liturgy as *Yom HaDin*, Day of Judgment, and indeed we find that God adjudicates on both of these days.

> Rabbi Kruspedai said in the name of Rabbi Yochanan, "Three books are opened on Rosh Hashanah: one of the completely wicked, one of the completely righteous, and one of the intermediate. The completely righteous are signed and sealed immediately for life, the completely wicked are signed and sealed immediately for death, while the intermediate people are held in abeyance from Rosh Hashanah until Yom Kippur. If they merit it, they will be written for life; if they do not merit it, they will be written for death."
>
> Talmud, *Rosh Hashanah* 17a

This is the Talmudic source for one of the most well known motifs of the High Holidays, that of the Book of Life and the Book of Death.

Everyone in the world fits into one of three categories: righteous, wicked, or exactly balanced between the two. How exactly does one merit being inscribed in the Book of Life? What is the definition of a righteous person? According to Maimonides it seems rather simple.

> Each and every person has merits and sins. Somebody whose merits outnumber his sins is considered to be righteous. Somebody who has more sins than merits is a wicked person. Somebody who has equal amounts of merits and sins is an average person. Righteousness is defined as one's merits being more numerous than one's sins, and wickedness as one's sins being more numerous. The whole world operates on this principle.
>
> Maimonides, Laws of Repentance 3:1

As unlikely as it may be in reality, Maimonides advises us that it is a healthy attitude to assume that we belong to the intermediate category.

> Every person must see himself all year round as if he were half worthy and half guilty, and so too the whole world—half worthy, half guilty. Do one sin and tip the scale, for himself as for the rest of the world, to the side of guilty and bring destruction upon it. Do one mitzvah and tip the scale, for himself as for the rest of the world, to the side of merit and bring it to repentance and salvation.[1]
>
> Ibid, 3:4

No one should be so brazen as to consider himself wholly righteous nor so self-deprecating as to consider himself completely doomed. But more than that, one should consider himself to be in the intermediate camp so that his outlook on life will always be that every step counts, for himself and for the entire world.

In reality, though, we must realize that the law of averages says that the vast majority of people in the world are either on one side of the fence or the other. How many people could actually be exactly fifty percent righteous and fifty percent wicked? But do not lose hope, for whatever is determined on Rosh Hashanah is not set in stone.

> On Rosh Hashanah it is signed and on the fast of Yom Kippur it is sealed, who will die and who will live…
>
> *Unetanneh Tokef*, Machzor[2]

So regardless of our present state of spiritual affairs, there is still time for change and an opportunity to win a favorable judgment.

III

Let us not, though, come to think of this evaluation process as a simple calculus of merit versus sin. In reality, God's system of judgment is much more complicated than that, as Maimonides explains:

> This weighing out [of merit and sin] does not work on a one-for-one basis, as there are some merits which outweigh many sins, as it is written, "...because of him some good thing is found" (Kings 1 14:13). On the other hand, there are some sins which outweigh many merits, as it is written,

> "[Wisdom is better than weapons of war,] but one sinner destroys much good" (Ecclesiastes 9:18). Only God knows how to evaluate sins and merits in this respect.
>
> Ibid. 3:2

The point here is that the system of evaluation is not based solely on the quantity of merits versus sins, but also the quality of those acts. One merit may outweigh many sins, and vice versa. The standard of judgment is as absolute as it is unknown to mankind.

Nevertheless, when the appraisal of man is put into dollars and cents, as Maimonides has suggested, there seems little room for maneuver. Life and death will be determined by a cold calculation of our behavior over the course of the past year.

The problem is that this just does not seem to be true. Our experiences, or at least our impressions of reality, do not seem to confirm the judgment of Rosh Hashanah and Yom Kippur as Maimonides has described them. After all, we can all think of people whom we would assume to be completely evil and yet they live out fabulous lives of fame and fortune. And what of all the unfortunate righteous people that seem to have it so hard, many of whom die each year? How are we to resolve our experience of reality with the blunt criteria of the Books of Life and Death?[3]

The question goes even further. Although we are loath to admit it, everyone dies eventually. This is simply the state of mankind since Adam and Eve's original sin when death was first decreed. Taking Maimonides' definition into account, does that mean that eventually everyone has a 'bad year'? Is the decent into wickedness and the subsequent death that follows in its wake an inevitability of all mankind? Whatever happened to free will? As the Talmud states (*Niddah* 16b), many things are determined about a person

before they are born, but righteousness and wickedness are not. Or as the Talmud says elsewhere (*Berachot* 33b), "Everything is in the hands of Heaven, except for the fear of Heaven." Whether we are to be written in the Book of Life or the Book of Death on any given year must therefore be in our own hands to determine as well. Anything else would violate the basic tenets of free will!

IV

Nevertheless, on Rosh Hashanah and Yom Kippur we pray to God to inscribe us in the Book of Life.

> Remember us for life, O King Who desires life, and inscribe us in the Book of Life…
>
> High Holiday Prayer, *Machzor*

Of what use is such a prayer? Either we were righteous over the past year and deserve the life inscription or we were not and therefore do not. How can praying for it change the past? How can asking for it change the facts?

The truth is that this is not the only request for life specially inserted in the High Holiday prayers. The first appears at the beginning of the Amida prayer while the next comes close to the end. The second time, though, we are much more specific with our request.

> In the Book of Life, Blessing, and Peace, and Good Livelihood, may we be remembered and inscribed before You—we and Your entire people, the family of Israel, for a good life and for peace.
>
> High Holiday Prayer, *Machzor*

Well, that seems a bit more to the point, does it not? But all of a sudden we are introduced to more books. No longer satisfied with just life, now we want blessing, peace, and livelihood as well. If these other books do indeed exist, why did we not mention them until now? Why not 'go for the gold' at the first available opportunity? Surely we do not beat around the bush on such a solemn occasion as a High Holiday service!

Rabbi Moshe Chaim Luzzatto suggests that the two prayers come to reflect two distinct judgments that we are exposed to on the High Holidays.[4]

As the name Rosh Hashanah itself indicates, all the events for the upcoming year are being determined and set into place based on past performance. That is, at the beginning of the year God looks at His world much as a CEO would look at his company. In trying to figure out how best to allocate resources to achieve the goal of His creation, God takes stock and examines the efficiency and profitability of each of His "employees." Judgment in this sense is not a final tallying of merit and demerit. If it were, it would more appropriately have been made at the end of the previous year and not at the beginning of the next. What kind of life each person will have as well as the resources God will allocate to him are the subject of this judgment.[5] To that end we ask that God grant us the best this world has to offer: life, peace, and a good income.[6]

But there is another judgment that takes place prior to all this. Before God decides whether or not to grant us a raise, as it were, He must first determine whether or not we are even working for Him. In other words, God wants to clarify whose team we are playing for. On the High Holidays, then, the most basic judgment to be determined relates to the essence of who we are, righteous or wicked:

> The righteous are considered alive even after their death…the wicked are considered dead even during their lifetime.
>
> Talmud, *Berachot* 18a-b

It is this judgment, the very identity of the individual as righteous or wicked, to which we refer when we talk about the Book of Life and the Book of Death. Life, in the extended sense of the word, refers to spiritual existence and connection to the Source of all being. Whether or not someone will actually live out the year is a secondary issue that only comes into play later. Only once the more basic evaluation of a person's status has been determined does God then turn to the issue of allocating the scarce resources of this-worldly blessings. The first task at hand, though, is for God to figure out who we are at root.

In a metaphor perhaps lost on today's generation of computer typing and typos, the idea of careful contemplation before committing something to ink illustrates the seriousness of God's deliberation over the issue. We therefore ask God to consider us carefully before marking us as essentially righteous or wicked.

V

We should now have a better picture of what we are asking for, but it still does not seem to make much sense to ask for it in the first place. We are what we are; we did what we did; nothing can change the facts. Where do we have any room to maneuver such that we can ask God to reconsider His basic opinion of us?

Truthfully, we do have certain leeway, but we will have to search hard to find it. Understanding how we can ask for a favorable

judgment will require us to explore the very nature of Divine justice and how our prayers and actions can manipulate it.

When Moses met God at the burning bush and was given the task of emancipating the Jewish people from Egyptian bondage, Moses was reluctant to take the job. One of his objections was that perhaps no one would believe that he had indeed been designated for such a role. But God reassures Moses by giving him a secure plan of action.

> Moses said to God, "Behold, when I come to the Children of Israel and say to them, 'The God of your forefathers has sent me to you,' and they say to me, 'What is His name?' what should I tell them?" God answered Moses, "I-Shall-Be-As-I-Shall-Be."
>
> Exodus 3:13-14

A cryptic name if ever there was one, but it is hardly the only name of God found in the Torah. Each reference to God expresses a unique aspect of His indescribable being, giving us a finite way to relate to the Infinite. The particular meaning behind this name finds expression in a fascinating Midrash.[7]

The Holy One said to Moses, "Go tell Israel that my name is I-Shall-Be-As-I-Shall-Be." What does "I-Shall-Be-As-I-Shall-Be" mean? I shall be to you as you are to me: just as you relate to Me, so shall I relate to you. This idea was similarly expressed by King David when he wrote, "God is your shadow on your right-hand side" (Psalms 121). What is meant by "God is your shadow?" Just like a shadow, if you play with it, it plays with you; if you sulk, it sulks; if you make faces at it, it does the same to you. So too, God is your shadow: just as you relate to Him, so He relates back to you.

We all live in a world of our own making. If we choose to see God then God will show Himself to us. Conversely, if we choose to ignore God, He will stay in hiding. The relationship is neither static nor one-sided. We have much to say and do in determining how God treats us.

VI

Judgment and forgiveness are no exceptions to the rule of Divine shadowing. Nevertheless, the sphere in which they play themselves out is not the one directly between man and God but rather between man and his fellow man.[8] God not only responds to our actions vis-à-vis Himself; He also responds to how we treat each other. When it comes to the issue of judgment, the ratio is one to one.

> One who judges his friend favorably is himself judged favorably by God.
>
> Talmud, *Shabbat* 127b

The Talmud then goes on to give this principle beautiful illustration in the form of a fascinating story.

> There was an incident involving a certain man[9] who descended from the Upper Galilee to enter the employ of another man in the south for a period of three years. On the eve of Yom Kippur (following the three years of work), the worker said to his employer, "Give me my wages and I will go and provide for my wife and children." The employer replied to him, "I have no money." "Then give me produce," asked the worker. "I have none," came the response. "Then give me land." "I have none." "Then give me livestock." "I have none." "Then give me pillows and

cushions." "I have none," replied the employer yet again. The worker then slung his belongings over his shoulder and returned home, dejected.

Shortly thereafter, once Sukkot had passed, the employer took the worker's wages in hand along with three donkey-loads of food, drink, and fine delicacies and traveled to his former worker's home. After eating and drinking together, the employer handed over the wages and asked the worker the following. "When you asked me for your wages and I told you that I had no money, of what did you suspect me?" The worker replied, "I thought to myself that perhaps you had invested it all in underpriced merchandise." "And when I said I have no livestock, what then?" "I thought to myself that perhaps you leased them all out to others." "And when I said that I had no land, of what did you suspect me then?" "Again, I thought perhaps you leased it all out to others." "And when I said I had no produce…?" "I figured that you simply had not yet separated the tithes from your produce and therefore could not pay me with it." "And when I refused to give you even pillows and cushions, what then?" "I figured that you must have made a vow consecrating all your property to Heaven,"[10] replied the worker. To that the owner exclaimed, "I swear to you that that is exactly what happened! My son was not occupying himself properly in Torah study and (as a way of disinheriting him) I had vowed all my possessions to Heaven. When I came to my colleagues in the south, they annulled my vow for me.[11] Just as you have judged me favorably, so may God judge you favorably!"

Ibid

A beautiful story that ends with a beautiful blessing. But does such a blessing really work? Can God judge favorably? After all, people are in the position to apply favorable judgment to others in situations that to them are ambiguous. Lacking all the facts before our eyes, we have the opportunity to give the benefit of the doubt. Seeing as the shepherd really did not know why his boss refused to pay him, he had the choice either to assume the worst or to try to think of mitigating circumstances that might excuse his otherwise heartless behavior. It was precisely due to his *lack* of knowledge that he was able to form a *favorable* judgment, not really knowing whether or not it was true.

God, however, lacks no such knowledge of our past actions or our true intentions. He has no doubt and as such lacks the option of giving any benefit by virtue of it. How then would God have the leeway to judge us favorably? Surely God must judge us just as we are and as He knows us to be!

VII

When we analyze this issue a little closer, we will discover that this tension between strict justice and favorable judgment strikes at the heart of the Torah's injunction to judge others favorably.

> Do not commit a perversion of justice; do not favor the poor nor glorify the great; with righteousness shall you judge your fellow people.
>
> Leviticus 19:15

The verse clearly sounds as if it is addressed to formal judges of legal proceedings, and the Talmud understands it to have such a

meaning. But our sages teach us that the verse also has a broader application.

Firstly, *In righteousness shall you judge your fellow people*: Do not make one litigant stand and the other sit; do not let one speak at length and tell the other to be concise with his words.

> Additionally, *In righteousness shall you judge your fellow people*: Judge your fellow to the side of merit.
>
> Talmud, *Shevuot* 30a

> Rav Acha, the son of Rav Icka, said: According to Biblical law, even one person is fit to serve as a judge, as it states, "In righteousness shall *you* (singular) judge your fellow people."
>
> Talmud, *Sanhedrin* 3a

We find here several interpretations of the Torah's requirement to judge favorably. While certainly disparate in scope, these interpretations are not mutually exclusive. A Biblical verse can support multiple meanings as long as they all fit within its syntax and context.[12] Maintaining equality before the law and the legality of a single judge to hear a case certainly fit within the context of a verse warning against the perversion of justice. Clearly the audience this mitzvah seeks to address is the court. But what does judging one's friend favorably have to do with judges, courts, and legal proceedings? What, in fact, does it have to do with justice at all? If anything, it seems an attempt to go beyond the letter of the law, to err on the side of caution and give the benefit of the doubt. The law is the law, and especially in Jewish law, which leaves little room even for circumstantial evidence, judging to the side of merit does not seem to fit into our legal criteria.

We can perhaps gain some leverage in understanding the mitzvah to judge favorably by contrasting it with a very similar statement made by the Mishnah.

> Yehoshua ben Perachya said: Find yourself a teacher, make yourself a friend, and judge everyone favorably.
>
> Mishnah, *Pirkei Avot* 1:6

Again we find the injunction to judge others favorably. At first glance, it seems that the Mishnah is just repeating the same message as stated by the Torah itself, but this cannot be. The authors of the Mishnah were well aware of the commandments stated in the Torah and did not simply repeat what had already been said. If the Mishnah felt the need to advise favorable judgment, clearly it must be telling us something additional to the Torah's own injunction to do likewise. In short, what is the Mishnah teaching us that we did not already know?[13]

If we pay close attention to the precise wording of each of these statements we will in fact discern a major difference. The Torah's injunction to judge favorably applies specifically to one's "friend," that is, someone that is well known to the one doing the judging. The Mishnah, on the other hand, made a more blanket statement: judge *everyone* favorably, i.e. even people who you do not know. Now this only begs the questions, what is the difference? Surely if we are supposed to judge favorably, the wider the girth the better?

Truthfully, if you do not know someone at all, it is impossible to really judge them. All one can do is give the benefit of the doubt. To judge everyone favorably is a nice attitude to have in general: have faith in mankind and assume the best of people.

The Torah's obligation to judge favorably is of fundamentally a different type. True judgment, not merely giving the benefit of the doubt, involves making character evaluations based not only on what we see before us but on everything we know about the person in question. Any act can be scrutinized if narrowly construed, and

it is easy to jump to conclusions about ulterior and even pernicious motivations. Favorable judgment, though, demands that we take the entire person into account, to judge any isolated act within the larger context in which it occurred. More than just assuming the best, favorable judgment obliges us to reframe any seemingly egregious behavior in a more reasonable way, in light of everything else we know to be true about the person and taking all their truly good qualities into account.[14]

When we reflect upon the story of the dejected worker and his seemingly stingy employer, we notice that this kind of reasonable judgment is precisely what our worker was able to develop. He obviously knew that his boss was a decent fellow to start with, one who would not have withheld three years of wages for no good reason. Furthermore, the story took place on the eve of Yom Kippur, the very last time of year that someone would want to incite animosity toward himself. With all these factors in place, the worker made the most reasonable assumption at every step of the way. His final excuse for his boss, that he had vowed all his property to Heaven, certainly seemed very far-fetched. Nevertheless, he did not jump to that conclusion from the beginning. At each stage he assumed what to him was the most reasonable explanation of the strange events taking shape before him. The fact that it happened to be true was in the end no fluke. It was a fair judgment. One might even say it was just![15]

And so when the boss gives a blessing to his loyal worker that, "Just as you judged me favorably, so may God judge you favorably," we can now understand the reason in his rhyme. He was not saying that 'God should give you the benefit of the doubt.' Obviously, God has no benefit of doubt to give. But rather, he was

saying that 'just as you judged me favorably within the context of everything that you know about me and the situation in which we found ourselves, so too may God focus on all your great qualities and take them into account at a time of judgment.'

But the Talmud goes a step further. Having God judge us favorably for judging others favorably is not just a nice blessing to bestow upon one's benefactor; it is, rather, a spiritual law of nature. One who judges others favorably *will* be judged favorably by God.

> By the yardstick man uses to measure others, he too is measured.
>
> Mishnah, *Sotah* 1:7

VIII

As the above story illustrated, judgment involves more than just the facts—it is a matter of attitude.

> Should God wish to judge [even such righteous people] as Abraham, Isaac, and Jacob with the full strictness of the Law, they would not be able to withstand His rebuke.
>
> Talmud, *Arachin* 17a

A narrow view of any particular act of malfeasance, which ignores the larger context or potentially mitigating factors, constitutes a strict manner of justice. God has the options open before Him to decide in what manner of judgment He wishes to judge us, in a spectrum ranging from mercy to strict justice. The most startling point to realize, though, is that the manner of judgment which God applies to us is entirely in our own hands to determine. This is so because God shadows our actions and attitudes in matters of the spirit. God's manner of judging us,

then, will be set more than any other factor by our manner of judging others.

This is what it means when the Talmud tells us that "one who foregoes acting upon his negative character traits—God will forego all his sins." The most obvious way to gauge a person's manner of judgment is to see how he responds to insult and injury others perpetrate against him. Is he slow to anger or quick to get upset? How, for example, would he react were someone to accidentally spill a drink on him? The person who automatically blows up might not be making a deliberate judgment at that moment, but certainly his manner of evaluating the moral worth of another's actions is quite limited in scope. Where in his reaction is there a trace of considering all the factors at play? Did the other person really plan with malicious intent to be so clumsy?

Too often we justify our harsh reactions in such scenarios by telling ourselves that the other person "deserved it." We feel ourselves in the right for verbally assaulting those that even mistakenly harm us. After all, if they had had the proper respect, they would have taken more care not to be so foolish.

This thought process is very important to the adjudication of personal justice. The first point is to acknowledge our own feelings and what we deem the other person truly deserves. We must then recognize that our initial judgments are strict precisely because they are narrow. However, were we to take into account the bigger picture—the personalities involved, the intentions or lack thereof, the mitigating circumstances—suddenly our judgment of others would lose its sharp edge. We will no longer feel the need to insist on reaping the full extent of the vengeance we initially had in mind.

IX

God does not disregard sin. That is why we approach Him on Yom Kippur with confessions and petitions for forgiveness. But we also ask that God write us in the Book of Life, that He judge us on the whole to be good people—to see that we are much greater than the isolated instances of sin may reflect.

At this time of year we also focus on asking our fellow man for forgiveness, in full awareness that even God Himself cannot absolve us of the wrongs we commit against others.[16] This laudable practice works both ways: When others come to entreat our forgiveness, it gives us an opportunity to restore our perspective on the way we may have judged them.

We have before us a tremendous opportunity not only to mend our interpersonal relationships but to ensure a positive response from God as well. When we judge others favorably, reasonably, and in light of the big picture, then we can be assured that God will do the same for us. That's His occupation.

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[1] Cf. Talmud, *Kiddushin* 40a

[2] Cf. Talmud, *Rosh HaShana* 16b

[3] This question was raised by the early commentators in response to Rabbi Keruspidai. Cf. Nachmanides, Exposition on Rosh Hashanah and Tosefot, ad loc.

[4] *Ma'amar Ha'hachma*, *Yalkut Yediat Ha'emet*, pg. 251

[5] Cf. Rabbi Chaim Friedlander, *Sifsei Chaim*, vol. 1, pp. 92-97 for a full treatment of this topic as the theme of Rosh Hashanah.

[6] These blessings are not to be considered ends in themselves. As Maimonides explains, when the Torah promises peace and prosperity as reward for mitzvah observance, the intention is that if we keep the Torah, God will make our lives more amenable to further mitzvah

observance by removing the obstacles of illness, toil, and subjugation (cf. Laws of Repentance 9:3).

[7] Cited by R. Chaim Volozhiner in *Nefesh HaChaim* (1:7).

[8] Jewish philosophy makes a basic distinction between these two spheres of human conduct. For instance, there is a popular notion that the Ten Commandments are split five and five along these precise lines, the first five relating to the man-God relationship and the second five relating to the man-man relationship (cf. *Mechilta*, *Bachodesh* 8). Later works of Jewish thought indicate even a third sphere, that between man and himself (cf. *Mahrasha* to *Bava Kama* 13a).

[9] According to She'iltot, the identity of the man is none other than the famous Rabbi Akiva and the man who hired him was the great Tanna, Rabbi Elazar ben Hurkanus.

[10] Thereby relinquishing ownership of them.

[11] Under certain circumstances, a vow may be annulled by a Jewish court (cf. Mishnah, *Nedarim* chap. 9)

[12] This is a common Talmudic form of analysis of what is termed *mashma'ut*, i.e. the literal connotation of the text, not to be confused with the exposition of superfluous words called *yitur* which is much more narrowly prescribed or *drush* which is much more open to homiletic interpretation.

[13] This question is further highlighted by the fact that Maimonides, in his *Sefer HaMitzvot* (Positive Commandment 177) cites "judging one's friend favorably" as a Biblical obligation incumbent upon everyone, but then in his *Yad HaChazakah* (*Hilchot Deyot* 5:7) he writes that judging *everyone* favorably is merely a type of behavior fitting specifically for a Torah scholar, but not generally applicable or obligatory.

[14] Cf. Rabbi Yisroel Meir Kagan, Introduction to *Sefer Chafetz Chayyim, Asin* 3 in *Be'er Mayyim Chayyim* ad loc.

[15] This explanation of the story in light on the mitzvah to judge favorably was heard in a lecture given by Rabbi Yitzchak Berkowitz of the Jerusalem Kollel.

[16] Mishnah, *Yuma*, Ch. 5

Catharsis of the Soul: On the Role of Confession in the Teshuvah Process

RABBI YISROEL GORDON

A central feature of the Yom Kippur service is the Confession. A long list of sins is repeated time and again on this holy day; sometimes the individual recites it quietly as a part of his personal *Amidah* prayer and sometimes the congregation recites it in unison, slowly chanting the all-encompassing list—symbolically alphabetized from *aleph* to *tav*. On Yom Kippur, Jews confess their sins to God.

This idea of confessing sins to God, central as it is to the Yom Kippur service, is troubling on several levels. Firstly, there is the existential discomfort of confronting our human weaknesses and failings. Why cry over spilt milk? Beyond that, why does man need to inform God of anything at all? If we have sinned, then presumably the infinite, omniscient God knows about it.

But the confession is most disturbing on a theological level. What is the purpose of the confession? Man needs merely to recite a list of his sins and God forgives? What happened to Divine Justice?

Make no mistake; God's sense of justice is robust and quite unforgiving. To cite a few examples:

> God saw that man's wickedness on earth was increasing… and God said, "I will obliterate humanity that I have created from the face of the earth – man, livestock, land animals, and birds of the sky. I regret that I created them."
>
> Genesis 6:5,7

> Leave Me now. I shall express My anger against them and destroy them.
>
> Exodus 32:10

> As happy as God was to be good to you and increase you, so will He be happy to exile you and destroy you.
>
> Deuteronomy 26:63

Here God is presented as a frighteningly strict judge with zero tolerance for sin. But things are not so simple. Consider these verses:

> God said, "I will grant forgiveness as you have requested!"
>
> Numbers 14:20

> "Have I any pleasure at all that the wicked should die?" says God the Lord, "and not that he should return from his ways and live?"
>
> Ezekiel 18:23

> "I love you," said God.
>
> Malachi 1:2

We are confronted with conflicting visions of God's relationship with man. Is God a strict judge? Or is He a loving father? Does He punish sins or does He forgive? Of course, both are true. As we shall see, these conflicting attributes are reconciled when man does "Teshuvah."

THE ILLOGIC OF TESHUVAH

> Nowadays, when the Holy Temple no longer exists and we lack an altar for atonement, there is nothing other than Teshuvah (repentance, literally "return"). Teshuvah atones for all sins. Even if a person is a *rasha* (wicked) his entire life, but he does Teshuvah at the end, not one evil thing of his is mentioned, as the verse states, "As for the wickedness of the wicked, he shall not stumble for that on the day that he turns from his wickedness" (Ezekiel 32:12).
>
> Maimonides, Laws of Teshuvah 1:3

God is willing to forgive sins, but it takes Teshuvah, repentance. How does Teshuvah work? Only God knows.

> They asked Wisdom, "What should happen when a person is guilty of sin?"
>
> Wisdom replied, "Evil pursues sinners" (Proverbs 13:21).
>
> They asked Prophecy, "What should happen when a person is guilty of sin?"
>
> Prophecy replied, "The soul that sins should die" (Ezekiel 18:4).
>
> They asked Torah, "What should happen when a person is guilty of sin?"

> Torah replied, "Let him bring an offering [to the Temple]…"
>
> Then they asked God, "What should happen when a person is guilty of sin?"
>
> God replied, "Let him do Teshuvah and be forgiven!"
>
> *Pesikta D'Rav Kahana* 24

Apparently, only God advocates Teshuvah. Wisdom, Prophecy, and even the Torah itself all have difficulty with the concept and it is not hard to understand why. God is a strict judge and "atonement" should not be in His vocabulary. What is it about Teshuvah that inspires God to compromise His divine attribute of justice and forgive our sins?

Before we can hope to understand Teshuvah, we first need to know what it is. What is the definition of this mysterious mitzvah? What exactly does it mean to "do Teshuvah"?

THE MYSTERY OF CONFESSION

> What is Teshuvah? It is when the sinner abandons his sin, stops thinking about [doing] it and resolves to never do it again, as the verse states, "The wicked should abandon his lifestyle, and the man of sin, his thoughts" (Isaiah 55:7). He should also regret his past, as the verse states, "For after my repentance I regretted…" (Jeremiah 31:18). …It is [also] necessary to verbally confess and state the resolutions of his heart.
>
> Maimonides, Laws of Teshuvah 2:2

According to Maimonides, Teshuvah consists of three basic components: (1) resolving to never repeat the sin again, (2) regretting the sin, and (3) a verbal confession of the sin to God.

Now the first two components are quite logical; a person who wishes to change his ways is obviously going to regret his past behavior and resolve to not repeat it. But what is the function of that strange third component, confession?

This question was raised by Rabbi Dr. Dovid Gottlieb.

> Are the components equally important? Or are some more fundamental than others? Many, I think, would answer that (1) and (2) are much more fundamental than (3). Regret and resolution are the basic changes in the personality in which we come to grips with the problem. Confession, it seems, is just a verbalization of these inner events. It might serve to strengthen one's resolve, or make one's regret more vivid, but it is hard to see its fundamental importance…
>
> In order to understand the centrality of confession, notice that *regret and resolution have no necessary connection to religion* – they may occur to an atheist! … The importance of confession is that it reveals the essence of teshuvah as a religious event. That essence is *return to God*. Our misdeeds are seen as damaging our relationship to God; teshuvah is the repair of that relationship. Confession is fundamentally important because it alone demonstrates the religious character of teshuvah.
>
> The Informed Soul, pgs. 180-181

Regret and resolution are, in and of themselves, potentially devoid of religious meaning. Driven by what he perceives to be an "emotional instinct," an atheist may strive to be a better person, but this obviously does not constitute Teshuvah. It is therefore

necessary, argues Rabbi Dr. Gottlieb, that Teshuvah be clearly defined as a religious act, a return to God. On this we can agree. However, it is unclear why confession would be chosen as the means to accomplish this task. Would it not be more direct to simply state that our motivation is of a spiritual nature? Let us say outright that we resolve to never commit the sin again for it defiles our soul and damages our relationship with God. Confessing the sin to God is an odd thing to do and it seems unlikely that its only function is to turn repentance into a religious event. Confession must have an independent role to play in the Teshuvah process. What is it?

DECONSTRUCTING TESHUVAH

Maimonides wrote that Teshuvah consists of three components: regret, resolution and confession. Assuming that it follows the pattern set by other mitzvot, all of Teshuvah's components would need to work together. That is, no one component acting alone would be of any value. According to R. Moses of Trani (1505-1585), however, this is not the case.

> [Teshuvah] is unlike other mitzvot where one receives no credit for an incomplete performance. Take the mitzvah of *tzitzit*, for example. [The mitzvah is to place *tzitzit* strings] on the four corners [of a four-cornered garment]. Someone who places *tzitzit* strings on only three corners is not considered to have fulfilled three-quarters of the mitzvah, for the four *tzitzit* strings are interdependent and it is as if he has done nothing at all. Teshuvah, however, even if it does not have both regret for the past and resolution to abandon the

> sin in the future, nevertheless, regret alone, without abandonment of the sin accomplishes something, as does an abandonment of the sin without regret.
>
> *Beit Elohim*, *Shaar HaTeshuvah*, chap. 12

Teshuvah consists of three parts, but each one has value as a stand-alone. Maimonides may very well agree with that, but it is hard to see how his ruling could agree with this teaching of the Talmud.

> Someone who marries a woman with a conditional clause that he is a *tzaddik* (righteous person) the marriage is valid[1] even if he is a *rasha gamur* (utterly wicked)! [This is so because] he may have had thoughts of Teshuvah in his mind.
>
> Talmud, *Kiddushin* 49b

Note that the Talmud made no mention of a confession; on the contrary, the Talmud refers only to "thoughts of Teshuvah in his mind." While we can accept that an incomplete Teshuvah "accomplishes something" as per R. Moses of Trani, to say that an incomplete Teshuvah accomplishes its goal entirely is untenable. Here the Talmud rules that mere *thoughts* of repentance have the power to transform an evildoer into a righteous person, contradicting Maimonides' assertion that Teshuvah requires a verbal confession.

R. Joseph B. Soloveitchik (Boston, 1903-1993) brings further evidence that Teshuvah does not require a confession from the Talmud's prescription for disqualified witnesses. Certain sins, especially monetary crimes, undermine trustworthiness and disqualify the sinner from being accepted as a witness in court. However, the Talmud teaches that Teshuvah is always possible.

When is the repentance [of gamblers] established?[2] When they destroy their dice and rehabilitate themselves completely – to the point that they don't even do it for free.

One who lends on interest [is disqualified as a witness], both the lender and the borrower. When is their repentance established? When they tear up their loan documents and rehabilitate themselves completely – to the point that they do not even lend [on interest] to a gentile...

> When is the repentance [for putting on animal fights] established? When they break their clackers (used to incite the animals) and rehabilitate themselves completely – to the point that they don't even do it in the wilderness.
>
> Talmud, *Sanhedrin* 25b

It seems that all that is necessary is the reformation of behavior. Nowhere does the Talmud say that confession is a necessary part of the Teshuvah process!

To make matters worse, Maimonides himself codified both of the above rulings in his *Mishneh Torah* (Laws of Women 8:5; Laws of Evidence 12:4-10). How does Maimonides reconcile these two laws with the need for a confession?

R. Yosef Babad (Ternopil, 1801-1874) resolves our problem with the elegant proposition that Teshuvah actually has two mutually exclusive functions: (1) transformation of a *rasha* (wicked person; evildoer) into a *tzaddik* (righteous person) and (2) atonement of the sin.

When the Talmud states that thoughts of Teshuvah are sufficient, it speaks only of the sinner's transformation into a *tzaddik*. Once regret sets in and a resolution is made to never repeat the behavior, a person can no longer be considered a *rasha*. On the

contrary, such a person is a *tzaddik*, a righteous individual for whom sin is not a part of his routine. In the case of a *rasha* who marries a woman on condition that he is a *tzaddik*, the Talmud rightfully assumes that even the worst criminals occasionally have thoughts of changing their ways, and, erring on the side of caution, the Talmud validates the marriage. In the case of criminals who are disqualified as witnesses, this too is a function of their status as *rashaim*, but here, erring on the side of caution requires proof that a change of behavior has indeed taken place. Once we can determine that these *rashaim* have changed their ways, as evidenced by the destruction of the tools of their trade, their status changes, they regain their trustworthiness in the eyes of Halacha, and their testimony can be accepted by the courts. In both of the above-cited cases, the issue is solely one of Halachic status, and a change of status can be effected without a confession. Atonement, however, is another story. In order to attain divine forgiveness for a sin, confession is required. And confession must be articulated verbally (cf. *Minchat Chinuch*, Mitzvah 364).

Taking things one step further, R. Soloveitchik argues that just as regret and resolution can act alone to effect a change in status, confession also acts alone to effect atonement.

> There is a Halachic reality to confession that is not related to the act of Teshuvah (i.e. regret and resolution), but rather exists as an independent fulfillment of "Confession." This can be proven by the confession of the High Priest on Yom Kippur, which is a fulfillment of verbal confession without a fulfillment of Teshuvah. For Teshuvah (i.e. regret and resolution) is possible only for the individual, whether it be his brethren the priests or each Jew, whereas the High Priest is doing the confession [on their behalf]… this is because the

> very act of confession is a fulfillment unto itself of the biblical injunction of verbal atonement. Another proof can be brought from the end of chapter "Yom Kippur" (Talmud, *Yoma* 86) where the institution of confession on Yom Kippur includes confessions on this Yom Kippur for sins that were already confessed for on last Yom Kippur. Maimonides also rules this way in the Laws of Teshuvah 2:8, "Sins that he confessed on this Yom Kippur, he should confess them again on another Yom Kippur – even though he has maintained his repentance (i.e., he did not lapse back into the sin)." This shows that the fulfillment of confession even applies to sins that have already been repented for. This obviously has nothing to do with Teshuvah, for this person already repented and has not relapsed. Clearly then, the [standard] Halacha of confession on Yom Kippur is also an independent fulfillment of confession, exclusive of a fulfillment of Teshuvah. (However, this confession does need Teshuvah and without Teshuvah is not considered to be an act of confession at all, as we see in Maimonides, Laws of Teshuvah 2:3. Nevertheless, the essential fulfillment of confession is independent.)
>
> *Igrot HaGrid HaLevi*, pg. 24[3]

In light of the above, Rabbi Dr. Gottlieb's thesis needs some qualification. It may be true that confession before God infuses regret and resolution with religious meaning, but confession is more significant than that. Confession has a role to play that is entirely independent of regret and resolution. Confession generates atonement, and it acts alone.

THE SIN AND I

We have learned that while the *mitzvah* of Teshuvah consists of regret, confession and resolution, the *function* of Teshuvah is twofold: transformation and atonement. Transformation is achieved through regret and resolution, and atonement is achieved through the confession. Of these two functions, R. Soloveitchik sees the transformation of the sinner to be of greater significance.

> The abandonment of sin (i.e., the resolve for the future) and the regret over the past divest the sinner of his status as a *rasha*. They "sever" his spiritual continuity and transform his identity… Verbal confession is directed toward precipitating the bestowal of atonement. Atonement, however, is only a peripheral aspect of repentance. Its central aspect is the termination of a negative personality, the sinner divesting himself of his status as a *rasha* – indeed, the total obliteration of that status. "Some of the modes of manifesting repentance are that the penitent… changes his name, as much to say: 'I am another person and am not the same man who committed these deeds'" (Maimonides, Laws of Repentance 2:4). The desire to be another person, to be different than I am now, is the central motif of repentance. Man cancels the law of identity and continuity which prevails in the "I" awareness by engaging in the wondrous, creative act of repentance. A person is creative; he was endowed with the power to create at his inception. When he finds himself in a situation of sin, he takes advantage of his creative capacity, returns to God, and becomes a creator and self-fashioner. Man, through repentance, creates himself, his own "I."
>
> Halakhic Man, pgs.112-113

The power of Teshuvah to effect personal change is indeed wondrous. Unfortunately, it is this very wondrousness, this illogic, which puts Teshuvah at a disadvantage. People just don't believe it. People do not believe that people, themselves included, can change. However, belief in the ability of man to transform himself and renew his relationship with God is fundamental to Judaism.

According to R. Soloveitchik, it is this transformation of the *rasha* into a *tzaddik* that is the "central aspect" of Teshuvah, and atonement, clearing the record of past misdeeds, is merely a "peripheral" benefit. But R. Soloveitchik does not end there. He vocally opposes those who put undue focus on gaining atonement.

> Here there comes to the fore the primary difference between the concept of repentance in Halacha and the concept of repentance held by *homo religiosus*. The latter views repentance only from the perspective of atonement, only as a guard against punishment, as an empty regret which does not create anything, does not bring into being anything new. A deep melancholy afflicts his spirit. He mourns for the yesterdays that are irretrievably past, the times that have long since sunk into the abyss of oblivion, the deeds that have vanished like shadows, facts that he will never be able to change. Therefore, for *homo religiosus*, repentance is a wholly miraculous phenomenon made possible by the endless grace of the Almighty.
>
> But such is not the case with halakhic man! Halakhic man does not indulge in weeping and despair, does not lacerate his flesh or flail away at himself. He does not afflict himself with penitential rites and forgoes all mortifications of body

> and soul. Halakhic man is engaged in self-creation, in creating a new "I."
>
> Halakhic Man, pg. 113

Not only does R. Soloveitchik label atonement a "peripheral" aspect of Teshuvah, he is disdainful of those who view repentance from this perspective. He paints a caricature of the so-called "*homo religiosus*" and describes "penitential rites" as non-Halachic, i.e., not legislated by Jewish law. Now, while lacerating flesh is certainly not a Jewish practice, it is undeniable that focusing on atonement is. From the prophets onward, our literature is filled with descriptions of the emotional distress caused by sins and the need to appeal for atonement. Here are three examples from the Yom Kippur prayer book, the *Machzor*.

> "My God. Before I was created, I was unworthy and now that I was created, it is as if I wasn't. I am dust while I live, all the more so after I die. Behold, before You I am like a vessel filled with shame and humiliation…
>
> "What are we? What is our life? What is our piety? What is our virtue? What is our salvation? What is our strength? What is our accomplishment? What shall we say before You, God our lord and lord our fathers? Are not all the mighty as nothing before You, men of renown as if they did not exist? The wise as if they lacked knowledge, the discerning as if they had no wisdom, for most of their deeds are valueless and the days of their lives a mere nothing before You. Man's superiority to the beast is nonexistent, for all is futile…
>
> "You know the secrets of every living thing. You search all the inner chambers and test the kidneys and heart. Nothing is hidden from you and nothing escapes your notice. It should therefore be Your will, God our lord and the lord of

> our fathers, that you excuse us for all our mistakes, pardon us for all our sins and forgive us for all of our betrayals…"

Not surprisingly, Yom Kippur, the "Day of Atonement," is quite concerned with atonement. These expressions of self-effacement are cathartic, expressing the frailty of the human condition and man's disappointment with his own failings.[4] The service is replete with such confessions of sin and mortality, but resolutions for the future do not appear even once.

Rabbeinu Yonah of Gerona (d. 1263) in his classic "*Sha'arei Teshuvah*" further develops this approach to Teshuvah. Going well beyond "regret" and "abandonment of sin" (i.e. resolution), he numbers several intense emotions that are integral to the Teshuvah process.

> The third principle is sorrow. He must be stung to his very depths and reflect on the immensity of the evil of one who has rebelled against his Creator. He must magnify sorrow in his heart, set a tempest whirling in his thoughts, and sigh in bitterness of heart…
>
> The fifth principle is worry. He must worry and fear the [divine] punishment for his transgressions…
>
> The sixth principle is shame, as the verse states, "I was ashamed and also embarrassed because I did bear the reproach of my youth" (Jeremiah 31:19)… One attains the level of shame by secluding himself to think upon the greatness of God and upon the greatness of the evil of one who disobeys Him, and in constantly remembering that God witnesses his deeds, searches his depths and observes his thoughts.
>
> *Sha'arei Teshuvah*, 1: 12-22, trans. Shraga Silverstein

According to R. Soloveitchik, the despair and self-nullification described by the *Machzor* and Rebbeinu Yonah are non-Halachic and play no role in the creative transformation afforded by Teshuvah. Halachic or not, concern for atonement cannot be categorized as an extremist behavior of the ultra-religious. On the contrary, worry about the effect of sin and the pursuit of atonement is typical among Jews, and long ago gave rise to a number of High Holiday customs. To demonstrate just how central atonement is to the Jewish experience, we will take a detour to present four of these customs.

ATONEMENT-ORIENTED HIGH HOLIDAY CUSTOMS

1. [On Rosh Hashanah] people go to the river to recite the verse, "Cast (*tashlich*) all of their sins into the depths of the sea…" (Micah 7:18)

Rama, O.C. 583:2

Here is the full quote:

> Who is like You, God, Who bears iniquity and ignores transgression for the remnant of His chosen people? He does not retain His anger forever for He desires to be benevolent. He will again show compassion and will subdue our sins and cast all of their transgressions into the depths of the sea.
>
> Micah 7:18

According to the master kabbalist of Tzefat, Rabbi Yitzchak Luria (the "Ari," 1534-1572), "when you say 'cast all of their sins into the depths of the sea' you should think that all of your mistakes and sins, and also the prosecuting angel in heaven, are being cast into the depth of the supernal sea" (*Sha'ar HaKavanot*

90b). Even if we put aside the kabbalistic *kavanot*, the custom of *Tashlich* is clearly a symbolic, if not a mystical attempt to rid ourselves of the burden of past sins. It plays no role in the *rasha's* self-transformation into a *tzaddik*. The same could be said of the custom of *Kapparot*.

2. The custom of generating atonement ("*Kapparot*") on the day before Yom Kippur by slaughtering a chicken for every male and reciting biblical verses – this custom should be stopped (for it can be confused with pagan practices – *Beit Yosef*).

Shulchan Aruch, O.C. 605:1

> Some of the Geonic sages cite this custom as well as many of the later Halachic authorities. This is the custom in all of the countries in this part of the world (i.e., Eastern Europe) and it should not be changed, for it is an ancient custom. The custom is to take a rooster for men and a hen for women… and to give it to the poor…
>
> *Rama*, ad loc.
>
> A person should think that everything that is being done to this chicken should have happened to him, but as a result of repentance God has revoked the decree from upon him and [instead] something similar is happening to this chicken. Medieval commentators give the same explanation for the [Temple] sacrifices that were offered to atone for accidental sins.
>
> *Mishnah Berurah*, ad loc.

The custom of *Kapparot* apparently grew out of a yearning for the Temple service of old, which used offerings to attain atonement for sins. Like *Tashlich*, *Kapparot* is a mystical method of achieving atonement, an attempt to somehow transfer the divine decree onto

a chicken (or money, cf. *Chayei Adam* 144:4). Our next example is a custom that is far more direct.

3. Everyone in the community should receive forty lashes after *Mincha* (the afternoon prayer on the day before Yom Kippur). They will thus take it to heart and repent from their sins.

Shulchan Aruch, O.C. 607:6

Outside of Hasidic circles, the custom of lashes is rarely practiced today, but up until the Holocaust it was still quite common. Here is an account from the shtetl of Eishyshok, Lithuania.

> *Another ceremony that made a big impression, on old and young alike, was that of the thirty-nine lashes. Following afternoon prayer on the eve of Yom Kippur, thirty-nine lashes were inflicted on those who chose to atone in this manner – an echo of biblical times, when courts punished offenders with thirty-nine lashes. Prostrating himself on the floor of the polesh in the Old Beth Midrash, the penitent asked the shammash to administer the lashes. (Women were not eligible for this form of atonement, as it could compromise their modesty.) During the final days of the shtetl, this job was give to a poor person, who was chosen by the community and paid for his services by his "victims." But by the time of Shlomo Kik, the last man to hold the position, the lashes were little more than symbolic, for Reb Kik was a tiny man, who wielded a thin little rope that would barely hurt a fly. Nonetheless, there were those in the shtetl – and everyone knew who they were – who seemed to feel the pain, though perhaps that was symbolic too. Hayyim-Yoshke Bielicki, then a choirboy in the shtetl, remembered watching Reb Shmuel Malke's take the lash, his "Oy vay" ringing out before the rope even reached him.*

> *The memory of the sight and sound of that annual ritual never left him.*
>
> Yaffa Eliach, "*There Once Was A World*," pg. 420

The situation in Eishyshok was indeed humorous, but to judge by the language of the *Shulchan Aruch* cited above – "they will thus *take it to heart* and repent from their sins" – the custom of lashes was always intended to be more symbolic than punitive. Our fourth example of atonement-directed customs is the most rational of all.

4. Yom Kippur atones for sins between man and God. Yom Kippur will not atone for sins between man and his fellow man until he appeases his fellow man.

   Mishnah, *Yoma* 8:9

   People should appease their fellow man on the day before Yom Kippur.

   Shulchan Aruch O.C. 606

In light of the pressing need for people to forgive each other before Yom Kippur, Rabbi Yosef Chaim of Baghdad (d. 1907) instituted the following practice:

> It is appropriate that the *chazzan* (cantor) announce before *Kol Nidrei*, "My masters, forgive each other!" And the congregation should respond, "We forgive!" This will inspire a defense for Israel at this time in heaven – how good it is when a thing is done at the right time. With the help of God, I established this custom here in our city (Baghdad).
>
> *Ben Ish Chai*, *Vayeilach* 5

The need for forgiveness extends to family members as well, and the *Ben Ish Chai* records the following Sefaradic custom.

> Every person should kiss the hands of his father and mother on the day before Yom Kippur towards evening, before they

> go to the synagogue, and ask them for forgiveness. This is a great obligation on every person and one who fails to do so is considered a sinner and derides the honor of his (or her) father and mother. If our sages of blessed memory obligated us to ask forgiveness from our fellow man, how much more so from a father or a mother, for there is no person who escapes this sin on any day. If the son [or daughter] is a fool and does not ask [for forgiveness], [the parents] should forgive [anyway]…
>
> Ibid, 6

While it takes a certain degree of humility to ask for forgiveness from friends and family, apologizing to servants is often a more difficult and more pressing task. Here is a mid 19th century account from the shtetl of Bobruisk.

> *Before he left the house [to go to synagogue] my father blessed each child and grandchild, even the smallest, still in the cradle. His tender words mingled with his tears and the tears of the child whose head was bowed beneath his hands. All of the servants came and stood at the door, weeping and begging each other to mauchel – to forgive. Even my mother's voice trembled as she begged all her servants to forgive her in case she had slighted them or hurt their feelings in the course of the year. The souls of the grown-ups who went to Kol Nidre as well as those of the children who stayed at home – all were turned to Heaven.*
>
> Pauline Wengeroff, "*Rememberings*," pg. 56, trans. Henry Wenkart

From time immemorial, from Bobruisk to Baghdad, Jews apologized and forgave each other on the day before Yom Kippur because they knew that divine forgiveness was contingent on human forgiveness. This desperate longing for atonement is so

ingrained into the Jewish mindset that it is often the last religious sentiment to be lost when a Jew assimilates into secular culture. None other than R. Soloveitchik's own son, Rabbi Dr. Haym Soloveitchik, observed this phenomenon firsthand.

> *I grew up in a Jewishly non-observant community, and prayed in a synagogue where most of the older congregants neither observed the Sabbath nor even ate kosher. They all hailed from Eastern Europe, largely from shtetlach, like Shepetovka and Shnipishok. Most of their religious observance, however, had been washed away in the sea-change, and the little left had further eroded in the "new country." Indeed, the only time the synagogue was ever full was during the High Holidays. Even then the service was hardly edifying. Most didn't know what they were saying, and bored, wandered in and out. Yet, at the closing service of Yom Kippur, the Ne'ilah, the synagogue filled and a hush set in upon the crowd. The tension was palpable and tears were shed.*
>
> *What had been instilled in these people in their earliest childhood, and which they never quite shook off, was that every person was judged on Yom Kippur, and, as the sun was setting, the final decision was being rendered (in the words of the famous prayer) "who for life, who for death, / who for tranquility, who for unrest." These people did not cry from religiosity but from self-interest, from an instinctive fear for their lives. Their tears were courtroom tears, with whatever degree of sincerity such tears have. What was absent… [in] contemporary services and, lest I be thought to be exempting myself from this assessment, absent in my own religious life too – was that primal fear of Divine judgment, simple and direct.*[5]

"Primal fear of Divine judgment" is not a function of regret or resolution, nor is it a part of a creative transformation of the self. It is a function of the feeling people had that they were being judged by God for their sins. Such was the primary Yom Kippur experience of these Jews, Jews who could hardly be classified as *homo religiosus*, to use R. Joseph B. Soloveitchik's term.

It was this ingrained anxiety about sin[6] that long ago gave rise to our many atonement-oriented customs. Clearly, atonement is a central concern for Jews on the Day of Atonement.

THE ATONEMENT MITZVAH

We have seen that atonement has deep roots in Jewish literature, Jewish tradition and Jewish consciousness. But more than that, it is also clearly expressed by the Halacha itself, as defined by Maimonides.

If a person transgressed any positive or negative biblical commandment, whether it happened on purpose or by accident, when he does Teshuvah and repents from his sin, he is obligated to confess before God, blessed be He, as the verse states, "When a man or a woman commits any of the sins of man… he shall confess the sin that he has committed" (Numbers 5:6-7) – this refers to a verbal confession and this confession is thus a biblical obligation.

> How does one confess? He should say, "Please, God! I am guilty of mistakes, sins and treason before you. I have done such and such, and I regret and am embarrassed by my behavior. I will never do this thing again." This is the basic confession.
>
> Maimonides, Laws of Teshuvah 1:1

Note that Maimonides did not say that there is a mitzvah to "do Teshuvah" or to rectify behavior; rather he formulated the law this way: "If a person transgressed any positive or negative biblical commandment… *when* he does Teshuvah and repents from his sin, he is obligated to confess…" The mitzvah is not Teshuvah; the mitzvah is confession.

It seems that Teshuvah itself, i.e., repentance, is not an obligation; it is just assumed. No less than sin itself, repentance is a function of the human condition. When people do something they recognize as wrong, they naturally regret their behavior and strive to change it for the better. Normal and healthy human instincts are never mandated as mitzvot; there is no need, nature will take its course and Teshuvah will happen. It is only a question of *when*. That is why even a *rasha gamur*, an utterly wicked person, is assumed to be contemplating Teshuvah. Not because Teshuvah is a mitzvah, but because the *rasha* is human.

Repentance is not the mitzvah here, confession is. And, as R. Soloveitchik himself proved so aptly, confession is a mechanism for atonement. With all due respect to Teshuvah's transformative power, it turns out that our primary Halachic concern is not the transformation achieved via regret and resolution, but the atonement achieved via confession.

With the nature of the mitzvah defined, we are now prepared to attempt an understanding of how Teshuvah operates and achieves its objectives. Given that people are capable of change, it seems reasonable that regret and resolution would function to effect that change and bring about a transformation of both behavior and Halachic status. However, the idea that confession before God produces atonement is more difficult to comprehend. Why would telling God that you sinned, something He presumably already

knows, be a reason for God to pardon the sin? To ask an even more basic question, why does the infinitely compassionate God need people to confess to Him in order for Him to forgive them? Why doesn't the infinitely compassionate God just forgive us out of love? For answers to these questions, we need to go back to the very beginning.

COMPASSION VS. JUSTICE

In the beginning, God created heaven and earth.

Genesis 1:1

This is a pretty well-known verse, but this translation fails to capture the full meaning of the biblical Hebrew. The English word "God" does not do justice to the Hebrew "אלהים." In the Torah we find multiple names for God, and each refers to a specific divine attribute. אלהים connotes justice.[7] A fuller and more accurate translation of the Torah's first verse would thus be, "In the beginning, God, in His capacity as judge, created heaven and earth."[8] Throughout the creation story, as God creates each component of the universe, God is referred to exclusively by this name. It would seem that God created a world of unadulterated justice. However, immediately afterward, we find this verse:

On the day that אלהים י-ה-ו-ה made the earth and heaven.

Genesis 2:4

Here we are introduced to a new name of God, the tetragrammaton, י-ה-ו-ה. This name refers to God's compassion and is used when God acts in ways that we perceive as compassionate. This verse describes creation as an act of divine compassion,

seemingly in conflict with the Torah's opening statement. But at the same time, this verse preserves אלהים in its description of God's modus operandi. What are we to make of this? Did God create a world that operates on justice or compassion? The answer is yes.

> "In the beginning, אלהים created heaven and earth" – The verse does not say י-ה-ו-ה created, for originally God thought to create [the world] with the attribute of justice. However, He realized that such a world could not survive. God therefore gave precedence to the attribute of compassion and joined it to the attribute of justice. This is what the verse means when it says, "On the day that י-ה-ו-ה אלהים made the earth and heaven" (Genesis 2:4).
>
> Rashi to Genesis 1:1, s.v. *bara elohim*

God initially thought[9] to create a world of strict justice, but realizing that it would not last, He blended compassion into the mix. The Midrash illustrates the point with an analogy.

> There was a king who had thin-walled goblets. The king said, "If I pour something hot in them, they'll break; something cold and they will disintegrate." What did the king do? He mixed hot with cold and poured it in, and [the goblets] were fine.
>
> Similarly, God said, "If I create the universe with the attribute of compassion, criminals will proliferate. [If I create it] with the attribute of justice, how will it survive? I shall create it with both justice and compassion. Hopefully, it will survive."
>
> *Bereishit Rabba* 12:16

Justice is a wonderful thing. Why does it doom the world to destruction? The answer is that sin is an unavoidable reality. "There

is no righteous person in the world who does good and does not sin" (Ecclesiastes 7:20). Man's free will and negative drives makes it impossible to be perfectly holy at all times, and in a world of unadulterated justice, sin spells instant death. In the words of R. Moshe Chaim Luzzatto:

> According to dictates of true justice, a sinner should be punished immediately after his crime, without any delay. The punishment itself would be an expression of divine "anger," as is appropriate for someone who has rebelled against the words of the Creator, blessed be His Name. And there should be absolutely no opportunity to rectify the sin.
>
> Path of the Just, chap. 4

In contrast, God's attribute of compassion allows us to learn from our mistakes and grow as people.

> The attribute of compassion, however, reverses the three points that we mentioned. Namely, it grants the sinner time so he is not wiped off the earth the moment he sins; the punishment itself does not totally obliterate [the sinner]; and, in a [divine act of] pure benevolence, sinners are granted [an opportunity to do] Teshuvah.
>
> Ibid

Justice is ideal, but it is unyielding and destructive. In order to survive, humans need divine compassion. However, justice is indispensable, for in a world devoid of justice, man's passions would run unchecked and criminals would act with impunity, lacking cause or motivation to strive for perfection. God therefore founded a world of checks and balances, a world where justice and compassion somehow coexist.

It would seem that these two divine attributes are engaged in some kind of cosmic struggle, each force vying for primacy. Justice

demands justice and Compassion appeals for compassion, and when a sinner is granted time to do Teshuvah and rectify his behavior, compassion wins and justice is compromised. This would be a fair description of affairs in a human court; however, the idea that God is in someway conflicted is, of course, an impossibility. The fundamental statement of Judaism is the Oneness of God. Unlike humans, God does not struggle with inner conflict or ethical dilemmas; He is One, and His "attributes" coexist in perfect unity.[10] How can we reconcile Teshuvah with divine justice? Once again, we turn to R. Luzzatto:

> Nevertheless, this benevolence does not entirely undermine the attribute of justice. It has a leg to stand on, for in place of the desire that wanted the sin and the pleasure derived from it, we now have regret and pain. And the time [that is granted for repentance] is not a pardoning of the sin; it is just a little patience to open the door to rectification.
>
> Ibid

It is perfectly logical that the regret and emotional pain of the Teshuvah process would cancel out the desire and pleasure of the sin. Seen from this perspective, Teshuvah is not merely an act of divine benevolence; on the contrary, it is quite just, arguably more just than punishment. In fact, Teshuvah has much in common with the ultimate judgment and rectification of sin, *Gehenom* itself.

GEHENOM ON EARTH

Gehenom is not to be confused with the Christian idea of "Hell." Jews do not believe in "eternal damnation" for sin. Jewish tradition tells of a different kind of Hell, a temporary purgatory known as

Gehenom. After death, souls usually need to spend some time in *Gehenom* to cleanse the spiritual defilement caused by sins. After this purification process, which can range from as little as brief moment to up to a year, the soul enters *Olam Haba*, heaven (lit. the World to Come), where it enjoys an unmitigated reunion with God and reaps the rewards of all the mitzvot performed in life.

What happens in *Gehenom*? How exactly are sins cleansed? Do fire and brimstone do the job? Drawing on biblical, rabbinic and kabbalistic sources, Rabbi Aryeh Kaplan (1934-1983) paints a vivid picture of the afterlife experience.

> Imagine standing naked before God, with your memory wide open…
>
> You will remember everything you ever did…
>
> The memory of every good deed and mitzvah will be the sublimest of pleasures… But your memory will also be open to all the things of which you are ashamed. They cannot be rationalized away or dismissed. You will be facing yourself, fully aware of the consequences of all your deeds. We all know the terrible shame and humiliation experienced when one is caught in the act of doing something wrong. Imagine being caught by one's own memory with no place to escape…
>
> A number of our great teachers write that the fire of *Gehenom* is actually the burning shame one experiences because of his sins.
>
> The Aryeh Kaplan Anthology, vol. I, pg. 203-204[11]

No, it is not fire or brimstone; it is shame. Indeed, Jews treasure their shame and bashfulness.

> This nation has three characteristics: They are compassionate, bashful and perform acts of kindness.
>
> Talmud, *Yevamot* 79a

We need shame. Shame is both the greatest defense against sin and the mechanism that fixes sin. Shame makes *Gehenom* tick, and it is surely no coincidence that shame is also a basic component of the Teshuvah process. When done right, Teshuvah creates a virtual *Gehenom* experience, cleansing sin as only shame can. It may be sourced in divine benevolence, but Teshuvah does not contradict justice. It *is* justice.

Which part of the Teshuvah process generates shame? Surely, there is no shame in regret or resolution. On the contrary, we take pride in this healthy striving for self-improvement. It is the enigmatic third component, the confession before God, which generates shame. To stand before the Creator and admit that we have sinned against Him, in His very presence, with no excuses to offer – this is a devastating experience for man. When Adam, the first man, sinned, he hid from God (Genesis 3:8), and when Cain, the second man, sinned, he denied it (Genesis 4:9). When man sins, his instinct is to run, hide, deny, or justify his behavior – anything but confess. Confession is just too painful and that is exactly the point. The shame of confession scours the soul and wipes the slate clean. Justice wouldn't have it any other way.

But why shame? Why is shame the place where Divine judgment and compassion are reconciled and sins are forgiven? Because to stand naked before God in the *Gehenom*-fires of shame is the ultimate affirmation of the God/man relationship.

Sin, by definition, is the betrayal of a relationship. Where there is no relationship, there can be no sin. And the deeper the

relationship, the greater the shame when it is undermined by sin and disloyalty.

Teshuvah is remarkable, for it breaks a Torah law.

Talmud, *Yoma* 86b

The Talmud explains that Teshuvah is in violation of the biblical injunction that women not remarry their first husband after being divorced or widowed from a second husband (cf. Deuteronomy 24:1-4). Teshuvah breaks that law, for when man sins, man leaves God and "marries" something else, bonding with an alien value that pushes God out of his life. To divorce that second "husband" and then "remarry" God violates Torah law!

On Yom Kippur, we recognize that we once had a relationship with God, an intimate relationship, a "marriage," no less, and we ruined it. We had an affair with immorality, materialism and self-centeredness, we were unfaithful to God, Torah and Judaism, and now we are ashamed. But instead of running away like Adam or denying it like Cain, we humbly admit our failings and accept the consequences. When God sees that, when He sees how much we care, when He sees how much it hurts us that we have distanced ourselves from Him and our willingness to submit to Divine justice to make things whole, His compassion is awakened. He "breaks the law," forgives our sins, and takes us back. Our souls are cleansed and the God/man relationship is renewed.

A DIFFERENT KIND OF TRANSFORMATION

Throughout, we have described the two functions of Teshuvah as *transformation* and *atonement*. As per R. Yosef Babad and R. Joseph B. Soloveitchik, a creative transformation of the self from

rasha into *tzaddik* is achieved via regret and resolution, and atonement for the sin is achieved via confession. In this formulation, the pious longing for atonement pales before the grand, personal transformation afforded by Teshuvah. However, in light of our new understanding, the term "atonement" fails to convey the full import of what is accomplished by confession. Confession is itself a creative, transformative act, effecting not a transformation of the self, but a transformation of the God/man relationship. Maimonides describes just how profound this transformation of atonement can be.

> One who has done Teshuvah should not assume that, due to the crimes and sins that he has committed, he is far from the level of *Tzaddikim*. This is not so. On the contrary, he is beloved and cherished before God – as if he had never sinned. Moreover, his reward is greater for he has tasted sin and abstains from it, controlling his desire…
>
> Teshuvah draws close those who are distant. Yesterday this person was hated before God, disgusting, distant and repulsive. Today he is beloved, cherished, close, a friend…
>
> How exalted is the power of Teshuvah! Yesterday this person was separated from God, the Lord of Israel, as the verse states, "Your sins have separated between you and your God" (Isaiah 59:2). He cries out and is not answered, as the verse states, "Even when you increase prayers, I do not listen" (Ibid 1:15). He does mitzvot and they are torn up in front of him, as the verses state, "Who asked this of your hand, to trample my courtyards?" (Ibid 1:12) … "I have no desire in you, said the God of Hosts, and I will not accept an offering from your hand…" (Malachi 1:10). But today, this person is attached to the Divine Presence, as the verse states, "And you

> who are clinging to God your lord." (Deuteronomy 4:4). He cries out and is answered immediately, as the verse states, "And it will be, [even] before they call I will answer" (Isaiah 65:24). He does mitzvot and they are accepted with pleasure and joy, as the verse states, "For God already accepts your deeds" (Ecclesiastes 9:7), moreover, [God] desires them, as the verse states, "The offering of Judah and Jerusalem will be pleasing to God as in the days of old and in previous years" (Malachi 3:4).
>
> Maimonides, Laws of Teshuvah 7:3,6,7

A sincere confession, nay, a burning confession, is the end goal of Yom Kippur. It alone has the power to generate atonement on this Day of Atonement and transform man's relationship with God into one of closeness and love.

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[1] That is, the woman will need a divorce from this man before she could marry anyone else.

[2] Not all forms of gambling are prohibited by Halacha and not all prohibited forms of gambling disqualify the gambler from being accepted as a witness in court, see *Shulchan Aruch* C.M. 34:16; *Semah* ad loc.

[3] In a letter dated, "Monday, thirty-sixth day of the Omer, 5689." That is 1929 and R. Soloveitchik was 26 years old at the time. The letter was sent to his uncle, R. Menachem Krakovsky. (In some sentences, our rendering is more of a paraphrase than a literal translation.)

[4] This is not to be confused with psychologically damaging feelings of guilt and worthlessness which paralyze rather than drive growth. Such feelings have no place in the restorative Teshuvah process. Teshuvah does not belittle man. Quite to contrary, it ennobles us as it makes us realize the profound significance of human behavior (heard from R. Yaakov Weinberg).

[5] Rabbi Dr. Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," Tradition, vol. 28, No. 4.

[6] See note 4.
[7] In fact, the Torah uses this very same word to refer to human judges (cf. Exodus 21:6; 22:8).
[8] Even that is not wholly accurate. Due to a grammatical issue raised by Rashi (ad loc.), the first verse should really be translated in this way: "In the beginning of God's creating of the heaven and the earth…" However, this point is immaterial to our essay.
[9] Of course, the infinite, all-knowing God does not change His mind. The Midrash quoted by Rashi is saying that God created a higher level of existence, a "thought" level, which is founded on justice (cf. Rabbeinu Tam, *Tosafot*, *Rosh Hashanah* 27a, s.v. *k'man*). It is said that the Tannaic sage R. Akiva elevated himself to the point that he entered the realm of strict justice – and then he was murdered by the Romans. This is what the Talmud means when it says, "God is exacting with those who surround Him [even if they deviate] like a strand of a hair" (*Baba Kamma* 50a). The closer one gets to God and the ideal of justice, the higher the standards they are held to. Even an infraction as minor as a hairsbreadth can mean death.
[10] Cf. Maimonides, Commentary to Mishnah, *Sanhedrin* 10:1 (second fundamental principle); The Guide of the Perplexed 1:53.
[11] For more sources about Gehenom in general and this understanding of it in particular, see R. Kaplan's translation of R. Luzzatto's "The Way of God," 2:2:4, note 7 (pg. 412).

The Mitzvah to Eat on Yom Kippur

RABBI AVI LEBOWITZ

> But on the tenth day of this seventh month, it is Yom Kippur... you should afflict yourselves.
>
> Leviticus 23:27-29

Jewish holidays are usually celebrated with eating and drinking; Yom Kippur is the exception. The Torah defines Yom Kippur as a "Day of Atonement" (Leviticus 23:28) and celebration[1] is

[1] In the Talmud, we find a basic debate about how the holidays should be celebrated. R. Eliezer states that a Jew is free to choose between dedicating the entire day to service of God or spending the entire day feasting and celebrating, and R. Yehoshua rules that the day must be divided between both of these activities: "*chazti lachem v'chatzi la'shem*," "half for yourselves and half for God" (cf. Talmud, *Beitzah* 15b). The Halacha follows R. Yehoshua's opinion (*Shulchan Aruch*, O.C. 529:1).
Although the term "*chatzi*" sometimes means partial rather than half, as in "*chatzi shiur assur min hatorah*" (Yoma 73b), in this context Maimonides seems to take it literally and rules that the day is divided in two (cf. Laws of Holidays 6:19). Citing the Maharshal, the *Mishnah Berurah* writes that cantors who show off their vocals and hold the congregation in captivity are not accommodating those in pursuit of spiritual pleasure nor are they

obviously inappropriate on such a serious day. Instead, we mark the day by "afflicting" ourselves.[2] Although affliction can be achieved in a variety of ways and does not necessarily entail abstaining from food and drink, the Talmud determines that this is the definition of affliction in this context (cf. *Yoma* 74b). The Mishnah (*Yoma* 73b) lists other pleasures that are forbidden on Yom Kippur, but eating is the most severe of the transgressions.[3] First and foremost, Yom Kippur is a fast day.

The title of this essay is perhaps misleading. There is a mitzvah to eat on the day *before* Yom Kippur,[4] but Yom Kippur itself is a fast day. Is there ever actually a mitzvah to eat on Yom Kippur? The answer is yes. When fasting would endanger one's life, there is

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accommodating those seeking physical pleasure (perhaps the cantor fulfills the mitzvah of physical pleasure for himself!) (*Sha'ar Hatziyun* 529:2). Even R. Eliezer who maintained that the mitzvah of *simchah* (joy and celebration) on the holidays is merely optional, instructed his students to return home and celebrate the holiday, implying that if one is going to be eating on the holiday they should see to it that they have special delicacies (*Beitzah* 15b, *Tosafot*, s.v. *oh ochel*). Furthermore, on holidays such as Purim and Shavuot even R. Eliezer agrees that one must celebrate with some physical pleasure (cf. Talmud, *Pesachim* 68b).

2 R. Ovadia Sforno (1475-1550) suggests that it is for this reason that the Torah's presentation of Yom Kippur begins with the word "but," indicating that its observance deviates from the standard observance of the Jewish holidays.

3 Rabbeinu Tam is of the opinion that the other prohibitions listed in the Mishnah are only rabbinic in nature, leaving the requirement to fast as the only biblical prohibition (in addition to resting from work) (*Yoma* 77a, *Tosafot* s.v. *d'tnan*) This is also the opinion of the Rosh and the *Tosafot Yeshanim*. Even Rabbeinu Nissim and Maimonides who disagree with Rabbeinu Tam and maintain that all the activities listed in the Mishnah are biblically prohibited, agree that the biblical punishment of "*kareit*" is reserved for those who eat (or work) on Yom Kippur (cf. Talmud, *Yoma* 81a).

4 See R. Avi Lebowitz, Focus vol. 2, "Feast or Fast: The Day Before Yom Kippur."

a mitzvah to eat. Just as one can violate Shabbat and virtually every other mitzvah in the Torah[5] when faced with a life threatening situation, one can eat on Yom Kippur in circumstances where fasting is deemed life-threatening. The Mishnah is clear about this. A pregnant woman who is enticed by the fragrant smell of food on Yom Kippur and her life, or the life of her fetus, are thereby endangered, is allowed to eat of that food (Mishnah, *Yoma* 82a). Similarly, the Mishnah permits an individual who is afflicted with "*bulmos*," a life-threatening illness induced by hunger, to eat non-kosher food (*Yoma* 83a).

Eating on Yom Kippur is never optional. It is either required or forbidden. In circumstances where eating will not contribute to preserving life, it is forbidden. In circumstances where eating will save a life or even when eating *may* help preserve or prolong a life, eating becomes an absolute obligation.[6] This Halacha expresses

[5] With the exceptions of idolatry, adultery and murder for which one is obligated to sacrifice their lives rather than violate the prohibitions (cf. Talmud, *Sanhedrin* 74a; Maimonides, Foundations of the Torah 5:2).

[6] A sick individual who is "religious" and does not take care of his medical needs on Yom Kippur is guilty of violating the Torah prohibition against suicide (*Mishnah Berurah*, 618:5) and should be told that the Halacha considers him to be a "pious fool" (*Mishnah Berurah* 328:6 citing Radvaz 4:67). [The classic example of a "pious fool" is a man who refuses to save a drowning woman because of the prohibition against physical contact with someone else's wife (Talmud, *Sotah* 21b). Another example is one who delays in saving a child from drowning until he first removes his *tefillin* (*Tosafot* ad loc. citing the Jerusalem Talmud).] It seems clear that a sick person may not opt to be a martyr; however, this issue requires further clarification. Although Maimonides rules that unless the Torah demands that one give up their life (i.e., to avoid one of the three cardinal sins: idolatry, adultery or murder), it is forbidden to do so to avoid the violation of a Torah law (Foundations of the Torah 5:4), the *Kesef Mishnah* (authored by R. Yosef Karo) cites many authorities (e.g., *Tosafot* in *Avoda Zara* 27b) who disagree with Maimonides and allow a Jew to sacrifice his life to avoid violating a Torah law. Yet, when it comes to people who are

itself in the laws of blessings. Although one does not recite a blessing on the consumption of non-kosher food, a blessing *is* recited when a person afflicted with *bulmos* eats non-kosher food or when a person eats on Yom Kippur in order to preserve his or her life. Such eating is regarded as a mitzvah and thus warrants the blessing recited on kosher food (*Shulchan Aruch*, O.C. 204:9).

On Yom Kippur, a fine line separates between the violation of a severe biblical prohibition and a mitzvah to eat. Rabbis who are

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sick, the Radvaz writes that they may not refuse treatment on Shabbat and sacrifice their lives to avoid a prohibition (cited by *Darchei Teshuvah*, Y.D. 157:12). The difference is obvious: When an anti-Semite tries to force a Jew to violate a Torah law, presumably his intent is to destroy the Jew's connection with God. Therefore, when the Jew refuses to violate the law there is a *Kiddush Hashem*, a sanctification of God's Name (even though the Jew was not required in this instance to martyr himself). However, when one is threatened by a personal illness and refuses treatment, there isn't any public statement being made and the opportunity for *Kiddush Hashem* is quite limited. The patient is therefore obligated to accept treatment and not be a "pious fool." Based on this rationale, Rabbeinu Yerucham is of the opinion that if the anti-Semite is forcing the Jew to sin for his own personal benefit rather than to damage the Jew's relationship with God, then one is not permitted to martyr themselves, for, like the patient, this case offers no opportunity for a *Kiddush Hashem* (cited by *Mishnah Lamelech*, Foundations of the Torah 5:4). This distinction was utilized by R. Ephraim Oshry (1914-2003) in his "*Mima'amakim*," a five-volume work of responsa compiled in the Kovno Ghetto during the Second World War. R. Oshry faced some of the most difficult Halachic questions of the Holocaust, many of which were matters of life and death. He tells of Jews in the ghetto hospital who were attempting to fast on Yom Kippur, ignoring the pleas of the doctors that by fasting they will certainly die. Many of these Jew were not particularly religious people, but they wanted to die performing the mitzvah of fasting on Yom Kippur. R. Oshry went to the hospital on Yom Kippur and explained to them that such behavior does not constitute a mitzvah at all. On the contrary, the Torah obligates them to eat. R. Oshry writes that he succeeded with all but one patient, who indeed passed away immediately after Yom Kippur, repenting on his deathbed for not following the Halachic ruling (*Mima'amakim*, vol. 5, pg. 51).

responsible for fielding these queries must familiarize themselves with the Halacha well before the onset of Yom Kippur. When such questions arise, answers are needed immediately; there is rarely time to consult the literature.[7]

REB CHAIM'S LEINENCY

Like every other mitzvah in the Torah, the prohibition of eating on Yom Kippur was legislated with exactitude. The need for exactitude is obvious; in the days of old, Jewish courts prosecuted transgressors who deliberately violated the law in the presence of witnesses. The courts, however, do not prosecute every crime and Yom Kippur is a case in point. When it comes to eating on Yom Kippur, the Halacha distinguishes between the amount of food that is *prohibited* to eat and the amount that one is *prosecuted* for eating. Thus, while even the minutest amount of food or drink is prohibited (Talmud, Yoma 74a; *Shulchan Aruch*, O.C. 612:4), only the consumption of one and a half ounces of food[8] or three ounces

[7] A *Posek* must master these laws prior to the onset of Yom Kippur because a slight delay in contemplating the Halachic ruling can lead to the loss of a life (*Mishnah Berurah*, 618:24). Generally, a student is not permitted to answer a Halachic query in the presence of his teacher, but in these situations whoever knows the Halacha must speak up immediately, even a student in the presence of his teacher (*Mishnah Berurah*, ad loc.). The requirement to educate the community about these laws is so essential the Jerusalem Talmud considers it an embarrassment when a rabbi is consulted with these questions on Yom Kippur. The rabbi should have given classes in advance so that people will know exactly what to do when the situation arises and will not have to procrastinate by asking (cited by *Mishnah Berurah* 328:6).

[8] The biblical mitzvah is to "afflict" ourselves on Yom Kippur by fasting (cf. Leviticus 23:29). The Talmud (*Yoma* 73a) determines that a volume of

of fluid[9] within nine minutes[10] is liable for prosecution. (When this same volume is consumed over a greater span of time, the food eaten at the end is not considered close enough in proximity to the earlier consumption to become one united act of eating and is

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food the size of a large date will relieve this "state of affliction." The *Shulchan Aruch* (O.C. 612:1) writes that the Talmud's "large date" is slightly less than the volume of an egg. Being that an average egg is approximately two fluid ounces, the amount that is considered to be breaking the "affliction" of Yom Kippur is approximately one and a half fluid ounces.

[9] The measure for liquids is a cheek-full, subject to the individual's personal cheek size (*Shulchan Aruch*, O.C. 612:9). This is two to three ounces for the average person (M.B. 612:26).

[10] The time span is described by Halacha as "*kdei achilas pras*," the amount of time it takes to eat a volume of bread equaling three eggs according to some authorities or four eggs according to others (cf. *Shulchan Aruch*, O.C. 612:4). An egg is approximately two fluid ounces. (For a comprehensive overview of this Halachic measurement, see R. Avi Lebowitz, "The Traditional Seder: A Halachic Guide," Focus vol. 3, pgs. 68-68, note 19.) It is irrelevant whether one eats slowly, or quickly with breaks in the middle, so long as he consumes less than the prosecutable volume of food within this amount of time (*Biur Halacha* 612:10). When a sick person knows in advance that they will need to take advantage of this law, they should experiment before Yom Kippur and discover how long it takes them to consume that amount of food (M.B. 618:21). The *Mishnah Berurah* seems to maintain that although the volume is purely objective, i.e., the volume of a large date, the time span is subjective and based on each individual's rate of consumption. However, the *Mishnah Berurah* then cites the *Chatam Sofer* (Responsa, 6:16) who writes that it is necessary to space out the consumption of this volume of food to at least nine minutes. The *Aruch Hashulchan* (618:14) is slightly more liberal and allows as little as six minutes. The time span for spacing out the drinking of fluids is a major dispute. Some consider it to be the same as the time span for eating, whereas others consider it significantly shorter, as little as less than one minute. (cf. *Shulchan Aruch*, O.C. 612:10). *Minchat Chinuch* (Mitzvah 313) discusses whether or not the time span changes dependent on the type of food or drink that is being eaten (e.g., hot food and drink would be consumed at a slower rate).

therefore not a prosecutable crime.[11]) As this distinction clearly demonstrates, not all eating is equally prohibited. There is prohibited eating and then there is prosecutable eating.

The sick often require more food and drink than just a couple of ounces and, if their lives are in danger, they may eat on Yom Kippur the amount that they need. Nevertheless, an effort can be made to ensure that they do not cross the line of consuming a prosecutable amount by spacing the consumption over a span of time greater than nine minutes. When this does not put the patient at risk, it is required (*Shulchan Aruch* 618:7[12]).

This brings us to the novel approach of R. Chaim Soloveitchik (Brisk, 1853-1910). "Reb Chaim," one of the most creative and influential Talmudists of modern times, had a reputation for stringency – except for when health was at stake. Reb Chaim ruled that one whose life is even remotely threatened is obliged to violate all Torah commandments necessary to preserve their life.[13] He did not see this as a leniency; on the contrary, in his view, it was in complete consonance with his usual style: "I do not take a lenient

[11] The time spans for eating solids and those for drinking liquids are measured independently of one another because they do not combine to create a "prosecutable volume" (*Shulchan Aruch*, O.C. 612:2).

[12] The *Shulchan Aruch* is the authoritative code of Jewish law, authored by R. Yosef Karo (1488-1575).

[13] Reb Chaim once permitted a father to violate Shabbat to assist his son in dodging the draft – during a time of peace. R. Chaim reasoned that although the army is not a dangerous place in peacetime, there is a possibility that during his tour of duty a war will break out. Therefore, even now the draft qualifies as a situation of "*pikuach nefesh*," imminent danger, and warrants the violation of Shabbat (R. S. Y. Zevin, *Ishim V'shitot*, pg. 65).

approach regarding Torah violations for the ill; rather, I take a stringent approach regarding the mitzvah to preserve a life."[14]

A presentation of Reb Chaim's approach can be found in the writings of his son, the "Brisker Rav" (R. Yitzchak Zev Soloveitchik, 1886-1959). The Brisker Rav testifies that when his father was consulted on Yom Kippur about an ill person whose life was in imminent danger (*choleh sheyesh bo sakana*), he ruled that the patient should be told to eat freely, without any attempt to stretch out consumption to avoid eating one and a half ounces within nine minutes.[15]

Seemingly, Reb Chaim's ruling is in direct violation of the following ruling of the *Shulchan Aruch*:

> When we feed a pregnant or ill individual [on Yom Kippur] we feed them little by little so that the quantity of food does not combine to yield the prosecutable amount.[16]
>
> *Shulchan Aruch*, O.C. 618:7

[14] R. S. Y. Zevin, *Ishim V'shitot*, pg. 64. When Reb Chaim was originally appointed to be the rabbi of Brisk (modern-day Brest, Belarus), his colleagues challenged his opinion on this matter claiming that it contradicts an explicit ruling of the *Shulchan Aruch*. Reb Chaim wasn't fazed by their objections and proceeded to present his justification which they ultimately accepted. Reb Chaim compared the obligation to violate Shabbat for a patient in imminent danger to a circumcision. He once commented, "Has anyone ever heard of a father who was distraught over the violation of Shabbat at his son's circumcision?" This is the perspective one should have when violating the Shabbat for a patient in imminent danger.

[15] *Chiddushei Maran Riz HaLevi*, *Yoma*, pg. 52.

[16] This ruling actually includes two distinct points: Firstly, we do not allow a patient to eat to his heart's content, rather we limit their food consumption to what is necessary to preserve their life. Secondly, even when the quantity of food and drink is limited to the patient's needs, we carefully space its consumption over a time span so that the patient will not consume the prosecutable amount at any given interval.

Reb Chaim dealt with this apparent contradiction by distinguishing between an individual who is presently in a life-threatening situation and an individual who is not presently in critical condition but who, if not cared for and fed, might slip into life-threatening danger. The former may eat to his heart's content to restore his health, with no need to avoid the prosecutable volume of food. The latter, however, may only eat less than the prosecutable amount in order to prevent his health from deteriorating into critical condition. This is the kind of patient that the *Shulchan Aruch* refers to.[17]

[17] The precedent for this idea is the *Shulchan Aruch's* distinction between a sick patient and a woman in labor. In the case of a sick patient, the *Shulchan Aruch* (328:12) implies that we can violate Shabbat directly and there is no need to violate it indirectly or through the agency of a gentile. But in the case of a woman in labor, the *Shulchan Aruch* (330:1) insists that, whenever possible, Shabbat violations on her behalf must be done indirectly. (When work on Shabbat is done indirectly or abnormally, the violation is less severe.) The *Mishnah Berurah* (330:5) explains this discrepancy based on the *Maggid Mishnah's* (2:11) view that childbirth is a natural occurrence and complications are relatively rare. The need to suspend the laws of Shabbat is less pressing for labor than for an ill patient and we therefore must deviate from the normal way of doing things when violating the Shabbat for a laboring mother. Similarly, Reb Chaim would argue, the Talmud's ruling (*Kritut* 13a) that we feed a pregnant woman less than the prosecutable amount is referring specifically to a pregnant woman, but an ill patient who is in imminent danger is fed without limitation.
Practically, it is difficult to know how to determine whether a patient is presently in a state of danger or on the brink of falling into a state of danger. The Brisker Rav hints to the following parameters: When a patient is suffering from a life-threatening illness such as the late stages of cancer growth, he is considered to be presently in danger ("*choleh sheyesh bo sakana*") and we make no limitations on his food intake. But if the only cause for the patient's weakness is a lack of food and malnutrition, we are obligated to monitor the quantity of his intake and limit his eating to less that the prosecutable amount (unless it is medically determined that he needs to eat larger quantities immediately in order to restore his health).

In support of his father's ruling, the Brisker Rav cites the *Sefer HaChinuch* (13th Cent., Spain).

> One who is ill, even though he is not presently in a state of danger, if he is considerably weak, it is proper to feed him less than the forbidden measure.
>
> *Sefer HaChinuch*, Mitzvah 313

As R. Yosef Babad (Turnopil, 1800-1874) points out, this statement is in apparent conflict with the accepted Halacha which forbids any eating and drinking unless one is in danger of losing their life (*Minchat Chinuch*, ad loc.). To resolve this problem, the Brisker Rav explains that the *Sefer HaChinuch's* statement refers to a situation which is indeed life threatening, but not imminently so. The patient's condition is not currently critical, but he might deteriorate into a life-threatening situation if he doesn't eat. When the *Sefer Hachinuch* described the patient as "not presently in a state of danger," he meant that the patient is not presently in a life-threatening situation but is headed in that direction. We therefore play it safe and allow him to eat but we limit his food intake so as not to surpass the prosecutable amount. Limiting the *Sefer HaChinuch's* ruling to one who is not yet in critical condition implies that a patient who is in critical condition may eat without limit, in perfect agreement with Reb Chaim's ruling.

In order to better appreciate Reb Chaim's approach, we need to take a step back and survey the primary sources.

> An ill person in imminent danger who requests to eat on Yom Kippur is fed until he says that he has had enough.
>
> Maimonides,[18] Laws of Yom Kippur 2:8

[18] R. Moshe ben Maimon, "Rambam," 1135-1204.

Maimonides is clear that we must first have a diagnosis that this patient is in "imminent danger." Only then is their request for food answered with an unlimited supply. In the absence of such a diagnosis, a pressing desire for food is insufficient grounds to violate Yom Kippur. To appreciate Maimonides' formulation of this law, we need to study its Mishnaic source.

> If there are no [medical] experts present [to diagnose the patient], we feed him based on his own opinion until he says "enough."
>
> Mishnah, *Yoma* 8:5

What does the Mishnah mean when it says that we feed him based on "his own opinion"? What exactly does the patient need to say? Some authorities rule that the patient may eat only if he claims that he will possibly die if he continues to fast. However, Rabbeinu Tam (R. Yaakov ben Meir, 1100-1171) disagrees, making his point with a very simple argument: "How is the patient to know whether or not he would die? Are patients prophets or doctors?" According to Rabbeinu Tam, as long as the patient knows that it is Yom Kippur and he still says that he can hold off no longer and must eat, we may give him food even if we think that his life is not in danger. There is no need for a self-assessment of possible death (*Hagahot Maimoni*, Laws of Yom Kippur, 2:5).

We have seen Maimonides' position that an urge to eat does not grant a patient "imminent danger" status. Imminent danger must be independently determined. This idea is in concurrence with Rebbeinu Tam's contention that a patient's feelings are not capable of determining their medical condition. A patient's unprofessional self-assessment, "If I don't eat, I will die," does not determine his medical status; it only informs us that he would like to eat. Once

the patient's status is determined to be "imminent danger," we submit to his interest in eating and provide him with food.

We might not expect the mere desire to eat to be grounds to violate Yom Kippur; however, in the Laws of Shabbat we find the following general leniency for the seriously ill.

> We light a lamp for him and we put out the lamp that is in front of him, we slaughter for him and bake, cook and heat up water for both drinking and washing his body. The policy is this: For all of the needs of a sick person in imminent danger, Shabbat is treated like a weekday.
>
> Maimonides, Laws of Shabbat 2:2

In other words, when a patient is in critical danger, Shabbat, and by extension, Yom Kippur, are violated for anything that will make the patient more comfortable – even though abstaining from these comforts would not endanger the patient in any way![19] In light of

[19] C.f. *Maggid Mishnah*, Laws of Shabbat 2:14, s.v. *osin*. (See, however, note 33 for an alternate interpretation of this statement of Maimonides.) The most probable source for Maimonides' leniency is this Talmudic ruling: A midwife may light a lamp to provide light for a delivery even if she is confident that she can safely deliver the baby without it, and even if the woman in labor is blind and the light is useless for her personally. A lamp may be lit because when the laboring mother knows that the midwife can see what she is doing it helps calms her nerves (Talmud, Shabbat 128b). In the Laws of Shabbat, the *Shulchan Aruch* quotes the Ramban, "Internal wounds (or illnesses) do not need a diagnosis; i.e., even if there are no [medical] experts present and the patient doesn't making any requests, we do for him everything that we would ordinarily do on a weekday..." (O.C. 328:4). The *Mishnah Berurah* (ad loc.) infers that the *Shulchan Aruch* is follows the approach of Maimonides as explained by the *Maggid Mishnah* that we need not limit the violations of Shabbat to what is absolutely necessary. The *Biur Halacha* points out that Maimonides is not alone in his approach. The *Tashbetz* (54), citing the Talmud in Shabbat (128b), also rules that anything that helps settle the mind of the critically ill is permitted, even if it is not medicinal in any way. In the Meiri, however,

this ruling, we can understand why Maimonides allows a patient in imminent danger to eat on Yom Kippur based on nothing more than his own request – it is simply because eating makes him more comfortable.[20] Based on this approach, we can now appreciate the ruling of Reb Chaim as explained by the Brisker Rav. Once a patient has been diagnosed to be in imminent danger, we are free to violate Torah law to provide him with every comfort and amenity that he requests, without limitation. There is no need to limit his food intake on Yom Kippur to less than the prosecutable amount or to what we think is necessary for his survival. Rather, we feed him until he says "enough," for satiating hunger is certainly comforting, and the Halacha permits violating Torah law to provide comfort for a patient in imminent danger.[21]

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we find a contradiction: when it comes to Shabbat he is stringent, but on Yom Kippur he seems to allow heating water for bathing since it will be helpful for the sick person, even though it is certainly not a life preserving necessity.

[20] The Brisker Rav recognizes that Reb Chaim's approach is only plausible within the position of Maimonides and that other authorities disagree and only allow violations that are absolutely necessary to preserve the life of the patient (*Radvaz* 4:130 cited in *Biur Halacha* 328:4; see note 38). According to these opinions, even when a patient is in imminent danger we would have to limit his food consumption on Yom Kippur to less than the prosecutable amount (if doing so would not endanger him in any way).

[21] The Brisker Rav writes that his father permitted ill patients to eat extra food just for the purpose of "strengthening their bodies." The implication is that this would be allowed only according to Reb Chaim's lenient position, but R. Elazar Menachem Shach (1898-2001), former dean of the Ponovitzch Yeshiva in Bnei Berak, Israel, argues. R. Shach explains that if a patient will gain strength by eating additional food, that would qualify as required treatment for a patient in imminent danger and all would agree that he may be fed the extra food on Yom Kippur. In R. Shach's view, the novelty of Reb Chaim's approach is to permit extra food even when it will not measurably strengthen the patient (*Avi Ezri*, Laws of Shabbat 2:2). With all deference to R. Shach, it seems that he focused unduly on the semantics used by the Brisker Rav, but there is really no argument here at

ALTERNATIVES TO REB CHAIM

Reb Chaim did not generally play the role of "*Posek*," a decider of Jewish law. A profound thinker and educator, Reb Chaim was famous for introducing a unique style of analytical methodology to the study of Talmud, one which ultimately became the standard approach in the yeshivas of Eastern Europe. This methodology was more focused on theory than practice and in his own town of Brisk, Reb Chaim left Halachic rulings to the local *dayan* (communal judge), R. Simcha Zelig.[22] When it came to caring for the ill,

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all. Certainly the Brisker Rav was aware that no one would ever forbid the consumption of food that could possibly lengthen the life of the patient, and certainly R. Shach was aware that eating merely for the purpose of gaining extra strength is not permitted according to those who disagree with Reb Chaim.

[22] According to R. Shlomo Y. Zevin, Reb Chaim seldom entered the realm of practical Halacha (*Ishim V'shitot*, pg. 62). Even within his own town of Brisk, he appointed scholars who served as judges to decide the Halacha (many of whom viewed themselves as his disciples). Reb Chaim's son, the Brisker Rav, followed him in this approach developing a family reputation as leading scholars who stay out of practical law. R. Zevin attributes this characteristic of R. Chaim to pragmatism. With his brilliantly creative mind, had R. Chaim entered the realm of *psak*, he would likely have developed an entirely new methodology, as he has done in the Talmudic sphere. To avoid what would likely result in a great number of novel rulings and deviations from long-standing traditions, R. Chaim chose to shy away from practical law and focus instead on law theory. R. Zevin illustrates the point with a story that he heard from R. Meir Bar-Ilan (1880-1949), son of the illustrious Netziv and namesake of the Bar Ilan University in Tel Aviv. A difficult Halachic problem regarding a *get* (religious divorce document) arose in Brisk and Reb Chaim sent the question to the preeminent authority of the generation, R. Yitzchok Elchonon Spector of Kovno. The question came to R. Yitzchok Elchonon with specific instructions: Respond briefly and without explanation. Reb Chaim felt that if he were privy to R. Yitzchok Elchonon's rationale he would likely debate it, refute its logic and return to a state of doubt. Being

however, Reb Chaim was steadfast in his opinion and insisted that his ruling was law. When his eldest son, R. Moshe Soloveitchik, accepted his first pulpit, Reb Chaim instructed him to follow his ruling regarding ill patients on Yom Kippur, because, Reb Chaim said, "it is an absolute Halachic truth."[23]

As we have seen, Reb Chaim's argument is both logical and well founded on primary Halachic sources; however, it is a novel approach that stands in contradistinction to many earlier authorities. In order to appreciate the complexity of this issue and determine the proper protocol for the patient in imminent danger, we must start at the beginning, introducing the opinions of Ramban (R. Moshe ben Nachman, 1194-1270) and Rosh (R. Asher ben Yechiel, 1250-1328), and finally coming to the Halachic position of the *Shulchan Aruch* itself. We begin with the laws of eating non-kosher food.

In situations where a Jew must eat non-kosher food,[24] steps should be taken to reduce the severity of the prohibition whenever possible. There are several ways to accomplish this. In situations where there are two types of non-kosher food to choose from, the patient should be given the one that has a less severe punishment associated with it. (Even though both foods are prohibited, the

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that Reb Chaim could rely on R. Yitzchok Elchonon's ruling even without knowing his legal reasoning, Reb Chaim preferred that he keep his logic to himself.

[23] R. Joseph B. Soloveitchik, "Halakhic Man," pg. 35.

[24] Four examples: (a) A doctor prescribed a diet of meat and only non-kosher meat is available; (b) a pregnant woman who smelled an aromatic non-kosher food and developed an intense craving that is endangering her health; (c) a person who is literally starving; (d) a person who is afflicted with *bulmos* (see note 26).

degree of punishment is a viable method to determine the severity of the prohibition.[25]) Alternatively, sometimes it is possible to avoid feeding the patient the forbidden food altogether by appeasing her with the gravy. If that doesn't suffice, we offer some of the soup. Only when even that is insufficient do we allow her to partake of the forbidden food itself.[26] Thirdly, the Talmud instructs us to

[25] Although the Mishnah teaches us to be as diligent with the "light" mitzvot as with the "severe" ones because we do not know the ultimate divine reward for mitzvot (*Pirkei Avot*, 2:1), R. Ovadia Bartenura writes that this only refers to the positive commandments for which we do not know their relative rewards and are therefore unable to prioritize them. But regarding the negative prohibitions, the severity of the punishments associated with them is a clear indication as to their order of importance.

[26] The Talmud teaches that a person who is afflicted with "*bulmos*," a life threatening illness induced by hunger, may eat non-kosher foods until his health is restored (*Yoma* 83a). (Of course, this is only permitted when there is no kosher food available.) Although the Talmud requires us to reduce the violation by feeding him foods that are less severely prohibited (when we have choices), it makes no mention of limiting the quantity of non-kosher food. The implication is that we are not limited to the bare minimum quantity necessary to remove the imminent threat and are instead obliged to feed him without restriction until his health returns to normal. Yet, earlier, when dealing with a pregnant woman who developed an intense craving on Yom Kippur that is endangering her life (or the life of the fetus), the Talmud (*Yoma* 82a) prescribes the following procedure for feeding her. If, for example, she craves meat, we would not begin by feeding her the meat itself; rather we would first allow her to suck on cotton with some of the meat gravy. If that is not sufficient to satisfy her craving, we allow her to eat some of the gravy. If that still doesn't satisfy her craving, then we allow her to eat the meat itself. The contrast is obvious and the question is compelling. In the case of the pregnant woman who yearns for pork we try not to feed her the pork itself until we have no choice, so why don't we follow the same process when it comes to a sick person who must eat? Ramban (cited by Rosh, *Yoma* 8:13) explains that a pregnant woman who has not been medically examined and we are unsure of what is really necessary to alleviate her craving is not permitted to eat the pork immediately since she may not actually need to eat it. But someone who is ill and has been diagnosed by physicians, who determine that he must eat a

reduce the quantity of the prohibited product that will be consumed to less than a prosecutable amount, i.e., less than one and a half ounces every nine minutes, when it is possible to do so without endangering the patient (*Kritut* 13a).

In this last example, the Talmud is talking about a pregnant woman who has developed an intense craving that is endangering her health. The Talmud challenges this ruling with an obvious question: if she is truly in a state of danger, she should be allowed to eat whatever is needed to save her life, without any limitations. To this the Talmud responds that although she is permitted to eat larger quantities if needed, we first try to satisfy her craving with smaller quantities so that she does not eat a prosecutable amount in the forbidden time span.

Ramban comments that although the Talmud is talking about a pregnant woman, we follow the same procedure for any patient in imminent danger of dying who needs to eat to save his life. The Rosh qualifies Ramban's statement and allows us to follow this procedure for such a patient only if a medical professional is confident that small quantities over the desired span of time would be sufficient to save his life. The Rosh's ruling implies that we assume a pregnant woman will survive by eating little by little with delays in between even in the absence of a professional diagnosis. Regardless, it is clear that according to both Ramban and Rosh, we

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particular food, may eat whatever has been prescribed. Of course, if the non-kosher gravy or soup are sufficient for the sick person, he would not be allowed to partake from the meat. Another way to explain why we are stricter when it comes to childbirth is based on the perspective of the *Magen Avraham*, who views childbirth as a natural occurrence with minimal risk. It is therefore necessary to do whatever we can to reduce the breaching of Torah law (cited in *Mishnah Berurah* 330:5).

may not provide unlimited food to a patient in imminent danger if it is not needed to save his life. This contradicts Reb Chaim's approach which allowed a patient in imminent danger to eat to his heart's content until he says "enough."

It is not only Ramban and Rosh. The *Biur Halacha*[27] (328:4 s.v. *kol*) cites numerous early authorities, contemporaries of Maimonides, who reject his opinion outright and insist that violations of Torah laws be limited to absolute necessities.[28] Moreover, the very idea that Maimonides himself permits Shabbat

[27] Commentary on the *Orach Chaim* section of the *Shulchan Aruch* authored by R. Yisroel Meir Kagen (the "Chofetz Chaim," 1838-1933).

[28] See note 38. Rashi (*Shabbat* 129a) defines an ill person who is *not* in imminent danger in this way: "without the remedy he will not die, but nevertheless he needs it." This implies that a sick person is considered to be in imminent danger only when refraining from the remedy will indeed kill him. (Rashi in *Yoma* 84b repeats this approach multiple times.) *Tosafot* (*Shabbat* 128b) who forces a distinction between a woman in labor and a patient in imminent danger further confirms this approach. It is permitted to light a lamp for a woman in labor even though it is not needed to preserve the life of the child, yet when it comes to a sick person who must eat on Yom Kippur we only allow him to eat the amount of food that experts determine is actually necessary. *Tosafot* explains that we light a lamp for a woman in labor because added nervousness could add to the danger, and having light helps calm her down. In contrast, an ill person can survive on the amount of food that the physicians prescribe and he does not need any extra. Clearly, *Tosafot* and the many other commentaries that follow their lead are of the opinion that one may only do what is necessary to save the life of the patient and nothing more. They make no distinction between Shabbat and Yom Kippur about this.

After proving that this is also the opinion of Meiri and Rashba, the *Biur Halacha* questions whether the *Shulchan Aruch* truly agrees with the view of Maimonides as read by the *Maggid Mishnah*. Perhaps when Ramban and the *Shulchan Aruch* permit "everything that we would ordinarily do on a weekday," (O.C. 328:4, cited in note 19) they are referring to a situation where we lack a professional diagnosis of what is and what is not necessary. But when we are certain that it is not necessary, even Ramban would agree that these violations are forbidden.

to be violated in order to provide for the patient's comfort is also contested. We have presented the view of the *Maggid Mishneh*, but others read Maimonides differently and do not believe that he permits violations merely for comfort.[29]

With the debate established, now we need to determine which opinion the Halacha follows in practice.

A CONTRADICTION AND ITS RECONCILIATIONS

Turning to the *Shulchan Aruch* for practical guidance, we are confronted with a contradiction. In the laws of Shabbat (328:4), the *Shulchan Aruch* rules in accordance with [the *Maggid Mishnah's* reading of] Maimonides that anything that would be done for the sick person during the weekdays may also be done for him on Shabbat.[30] In other words, all biblical prohibitions are waived for the comfort of the critically ill. However, in the laws of Yom Kippur, the *Shulchan Aruch* (618:7) rules that when possible, we reduce the food intake of a sick person to less than the prosecutable

[29] See note 33. The Mishnah (cited above) states: "If there are no [medical] experts present [to diagnose the patient], we feed him based on his own opinion until he says 'enough'" (*Yoma* 8:5). If violations are only permitted when needed to save a life it is difficult to understand why we would feed a patient based on his own opinion. In order to understand this Mishnah, these authorities must consider the patient capable of determining his state as being in imminent danger if he does not eat.

[30] See note 19. Interestingly, this ruling of the *Shulchan Aruch* is a quote of Ramban from his work *Torat Ha'adam* – the same Ramban who we just determined, based on his commentary to Talmud, to be of the opinion that we may *not* provide unlimited food to a patient in imminent danger if it is not needed to save his life. It seems that the contradiction in the *Shulchan Aruch* is not the only contradiction that needs resolving. (R.Y.G.)

amount. Being that during the weekdays a patient is fed without any such limitations, the *Shulchan Aruch's* ruling in the laws of Shabbat should allow for unrestrained eating on Yom Kippur.

There are five major approaches to reconcile these two apparently contradicting statements of the *Shulchan Aruch*, none of which is consistent with the Halachic ruling of Reb Chaim:

1. The *Biur Halacha* (328:4) suggests that the *Shulchan Aruch's* license to violate Shabbat for "anything that one would do during the week," is only actionable in the absence of a professional diagnosis. In the absence of a physician who could tell us what is really necessary to preserve the health of the patient, the inexperienced layman would have no choice other than to assume that anything that would be done during the week must also be done on Shabbat. However, if the layman himself is confident that a particular activity is not absolutely necessary, neither Shabbat nor Yom Kippur may be violated merely for the purpose of providing comfort to the patient.

2. By way of introduction to this approach, we will raise a basic question: Why does Maimonides allow Shabbat to be violated for activities that are not absolutely necessary to preserve the life of the patient? Being that the need to preserve life is the only legal mechanism that allows us to violate Shabbat (cf. Talmud, Yoma 85b), how can Maimonides expand this license to include actions that are merely for the patient's comfort? The answer is that as a doctor, Maimonides was aware that a patient's mental health and emotional well-being have a direct impact on their survival. Just as a patient who is suffering from pain will likely deteriorate more

quickly and die sooner than a patient who is pain-free,[31] a patient who experiences emotional distress will also be more likely to die sooner.[32] The Talmud, itself, suggests this idea when it describes the need "to settle her mind" (*Shabbat* 128b). Perhaps this is why Maimonides permitted the violation of Shabbat for a patient's comfort.[33]

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[31] "For patients suffering various diseases, increased pain hastens death by interfering with life-enhancing activities; if it hurts to eat, patients won't eat; if it hurts to move, they won't move. But survival simply cannot be enhanced by reducing pain because, even as some pain treatments have a beneficial effect on disease (spinal cord stimulation on coronary artery disease, for example), other pain treatments can have an adverse effect on survival." (Staats, P. (2003). The Effect of Pain on Survival. *Anesthesiology Clinics of North America*, 21:4, 825-833.)

[32] R. Dovid Shlomo Eibshitz (d. 1810) permits Shabbat to be violated to summon relatives, for the presence of relatives helps alleviate emotional distress (*Levushei Sered* 306:9). (There are relatives whose presence can have an adverse effect, increasing emotional distress and anxiety. Such relatives should not be granted visitation rights.) However, R. Moshe Feinstein argues that we don't find emotional distress qualifying in and of itself as a life-threatening danger and, unless there is a fear of suicide, we may only permit violations of rabbinic law to alleviate emotional distress and not biblical law (*Igrot Moshe*, O.C. 5:18, pg. 48).

[33] Ramban writes that we may light a lamp for a woman in labor "to settle her mind" (*Shabbat* 128b) because an unsettled mind can be dangerous for a laboring woman (*Torat Ha'adam*; cf. *Biur Halacha* 328:4). If this is the rationale of Ramban it is plausible that it is the rationale of Maimonides as well. If so, then Maimonides only permits violations that are absolutely necessary for the preservation of the patient's life.

There are advantages to this understanding of Maimonides. If Maimonides truly allows anything to be done for the comfort of a patient in imminent danger, then the Talmud's prohibition against lighting a fire to provide warmth for an ill patient (*Shabbat* 129a) must be limited to a patient whose life is not in danger. This reading of the Talmud is problematic. However, the problem is resolved according to our new understanding of Maimonides' position, which only permits activities that may help save a life. Although emotional distress can sometimes threaten a patient's health,

Based on this approach, the distinction between Shabbat and Yom Kippur is fairly obvious. Refraining from Shabbat violations such as providing extra light or calling doctors and relatives can cause a patient to feel neglected, a potentially life threatening trauma for an individual in imminent danger. The same cannot be said for reducing the food intake of a patient on Yom Kippur. While a person who is starving would probably experience emotional distress if he were told that his food allotment was being limited, an ordinary patient is not starving to death. Limiting the quantity of food does not generally distress the patient since it is clear that experts are determining that he receive the quantity that he needs. When emotional distress is not an issue, Maimonides and the *Shulchan Aruch* would agree that violations of Shabbat and Yom Kippur must be limited to absolute necessities.

3. R. Elchonon Wasserman (1875-1941) posits a different distinction between Shabbat and Yom Kippur, based on the nature of a suspended law. In situations where the Halacha suspends one prohibition in order to allow for the fulfillment of a more important mitzvah, the question arises whether the suspended law was merely "pushed aside" or rendered temporarily "permitted" (cf. Talmud, *Yoma* 6b). While this distinction seems esoteric, it is a fundamental question: when faced with a conflict between mitzvot and forced to choose one at the expense of the other, does the Torah sanction a violation or does the Torah waive the violation? When Shabbat must be violated to save a life, the argument can be made that the prohibitions of Shabbat are completely waived and rendered permissible. However, when other biblical prohibitions,

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the lack of a fire does not cause that much stress and is therefore prohibited even for a patient in imminent danger.

such as eating on Yom Kippur, must be violated in order to save a life, they are not rendered inherently "permitted;" they are only "pushed aside."[34] Therefore, on Shabbat we can allow anything that

[34] R. Wasserman's source for this distinction is a ruling of Maharam of Rothenburg (R. Meir ben Baruch, 1215-1293) regarding a situation in which one must eat on Shabbat and no kosher food is readily available. Is it preferable to eat non-kosher food or should we instead violate Shabbat and slaughter an animal to provide kosher food? The Rosh (R. Asher ben Yechiel, 1250-1328) raises this question in his commentary to *Yoma* (8:14) and presents three different approaches from three sources: (1) Ra'avad (R. Avraham ben David, 1125-1198) answered that although the argument can be made that it is preferable to violate the prohibition of eating non-kosher food oneself rather than have others violate the prohibition of slaughtering on Shabbat, since Shabbat is always being legitimately violated somewhere in the world, it is easier to violate it in this instance as well. (2) Rosh himself based his approach on a practical concern. Feeding the patient non-kosher food is not a viable option since he is likely to be disgusted by it and will refrain from eating the amount that he needs. (3) Maharam of Rothenburg answered that there is a major Halachic distinction between violating Shabbat and violating the prohibition to eat non-kosher food. Shabbat is completely waived and considered a weekday for the sake of saving a life, whereas the prohibition to eat non-kosher food is only "pushed aside." It is therefore considered a more severe violation to eat the non-kosher food than to violate Shabbat.
This distinction of Maharam of Rothenburg is problematic since the Talmud (*Yoma* 85b) finds the biblical obligation to violate the Torah in order to save a life in the verse, "live by them" (Leviticus 18:5) – live by the mitzvot and don't die for them. This verse is a general statement and is certainly not unique to Shabbat. Accordingly, there would be no basis to distinguish between Shabbat and other mitzvot when they are waived to save a life. The approach of Maharam of Rothenburg must be based on an earlier Talmudic statement, one that views the obligation to "Keep the day of Shabbat" (Deuteronomy 5:11) from a broad perspective: "Desecrate one Shabbat for the sake of observing many *Shabbatot* in the future" (Talmud, *Yoma* 85b). Shabbat should be violated to save a life, for doing so will give this saved Jew many more opportunities to observe Shabbat. Apparently, Maharam of Rothenburg understands this statement of the Talmud to mean that since the violation of Shabbat is necessary in order to enable the observance of future *Shabbatot*, the violation of this Shabbat can actually be viewed as an observance of Shabbat, not a violation. This logic is

would normally be done during the week, because the prohibitions of Shabbat are literally non-existent in the presence of a life at risk. Yom Kippur differs. Its laws are not waived; they are "pushed aside" – yet remain active. Therefore, we may do whatever is necessary to preserve life, but anything beyond that is a violation of Yom Kippur (cf. *Kovetz He'arot* 18:9).

The founder of the Sochatchev Hasidic dynasty, R. Avraham Borenstein (1838-1910), rejects this distinction between Shabbat and Yom Kippur (cf. *Avnei Nezer*, O.C. 453-455).[35] In its place, R. Borenstein offers other creative ways to reconcile the statements of the *Shulchan Aruch*.

4. R. Borenstein bases his approach on a responsa of the Radvaz (R. David ben Zimra, 1480-1573). The Radvaz writes that

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obviously limited to the redefinition of "keeping" Shabbat; for all other prohibitions, such as eating non-kosher food or eating on Yom Kippur, we are forced to rely on the verse "live by them," which only "pushes aside" the prohibition and does not render it "permissible."

This point is itself debatable, because the Talmud may be using Shabbat merely as an example of a temporary loss for an ultimate gain but the same logic may actually apply to all other mitzvot as well (cf. *Biur Halacha* 329:4). Furthermore, the *Kesef Mishnah* (Laws of Shabbat 2:2) maintains that even Shabbat is only "pushed aside" in cases of life-threatening danger and is not rendered "permitted." Indeeed, *Korban Netanel* (Rosh ad loc., note 2) quotes the Rashbah as saying that the approach of Maharam of Rothenburg is based on the notion that Shabbat is "permitted," but there are many indications that it is just "pushed aside."

[35] From the language of his response (453:2), it seems that the questioner suggested that the distinction between Shabbat and Yom Kippur is based on the opinion of Ra'avad cited in the previous note. Namely, every Shabbat is waived somewhere in the world for the needs of a sick person and therefore it is easier for us to violate it, whereas other prohibitions are not necessarily being waived for the needs of a sick person. R. Borenstein responds that this reasoning would not suffice to draw a distinction between Shabbat and Yom Kippur because surely Yom Kippur is also being waived somewhere in the world for the needs of a sick person.

keeping a patient comfortable contributes *slightly* to restoring his health. Conversely, withholding comforts will, at worst, cause a slight deterioration of the patient's condition. However, even a slight deterioration can be grounds for violating Shabbat, based on a Talmudic precedent in the laws of circumcision. Circumcisions are delayed even for minor health concerns, the rationale being that since circumcision itself puts the child's health at risk, any additional complications increases the danger exponentially (cf. Talmud, *Yevamot* 71b).[36]

Jewish tradition tells us that one who sets out to perform a mitzvah merits divine protection. The Talmud writes that this protection is only provided to the person who is endangered by his own mitzvah performance (*Pesachim* 8b). However, when one person's mitzvah puts somebody else at risk, divine protection cannot be assumed and we are therefore required to play it safe. It follows that when a sick person does the mitzvah of reducing his food intake on Yom Kippur to less than the prosecutable amount, that mitzvah will help shield him from harm, but when this

[36] R. Borenstein deduces this idea from Maimonides who writes that we don't perform circumcision on any child who has even a minor illness because "life takes precedence over all else and it is possible to perform the circumcision after he is healed but it is impossible to resuscitate a lost Jewish life" (Laws of Circumcision 1:17). Why does Maimonides need to include in his argument the possibility of doing the circumcision on a later date? This implies that if it were not possible to do the circumcision later, we would indeed do it immediately despite the added risk. Being that it is forbidden to endanger the life of the child in order to perform a circumcision, it therefore follows that the level of risk added by a minor illness must be minimal. Because the risk is minimal, if not for the fact that we could perform the circumcision later, we would do it now. Similarly, in our circumstance, we can tolerate a minimal risk as long as there is some measure of divine protection, such as the merit of the performance of a mitzvah.

mitzvah is done by his caretakers there is no promise of divine protection for the patient.

In light of the above, R. Borenstein explains that the distinguishing factor between the *Shulchan Aruch's* two statements is not a Halachic difference between Shabbat and Yom Kippur, but a basic difference in the case itself. When it comes to patient care on Shabbat, no one has the right to limit the patient's comfort level and increase his health risks even minimally. Since the patient is not making the decision to violate Shabbat or not, he doesn't merit any special divine protection. His caretakers are therefore required to do all that is necessary to eliminate even the smallest risk to his health. However, when it comes to Yom Kippur, by reducing his food intake to less than the prosecutable amount, the patient himself fulfills a mitzvah. This mitzvah affords him divine protection that will counteract the minor effects of discomfort. It is therefore forbidden for him to eat more than the prosecutable amount (unless, of course, his condition absolutely requires it) (cf. *Avnei Nezer*, O.C. 454).

R. Borenstein's logic is compelling, but it seems counterintuitive that in certain situations others can do more for a patient than he can do for himself.

5. R. Borenstein's second approach begins with a question: When Shabbat is violated to save a life, do we consider that to be an observance of Shabbat? For example, someone who was unable to obtain an *etrog* (citron) for the holiday of Succot is obviously not guilty of neglecting a mitzvah—there was no negligence involved. However, it is also obvious that he has not performed the mitzvah of *etrog*. What about when Shabbat is violated to care for the sick? Can we say that Shabbat was observed? This depends on whether

the prohibitions of Shabbat are just "pushed aside" or rendered "permitted." If the prohibitions are merely "pushed aside," it is of course a great mitzvah to care for the patient, but it cannot be said that the Shabbat has been observed. If, however, the prohibitions of Shabbat are "permitted" when a patient is in need, then the activities that are done on behalf of the patient do not constitute a violation of Shabbat at all. R. Borenstein believes Shabbat prohibitions are "permitted" for the sake of saving a life.[37] Being that Shabbat is considered to be perfectly observed even when it is "violated" to care for a sick patient, forgoing the patient's comforts does not enhance the observance of Shabbat in any way and thus does not qualify as a "mitzvah." If it is not a mitzvah to abstain from providing extra comfort to the patient, then abstaining will not provide the divine protection needed to counteract the minor harm inflicted by the lack of comfort. However, limiting food consumption on Yom Kippur to less than the prosecutable amount is certainly considered to be an observance of Yom Kippur, and the

[37] This too is predicated on the opinion of Maharam of Rothenburg cited above (note 34). Although this seems to be in conflict with Maimonides himself who writes that Shabbat is "pushed aside" to save a life (Maimonides, Laws of Shabbat 2:2; cf. *Kesef Mishnah* ad loc.), R. Borenstein is not convinced. He deduces from Maimonides' very next statement, "those who reject the Torah and consider this [violation to save life] to be a violation of Shabbat...," that Maimonides believes that we do not regard these activities to be violations and one who does these activities for a sick person is considered to have observed the Shabbat. Further evidence that Shabbat is rendered "permitted" can be found in the Talmud itself. One of the Talmud's sources for violating Shabbat in order to save a life is a *kal v'chomer* (a fortiori) from the Temple service which is performed even on Shabbat (*Yoma* 85a). Certainly, the Temple service is meant to be done on Shabbat and is not considered a violation at all. Violations on behalf of the sick would thus be seen in the same light. (*Avnei Neizer* O.C. 455).

fulfillment of this mitzvah would thus provide divine protection from harm. Accordingly, the *Shulchan Aruch* allows Shabbat to be violated even for the patient's added comforts, but limits his food intake on Yom Kippur to the bare necessities (cf. *Avnei Nezer*, O.C. 455).

CONCLUSION

In conclusion, R. Chaim Soloveitchik's leniency, allowing an individual who is in imminent danger to eat to his heart's content, is predicated on two assumptions that are rejected by the *Shulchan Aruch*. First, the assumption that we follow the ruling of Maimonides, as understood by the *Maggid Mishnah*, that Shabbos may be violated merely for the purpose of providing additional comfort, is rejected by most of Maimonides' contemporaries as listed by the *Biur Halacha*. Secondly, even within the *Maggid Mishnah's* understanding of Maimondies' opinion, the assumption that this ruling permits the patient to eat on Yom Kippur without limitation is also not justified. According to all five approaches listed above, the lenient ruling of the *Shulchan Aruch* in the laws of Shabbat does not grant the patient the right to eat without limit on Yom Kippur. The *Shulchan Aruch's* ruling in the Laws of Yom Kippur (618:7) is founded on numerous sources[38] and is perfectly

[38] The *Biur Halacha* (328:4), in the conclusion of his elaborate rejection of Maimonides' position (see note 28), lists the dissenting opinions. They include: Rashi, Rabbeinu Tam, Rabbeinu Yitzchak, *Tosafot Yeshanim*, *Tosafot*, Meiri, Rashba and Ohr Zarua quoting Rabbeinu Eliezer. All these authorities only permit violations when abstaining from them would possibly result in a loss of life. The *Biur Halacha* thus concludes that one should be stringent and only permit what is necessary to remove the imminent danger.

clear: we are obligated to limit a patient's food to less than the prosecutable amount, even a patient whose life is in imminent danger, as long as the physicians confirm that he is not in need of greater quantities. We cannot deviate from a clear ruling of the *Shulchan Aruch*.

Reb Chaim claimed that he was not being lenient with the prohibitions of Shabbat and Yom Kippur, but rather stringent with the mitzvah to care for the sick. In truth, all Halachic authorities concur that Shabbat and Yom Kippur must be violated to provide any care that may improve the patient's health and thereby extend his life.[39] It is only with regard to violations for the purpose of providing comforts that do not extend the patient's life, such as raising and lowering the position of an adjustable bed, turning a light on or off, or calling relatives to come and visit, that we reject Reb Chaim's leniency. We too are stringent about caring for the sick, but can violating Shabbat or Yom Kippur for comfort honestly be categorized as a Halachic "stringency"?!

[39] This point is underscored by the *Biur Halacha* (328:4) and is stated by the *Shulchan Aruch* in the context of eating on Yom Kippur (O.C. 618:1).

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