

# Toras Aish

## Thoughts From Across the Torah Spectrum

**RABBI LORD JONATHAN SACKS**

### Covenant & Conversation

**T**he shock is immense. For several weeks and many chapters -- the longest prelude in the Torah -- we have read of the preparations for the moment at which G-d would bring His presence to rest in the midst of the people. Five parshiyot (Terumah, Tetzaveh, Ki Tissa, Vayakhel and Pekudei) describe the instructions for building the sanctuary. Two (Vayikra, Tzav) detail the sacrificial offerings to be brought there. All is now ready. For seven days the priests (Aaron and his sons) are consecrated into office. Now comes the eighth day when the service of the mishkan will begin.

The entire people have played their part in constructing what will become the visible home of the Divine presence on earth. With a simple, moving verse the drama reaches its climax: "Moses and Aaron went into the Tent of Meeting and when they came out, they blessed the people. G-d's glory was then revealed to all the people" (9: 23).

Just as we think the narrative has reached closure, a terrifying scene takes place: "Aaron's sons, Nadav and Avihu, took their censers, put fire into them and added incense; and they offered unauthorized fire before G-d, which He had not instructed them to offer. Fire came forth from before G-d, and it consumed them so that they died before G-d. Moses then said to Aaron: 'This is what G-d spoke of when he said: Among those who approach Me I will show myself holy; in the sight of all the people I will be honoured.'" (10:1-3)

Celebration turned to tragedy. The two eldest sons of Aaron die. The sages and commentators offer many explanations. Nadav and Avihu died because: they entered the holy of holies; (Midrash Tanhuma (Buber), Acharei Mot, 7) they were not wearing the requisite clothes; (Vayikra Rabbah 20: 9) they took fire from the kitchen, not the altar; (Midrash Tanhuma, ibid.) they did not consult Moses and Aaron; (Yalkut Shimoni, Shmini, 524) nor did they consult one another. (Midrash Tanhuma, ibid.) According to some they were guilty of hubris. They were impatient to assume leadership roles themselves; (Midrash Aggada (Buber), Vayikra 10) and they did not marry, considering themselves above such things. (Vayikra Rabbah 20: 10) Yet others see their deaths as delayed punishment for an earlier sin, when, at Mount Sinai they "ate and drank" in the presence of

G-d (Ex. 24: 9-11).

These interpretations represent close readings of the four places in the Torah which Nadav and Avihu's death is mentioned (Lev. 10:2, 16: 1, Num. 3: 4, 26: 61), as well as the reference to their presence on Mount Sinai. Each is a profound meditation on the dangers of over-enthusiasm in the religious life. However, the simplest explanation is the one explicit in the Torah itself. Nadav and Avihu died because they offered unauthorized, literally "strange," fire, meaning "that which was not commanded." To understand the significance of this we must go back to first principles and remind ourselves of the meaning of kadosh, "holy", and thus of mikdash as the home of the holy.

The holy is that segment of time and space G-d has reserved for His presence. Creation involves concealment. The word olam, universe, is semantically linked to the word neelam, "hidden". To give mankind some of His own creative powers -- the use of language to think, communicate, understand, imagine alternative futures and choose between them -- G-d must do more than create homo sapiens. He must efface Himself (what the kabbalists called tzimtzum) to create space for human action. No single act more profoundly indicates the love and generosity implicit in creation. G-d as we encounter Him in the Torah is like a parent who knows He must hold back, let go, refrain from intervening, if his children are to become responsible and mature. But there is a limit. To efface Himself entirely would be equivalent to abandoning the world, deserting his own children. That, G-d may not and will not do. How then does G-d leave a trace of his presence on earth?

The biblical answer is not philosophical. A philosophical answer (I am thinking here of the mainstream of Western philosophy, beginning in antiquity with Plato, in modernity with Descartes) would be one that applies universally -- i.e. at all times, in all places. But there is no answer that applies to all times and places. That is why philosophy cannot and never will understand the apparent contradiction between divine creation and human freewill, or between divine presence and the empirical world in which we reflect, choose and act.

Jewish thought is counter-philosophical. It insists that truths are embodied precisely in particular times and places. There are holy times (the seventh day, seventh month, seventh year, and the end of

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seven septennial cycles, the jubilee). There are holy people (the children of Israel as a whole; within them, the Levi'im, and within them the Cohanim). And there is holy space (eventually, Israel; within that, Jerusalem; within that the Temple; in the desert, they were the mishkan, the holy, and the holy of holies).

The holy is that point of time and space in which the presence of G-d is encountered by tzimtzum -- self-renunciation -- on the part of mankind. Just as G-d makes space for man by an act of self-limitation, so man makes space for G-d by an act of self-limitation. The holy is where G-d is experienced as absolute presence. Not accidentally but essentially, this can only take place through the total renunciation of human will and initiative. That is not because G-d does not value human will and initiative. To the contrary: G-d has empowered mankind to use them to become His "partners in the work of creation".

However, to be true to G-d's purposes, there must be times and places at which humanity experiences the reality of the divine. Those times and places require absolute obedience. The most fundamental mistake -- the mistake of Nadav and Avihu -- is to take the powers that belong to man's encounter with the world, and apply them to man's encounter with the Divine. Had Nadav and Avihu used their own initiative to fight evil and injustice they would have been heroes. Because they used their own initiative in the arena of the holy, they erred. They asserted their own presence in the absolute presence of G-d. That is a contradiction in terms. That is why they died.

We err if we think of G-d as capricious, jealous, angry: a myth spread by early Christianity in an attempt to define itself as the religion of love, superseding the cruel/harsh/retributive G-d of the "Old Testament". When the Torah itself uses such language it "speaks in the language of humanity" (Berakhot 31a) -- that is to say, in terms people will understand.

In truth, Tenakh is a love story through and through -- the passionate love of the Creator for His creatures that survives all the disappointments and betrayals of human history. G-d needs us to encounter Him, not because He needs mankind but because we need Him. If civilization is to be guided by love, justice, and respect for the integrity of creation, there must be

moments in which we leave the "I" behind and encounter the fullness of being in all its glory.

That is the function of the holy -- the point at which "I am" is silent in the overwhelming presence of "There is". That is what Nadav and Avihu forgot -- that to enter holy space or time requires ontological humility, the total renunciation of human initiative and desire.

The significance of this fact cannot be overestimated. When we confuse G-d's will with our will, we turn the holy -- the source of life -- into something unholy and a source of death. The classic example of this is "holy war," jihad, Crusade -- investing imperialism (the desire to rule over other people) with the cloak of sanctity as if conquest and forced conversion were G-d's will.

The story of Nadav and Avihu reminds us yet again of the warning first spelled out in the days of Cain and Abel. The first act of worship led to the first murder. Like nuclear fission, worship generates power, which can be benign but can also be profoundly dangerous.

The episode of Nadav and Avihu is written in three kinds of fire. First there is the fire from heaven: "Fire came forth from before G-d and consumed the burnt offering..." (9: 24)

This was the fire of favour, consummating the service of the sanctuary. Then came the "unauthorized fire" offered by the two sons. "Aaron's sons, Nadav and Avihu took their censers, put fire in them and added incense; and they offered unauthorized fire before G-d, which He had not instructed them to offer." (10:1)

Then there was the counter-fire from heaven: "Fire came forth from before G-d, and it consumed them so that they died before G-d." (10:2)

The message is simple and intensely serious: Religion is not what the European Enlightenment thought it would become: mute, marginal and mild. It is fire -- and like fire, it warms but it also burns. And we are the guardians of the flame. ©2015 Rabbi Lord J. Sacks and rabbisacks.org

### **RABBI SHLOMO RISKIN**

## **Shabbat Shalom**

"**S**peak to the children of Israel saying, when a woman conceives (tazria) and gives birth to a male ... on the eighth day the child's foreskin shall be circumcised." (Leviticus 12:2-3) The Hebrew word "halacha" is the term used for Jewish law which is the constitution and bedrock of our nation; indeed, we became a nation at Sinai when we accepted the Divine covenantal laws of ritual, ethics and morality which are to educate and shape us into a "special treasure... a kingdom of priest-teachers and a holy nation" (Exodus 19:5-6).

The verb of the root "hlch" means "walk"; progressing from one place to another, and not remaining static or stuck in one place, as in the biblical verses: "Walk before Me [hit'halech] and become

whole-hearted" (Genesis 17: 1) and "You shall walk [ve'halachta] in [G-d's] pathways" (Deuteronomy 5: 33).

This is important since scientific discoveries and social norms are constantly evolving, and it is incumbent upon scholars to consider these changing realities when determining halachic norms, such as establishing time of death (no longer considered the cessation of the respiratory function, but rather now considered brain-stem death), which would allow for heart transplants.

For this reason, the Oral Law was never supposed to have been written down – for fear that it become ossified.

It was only because our lost sovereignty (70 CE), pursuant exile and almost incessant persecution might have caused us to forget our sacred traditions that the Sages reluctantly agreed to commit the Oral Law to writing in the form of the Talmud, declaring, "It is time to do for the Lord, they must nullify the Torah law" not to record the Oral Law (Tmura 14b).

However, thanks to responsa literature, where sages respond to questions of Jewish law from Jews in every country in the globe, halacha has kept "in sync" with new conditions and new realities.

I would like to bring to your attention a groundbreaking responsum published by the great Talmudic luminary Rav Moshe Feinstein in 1961, regarding the verse which opens our Torah portion. Reactionary forces opposed his ideas, burnt his books and harassed his household, but he refused to recant.

The Hebrew word *tazria* in the above quote literally means "inseminated," *zera* being the Hebrew word for seed or sperm. The rabbi was asked whether a woman who had been artificially inseminated, after 10 years of a childless marriage because of her husband's infertility, could still maintain sexual relations with her husband. In other words: did the "new invention" of artificial insemination by a man who is not her husband constitute an act of adultery, which would make the woman forbidden to her husband?

Rav Moshe responded forthrightly and unequivocally: "It is clear that in the absence of an act of sexual intimacy, a woman cannot be forbidden to her husband or considered to be an unfaithful wife ...similarly, the child is kosher, because *mamzerut* (bastardy) can only occur by means of an act of sexual intimacy between a married woman and a man not her husband, not by means of sperm artificially inseminated." The sage added how important it is for us to understand the deep existential need a woman has for a child and how our "holy matriarchs" all yearned to bear children "and all women in the world are like them in this respect." If the mother does not know the identity of the sperm donor, it would not prevent the later marriage of the child (lest he/she marry a sibling), since we go in accordance with the majority of people, who would not be siblings to this child (Igrot Moshe, Even

HaEzer, siman 10).

This responsum opened the door for many single women who refuse to be promiscuous, or to take a marriage partner solely for the sake of having a child with him, but who desperately wish to have a child of their own and continue the Jewish narrative into the next generation. Especially given the obiter dictum Rav Moshe included, in which he explained the importance of having a child especially to a woman and specifically states that he would have allowed the woman to be artificially inseminated *ab initio* (l'hat'hila — since the woman asked her question after she had already been inseminated), this responsum has mitigated to a great extent the problem of female infertility. If a given woman does not have a properly functional ovum, her husband's sperm can artificially inseminate a healthy ovum, which can be implanted within the birth mother who will then carry the fetus until delivery; and if a woman is able to have her ovum fertilized by her husband's sperm but is unable to carry the fetus in her womb, a surrogate can carry the fetus until delivery.

The question is to be asked: Who then is the true mother, the one who provides the fertilized ovum or the one who carries the fetus to its actual birth? Depending on the response, we will know whether or not we must convert the baby if the true mother was not Jewish.

Rav Shlomo Goren, a former chief rabbi of Israel (and previously the IDF chief chaplain), provides the answer from our parsha's introductory text: "When a woman is 'inseminated (*tazria*) and gives birth..." The word "*tazria*" seems at first to be superfluous. Rav Goren explains that it took 4,000 years for us to understand that this word is informing us that the true biological mother is the one whose ovum was "inseminated." ©2015 *Ohr Torah Institutions & Rabbi S. Riskin*

#### RABBI AVI WEISS

## Shabbat Forshpeis

**S**urvivors of the Shoah encounter the experience through what can be called "pure memory." Their relationship to the event is direct, with very little intervening. As we move further away from the Shoah, and we who were not there seek to remember, symbols may be required to help us. It is in this realm that Shoah memory faces its greatest threat and its greatest challenge.

In Judaism, the symbols used in ritual to evoke memory tend to be simple. The paradigmatic memory for Jews is the Exodus from Egypt. The two major symbols of that event—the matzah used on the festival of Passover and the booths built for the holiday of Sukkot—share the element of simplicity. Matzah is a humble food, a mere flat bread that does not rise. The sukkah, too, is a modest symbol, nothing more than a humble shelter.

Perhaps the rabbis understood that if symbols are associated with wealth and power rather than remaining simple tools to promote memory, there is a danger that they can become identified, and even replace, the actual event or object they had been summoned to represent. Maimonides notes that idolatry began when good people created images as a way through which finite human beings could connect with the infinite G-d; the images served as a kind of bridge. However, people soon mistakenly saw the images as G-d Himself. In the process, they forgot what the image had been originally created to symbolize, thereby perverting faith, as the idol itself became in their minds the divine.

When it comes to Shoah memory, the emphasis most recently has been on two symbols representing wealth and power: Holocaust asset restitution and the Holocaust Museum in Washington, D.C. These two have, in a sense, become the contemporary images created to connect to the tragedy of the Six Million. A very palpable danger exists that they will, like idols, become objects of worship themselves, while the pure memory of the event that they had been created to invoke will be lost.

Recouping stolen assets can, of course, be a positive symbol of the Shoah, as it notifies the world that justice demands that the guilty pay. If, however, financial restitution becomes an end unto itself, if it is conflated with the injustice that it was meant to symbolize, the Shoah may be remembered for stolen money rather than for stolen souls. Shoah memory would thereby be falsified and demeaned.

Similarly, the Holocaust Museum as a symbol of the Six Million could be, and in many ways has been, a positive force; millions of visitors have come through its portals to learn about the Shoah. Yet if the museum becomes an end unto itself as it is engulfed in Washington politics, turf battles and power plays, it could critically compromise and distort Shoah memory.

Indeed, the real danger is that if we allow restitution and the museum to evolve into ends unto themselves, Shoah memory will be desecrated. These important contemporary undertakings can come to replace the Six Million rather than serve as the path to remembering them. Taken to the extreme, they, like any other symbol, can become a form of idolatry.

The Shoah, like the Exodus, requires a pure spiritual ritual experience in order to be authentically remembered. Today more than ever we need to strive to achieve untainted memory without ostentation and without politics. As with the Exodus, the only way the Shoah will be remembered is through ritual-through a participatory service like the Passover seder in which all present re-experience the event. Nothing in Jewish history has ever been remembered in the absence of ritual.

That ritual must be simple, uncontaminated by

wealth and power, humble and self-effacing. Just as the matzah and the sukkah have served over the generations to symbolize the redemption from Egypt in all its immediacy, so too the rituals that we must devise to remember the Shoah must remain as close to the truth for generations to come as the "pure memory" today of the remaining survivors. © 2006 Hebrew Institute of Riverdale & CJC-AMCHA. Rabbi Avi Weiss is Founder and Dean of Yeshivat Chovevei Torah, the Open Orthodox Rabbinical School, and Senior Rabbi of the Hebrew Institute of Riverdale

#### RABBI BEREL WEIN

### Wein Online

**D**ue to the fact that the seventh day of Pesach this year falls on a Friday, the Torah reading of Shmini will occur on different dates in the Jewish world. Here in Israel it will be read immediately after the conclusion of the holiday of Pesach, which is only seven days in length. In the exile/diaspora the Shabbat immediately after the seventh day of Pesach is reckoned and observed as the eighth day of Pesach and therefore the Torah reading of Shmini is postponed until the next Shabbat.

Eventually the Torah readings of the land of Israel and of the exile/diaspora will be reconciled and become simultaneous once more. The observance of the extra day of Pesach, Succot and Shavuot is an ancient custom already recorded for us in the times of the Second Temple. It has been given halachic legitimacy and emphasis for the exile/diaspora by rabbinic literature and responsa ever since then.

Though the original reason given for its observance apparently no longer applies, the tradition and custom of our forefathers is binding upon the Jewish world till now. All of those groupings that tinkered with this and other Jewish customs and traditions over the ages have sooner or later diminished or even disappeared from the Jewish world. And those who abolished the eighth day of Pesach in the exile/diaspora eventually found themselves wanting even on the seventh day.

Jewish history is harsh and unbending when it comes to unnecessary, frivolous and temporarily politically correct changes and compromises. So, to a great extent, Shmini shel Pesach – the extra eighth day of the holiday - has become a litmus test for Jewish survival and continuity in the exile/diaspora.

The Torah references this by emphasizing that the dedication of the Mishkan/Tabernacle took place on the eighth day. The eighth day represents the continuity and extension of the spirit and the lessons of the seven commemorative days that preceded it. One is charged with somehow feeling greater, more spiritual and more purposeful after the seven days of commemoration and dedication.

The eighth day is the measure of what we have

gained over the seven days that preceded it. This is also true as far as holidays are concerned and is equally true with all momentous occasions in Jewish life. Living in the land of Israel has always been meaningful and challenging at the same time, and has a holiness and personality all its own. Every day in Israel is the eighth day.

The exile/diaspora does not have that quality or ability built within it. It requires a special eighth day in order to fortify the gains and attitudes that the seven days of the holiday granted. Judaism operates on a rational but yet mystical plane of events, commandments and customs. It allows no shortcuts and frowns upon foreign imports into its spirit and lifestyle.

All of this is represented in the dichotomy that it has created between the observance of the eighth day in the land of Israel and in the exile/diaspora. This important lesson should be incorporated into our observance of this Shabbat, whether it be here in Israel where it is the Torah reading of Shmini – the “real” eighth day, so to speak – or in the exile/diaspora where it is the eighth day of Pesach itself. ©2015 Rabbi Berel Wein - Jewish historian, author and international lecturer offers a complete selection of CDs, audio tapes, video tapes, DVDs, and books on Jewish history at [www.rabbiwein.com](http://www.rabbiwein.com). For more information on these and other products visit [www.rabbiwein.com](http://www.rabbiwein.com)

**DR. ARNOLD LUSTIGER**

## Vort from the Rav

**"D**o not leave your heads unshorn, and do not rend your garments" (Lev. 10:6). Moses enjoined Aaron and his two surviving sons from mourning for Nadav and Avihu. The inalienable right to which every parent is entitled of mourning the death of a child was denied to Aaron and his sons. Why? Because the priests constituted a community of the anointed who were consecrated exclusively to the service of the Lord.

The commitment or consecration of a priest to G-d is ultimate, all-demanding, and all-inclusive. G-d lays unrestricted claim not to a part but to the whole of the human personality. Existence in toto, in its external and inward manifestations, is consecrated to G-d. Aaron belonged to no one, not even to himself: only to G-d. He was not even free to give himself over to the grief precipitated by the loss of his two sons; he had no private world of his own. Even the heart of Aaron was divine property.

What does all this mean in psychological terms? G-d wanted Aaron to disown the strongest emotion in man -- the love for a child. Is it possible? As far as modern man is concerned I would not dare answer. With respect to Biblical man, we read that Aaron acted in accord with the divine instruction: Aaron withdrew from himself; he withdrew from being a father.

This movement of recoil is tantamount to self-denial.

Not only Aaron, but the entire covenantal community, was summoned by G-d into His service. Once man enters the service of G-d, be it as high-priest or as an ordinary humble person, his commitment is not partial; it is total. He is subject to the divine call for total inner withdrawal. Here the Halacha intervenes frequently in the most intimate and personal phases of our lives, and makes demands upon us which often impress the uninitiated as overly rigid and formal.

Let us take an example. We all know the law that a festival suspends the mourning for one of the seven intimate relatives. If one began to observe the shiva period a short time before the holiday was ushered in, the commencement of the latter cancels the shiva.

Mourning in Halacha consists of far more than the performance of external ritual or ceremony. It is an inner experience of black despair, of complete existential failure, of the absurdity of being. It is a grisly experience which overwhelms man, shatters his faith and exposes his I-awareness as a delusion. Similarly, the precept of rejoicing on a holiday includes not only ceremonial actions, but a genuine experience of joy as well. When the Torah decreed, and you shalt rejoice in your feast, it referred not to merrymaking and entertaining, to artificial gaiety or some sort of shallow hilarity, but to an all-penetrating depth-experience of spiritual joy, serenity and peace of mind deriving from faith and the awareness of G-d's presence.

Now let us visualize the following concrete situation. The mourner, who has buried a beloved wife or mother, returns home from the graveyard where he has left part of himself, where he has witnessed the mockery of human existence. He is in a mood to question the validity of our entire axiological universe. The house is empty, dreary, every piece of furniture reminds the mourner of the beloved person he has buried. Every corner is full of memories.

Yet the Halacha addresses itself to the lonely mourner, whispering to him: "Rise from your mourning; cast the ashes from your head; change your clothes; light the festive candles; recite over a cup of wine the Kiddush extolling the Lord for giving us festivals of gladness and sacred seasons of joy; pronounce the blessing of Blessed art Thou... who has kept us in life and has preserved us and has enabled us to reach this season; join the jubilating community and celebrate the holiday as if nothing had transpired, as if the beloved person over whose death you grieve were with you." The Halacha, which at times can be very tender, understanding and accommodating, may on other occasions act like a disciplinarian demanding obedience. The Halacha suggests to man, broken in body and spirit, carrying the burden of an absurd existence, that he change his mood, that he cast off his grief and choose joy.

Let us repeat the question: Is such a metamorphosis of the state of mind of an individual possible? Can one make the leap from utter bleak desolation and hopelessness into joyous trust? Can one replace the experience of monstrosity with the feeling of highest meaningfulness? I have no right to judge. However, I know of people who attempted to perform this greatest of all miracles. (Catharsis, pp. 47-49) © 2015 Dr. A. Lustiger & Torah Musings

### **RABBI DOV KRAMER**

## **Taking a Closer Look**

**"D**o not conduct yourself in the manner of lawyers" (Pirkay Avos 1:8). There are many "lawyer jokes" out there, but this teaching of [Rabbi] Yehuda ben Tabai was not intended as one. What did he find offensive about lawyers that he warned his students not to act like them? Is there a problem with being a lawyer? Don't those either summoned to court or who have to bring someone else to court in order to recover what (they think) is rightfully theirs need (and deserve) someone who "knows the system" to help them? If he found lawyers offensive, why wasn't his advice (or directive) simply to not become lawyers? What does it mean to "act like a lawyer" that we should not do the same?

Pirkay Avos is accurately described as "Ethics of our Fathers," as it relates ethical teachings that our sages taught. More specifically, though, it is a record of the ethical teachings that each of these sages taught to his students. Because it consists of ethical teachings, the commentators don't necessarily try to accurately relate what the intent of the original teaching was; the ethical lesson they bring out is also valid, and adds much to our tradition. Nevertheless, my intent here is to try to understand what Rabbi Yehuda ben Tabai meant when he taught this to his students; the fact that there are various other ways this teaching can be explained does not detract from an attempt to understand what was originally intended, nor does such an attempt detract from the valuable other lessons learned from and/or taught through his words.

The Mesechta (Tractate) starts with a record of how the Torah was transmitted through the earlier generations, and continues with some of the specific ethical teachings subsequent leaders of their generation taught to their students. Rabbi Yehuda ben Tabai himself, in his very next "teaching" (which is a continuation of this one) tells his students what perspective to have when litigants are before them, obviously referring to a situation where his students are the judges of a court case (see also 1:9, which is addressed specifically to judges, and 1:11, which is directed at leaders). Since he is teaching his students how to act when they are judges, some (e.g. Rabbeinu Bachye) explain "not acting like a lawyer" to also be referring to when they are the judge of a case; if you

are the judge, you can not act like a lawyer, helping one of the litigants argue his case, even if you are convinced that he is right. From this perspective, there is nothing wrong with being a lawyer; it is only the judge who cannot conduct himself the way a lawyer would.

Although conceptually this is true (see Rambam's Hilchos Sanhedrin 21:11 and Choshen Mishpat 17:8, where this is codified as law), it is difficult to say that this is what Rabbi Yehuda ben Tabai was trying to teach his students. For one thing, as Beis Avos (written by the Vilna Ga'on's son, R' Sh'lomo Zalman) points out, this teaching continues by saying "and when the litigants are before you," which strongly implies that the previous part was not limited to "when the litigants are before you," and therefore applies even in situations when not a judge. Additionally, the Talmud (K'subos 52b and 85b-86a) tells us of cases where Rabbi Yochanan and Rav Nachman advised their relatives how to attain a more favorable judgment in their upcoming court cases, after which they regretted having done so because they had "acted the way lawyers do." Since in both of those cases the person giving the advice was not directly involved in the case, and was certainly not one of the judges, the issue of "acting like a lawyer" cannot apply only to judges.

Those situations raise other issues, issues that can help us focus on what the problem with "acting like a lawyer" might be. In both cases, the Talmud asks what the person who advised his relative was thinking when he first gave the advice (since "acting like a lawyer" is problematic) and what he was thinking when he regretted doing so (what changed his mind). The Talmud explains that originally they thought that advising a relative was appropriate, since we are told not to "close our eyes" to a relative in need (Yeshayahu 58:7), but then realized that since they are people of stature, it was inappropriate for them to have done so. If "acting like a lawyer" is problematic, why would be okay to do so for a relative? Can we violate other things to help out family members? (Obviously not.) If the reason they regretted doing so was based on their stature, the implication is that for those of lesser stature it would be okay to "act like a lawyer." How does their stature affect their ability to do something that is allowed, and is perhaps even recommended, for others?

Rashi (86a) says that being men of stature makes a difference because others who see them advise a litigant might think it's okay to do so even for non-relatives. [Interestingly, Rashi only tells us this on 86a; he doesn't explain why someone of stature is different on 52b.] It is clear from Rashi (and the Talmud's implication that the reason these "men of stature" advised their relatives was precisely because they were relatives) that it was only appropriate because they were relatives. However, if even a layperson is supposed to "act like a lawyer" for

relatives, why is it problematic for someone of stature to do so? The example he is setting is perfect -- helping a relative! Rabbeinu Yehonasan from Lunil (on 52b) says that the reason someone of stature shouldn't advise his relatives is because people will say he did something inappropriate. But if helping a relative by advising them for their court case is appropriate, why would people think it was inappropriate?

Avos d'Rav Nasan (10:2), after quoting our Mishna, explains how this is to be fulfilled: "If you come to the study hall and you hear a court decision or a law that was decided, do not let your spirit let you rush to respond. Rather, be seated and ask how such a conclusion was reached." As Rav Yaakov Kamenestsky (in his commentary on Avos) explains (although he applies it differently), the point is to not reach a conclusion too hastily, but instead to take the time (and have the patience) to think the matter through, and get a thorough background on all the pertinent issues before coming to any conclusions. If, after that, there is still a difference of opinion, it should certainly be discussed, but until then, it would be inappropriate to express an opinion on the matter.

The obvious difference between stating an opinion before thinking it through and waiting until a more appropriate conclusion is reached is the likelihood of being correct. What is not necessarily so obvious is why an opinion stated prematurely is more likely to be incorrect, as well as why an opinion would even be offered before the issue is thoroughly researched and investigated. (I know this is done often, as evidenced by the writing of so many bloggers and columnists, but the question is why they would expose themselves as being shallow rather than holding off until they can develop a more informed and mature opinion.)

The wording of Avos d'Rav Nasan, "do not let your spirit let you rush to respond," pinpoints the issue as being "your spirit," i.e. your biases. Because of our predispositions, our initial reaction is to discredit anything that runs counter to them. We are therefore advised not to offer any initial reaction, but to find out what the decision is really based on. Since refraining from reacting based on our biases is described as fulfilling the dictum of not "acting like a lawyer," it would seem that "acting like a lawyer" refers to advocating for a position we are biased towards even before we have thought the issue through. More precisely (since ideally any "predispositions" we have are based on a carefully researched and thought out opinion), it is the initial reaction to a specific decision that must be guarded against, as even if our "predisposition" is valid, our initial rejection of something we think runs counter to it may not be.

It can therefore be suggested that Rabbi Yehuda ben Tabai was trying to teach his students to carefully consider everything on its own merits, rather than being an advocate. For anything. Or anyone.

Every situation that arises must be carefully examined, without making a determination or taking sides before all the facts are in. The job of a lawyer, on the other hand, is to advocate for his or her client, whether or not they are right. The admonition not to "act like a lawyer" certainly applies when judging a case, as a judge is not allowed to help one side by suggesting an argument to make -- even if convinced that side is right -- because which side is really right has not yet been determined. And it applies in the study hall, as a student should not argue against a decision or law before understanding its full context just because he thinks it doesn't fit within his previously established framework.

Since the teachings of Pirkay Avos are not halachic obligations, but (as Tiferes Yisroel points out on this very part of our Mishna) advice for the best way to approach things, Rabbi Yehuda ben Tabai is not outlawing becoming a lawyer, just telling his students that not only are they better off not becoming lawyers (because it means putting their clients interests above the truth, even if nothing untrue is said), but they should not act the way lawyers do either; they shouldn't advocate for anything or anyone, evaluating every situation on its own merits instead.

Normally, advising one litigant means advocating for one side, which is what is being advised against. When it comes to relatives, though, we are supposed to help them out, so Rabbi Yochanan and Rabbi Nachman (in the Talmud) gave their relatives advice. Nevertheless, since those in a position of authority could be seen as using their stature to impact the case (not just advising their relatives how to proceed within the case), they regretted having done so. © 2015 Rabbi D. Kramer

#### JEWISH WORLD REVIEW

## **A Day Too Late**

*By Rabbi Nathan Lopes Cardozo*

**A**s has been explained by numerous commentators and philosophers, the biblical commandment to count 49 days (Leviticus 23:15) between Passover and Shavuot (Pentecost), is to encourage man not just to count these days but to use this time to take account of himself and to introspect. The Exodus from Egypt, which is the beginning of our forefathers' first encounter with liberty and its culmination with the giving of the Torah, the law of moral freedom, at Mount Sinai, should become ingrained in our personalities, inspiring a constant elevation of our very being. The purpose of the period between these two festivals is therefore to re-enact and relive these sublime moments so as to become elevated.

It is a major tragedy when Jews start to believe that these festivals are given just to remember what happened thousands of years ago. Instead, they should utilize these festivals to realize that the goal is not just to perform but above all to transform.

Nothing is more dangerous for man than to stay spiritually stale. It is for this reason than one is required to count the 49 days of the Omer. To prepare ourselves for the upcoming celebration on Shavuos of the giving of the Torah we are asked to climb a ladder of 49 spiritual rungs in which each day will add another dimension to our souls.

Commentators are therefore surprised to notice that the actual counting of the Omer starts on the second day of Passover and not on the first (ibid.) If the purpose of the counting is indeed to re-enact the whole historical period between Passover and Shavuos why not start on the same day that the Exodus took place which was also the first day in which Jews started their journey to moral freedom? Why only start counting on the second day when in fact this period of transformation started one day earlier?

Carefully examining the condition of the Jews on the day of the actual Exodus (the first day of Passover) we become aware of a strange phenomenon. It is the astonishing passivity of the Jews that stands out. There is no action whatsoever and no initiative. Jews were told to stay inside their homes, and simply wait for Moses to give the sign to start leaving Egypt. There are no planned confrontations with the Egyptians, no speeches of national revival, no demonstrations, but only silence, absolute quiet and a spirit of inert waiting. Only after Moses calls on the Jews to move is there motion, and the Jews humbly leave Egypt.

What becomes increasingly clear is that it is only G-d who acts on this day. There is no human initiative. It is solely G-d who takes them out, and it is He who leads the way. It is a moment where there cannot be any misunderstanding about who is calling the shots. It is the day of G-d's unfathomable strength. While man stays utterly passive, it is G-d "who steals the show" and gives evidence of His absolute sovereignty. The only thing man is asked to do is to follow like a slave follows his master. G-d's protection is impervious.

But once they have left the borders of Egypt, we see a radical change. Suddenly the Israelites wake up from their imposed passivity and realize that they had better start preparing for a long road through the desert. It is now that they need to show courage and patience. The earlier divine protection is no longer watertight. Only a few days on the road, the Israelites learn that Pharaoh and his army are approaching with the intent to take revenge. He wants the Jews back home and if necessary will use all the forces at his disposal to accomplish this goal. Why, the Israelites must have wondered, does G-d not make sure that Pharaoh stays home? Yesterday he did not make any noise; he didn't even attempt to stop them from leaving! They even ask Moses why they have to die in the desert (Exodus 14:11). It all looked so great on that first

day of the Exodus! Everything was taken care of. G-d's protection was complete and without deficiency. So why not continue this most comfortable situation?

Indeed, on the second day, it is no longer G-d who pulls all the strings. It is as if G-d has decided to move into the background, and man will have to become more active. Only after a lot of complaining and fervent prayers He is prepared to step in and provide them with a basic protection and decides to split the Sea of Reeds. Could G-d not have split the sea a little earlier to save the Jews unnecessary anguish?! Why not let things continue like the day before when everything was under control and nearly a messianic condition was prevailing?

The point is clear: It is man who has to carry his own responsibility. The option of sitting in one's armchair and passively relying on G-d and His benevolence does not exist. Man is brought into the world to take moral action, to grow spiritually and dignify himself through hardship and struggle. It is the desert that functions as the classroom where Jews learn to become a light to the nations and set a moral example. This is the purpose of life, and this is its condition.

But why, then, did He first create a day that resembled paradise only to plunge them the next day into worries and feelings of insecurity? Because without the knowledge and the experience that ultimately G-d is in total power, their obligation to be morally responsible would stand on quicksand. Why be moral when there is no unshakable foundation on which this morality depends? Man first has to learn that there is a purpose to his struggle for moral behavior, not just a utilitarian one, but, above all, an existential one. He first has to be convinced that there is more to life than meets the eye. First it has to become clear that G-d and only G-d is the ultimate source of everything. At such a moment, man has to stand in awe, overwhelmed by the grandeur of G-d's infinite power. Man needs to become completely powerless before he is able to take action and become responsible.

Because of this, the real struggle for moral liberty started the day after the Exodus from Egypt. The first day was a given. It was the day of G-d and not of man. It was the day of passivity and complete surrender. Only the next day the spiritual labor of man started. It is consequently the first day of his spiritual elevation. It is for this reason that throughout all the generations we first have to learn what G-d's power is all about and that is what we celebrate on the first day of Passover and specifically when reading the Hagada. Only after we are totally overpowered by G-d's absolute omnipotence and spend a day in contemplative awe, are we able to take moral action on the second day.

This, we believe, is the reason why the counting of the Omer only starts on the second day. The first day does not count. ©2007 Rabbi N.L. Cardozo & [jewishworldreview.com](http://jewishworldreview.com)