

DO NOT MAKE FACTIONS:
LO TITGODEDU IN THE WRITINGS OF RABBIS
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OVADIA YOSEF AND
ELIEZER LIEBERMANN

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Do Not Make Factions: *Lo Titgodedu* in the Writings of Rabbis Yechiel Yaakov Weinberg Ovadia Yosef and Eliezer Lieberman, by Marc Katz

The words, *lo titgodedu* appear for the first time in Deuteronomy 14:1 as a prohibition against self-mutilation during mourning. However, during the rabbinic era the rabbis turned this phrase into an important collectivist principle. ~~Lo~~ *titgodedu*—do not make gashes”, became midrashically, ~~Lo~~ *ta’asu agudot agudot*—do not make factions” (lit. do not make bundles upon bundles, see *Yeb.* 13b, *Sifrei D’varim* 96). For example, it is through *lo titgodedu* that we find the prohibition against hiring disputing judges in a single rabbinic law court. Here, this law was enacted to avoid part of a rabbinical court ruling like Hillel and part like Shammai. As their disputes governed many important areas of Jewish life such as marriage and food, failure to achieve unity in a community could result in invalid unions and the widespread doubt about the permissibility of certain food items. As time progressed, many in the medieval world debate the rationale behind the law. Was it primarily in place to stop arguments or to ensure that the legal system seemed uniform and not open to multiple truth claims? These two rationales influenced how commentators would legislate using the precept. This background will be discussed in the introduction and first two chapters of the thesis and will make extensive use of Mishnaic and Talmudic sources, as well as codes, and commentaries.

The thesis will explain how three traditional rabbis –Yechiel Yaakov Weinberg (1884-1966), Ovadia Yosef (1920-), and Eleizer Lieberman (early 19th C) understood *lo titgodedu* by examining their writings (responsa, articles). By looking at these thinkers and their approaches to the law, I seek to look at two things. The first is how these influential Orthodox Jewish leaders balanced the traditional notion of collectivism with the reality of a modern world that is marked by autonomy and diversity. Secondly, I seek to use their approach to develop a model for balancing notions of collectivism and individuality in our Jewish world (i.e., liberal Jewish circles). My belief is that the notion of *lo titgodedu* provides a useful paradigm for liberal Jews to discuss issues of unity and separatism in our own world. I will therefore conclude my thesis by focusing on the utility of this concept for liberal Judaism today.

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Introduction

All halachic precepts tell a story and have a history. Throughout time, as Jews encountered lands and cultures different from their own, they were forced to develop a new legal vocabulary to describe and legislate for their surroundings. In some cases, they created wholly new categories. In other circumstances, they employed traditional terms, reinterpreting them for their own reality. The halachic precept, *–lo titgodedu*,” drawn from Deuteronomy 14:1, which the rabbis came to understand as, *–do not make factions*,” is an illustrative example of how a term can evolve many different meanings in different communities throughout time and how legislative stringencies and leniencies can be born in the course of its evolution. This thesis will explore this concept and its evolution, and attempt to define what its meaning might be for Reform Judaism today. In order to do so, and prior to indicating fully the outline for this work, I would begin with a prefatory examination of the phrase and its understandings as part of the ongoing process of the Jewish legal tradition.

“Lo Titgodedu” in the Bible

The earliest mention of *lo titgodedu* in the Bible appears in the Dt. 14:1 as a prohibition against self-mutilation during mourning practices:

בָּנִים אַתֶּם לַיהוָה אֱלֹהֵיכֶם לֹא תַתְגַּדְדוּ וְלֹא תַשִּׂימוּ קָרְחָה בֵּין עֵינֵיכֶם לְמֹת:

You are children of the Lord your God, do not gash yourselves (*lo titgodedu*) or shave the front of your heads because of the dead. (Translation JSP)

Here the root *gimel, dalet, dalet* connotes “cutting” or “penetrating,” and shares its meaning with other biblical texts including Jeremiah 47:5¹ and 1 Kings 18:28² among others. ³ Jeffrey Tigay explains that practices associated with gashing one’s skin were diverse among different cultures in the Bible and the Ancient Near East. While in 1 Kings 18:28 the practice may have been meant as an offering to God, in its Deuteronomic context it may be either an offering of blood and hair to “strengthen the ghost [of the dead person] in the nether world or to assuage the ghost’s jealousy of the living by showing it how grief-stricken they are.” However, Tigay points out that the act of gashing one’s skin could simply be an outward expression of the pain the mourner is feeling⁴. Despite its rationale, whether meant as an offering to ghosts or as a symbolic expression of pain, the Torah condemned the behavior as outside the bounds of “a people consecrated to the Lord your God⁵.”

However, as with other roots in the Bible, the root *gimel, dalet, dalet* has a second connotation⁶. Sharing its root with the Akkadian verb, “*gudugu*,” meaning military detachment,⁷ the root implies banding together, often with a military connotation. Psalm

¹ Baldness has come upon Gaza, Ashkelon is destroyed. O remnant of their valley, how long will you gash yourself (*ad matai titgodadi*). (JPS Translation).

² Dealing with the actions of the prophets of Baal during their encounter with Elijah the Torah describes their actions, “So they shouted louder, and gashed themselves (*va’yitgodedu*) with knives and spears, according to their practice until blood flowed from them.

³ See also Jeremiah 16:6

⁴ Tigay, *The JSP Torah Commentary: Deuteronomy*. pg. 136.

⁵ Dt. 14:2. Like an offering meant for slaughter, we too are a people consecrated and thus we should not willingly make ourselves blemished.

⁶ For other examples see *bet, ayin, reish* (to burn or cast out), *ayin, lamed, mem* (to hide or ignore).

⁷ Tawil. *An Akkadian Lexical Companion for Biblical Hebrew*. Pg 64.

94:21 speaks of the wicked, –They band together (*yagodu*) to do away with the righteous; they condemn the innocent to death.” As a noun, *g’dud*,” meaning troop or marauding band, appears in numerous places in the Bible, including 2 Kings 13:21⁸ and 2 Sam 4:2⁹.

These two divergent meanings lend themselves to word play, the earliest version of which appears in Micah 4:14. The text, as various translations render it, reads:

עַתָּה תִתְגַּדְדִי בֵּת גְּדֻד מִצֹּר שָׁם עָלֵינוּ

Now you **gash yourself in grief**. They have laid siege upon us. (JPS)

Now **gash yourself, daughters of marauders!** Seige is set upon us (Mays)¹⁰

Now thou **shalt gather (thy) troops, O daughter of Troops**. He put a siege upon us

(Anchor Bible)¹¹

Here, the prophet Micah is laying out any number of visions for the future of the Jewish people, some of which are utopian (4:1-8) and others which predict Israel’s downfall. This text falls into the latter category. As one can see from the above translations there is little agreement as to which of the two meanings might be assigned to the above root *gimel, dalet, dalet*. JSP chooses the first translation for both, the Anchor Bible translation chooses the second, while Mays chooses to express both meanings in his translation. This plurality of meaning will give license for the rabbis of later generations to take the phrase *lo titgodedu* entirely out of its Deuteronomic context and apply it to their own settings in diverse ways.

⁸ –Once a man was being buried, when the people caught sight of such a band (*hag’dud*); so they threw the corpse into Elisha’s grave and made off.”

⁹ –The son of Saul [had] two company commanders (*sarei g’dudim*)...”

¹⁰ Mays, *Micah: a commentary*. Pg. 111

¹¹ Anderson. *Micah: a new translation with introduction and commentary*. Pg. 457

“Lo Titgodedu” in the Midrash

The earliest Midrash we have that links *lo titgodedu* with factionalism appears in Sifre to Deuteronomy¹².

לא תתגודדו, לא תעשו אגודות אלא היו כולכם אגודה אחת וכן הוא אומר +עמוס ט ו+
הבונה בשמים מעלותיו ואגודתו על ארץ יסדה.

“Lo titgodedu” meaning, “Do not make factions (lit. bundles). Rather, all of you are one group, and thus it says (Amos 9:6), “Who built the chamber in heaven and established his vault on the earth?”

Like the root *gimel, dalet, dalet*, the root *aleph, gimel, dalet* has a number of meanings. Besides the phonetic similarity of these two roots—this lends itself to wordplay—their semantic range overlaps. As discussed in the previous section, *gimel, dalet, dalet* means both to cut in the physical sense and to break off into groupings. This second meaning conforms to the root *aleph, gimel, dalet* in rabbinic Hebrew, which, as a noun, may mean either a physical bundle¹³ or band or faction¹⁴.

The proof text from Amos, however, is more puzzling. Using biblical parallelism it is clear that *agudah* is intended to have a parallel meaning with *ma’alah*, which means

¹² *Sifrei re’eh, piska* 96, pg. 158

¹³ See Bavli Succot 33b

¹⁴ Jastrow. A Dictionary of the Targumim, the Talmud Babli, and Yerushalmi, and the Midrashic Literature. Pg 11.

high place or chamber. Without additional explanation, it is not clear how this text speaks directly to the idea of factionalism in the preceding midrash.

However, a parallel text later in the Sifrei¹⁵ expands on this midrash and explains more fully how the Amos proof text speaks to the idea of factionalism.

**יחד שבטי ישראל, כשהם עשויים אגודה אחת ולא כשהם עשויים אגודות אגודות, וכן
הוא אומר +עמוס ט ו+ הבונה בשמים מעלותיו ואגודתו על ארץ יסדה. רבי שמעון בן
יוחי אומר משל לאחד שהביא שתי ספינות וקשרם בהוגנים ובעשתות והעמידן בלב
הים ובנה עליהם פלטרין כל זמן שהספינות קשורות זו בזו פלטרין קיימים פרשו
ספינות אין פלטרין קיימים כך ישראל כשעושים רצונו של מקום בונה עליותיו
בשמים וכשאינן עושים רצונו כביכול אגודתו על ארץ יסדה**

[Then he became a king in Jeshurun, when the heads of the people assembled]
the tribes of Israel together” (Dt. 33:5). Just as they are made into one group
(*agudah achat*) and not made into many groups, likewise does scripture say
(Amos 9:6), “Who built the chamber in heaven and established his vault
(*agudato*) on the earth?” Rabbi Shimon ben Yochai says: This is likened to one
that brings two boats together and ties them with anchors and iron and stands
them up in the heart of the sea. Then he builds upon them a palace. As long as the
boats are tied together the palace stands, but if they are separated, the palace
cannot stand. So too, when Israel does the will of the omnipresent, he builds a

¹⁵ Sifrei, v‘zot habrachah, piska 346, pg 403

vault in heaven, but when they do not do his will, as it were¹⁶, his vault *agudato* is established on the earth.

In essence, the unity of the people Israel provides a platform on earth that allows God's palace, a symbol of God's glory and majesty, to be built in heaven. However, like a palace on two boats that drift apart, God's palace falls from heaven into the hole left between the two platforms. This is the reason that factionalism causes God's palace to fall down onto earth.

What both these first and second texts have in common is that they value unity—called God's will—and condemn factionalism. According to Louis Finkelstein, these texts were meant primarily to address the ~~g~~rowth of separatist sects in Palestine in the early generations of Tannaim¹⁷.” Much has been written about this separatist trend in Palestine.¹⁸ Starting in the second Temple, sects such as the Essenes, the Qumran sect, the Sicarri, Samaritans, and Early Christians challenged the power of the Temple cult and later the aspirations of the early rabbis. Shaye Cohen writes, ~~m~~embers of a sect...remove themselves from the social mainstream and make themselves special...they arrogate to themselves the exclusive claim of truth¹⁹.” And, of course, they question the exclusivity that the rabbis' claim to truth. In light of this definition, it is clear why the rabbis would fear sectarianism. In addition to the zealotry that it might cause, worsening

¹⁶ There is no exact translation for the word *kiv'yichol* but it usually connotes a problematic statement about God (usually because it contains an anthropomorphism of God).

¹⁷ Finkelstein *Sifrei re'eh, piska* 96, pg. 158, Note 1. Quote from Ben-Menahem, Judicial Deviation in Talmudic Law: Governed By Mean, Not By Rules. 1991.

¹⁸ See the works of Shaye Cohen, Jacob Neusner, Albert Baumgarten, and Morton Smith.

¹⁹ Cohen, From the Maccabees to the Mishnah. Pg 165

relations with the Romans, it also threatened the claims of “truth” that they were making, as they legislated Torah for their community.

This polemic is as interesting for what it contains as for what it lacks. These two texts speak of factions between groups, not within them. Nowhere do we find any notion that two rabbinic Jews who have divergent practices may violate the precept. If *halacha* is the way that rabbinic Jews function legally in the world, then Isaac Gilat is correct in observing that there are no “*halachic* implications” in the Midrashic discussion of *lo titgodedu*.²⁰ Instead, they wrestle with overarching ideas of unity and separatism among the Jewish people without dealing with the fact that those comfortably within the rabbinic sphere of influence may also have divergent practices. Although *lo titgodedu* would continue to address sectarianism in later midrashim,²¹ its development would take a radical turn in both the Bavli and Yerushalmi as its purview narrowed and its influence in the *halachic* sphere increased. Later discussions of the precept would center on where rabbinic Jews could or could not differ in practice and would ignore the presence of sectarian groups.

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²⁰ Gilat “*Lo titgodedu*” pg. 79-98.

²¹ See Targum Yerushalmi to Dt. 14:1, “Don’t make factions for idol worship” and Pesichta Zutra to Deuteronomy (pg. 43):

לא תתגודדו. לא כענין (דניאל ד) גדו אילנא אלא מלשון גדוד לא תעשו אגודות אגודות שיהו אלו פוסלין ואלו מכשירין. אלו שומרין מקרא קדש היום אלו למחר אלא היו כלכם אגודה אחת

Lo titgodedu: not in the vein of its meaning in Daniel 4:11, “Hew the tree” rather like the word band (*G’dud*), do not make factions (lit. bundles) where some declare things invalid, while others declare it valid, these observe [Shabbat] on the ordained day (i.e. the seventh day) while those observe it on the next day (i.e. Sunday). Rather all of you should be like one group.

Here, although there are clearly halachic implications to this text, the term retains its sectarian meaning, something it loses in later generations. This is because observing the Christian Sabbath could by no means be considered within any bounds of rabbinic permissibility.

Having provided a brief excursus on the phrase, *–lo titgodedu*,” in both Bible and Midrash, I am now prepared to turn to an outline of my thesis as I explore the halachic progression and development of the term *lo titgodedu* first in Talmudic and later medieval rabbinic sources, and then in modern responsa themselves. Chapter 1 will analyze and compare the use of the term in the Bavli and the Yerushalmi. Scholars have pointed out that the Yerushalmi, in its treatment of *–lo titgodedu*,” tends to allow for less halachic flexibility, i.e., tolerance for division and difference, within and between communities than does the Bavli. Since much has been written about this dichotomy, this section will serve two main purposes. First, it will explore the recent scholarly literature written specifically about *lo titgodedu* in the Talmuds.²² Second, this chapter will introduce the relevant texts with which later commentators must grapple in their discussion of *lo titgodedu*. The section will also conclude with a consideration of other concepts and texts, which, while only tangentially related to Talmudic discussions about *–lo titgodedu*” itself, are necessary for informing later rabbinic discussions on *–lo titgodedu*.” The most important of these is the concept, *al titosh torat imecha*, do not abandon the *–torah*” of your mother (Proverbs 1:8), which is interpreted by the rabbis as prohibiting an individual to change his or her customs if he or she moves or is part of a later generation in the same locale. By way of example, can someone who has never traveled to the market in the hours before Shabbat, change this custom for economic reasons and begin traveling? *Al tisosh* would advocate against this change. As will be explained, this idea runs counter to *lo titgodedu* because while *lo titgodedu* legislates

²² See specifically the work of Richard Hidary, Dispute for the Sake of Heaven: Legal Pluralism in the Talmud.

halachic unity, *al titosh torat imecha* forces an immigrant to retain his own traditions and laws despite the practices of his new land.

Chapter 2 will observe how *lo titgodedu* is treated in by the *rishonim* and early *acharonim*. In this period, beginning with Maimonides, the purview of *lo titgodedu* expanded significantly. While the Bavli limited *lo titgodedu*'s reach to the legal realm, Maimonides, continuing in the vein of the Yerushalmi, expanded it to include limits on customs within and between communities in a given city. He did this by introducing a new rationale for unity. Counter to previous claims that *lo titgodedu* was meant to limit the appearance of “two Torahs” in the Jewish community, Maimonides claimed that the term was meant to limit *disputes* between communities. These two rationales, one ontological and one sociological, frame the conversation around *lo titgodedu* differently and subsequently cause one who employs the concept for legal purposes to see the scope of the precept differently.

Maimonides' writings would change the way that many in the medieval world viewed both the rationale and reach of *lo titgodedu*. Specifically, Rabbi Moses ben Jacob of Coucy (13th C France, *Semag*) and Moses Isserless (16th C Poland, *Rama*) ruled as Maimonides, and held that *lo titgodedu* could govern disputes of custom. However, not all agreed with him. Other authors, like Menachem Meiri (13th C Provence) and Asher Ben Yechiel (13-14th C Spain, *Rosh*) believed the law only governed the legal realm and was meant mainly to avoid the appearance of “two Torahs.” This chapter will trace these divisions and introduce many of the major medieval thinkers as a further way to introduce the relevant source material with which later respondents would grapple as they defined the essence and boundaries of *lo titgodedu*.

The final three chapters will deal with three sets of modern responsa, all of which wrestle with notions of communal unity and separatism in the modern period through the prism of *lo titgodedu*. The last few hundred years have brought unique challenges as communities have grown from cities and towns to states, and even global conceptions of “world Jewry.” These changes brought fundamental challenges to the limits halacha has set on unity and separatism.

Chapter 3 will explore *lo titgodedu* in the writing of the Askenazi authority, Rabbi Yechiel Yaakov Weinberg (1884-1966). Specifically, the chapter will discuss a lengthy responsum that deals with divergent kashrut practices when communities are forced to unite, as well as a 1949 article published in *Tevunah* that examines whether a city can have two rabbinical courts within its walls. Although Weinberg first made a name for himself in the pre-war period, these two responsa were written during his time in Switzerland after the war when displaced communities forced people with divergent practices and ideologies into the same locale.

Chapter 4 will look at the ideas of unity and legal variation in the writings of Ovadia Yosef (1920 -). As the chief Sephardic halachic authority in Israel for decades, Yosef has remained a guardian of Sephardic practices, advocating for the customs, practices, and legal authorities of Sephardic Jews. For this reason, Yosef was put in an interesting position. On the whole, his halachic rulings side with Sephardic authorities, most notably Maimonides and Joseph Caro. However, in his quest to allow Sephardic Jewry to continue their traditions in a predominantly Askenazi culture, he often opposed Maimonides' more narrow view of variation and allowed the Sepharadim to continue their practices in predominantly Ashkenazic settings. This section will examine three

responsa. The first questions whether Sephardic students in an Ashkenazi yeshiva could cut their hair during the days between the *17th of Tamuz* and the week preceding the *9th of Av*. The second deals with whether a Jew from Yemen can engage in levirate marriage despite a unified statement by the chief Ashkenazi and Sephardi rabbinate in February of 1950 that outlaws this practice. The final responsum deals with whether a school that is 90% Sephardic, but which prays using the Ashkenazi Chasidic nusach (called nusach Sepharad),²³ can continue to pray in this tradition, since it is what is used by the Israeli army, or if they must revert back to their traditional Sephardi nusach (called Minhag Ari). In each of these three responsa, Ovadia Yosef struggles with the place of his community's practice in the larger Israeli orthodox community.

Chapter 5 will examine *lo titgodedu* in the work *Or Nogah* by Eliezer Lieberman. This work was written in defense of the liturgical changes introduced into the Hamburg community by the Reform temple there in the second and third decades of the 19th century. In it, Rabbi Lieberman defended the use of the organ in worship as well as prayer in the vernacular. His short work concludes with a discussion of why these changes, while significant, do not violate the norms of communal unity expressed through *lo titgodedu*.

These three chapters deal progressively with larger issues in Jewish life. While Weinberg deals with implications of unity and separatism in his community, Yosef must struggle with the meaning of *lo titgodedu* in a whole country, as Israel begins to define herself. Finally, Lieberman confronts the largest task -- he must defend how his changes support notions of unity among Jewry as a whole. As did their predecessors, each must choose among a multiple of options and challenges in the application of "*lo titgodedu*" --

²³ See Chapter 4 for more information about the difference between Nusach Sefard and Minhag Ari.

whether *lo titgodedu* should include customs, whether it is meant to avoid dispute or the appearance of multiple truths (two Torahs), and, finally, how to balance notions of unity with the need to uphold the ideal of *al titosh torat imecha* (see above section).

This paper will conclude with an examination of how *lo titgodedu* might fit into the modern Reform synagogue. It is the author's contention that just as the Reform movement has adopted Hebrew terminology such as *b'tzelem elohim*, *bal tashchit*, and *tzedek*, to help inform our worldview, *lo titgodedu* can also be a powerful force to advocate for unity in an often divided Jewish community. Using the issues and language developed in previous sections of the paper, this final section will explain what the Reform movement and a Reform congregation might look like that took seriously this notion.

* * *

A few months ago, I led services in a vacation community on eastern Long Island when the rabbi of the community was away. Although I had worked at that community for a number of weeks, I realized in the middle of the service that I did not remember when the congregation traditionally stood and when they were seated during the service. Perhaps more than any other custom, the times when a congregation stands varies between Reform synagogues. As I approached the *Chatzi Kaddish* I motioned for the cantor but she did not hear me. Knowing I had to make a decision, I asked the congregation to rise.

Immediately, there was nervous laughter as everyone slowly stood up. Without thinking, I jumped in —“Your custom was to stay seated here, wasn't it?” Nodding, most

people began to sit back down. However one member of the community announced, –This is the way I do it back home. I’d like to remain standing since you invited us to!” Forced to accept his position, I invited all those who wanted, to remain standing; the rest could find their seats.

Although it is commonplace in many Reform communities to have divergent practices, even within a single community, the decision to allow those members who so chose to remain standing had an unforeseen effect. By allowing members of this community to stand, they failed to be a cohesive whole. The community, which is made up of people from many different Manhattan synagogues, had engaged in a long process of bringing these practices together under the roof of a single synagogue. In doing so, they could make a statement that despite the fact that many only attended the synagogue in the summer, when they were there it was *their* shul. However, when some stood and some sat, they were reminded that this statement of unity was only temporary and that they would soon be returning to their homes. The difficult task in which the community had engaged of bringing Jews from diverse backgrounds together under one umbrella had been undone. Everyone there was reminded that they were sitting in a vacation community. The sense of groundedness, created by common practice had been lost.

Lo titgodedu is not just a way to decide who sits and stands, who eats what food, and who sings what tunes, it is a commentary on the power of unity. It is a tool for congregations to decide where they stand in the continuum between guarding their past and creating a future.

Chapter 1: Lo Titgodedu in the Bavli and Yerushalmi

This chapter will explore the evolution and meaning of *lo titgodedu* in its talmudic sources, namely the Jerusalem and Babylonian Talmuds. These two sources differ significantly in their understanding of the scope and meaning of the term. However, they both convey a significant departure from previous understandings of *lo titgodedu* as mainly legislating against sectarian groups. As much has been written about the differences between these two sources as they pertain to *lo titgodedu*²⁴, this chapter will mainly serve to introduce the reader to the relevant Talmudic source material utilized by later legal authorities.

Nearly all discussions of *lo titgodedu* can be traced back to two *mishnayot*. Although neither addresses the concept directly, both become the scaffolding for later amoraic discussions. The discussion in the Jerusalem Talmud follows directly from Mishnah Pesachim 4:1:

מקום שנהגו לעשות מלאכה בערבי פסחים עד חצות עושין מקום שנהגו שלא לעשות
אין עושין ההולך ממקום שעושין למקום שאין עושין או ממקום שאין עושין למקום
שעושין נותנין עליו חומרי מקום שיצא משם וחומרי מקום שהלך לשם ואל ישנה אדם
מפני המחלוקת :

In a place where the custom is to do work on Erev Pesach until midday, one may perform work. In a place where the custom is to refrain from work, one should not do it. If one travels from a place where one does work to a place where one does

²⁴ See Ben-Menahem, Judicial Deviation in Talmudic Law and Hidary, Dispute for the Sake of Heaven

not do work or a place where they do not do work to a place where they do work, he should take upon himself the stringencies of the place from which he came and to where he is going. A person should not change from the local custom [in order to avoid] conflict.

According to the classical commentators,²⁵ the reason for the variation between communities is that although all prohibit work in the hours immediately preceding Pesach, some communities acknowledge that if one works even in the morning, he might get so involved in his own work that he would therefore forget to clear his house of *chametz* or slaughter his *pesach* sacrifice. To prevent such oversights, some communities prohibit all work on the day before Passover.

However, the Mishnah understands that sometimes people may travel between communities with divergent practices. If that is the case, the Mishnah instructs one to hold by the most stringent ruling. It seems from the plain meaning of the text that if either his home community or his current locale prohibit work on the day before Pesach, he should abstain. However, this is contradicted immediately by the last line in the Mishnah that says that a person should uphold the local custom to avoid conflict.²⁶

²⁵ See Bartenura (s.v. *sh'lo la'asot*)

²⁶ A full discussion of this contradiction is outside of the scope of our discussion. However, in short, the Bavli (Pesachim 51b) reconciles these two ideas in two ways. In one solution, the Mishnah's second clause is understood as only advocating for uniformity when divergent practices would become too noticeable and cause conflict. The following chart shows that conflict may only arise in one of four situations:

	<u>Visiting custom is not to work</u>	<u>Visiting custom is to work</u>
<u>Home custom is not to work</u>	Same policy, no problem	<i>One abides by the stringency of his home locale and he abstains from work while other do not. This appears as a divergent practice.</i>

In discussing this Mishnah, the Jerusalem Talmud begins an exploration of *lo titgodedu* in light of the fact that if one practices according to the stringencies of their home community and ignores the leniencies of their current locale, they would then be behaving differently than their neighbors. Y. Pesachim 30d reads: ²⁷

רבי שמעון בן לקיש שאל לר' יוחנן ואינו אסור משום כל תתגודדו אמר ליה בשעה שאילו עושין כבית שמאי ואילו עושין כבית הלל בית שמאי ובית הלל אין הלכה כבית הלל אמר ליה בשעה שאילו עושין כרבי מאיר ואילו עושין כרבי יוסה רבי מאיר ור' יוסי אין הלכה כרבי יוסי אמר ליה תרי תניין אינון על דרבי מאיר ותרין תניין אינון על דרבי יוסי אמר ליה הרי ראש השנה ויום הכיפורים ביהודה נהגו כר' עקיבה ובגליל נהגו כרבי יוחנן בן נורי אמר ליה שנייה היא שאם עבר ועשה ביהודה כגליל ובגליל כיהודה יצא הרי פורים הרי אילו קורין בי"ד ואילו קורין בט"ו אמר ליה מי שסידר את המשנה סמכה למקרא משפחה ומשפחה מדינה ומדינה ועיר ועיר נחא ממקום שעושין למקום שאין עושין ממקום שאין עושין למקום שעושין ויבטל שהרי כמה בטילין יש לו באותו מקום רבי סימון בשם רבי יוחנן במתמיה

<u>Home custom is to work</u>	One abides by the stringency of the new locale and no one realizes he is accustomed to working	Same policy, no problem
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However, the Talmud points out that even in the situation where his home custom is to abstain from work and the custom of his new locale is to work, such absence from work will not be problematic because others will assume he is simply unemployed and that he is not working because he has no work, not because of divergent customs. However, the second clause of the Mishnah teaches that in cases where it would cause conflict, one should hold by the customs of their new locale. Nevertheless, the case of working before Pesach is not one of these occasions.

The second solution explains that there is a difference in mindset between a traveler with the desire to return home and one without this desire. Should one simply be visiting a locale, he must hold by the stringencies of his home, and not new locale. However, should he be relocating permanently, he is no longer a visitor and must abide by the local custom. The second clause of the Mishnah is speaking to this particular case.

²⁷ This translation is a modified translation for one found in Richard Hidary, Dispute for the Sake of Heaven: Legal Pluralism in the Talmud, pg. 99-100.

A] Rabbi Shimon Ben Lakish asked Rabbi Yochanan: Isn't this [having different customs regarding work on the day before Passover] prohibited because of *lo titgodedu*, do not make factions? He told him, ~~—~~[There is only a problem] when some are practicing like the House of Shammai and others are practicing like the House of Hillel.”

But, whenever there is a dispute between the House of Shammai and the House of Hillel, isn't the halacha according to the House of Hillel? He told him, ~~—~~[There is only a problem] when some practice like Rabbi Meir and others practice like Rabbi Yosi.”

But, whenever there is a dispute between Rabbi Meir and Rabbi Yosi, isn't the halacha according to Rabbi Yosi? He responded, ~~—~~[There is only a problem] when there are two Tannaim concerning R. Meir and two Tannaim concerning Rabbi Yosi (i.e. we have discrepancies in what the authorities actually said).

B] He said to him, ~~—~~But what about Rosh Hashanah and Yom Kippur, in Judea they follow Rabbi Akiba and in the Galilee they follow Rabbi Yochanan Ben Nuri? He responded, ~~—~~It is different for if one has already acted in Judea as they do in the Galilee or in the Galilee as they do in Judea, he has fulfilled his obligation.

C] What about Purim? Behold, some read [the book of Esther] on the fourteenth of Adar and others read on the fifteenth of Adar. He told him, ~~—~~Whoever redacted

the Mishnah supported it based on a verse – ‘Each and every family, each and every Province, each and every city’ (Es. 9:28).”

D] It is alright with regard to [one who travels] from a place where they do [work on the morning of the day before Passover] to a place where they do not. But from a place where they do not to a place where they do – let him idle since many idlers are in that place? Rabbi Shimon [said] in the name of Rabbi Yochanan ~~→~~where he will cause others to inquire [since he is usually a busy person].”

Section A begins with an exchange between Rabbi Yochanan and his contemporary Rabbi Simon Ben Lakish. In this exchange, the two try to examine the scope of *lo titgodedu*. Resh Lakish begins by asking if the Mishnah violates the rule. However, his question is ignored, implying that it does not, and Yochanan moves on to exploring other definitions. He begins by asking whether cases where some groups hold like Shammai and others like Hillel would violate the precept. Yochanan answers no. As Richard Hidary has noted, the Jerusalem Talmud holds by strict rules governing which rabbis have authority to decide halacha²⁸. For that reason, there can be no variation between those who hold like Hillel and those who hold like Shammai, for those who behave like the latter are simply corrupting the law. This also applies to the Yochanan’s second question: disputes between Meir and Yosi.

Finally, Yochanan cites a case that would allow for variation and be subject to the prohibition, *lo titgodedu*. Here, the law applies when there is variation in the transmission

²⁸ Hidary, 56

of a tradition. The halacha may accord with Yosi, but if there are two authoritative statements by Yosi which contradict one another, there is no way to know which is authentic. In this case, some may rely on one statement while others rely on the second. Interestingly, this solution is in no way connected to the Mishnah's case of divergent work practices. Whereas the Mishnah is questioning those who rely on different authorities for their behavior, the Yerushalmi is limiting those who rely differently on the same legal authority. Implicitly, Yochanan has defined *lo titgodedu* in such a way that the Mishnah, and other disputes over custom, are in no way subject to this prohibition. This resolution also explains why Yochanan ignored Resh Lakish's first question to him.

Sections B and C challenge the notion that variation of custom is not prohibited in light of *lo titgodedu*. Resh Lakish asks Yochanan whether divergent practices on Rosh Hashanah and Yom Kippur in two communities in Israel violate the law. Yochanan answers that they do not because either practice allows one to fulfill their legal obligation. Thus, on a legal level, both are perfectly valid. The other case involves reading the Megillah on different days and is permitted on the basis of a scriptural verse that mandates variation. Hidary notes:

All in all, the Yerushalmi distinguishes between custom and law. The law of “do not make factions” does not apply to minhag. Variation in customs from one locale to another are not only tolerated, they must also never even be changed.²⁹

Regarding halakha, on the other hand, everyone must follow the established rules of decision making, otherwise they are outside the boundaries of halakha. Only in

²⁹ This idea will be explored at the end of this chapter.

an undecided case, where each side may have halakhic validity, does the problem of “do not make factions” arise and one must find a way to agree.³⁰

However, although *lo titgodedu* does not govern custom, the Yerushalmi’s interpretation of the precept opens the door for later commentators to expand its scope and apply it to custom as well as law – minhag as well as halakha. In part D, Yochanan teaches that one who travels from one locale to another must change their customs in one of two circumstances, either their new locale is more stringent or their stringency will cause others to take note of him. As the Mishnah explicitly states and the Talmud implicitly warns (“he will cause others to wonder about him”), behaving differently from others may cause discord. Because avoiding communal arguments and divisions is paramount, it is crucial that one adopt practices that convey uniformity and unity. In later generations when commentators are searching for language to describe uniformity in custom, some will expand the scope of *lo titgodedu* to include this sentiment that avoidance of conflict in custom and not just law is required.

While the Jerusalem Talmud focuses its discussions of *lo titgodedu* to Mishnah Pesachim, the Babylonian Talmud centers its consideration of *lo litgodedu* around Mishnah Yebamot 1:4:

... בית שמאי מתירין הצרות לאחים ובית הלל אוסרים חלצו ב"ש פוסלין מן הכהונה
ובית הלל מכשירין נתייבמו בית שמאי מכשירין ובית הלל פוסלין אע"פ שאלו אוסרים

³⁰ Ibid 101

ואלו מתירין אלו פוסלין ואלו מכשירין לא נמנעו בית שמאי מלישא נשים מבית הלל
ולא בית הלל מבית שמאי כל הטהרות והטמאות שהיו אלו מטהרים ואלו מטמאין לא
נמנעו עושין טהרות אלו על גבי אלו

Beit Shammai permits the co-wife to marry a deceased man's brother and Beit Hillel forbids it. Beit Shammai invalidates a woman from marrying into the priesthood who has undergone *chalitzah*³¹ [with the brother of the deceased] while Beit Hillel validates her. If the co-wife is taken in yibum, Beit Shammai permits her while Beit Hillel invalidates her. Even though these prohibit and these permit, these invalidate and these validate, Beit Shammai did not refrain from marrying women from Beit Hillel and Beit Hillel did not refrain from [marrying women] from Beit Shammai. [Similarly, in all questions] of [ritual] cleanliness and uncleanness, things that [one House] deemed pure which [the other deemed] impure, they nevertheless did not refrain from using the utensils of the others for the preparation of foods that were ritually pure.

The Mishnah begins by addressing the case of a man who marries two women and dies. If he is childless, they must marry his brother and have a child in his name. However, in a case where his brother is married to any number of relatives of one of these women, for example, her sister, he is not permitted to marry her and engage in the levirate act. At dispute is whether the other wives of the deceased husband are also forbidden to marry his brother. Shammai says they are permitted, while Hillel disagrees.

³¹ This is the ritual of release whereby a woman who is obligated to marry her deceased husband's brother is released from the obligation and is then permitted to marry anyone else she chooses.

The final section of this Mishnah pertains directly to the discussion of *lo titgodedu*. If Shammai permits the co-wife to marry and Hillel forbids it, this may mean that there are unions that the other does not allow. Shammai's ruling may produce *mamzerim*³² in Hillel's eyes, and Hillel's ruling may permit divorcees into the priesthood, again producing a union that should not be³³. However, neither forbids the other from marrying their women. As a parallel, the Mishnah concludes that, as in the case of disputed unions, both sides respect the rulings of disputed vessels.

The Gemora will examine this Mishnah, which allows for significant halachic pluralism despite the ruling of *lo titgodedu*, which would seemingly frown upon such pluralism. At issue is how both parties can be right (or at least, if not "right," tolerate the diverse ruling of the other, which would seemingly lead to intolerable halachic differences) when there exists a precept that tells us that uniformity of practice (i.e. avoiding factionalism) is paramount. Yebamot 13b-14a reads³⁴:

[A] תנן התם מגילה נקראת באחד עשר ובשנים עשר ובשלשה עשר ובארבעה עשר
ובחמשה עשר לא פחות ולא יותר אמר ליה ר"ל לר' יוחנן איקרי כאן +דברים י"ד+ לא
תתגודדו לא תעשו אגודות אגודות האי לא תתגודדו מיבעי ליה לגופיה דאמר רחמנא
לא תעשו חבורה על מת א"כ לימא קרא לא תגודדו מאי תתגודדו שמע מינה להכי הוא

³² This is the product of an incestuous or forbidden union where parents conceive the baby in an act punishable by *karet* (early death at the hands of heaven). In this case, the sin is incest. The child is then not permitted to marry another kosher Jew.

³³ This is because the chalitzah ritual is seen as a version of divorce. In Hillel's opinion, if a co-wife is not permitted to marry her husband's brother, she is free from the obligation of marriage with the death of her husband. However, if they are obligated to have a child with their husband's brother, as Shammai contends, their only way out of the obligation is through chalitzah. Thus, they would be considered a divorcee and would not be permitted to marry into the Priesthood.

³⁴ The following translation is a modified version of the classic Soncino Translation (Ed. Dr. Isador Epstein, Bloch Pub Co, January 1990).

דאתא ואימא כוליה להכי הוא דאתא אם כן לימא קרא לא תגודו מאי לא תתגודדו

שמע מינה תרתי

[B] א"ל עד כאן לא שנית מקום שנהגו לעשות מלאכה בערבי פסחים עד חצות עושין

מקום שנהגו שלא לעשות אין עושין א"ל אמינא לך אנא איסורא דאמר רב שמן בר אבא

אמר ר' יוחנן +אסתר ט+ לקיים את ימי הפורים בזמניהם זמנים הרבה תיקנו להם

חכמים ואת אמרת לי מנהגא והתם לאו איסורא הויא והתנן (בבליה) +מסורת הש"ס

[הלילה] + בית שמאי אוסרין ובית הלל מתירין אמר ליה התם הרואה אומר מלאכה

הוא דלית ליה

[C] והא בית שמאי מתירין הצרות לאחים ובית הלל אוסרים מי סברת עשו ב"ש

כדבריהם לא עשו ב"ש כדבריהם ור' יוחנן אמר עשו ועשו ובפלוגתא [דרב ושמואל] דרב

אומר לא עשו ב"ש כדבריהם ושמואל אמר עשו ועשו אימת אילימא קודם בת קול מ"ט

דמ"ד לא עשו ואלא לאחר בת קול מ"ט דמ"ד עשו אי בעית אימא קודם בת קול ואי

בעית אימא לאחר בת קול אי בעית אימא קודם בת קול וכגון דב"ה רובא למ"ד לא עשו

דהא ב"ה רובא ומ"ד עשו כי אזלינן בתר רובא היכא דכי הדדי נינהו הכא בית שמאי

מחדדי טפי ואי בעית אימא לאחר בת קול מ"ד לא עשו דהא נפקא בת קול ומ"ד עשו

רבי יהושע היא דאמר אין משגיחין בבית קול ומ"ד עשו קרינן כאן +דברים י"ד+ לא

תתגודדו לא תעשו אגודות

[D] אגודות אמר אביי כי אמרינן לא תתגודדו כגון שתי בתי דינים בעיר אחת הללו

מורים כדברי ב"ש והללו מורים כדברי ב"ה אבל שתי בתי דינים בשתי עיירות לית לן

בה אמר ליה רבא והא ב"ש וב"ה כשתי בתי דינים בעיר אחת דמי אלא אמר רבא כי

אמרינן לא תתגודדו כגון ב"ד בעיר אחת פלג מורין כדברי ב"ש ופלג מורין כדברי ב"ה

אבל שתי בתי דינים בעיר אחת לית לן בה

[E] תא שמע במקומו של רבי אליעזר היו כורתים עצים לעשות פחמים בשבת לעשות ברזל במקומו של ר' יוסי הגלילי היו אוכלים בשר עוף בחלב במקומו של רבי אליעזר אין במקומו של רבי עקיבא לא דתניא כלל אמר רבי עקיבא כל מלאכה שאפשר לעשותה מע"ש אין דוחה את השבת והאי מאי תיובתא מקומות מקומות שאני ודקארי לה מאי קארי לה ס"ד אמינא משום חומרא דשבת כמקום אחד דמי קמ"ל ת"ש דרבי אבהו כי איקלע לאתריה דרבי יהושע בן לוי הוה מטלטל שרגא וכי איקלע לאתריה דר' יוחנן לא הוה מטלטל שרגא והאי מאי קושיא ולא אמרינן מקומות שאני אנן הכי קאמרינן ר' אבהו היכי עביד הכא הכי והיכי עביד הכא הכי רבי אבהו כר' יהושע בן לוי סבירא ליה וכי מקלע לאתריה דרבי יוחנן לא הוה מטלטל משום כבודו דרבי יוחנן והאיכא שמעא דמודע ליה לשמעא

[A] We learned elsewhere (Megalith 2a): The Scroll of Esther is read on the eleventh, the twelfth, the thirteenth, the fourteenth or the fifteenth [of Adar] but not earlier or later. Said Resh Lakish to R. Johanan: Apply here the text of *lo titgodedu* (Dt. 14:1), you shall not form separate sects! Is not *lo tithgodedu* required for its own context, the All Merciful having said, *‘You shall not inflict upon yourselves any bruise for the dead’*? — If so, Scripture should have said, *lo ti’godedu*³⁵, why did it say *‘lo tithgodedu*³⁶? Learn from this that it comes to teach [against factions]. Might it not then be suggested that the entire text refers to this only [factions]?³⁷ — If so, Scripture should have said, *Lo thagodu*³⁸; why did

³⁵ Without the second tav

³⁶ With the second tav

³⁷ In other words, does the original context of avoiding gashes and skin mutilation still apply?

³⁸ Without either the additional tav or dalet

it say *lo tithgodedu*? Learn for this that it teaches the two deductions [factions and cutting].

[B] The former answered (Johanan said to Resh Lakish): Have you not yet learned (M. Pesachim 4:1), *Wherever it is customary to do manual labour on the Passover Eve until midday it may be done; wherever it is customary not to do any work it may not be done*? The first said to him: I am speaking to you of a prohibition, for R. Shaman b. Abba said in the name of R. Johanan: *Scripture having said (Esther 9:31, "To confirm these days of Purim in their appointed times," the Sages have ordained for them different times, and you speak to me of a custom! But is there no prohibition there? Surely we learned, Beth Shammai prohibit work during the night and Beth Hillel permit it!* — The other said to him: In that case, anyone seeing [a man abstaining from work] would suppose him to be out of work.

[C] But doesn't the Mishnah say BETH SHAMMAI PERMIT THE RIVALS TO THE OTHER BROTHERS AND BETH HILLEL FORBID THEM! — Do you imagine that Beth Shammai acted in accordance with their views? Beth Shammai did not act in accordance with their views. R. Johanan, however, said: They certainly acted [in accordance with their views]. Herein they differ on the same point as do Rab and Samuel. For Rab maintains that Beth Shammai did not act in accordance with their views, while Samuel maintains that they certainly did act [in accordance with their views]. When does this apply? If it be suggested, prior to

the decision of the heavenly voice³⁹, then what reason has he who maintains that they did not act [in accordance with their own view]? If, however, after the decision of the heavenly voice, what reason has he who maintains that they did act [in accordance with their views]? — If you wish I could say, prior to the decision of the heavenly voice; and if you prefer I could say, after the heavenly voice. _If you wish I could say, prior to the heavenly voice‘, when, for instance, Beth Hillel were in the majority: One maintains that they did not act [according to their view] for the obvious reason that Beth Hillel were in the majority; while the other maintains that they did act [according to their view, because] a majority is to be followed only where both sides are equally matched; in this case, however, Beth Shammai were keener of intellect. _And if you prefer I could say, after the heavenly voice‘; one maintains that they did not act [according to their view] for the obvious reason that the heavenly voice had already gone forth; while the other who maintains that they did act [according to their view] is [of the same opinion as] R. Joshua who declared that no regard need be paid to a heavenly voice⁴⁰. Now as to the other who _maintains that they did act [according to their views] — should not the warning, *Lo titgoddeu*, you shall not form separate sects‘ be applied?⁴¹

[D] Abaye replied: [*Lo titgoddeu*] the warning against opposing sects is only applicable to such a case as that of two courts of law in the same town, one of whom rules in accordance with the views of Beth Shammai while the other rules

³⁹ This is the heavenly voice that announced that the halacha accords with Hillel (Eruvin 13b)

⁴⁰ See Bava Metzia 59b where R. Joshua explicitly states that we do not heed heavenly voices.

⁴¹ See below chart for a succinct explanation of this dispute

in accordance with the views of Beth Hillel. In the case, however, of two courts of law in two different towns [the difference in practice] does not matter. Said Raba to him: Surely the case of Beth Shammai and Beth Hillel is like that of two courts of law in the same town! The fact, however, is, said Raba, that the warning against opposing sects is only applicable to such a case as that of one court of law in the same town, half of which rule in accordance with the views of Beth Shammai while the other half rule in accordance with the views of Beth Hillel. In the case, however, of two courts of law in the same town [the difference in practice] does not matter.

[E] Come and hear from the following Baraita: In the place of R. Eliezer, wood was cut on the Sabbath wherewith to produce charcoal on which to forge the iron [to make a knife for circumcision]. In the place of R. Jose the Galilean the flesh of fowl was eaten with milk. In the place of R. Eliezer only but not in the place of R. Akiba; for we learnt in a Mishnah: R. Akiba laid it down as a general rule that any labour which may be performed on the Sabbath Eve does not supersede the Sabbath! — What an objection is this! The case, surely, is different [when the varied practices are respectively confined to] different localities. What then did he who raised this question imagine?— It might have been assumed that owing to the great restrictions of the Sabbath [different localities are regarded] as one place, hence it was necessary to teach us [that the law was not so].

Come and hear: R. Abbahu, whenever he happened to be in the place of R. Joshua b. Levi, carried a candle [on Shabbat], but when he happened to be in the place of

R. Johanan he did not carry a candle! — What question is this! Has it not been said that the case is different [when the varied practices are respectively confined to] varied localities? — This is the question: How could R. Abbahu act in one place in one way and in another place in another way?— R. Abbahu is of the same opinion as R. Joshua b. Levi, but when he happened to be in R. Johanan's place he did not move a candle out of respect for R. Johanan. But his attendant, surely was also there! Would he not do the wrong thing? — He gave his attendant the necessary instructions

The Gemora begins by citing a discussion between Yochanan and Resh Lakish where the former brings the case of a dispute over the dates assigned for the reading of the Megillah as a possible violation of *lo titgodedu*. M. Megillah 1:1 teaches that communities may have different practices regarding the time for the reading the scroll depending on which day of the week Purim falls and whether one lives in a walled city. Because of this variation, some communities may read the scroll one day, while others read it the following day. The Gemora then derives the source for this ruling, midrashically “playing” with the spelling of the word *titgodedu* in Dt. 14:1 to indicate that the verse addresses both the laws of gashing skin and of forming factions.

Section B begins with what seems like a parallel case to the Megillah example. As developed in the above section, M Pesachim 4:1 allows some communities to work on the morning of Passover and some to abstain. Resh Lakish objects to this comparison, drawing a distinction between custom and law. Divergent work practices before Passover do not violate *lo titgodedu* because, at its core, the disagreement is over a custom alone

and the precept only governs disputes of law. However, Yochanan disagrees and cites a dispute between Hillel and Shammai to prove that M. Pes. 4:1 is indeed addressing legal variation. Resh Lakish then explains that work before Passover is a special case because even if one abstains from it, it is not governed by *lo titgodedu*, for one who does not work, does not appear as deviating from the custom of the locale, but rather as one who lacks work like others in the city.

Section C then continues with a discussion about two key questions central to an understanding of the Mishnah: does Shammai conform to his own opinion and does the Mishnah take place before or after the heavenly voice (bat kol) comes down and explains that the halacha always accords with Hillel⁴². The following chart explains the difficulty:

	Shammai acted in accordance with his own opinion	Shammai did not act in accordance with his own opinion
Before Bat Kol	There is no problem because Shammai would assume he was correct in his assertion	Because Hillel was the majority, Shammai willingly held by his rulings
After Bat Kol	<i>This is the problematic scenario and may be a violation of lo titgodedu.</i>	Shammai listened to God's voice and held by Hillel's opinion

⁴² For full discussion see Eruvin 13b

As is explained in this chart, the only major point at issue in the text is determining the time when Shammai received confirmation from God in the form of a heavenly voice that he was incorrect in his opinion. If, after hearing the Bat Kol, Beit Shammai conformed to the opinion of Beit Hillel, then the problem dissolves. On the other hand, if the House of Shammai continued to insist upon its view subsequent to the revelation of the Bat Kol, then it would appear to be a violation of *lo titgodedu*. While tangential, this lengthy passage returns us to the question of the boundaries of *lo titgodedu*, which will be defined in the next section.

Section D imposes two limitations on the law of factions. Abaye begins by circumscribing *lo titgodedu* to two courts in one city. Thus, Abaye would agree that Shammai's insistence on his position after the Bat Kol is a violation of *lo titgodedu*. Rava on the other hand permits Shammai's viewpoint. His view is more pluralistic. A community only violates *lo titgodedu* when there are disagreements within the same rabbinical court, some who rule like Shammai and others who rule like Hillel. ***Although brief, Abaye and Rava's debate will frame nearly every further discussion of lo titgodedu into the modern period as commentators seek to understand the bounds of the law.***

At this point, the Babylonian Talmud has provided a narrow definition of *lo titgodedu* and, in so doing, has allowed for a great deal of pluralism between communities. *Lo titgodedu* does not apply between locales, nor does it apply to customs, nor do we fault Shammai for not listening to the Bat Kol in every circumstance. However, section E offers one last attempt to undermine this pluralistic attitude. It begins by asking how Eliezer could have a different practice for circumcision on Shabbat than

Akiba. The challenge is quickly dismissed because both Abaye and Rava agree that *lo titgodedu* does not apply between locales. The second challenge asks why R. Abbahu would carry a lamp on Shabbat in one locale and not in another. Is it because he wants to avoid factionalism? The Talmud answers that this is not the case. R. Abbahu believes that the law permits carrying lamps on Shabbat but he avoids carrying the lamp, not because of factionalism, but as a sign of respect to R. Yochanan who does not permit it. The assumption here is that were R. Abbahu not concerned with R. Yochanan's honor, he would not be in violation of the law should he have chosen to carry the lamp. Thus, both challenges are dismissed and the Talmud's narrow definition of *lo titgodedu* stands.

In summary, one can draw a number of distinctions between the characterization of *lo titgodedu* in the Babylonian Talmud as opposed to its definition in the Jerusalem Talmud. On the one hand, both Talmuds recognize that the prohibition against factions applies only in the case of law. Variation in custom is absolutely permitted. However, this should not obscure the significant differences that divide the two Talmuds. The Jerusalem Talmud rules stringently and holds that there cannot be a case where Shammai is correct in affirming his own opinion.⁴³ Therefore, unlike in section D of the Babylonian Talmud, if two different locales rule, one according to Shammai and the other according to Hillel, this is considered factionalism and those who rule like Shammai have erred. At its core, the Jerusalem Talmud is stricter than both Rava and Abaye in the Bavli.

However, perhaps the biggest difference between the Talmuds is the fact that the Jerusalem Talmud implies that the motivating factor behind *lo titgodedu* is to avoid

⁴³ Except in six preselected cases

discord.⁴⁴ This rationale is absent from the Babylonian Talmud. Nowhere in its discussion of M. Megillah 1:1 or Pesachim 4:1 does the Bavli ever give a rationale for why factionalism is wrong. In fact, the Bavli, in Yeb. 13b-14a explicitly avoids any mention of the second clause of M. Pes 4:1, which speaks explicitly of avoiding disagreements within a community. Therefore, as later commentators view the Bavli's discussion of *lo titgodedu* they are forced to provide their own rationales. On the one hand, like the Jerusalem Talmud, one may forbid factionalism because it causes discord. However, one may also forbid it because if divergent practices are sanctioned that both claim authenticity, then it might appear as if God revealed two Torahs at Mount Sinai⁴⁵. Like sectarianism in the Midrash, this undermines the rabbinic theological claim that there is one only one divinely revealed "Truth." As we will see in the next section, uncovering the rationale for *lo titgodedu* is a necessary "first step" in determining its scope. If *lo titgodedu* developed to avoid conflict, there need not be any distinction drawn between law and custom, as one would affirm the need to insist upon uniformity in the face of divergent practices based either upon law or custom. If, however, the issue is one of divergent truth claims, the precept would apply to the realm of law alone since it could be argued that God creates law while humans create custom.

Al Titosh – Do not abandon the Torah of your mother

Although not directly connected to *lo titgodedu*, there is one particular *suggiah* that follows M. Pesachim 4:1 and will directly impact future discussions of the law. The *suggiah* appears as follows:

⁴⁴ See above explanation at length

⁴⁵ See Rashi to Yeb 13b and others in the next chapter

בני ביישן נהוג דלא הוו אזלין מצור לצידון במעלי שבתא אתו בנייהו קמיה דרבי יוחנן
אמרו לו אבהתין אפשר להו אנן לא אפשר לן אמר להו כבר קיבלו אבותיכם עליהם
שנאמר +משלי יא א/א+ שמע בני מוסר אביך ואל תטש תורת אמך

The people of Beishan were accustomed not to travel from Tzur to Tzidon on
Erev Shabbat [where there were markets]. [Later] their children came before
Rabbi Yochanon and said to him, –It was possible for our fathers, but this is not
possible for us.” Yochanon said to them, –They already accepted upon themselves
the custom as it is stated (Proverbs 1:8) Hear, my son, the ethics of your father, do
not abandon the teachings (lit. Torah) of your mother.” (Pesachim 50b)

This text serves as a parallel to the Mishnah text. Just as refraining from work before
Erev Pesach was a safeguard for certain communities during the time of the Mishnah, so,
too, was it a safeguard for the residents of Beishan to avoid traveling to the market on
Erev Shabbat in case they were delayed and therefore unable to return in time for the
onset of Shabbat. At issue here, was the changing economic situation of the residents.
Rashi explains that, where the –fathers” of Beishan had the economic security to refrain
from working on Fridays, their children needed to go to the markets for their livelihood.

However, when the residents approached R. Yochanon, he replied that since their
ancestors had already adopted the practice of refraining from work on Friday, the current
generation had to abide by this tradition. Using a proof text from Proverbs, Yochanon
reminds them that they have no right to change this custom. Over time, this proof text of

al titosh, do not abandon (the Torah of you mother),⁴⁶ would give legal force to custom,⁴⁷ and warns against changing this custom for one's own needs.

In later chapters, we will examine how the precept of *al titosh* comes into conflict with *lo titgodedu*. While the former stresses continuity with the past and insists upon the unchanging obligation to abide by the inherited traditions of one's ancestors, *lo titgodedu* points to uniformity in practice in a given community. In the Talmudic era, these precepts do not run into conflict because neither Talmud allows *lo titgodedu* to limit pluralism of custom. However, in the medieval era, when the scope of *lo titgodedu* is expanded to include customs, and when diverse Jewish groups with diverse customs migrate and blend among one another, conflicts will arise and particular ethnic groupings of migrant Jews will need to choose between preserving their own identity or surrendering their cultural and halakhic autonomy and distinctiveness to the customs and culture of their present host communities.

⁴⁶ The full text reads: ~~H~~ear, my son, the ethics of your father, don't abandon the teachings (lit. Torah) of your mother." This text is dissected in Berachot 35b, where ~~father~~" is proven to mean God and ~~mother~~" is proven to be the collective of Israel (*k'neset yisrael*). In drawing this distinction, the text is warning both against changing God-given laws, and also laws proscribed by humanity (i.e. customs).

⁴⁷ In fact there are certain debates in the medieval period about the necessity to say blessings before performing certain customs. See Tosafot to Sukkah 44b s.v. kan.

Chapter 2: *Lo Titgodedu* in Medieval Codes and Commentators

Beginning with the 11th century, we see the first attempt by a Rishon to define the scope of *lo titgodedu*. In his work, *Sefer HaHalachot*, the Rif (Rabbi Isaac Al-Fasi, North Africa, 11th C) ruled in accordance with Rava's understanding of the law,⁴⁸ writing, —Rava concludes that we ascribe *lo titgodedu* to a situation where there is one rabbinic court in a city and some of its authorities rule like Shammai and others like Hillel. However, we do not [claim] that two rabbinic courts in the same city [violate *lo titgodedu*], and this is all the more so for two courts in two cities⁴⁹.”

As we discussed in the previous chapter, Rava's statement was in opposition to the position of his rabbinic colleague Abaye, who wrote that two rabbinic courts in one city also violates *lo titgodedu*. However, the commentator Alfasi was following a long line of rabbinic tradition in following Rava. After all, the Talmud teaches that in all but six of hundreds of cases, the halacha always accords with Rava in disputes.⁵⁰ Thus, any commentator who rules in accord with Abaye in any case other than these six, must have both a good reason as well as considerable legal influence and authority to disregard this established tradition.

Nevertheless, within the century we do find a split between those commentators who agree with Alfasi and rule like Rava and those who disagree with him and rule like Abaye. In essence, the schism results from diverse rationales. As we mentioned in the previous chapter, the Bavli does not offer an explanation for *lo titgodedu*. Thus, one can read the law as either limiting dispute in a community—this is the explicit rationale in the Jerusalem Talmud—or as something else. In the middle ages, beginning with Rashi, this

⁴⁸ See previous chapter for a reminder of Rava's view

⁴⁹ Rif, Yeb 3b

⁵⁰ For a list of these six cases see Bava Metzia 22b

second rationale was understood as limiting the appearance of ~~two~~ Torahs”. While this idea will be more fully developed later in the chapter, Rashi was primarily concerned that if there were multiple correct ways for a single community to practice a law, it would undermine the appearance of uniformity in God’s revelation. Rashi was concerned with ontology, believing that God gave a single infallible Torah at Sinai and that there was only one ~~correct~~ way” to perform God’s will. In essence, he was worried that the appearance of even a single disputed law might undermine the entire system of Jewish law and thereby undermine the foundation of a community.

The following chapter will trace these two rationales, one sociological and one ontological through the rishonic and early acharonic periods. As we will see, those who choose to side with Rashi conform to the Rif’s ruling; *lo titgodedu* has a narrow scope, covering only legal disputes within a single rabbinic court. However, starting with Maimonides, those who view *lo titgodedu* as a sociological category expand the scope of the concept by siding with Abaye in limiting even variation in customs (*minhag*). They prohibit all disputes within a city—even among two courts. This chapter will trace this schism through the Middle Ages and set the stage for the reimagining of *lo titgodedu* in the modern era.

Lo Titgodedu – protecting against multiple truth claims

The idea that discord in the rabbinic community may cause the appearance of two Torahs appears explicitly in only one place in the Bavli. There we read, ~~When~~ the disciples of Shammai and Hillel multiplied, some who had not served [their teachers] sufficiently, dissensions increased in Israel and the *Torah became like two Torahs*.”

(Sotah 47b). Here the Talmud puts forth an important concern; lack of learning from one's teacher creates incorrect interpretations of law. Although Hillel and Shammai understood the nuances of their arguments and thus had what were defined as ~~disputes~~ "for the sake of heaven," their students did not pay attention to these nuances. Consequently, their disputes went beyond the bounds of what were deemed ~~acceptable~~ "variations" and created diverging practices. Since each group of students claimed what they were doing was in accordance with God's revealed will at Sinai, it would appear to an outsider as if God revealed multiple versions of his divine law, all of them true. The issue in question is determining what is ~~acceptable~~ pluralism."

In commenting on Yebamot 13b, Rashi co-opts the phrase *shteí torot*, two Torahs, to explain why one should worry about factionalism in the Jewish community. Using the Talmudic debates regarding the dates when the Megillah should be read to center his argument, Rashi writes that the reason for the prohibition forbidding a community that is obligated to read Torah on the 14th of Adar from reading on the 15th is because it would then appear that ~~there~~ "there are two Torahs." Thus, although Jewish law permits variation in the date of reading depending on the location and age of a community, each community must abide by its prescribed date because diverging from the law might make it appear as if there are multiple truths.⁵¹

Although Rashi does not rule explicitly on the bounds of *lo titgodedu*, his rationale sets an important precedent for later commentators who address this principle.

⁵¹ It seems that the ~~two~~ "two Torah" argument is Rashi's ~~default~~ position." He addresses the issue both in Sukkah 44a (s.v. L'dideihu) and Bava Metzia 33b (s.v. b'yamei rabi). In the former, the ~~two~~ "two Torah" argument is employed to explain why there must be uniformity between Palestinian and Babylonian communities when dealing with carrying the lulav on Shabbat.

Like Rashi, the Rosh (Asher ben Yechiel, 13th C Spain)⁵² also emphasized the theological importance of affirming the notion of a single Torah. Ruling in accordance with Rava, the Rosh explained that *lo titgodedu* governed only a case where a single court had disputing judges. He contended that two courts in a single city or two courts in multiple cities are not a violation of the precept. Here, the Rosh ruled in accord with Alfasi. The scope of the law is narrow and there is no evidence from his statement that it governs anything other than Torah and rabbinic law. Giving a rationale for his ruling, the Rosh quotes Rashi, “if a resident of a community travels to another community he must behave like them, so that it not appear as if there are two Torahs.”

The statement above displays the Rosh’s desire for uniformity. However it is telling that although the statement is not original – the second section of M Pesachim 4:1 reads, “A person should not change from the local custom [in order to avoid] conflict”—he makes a conscious decision to change the rationale provided by the Mishnah (i.e. avoiding conflict) and offers instead Rashi’s ontological rationale (two Torahs). Having removed completely all mention of dispute, the Rosh was now free to accept Rava’s ruling that two courts in the same city do not violate *lo titgodedu*. True, there may be disagreements between them. However, ontologically, he claimed that disagreements between two communities in the same city do not give the appearance of multiple truths as do disagreements within a single community.

Like the Rosh, Menachem Ha-Meiri agrees with Rashi’s rationale for the law and rules as Rava does. He writes⁵³:

⁵² Commenting on Yeb 1:9

⁵³ 14a, pg. 68

That which we say pertaining to the law of *lo titgodedu*, that there is a scriptural understanding that *one should not make factions, since it would then appear as if there are two Torahs* -- When does this apply? When there is only one rabbinical court in a city and that particular court has disagreements deciding the law, some judges deciding one way, some of them deciding another. However, in one city where there are two courts, and where one court decides one way and another court another, these are not considered factions for it is impossible that everyone will agree on one opinion. And this is all the more so with matters that depend on custom since one should not care if some [Jews] behave one way and some another.

Here, as it did for the Rosh, the doctrine of “two Torahs” provides a necessary framework to assess the scope of the law. Unlike the Rosh, the Meiri makes explicit his comfort with dispute. Since groups by nature disagree, one should not be concerned with disputes between different groups, but only within the same one. Furthermore, he states unequivocally that since we only care about ontology and not dispute, custom is not governed by *lo titgodedu* since it does not rise to the level of law. Halacha is the “revealed word of God” while minhag is not.

This position was echoed by Shlomo Luria, who wrote in his work, the Yam Shel Shlomo (Yeb 1:10):

The law is that it is forbidden to make factions in a city, which means that half the will judges rule one way and half will rule another, but two courts in the same city can each rule according to its own judgments. Even in the case of one court, if the disagreement does not seem prominent, it is [not defined] as a faction

Although this ruling has much to teach on its own, it is better understood through the lens of a later point that Luria makes when summarizing the suggiah on Yebamot 13b⁵⁴ whether different dates of Megillah readings violate *lo titgodedu*:

....Reish Lakish found problematic what R. Yochanan said on that which was taught in a Mishnah, ~~we~~ read the Megillah on the 11th, 12th, 13th, 14th, and 15th [of Adar].” Perhaps I should apply the verse ~~lo~~ *titgodedu*”, ~~do~~ not make factions,” since it *might then appear that there are “two Torahs.”*

In examining Luria’s ruling, several points stand out. First, like his contemporaries, he sees the rationale of ~~two~~ Torahs” tied directly to the prohibition against factionalism, which incidentally he concludes is not violated by diversity in Megillah reading. He does not quote Rashi when explaining why the law exists; the law as it is stated in the Talmud and Rashi’s explanation of its meaning are inextricably tied together for him and he makes no distinction between the written Talmudic text and its 11th century interpretation. However, Luria narrows significantly the scope of the prohibition. It is confined to disputes in a single court only when these disputes are *prominent*. The issue of prominence is a new detail in our discussion. Luria is not concerned with whether people are arguing. Rather, he is concerned about whether such arguments spill into the public realm and might therefore cause others to misunderstand the truth of a revealed Torah.

The Rosh, Meiri, and Yam Shel Shlomo provide an interesting cross section of legal thinkers throughout time and across geographical boundaries who see ~~lo~~ *titgodedu*” primarily as dealing with ontological claims. Because defining what is ~~true~~” in Judaism inherently involves a subjective judgment, they choose the ~~safer~~ route” and

⁵⁴ See chapter 1 to compare this version to the original suggiah.

limit the scope of *lo titgodedu* to include only disagreements that emerge from a single rabbinic court. Like the Bavli, they tolerated disputes, understanding they were part of everyday Jewish legal practice. As long as the theological foundation of the system itself remained intact and unchallenged, they could tolerate a great deal of practical division.

Lo Titgodedu – Avoiding Conflict

The first medieval jurist to disagree with Alfasi and expand the scope of *lo titgodedu* was Maimonides. Writing in his work, the Mishneh Torah (Hilchot Avodah Zarah 12:14), he rules, “There should not be two rabbinic courts in one city, one behaving according to one custom (*minhag*) and one according to another custom, for this thing causes great disputes as it is said, *lo titgodedu*, do not make factions.”

Although short, this statement diverges from previous scholars we have examined in three distinct ways. First, it appears that Maimonides rules in accordance with Abaye, not Rava, expanding the scope of the prohibition to include disputes between two different rabbinic courts in a single city. Second, he divorces *lo titgodedu* from any ontological rationale (i.e. the theological notion of “two Torahs”). In accord with the Yerushalmi’s rationale, Maimonides explains that law exists to avoid disputes altogether. The third difference is that he explicitly includes mention of the word *minhag* or custom. This move to expand the prohibition to include customs and not just “laws” is unprecedented in either Talmud – both the Yerushalmi and Bavli limit the scope of the prohibition to the legal realm. However, this expansion is a direct result of Maimonides’ decision to redefine the law in relation to disputes. If the law exists to limit disagreement

altogether, then it must include all disputes that might create discord in a community, including those over custom.⁵⁵

As it was such a radical departure from previous interpretations, those who encountered Maimonides' ruling were forced to choose between different understandings of *lo titgodedu* itself. On the one hand, they could rule counter to Maimonides, ignoring him outright, like the Rosh and Meiri. On the other hand, they could accept his interpretation of the law and defend his choice or use him as precedent for future rulings they themselves might issue.

Joseph Caro, in the Kesef Mishnah, his commentary on the Mishneh Torah, is perhaps the most famous scholar of Jewish law to affirm Maimonides' view of this law. In his comment on Hilchot Avodah Zarah 12:14, he champions Maimonides by first narrowing the scope of when the halacha accords with the views of Rava as opposed to Abaye. As stated above, traditionally the halacha favors Rava in all but six cases. However, Caro explains that this rule only applies when 1) Rava employs his own reasoning to provide a different interpretation of the law ; and when 2) he differs from Abaye because they learned differing traditions from different teachers, in which case the halacha does not necessarily accord with his opinion. In the case of Yebamot 13b, Caro explains, Abaye and Rava disagree because of differing traditions, not as a result of different understandings or rationales. Thus, Caro concludes that Maimonides is free to rule like either of them.⁵⁶

⁵⁵ According to Jacob Gilat one rationale for why Maimonides would depart from previous held beliefs was because of his need to centralize power in light of the Karaites. Narrowing the boundaries of what is acceptable practice by limiting disputes and expanding *lo titgodedu* to include customs would delegitimize the group and allow the rabbis to retain power. See pg. 87 of his work for other rationales.

⁵⁶ Our modern commentators will point out that this is a forced interpretation because there is no evidence from Yeb 13b that they are speaking in the name of someone else. Although Caro tells us to look closely at the *suggiah* to find the answer, he fails to explain what in the *suggiah* is his marker for this distinction.

Caro's defense of Maimonides finds its way into his magnum opus, the *Beit Yosef*⁵⁷ as well. In Tur OH 624, Jacob Ben Asher cites his father's ruling that prohibits groups from observing a second day of Yom Kippur with the full holiday liturgy. This practice, although not widespread, was around for centuries as many struggled to distinguish Yom Kippur from other two-day festivals in the diaspora like Rosh Hashanah and Sukkot. In explaining the rationale for the Rosh's ruling, Caro cites two alternative grounds for this understanding. On the one hand, the Rosh could rule that two such groups in the same city, one that observes a second day of Yom Kippur while the other refrains from doing so, violates *lo titgodedu* because although the groups appear separate now, they nevertheless began as one cohesive whole. Thus, they are similar to one court where disagreements take place, and this is a clear violation of the law. The other possibility is just as telling. Here he explains that the second day of Yom Kippur could appear as false piety and arrogance and thus create arguments in the community. In essence, Caro has attempted to merge the Rosh's ruling with Maimonides' rationale. Like Maimonides, he privileges the sociological argument (avoiding conflict) while creating a situation that two communities in the same city might be in violation of *lo titgodedu*.

Just as Caro defended Maimonides, there are other commentators who accept Maimonides at face value and rule in accordance with him. These include Moses of Coucy (13th C France), Isaiah ben Elijah di Trani the Younger (13th C Italy), and Moses Isserless (16th C Poland). While Coucy (Lav 62) cites Maimonides' ruling virtually word for word, di Trani the Younger uses his own words writing, –Also in this time, there are many places where disputes between the sages and the Geonim arise. It is forbidden for members of a city to divide and affirm varying customs, some of them [practicing] one

⁵⁷ Oddly Caro does not use the phrase at all in the *Shulkan Aruch*.

way and some of them [observing] another. Rather they should vote and do according to the majority.” For him, as for Maimonides, disputes over customs must be limited. However, while Maimonides did not indicate how this should be done, di Trani the Younger emphasizes the need for a simple majority in decision-making.

Like Maimonides, Moses Isserless expanded the scope of *lo titgodedu*. Commenting on Caro’s ruling (OH 493:3) that ~~there~~ are those who are accustomed to cut their hair on Rosh Chodesh Iyar but this is a mistaken custom,” Isserless writes:

In many places, the custom is to cut one’s hair up until Rosh Chodesh Iyar. And in those places one does not cut [one’s hair] from the 33rd day of the Omer onward, even though it is permitted to cut [one’s hair] on the 33rd day of the Omer itself. And in those places that customarily cut their hair from the 33rd day of the Omer onward, they should not cut it at all after Passover until the 33rd day of the Omer. It should not be the case that in one city some behave according to one custom while others act according to another because [that violates the precept] *lo titgodedu*. And it is all the more so that one should not follow both leniencies.

At issue here is the length of time a community must mourn the death of Rabbi Akiba’s students who the Talmud claims died in a plague during the 2nd century. Since refraining from haircuts is one important way to show mourning, it is customary to avoid them during much of the Omer. In his gloss on Caro, Isserless explains that there are two ways that communities abbreviate the mourning period. Some stop cutting on Rosh Chodesh Iyar, around the 15th day of the Omer, and except for the 33rd day, continue until the end

of the Omer period. Other groups stop cutting at Passover and continue to refrain until the 33rd day. After the 33rd day, they commence cutting again. While the period of refraining from cutting is custom rather than law, Isserless worries that having two groups each observing the mourning period of the Omer in distinct ways will violate *lo titgodedu*. Here, Isserless has expanded the scope the law to include customs. However, unlike Maimonides, he refrains from providing a rationale as to why. This might be because by the time Isserless is writing, the idea of avoiding conflicts over customs is so ingrained he can take the rationale for granted.

Merging Rationales

As time progressed, the sociological rationale and the ontological rationale began to be mixed. As both became integrated into the core of *lo titgodedu*, we begin to find both rationales creeping into the same work. We find an early example of this in Sefer HaChinuch (13th C Spain). Here the author⁵⁸ first quotes Maimonides, but then disagrees with him, writing:

But from my masters, may God protect them, I learned that this prohibition only applies to one group that is divided with another that is equal in wisdom [to the other group]. For it is forbidden for each subgroup to act according to its own understanding, since it will cause disagreement among them. They should rather discuss and dialogue until they all agree on one opinion...However, we do not

⁵⁸ The author of this work is unknown. Some have attributed it to Rabbi Aharon HaLevi of Barcelona while others have seen it as Pinchas ben Joseph ha-Levi. See Ta-Shma, "Mehabbero ha-'amitti shel Sefer ha-hinnukh," pg 787-90

apply the prohibition, *Lo titgodedu*, to two courts that disagree and are equal in wisdom.

Here, the author of Sefer HaChinuch disagrees with Maimonides's conclusion -- the law only governs disputes within a single court. However, he is not concerned with the notion of two Torahs. Instead, his rationale for invoking *lo titgodedu* is about "disagreements" between groups. Sefer HaChinuch has merged the Maimonides's rationale and Alfasi's conclusion. Like Sefer HaChinuch, Shabbtai HaCohen (17th C, Poland, Shach) takes elements from both schools of thought to define the scope of *lo tigoddedu*. He writes (at the bottom of Siman 242):

It is forbidden for a rabbinic court in a city to be divided in a matter *so that some of them rule one way while some rule another way because of the precept lo titgodedu, do not make factions. [The reason for this prohibition] is that disagreements cause conflict in Israel and [because of them] the Torah appears like two Torahs...* Rather, they should negotiate back and forth until all of them arrive at one opinion. If this, however, is impossible, [and] if they disagree about a Torah law, they should rule stringently. If it is a rabbinical law [about which they disagree], they should rule leniently. Two rabbinical courts in one city can rule [independently] some ruling one way and some another. This is specifically the case with two courts that are known, but if they are not known, it is forbidden for some to follow one court in a city and some to follow the other. Even though doing this may cause disagreement between the two courts, it is forbidden [to

follow one over the other]. *How much the more so for something that increases disagreements (machlakot)!* However, if one court was greater than its contemporary, its judgments are like two Torah scholars who disagree on a matter [and we rule like the greater one].

In his discourse on the bounds of *lo titgodedu*, the Shach offers a number of interesting innovations. First, he merges the rationales. *Lo tigoddedu* is a precept meant to avoid conflict as well as the appearance of two Torahs. Additionally, he circumscribed Maimonides's ruling; if both rabbinic courts in a city are equally known and respected, then their disagreement does not violate *lo titgodedu*. However, if one court is greater than another we rule as Maimonides did. Here there cannot be a variation. The real test comes when we do not know if one court is superior to another. If Maimonides was ruling, this case would be simple: as disagreement causes discord, a way must be found to side with one court or the other and affirm that court as the authority. However, the Shach disagrees. When we do not know which court is more respected, we are forbidden to follow one court over the other, even if such inaction causes disagreements. True, avoiding disagreements is important. However, for the Shach it is nevertheless important to champion the truth of God's Torah. Because we do not know which court is greater, and because we might make a mistake and prefer the lesser court, a decision should altogether be avoided and neither should be followed. For the Shach, the sociological rationale was important, but misrepresenting the truth, i.e, undermining the authority, of Torah embodied a greater risk.

As we move into our next three chapters and examine the way that *lo titgodedu* functions in the modern era, Sefer HaChinuch and the Shach provide instructive models for later authorities. Both rationales for the law, avoiding discord on the one hand and conveying only one ontological truth on the other, are in tension with one another. However, they are both so ingrained in the understanding of the law by the end of the Middle Ages that modern commentators have to grapple with both rationales when dealing with the precept in the modern period. This leaves open the possibility that a single halachic authority can break with the paradigm discussed in this chapter. They might see *lo titgodedu* as primarily ontological but as limiting custom or primarily sociological but as confining disagreements in a single court. These multiple outlooks will allow for malleability in the law and give license to understanding *lo titgodedu* in different ways when confronting particular problems and challenges. Because the application and understanding of the law is flexible, it can serve as a litmus test for a halachic authority's outlook on pluralism and their community's place within the wider Jewish people.

Chapter 3: Lo Titgodedu in the Writings of Yechiel Yaakov Weinberg

In the late 1940s, the Jewish community was recovering from the effects of World War II and the Holocaust. Jews were displaced and many had to find new homes. For many Jews, Poland and Germany were no longer viable places to live. While many left to go to America, Israel or Canada, others settled within Europe. Rabbi Yechiel Yaakov Weinberg, one of the generation's leading scholars of rabbinic literature and Jewish law, found himself in Montreux, Switzerland, in the post-war period, where he would remain until his death.

While in Switzerland, Yechiel Yaakov Weinberg would continue a trend he began earlier in his career as he straddled the world of the traditional Yeshiva and the academy. A product of both the yeshiva and the academy, Weinberg became the head of the Berlin Rabbinical Seminary where he wrote both scholarly treatments of Jewish themes as well as traditional responsa. Perhaps most famous for his defense of traditional slaughter methods in the 1930s, Weinberg galvanized both eastern and western scholars to examine *sh'chita* (ritual slaughter) in light of anti kashrut laws during the rise of the Nazi era.⁵⁹

While in Switzerland, Weinberg wrote a number of scholarly works about the formation of the Mishnah.⁶⁰ He also spent a great deal of time writing traditional responsa on a number of issues, from firing rifles at military funerals in Israel⁶¹ to the

⁵⁹ For a full discussion of this issue see Shapiro, Between the Yeshiva World and Modern Orthodoxy, Chapter 5.

⁶⁰ See S'ridei Eish i 364-369

⁶¹ S'ridei Eish iii 297-8

establishment of Yom Hashoah, Holocaust Remembrance Day.⁶² These post-war response, along with a number of his early works, would be collected, many by his student Eliezer Berkowitz, and published as a collection entitled *S'reidei Eish*. Perhaps above all, this collection is famous for a number of lenient rulings that Weinberg issued. Especially in the post-war period, many authorizes were reluctant to allow many changes and therefore ruled stringently on virtually all matters. Weinberg was noteworthy for standing against this trend. As his biographer Marc Shapiro explains, “He felt that in these cases [where he ruled leniently] he had no choice but publicize his view, for as he explained, ‘it cannot be that only those who are fearful will decide the halakhah.’ On another occasion he expressed himself similarly, declaring: ‘One must not be afraid of the masses’ screaming and of rabbis who wish to glorify themselves with their stringencies.’”⁶³

It is with this historical backdrop that we examine two particular works by Yechiel Yaakov Weinberg in the post-war era. The first, a lengthy responsum on divergent kashrut practices within a community, examines whether these variations violate the precept *lo titgodedu*.⁶⁴ The second, a shorter scholarly piece published in the journal “Erevunah,” acts as a digest to many of the issues raised in the first responsum.⁶⁵ Both works are scrupulously detailed and rely heavily on precedent from previous rabbinic authorities. However, within these detailed discussions, Weinberg makes a number of novel and lenient claims about the scope of *lo titgodedu* and its place in post-war Switzerland.

⁶² *S'reidei Eish* ii 53

⁶³ Shapiro 188

⁶⁴ *S'reidei Eish*. ii OH 11. Responsa Project: Bar Ilan. Version 14, 2002

⁶⁵ *S'reidei Eish*. ii OH 12. Responsa Project: Bar Ilan. Version 14, 2002

Although there is no date on Weinberg's particular responsum, we do know the name and location of the addressee. The letter was written to R. Mordechai Yaakov Breisch,⁶⁶ who was the head of the rabbinical court (*av beit din*) of Agudas Achim in Zurich, Switzerland. The court of Agudas Achim functions even today as an important European authority on Kashrut and slaughter practices. Therefore, it is no coincidence that the issue Rabbi Breisch was exploring in his question to Weinberg related to food: could a community that is accustomed to inflate the lungs of a slaughtered animal to check for punctures continue this practice if they move to a locale where the majority of the residents do not observe this practice?

While a full exploration of this halachic issue is outside of the purview of this paper, it is nevertheless important to briefly sketch its background. Chapter three of tractate Chulin deals with eighteen defects that render an animal *trefiah* or invalid.⁶⁷ One of these defects is a punctured lung, *ha-re'ah nikveh*. Should an animal be found to have this defect of any size, the animal is not kosher and cannot be eaten.

However, the Gemara is explicit that *a priori*, one does not need to check for these defects. There is an important principle in kashrut called *rov behemoth einan trefot*, ~~the~~ "the majority of animals are not non-kosher." Since most animals lack defects that will kill them within twelve months, one can assume any animal killed without suspicion of a defect does not need checking.⁶⁸ Therefore, the defects that cause an animal to be non-kosher are only problematic if the slaughterer or butcher stumble upon them. According

⁶⁶ Died 1977. Breisch is the author of the well known responsa collection *Chelkat Yaakov*.

⁶⁷ The Talmud later derives this law from the phrase Exodus 22:30, ~~and~~ "and the meat that was torn [*–trefah*]" in the field you shall not eat." Although the plain meaning of the text is that one cannot eat an animal that has been attacked by another animal, the rabbis expand this meaning to include any animal with an number of defects that will kill it within 12 months (Chulin 42a).

⁶⁸ Such as those who die due to a fall from a roof or an attack by a wild animal

to Breisch, the community in question is stringent and takes it upon itself to check the lungs of the slaughtered animal despite the fact that this is not required by tradition.⁶⁹

Weinberg's answer is thorough and discusses a number of legal issues. However, he explores four central questions that guide his ruling in this case:⁷⁰

1. Are the two communities, those that inflate lungs and those that do not, considered two separate communities or are they two parts of one whole? To what extent is a community like Zurich where historical circumstances brought two communities together similar or different from a community that actively forms a faction?⁷¹
2. Does *lo titgodedu* govern variation in laws, customs, or some third category? What category does inflating lungs fall into?
3. Can either community surrender its custom and join the other, or is that a violation of *al titosh*?
4. If we allow both communities to retain their kashrut practices, can they share meals together?

Are the two communities, those that inflate lungs and those that do not, considered two separate communities or are they two parts of one whole? To what extent is a

⁶⁹ The Talmud lays out the process for checking lungs on Chullin 46b. One first inflates the lung and listens for hissing noises. If he is know from where the noise is coming, one places a feature, some spittle, or a straw near the hole. If it flutters one knows definitively the location of the hole and the animal is *treifah*. If one cannot find the hole, they then place the lung in lukewarm water and inflate it. If the water bubbles this means there is a hole in the outer and inner membranes of the lungs and the animal is *treifah*. If it does not, it means the sound was the air rushing between the two membranes and the animal is kosher.

⁷⁰ Weinberg does not structure his responsum like this. These questions are mine.

⁷¹ This will be the Liebermann case in Chapter 5

community like Zurich where historical circumstances brought two communities together similar or different from a community that actively forms a faction?

In his *she'eilah* to Weinberg, Breisch examines the divergent kashrut practices of these two communities through the lens of the question above. Quoting the Pri Chadash⁷² and the Beur Halacha,⁷³ Breisch claims that these communities are each like their own city within the larger city.⁷⁴ If this is the case, no halachic authority in history would rule that two cities with divergent practices must conform because the rule of *lo titgodedu* would then not be applicable.

Although Weinberg will eventually rule like Breisch and permit these two communities to follow their own practice of kashrut, he notes that Breisch's explanation is incomplete. He draws a distinction between the historical circumstances that led the Pri Chadash to issue his ruling and the reality of contemporary Switzerland. The Pri Chadash was writing in response to the history of Sephardic Jewry that was exiled from Spain and Portugal en masse and resettled in sizable numbers in Constantinople. As a large group, they were permitted to keep their ancestral customs. However, in the wake of World War II, whole communities in Europe were not uprooted and replanted. Instead, as Jews fled their homes and as DP camps were later liberated, Jews arrived as individuals, each one subsumed into the larger culture that awaited them in Zurich.

Weinberg further refines his critique of Breisch by citing the 16th Century authority Moshe Alisheich, who claimed that when there are multiple communities in a

⁷² Hezekiah Da Silva, 17th C Italy

⁷³ Yisrael Meir HaCohen Kagan, 19th C, Eastern Europe

⁷⁴ Kagan for example states, "If a community has its own synagogue, mikveh, and rabbinic authority they are considered like their own city (i.e. subject to their own laws)"

single locale, the minority “gets pulled after the majority” and must conform to their customs. Weinberg quotes Alisheich for two reasons. First, Alisheich serves as a counter to the Pri Chadash and other like sources, showing that the answer to Breisch’s question is more complex than it might seem. Second, this text allows him to examine Maimonides’s famous ruling that two disputing courts in the same city violates *lo titgodedu*. Maimonides provides an important base for Alisheich’s argument. If two courts cannot exist side by side in one city, then the community must choose one legal norm and the minority would yield its claim to determine authoritative practice in that city.

As we discussed in the previous chapter, Maimonides’s ruling is extremely novel and departs significantly from previous held rabbinic opinion. Therefore, Weinberg devotes a great deal of attention to understanding his motivations and reasoning. He particularly centers his examination on a responsum by the Nitziv (Naphtali Tzvi of Berlin). At issue is how Maimonides could rule like Abaye—that two disputing courts violate *lo titgodedu*—when most authorities agree with Rava that this is not a violation.

In the end, Weinberg, informed by the Nitziv and other Halachic authorities, decides that Maimonides and Rava were in fact addressing different circumstances. According to Weinberg, all agree that in an ideal world when two courts disagree one should always side with the more learned court. However often today, it is virtually impossible to determine which court is more learned. Therefore, both sides should ideally negotiate until they arrive at a compromise. Rava and Abaye (and thus Maimonides) were in essence arguing about what happens in instances when the sides cannot agree. Rava would say that in the case of a stalemate, one may allow variation. For Maimonides,

Rava is correct only at the time when communities already exist. However, in the case of communities that are forming, they must make the extra effort to discuss and debate and settle on a communal policy. Therefore, although it seems that Rava and Maimonides disagree, the later rules more stringently because he is speaking about a more narrow circumstance. With this in mind, Weinberg rules that because the two communities in Zurich have ancestral roots, they are each permitted to engage in their own kashrut practices without violating *lo titgodedu*. This is because they are simply relying on the previous halachic practices of their own communities, not actively initiating new decisions.

The Zurich community was in flux in the postwar period. It was therefore a community without any set custom. That being the case, no community's customs were stronger than another. Thus, the discussion at the outset of the responsum about larger communities subsuming smaller communities or individuals was in effect irrelevant. Neither community was powerful enough to do this. To make this claim, Weinberg still needed to deal with an important legal precept – that is, that when two communities are in dispute and they are both equal in wisdom, Jewish law holds that we follow the more stringent community for biblical precepts and the less stringent for rabbinic precepts.⁷⁵ Although he cites a number of sources to make this point, his most powerful support for his position comes from the Pri Chadash,⁷⁶ who held that in the case of someone who settles in a city where there is no fixed custom, that person should always conform to the stringencies from his community of origin. As Zurich had no fixed custom and two very

⁷⁵ Found in Avodah Zarah 7a

⁷⁶ Hezekiah Da Silva (17th C Amsterdam), *Orech Chayim Siman* 468

distinct communities, there was every right for each community within the city to retain variation in practice.

This ruling is particularly interesting in light of other social policy positions advocated by Weinberg, and it will be useful to compare this lenient ruling with those he issued in previous decades. In his earlier years, Weinberg was critical of the early Reformers, writing “Is it easy to say to a son that he should be tolerant of those who insult his mother?”⁷⁷ However, despite this, Weinberg did cooperate with these Reformers on issues of mutual benefit and concern.⁷⁸ Many Orthodox rabbis of his era and educational standing favored separatism, seceding from communities where reformers had gained too much power. Indeed, many Orthodox Jews, both eastern and western, would pledge their support to the separatist Agudat Yisrael. However, Weinberg opposed this position, concerned that this body would become too politically focused and would in the end alienate more moderate segments of the Orthodox community.⁷⁹

Weinberg stood between those Orthodox who favored separatism and those who allowed for cooperation with Reform. His stance was a most pragmatic one, and this allowed him to work with Reform and Orthodox alike depending on the issue. This openness to variety and dialogue, even when one side is judged “problematic,” can be seen in our responsum. Here Weinberg was willing to allow both Zurich communities the right to practice in their own way without fear that they were violating *lo titgodedu*. Although it is hardly fair to make a direct comparison between Weinberg’s attitudes about Reform communities and his attitudes toward variation in Zurich among traditionally observant communities since there are details in each these cases that do not

⁷⁷ Shapiro 67

⁷⁸ Ibid 67

⁷⁹ Ibid 68

conform with the other, Weinberg's attitude toward the Reform is useful in highlighting a general trend of openness, flexibility, and pragmatism that pervades much of his rulings.

Does lo titgodedu govern variation in laws, customs, or some third category? What category does inflating lungs fall into?

As we have observed in previous chapters, the scope of *lo titgodedu* is dependent upon how one defines and understands its strictures and meaning. If the law governs legal matters alone, there can be much more variation in a community than if it applies to *minhagim*. For the Jews of Zurich, the question of the scope of *lo titgodedu* is significant since at its core, inflating lungs to check for holes is a custom, not a legal necessity. Therefore, if *lo titgodedu* governs only law, there is absolutely no problem with this brand of pluralism. However, if it limits variation as applied to customs, no community could permit one group to inflate lungs while others did not in the observance of ritual slaughter.

In answering the previous question, Weinberg explicitly stated that the Zurich communities were not in violation of the precepts because they were two separate, preexisting communities that were in flux. Therefore, each had a right to retain its own customs. However, he would use the distinction between law and custom to strengthen this point. Here Weinberg drew a distinction between two similar precepts, *lo titgodedu* (do not make factions) and *asur leshanot mipnei hamachloket* (do not change [the custom of a place] so as to avoid disputes)⁸⁰. These two categories, while aimed at assuring uniform communal practices, governed different realms. *Lo titgodedu* was primarily

⁸⁰ This is a direct quote from M. Pesachim 4:1

ontological and therefore governed only law. *Asur leshanot mipnei hamachloket* is sociological and is directed specifically at changes in customs that might lead to conflict in one's locale. Therefore, because inflating lungs was primarily a custom, it could not fall into the realm of *lo titgodedu*. The next section will discuss how Weinberg dealt with the issue of whether variation in kashrut practices constituted a violation of *asur leshanot mipnei hamachloket*.

Before moving on to a consideration of this issue, it is interesting to note that Weinberg here drew a distinction between religious law and secular law. For him, the variability that is permitted when two communities come together is limited in the case of paying taxes and ensuring protection. In these practical areas, unified practice and a single authority is mandatory. However, for matters in the religious realm, e.g., when to read the megillah, variation in law is permitted. Therefore, one can say that Rava and Abaye's debate—namely, the question of whether two courts can exist in the same city -- applies only in a case of religious law. For secular causes like paying taxes and representing the community to the state leaders, both authorities would agree that one Jewish voice is crucial. This ruling comports to the attitudes Weinberg adopted regarding Reform Judaism, where he saw opportunities, mostly political and economic, where the two could work together.⁸¹

Can either community give up their custom and join the other or is that a violation of al titosh, do not abandon the custom of your father?

⁸¹ However, in countless places Weinberg rules against religious and liturgical changes of that community. See *S'ridei Eish* 2:11

As mentioned in the previous section, according to Weinberg's definition, variation in custom does not violate *lo titgodedu*, but may violate *asur lishanot mipnei hamachloket*. In order to counter this, Weinberg brings in the precept *al titosh torat imecha*, which prohibits changing one's ancestral customs.⁸² If he can demonstrate the inapplicability of the former precept while demonstrating the applicability or actionability of the latter one, he could maintain that the two Zurich communities could be not be forced to adopt a single uniform practice.

However, Weinberg does not get that far. Before examining the scope of *al titosh*, he began by arguing that *asur lishanot mipnei hamachloket* was not applicable in a straightforward manner to this case. He stated this precept, no less than for *lo titgodedu*, was only in force in the case of a single community or rabbinical court where there was disagreement. Because the Zurich community has two distinct communities, one native and one from Poland, both are entirely distinct entities and they do not violate the precept. He completes this discussion by quoting the Magen Avot, "A craftsman is permitted to retain his customs even though the rest of the city does not act as he does."⁸³ In sum, the argument is that if there are cases where individuals (i.e, the craftsman) do not need to conform to customary societal norms, then whole communities should certainly not be held to that standard. Both communities can retain their own lung inflating practices.

Having dismissed the notion that *asur lishanot mipnei hamachloket* limits variation in the case in question, Weinberg is free to assess *al titosh* on its own merits since he has already established that it is permissible for these two communities to retain

⁸² See chapter 1 for an examination of the roots of this law.

⁸³ Siman 493

separate kashrut stringencies. The question here is whether in light of *al titosh* both communities have the choice to switch kashrut practices if they so desire. He has already established above that they *can* retain their ancestral practices; at question now is whether they *must*.

Through an aggadic text in the Yerushalmi (Pesachim 4:1), ⁸⁴ he dismisses the notion that *al titosh* has relevance for the case at hand. According to the story, a group approaches Rebbe and asks him if they can sail in the Mediterranean Sea before Shabbat. Rebbe answers that if their parents were not permitted to sail, they should also be prohibited. However, the Gemora does not allow Rebbe's answer to stand alone. It asks why the children cannot seek an annulment for their parent's customs in the same way they might seek one for a vow. After answering that the children have no right to annul a vow they themselves do or did not make, the Gemora responds that they should not be beholden to a vow made by a previous generation. With this answer in mind, the Gemora concludes that Rebbe's stringency, prohibiting sea travel, was not because of their parents' custom at all but because he felt that it was wrong for any group to sail in the Mediterranean. He was therefore, according to thinkers like the Sdei Chamad, legislating for other reasons (i.e., safety), not because of *al titosh*.

Responding to the story, Weinberg disagrees with the Sdei Chamad. Rebbe was discussing *al titosh*, but only in specific circumstances. According to Weinberg, there are two kinds of customs. The first kind is customs that are legislated by law, *mi tzad hadin* (i.e., wearing *t'fillin* on Chol Hamoed). This category of customs is varied across the Jewish community because the medieval commentators (*rishonim*) do not agree on how

⁸⁴ *Yersuhalmi Pesachim* Chapter 4, daf 30 4a

the custom should be practiced. The other kind of custom is not debated by the *rishonim*, but is rather a simple custom created by one's ancestors. Not traveling on the Mediterranean Sea from Beishan on erev Shabbat is an example of this later kind of custom because it is too specific to be legislated by anyone other than residents of Beishan. Weinberg believes that *al titosh* only applies in this second, non-legal case. Therefore, because the issue of inflating lungs is a custom that *is* debated by rishonim and is *mi tzad hadin*, it is not subject to *al titosh* and should a community decide to change their practice they are not held accountable.

If we allow both communities to retain their kashrut practices can they share meals together?

At the end of his responsum Weinberg explores a slightly tangential issue, but one with interesting consequences: if we allow both communities to retain their separate kashrut practices can they share meals together? In a way, this question is his most fascinating because it explores the conviction of and has genuine practical consequences for both communities. If we allow both communities to retain their unique kashrut practices, that means that the more stringent party — those that inflate lungs — might consider the meat of the other party unkosher and could therefore not eat together with them or buy their meat. Therefore, can it be left up to individuals to make their own choice about whether to eat with the other community, or do we say that since once they have relied on their authorities and ancestors for their practices that they cannot diverge from them even to appease their neighbors and foster communal unity among Jews?

Weinberg does rule that one is permitted to accept the invitation. He bases this upon an analogy. According to the Shach,⁸⁵ even if one is stringent in the laws of inflating lungs, he is still permitted to eat a piece of meat from an animal whose lung has been lost. This is because while one is required to do all he or she can to determine whether a piece of meat is kosher, in certain cases, if there is absolutely no way to know whether it is—as in the case of a piece of meat from an animal without an accompanying lung—one is permitted to assume that the meat is kosher and eat it. This is because of the principle cited above, *rov behemoth einan trefot*, the majority of animals are not invalid. This, Weinberg writes, is similar to the case of inviting one to a meal at a house that may not have the same kashrut customs in regard to inflating lungs of slaughtered animals. .

In order to support this point, Weinberg asks an important question: what is actually prohibited when someone eats meat when they do not check the lung? On the one hand, perhaps it is the meat that is not kosher and thus one who eats it violates the laws of kashrut. On the other hand, perhaps the violation is not at all connected to the meat, but to a disregard of their ancestral custom of checking the meat in this way. In this instance, while the meat may indeed be kosher, the individual has ignored an ancestral mandate. For Weinberg, this second rationale is paramount. If the problem with eating questionably invalid meat is the meat itself, then there cannot possibly be legal pluralism regarding such a practice. Meat is either kosher or not, regardless of whether you have access to the lung, and you should therefore be certain not to eat such meat. Thus, if you have lost the lung or are invited to another's house where the owners do not check the lungs, the meat that is being served cannot be certified with certainty as kosher and should therefore be avoided. However, if refusing to eat the meat is only about

⁸⁵ Yoreh Deah, Siman 29

avoiding abandoning ancestral customs, one can draw a distinction between actively diverging from these customs and passively doing so. When one eats meat from an animal where we do not have the lung, the person has not made a conscious decision to abandon their custom. They are simply victims of circumstance. The same is true of a dinner invitation. They are not serving the meat and thus are permitted to eat what is served to them since they did not actively change their ancestral customs nor do they know for sure that the status of the meat is likely non-kosher. For the sake of communal unity, Jews of different persuasions should be allowed to eat together. Once again, Weinberg's moderation and commitment to Jewish communal unity – where possible – are obvious in his rulings.

What is significant here is that Weinberg has not addressed the issue of which community has proper kashrut standards. By ruling that one community can invite the other over for dinner, he has effectively validated both kashrut practices. It does not matter whether one community inflates lungs while another does not. Instead, Weinberg has reminded his readers that what is at stake with his whole responsum is communal cohesiveness on the one hand and connection to ancestral tradition on the other. When they are among their peers, persons in one community must not allow for variations in kashrut practices because of *al titosh*. However, when a choice must be made between breaking bread with other Jews or doggedly retaining one's traditions, Weinberg allows concerns of kinship among Jews to triumph and cautions his readers not to remain too tied in such instances to their ancestral folkways..

After publishing his lengthy responsum on *lo titgodedu*, Weinberg published a shorter piece on the topic in the September 1949 issue of the journal *Tevunah*,⁸⁶ where he summarized a number of his main points from his letter to Breisch. Dispelling notions that the apparent inconsistencies found in Maimonides can be explained by mistakes in the printing and transmission of his code (*girsao*t), he instead reads and understands Maimonides in a distinctive way. I have included a translation of parts of the last section of this article as they constitute a summary of much of the argument and reasoning he put forth in his responsum:

Lo titgodedu is only applicable in the case where there is one rabbinic court that is obligated to debate and bring forth a decision according to the majority or according to the most stringent opinion. If it is impossible to make a decision, as in the case of two courts, each one can follow its own opinion since each must follow the words of its rabbi and it is forbidden to act more or less stringently than the words of its rabbi.

And while this is true for the members of a community, it is not true for the heads of a community as they are certainly **forbidden to appoint two courts, for should this occur, factions will result....**

A close reading of Maimonides shows that he is speaking about the case of *appointing* rabbinic courts while Rava in Yebamot (14a) is speaking about a single [existing] court where each member follows his own opinion. Rather they

⁸⁶ *Tevunah* was a Mussar journal founded in the 1860s by Israel Salanter

should come to a decision or follow the most stringent opinion. In another responsum I speak about this at length.

In sum, throughout this article and the above responsum, Weinberg intentionally reads the scope of *lo titgodedu* and its surrounding issues narrowly. For him, the postwar period necessitated a tolerance of pluralism and variety among Jews. One can only surmise that with European Jewry destroyed and many people left with nothing but their practices, the notion that there is value in retaining those practices should play powerfully into any decision one makes. Communal unity was important—no one should ever withdraw from another community and appoint their own as the Reformers did—but after WWII, Jews needed something foundational in their lives. Weinberg would not be the one to take away their customs.

As mentioned above, this leniency and sensitivity to social factors at the time of his rulings were indicative of his general worldview. As Shapiro observes. “Weinberg’s method...followed the German halakhic tradition...One of the characteristics of the German halakhic tradition has been described by Breuer as follows ‘How the inquisitor will respond to the decision which is given to him was often no less decisive, with regard to the ultimate halakhic ruling than the pure halakhic argumentation.’ Weinberg shared this characteristic, and the tendency to take into account modern social and educational issues is constantly present in his responsa.”⁸⁷ With the state of European Jewry as it was, how could Weinberg not allow this simple variation in kashrut customs?

⁸⁷ Shapiro 216-218

Chapter 4: Lo Titgodedu in the Responsa of Rabbi Ovadia Yosef

Born in 1920 in Baghdad, Iraq, Ovadia Yosef (born Abdullah Yusef) has been the chief spiritual and halachic leader for the Sephardic Jewish community in Israel for over 60 years. After moving to Jerusalem at the age of four, Yosef moved to the Porat Yosef Yeshiva, the only Sephardic yeshiva in Jerusalem in the 1920s.⁸⁸ After receiving rabbinical ordination from Rabbi Ben Zion Meir Uziel and spending some time as a judge in Jerusalem and Cairo, Yosef became a member of the rabbinical court in Petah Tikveh in 1950.

While in Peteh Tikveh, Yosef began heavily advocating for the rights of Sephardic Jews in Israel. This would become a major aspect of his life work and would help to shape an enduring legacy on the Israeli scene. Throughout his later posts, first as a member of the rabbinical court in Jerusalem, then as chief Sepharidic rabbi of Tel Aviv and Israel, and finally as spiritual leader of the Sephardic Shas Party, Yosef would use the Talmudic aphorism, “to restore the crown to its pristine state” (*l’hachzir atara l’yoshnah*), to describe his mission in both the political and halachic realms.

Politically, the statement was meant to bolster the standing of Sephardim. The American scholar Marc Shapiro writes, “The slogan of Shas, *l’hachzir atara l’yoshnah*, says it all. R. Ovadia Yosef ushered in a new era, one in which Sephardim were no longer to be regarded—or regard themselves—as second-class citizens, either in society at large or in the Torah world. This was a great social achievement and is the reason why

⁸⁸ Jacob. “Yosef, Ovadiah”

numerous non-Orthodox Sephardim voted for Shas.”⁸⁹ Here, Yosef’s project is to give confidence and strength to millions of Sephardic Jews living in Israel who struggle for a political voice.

However, more significant for our discussion are the halachic implications of *l’hachzir atara l’yoshnah*. Binyamin Lau explains that Yosef’s intention in this statement was that those living in contemporary Israel would recognize that the rulings of the Sephardic Sage Joseph Caro as contained in the Shulkan Aruch would be authoritative for all residents in Israel. In Yosef’s view, Joseph Caro, who was not only the author of the Shulkan Aruch, but is also referred to in Sephardic legal tradition as “Maran,” our Master, was unquestionably *the mara d’atra* for Israel.⁹⁰ *Mara d’atra*, “master of the place,” is a term that affirms the ruling legal supremacy of a specific authority for a specific locale. Hence, Yosef explicitly asserted that the rulings of Caro should trump those of any other halachic authority for those who lived in Israel. Yosef would thus spend his career elevating Caro’s rulings over and against the Ashkenazic authorities who questioned the hegemony of the Sephardic sage. In so doing, Yosef intended to restore Rabbi Caro to his rightful place in Israeli society.

Marc Shapiro notes that while Yosef claimed that he was simply promoting a return to tradition, his approach was in fact an innovation. He writes, “As far as I know, he is the first *poseq* (legal authority) in history to make such a far-reaching claim as to the significance and binding nature of the Shulkan Aruch in its entirety. Previous decisors recognized that various communities had long-standing practices that diverged from the Shulkan Aruch, and that since these practices had the sanction of great rabbinic

⁸⁹ Shapiro, “Review Essay: *Mi Yosef ad Yosef Lo Kam ke-Yosef*” pg. 6

⁹⁰ Lau., *Mi-Maran ad Maran: Mishnato ha-Hilkahatit shel ha-Rav Ovadiah Yosef*.

authorities they could not be abolished. Yet R. Ovadia is less tolerant than this, and for reasons I cannot comprehend, insists on a uniformity under the Shulkan Aruch's rulings that R. Joseph Caro himself never insisted on."⁹¹ ⁹² It is this insistence on uniformity and the halakhic hegemony that ought always to be accorded Caro that will come into tension with the value of *lo titgodedu* in the rulings Yosef issues. As we will see, when faced with questions of conforming to the Ashkenazi majority norms or following Caro's precedent, which may lead to breaking off into a halachic faction, Yosef always chooses to follow Caro. In order to do this, Rabbi Yosef negates and limits the scope of the precept of *lo titgodedu*, even when this violates Caro's own wide understanding of the law. Yosef's actions are best understood through an insight that the late Columbia University professor Joseph Blau put forth, when he wrote, "Not the least of the elements of paradox that enter into the very nature of religion is the necessity that lies upon it, in its organized and institutional forms, to change while both seeming changeless and protesting its changelessness."⁹³ Here, in order to break from the immediate past and establish Caro's hegemony, Yosef must root his change in a mainstream understanding of *lo titgodedu*.

Lo Titgodedu and Haircuts

Although we will examine Rabbi Ovadia Yosef's earlier works later in this chapter, his most complete examination of *lo titgodedu* comes in a later responsum from

⁹¹ Shapiro, "Review Essay," p. 10.

⁹² Yosef's instance on Caro is not so hard to understand from a political viewpoint (see above). We will discuss more about how Yosef's political agenda influences his halachic decisions below.

⁹³ Blau, Joseph. "Tradition and Innovation," Pg. 95

his collection entitled *yechaveh da'at*.⁹⁴ At the root of this responsum is a 16th century argument between Joseph Caro and Moses Isserless over haircuts prior to Tisha B'av. It is customary in the weeks preceding Tisha B'av to refrain from haircuts as a way to mourn the Temples' destruction. However, Ashkenazim and Sepharadim divide over the amount of time one ought to refrain from cutting one's hair. For Sepharadim who follow Caro's opinion in the Shulkan Aruch⁹⁵ one must refrain from haircuts for exactly one week before Tisha B'av. The Ashkenazim, who follow Isserless, refrain from haircuts during the entire three-week period between the 17th of Tamuz and the 9th of Av.

At issue is whether a group of middle eastern students (*edot hamizrach*) who study in a predominantly Ashkenazi yeshiva and who traditionally refrain from haircuts for only one week must observe the whole 3-week period beginning with the 17th of Tammuz as the Ashkenazi students do. Because they are a minority, are they required to observe Isserless's more stringent ruling even though their community regards Caro as authoritative? Furthermore, if they decide to retain their own customs, is this a violation of *lo titgodedu*?

In order to rule on this issue, Yosef examines closely the roots and scope of *lo titgodedu* and comes to a number of key findings. First, he emphasizes that disputes between Ashkenazim and Sepharadim do not fall under the prohibition of *lo titgodedu*. As we discussed in Chapter 2, the majority of medieval commentators believe that *lo titgodedu* is only violated by disputing judges in a single rabbinic court. Two courts can thus rule differently in the same city with no fear of violating the law. The major exception to this position was put forth by Maimonides, who ruled that two courts in the

⁹⁴ Chelek 4, Siman 36

⁹⁵ OH 451

same city were not allowed to disagree. While Yosef spends a great deal of time trying to explicate Maimonides and harmonize his ruling with that of the other medieval commentators, he concludes that since commentators as significant as the Isaac Alfasi (11th C, N Africa) and Asher Ben Yechiel (13th C Spain) rule against him, they should trump Maimonides's view. Therefore, *lo titgodedu* is violated only when there is disagreement on a single court.

With the scope of the law settled, Yosef was able to rely upon a ruling from Rabbi Samuel de Medina of Salonika⁹⁶ (16th C, Mahardasham) who wrote that in the case of disputes between Ashkenazim and Sepharadim, one should always consider the two groups like two separate courts who live in the same city, even if they reside in the same school or court building. Therefore, in the case at hand, even though both Ashkenazi and Sephardic students attend the same school, the traditions of their own community are sufficiently autonomous. They can display divergent practices, and in doing so, do not violate the law of factions. This ruling seems to overshadow a larger discussion about whether the scope of *lo titgodedu* in general covers disputes between law or custom. Although Yosef cites arguments on both sides of the debate, he explains later that this debate is irrelevant because disputes between Ashkenazim and Sepharadim are never considered factious whether they center around law or custom.

Yosef further supports his claim by drawing a distinction between established disputes and newer ones. He writes:

Even according to Maimonides [who rules that two courts in the same city violates *lo titgodedu*], it appears that since the matter [i.e. the time to abstain from haircuts] is well known to all in the Disapora -- that Sepharadim behave

⁹⁶ Chidushim Siman 153

according to the ruling of the Shulkhan Aruch (i.e. Joseph Caro) and the Ashkenazim follow Moses Isserless -- and that every holy community understands that the customs of the other are founded in golden stone and their foundations in holy beauty, both are the words of the living God (*elu v'elu divrei elohim chayim*)⁹⁷ -- therefore [their differences] are not a violation of *lo titgodedu*.

In other words, Yosef here has a respect for the breadth of halachic practice that made the variation between these two groups permissible from a Jewish legal standpoint. In his view, each practice is not only valid, but beautiful and holy and their followers must be able to remain faithful to their ancestral practices. Yosef further bolsters this point by quoting the 19th century Hungarian authority Rabbi Mordechai Benet, who wrote in his collection, *Parshat Mordechai*,⁹⁸ that in the case of single synagogue where Ashkenazim wear Tefillin on Chol Hamoed and Sephardim do not, we allow each community to continue with their ancestral customs because ~~the~~ prohibition *lo titgodedu* is only applicable when disagreements are *started* [between two communities] in one court that has equal sway in the matter. However when they disagree about an ancient matter and each one is following the ruling of their rabbis, this is not a violation of *lo titgodedu*.”

Therefore, in the case at hand, because debate over the weeks when haircuts were allowed prior to Tisha B’Av, was not a new dispute, both the student communities, the Ashkenazim and Sephardim, had an obligation to observe the practice of their own community. In an echo of *al titosh*,⁹⁹ Benet writes that each community ~~needs~~ to fulfill the customs of their ancestors.”

⁹⁷ See Eruvim 13b

⁹⁸ OH siman 4

⁹⁹ See chapter 1 for a full discussion of this principle

Rabbi Ovadia Yosef further narrows the scope of *lo titgodedu* in the final section of his responsum where he quotes the *Maharshag* (Rabbi Shimon Greenfield, Hungary, 1860-1930), who writes,¹⁰⁰ “The prohibition *lo titgodedu* is only in force when someone is *teaching* halacha to others so that they will behave like him, and one teacher rules that something is forbidden and another rules that it is permitted. However, when people act simply according to their own customs and they do not instruct others, we do not consider this a violation of *lo titgodedu* at all.” He then goes on to cite a number of authorities who agree with this statement. Therefore, because no students are pressuring or instructing any other student to change their haircutting customs, this cannot be a violation of *lo titgodedu*.

In this responsum, Yosef has defined and narrowed the scope of *lo titgodedu* in such a way that divergent Ashkenazic and Sephardic haircutting practices in the weeks prior to Tisha B’Av do not violate *lo titgodedu* because such customs fall beyond the scope of the law. In sum, his findings are threefold. (1) *Lo titgodedu* is never violated when there are disputes between Ashkenazim and Sepharadim. (2) *Lo titgodedu* is never violated in instances of “ancestral disputes,” where the disputants are simply following pre-established customs that have existed for generations. (3) *Lo titgodedu* is only in force when judges force others to follow their opinion, and not when groups act in compliance with pre-existing norms.

These three statements allow Yosef to declare at the end of his responsum, “It is permitted by law for the Middle Eastern students to cut their hair [in the weeks leading up to Tisha B’av] even though they learn in a yeshiva where the majority of their fellow students are Ashkenazim.” However, in a somewhat surprising turn, Yosef concludes

¹⁰⁰ Responsa of the Maharshag, Chelek 2, Siman 12

with the statement, “Nevertheless, if they want to be *stringent* they need not cut their hair and blessing will come upon them.” Although Yosef does not expand upon this statement, a number of factors may lead to his final qualification. First, although Yosef feels that the case at hand is not a violation of *lo titgodedu*, he nevertheless still values unity. Therefore, although an authority such as Mordechai Benet wrote that “each community ~~needs~~ to fulfill the customs of their ancestors” on the basis of ~~al titosh~~,” Yosef seemingly disagrees. At the very least, he does not grant the latter principal supremacy here. For him, the spirit of communal cohesiveness trumps an absolute adherence to *al titosh*. Secondly, perhaps it makes a difference that 90% of the student body was Ashkenazi. As we will see in the third section of this chapter, Yosef accepts the halachic notion that when there is a clear majority, “We follow the majority and the minority is pulled toward the majority.” In this case, although he does not require the Sephardic students to conform to their classmates’ practice, it is still significant to him that 90% of the student body does observe a single and different custom. Finally, earlier in his responsum, Yosef establishes that *lo titgodedu* has the halachic weight of a Torah prohibition. Since a law *d’oraita* (a Torah law) possesses the utmost gravity, one would warrant severe punishment were he to violate it. While Yosef ruled above that the understandings of Alfasi and Asher ben Yechiel could overrule Maimonides on this issue, he still felt it prudent to be cautious in this instance and conform to the more stringent option of the majority. This would ensure that the student would not violate *lo titgodedu* in the eyes of any of these three authorities.

No matter the intent, this openness to Ashkenazi stringency seems out of place with Ovadia Yosef’s larger project, *l’hachzir atara l’yoshnah*, i.e. promoting Caro’s

ruling as the halachic norm. As this will not be the only halakhic departure in Yosef's legal corpus that is dissonant with his overarching ideology, we will return to this question and examine why this is so in such an instances in the conclusion of this chapter.

Lo Titgodedu and Levirate Marriage

Levirate marriage in Judaism arises when a woman's husband dies without offspring, Jewish law then requires the woman to marry the brother of her husband in the hope that the union will produce a surrogate child and heir to the dead brother, so that the dead brother's name ~~may~~ not be blotted out in Israel" (Deuteronomy 25:6). However, should the living brother reject his deceased brother's widow and opt not to fulfill his levirate duty, he must perform the ritual of *chalitzah* (unshoeing – Deuteronomy 25: 7-10), whereby he releases the levirate widow from her automatic marital tie to him. His sister-in-law is then free to remarry or not at will.

As early as the rabbinic period, there were debates about whether, if left with a choice between levirate marriage and *chalitzah*, a couple should choose one over the other. We find in Yebamot 39b the earliest discussions of this debate, as the rabbis argue for the primacy of levirate marriage and Abba Saul argues for the primacy of *chalitzah*:

At first, when the object was the fulfillment of the commandment, the precept of the levirate marriage was preferable to that of *chalitzah*; now, however, when the object is not the fulfillment of the commandment, the precept of *chalitzah*, it was laid down, is preferable to that of the levirate marriage'. Said Rami b. Hama in the name of R. Isaac: It was re-enacted that the precept of the levirate marriage is

preferable to that of *chalizah*. Said R. Nahman b. Isaac to him: Have the generations improved in their morals? — At first they held the opinion of Abba Saul, and finally they adopted that of the Rabbis. For it was taught: **Abba Saul said, „If a levir marries his sister-in-law on account of her beauty, or in order to gratify his sexual desires or with any other ulterior motive, it is as if he has infringed the law of incest; and I am even inclined to think that the child [of such a union] is a *mamzer*. But the Sages said, „Her husband's brother shall go in unto her, whatever the motive.**¹⁰¹

The essence of this debate centers on an important issue in understanding levirate marriage. Except for levirate marriage, a man is not permitted to marry his brother's wife. Leviticus 18:16 reads, “Do not have sexual relations with your brother's wife; that would dishonor your brother.” The question Abba Saul in the above *suggiah* is dealing with is whether a husband's motivations affect the permissibility of levirate marriage. If the brother-in-law has the sole intention to fulfill the commandment of *yevamah* (the levirate marriage obligation), all parties agree that his sexual act is not in violation of Leviticus 18:16. However, if he has some other motive—attraction or sexual desire—Abba Saul believes he is liable to incest and his children receive the label of *mamzer*.¹⁰² For this reason, Abba Saul argues, one should prefer *chalitzah* over *yevamah*. Although here Abba Saul is a minority opinion, his view will gain prevalence in later generations.

¹⁰¹ Soncino translation

¹⁰² *Mamzer* is the product of a union punishable by an early death at the hands of heaven (i.e incest and adultery) and they are only permitted to marry a convert or another *mamzer*.

Since the 13th century, it has been Ashkenazi practice to rule like Abba Saul and prefer *chalitzah* over *yevamah*.¹⁰³ Therefore, for nearly seven centuries Ashkenazic and Sephardic practice differed around this issue. While Ashkenazi communities sided with Abba Saul, Sephardic communities retained the majority view that if left with a choice society should advocate for *yevamah* over *chalitzah*. In the modern state of Israel, this debate reached a climax as the country's chief Sephardic and Ashkenazi halachic authorities were forced to decide on what their policy would be regarding levirate marriage in the modern state. This task would fall to the Chief Ashkenazi Rabbi Isaac Halevi Herzog and the Chief Sephardic Rabbi Ben Zion Meir Hai Uzziel who would need to decide whether they would adopt a unified stance on this matter for the modern state of Israel or whether they would permit each of their own communities to retain their own separate practices.

In 1950, Uzziel and Herzog enacted what would become known as the Jerusalem Ban. This enactment included many features aimed at eliminating variation in Sephardi and Ashkenazi legal norms and creating unified standards and practices between these communities. Most notably, the "Jerusalem Ban" reiterated Israel's commitment to affirming Rabbeinu Gershom's 11th century ban on polygamy and a joint decision that in the modern state of Israel *chaltzah* would be preferred to levirate marriage. This later statement included the paragraph:

In most Jewish communities and likewise in most Ashkenazi communities in Israel they accepted upon themselves the obligation to observe Jewish law in accordance with the Rama (Moses Isserless, middle 16th C Poland), who ruled

¹⁰³ Westreich. "Levirate Marriage in the State of Israel." Pg. 428

that the command to engage in *chalitzah* takes precedence over levirate marriage. Even when both the *Yibum* (brother-in-law) and the *Yebama* (widow) want levirate marriage, we do not pay attention to them. **In this era, when it is clear that most people who engage in levirate marriage do not do so for the sake of the Mitzvah, then, for the sake of peace and unity in the land of Israel, and so it will not appear as if there are two Torahs, I am hereby decreeing on the residents of the land of Israel and all those who will immigrate to Israel from now and into the future that the mitzvah of levirate marriage is absolutely forbidden.** We are obligated in *chalitzah* and if the *yibum* (brother-in-law) does not agree to *chalitzah*, we obligate him to financially support the widow in accordance with what the rabbinic court will decide for him until he exempts the widow through *chalitzah*.¹⁰⁴

Here Rabbis Herzog and Uzziel are making two very important points. On the one hand, they are making a legal argument: their reading of the sources, and the *suggiah* on Yeb 39b gives them an opening through a minority opinion to privilege *chalitzah* over levirate marriage. However, their second point is perhaps more salient. In the modern state of Israel, there is a value in unity (*achdut*) and thus both Ashkenazi and Sephardi authorities must agree on one halachic norm – especially in such a crucial area. Although they do not use the term explicitly, their use of “two Torahs” echoes the ontological rationale of many medieval scholars about why *lo titgodedu* exists.¹⁰⁵ Therefore, when, in the summer of 1951, Rabbi Ovadia Yosef issued a ruling in Petach-Tikveh attacking Rabbis

¹⁰⁴ Text found in *Yabia Omer* Chelek 6. *Even HaEzer* 14.

¹⁰⁵ See chapter 2 of this Thesis

Herzog and Uzziel, he found himself with the dual task of arguing against their use of halachic sources and indicating why allowing variation in levirate marriage practice was not a violation of *lo tigoddedu*.

Although Ovadia Yosef could have picked any number of questions as a starting point to argue against this ruling, he chose to respond to a case of a Yemenite man whose brother passed away and who wanted to engage in levirate marriage with his reluctant sister-in-law. What makes this case interesting is that it is quite difficult. Instead of choosing two parties who were anxious to fulfill this commandment, this case involved a woman who was violently opposed to sleeping with her brother-in-law and sought a legal dispensation that would obligate him to perform the ceremony of *chalitzah*. Yosef's responsum would defend the man's position, asserting the primacy of levirate marriage.

In the first section of the responsum, Rabbi Yosef examined in detail the Talmudic and medieval material, assessing whether *yibamah* or *chalitzah* took precedence. Basing his rulings on primarily Sephardic authorities, namely Rabbi Yitzchak Al-fasi (Rif) and Rabbi Moses ben Maimon (Rambam), he demonstrated that there is no unambiguous way to read the sources as privileging *chalitzah* over *yibamah*. In fact, in his usual encyclopedic style, Yosef cites numerous Ashkenazi authorities as well who hold that levirate marriage is optimal. More than anything, he gives Joseph Caro the final word as he is the ultimate arbiter for Sephardic (or any) halacha.

Particularly pertinent to our discussion is the way that Rabbi Yosef deals with the notion of *lo tigoddedu* in the latter half of the responsum. Using the preeminence of Joseph Caro as an introduction to the discussion, Yosef writes, ~~In~~ In locales where there are fixed Ashkenazi rabbinic courts, [the rulings of Isserless should dominate and guide

the community.] However, since the land of Israel is the locale of Maimonides and Joseph Caro, we have no need to move from their words either to the right or to the left, as, in every instance of ‘permitted and forbidden’ (*inyenei issur v’heter*), *we behave in the land of Israel in accordance with Joseph Caro’s rulings* and not as dictated by the customs of the Ashkenazim that are founded on Moses Isserless. And this does not violate the precept *lo titgodedu*.” In order to prove this, Caro begins by quoting Rava in Yebamot 14a, stating that *lo titgodedu* only applies in the instance of a single rabbinic court with dissenting judges. However, in the case of a locale with two courts, this is not a violation. In his view, the modern state of Israel is one locale with multiple courts and, like Rava, he believes that each has a right to rule in accordance with their ancestral customs.

In order to support this position, Yosef cites a number of examples where variation between communities was permitted by early Israeli halachic authorities:

What the members and presidents of the Chief Rabbinate of Israel wrote in the above mentioned document is: ~~For~~ the sake of peace and unity in the State of Israel, so that the law will not be two laws (lit. two Torahs), the levirate commandment is entirely prohibited and *chalitzah* is obligatory.” With all due respect, they greatly exaggerated in this, and their opinion is not at all correct, for in their everyday actions in any number of areas regarding the slaughter of animals and non-kosher food, in other permissions and prohibitions, and in rules of the Sabbath, [and] of laws of family purity, every community acts according to the customs of its rabbis, the Sephardic community following the author of

Shulchan Aruch and the Ashkenazim the Rama (Isserless). Similarly, they use different forms when praying and reading the Torah, in the writing of scrolls of Torah, tefillin, and mezuzahs, and so on, and never fear that as a result the law will become two laws, as it is known that each [community] has the custom of its forefathers to rely on, and both this and that are the words of the living God.¹⁰⁶

In essence, Rabbi Yosef is identifying an inconsistency in the positions Rabbis Herzog and Uzziel adopted regarding Israeli religious legal system. Why, he asks, can there be variation in all these areas of religious laws while limiting variation in the case of levirate marriage?

Rabbi Yosef then moves on to one final point. He quotes the first chief Rabbi of Israel, Rabbi Kook, an *Ashkenazi* rabbi himself, who examines whether it is permissible for multiple butcheries, some Ashkenazi and some Sephardic to exist side by side in the same locale even if their kashrut practices are different. Kook writes, “Therefore, I am forced to stand against them [previous halachic precedent that prohibits this variation] and this is not a decision, God forbid, against national unity or against the ways of peace,¹⁰⁷ as it is known that each community must be careful to behave in accordance with their ancestral customs, **because of the precept “do not abandon the Torah of your mother (Proverbs 1:9), *al titosh torat imecha.*”**

In one statement, Rabbi Ovadia Yosef has defended his decision to allow levirate marriage. By quoting Rava and Yebamot 14a he has undone any notion that *lo titgodedu* can be applied to insist on legal uniformity among Ashkenazim and Sephardim in the

¹⁰⁶ Translation found in Westreich 476

¹⁰⁷ Notice how Yosef finds a quote that address two of the major arguments of Rabbis Uzziel and Herzog, unity and peace.

modern state of Israel. He has also reinforced this position by citing a number of contradictory rulings issued by each community, all of which are halakhically defensible and none of which has adversely affected Israeli unity. Finally, he has quoted, Kook, as a way to remind his reader that just as avoiding factions is a legal ideal (*lo titgodedu*), so is remaining true to one's ancestral customs (*al titosh*). For that reason, it is not only permitted to retain the practice of levirate marriage for the Sephardic community. Rather, it may be regarded as a legal imperative not to abandon it if you belong to a group for which levirate marriage is the norm.

Lo Titgodedu and Prayer Nusach

Israel has a rich tapestry of liturgical rites. These rites (*nusach*) dictate how a prayer book is constructed. For some communities, Kabbalat Shabbat begins with the reading of Song of Songs, for other communities it does not. For some, evening services end with the recitation of the Barchu, for others this is not the case. In fact, even rites of the same name are often different. There are a number of different rites that fall under the umbrella called "Sephardic rites." After the expulsion from Spain in 1492, some Spanish communities went north to Holland, preserving in whole the Spanish Sephardic prayer practices. Other communities that found themselves in Israel and under the influence of Isaac Luria created a distinctly Sephardic rite known as Minhag Ari. However, this Kabbalah infused prayer style eventually found its way to Poland and merged with Chassidic practice. The Chasidic rite, known today as Nusach Sepharad, combines aspects of Minhag Ari with distinctly Ashkenazi Polish rituals and practices.

It is with this background that we examine one final responsum relevant to an understanding of the position Rabbi Yosef adopted in regard to *lo titgodedu*.¹⁰⁸ In the fall of 1970, Rabbi Yosef received a letter from a community in Afula, in the North of Israel, asking him to identify the correct rite they should follow in prayer. Should all the elementary schools in Afula, where 90% of the student body is Sephardic and from areas of the Middle East, continue to use a prayer book with the Ashkenazi infused Chasidic, Nusach Sepharad or should they abandon this rite in favor of Minhag Ari? To complicate matters, Nusach Sephard was the prevailing rite in the Israeli army and in many youth movements including B'nei Akiva. Should this community continue their recent tradition of following the majority of Israel and pray out of this siddur or should they revert to their ancestral customs and practice their distinctly Sephardic rites?

In a characteristically lengthy responsum, Ovadia Yosef rules that the Afula community should absolutely abandon the standard Israeli Chasidic siddur in favor of a distinctly Sephardic one. After proclaiming the superiority of his Sephardic rite and discussing the role of a majority group vis-à-vis their ability to subsume and negate the customs of a minority, he writes:

Our conclusion -- we know that *“Nusach Sepharad”* in the *siddur* is not the true *“Nusach”* of the Sephardic community, [whose siddur] agrees with rulings of Isaac Luria...[He then cites a number of examples where the Chasidic and Sephardic rites do not agree including the recitation of *Shema Koleinu* and *Barech Aleinu* in the winter]...and since the majority of students are Sephardic, the matter is clear that [the students in Afula] need to pray from a Sephardic

¹⁰⁸ *Yabia Omer*. vi OH 10. Responsa Project: Bar Ilan. Version 14 (2002)

Siddur for example *Chukat Olam*,¹⁰⁹ *Tefilat Yisharim*,¹¹⁰ and others like it. We follow the majority and the minority is pulled toward the majority...Ultimately, everything depends on the heritage of the school and teachers to “restore the crown to its pristine glory” (*l’hachzir atara l’yoshnah*) and to lead the school to pray in the Sephardic rite according to their customs and God will show them blessing.

Here Yosef is making a bold claim. In addition to compelling the Sephardic student body to abandon the mainstream Chasidic prayer book and adopt one that reflects their own patrimony, he writes that they can compel the remaining 10% of the Ashkenazi student body to adopt their practices because “the minority is pulled toward the majority.” As explained above, his decision is motivated mainly by ideological motives. Minhag Ari was the rite of Joseph Caro. Thus, in an effort to establish Caro’s hegemony over the modern state of Israel and “restore the crown to its pristine state,” Ovadia Yosef asked his community to stop using the mainstream *siddur* from which a majority of Israel’s citizens prayed. As he was making a move against uniformity and towards diversity, he was forced to confront *lo tigoddedu* directly in his decision.

Unlike his responsum on levirate marriage, where he concentrates his discussion of the prohibition towards the end, here Yosef includes his discussion of the precept throughout the responsum. Yosef begins his discussion of *lo tigoddedu* with a quote from Abraham David ben Asher (Anshel Wahrman), the early 19th century Galician authority who wrote that in the case of a discrepancy between Ashkenazi and Sephardic traditions,

¹⁰⁹This siddur was published in 19th Century in Jerusalem and is heavily influenced by Kabbalah.

¹¹⁰ Published in Livorno in 1800

for example, whether *Baruch She'amar* should precede *Hodu* in the morning service, we cannot compel either side to change because disputes between Ashkenazim and Sepharadim are not in violation of *lo titgodedu*.¹¹¹ However — and this is why it is important that Yosef begins his discussion with him —, because Sephardic tradition is “more exact,” it is preferable for a community to adopt the Sephardic practice (Nusach Ari) even if that means changing their own current customs. This is because at the time Wahrman was writing, the majority of Jews living in Israel worshipped according to Luria’s custom. Although by the 1970s, when Yosef was writing, Sephardic custom constituted the practice of a minority, Wahrman’s statement helps frame his discussion and supports Yosef’s intention to establish Sephardic custom as the basis for all Jewish practice in the land of Israel.

Having established this position, Yosef continued with a discussion as to whether *lo titgodedu* limits disputes over custom or law. Here, as he did in the first responsum considered in this chapter, Yosef gives equal weight to both views, arguing at first that *lo titgodedu* is not violated by differences in custom (i.e., it is only violated by differences in law). Then he moves on to cite a number of authorities who believe that *lo titgodedu* does not allow for differences in either custom or law. As before, he seems to abandon this line of reasoning in favor of two important points. First, even if *lo titgodedu* limits disputes over customs, there is something *sui generis* about liturgical rites that allows for variation between communities in spite of the above debate. However, Yosef seems to draw a distinction between two groups praying in their own traditions silently—which will not cause discord between the two groups—and the groups rotating which rites they

¹¹¹ Eshel Avraham, Resh Sayif 51

say aloud. Because this latter distinction may cause arguments, he seems at first less open to allowing pure variation and choice in audible prayer.

However, even in the case of audible prayer, it seems that Yosef allows for variation. Quoting many of the same responsa we examined in section one, Yosef claims that *lo titgodedu* only limits disputes that are not “famous” and pre-established. This is because for him, *lo titgodedu* is a precept that aims primarily to limit disputes. Because pre-established differences between Ashkenazim and Sephardim do not result in the active creation of factions, allowing variation, even in the same synagogue, is fine. In the case at hand, the Sephardic community should be allowed to revert to Nusach Ari without the fear that this will cause a faction to form.

The other issue with which Yosef must struggle is whether changing rites from Ashkenazi to Sephardi prayer violates *al titosh*. As discussed in Chapter 1, *al titosh torat imecha*, “do not violate the Torah of your mother,” limits an individual’s right to change an ancestral custom. In this case, because the questioner’s school has always prayed according to the Ashkenazi rite since its founding, would a change to their more ancestral Sephardi rite defy the intention of the school’s founders and thus violate *al titosh*? Here, Yosef feels that if the Sephardic student body abandons their Ashkenazi rite, this is not a violation of the precept. Although he brings a number of proofs, perhaps his strongest comes from Isaac Judah Schmelkes in his 19th century Lithuanian work *Beit Yitzhak*. There, Schmelkes draws a distinction between *davar shel chumrah v’zehirut l’sayeg*, fences that one’s ancestor established to keep one from violating a law,¹¹² and cases like the wearing of tefillin on Chol Hamoed where there is precedent in the tradition to wear

¹¹² As seen in the original context in the Talmud where the residents of Beishan are prohibited from going to the market on Erev Shabbat lest they fail to return in time.

them or not and following either would not cause one to risk violating another precept. In the case at hand, since ultimately there is no chance that changing one's prayer rite will cause a group to risk sinning—the stakes are not high enough—it is absolutely permitted for the Sephardic students to abandon their Ashkenazi prayer books without worrying about violating *al titosh*.

With all this considered, it is clear why Yosef decided to permit the students to change to a Sephardic rite. Not only does this change not violate *lo titgodedu* or *al titosh*, it also helps further his agenda of giving preeminence to Sephardic customs. Since Nusach Ari was the rite that Joseph Caro would have used it was important for him to not only permit Sephardic students to use their own prayer book, but to force the remaining Ashkenazi students to conform as well.

Conclusion

More than anything else, the rulings Yosef issued in the three responsa that we have considered intended to bring Sephardic practice into the mainstream of Israeli society in the face of Ashkenazi hegemony. In the first, Yosef ruled that Sephardic students can retain their own haircutting practices while studying in an Ashkenazi yeshiva during the weeks leading up to Tishva B'av. In the second, he defends the Sephardic practice of levirate marriage in light of the Ashkenazi approach which condemns it. Finally, in the third responsum, he allows a primarily Sephardic school to adopt the Sephardic prayer rite even if that means breaking from mainstream Israeli practice which uses an Ashkenazi infused rite.

In each of these cases, Ovadia Yosef attempted to move the Sephardic community one step closer to bringing Joseph Caro back to prominence and *l'hachzir atara l'yoshnah*. Ironically, in order to do this, Rabbi Ovadia Yosef had to take a narrow view of *lo titgodedu*. As we have discussed in Chapter 2, Joseph Caro sides with Maimonides in his wider understanding of the precept. For him, *lo titgodedu* primarily aims to bring an end to conflict. However, in practice, Ovadia Yosef's rulings created factions and caused conflict. In trying to return Joseph Caro and the Sephardic tradition back to prominence in Israel, Yosef had to rule against Caro's own approach to the spirit of *lo titgodedu*. In his writings, the ideology of *l'hachzir atara l'yoshnah* trumped the ideology of harmony.

As Marc Shapiro has observed, Yosef's project of *l'hachzir atara l'yoshnah* is much more complex than one would first assume. Because he is first and foremost a political figure with a practical agenda, his rulings fail to fall cleanly in line with Caro. Therefore, Rabbi Ovadia Yosef ruled that a Sephardic Jew may eat at a restaurant in which a non-Jew cooked the food and the only involvement of the Jew was in turning on the fire.¹¹³ While this ruling makes eating out easier for the Sephardic community, it also runs counter to Caro's ruling in Yoreh Deah 113:7 where he rules against this practice. This is only one example of many of Ovadia Yosef's struggles to balance his ideology with the needs of the Sephardic community. For him, any concern, even that of creating factions, comes second to establishing a central place for his community in mainstream Israeli society and giving them space to assert themselves politically and halachically. Sometimes that was through the lens of Joseph Caro. Sometimes it was not.

¹¹³ *Yehaveh Da'at*, vol. 5, no. 54.

Chapter 5: *Lo Titgodedu* and *Al Titosh* in Or Nogah

The early part of the 19th century was a time of great change for German Jewry. In 1815, Israel Jacobson, along with other leaders of his community, began introducing innovations to their Temple in Hamburg. Mostly aesthetic, these changes included prayer in the vernacular, the use of musical instruments such as the organ, mixed choirs, and the Sephardic pronunciation of Hebrew. Additionally, there were structural changes to the service as well, as the community omitted customary Ashkenazi piyutim and dissolved the silent Amidah.¹¹⁴ Immediately, these leaders faced a great deal of criticism from traditional authorities in the area who opposed these changes. This opposition was only magnified three years later with the dedication of the Hamburg Temple in 1818 and the publishing of the Hamburg *Gebetbuch* (prayer book) in 1819.

From the beginning, the community of Hamburg was split over its support for the Reform synagogue. When the community's petition for acceptance arrived at the Hamburg Senate, four of the judges supported it, while two were so vocal in their opposition that they all but blocked its passing.¹¹⁵ At that time, major decisions in the Jewish community which would affect secular policy, like how to care for the Jewish poor, had to go through specific secular law courts, called here the Hamburg Senate. The founding of a synagogue was one such issue. Besides the controversy this Reform institution aroused in the larger Hamburg polity, the traditional rabbinical court of Hamburg opposed the community's liturgical changes. They issued a proclamation

¹¹⁴ Meyer. Response To Modernity. Pg. 49

¹¹⁵ Ibid 58

against any liturgical changes, explaining that “as long as only individuals had strayed from the path of traditional practice they had been content to grieve in silence. But now an institution had been created which, as it were, granted legitimacy to a heterodox expression of Judaism.”¹¹⁶

With foreknowledge of this opposition and critique, the leaders of the Hamburg Temple enlisted Rabbi Eliezer Liebermann to write a defense of their practices. Little is known about Liebermann's past. Lieberman was born in Austria, and was the son of Ze'ev Wolf, rabbi of Hennegau. However, details of both his early and later years are obscure. Liebermann arrived in Hamburg sometime between 1815 and 1817. Before this, he was a wandering teacher and preacher.¹¹⁷ According to Heinrich Graetz, Liebermann was plagued by gambling issues.¹¹⁸ Because he was such a controversial character, much of what has been written about him (including by Graetz) is polemical in nature. Some sources claim that he eventually converted to Christianity; however there is no substantial evidence to support this.¹¹⁹

In 1818, Liebermann published two works, the first entitled *Nogah HaTzedek* (“Radiance of Justice”) and the second *Or Nogah* (“Radiant Light”). In *Nogah HaTzedek*, Liebermann enlisted the help of Rabbis Shem Tov Samun of Levorno, Jacob Recanati of Verona, Aaron Chorin of Arad, and Moses Kinitz of Ofen. Collecting their responsa, Liebermann produced a detailed tract in favor of the Hamburg Temple's liturgical changes found in their prayer book.¹²⁰ Together, these Rabbis struggled with such

¹¹⁶ Ibid 58

¹¹⁷ Ibid 50

¹¹⁸ Heinrich Graetz, *History of the Jews* V5. pg 569

¹¹⁹ See Jewish Encyclopedia “Liebermann, Eliezer” at <http://www.jewishencyclopedia.com/articles/9964-liebermann-libermann-eliezer>

¹²⁰ For a detailed examination of this work, see Joseph Weitzenbaum's 1962 D.H.L. Thesis, entitled, “An Analysis of *Nogah Tzedek*” (Hebrew Union College, Jewish Institute of Religion).

concepts as the meaning of the prohibition in Lev. 18:3, “You shall not follow their customs,” which was used by traditionalists to object to the changes such as organ music which the Reformers had introduced into their worship, and the place of the vernacular in the synagogue service.

This chapter will examine in depth one section from Liebermann’s other shorter treatise, *Or Nogah*. The work is divided into two parts. In the first, Liebermann defends specific changes made by the leaders of the Hamburg Temple. These include prayer in the vernacular and the use of musical instruments. The second section contains an essay on the general place of reform and the history of change and progress in Jewish history.¹²¹ In this latter section, Liebermann concludes with two interconnected questions. The first concerns whether the community’s liturgical changes violate *lo titgodedu* by causing the appearance of “two Torahs.” The second asks whether these changes constitute a violation of *al titosh torat imecha*.

The following chapter will deal in depth with these final sections. As we discovered in Chapter 2, the ontological and sociological rationales for *lo titgodedu* produce distinct policy decisions on the part of an halachic authority. As we will see, Liebermann falls comfortably in the ontological camp that maintains that *lo titgodedu* exists to avoid the appearance of multiple truth claims (two Torahs) in Jewish law. Through this rationale, he is able to substantiate his claim that the Hamburg Temple’s liturgical changes are not in violation of the *lo titgodedu* precept. His discussion of *al titosh* is similarly brief and polemical. Failing to examine the scope of this precept, Liebermann makes a strong, albeit argumentative case, for the need for liturgical change.

¹²¹ Hoberman. An Analysis of Or Nogah – Reform Responsa in Early Nineteenth Century Germany.

In the end, both sections leave him open to critique from the Orthodox authorities of his time.

Lo Titgodedu in Or Nogah

The seventh claim of *Or Nogah* begins with a question: Is it a desecration of God's name for the reformers to make their changes and does this cause the Torah to appear as ~~two~~ "Torahs," thus transgressing the commandment, *lo titgodedu* -- "do not make factions"? This question was a natural one. Prior to the Hamburg Temple, the Jewish community appeared homogeneous. True, visitors would often arrive from other lands with other practices, but never before had a large swath of Jews made a conscious decision to change their customs and prayer practices. At first glance, the actions of the Hamburg community appeared to epitomize what it means to create factions. From an halakhic standpoint, what was at issue was whether such factionalism was in violation *lo tigoddedu*.

Liebermann begins his examination by writing that any claim that the reformers are violating *lo titgodedu* is fundamentally weak. He then cites sections from Yebamot 13b to support this assertion.¹²² After quoting the passage in the Mishnah that the houses of Hillel and Shammai disagree, he cites Resh Lakish's contention that variation between two schools of law is a violation of *lo tigoddedu*.¹²³ Skipping forward in the sugyah, Liebermann quotes Rava's opinion that the precept is only violated when there is disagreement within one rabbinic court. However, two divergent courts ruling in the same

¹²² See chapter 1 for a full discussion of this sugyah

¹²³ Incidentally Resh Lakish's challenge is raised in light of the variation in the schedule of scriptural readings on Purim (found in Megillah 2a). Here, Liebermann uses the challenge to refer directly to the variation in the Mishnah.

city do not violate the precept. Here, Liebermann reads the sugyah as Alfasi had. Like Alfasi, he holds that the halacha is in accord with Rava against Abaye, who held that two divergent courts in the same city violate the precept. Already one can anticipate where Liebermann will take the discussion. Just as Rava would agree that there could be a house of Hillel and a house of Shammai in the same city, so too could there be a mainstream traditional Judaism alongside a Hamburg Temple in Hamburg.

Continuing, Liebermann cites Shabbatai HaCohen¹²⁴ for further support for his position. The Shach, following Rava, explains that *lo titgodedu* applies to disputing judges in a single rabbinic court. He then gives two rationales. The law exists to avoid disagreement (sociological approach) and to avoid the appearance of “two Torahs” (ontological approach). After explaining how a court should debate if there is a dispute,¹²⁵ HaCohen explicitly rules out Abaye’s decision. *Lo titgodedu* would not apply to two disputing courts in the same city.

Liebermann continues by further narrowing the scope of the law. *Lo titgodedu* applies only in the case of disagreements over law (*isur v’heter*) in times when the disputes would lead to ontological variation (two Torahs). However, in the case of disagreements surrounding customs, *lo titgodedu* does not apply. Here, Liebermann had drawn a very interesting conclusion from the Shach. Although HaCohen includes both the ontological and sociological rationale in his ruling, Liebermann has explicitly ignored the latter. In his view, *lo titgodedu* exists to limit ontological variation and as we have seen in Chapter 2, this distinction allows him to limit the law to exclude custom from the law’s reach.

¹²⁴ For a fuller discussion of the Shach see Chapter 2

¹²⁵ In this case one should rule stringently if they are disputing a Torah law and leniently if they are disputing a rabbinic precept

After establishing the scope of the law, Liebermann asks his reader to ~~go~~ out and see what others are doing.”¹²⁶ He writes that in Amsterdam there are a number of divergent customs between Ashkenazi and Sephardi communities, specifically around prayer. Although he does not say it explicitly, these sub-communities are an example of divergent practices within the same city that do not violate *lo titgodedu*. Since there can be variation between Ashkenazi and Sephardi communities around Europe there should also be variation between traditional communities and early reformers.¹²⁷

Liebermann then brings three examples of divergent practices in Lumburg, Austria, in 1810. Of the nearly 6,000 Jews who lived in the city, there was a clear divide between Jews living in the center of the city and those who lived in the city’s approach, either of Sephardic origin or Ashkenazi Jews who followed Sephardic practices. While those who lived in the center of the city bowed during certain prayers at Rosh Hashanah and during the *Aleinu* and *Avodah* prayers on Yom Kippur, those who lived at the approach did not. Furthermore, while the former conducted *tashlich* services during the High Holy Days and participated in the plate breaking ceremony during weddings, the former avoided both of these practices. Noting that there are other examples of divergent practices, Liebermann ended his discussion of *lo titgodedu* rather abruptly, and then moved on to his discussion of *al titosh* (below).

In essence, Liebermann’s argument regarding *lo titgodedu* focused on several issues. First, *lo titgodedu* governs law, not custom. Therefore, issues like German sermons or melodic choice are not a violation of *lo titgodedu*. Second, *lo titgodedu* governs only disputes within a single law court. Therefore, two communities in the same

¹²⁶ This is a common rhetorical tool in the Talmud

¹²⁷ For more on the Amsterdam Jewish community see Ellenson. ~~Emancipation and the Directions of~~ Modern Judaism: The Lessons of Melitz Yosher.”

city with different practices do not violate the law. Finally, he draws a parallel between the Hamburg Temple's practices and those of the mainstream Jewish community and between differences among Sephardic and Ashkenazi communities. Just as time has permitted the variation between these communities, so, too, should time permit the divergent practices of the early Reformers. As noted above, Liebermann did all this by seeing the law as primarily ontological. Arguments between communities were acceptable as long as they did not imply that God gave ~~two~~ Torahs."

Since Liebermann ignored *lo titgodedu*'s sociological rationale, he gave his critics an easy opening to attack him. Shortly after publishing *Or Nogah*, a group of Orthodox scholars attacked the Hamburg Temple in an 1819 collection of letters entitled *Eileh Divrei HaBrit* (These Are The Words Of The Covenant). These twenty-two letters were signed by forty rabbis with the expressed goal of invalidating Liebermann and the other Reformer's conclusions. David Ellenson writes, "The Orthodox rabbis of *Eileh Divrei HaBrit* were aware that the arguments contained in these Reform pamphlets drew upon classical rabbinic sources and practice that could 'mislead' the unsuspecting into believing that the employment of instrumental music, among other things, was justified in religious devotion."¹²⁸

While a full examination of their response is outside the scope of this chapter, the Orthodox argument is helpful in highlighting the shortfalls of Liebermann's argument. Discussion of *lo titgodedu* appears twice in the Orthodox work. In the 12th letter, Moses Sofer examines the roots of the law. In addition to stating that a number of *rishonim*, such as the Rif, Rosh, and Tosafot agree that *lo tigoddedu* prohibits variation in

¹²⁸ Ellenson, "A Disputed Precedent, p. 121.

custom,¹²⁹ he moves on to an examination of other texts which speak against Liebermann's conclusions. Perhaps the most interesting of these texts are statements of Abraham Abele Gombiner (17th C Poland, *Magen Avraham*) and Maimonides. The former rules that one can force a minority to accede to the majority and the latter rules that two rabbinical courts in the same city violate *lo tigoddedu*, even if their dispute is over custom (*minhagim*).¹³⁰ Like the 12th letter, the 14th letter examines the issues of prayer in the vernacular through the lens of *lo tigoddedu* invoking Maimonides and his counterpart, Sefer Hachinuch.¹³¹ Here, the author quotes Maimonides in full, including the sociological rationale behind the law.

Much more can be said about the Orthodox reaction to Liebermann. However, in this short analysis, a few important ideas appear. First, Liebermann ignores many important voices when defining the scope of *lo tigoddedu*, most significantly, Maimonides. Secondly, by ignoring Maimonides and others like him, he fails to include mention of the sociological rationales behind the law. While this allows him to permit variation in custom, it undermines his credibility and opens him to legitimate criticism. It is impossible for his critics to take his argument seriously when he ignores so many voices in the *lo tigoddedu* debate. While it is commendable that Liebermann attempted to prove that the Hamburg Temple did not violate *lo tigoddedu*, he was not thorough and his argument was therefore weaker than it might have been.

Al Titosh in Or Nogah

¹²⁹ See chapter 2, which challenges the notion that the Rosh and Rif had anything to say about custom vs law and even may have believed the opposite of what Sofer is claiming.

¹³⁰ See chapter 2 in depth

¹³¹ Oddly, the author is incorrect. While Sefer HaChinuch quotes Maimonides, the author quickly disagrees with him. See Chapter 2 for a full discussion of this.

As we mentioned in previous chapters, the concept of *lo titgodedu* is often in conflict with the rule of *al titosh*. While the former compels two communities to conform to one practice, the later resists change altogether.¹³² However, Liebermann's case is different from all those we have examined previously. For Weinberg, the question was about how two communities who had been forced together because of historical circumstances would weigh the competing values of communal uniformity and continuity of personal practice.¹³³ As the need for uniformity would force one community to change its traditional practices for the sake of unity, a discussion of the competing notion of *al titosh* was therefore unavoidable.

For Liebermann it was the opposite. When a new community forms from two existing communities, permitting variation means neither community has to change. Therefore, neither would violate *al titosh* because neither would have to change their ancestral practices. The Hamburg Temple, however, was one of the first examples in modern times of a community choosing to change their ancestral practices, thereby introducing diversity, not unity, into the community. In fact, the goal of their liturgical changes, namely prayer in the vernacular or the organ, was so that they would be different from their neighbors. While the stated intention of the Hamburg Reformers was to create a mode of worship in both form and content that would entice Jews who were leaving the fold to remain within the community, there is no question that such liturgical change introduced diversity into the community. Thus, Liebermann was forced to address how the Hamburg Temple could make these changes and why their actions did not violate *al titosh*.

¹³² For a full examination of the roots and rationale of this law see chapter 1

¹³³ See chapter 4

Liebermann began his discussion philosophically. He observed that change is constant. Later generations were always adding to the opinions and practices of previous generations. He scoffed at those who say that one can only use their intellect to deal with secular matters and that we cannot change items that deal with God or Torah. He then cited a number of texts that allow for change and attempted to prove that those who oppose wisdom and reason in analyzing religious law also oppose the will of the rabbis who permitted these processes.

The first text he cites is Chulin 6b. There, Rabbi reverses a previous decision and permits the consumption of untithed vegetable leaves in Beit Sha'an where they were once prohibited.¹³⁴ Hearing this ruling, his brothers come to him and complain: how does Rabbi have the authority to change their ancestral prohibition? To answer this Rabbi quotes a verse from 2 Kings 18:4 which tells of Hezekiah destroying a symbol of idolatry from the time of Moses –He (Hezekiah) crumbled the copper servant that Moses had made for until those days the children of Israel has burned incense to it and called it Nechustan.” Rabbi then asks rhetorically, –Is it possible that Asa (Hezekiah’s grandfather) came to power and did not destroy it or that Yehoshaphat (Hezekiah’s father) came to power and did not destroy it?” Instead, he answers, Hezekiah’s ancestors left this symbol of idolatry for him so that he might distinguish himself as an uprooter of idol worship in his generation. Rabbi then draws a parallel between himself and Hezekiah. Just as the king was given license to distinguish his authority in his generation, Rabbi would be allowed to change his ancestral practices and distinguish himself in his

¹³⁴ It is a rule that one must tithe produce that grows inside the land of Israel. However, it was questionable if Beit Sha'an was inside or outside of the locale. Therefore, Rabbi, using a precedent from Rabbi Meir, ruled, because of the ambiguous status of the city, that one was exempt from tithing produce grown there.

era. The text concludes with a statement, “From here we learn that when a Torah scholar recites a (radical) halachic opinion we do not make him retract it.”

Instead of adding his own commentary to why he brought these texts, Liebermann cited Rashi and Tosafot to make the point for him. Rashi explains that if our ancestors do everything right, there will be no way for later generations to increase their reputation (literally, *name*) in the world. He further explains that even if a scholar’s ruling seems baffling, we must heed their words. Instead of casting them out or ignoring them, we must take their ruling seriously, even if they permit that which was always forbidden. After quoting Rashi, Liebermann includes a short statement by Tosafot that our ancestors erred by assuming that just because God commanded Moses to fashion the snake, the idol should not be destroyed by later generations. In short, Liebermann had ample traditional textual warrant to support his point that change is countenanced by tradition and rabbinic authority itself.

These statements provided the foundation for the rest of Liebermann’s argument. In essence, Liebermann drew an analogy between the Hamburg community and the actions of Rabbi and Hezekiah. In both cases, the reality of their time, coupled with a charge from previous generations to “fix” previous “mistakes,” gave contemporary authorities permission to make significant changes in their era. For the Jews of Hamburg, modernity is the factor that necessitates change and, like the changes introduced by Hezekiah, the liturgical changes made by the Hamburg Temple are no less the manifestations of God’s will. Basing himself upon the logic put forth by Rashi, Liebermann was able to argue that these changes were the way for the Reformers to make a name for themselves in the world.

Taking this conclusion one step further, Liebermann introduces a responsum from the *Be'er Yaakov*.¹³⁵ The *Be'er Yaakov* wrote that later generations have the right to “fix” matters hidden from earlier generations. He brings proof for this idea from his reading of Avodah Zarah 5a. There, Resh Lakish says that we should show gratitude to our ancestors because if they had not sinned by worshiping the golden calf at the foot of Mount Sinai, “we would never have come into the world.” The reason is because at Sinai, God was willing to make the Jewish people as pure as angels and, as part of that purity, God would have remove all instinct for procreation. However, after the incident of the golden calf humanity was punished for its sin by being returned to their status as humans. Consequently, they were forced to remain in the human cycle of birth and death. Resh Lakish, realizing that no procreation would mean no future generations, interpreted the golden calf incident as a catalyst for growth.

The Gemara then raises a challenge to the statement of Resh Lakish: how could God have put humanity in a situation where they would not be able to fulfill the commandment to “be fruitful and multiply?” After a somewhat lengthy discussion, the Gemara concludes that had the golden calf not existed it would be *as if* future generations did not exist. This is because while there would still be birth, the purity of Sinai would wipe away death and those who were born would be overshadowed by the holiness of those who stood at Sinai.

This Talmud text does much to bolster *Be'er Yaakov*’s opening point. As a result of the incident of the golden calf, “bad decisions” of previous generations need not be maintained. Each generation now has the opportunity to fix the errors of the past and find “those things that were hidden” from our ancestors. Liebermann concludes his discussion

¹³⁵ R. Jacob b. Abraham Berlin (1707-1749)

of *al titosh* with a quote from Isaiah 61:4, “They will rebuild the ancient ruins and restore the places long devastated; they will renew the ruined cities that have been devastated for generations.” True Jewish law cautions against changing our ancestral customs through the *al titosh* precept. However, it is the God-given mission of the Jewish people to revisit and repair previous practice so that Judaism can be restored to a state of pristine perfection from a ~~place~~ long devastated.”

Although Liebermann provides an interesting rationale for change, calling all previous Jewish practices errors and ~~ruins~~” opened up Liebermann and his responsum to much criticism. While Liebermann chose to address the need for change, he provided a constricted analysis of this Jewish legal concept. While he addressed the notion of *al titosh*, he neither engaged with its source text (Pesachim 50b) nor later literature on the scope of the law. As before, a full examination the Orthodox critique is beyond the scope of this study. However, it is important to note that these points were raised by his halakhic critics in *Eileh Divrei HaBrit*.

For example, the second letter of *Eileh Divrei HaBrit*, authored by Rabbi Abraham Naftali Hertz Scheuer of Mainz, includes a discussion of *al titosh*. Scheuer begins by explaining that the prohibition against changing fixed customs applies both to the individual and to communities as a whole (i.e. the Hamburg Temple), and he cites the Rosh to support his claim. After quoting the biblical source of *al tisosh* (Proverbs 1:8), Scheuer then quotes Ecclesiastes 1:8, “He who breaches a stone fence will be bitten by a snake,” and explains that Maimonides understood this statement as referring to someone who transgresses rabbinic enactments and customs and is therefore liable to

punishment.¹³⁶ This holds true even if there is no loss or gain from the transgression. In the case of the Hamburg reforms, where there was definitely loss from their changes – in a departure from accepted law –, one should be liable for punishment on account of these actions.

Here Scheuer has defined the scope of *al titosh* to include communal decisions as well as individual ones. Furthermore, he has ~~up~~ped the ante.” *Al titosh* prohibits neutral (and even positive) change altogether. Therefore, major changes like those of the Hamburg community, which he views as harmful, are extreme violations of the law -- and he has brought in both Maimonides and the Rosh as support for his claim. These three points highlight what seem to me to be the weakness in Liebermann responsum. Unlike Scheuer, Liebermann does not address the scope of *al titosh* nor does he engage with medieval thinkers around the issue. In fact, the only area where the two seem to be discussing the same issue is over whether the Hamburg reforms are for ill or for good, and this is a subjective claim with no objective way to substantiate the correctness of either’s assertion.

In both his discussion of *lo titgodedu* and *al titosh*, Liebermann attempted to ~~play~~ the halachic game” and left his reader wanting. In a world still ensconced in legal positivism, namely the need to rely on precedent, Liebermann’s attempt seems weak. Later generations would acknowledge that they needed a different kind of discussion, one based more on history and language than engagement with Jewish legal precedent. However, Liebermann was prophetic in one way. He asked the question that contemporary Jews are now asking and that will be the focus of our conclusion: what is

¹³⁶ Found in his introduction to Seder Zeraim

the place of *lo titgodedu* and *al titosh* in contemporary Reform discourse? Can one be a modern Reform Jew and stress the ethics of uniformity and continuity?

Conclusion

This thesis has examined the legal development and scope of one halachic term, *lo titgodedu*, do not make factions. Departing from a literal understanding derived from its biblical context in Deuteronomy 14:1 where the term warned against making gashes in one's skin over the dead, the term has been molded and stretched over countless generations to serve the *zeitgeist* of the time in which it was used. In the Tannaitic era, the term was used to limit sectarian groups like Christians and Samaritans. For Jews, splitting off into sects was no longer just socially problematic. It became a violation of an important religious precept.

While the idea that *lo titgodedu* was primarily a response to sectarian groups did appear in certain later midrashic collections, such midrashic understandings were virtually abandoned in both the Jerusalem and Babylonian Talmuds in favor of a distinctly legal approach. Instead of limiting sectarianism broadly, *lo titgodedu* would limit legal variation within the Jewish community. Could members of one part of a community read the megillah on a day distinct from their neighbors? Could a visitor to a locale where they perform work on Friday afternoon abstain because it was his home practice to avoid work during this time? In the Bavli, this conversation culminated in a debate between Rava and Abaye about the scope of the law: Rava claimed *lo titgodedu* is violated when one court contains disputing judges while Abaye claimed that any courts that disagree within the same city violate the law.

In the middle ages, this debate would resurface. Some like Isaac Alfasi and Asher Ben Yechiel would side with Rava. However, others like Maimonides would agree with Abaye. Two questions lay at the core of their debate: (1) What was the rationale behind

lo titgodedu? (2) Would *lo titgodedu* limit variation in law (halacha) or custom (minhag)? As we found, those who saw the rationale as primarily ontological (making sure that variation did not lead to the appearance of ~~two~~ “two Torahs”) limited *lo titgodedu* to the halachic realm, while those who saw it a primarily sociological (limiting disputes within a community) expanded it into the realm of custom. This divide held until the early Acharonic period when the two rationales began to occupy equal prominence in Jewish discourse.

Our discussion then turned to an examination of three modern rabbinic authorities, Rabbis Eliezer Lieberman, Yechiel Yaakov Weinberg, and Ovadia Yosef. Each of these rabbis struggled with their own social pressures and contexts. However, each was able to interpret the scope of the law in accord with their wider aim of championing their own constituency. For Lieberman, this meant defending liturgical change in Hamburg against claims that religious reform created factions. For Weinberg it meant affirming that in post-Holocaust Switzerland, communities decimated by the Shoah could come together and retain their distinctive customs. For Yosef, it meant that Sephardic Jews living in Israel would not be forced to adopt Ashkenazi customs and that the Sephardic rulings of Joseph Caro would have a voice and return to prominence.

These three thinkers share a number of common traits. First, each narrowly defined the scope of *lo titgodedu*. For them, while the law is important, it could not be employed to limit the practices of their constituencies. For Yosef, a broad reading of the precept would have precluded Sephardic Jews from affirming their distinctiveness from their Ashkenazi neighbors. For Lieberman such a reading would have meant disallowing the Hamburg reforms. Therefore, although preventing factions is important for these

thinkers, they read the tradition in such a way to ensure that their practices are never labeled as such.

Second, in almost every case, their use of *lo titgodedu* preempts challenges that their positions may face even though their teshuvah was *prima facie* dealing with a question different than *lo titgodedu*'s scope. While Liebermann, for example, was criticized for his use of *lo titgodedu* in Or Nogah, it is not altogether clear that he was responding to a specific voice when he considered the scope of the term. Likewise, in neither of the three Yosef responsa was *lo titgodedu* the main focus of the *she'elah*, the question posed to him. Instead, the question was about the permissibility of a specific action, levirate marriage, summer haircuts, or changing one's siddur, and Yosef, himself focused on *lo titgodedu* only to prove his point. Even with Weinberg, it is not clear that Rabbi Yaakov Breisch intended Weinberg's teshuvah to deal primarily with *lo titgodedu*. Instead, based on the sources he presents, Breisch may have intended Weinberg to deal with the question of when a majority "nullifies" a minority and subsumes them into their practice, a related questions but one that does not necessitate an in-depth examination of *lo titgodedu*. Perhaps for these three thinkers, their use of *lo titgodedu* was prophylactic. They knew someone might disagree with their ruling and the most obvious way their opponents might undercut their argument would be to assert that they were undermining unity in the community. Therefore, our thinkers preemptively responded by bringing in *lo titgodedu* themselves. In other words, while they may have employed *lo titgodedu* in anticipation of criticisms that would be lodged against them, they all interpreted it in such a way that charges of promoting disunity on their parts could be refuted.

Finally, all thinkers deal with *lo titgodedu* in conjunction with the precept of *al titosh*. As we discussed in chapter 1, *al titosh* limits one's ability to change his ancestral custom. In most cases, therefore, one would expect an authority to deal with it when he is forcing one to accept a custom different than that of their forbearers. This was true when Yosef had to deal with *al titosh* as he legislated a change in the siddur or for Lieberman when he defended liturgical change. However, we found that in other circumstances, *al titosh* was cited as further proof for why a community could retain their ancestral practices. Weinberg's responsum was an example of this. In this study, *al titosh* highlights the tension between two important commitments in Jewish law: communal unity as expressed through *lo titgodedu* and a commitment to the ancestral chain of tradition as seen through *al titosh*.

However, it should be noted that while Lieberman was certainly a reformer, historically nearly all discussion of *lo titgodedu* has been confined to Orthodox halachic discourse. In view of my own concerns as a reform rabbi, the final section of this thesis will deal with the question of what the place of *lo titgodedu* might be in the American Reform milieu.

Lo Titgodedu for Reform Jews

As we have discussed previously there are two rationales for *lo titgodedu*, one ontological and one sociological. For Reform Jews both rationales speak to tensions inherent in Reform practice.

The ontological rationale may seem foreign to many Reform Jews. Since most Reform Jews do not believe in a revelation from Sinai, they may be unconcerned with the

notion that God revealed ~~two~~ Torahs.” However, Reform Judaism, while open to multiple opinions and ~~truths~~,” is closed to others. In his book, *Jewish Living*, Mark Washofsky delineates four overarching principles of Reform Jewish practice. He writes, ~~our~~ experience had led us to see that Torah, if it is to serve us *as a sure source of religious truth*, cannot exist in the absence of certain essential moral and ethical commitments.¹³⁷” In enumerating these commitments, Washofsky asserts that Reform Judaism is absolutely committed to notions of egalitarianism and ~~affirms~~ the moral equality of all humankind,” including those who are not currently part of the Jewish community. Here the ~~truth~~” of Reform Judaism is that women and men are equal and that one cannot discriminate against someone on the basis of their religion.

The idea of ~~truth~~” in Reform Judaism appears strongest in the policies of institutions. For example, as individuals, people are given the autonomy to struggle with conceptions of God on their own. However, as a movement we affirm ~~the~~ reality and oneness of God, even as we may differ in our understanding of the Divine presence¹³⁸.” This statement, adopted as part of the 1999 ~~Principles of Reform Judaism~~” in Pittsburg conveys that at least on an institutional level, to be part of the mainstream Reform community one must accept the notion that there is a power beyond human conception called God. Therefore, in 1994, when Congregation Beth Adam, a humanist congregation that removed the mention of God from their prayer book, sought to join formally the Reform movement they were denied. On an institutional level, Reform stands for the ~~truth~~” that God exists and therefore, to allow this congregation to join the movement would mean that we acknowledge atheisms as equal to the belief in God. We would

¹³⁷ Washofsky, *Jewish Living: a guide to contemporary Reform practice*. Pg. xxii

¹³⁸ ~~A~~ Statement of Principles for Reform Judaism” **Central Conference of American Rabbis, May 1999**
<http://ccarnet.org/rabbis-speak/platforms/statement-principles-reform-judaism/>

therefore, have created ~~two~~ Torahs” one which puts God at the center and one which banishes God from Judaism. With this in mind, the movement denied Beth Adam’s application. Commenting on the decision, the then President of the URJ, Rabbi Alexander M. Schindler wrote, ~~“We~~ are a liberal community and we allow for a wide spectrum of beliefs, and certainly a wide gamut of theological stances...but I believe some understanding is necessary to give us cohesion to retain our distinctiveness and secure community¹³⁹.” Here *lo titgodedu* adds force to the argument against Beth Adam joining the movement because it would blur one of the key ~~truths~~” of the Statement of Principles.

In addition to the boundaries of the Union for Reform Judaism, the Central Conference of American Rabbis (CCAR) must also struggle with notions of ~~truth~~.” As mentioned above, egalitarianism is a central facet of what it means to practice Judaism as a Reform Jew. Therefore, it would be extremely problematic if a Reform Rabbi began legislating separate seating for women in their community since this would violate the ~~truth~~” of egalitarianism and give the appearance that Reform Judaism does not stand for it. Although I have not found any cases in the last few decades of Reform rabbis attempting to implement anti-egalitarian policies, one might surmise that actions such as this might through into question one’s membership in the CCAR.

While many argue that we live in postmodern age and that there are multiple truths, one must be careful not to become a moral relativist. Reform Judaism stands for many things, and *lo titgodedu* can ensure that values like egalitarianism remain a central focus in all communities that wish to call themselves Reform. This holds as true in an individual synagogue as it does in institutions like the CCAR. Should a lay leader seek to

¹³⁹ Gonzales. ~~“Temple With No Place For God Seeks A Place.”~~

establish separate seating in a Reform shul, the rabbi can use *lo titgodedu* as part of the argument against this, explaining the value in the whole community embracing egalitarianism as a central tenant of what it means to be a Reform Jew.

This issue of ontological certainty came up recently in a conversation among a group of Reform rabbinical students over the question of officiating at same sex marriage. While classic Jewish tradition clearly labels gay relations an ~~ab~~omination,” most Reform rabbis in the country will perform these marriages. However, there are still small numbers of rabbis who will not perform these unions for religious reasons¹⁴⁰. At the heart of this debate is the question of whether equality of sexual orientation is a ~~religious truth~~” in the same way as egalitarianism. If it is not, it is the same as kashrut or Shabbat observance and is dependent on the discretion of the individual to decide on their practice. However, if permitting gay marriage is a moral imperative, *lo titgodedu* would govern the CCARs position and all rabbis who call themselves Reform and seek membership in the CCAR would be mandated to treat gay and lesbian couples the same as they would treat strait couples in order to remain in good standing with the institution. If this is the case, *lo titgodedu* would assure that all Reform rabbis present one religious truth, the equality of the GLBT community.

While variation within an institution or organization is relatively straightforward, variations between individuals is much more complicated. This is because there is no way to legislate an individual’s actions and there are no accountability structures to ensure that an individual acts in a certain way. For an individual their ~~Torah~~” may include the

¹⁴⁰ Here I am making a distinction between rabbis who would perform these weddings but do not because they are not legally permitted in their state.

observance of Shabbat while for another, their “Torah” may not. There are two ways that *lo titgodedu* can address these differences.

On the one hand, the scope of *lo titgodedu* actually permits this variation. In a recent exchange with Cantor Dana Anesi, Rabbi, Samuel M Stahl observed that a good paradigm to think about Reform practice may not be as law, but rather as custom, *minhag*. He writes:

It is through *minhag* that we can discover our boundaries as Reform Jews today. *Minhag* is what serious and learned Reform Jews at a particular time and place consider necessary for us to be responsible partners in our covenant with God. It is through our *minhagim* that we can discern what is obligatory and what is optional...Few practices now considered appropriate or inappropriate to Reform Judaism ever were brought to a vote. They evolved over time and were unconsciously adopted. The majority of us, representing an enormous diversity of beliefs, can usually agree on these matters. Boundaries set by *minhagim* are not stationary but are subject to constant shifting and repositioning¹⁴¹.

Since, according to his definition customs are shifting, Reform practice is much more akin to *minhagim* than law. If this were the case, the definition of *lo titgodedu* held by nearly all commentators other than Maimonides would state that in Reform Judaism, variation in practice is permitted because people are disagreeing about customs rather than laws. Therefore, there is no worry that one person who keeps kosher while another does not appears like multiple truths (two Torahs) because there need not be uniformity in *minhag* across the whole Jewish community.

¹⁴¹ Stahl, “Is there anything I have to believe or do in order to call myself a Reform Jew?”

However, even if Jewish practice in a Reform context falls into the categorization of law, there is a place for *lo titgodedu* in mediating an individual's choices. In his essay, "Freedom" Dr. Eugene Borowitz argues that the idea that individuals are given sole autonomy over their actions is flawed. Instead, he argues, we should consider the role of the historical import of the commandments to the Jewish community. He writes:

The individual stands in intimate relationship to God and from that—or from the tradition of the teachers who authentically articulate the consequences of this relationship—the individual discovers what must be done. That is true universally; all mankind shares in the Noahide covenant. The Jewish self, however, does not stand in isolated relationship with God but shares in the people Israel's historic covenant. Jewish duty derives from this and is, therefore, ineluctably particular as it is universal, social as it is personal. Yet it must be individually appropriated and projected. For all that the Jewish self comes before God as one of the Jewish people, the Jew remains a self with the personal right to determine what God now demands of the people of Israel and of any particular member of it¹⁴².

Here Borowitz is making a strong case that in making decisions about Jewish practice one should weigh mainstreams and historic Jewish practice along with his decision. Although he does not say it, one could imagine *lo titgodedu* entering this discourse. If one person considers the Jewish cannon in their decisions while another rely solely on his autonomy, it is as if they have created two "truths" one that compels us to consider tradition and one that does not. If we are to avoid factions, everyone must at least start

¹⁴² Borowitz. "Freedom" pg. 266

with the same assumptions, namely that in making decisions text and community should stand alongside personal choice.

Perhaps more straightforward than the ontological rationale is the sociological rationale. As defined earlier, *lo titgodedu* exists to limit disputes in a community. If one group's behavior will cause an argument in the community *lo titgodedu* compels that both groups compromise on one religious practice. This is because Jewish tradition puts a value on feelings of communal unity and cohesiveness.

While there is certainly variation in the practices of individuals, setting one communal standard can often squelch discord. For example, many Reform synagogues have found it helpful to set a communal Kashrut policy. Although each individual Jew may eat what he or she wants outside of the community, when the synagogue puts on events everyone must conform to a specific standard, whether kosher style or glatt kosher. In doing this, it is clear to those having events at the synagogue, like weddings or bnei mitzvah, which dishes they may use and what may be served. This specificity, while limiting, prevents communities from arguing over meals each and every time they are served.

Likewise, many communities have found it helpful to create guidelines for the place of the non-Jew in the synagogue. Here, communities decide in all cases, whether non-Jews can hold the Torah, bless it, or even read from it publically. Many rabbis are most criticized when they are perceived as being inconsistent or when they are said to display favoritism to one group of people. Favoritism is a form of factionalism and firm standards take away any impression of this and make all equal in the eyes of the community.

In both of these cases, *lo titgodedu* can be part of the discourse. Few issues are more contentious than food and religious status. *Lo titgodedu* can give framing language to understand the need for firm standards and boundaries in a community. Although such conversations are difficult, strict standards can help ensure that everyone is informed about communal norms and that no factions form because groups have different practices.

Whether we teach our children about *lo titgodedu* through the ontological or sociological lens, the term has great potential to enrich our conversation around the meaning of communal unity, cohesiveness, and Truth. Like other popular concepts such as *klal yisrael*, *tikkun olam*, and *tzedek* in the Reform movement, *lo titgodedu* deserves a place in our Reform lexicon. Through it, we can explore the power of community, the location of boundaries, questions of “truth” and the place of Torah in our lives. As it has for 3000 years, *lo titgodedu* will continue to change with our times provided we don’t forget its rich and colored history.

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