

TEXT IMMERSION: A STUDY OF THE ARBA'AH TURIM

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Table of Contents

Introduction to the Three Analytical Papers	3
Keeping Alive the Chain of Tradition: A Study of the Tur's Philosophy of Education	9
Accident in the Kitchen? Can a <i>Kefeila</i> Help Clean-Up the Mess?	25
The Principle of Fair Balance of Power in the Arba'ah Turim	37
Works Cited in the Three Analytical Papers	52

Introduction to the Three Analytical Papers

The Arba'ah Turim (the “Four Pillars,” commonly referred to as “the Tur”) is the major *halakhic* work of Rabbi Jacob ben Asher (1269-1343). Rabbi Jacob is the son of Rabbi Asher ben Yechiel (“the Rosh,” 1250-1327), a renowned scholar who moved with his family from Ashkenaz to Spain in 1303 to flee the persecution of the Jewish community in Germany, arriving in 1305. According to Judah Galinsky, as a Tosafist in Ashkenaz, the Rosh was accustomed to Talmud study and analysis as the main focus of scholars and source of *halakhah*. When he arrived in Spain, he entered into a culture of learning and *halakhic* decision-making that was almost solely based on the codes of the Rif (Rabbi Isaac Alfasi, 1013-1103) and Rambam (Rabbi Moses Maimonides, 1135-1204). Concerned with what he perceived as an over-reliance on the codes, the Rosh attempted to restore Talmud study as a core part of the educational curriculum and as a part of the Sephardic *halakhic* process. He also wanted to introduce the Tosafists’ legal interpretations to the rabbis of his community in Spain.¹ Rabbi Jacob shared his father’s concern for the neglect of Talmud study in the local *yeshivot* and the dependence of the rabbis of his generation on Alfasi and Rambam to decide *halakhah*, and for these two reasons embarked on the composition of the Tur. However, having spent more of his lifetime in Spain than his father, the Tur had a different perspective on how to most effectively carry out his goals. He combined aspects of both Ashkenazic and Sephardic styles in the Tur in order to package the material that he finds to be most important in a style that will be acceptable within the local culture. To that end, the Tur presents the law as a code, and does not include the Talmudic references that the reader would need to

¹ Judah Galinsky, “Ashkenazim in Sefard: The Rosh and the Tur on the Codification of Jewish Law,” *The Jewish Law Annual*, Vol. 16 (2006): 5-6.

fully examine the issue in its original context. This facilitates legal decision-making without needing to fully work through the Talmudic argument. At the same time, the Tur provides multiple opinions on a given question, which serves the dual function of introducing Ashkenazic legal interpretations to Spain and preserving the model of *halakhic* discourse that allows for a plurality of voices upon which the reader can base his decision.²

The Tur is a code of law that covers an enormous breadth of content and is intended for practical use. The four pillars are *Orach Hayyim*, which contains laws about daily religious observance and Shabbat and holiday observance, *Yoreh Deah* which deals with Jewish dietary law, family purity, and other topics of *halakhah* that do not fit into the other main categories, *Even HaEzer*, which covers primarily Jewish family law, and *Hoshen Mishpat*, which deals primarily with Jewish civil law.³ The laws in each of the four pillars are organized by topic, in sections called “*halakhot*.” The *halakhot* are further divided into *simanim* (chapters), which cover a subsection of the topic at hand. According to Galinsky, the Tur is actually a composite of three types of *halakhic* literature: codes written for judges who were responsible for deciding civil and family law (present mainly in *Hoshen Mishpat* and *Even HaEzer*), codes written for local rabbis who made rulings for their communities about dietary law and family purity (present mainly in *Yoreh Deah*), and codes for rabbis, preachers, and lay people about regular religious observance (present mainly in *Orach Hayyim*).⁴ The scope and functionality of the Tur are both

² Ibid, p. 22.

³ Judah Galinsky, “The Four Turim and the Halakhic Literature of 14th Century Spain: Historical, Literary and Halakhic Aspects,” *Ph.D. diss.*, Bar-Ilan University, 1999, p. III.

⁴ Ibid.

attested to by the fact that Rabbi Joseph Karo's (1488-1575) lengthy *halakhic* exposition, the Beit Yosef, and the Shulkhan Arukh, its codificatory summary, are based upon the Tur, and the Shulkhan Arukh today functions as the source of mainstream *halakhah*.

I came to focus on the Tur for my text immersion project out of a desire to increase my *halakhic* knowledge as well as my familiarity with a major work from the Jewish bookshelf. The organizational style used by the Tur simplifies the study of a specific area of *halakhah* because it draws from so many different sources and arranges them in a logical fashion. Although Rabbi Jacob risked creating a code that represents the *halakhic* simplification so feared by his father, the commentaries of the Beit Yosef, the Bach (the Bayit Hadash, Rabbi Joel Sirkes, 1561-1640), and the P'risha and D'risha (Rabbi Joshua Falk, 1555-1614), supply the necessary references to locate the sources that the Tur includes in its presentation of the law. Utilizing these resources, in conjunction with my study of the Tur, I succeeded in learning a great deal of *halakhah* on specific topics, as well as over-arching *halakhic* concepts. I have also gained comfort with the work of the Tur as a whole and can now access it comfortably for further study.

In selecting the text immersion option, I also sought to improve my text learning skills, in order to prepare for a lifetime of study after completing rabbinical school. The Tur provided an excellent linguistic challenge that added to my Hebrew and Aramaic vocabularies. I also became much more familiar with common acronyms and rhetorical devices that appear throughout the Tur and its commentaries, and that are essential for learning *halakhic* texts in their original languages. Over the past year, I sowed the seeds of hours of time spent with the Bar Ilan University's Responsa Project software open on my computer for searching text, a Jastrow dictionary and dictionary of abbreviations to

one side of me, a relevant volume of Talmud on the other side of me, and the pages of the Tur spread out before me. I hope to reap the capacity to engage with this text and the texts of other Jewish works as an individual learner and as a teacher.

I studied the following texts for my project:

- YD 98, *Hilchot Ta'aruvot*
- YD 240, *Hilchot Kibud Av v'Em*
- YD 243, *Hilchot Kibud Ravo*
- YD 245 and 246, *Hilchot Talmud Torah*
- HM 31, *Hilchot Edut*
- HM 259 and 263, *Hilchot Avidah U'Mitzia*
- HM 339, *Hilchot Po'alim*
- HM 388, *Hilchot Moser*

These ten chapters contain a variety of content through which, on top of gaining *halakhic* knowledge, I also learned more about the Tur's unique approach to *halakhah*, based on his own thinking. The decisions that the Tur makes about what to include or omit from other *halakhic* authorities make statements about his personal beliefs that transcend an academic interpretation of the sources. The series of three analytical papers that I wrote for this project present both the *halakhic* points that I learned through my study of the Tur as well as the understanding of the Tur's philosophy that I gleaned through my engagement with the text.

The first paper is called "Keeping Alive the Chain of Tradition: A Study of the Tur's Philosophy of Education." It focuses on YD 245 and 246, the laws of Torah study. According to the *halakhic* tradition, all adult Jewish men are required to engage in a lifetime of Torah study, and if they have sons, then they are required as well to teach Torah to their children. Within these chapters, the Tur provides specific guidelines for

Jewish education. The paper illuminates the guiding philosophical principles of the Tur that inform his presentation of the law and suggests that today we are in a better position than ever to carry out these ideals, albeit in innovative ways.

The second paper, “Accident in the Kitchen? Can a *Kefeila* Help Clean-Up the Mess?” takes a very close look at a single topic within the massive laws of *kashrut*, Jewish dietary law. YD 98, *Hilchot Ta’aruvot*, deals with cases in which an accidental mixture of food substances occurs that can possibly render the food forbidden to Jews. It is possible to salvage the food if the amount of the forbidden substance is below a legally determined threshold. One approach to handling such a case is to ask a *kefeila*, a Gentile food taster, to sample the food and assess the taste in a way that allows the Jewish owner of the food to determine if the forbidden substance has been nullified by a large enough quantity of permissible food, thus rendering the food acceptable for the Jew to consume. The questions of the requisite expertise of the *kefeila* and the reliability of Gentiles to provide information concerning a matter of that which is forbidden or permitted to Jews were major concerns for the generations of *halakhic* authorities. This paper uses the Tur as a basis for studying the particulars of the issue, evaluates his presentation of the law in light of the other *halakhic* sources, and examines the elimination of this practice in later *halakhic* literature.

The third paper, “The Principle of Fair Balance of Power in the Arba’ah Turim,” examines a pattern that emerged throughout my study of the text. Through a study of the presentation of the law from several of the chapters that I covered, it appears that the Tur codifies the law in a way that recognizes the needs and rights of all parties involved, and does not let the balance of power shift completely to one side or the other. The paper

demonstrates this tendency through four different *halakhic* examples, and concludes that the Tur's concern for fairness represents his intention to create a functional code of law that aims at communal cohesiveness and harmony.

I am most indebted to my thesis advisor, Dr. Alyssa Gray, for her knowledge, patience, and devotion to working with me on this project. Every aspect of the project was made possible by her deep knowledge of rabbinic text, which not only helped me to understand the content of the Tur, but which illuminated connections between this literature and other relevant teachings in the Talmud and Shulkhan Arukh that I would not have otherwise discovered. Dr. Gray also provided me with the social and historical background that I lacked in order to contextualize the information found in the Tur. Most importantly, Dr. Gray supported my discovery of knowledge and development of new insights about the text. Because of her keen sense of when to offer her own understanding and when to hold back and let me work out the ideas for myself, she has given me the gift of being able to take pride in accomplishing this project. It has been a privilege to work with her, and I believe that, plus or minus a few technical details, she is whom the Tur had in mind when he set his standards for professional excellence and exemplary character amongst teachers.

Keeping Alive the Chain of Tradition: A Study of the Tur's Philosophy of Education

The study of Torah and the teaching of Torah to the next generation are so integral to the agenda of the Jewish people that it is easy to take for granted the importance of teaching and learning in the Jewish tradition without studying its origin or particulars. The Torah itself speaks to the obligation to pass the tradition on to the next generation, and these words become command in the subsequent rabbinic literature. In the Mishneh Torah *Hilchot Talmud Torah* the Rambam codifies the laws of Torah study and the proper respect that one must show to his rabbi. The Tur organizes the teachings from a number of tractates in the Babylonian Talmud as well as from the Rambam's laws of Torah study into what we may call a "school handbook" that covers a variety of topics concerning the qualifications of the teacher, the procedures for running the classroom, the expected behavior of the students and the disciplinary measures that can be taken when a student's actions need correction. The laws that the Tur presents in his handbook illustrate two core values concerning Torah study. First, Torah study is a mandatory, lifetime endeavor for the Jewish male, and it is a process that a father must initiate for his sons from an early age. Second, education is an act that re-enacts God's revelation of the Torah to Moses on Mt. Sinai. Just as Moses passed the tradition on to the people, and the tradition carried through the generations of prophets and sages, each act of teaching Torah from father to son creates another link in this chain of tradition. Today, Torah study and the education of the next generation have endured as core values in the Jewish community. The diversification of educational options and the extension of Jewish education to women are ways in which the Jewish community today has built upon and improved the link between education and revelation at Mt. Sinai that the Tur held so dear.

The Tur opens *Hilchot Talmud Torah* with a presentation of the two core principles of education in a way that reveals both his codificatory approach and his philosophy of Torah study. Regarding his approach, most of the material in the Tur's *Hilchot Talmud Torah* is gleaned from the Babylonian Talmud and the Rambam's Mishneh Torah *Hilchot Talmud Torah*. Indeed, the very opening of YD 245 begins with the passage that the Rambam also uses to begin his laws of Torah study in *Hilchot Talmud Torah* 1:1: "It is a positive commandment for every Jew to teach his son Torah, as it is said, 'You shall teach them to your children' (Deut.11:19)."⁵ The Tur continues with a teaching from BT *Kiddushin* 30a that states, "and for everyone who teaches his son Torah, it is regarded as if [the son] received it on Mt. Sinai." The Tur freely mixes together teachings from the Babylonian Talmud and from Rambam in his topical presentation of the law. In doing so, he extracts the relevant content from a number of places and organizes it in a way that emphasizes the standards and purpose of Jewish education.

The opening section also reveals the Tur's philosophy of Torah study, which is different from that of the Rambam. After presenting the Rambam's teaching that lays out the basic obligation upon a father to teach his son Torah, the Tur pauses to make the connection between Torah study and the revelation of the Torah at Mt. Sinai. He then moves into a more detailed explanation of the nature of the obligation. Those details would have fit perfectly after the first statement, but the Tur makes the decision to first provide the teaching from *Kiddushin*, and then continue with the details of the obligation,

⁵ All translations of Rambam's Mishneh Torah are based on Rabbi Eliyahu Touger's translation, which can be accessed online at http://www.chabad.org/library/article_cdo/aid/682956/jewish/Mishneh-Torah.htm.

in order to frame the historical and theological significance of the commandment to teach Torah to one's children. In doing so, the Tur breaks the pattern of the Rambam, who does not make this initial connection between Torah study and revelation. The Rambam was a philosopher and believed that an intellectually and spiritually worthy person had to progress in his studies from Torah subjects to physics, metaphysics and math in order to link his intellect to the "Active Intellect" and thereby attain greater understanding of God. The contents of the Written and Oral Torahs, which were revealed at Mt. Sinai, are only a small part of the body of knowledge to be studied by such a person. In the *Mishneh Torah Hilchot Yesodei Torah* Chapters 1-4, the Rambam begins to teach about the topics of "*ma'aseh merkavah*" (metaphysical teachings about the nature of God) and "*ma'aseh bereshit*" (teachings about the creation and form of the universe). According to *Yesodei HaTorah* 4:13, these are the subjects that the Sages refer to as "*Pardes*" in the legend in BT *Hagigah* 14b. In this cryptic tale, four rabbis who enter into *Pardes* (literally, an orchard) and after one dies, one becomes insane and one apostatizes. Only Rabbi Akiva emerges unscathed. Although commentators have many ways of explaining the story, the Rambam interprets the story to mean that these four rabbis delved into the study of *ma'aseh merkavah* and *ma'aseh bereshit*. He uses the fate of the rabbis to prove that most people do not have the capacity to study these philosophical topics, because even these three great Sages were ruined in the process. The Rambam continues in 4:13 to teach that even though the Sages call *ma'aseh merkavah* a "great matter," and the *halakhic* content of the Talmud a "small matter," it is the study of *halakhah* and not philosophy that most people should pursue because it is within most people's mental capacity to understand, it is useful for the structuring of civil society, and, unlike philosophy, it "settles a person's

mind.” The Rambam’s expectation for most Torah scholars is that they will mainly learn *halakhah*, while only a select elite will acquire the knowledge of the deeper workings of God and the universe.

Even after acknowledging that most people’s course of study will be limited to Torah and *halakhah*, the Rambam maintains that the ideal course of study pursues the topics of *Pardes*. In the Mishneh Torah *Hilchot Talmud Torah* 1:11 the Rambam teaches that a person should initially divide his study time into thirds: one third devoted to the study of the Written Torah, one third for Oral Torah, and one third for “*Gemara*,” which encompasses the teachings of the Talmud as well as the reasoning used to derive them. He continues on in 1:12 to state that the matters of *Pardes* are also included in the general category of *Gemara*. Then, in a tone which resembles that of *Yesodei HaTorah*, the Rambam teaches that after a person masters the Oral and Written Torah, he should really devote most of his time to the study of *Gemara* (with the occasional review of the other material) in accordance with his “ambition and ability to concentrate.” After a chapter in which he outlines the basic obligations for every man to study the Torah and teach Torah to his sons, he concludes with a teaching that the ideal education path that a person must pursue in order to gain wisdom and understanding about God and the universe must include a lifelong study of philosophy. He restricts the pool of people who can actually attain this knowledge to a select bunch with an exceptional capacity for knowledge and study. The Tur cites the Mishneh Torah *Hilchot Talmud Torah* 1:11-12 almost word for word, but what he omits is quite telling about where his approach to education differs from that of the Rambam. He leaves out the Rambam’s statement that “*Pardes* is considered part of the *Gemara*.” In doing so, he makes a completely different statement

than the Rambam about the purpose of lifelong Torah study. To the Tur, the study of Gemara that an adult male should pursue, after he has mastered the content of the Written Torah and Oral Torah, consists of learning the reasoning of the Talmud and its exegetical approach, and does not include philosophy. The Tur believes that the material that was revealed at Mt. Sinai should be the content that is passed from generation to generation, and philosophy does not fit into this rubric. Additionally, the Tur makes no statement that limits the number of people who can gain wisdom and understanding to an elite group, but rather sees the enlightenment and piety that stems from Torah study as widely attainable. For all of the ways that his presentation of the laws of Torah study resembles that of the Rambam, the Tur's orientation to education is distinct.

The Tur's two core values of Torah study yield three main standards for teaching Torah, which are reflected in the law as presented in YD 245 and 246. The first standard is that the place of learning is a fixed institution in the town. The law regulates when the school must meet, at what age students must begin to attend, and the minimum teacher-student ratio for each class. The second expectation is that, because the teachers are taking part in the continuing the revelation of Torah, they are required to meet high standards of professional competency and moral behavior. They are also serving as surrogate parents, taking on the fathers' responsibility to educate his sons, and are therefore afforded the honor that children must give their parents and are permitted to discipline the students as a parent would be allowed to do. Third, because of the holy nature of education as an act that emulates revelation, students are expected to take their education seriously, and to treat the school and the teacher with the utmost respect. This paper will show how each of these expectations is provided for in the Tur's codification

of the laws of teaching Torah, as well as the way that the two main principles of obligation and renewing revelation are present throughout the educational process.

The root commandment at the beginning of YD 245 states that a father must educate his sons. This law does not mention anything about setting up a school. However, a number of factors make it unrealistic for the father to be the main educator of his children. If the father has another business then he does not have enough time to devote to his children's Jewish education. It is possible as well that a father might not know enough himself to teach his children more than the basics. Rather than expecting each family to take on the responsibility of education independently, the law takes a practical approach and commands that each community establish a school that takes on the educational obligations of the families. The community maintains the school and pays for the teachers. Although "school" and "class" are terms that probably took different shapes and forms from one town to another, the law clearly expects that every community will have a place of learning to which children are sent to study the Written and Oral Torah.

A number of laws in YD 245 govern the standards that establish the school as a fixed communal institution. First, the town is obligated to set up a school and if it fails to do so, the community is placed in a state of *herem* (excommunication) until it complies. The law states that a town that continues to ignore its obligation should be destroyed. Second, the law provides a minimum age at which boys begin to attend. Based on the physical vitality of the student, he enters school at age six or seven. A parent should not send a child younger than six to school. However, if the child is already old enough to attend school, but has not yet learned how to read, the parents must send him anyway, with the hope that the experience of being immersed in the classroom will facilitate his

learning. Next, there are fixed times that school is in session. Class meets every day, beginning in the morning and ending in the early evening. The only exceptions are the eves of the Sabbath and Festivals, and on the Festival days themselves. Classes are in session on the Sabbath; however the teachers should only review old material with the students and not teach anything new, so as not to burden the students on the Sabbath. There must be adequate teacher coverage in the classroom. The Tur writes that the town must hire one teacher for every 25 students. When there are more than 25 students the authorities disagree on how many teachers are required. The Rambam says that for 26-40 students, the town must hire an assistant teacher, and two teachers are required for more than 40 students. The Rosh stretches the numbers a little farther, requiring one teacher for 40 students, an assistant for 41-50 students, and two teachers when there are more than 50 students. The concerns with providing the students with enough attention from the teacher and maximizing the teacher's efficiency in the classroom are balanced with an understanding of the financial demands that the teacher's salary places on the community. Balancing these competing concerns may be what leads the Tur to provide both a strict and lenient opinion on the requisite teacher-student ratio. The composite picture created by these laws is of an organized school institution that is a main part of the life of the community. The community dedicates its resources in order to fully carry out the obligation to teach Torah to the children.

Because of the weight of the obligation to teach Torah and the sacred nature of the endeavor, teachers are expected to meet high standards of professional excellence. These standards ensure that the students are receiving an education that fulfills the obligation that is incumbent upon the parents, and in a way that honors the process of

education as a part of the chain of revelation. There are a number of skills that teachers are required to exhibit in the classroom. First, they must organize the class in a circle around the teacher so that all of the students can hear and see. The teacher also must be sitting on the same level as the students, not sitting in a chair while the students sit on the floor. This arrangement is part of the choreography of re-enacting revelation. The Tur draws from BT *Megillah* 21a, which states that teachers and students should be on the same level because when God revealed the Torah to Moses, they stood together. God was Moses' teacher, and part of re-creating revelation is emulating God's model of teaching.

Another requirement of the teacher is that he teaches at a pace that is swift enough to cover a large amount of material, but that does not sacrifice the students' comprehension of the content. A teacher should not take his position for granted, because the Tur instructs that if a more competent teacher is available, then the less competent teacher should be replaced. If there are two teachers with different strengths, one who moves through the material quickly but is not exacting in correcting and testing the students to make sure that they understand the content, and another teacher who is very exacting and therefore moves at a slower pace, it is preferable to hire the more exacting teacher. Another standard is that the teacher must be capable of accommodating the variety of levels and temperaments of his students. The Tur states that if a student does not understand the lesson, the teacher must not get angry. Instead, he must repeat his lesson and review the concepts, perhaps several times, until the students understand. According to the Tur, this level of patience is important so that the student does not pretend to understand the material in order to avoid the wrath of his teacher. If some of the students understand and others still do not, the teacher should continue to review so

that even the slower students understand. A teacher must not embarrass his students because this will inhibit their learning. The only time that the slow progress of the students is a justified cause for the teacher's frustration is if the students are being lazy or inattentive and are therefore not grasping the material. In those cases, the teacher is required to shame them in order to instill in them the discipline to apply themselves to their studies. Being a successful teacher according to the standards of the Tur requires the teacher to be very much attuned to the students' strengths and weaknesses, and to know how much pressure to apply to them to motivate them without shaming them.

As agents of revelation, teachers are expected to serve as moral exemplars for their students, living in accordance with the words of Torah that they deliver. The Tur teaches that it is forbidden for a teacher to take leave of his students during their studies, take up mundane work during class time, or to be lazy in his teaching. This behavior would compromise the effectiveness of the teaching, as well as set a poor example for the students about how to honor the study of Torah. The Tur also states that a person should not learn from a teacher who does not live a moral life, even if he is an exemplary scholar. Even if the community depends on the scholar for his wisdom, the people should not follow his teachings until he has repented and changed his behavior. These standards acknowledge that students do not just learn from the words of their teachers, but from their actions as well. Just as Moses was a pious individual, the teachers who model Moses' role in revelation must live morally upstanding lives.

Teachers take on the responsibility of the parents, and are therefore permitted to discipline the children in order to ensure that they take their studies seriously and contribute positively to the learning environment. The Tur outlines both the attitude with

which the teacher should discipline the students as well as the implements that are permissible to use. A teacher is only permitted to strike the students in order to instill them with respect for the teacher and for the act of learning Torah. He cannot strike the students in a cruel, belligerent manner. A teacher may not hit the students with a whip or a stick. Rather, he is limited to using a narrow strip of leather, such as a shoelace, which is enough to force the student to submit without causing him disproportionate suffering. Teachers are actually forbidden from teaching students that render themselves “unworthy” because of their misbehavior. The Tur cites this teaching from BT *Hullin* 133a, which states that if a teacher tries to teach an unworthy student, it is as if the teacher is throwing stones at *Markolis* (in Talmudic Palestine, this was a pile of stones on the side of the road towards which travelers would toss stones for luck on their journey). The Rabbis teach that just as throwing stones at *Markolis* is a form of vain idol worship, offering words of Torah to an ill-behaved student is a vain pursuit as well, which only results in building up the idol. Since, according to this analogy, the teacher who teaches an unworthy student engages as it were in an “anti-revelation,” he should first show the wayward student how to act appropriately, and then, once the student’s behavior has improved, the teacher can resume working with the student on the material.

Because of the many hours that teachers must devote to educating their students and the level of talent and expertise that they are expected to exhibit in the classroom, the law permits teachers to be paid. In this way, a professional teacher is different from a parent, even though he is fulfilling the same role. A person is not supposed to be paid for performing a commandment, and because the teacher is carrying out the father’s obligation to teach his children, the teacher also should not be paid. However, the Tur is

aware of the reality that people need to earn a living and that money is an incentive for better performance. The Tur mentions that there are places where it is the custom for teachers to teach for free and places where it is the custom to pay, and generally speaking a person should adhere to the local custom. However, he also includes the teaching of the Rosh who states that, in his day, it was customary for all teachers to be paid if they do not have other means of making a living. Or, if they do have other business from which they refrain in order to teach, they are compensated for their lost time. Other ways to legally compensate the teacher without technically paying him for teaching are to offer him money for the supervision that he provides over the students during their lessons or for his role in teaching them how to properly pronounce the Torah. Each of these approaches is a way to incentivize excellent teaching and to compensate teachers for their challenging work.

The third prominent feature of the Tur's laws of education is the high standard of conduct to which students are held. They are obligated to be hard-working, well-behaved, and respectful of their teachers and of their learning environment. These standards facilitate their required practice of Torah study, as well as give honor to the reenactment of the revelation of the Torah on Mt. Sinai which takes place in the classroom setting. The basic standards of behavior and diligence are clear from the laws previously discussed about the teacher's right to discipline his students. When the students are in class, which is a large part of their waking time each day, they are to be focused on understanding the depth of the concepts at hand. They have reason to fear the consequences from their teacher who is permitted to punish them physically if they are neglecting their studies.

The students are obligated to respect their teachers. The laws in YD 245 and 246 outline several expectations for how the students relate to their teacher in the classroom, and YD 243 and 244, the laws of honoring one's rabbi, include other teachings about how to treat a learned person in the community. One way in which the Tur regulates the treatment of the teacher by the students is through the laws of asking questions. The law states that the students must ask questions with a tone of reverence and respect for their teachers. There is a specific protocol for asking questions in which the students approach the teacher with humility and the teacher is afforded the time and space that he needs to provide the best answer he can. Students are forbidden from asking questions the moment the teacher enters the classroom. Instead, they must wait until he gets settled. Only one student at a time is permitted to ask a question, which allows the teacher to think about the answer and avoid confusion. Students should only ask questions about the topic at hand. This law is designed to avoid embarrassing the teacher who might not be prepared to answer a question on another topic. There is recognition in the law that teachers are intelligent, but are also students themselves and cannot be expected to have all of the answers off-hand. Students must limit themselves to no more than three questions on a given topic. In doing so, they respect the time of their teacher as well as his educational approach. Three questions are enough for the teacher to inform the student about a topic or explain some of the details, but if a student asks too many questions, it is possible that he is only challenging the teacher to be difficult or to try to stump him, neither of which are appropriate behaviors. The Tur writes that teachers are not supposed to have friendly relationships with their students in order to maintain an atmosphere of serious learning.

Because the asking of a question is one of the few occasions upon a student would speak to his teacher, it is essential that the student asks questions in a respectful manner.

As the stand-in for Mt. Sinai in the re-enactment of revelation, the classroom is sacred space. Regardless of whether the place of learning is in a synagogue or in a separate beit midrash, the students must act with reverence within the walls of that space. The Tur teaches that students must refrain from sleeping in the beit midrash. Sleeping would suggest that the students are neglecting their studies. In the learning environment, students should only speak words of Torah. They should avoid idle chatter, and not even verbally acknowledge someone who has sneezed! The sanctity of the beit midrash is considered even greater than that of the synagogue. This means that the students must comport themselves with all of the reverence that they would in the synagogue, in addition to any additional restrictions upon their behavior which are upon them in the place of study. These laws represent the ideal of a place where students and teachers can solely focus on learning and not be distracted by mundane thoughts and activities.

In sum, the scrupulous laws that outline the obligation to teach Torah to children, the provisions for establishing and maintaining a school in every city despite the cost of doing so, and the strict guidelines for both teacher and student performance in the classroom all show the importance of Torah study in the Jewish tradition. The Tur collects and compiles laws that are found throughout the Babylonian Talmud, along with teachings that the Rambam codified and expanded upon in his Mishneh Torah, to create a manual of procedure for Jewish education that draws on the richness of the Jewish tradition on this topic. His work reflects the core values of fulfilling the commandment to

teach Torah to the next generation and of continuing the chain of revelation through each act of education.

These two values are alive today in modern Jewish education. In a time when the Rambam's educational ideals of the study of math, physics and metaphysics are featured in the secular classroom, the Tur's emphasis on education as the continuation of revelation is a far more relevant justification for engaging in teaching and learning. Not only that, but these days education exists in a wider variety of formats and reaches a larger audience than in the days of the Tur. Today, parents can choose from a menu of Jewish day schools, part-time religious school programs at their synagogue, summer camp for informal Jewish education, year-long *yeshivah* programs in Israel, or a private tutor. The commandment to teach Torah to one's children can be fulfilled through any combination of these means in a way that best suits the temperament of the child, a value that was also held by the Tur. Depending on the community in which a Jewish family lives, there are different expectations for the number of hours that children will devote to Jewish education and the level of formality in the classroom. In Orthodox communities, it is the norm to send children to full-time Jewish day schools that more closely follow the model in the Tur. In liberal Jewish communities, part-time religious school in the synagogue is a more popular option, and the rules governing the amount of time that a student must spend each week on his studies and the formality of how the teacher runs the classroom are not adhered to in a traditional way. At the same time, for members of the liberal Jewish community who, for various reasons, do not want to send their children to a full-time day school program, these other options of Jewish education are exactly what allow the chain of revelation that began on Mt. Sinai to continue into the future.

The liberal Jewish communal norm to include women in Jewish education is one important change from the expectations and values that are codified in the Tur. I began my text immersion project with these chapters about Torah study. Even though I knew then that there are a number of laws that restrict the teaching of Torah to women, I still could not help but feel frustrated when, not five minutes into an almost year-long project, I read words that negated my entire endeavor. Torah study is one of the strongest traditions that have endured throughout Jewish history, constantly taking new shapes in every community where Jews have settled. I believe that one of the major triumphs of liberal Judaism is the extension of education to women as well as men, as an obligation upon mothers as well as fathers. Jewish education instills boys and girls with a positive identity and enables them to participate in Jewish rituals and celebrations. Also, and perhaps more importantly, including women in Jewish education is a more accurate representation of the revelation on Mt. Sinai, as Deuteronomy 31:12 teaches that God commands Moses, “Assemble the people, the men, the women and the children and the stranger that is within your gates, that they may hear, and that they may learn, and fear *Adonai* your God, and observe, in order to do, all the words of this Torah.”⁶ The Tur follows the rabbinic interpretation of this verse from BT *Hagigah* 3a, which states that the men were assembled at Mt. Sinai to learn the Torah, but the women were only present to hear the Torah. Although the Tur inherited a tradition that diminishes the significance of the presence of women, alongside all members of the community, to witness revelation, today we can give full recognition to the implications of this verse of Torah

⁶ All biblical translations for these three analytical papers are taken from the new JPS translation of the Bible. I have made some changes to the language of these translations in order to clarify the relationship between the biblical and *halakhic* text.

and carry on the chain of revelation in the manner in which it originated. Today, we have a greater ability than ever before to carry out the Tur's vision of teaching Torah to every generation, keeping alive the chain of tradition.

Accident in the Kitchen? Can a *Keifeila* Help Clean-Up the Mess?

Halakhah, the Jewish legal tradition, provides rules and standards which Jews are to abide by in every aspect of their daily lives. However, because the rules are complex, and because humans are imperfect, the *halakhah* also contains ways of dealing with mistakes. This paper will focus on one way of dealing with an accidental violation of *kashrut*, the Jewish dietary laws. While one who follows the law would generally want to act in the clear realm of what is permitted, when dealing with a mistake, one stands right on the line between permitted and prohibited action, and must be extremely careful to avoid a violation. In order to protect people from transgression, the rabbis discuss in great detail the laws for dealing with mistakes. Over time, the rabbis must consider a number of factors that have an impact on people's ability to properly carry out the demands of the law.

The prohibition at hand here concerns the eating of foods which are prohibited in the Torah, avoiding the mixtures of these foods with permitted foods, and avoiding the mixtures of foods that are be permitted to be eaten separately, but cannot be cooked or served together. For example, *terumah* is food which is only designated for priests and their families to eat. If some *terumah* is accidentally mixed into *hullin* (food which is permitted to both priests and lay people), then it is questionable whether a non-priest can eat that food. Similarly, all Jews are forbidden from eating dairy and meat foods together, and if one substance, or a utensil used to prepare that substance, is accidentally mixed into the other, then the permissibility of the food becomes questionable. In these cases, the provisions for dealing with mistakes protect the consumer from transgressing the

prohibitions concerning food, while also attempting to save them from an unnecessary loss of resources.

In BT *Hullin* 97a-98a, the Rabbis establish three ways in which an accidental mixture can be tested for a significant amount of prohibited substance. One way is quantitative. Called *battel beshishim*, which means “nullified in sixty,” the volume of the permitted food is measured against the amount of substance which was accidentally mixed in, and if there is less than one part forbidden substance to 60 parts permitted substance, the mixture can be eaten. The two other methods are qualitative measures, based on the assessment of the taste of the food. A priest is relied upon to taste an accidental mixture of *terumah* into *hullin*, because *terumah* is only forbidden to lay people. If the priest cannot detect the taste of the *terumah* then the amount of *terumah* in the food is considered negligible and the owners are allowed to eat it. The third method relies on a *kefeila* (literally, a “professional chef”) to taste the food. A *kefeila* in this context refers to a Gentile in the community who, as a non-Jew, is not subject to the prohibitions of forbidden mixtures of food. In a way that is analogous to the role of the priest in tasting for *terumah*, the *kefeila* can taste a forbidden mixture of food (such as milk that gets mixed into a pot of meat), and if the *kefeila* cannot taste the prohibited substance then the Jewish owners of the food are allowed to eat it.

This last method of testing the food is complicated by two major questions. This first is the level of expertise needed to accurately assess food through taste. The second question concerns whether a Jew can rely upon a Gentiles to report honestly about a Jewish legal matter. The controversial nature of this issue is apparent in the Tur, who presents a number of opinions about the requisite expertise and reliability of the *kefeila*

and in doing so provides options from which the *halakhic* decisor can choose. After the publication of the Shulkhan Arukh (first published in 1565), for reasons that are hinted at, but not completely explained in the text, this practice fell from use. This paper will introduce and elaborate upon the factors that the rabbis use to evaluate the reliability of the *kefeila* and will shed light on some of the reasons that this practice fell into desuetude.

Let us deal first with the level of expertise that the *kefeila* must have in order to accurately assess the taste of the food. Because it is a violation of a biblical commandment to consume the prohibited mixture of food, it is essential that the *kefeila* who samples the food is able to detect the taste of the substance if a significant quantity has accidentally been added into the food. Although the term “*kefeila*” means “chef,” it is difficult to tell if the text of the Gemara really means that the *kefeila* must be a professional chef, or if the term can be applied to any Gentile who is asked to taste the food. Rashi (Rabbi Shlomo Yitzchaki, 1040-1105) interprets the term literally as “*nachtom nochri*,” a “Gentile baker.” He assumes that a trained chef or baker would be more qualified to discern tastes than an average person whose palate is not very sensitive. The Tosafot (12th-13th century Ashkenazic commentators on the Talmud), on the other hand, do not express concern for the taster’s level of expertise. They do require a professional chef to serve as a *kefeila*, but they do so for a different reason, which will be discussed in the next section. The Tur does not take an official stance on the question of who is qualified to serve as a *kefeila*, but rather presents two different opinions. First, the Tur quotes the teaching of the Rashba (Rabbi Shlomo ibn Adret, 1235-1310) who writes in his law code Torat HaBayit that the taster does not need to be an expert, but can be an average person. The rationale for his ruling is that the threshold for what *halakhically*

constitutes significant taste is not based on what a taster with a highly-refined palate can perceive, but rather what an average person is able to taste. Others believe, however that the taster must be more qualified than the average person. The Tur includes another part of the Rashba's teaching, which states that there is a minority opinion which requires that the taster be an expert. The Tur writes that his father the Rosh agrees with this minority opinion. There is no conclusion in the Tur about whether the taster must be an expert or if any person can be relied upon, and the issue is revisited in later *halakhah*.

The second major question—whether a *kefeila* can be relied upon to give an honest assessment of the food—is a major concern for *halakhic* authorities from the time of the Talmud until present day. Most authorities view Gentiles as dishonest, and therefore set up two ways of working with a *kefeila* to ensure that the Jew receives a reliable report about the food. The first way is to ask the *kefeila* to taste the food without telling him the reason for the request. This approach is called *masiah lefi tumo*, or “speaking out of his ignorance.” Since the taster does not know that he is being relied upon to discern the taste, he could not purposely mislead the owners of the food about the taste. If the taster makes a casual comment about, for example, the delicious taste of milk in the chicken soup that his Jewish neighbor has offered him, then the Jew knows that the soup is not kosher and the taster is unaware that his comments had any *halakhic* import. Rashi supports this approach to dealing with a Gentile *kefeila* and this view is later presented as *halakhah* in the Shulkhan Arukh YD 98:2.

The second option for ensuring an honest report from a *kefeila* is to ask a professional chef to taste the food. In this case, the concern is not the expertise of the professional chef in discerning the taste, but rather that the professional chef is assumed

to have a greater incentive to be honest than a layperson. Since chefs are supposed to be experts at discerning taste, a *kefeila* who lies about the taste of the food would risk his reputation as a chef and potentially bring professional harm upon himself. If the chef is dishonest when he tastes the chicken soup and says that he cannot taste the milk, and then the Jew eats the soup and can clearly taste the milk, then the chef ends up looking like an unskilled taster. To avoid the problem of the dishonest nature of Gentiles, The Tosafot and the Ran (Rabbi Nissim ben Reuven of Gerondi, 1320-1376) insist on using a chef who is aware of the reason he is being asked to taste the food. Although the Rashba states that the taster does not need to be a chef, he agrees that if the taster is a chef, he does not need to speak *lefi tumo* because he will be concerned for his reputation.

The Tur supports either of these two approaches in order to guarantee that the taster offers an honest report. He cites the Rashba, who states that a professional chef can be trusted, even if he knows he is being relied upon for a *halakhic* ruling, since he will want to protect his reputation as an expert. The Tur also presents the minority opinion from the Rashba which, in conjunction with the opinion of the Rosh, teaches that an amateur taster is reliable if he is unaware of the *halakhic* import of his tasting of the food. What is notable about the Tur's presentation of the topic is that he purges from the conversation the comments of the Tosafot and the Ran, which are disparaging towards Gentiles, and only partially presents the Rashba's opinion, excising the part that explicitly questions the trustworthiness of non-Jews. Each of these *rishonim* states explicitly that Gentiles cannot generally be trusted. They write, each in slightly different ways, that a professional Gentile chef is more reliable than a non-professional because his personal stake in offering an honest reading of the taste of the food will override his tendency to

lie. The Rosh did not include any mention of the dishonesty of Gentiles, so it is possible that the Tur omits these ideas because he has inherited this manner of presenting the issue from his father.

The Shulkhan Arukh continues the thread of suspicion towards Gentiles, while retaining the Tur's confidence in the ability of any Gentile to adequately discern the taste of the food. YD 98:2 SA rules that any Gentile can serve as a taster, but he should not know that he is being relied upon. The ignorance of the taster ensures that he will report honestly about the taste of the food. One significant development here is that the Shulkhan Arukh makes no mention of the practice of using a professional chef as a taster. In some sense this can be perceived as a lenient view, because it means that the taster does not need to be an expert in order to be capable of discerning the tastes.⁷ At the same time, Karo's ruling is stricter than the Tur because, unlike the case in which a professional chef can be relied upon to be honest even if he knows that his opinion is being used to decide a *halakhic* matter, the Shulkhan Arukh teaches that there is no case in which a Gentile who is aware of the matter at stake can be relied upon to be honest. Because Karo decides in the Beit Yosef in accordance with the Rambam, Tosafot, Rashba and Ran that a professional chef does not need to speak *lefī tumo* in order to be reliable, it is unclear why he decides in the Shulkhan Arukh to omit this part of the practice of *kefeila*.⁸

⁷ Karo bases this opinion on the Rashba's opinion from Torat HaBayit and on the Rambam, who rules in *Hilchot Ma'achalot Assurot* 15:30 that any Gentile can be relied upon to taste the food. The Rambam interprets the word *kefeila* not as a professional chef, but as one who serves as a chef at the moment he is tasting the food.

⁸ In his commentary to SA 98:1, the Taz (Turei Zahav, Rabbi David HaLevi Segal, 1586-1667) makes a reference to a comment from the Beit Yosef that explains that the

Although the Shulkhan Arukh very clearly sets out the parameters for how to employ a *kefeila* to test and possibly permit an accidental mixture of permitted and forbidden food, the Remah's gloss on SA YD 98:2 (Rabbi Moshe Isserles, 1520-1572) prohibits the practice and insists that people instead rely solely on the quantitative measure *battel beshishim*. The Remah initially presents this view in the Darchei Moshe on the Tur YD 98, citing Sefer HaAgur *Hilchot Issur v'Heter* 1:263 (Rabbi Ya'akov ben Yehuda Landau, d. 1493), in which the author states that he has neither "seen nor heard" of this custom being practiced, but that all the people rely on *battel beshishim*. Landau wrote his code in Germany, which implies that by the 15th century Ashkenazic practice was not to turn to a *kefeila* to taste questionable food mixtures. When the Remah cites the Agur in the Darchei Moshe and again in his gloss on SA YD 98:2, he indicates that the members of the Polish Jewish community were also not accustomed to this practice. Neither the Agur nor the Remah state explicitly why a custom that is legitimized in *halakhah* fell into desuetude in their respective communities.

Several *halakhic* authorities offer insight as to why the Remah does not permit the practice of *kefeila*. The Levush (Rabbi Mordechai Jaffe, 1530-1612) highlights the question of expertise in his code. He writes that Jews and Gentiles alike no longer have the expertise to discern tastes. In light of his observation, it is likely that he would thus rule that today a priest would not have the expertise to distinguish the taste of *terumah* if it became mixed with *hullin*. In his commentary on SA YD 98:5, the Shach (Rabbi

taster does not need to be a professional chef as long as he speaks *lefi tumo*. According to the Taz, the Beit Yosef bases this comment on the opinion of Ravad (Rabbi Abraham ben David, 1125-1198). After conducting a thorough search, I could find neither the Ravad's comment on the subject nor the Beit Yosef's citation of the Ravad's opinion. Because the Beit Yosef refers explicitly to the practice of using a *kefeila* who does not speak *lefi tumo*, the Taz's comment is perplexing and requires further investigation.

Shabbatai Meir HaCohen, or the Siftei Cohen, 1621-1662) agrees that Gentiles lack the expertise to discern tastes, although he rejects the Levush's assertion that Jews are unqualified as well. The second possible explanation for the Remah comes from Rabbi Akiva Eger (1761-1837). Although he begins his commentary on SA YD 98:1 by stating that he does not know the reason behind the Remah's decision, he hypothesizes that the Remah might have found it impossible to find a reliable *kefeila* based on the law itself. According to some *rishonim*, the taster has to be a professional chef who is aware of what he is being asked to do in order to ensure his honesty. Other *rishonim* state that the taster must be unaware that he is being relied upon. Rabbi Eger concludes that these two criteria cancel one another out, and it is possible that the Remah discontinued the practice for the reason that no truly reliable *kefeila* exists.

The scholars just surveyed searched for reasons internal to the development of the *halakhah* for the Remah's presentation of his community's practice not to rely on the *kefeila*. Yet it is also possible that the Remah does not endorse the use of the *kefeila* for reasons external to the *halakhic* history of the issue. His glosses to the Tur and SA were largely informed by the customs with which he was familiar, based on his study of Ashkenazic scholars as well as his own experience. If no one in Ashkenaz or in Poland was using a *kefeila*, then the fact that the earlier *halakhah* permits the practice is not compelling enough for him to change their lived practice. Also, it is likely that the social and political situation of the 16th century Polish Jewry did not support the practice of using a *kefeila*. The Jews lived in insular, autonomous communities, and while there are some records of friendships between Jews and Christians in Poland, for the most part the interactions between Jews and Christians were limited to business transactions,

commerce, and tax collection.⁹ A Jew therefore might not have had the appropriate context in which to turn to a non-Jew to ask him to taste the food. In addition, the Jews adhered strongly to the *halakhic* boundaries between Gentiles and Jews, and while they might have had positive interactions with individual Christians, as a group they maintained communal separation. They would likely not have considered it to be appropriate to turn to Christians for an issue of Jewish religious observance.¹⁰ The themes of expertise and reliability of Gentiles are likely still at play here, as well as an overarching attitude that the Jews should keep ritual matters to themselves. Relying solely on *battel beshishim* still allows for a way to potentially save food after an accidental mixture and avoids violating the norms of Jewish-Christian relations at this time and place in history.

Today, there are a number of other reasons that this practice is not useful. Jews in many places in the world enjoy peaceful relations with the non-Jews in their communities and can trust their general levels of honesty. If the question of trust was the only issue preventing the acceptance of the use of *kefeila*, then perhaps a return to the practice would be appropriate. However, the peaceful relations between Jews and non-Jews today are also problematic for achieving an honest assessment of the food. In *The Laws of Kashrus*, Rabbi Benyamin Frost raises two objections to the reliability of a *kefeila*. The first is that a non-Jew might want to please the Jew and, regardless of what he tastes, will respond in a way that indicates to the Jew that the food is permitted.¹¹ Although this is

⁹ Bernard D. Weinryb, *The Jews of Poland*, (Philadelphia: Jewish Publication Society of America, 1973), pp. 93-94.

¹⁰ Ibid, p. 96.

¹¹ Benyamin Frost, *The Laws of Kashrus*, (Brooklyn: Mesorah Publications, Ltd, 1993), p. 96.

technically dishonesty on the part of the non-Jew, it is not malicious, but rather comes from a place of friendliness towards his Jewish fellow. The second concern which Frost raises is that a non-Jew cannot be relied upon because he cannot properly grasp the import of the commandments. Frost writes, “We believe that the performance of a mitzvah or the violation of a prohibition is a matter of cosmic effect that can only be properly appreciated by one who accepts and abides by those precepts. A non-Jew, however honest and trustworthy he may be, cannot appreciate the enormous consequences of his information.”¹² Frost’s view expresses doubt that even the most amicable and honest non-Jew can offer accurate and reliable information. At the same time, he does not address in his comment the provision of *masiah lefi tumo* which could potentially ensure the reliability of the report without the taster needing to know the import of his assessment of the food.

From the Reform Jewish perspective, there is another reason why a *kefeila* cannot be relied upon to taste food. To rely upon a Gentile for a matter of Jewish legal concern objectifies the Gentile as useful to meet the religious needs of the Jew. It is a practice that creates unfair pressure on a person to play a role in a religious situation that has no meaning to him. Mark Washofsky writes in the introduction to *Jewish Living: A Guide to Contemporary Reform Practice* that, “Reform Judaism affirms the moral equality of all humankind” and that “distinctions between Jews and non-Jews are appropriate in the area of ritual behavior... [but not] in the arena of moral conduct.”¹³ Although it is appropriate to draw a distinction here between Jews and non-Jews, since Jews are subject to the laws

¹² Ibid, pp. 96-97.

¹³ Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice*, (New York: UAHF Press, 2001), p. xxiv.

of *kashrut* and non-Jews are not, the practice of relying upon a *kefeila* raises some ethical concerns. There is the potential for the practice to adversely affect the relationship between Jews and non-Jews. Although the *kefeila* is not supposed to know that he is being relied upon, it is possible that the *kefeila* will guess the reason why he is being asked to taste the food. As Frost points out, the *kefeila* might then try to give a pleasing answer. Another possible scenario is that the *kefeila* does speak *lefi tumo*, and gives an assessment of the taste that is not pleasing to the Jew. It is possible for the Jew to express frustration or disappointment to the non-Jew who never wanted to be involved in the first place. A third concern is that a Jew could make unfair demands on the time of the *kefeila* by making him deal with unexplained requests to taste food when the *kefeila* has other things to do and receives no benefit for participating in the tasting. Last, if the *kefeila*'s assessment of the food renders it forbidden to the Jew, it is still permissible for the non-Jew to consume. While the non-Jew might be grateful for the free meal, he might not appreciate the gift of rejected food that the Jew reluctantly gives him so as not to let it go to waste completely. In order to maintain a relationship of mutual respect, the Jew in this situation would be responsible for explaining his personal reasons for adhering to the law and would need to be very careful to ensure that the non-Jew did not feel denigrated by the interaction. In reality, none of these scenarios is good for relations between Jews and non-Jews. We have much more to offer one another and to gain from one another than ritual favors, and should avoid situations where we highlight the differences of the other only because they serve our needs.

A close study of the practice of *kefeila* reveals that concern for dealing carefully with this tricky *halakhic* situation has only intensified over time. In an era when the

initial concerns of the rabbis about the integrity of Gentiles have largely been resolved, the fear that Gentiles might be *too nice* proves to be just as dangerous. This, combined with the concern that today's generation lacks the expertise of ages past, means that taste is a dangerous way to determine if a food is permissible, and the cases in which it can be relied upon must be severely limited. Fortunately, *battel beshishim* can still be used today. Even when people are very careful about the law, they will always make mistakes, and in order for the laws not to force an excessive loss of money (which is a factor in many other *halakhic* decisions)¹⁴ *battel beshishim* remains a useful corrective for an accidental mixture that is not significant enough in proportion to render the food prohibited. The practice avoids all of the concerns of expertise and reliability that come with a qualitative assessment by a *kefeila* about the food, and instead endorses a quantitative approach that only involves Jewish participants. Cooking is messy business, and the *halakhah* has evolved in a way that allows messes to be cleaned up, so long as the cleaning takes place within the confines of the Jewish kitchen.

¹⁴ For example, note the many appearances (in many versions) in the Talmuds of the statement “התורה חסה על ממונן של ישראל.” See Daniel Sperber’s all-too-brief yet helpful summary of post-Talmudic uses of that principle in his *The Path of Halacha* (Jerusalem: Reuben Mass, 2007), 93-99 (Hebrew).

The Principle of Fair Balance of Power in the Arba'ah Turim

Introduction

In his outstanding *halakhic* work, Rabbi Jacob ben Asher compiles centuries of laws and legal opinions and organizes them according to topic. A major feat of the Tur is the clarity with which he organizes and presents this enormous body of legal discussion. However, in my introductory encounter of studying the content of the Tur and the methodology of its compilation, I have found compelling evidence that clarity was not the only organizing principle employed by the author. In my studies, I discern a tendency for the Tur to present the law in a way that expresses a concern for fairness and maintaining a balance of power between all parties involved.

This paper will explore four places in the Tur in which the principle of fairness is clear in the Tur's presentation of the law. The topics I selected for this paper are taken from the laws of honoring one's parents (YD 240), the timely payment of workers (HM 339), the liability of a person who hands over another Jew's money (that person is called a "*moser*") under the force of an *anas* (a thief, either rogue or working to seize property for the local government) (HM 388) and the laws of returning lost objects (YD 259). Not only does each area of law show the Tur's tendency towards fairness in the law, but the variety of cases shows that fairness is a wide-reaching concern, whether the law pertains to personal interactions at home, at work, in the neighborhood, or passing through another place. This paper progresses in a way that illustrates the importance of maintaining a balance of power regardless of whether the two parties have a close personal relationship or no relationship at all. We begin by looking at the relationship

between family members, then the less personal employer-employee relationship, then with neighbors where a personal relationship goes sour, and last, with an unidentified stranger who has accidentally left behind a possession of his. We will see as well that these laws apply in times of safety and in times of danger. The Tur's wide-ranging concern for fairness works to prevent the particulars of the laws from being too burdensome for any one person to follow, and thereby maintains the feasibility of living by these laws.

YD 240

Our exploration of legal balance in the Tur begins in the home, with the relationship between parents and their children. YD 240 outlines in great detail the proper way for both young and adult sons and daughters to treat their parents. Although the laws present an extensive set of obligations for children to follow, the Tur includes measures to prevent the abuse of these privileges on the part of the parents.

The Tur begins this chapter by presenting the biblical sources. The first is Exodus 20:11, which states, "Honor your father and your mother." The second source, Leviticus 19:3, commands, "One must revere his mother and his father." These guiding principles of honor and reverence form the basis of the specific laws of how to treat one's parents. The Tur follows with the teaching in BT *Kiddushin* 30b that equates honoring one's parents with honoring God.¹⁵ Having impressed upon the reader the importance of these

¹⁵ In a *baraita* on BT *Kiddushin* 30b, the rabbis compare the wording of the obligations to honor and revere one's parents and to honor and revere God. The word "honor" (*kabed*) is used in the commandment to honor one's parents (Exod. 20:12) and in the commandment to honor God with one's possessions (Prov. 3:9). The word "revere" (*tira'u* or *tira*) is used in the commandment to revere one's parents (Lev. 19:3) and to

commandments, the Tur continues with a discussion of what qualifies as reverence and honor in order to teach the reader exactly how to fulfill his or her obligations.

Beginning with reverence, the Tur teaches that a person is forbidden from sitting in his father's seat, contradicting his father in an argument, and calling his father by name. The Tur also includes the teaching from BT *Kiddushin* 31a which states the extent to which a person must revere his parents. Even if the person is sitting in front of the community and wearing fine clothes, if his parents come up to him and hit him on the head and spit in his face, he must sit there and suffer through it and cannot curse his parents in front of the people. Because the Tur is at this point still in the mode of explaining the obligations incumbent upon the children, this statement about the high degree to which a person must revere his parents stands apparently without limit.

Next, the Tur explains the meaning of the commandment to honor one's parents. A person must provide for the physical needs of his parents, such as giving them food and water, and he must do so in a pleasant way, never begrudgingly or rudely. Here, there are some limits to the reach of the commandment. A person is first obligated to take care of the physical needs of his own family, and is not required to provide for his parents beyond what he can afford. The Tur provides other examples of honor, such as standing while in their presence and making requests from people in the name of one's parents so that the fulfillment of these requests will bring honor to the parents. Next, just like in his explanation of reverence, the Tur offers an extreme example of what constitutes honor. In this example from BT *Kiddushin* 32a, if a father throws a wallet full of money into the

revere God (Deut. 6:13). The rabbis conclude that the similar wording means that the obligations are equal.

ocean, the son is forbidden from cursing him. Although later rabbis argue over whether the father throws the son's money or his own money into the water,¹⁶ the bottom line is that people must honor their parents even in the face of great temptation to do otherwise. At the conclusion of the explanation of the legal definition of honor, the reader is left with a clear picture of the severity of the laws of honoring one's parents.

The Tur, however, does not leave the reader with an unlimited obligation to his parents. After fully defining and illustrating the obligations of reverence and honor, the Tur introduces limitations to the applicability of the commandments. For example, Torah study takes precedence over honoring one's parents, as does adhering to the laws of the Torah despite a command from one's father to violate a commandment. The Tur also cites BT *Bava Kama* 94b to teach that children are not obligated to honor a parent who is evil (*rasha*) until he has repented. These limits help people who want to observe all of

¹⁶ An argument is raised in the Gemara and taken up by later *halakhic* authorities about how to interpret this case. The Tur includes with this example the interpretations of Rambam, the Ri (Rabbi Isaac ben Samuel, 12th century) and the Ramah (Rabbi Meir HaLevi Abulafia, 1170-1244). The Rambam understands this case as referring to a father who throws the son's money into the water. Regardless of his anger, the son is forbidden to curse his father. Other commentators argue that if the son must honor his father if the father throws the son's money into the water, then this contradicts the previous teaching that a person does not have to honor his parents to his own financial detriment. The Ri resolves the contradiction by teaching that in this example, the father is actually throwing his own money into the sea, not the money of his son. The son is supposed to inherit this money after his father's death, and therefore might be tempted to curse his father, but must refrain. The Ramah approaches the question by looking at the timing of the incident. He understands the case as dealing with the son's money. The son is allowed to yell at his father to prevent him from throwing his money into the water; however, if the father has already thrown away the money, then the son is forbidden from cursing his father. The action has been completed and the son's opportunity to protect his finances has passed. After the fact, however, the son is still permitted to take his father to court to sue for his lost money. Each of these interpretations supports the obligation for a person to refrain from cursing his parent after the money has been lost.

the commandments to prioritize multiple pressing obligations to avoid transgressing the law.

Now, towards the very end of the chapter, the Tur turns away from his audience of sons and daughters and directs his teaching to parents. He places here a teaching gleaned from BT *Kiddushin* 32a which warns that a parent must be careful in not demanding too much honor for himself. He states that a parent is permitted to waive the honor due him. In the example the Tur provides, a parent should not ask his child to carry a very heavy burden just to demand the extent of the child's honor, since the child would have to obey the request. Similarly, a parent is not permitted to strike a grown child because this too demands too much honor, since the child is forbidden from returning the blow, but might not be able to control his rage. In this teaching from BT *Moed Katan* 17a, the Rabbis present a midrashic interpretation of Leviticus 19:14, "Do not place a stumbling block before the blind." Here, by demanding too much honor from their children, parents can set up their children to fail to sufficiently honor and revere them properly, and can lead them to violate a number of commandments in the process.¹⁷

The Tur's reminder to parents to refrain from taking advantage of the very generous benefits of the commandments of honor and reverence is well-placed after all of these advantages are explained. His lengthy, detailed explanations of the biblical commandments of honor and reverence teach sons and daughters that they must be aware of their actions towards their parents and strive to show their parents the same honor and reverence that they show to God. Only after fully explaining the seriousness of the

¹⁷ A child who curses or strikes his mother or father is liable for death (see Exod. 21:15, Exod. 21:17, and Lev. 20:9).

obligation does the Tur expound the limitations to the law. It is clear, therefore, that the onus of these commandments is upon the children, and their rights are largely subjugated to those of their parents. However, in the end the Tur seeks to protect some of the autonomy of the children that the parents could otherwise claim. When the Tur instructs the parents not to abuse their privileges, he tempers the severity of the obligation upon the children, even as he affirms the weight of the obligation upon the children. By attempting to instill some balance of power between parents and children, the Tur makes the law itself more robust and manageable for sons and daughters to follow.

HM 339

The next illustration of legal balance of power in the Tur comes from the laws of the timely payment of workers. This chapter in the Tur explains the parameters of the legal timeframe for paying workers and explains the rules for who is responsible for paying the workers on time in cases where an agent is used to hire or to pay the employees instead of the actual employer. Although these laws are primarily designed to prevent the exploitation of workers at the hands of their employers, consideration is also given to the financial situation of the employer, which could otherwise make it impossible for him to hire workers and properly pay them according to these parameters.

The rules concerning timely payment are derived from several biblical commandments. Leviticus 19:13 instructs, “You shall not oppress your neighbor, and you shall not rob him. The wages of one who was hired shall not remain with you overnight until the morning.” From here, the Rabbis derive three separate negative commandments: you shall not oppress your neighbor, you shall not rob your neighbor, and you shall not

keep his wages overnight.¹⁸ Deuteronomy 24:14-15 contains further laws concerning timely payment: “You shall not oppress a hired worker who is poor and needy, whether he is of your brothers, or of your stranger who is in your land within your gates. On his day you shall give him his wages, and the sun shall not go down upon him; for he is poor and he sets his soul upon it.” The Rabbis derive from these verses two additional negative commandments and one positive commandment. An employer cannot oppress a poor hired worker, cannot let the day end without paying the worker, and is obligated to pay the worker on that day. The Rabbis also turn to the book of Proverbs for guidance, and in a rare move for Babylonian *amoraim*, use a biblical source outside of the Pentateuch to derive law. They cite the passage, “Do not say to your fellow, ‘Come back again; I’ll give it to you tomorrow,’ when you have it with you,” (Prov. 3:28) to add to the prohibitions the withholding of the workers’ wages when the employer has the funds available to pay them. This lengthy list of citations indicates that the Rabbis understood this topic to be a vitally important principle in the biblical text and a cornerstone of their conception of ethical business practices.

After presenting a strong case based on biblical and rabbinic law for the general obligation to pay one’s workers in a prompt manner, the Tur presents the more complicated situation from BT *Bava Metzia* 110b-111a of using an agent to hire or pay the employees. This topic begins the shift towards protecting the rights of the employer. The employer is allowed to appoint an agent to hire and pay the workers, and in doing so, relieves himself of his obligation to pay the workers on time. This is an important measure for protecting the employer from transgressing the law if the agent has told the

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BT *Bava Metzia* 111a.

workers that he will be paying them and then fails to do so. Also, while the workers are owed their fair payment regardless of how the payment is supposed to be made, they would be wise to ask about who exactly will be paying them so that they know to whom to turn if they are not paid on time. There is an elaborate discussion of this topic in the Tur, but to summarize, there are ways of delegating responsibility for timely payment, so that an employer is not liable for a transgression of biblical law if he in good faith appoints someone to pay his workers on his behalf and that agent fails to follow through. This right to delegate frees an employer to be concerned with other pressing matters of business.

The Tur provides another important protection for the employer. If an employer relies on the proceeds from the market day to pay his workers, he is allowed to strike a deal with his workers to delay payment until after the close of the market day. The law stipulates that the workers must be aware of these conditions and accept them, but once they do, the employer does not violate the transgression of late payment if he waits until the market day to pay his employees for work that they did prior to that day. Because the assumption is that the employer will have enough money from the market to pay the workers on that day, the Tur goes on to instruct that the employer is responsible to pay his workers on that day, and if he fails to do so, he stands in violation of the prohibition derived from Proverbs of not telling a worker to “leave and come back” when he has the money to pay him.

This case recognizes that the power balance between workers and employers is not universally one in which the employers are powerful and the workers are vulnerable. Economic situations are not static, and a business person who at one time has plenty of

money to pay his workers can find himself at other times living “paycheck to paycheck.” The employer might require laborers to carry out his work, and therefore needs to put out an initial investment of hiring workers in order to earn the proceeds to pay them and make a livelihood for himself. Also, considering the factors of a tough economy in which there might be a surplus of labor, the workers should have the right to agree to what might, in better times, be considered an agreement that is less than ideal. Under these laws, the worker can decide for himself if he is willing to accept delayed payment rather than no payment. The fairness of the law is evident by the fact that the multiple obligations of timely payment that are codified in the *halakhah* do not have to operate in a way that harms the employer or the employees. The worker can waive his right to be paid on time if he deems it to be the best decision for his own economic good, and employers in unique circumstances retain the ability to hire these willing employees.

HM 338

A balance of legal power is not only applicable to everyday situations, but also applies to cases of emergencies. HM 338 is a subset of the laws of monetary damages. The laws deal with a situation in which the *moser* hands over in some way the money of his fellow Jew under the pressure of an *anas*. The *halakhah* deals with the question of whether the *moser* is obligated to repay the person whose money he gives away, or whether he is exempt because he did so in order to protect himself from harm, if that was in fact the case. The Tur presents the law in a way that balances the prohibition of stealing someone’s money, whether the thief is keeping it or giving it to someone else, with the commandment to save one’s own life, which could mean a loss of financial resources for oneself or for his neighbor.

The Tur begins chapter 338 with the general law: If a *moser* gives over the money of his friend to an *anas*, whether this *anas* is a Gentile or a Jew, he is obligated to repay his friend for the financial loss that he caused him. The Tur connects this teaching to the preceding chapters in *Hoshen Mishpat*, teaching that this law is like all the other cases of damages, even though the *moser* is not physically handing over the money to the *anas* (but is somehow facilitating the taking of the money by the *anas*). After this broad declaration of the *moser's* liability, the Tur proceeds to an explanation of the criteria according to which the *moser* is actually liable, and in fact there are a number of cases in which the *moser* is exempt.

There are three possible actions that a *moser* can carry out that constitute giving over his friend's money to an *anas*: 1) Showing the money to the *anas*, 2) Picking up the money and handing it over to the *anas*, and 3) Going to his friend's house to take his money, and then returning to hand the money to the *anas*. The variable that determines whether the *moser* is liable to repay his friend for any of these three actions is whether the *moser* acts on his own accord without really being forced, thereby providing the *anas* with his friend's money when it is possible that the *anas* would have been satisfied with the *moser's* own money. The Tur provides a number of examples to illustrate this point. If the *anas* ties up the *moser* and does not specify the conditions of releasing him, and the *moser* proactively offers to give him his friend's money, then the *moser* is obligated to repay his friend. On the other hand, if the *moser* says, "I know that your friend has a lot of money in that box over there – hand it to me or I'll kill you," then the *moser* is not obligated to repay his friend if he gives the money to the *anas*. The second case is different, because there is an assumption that, since the *anas* knew about the money and

was aware of its location, he could have (and would have) taken it without the help of the *moser*. Also, the threat of violence puts the *anas* in the category of the *rodef* (one who is actively threatening someone's life),¹⁹ which further gives the *moser* the right and obligation to protect himself. The law expresses the value that life is worth more than money, and is in accordance with the natural human inclination towards self-protection.

Through his presentation of the laws of *moser*, the Tur shows concern for maintaining a responsibility amongst people to protect one another's well-being and resources. Therefore, in the absence of an *anas*, it is clearly illegal to steal people's money or possessions. And, when an *anas* threatens the life of someone in the community, a person must forfeit his resources to protect the life of his fellow. At the same time, the *moser* cannot cherish his own resources over those of his friend, and unless specifically forced to give his friend's money to an *anas*, he is liable to repay that money if he gives it away under duress. Whether he was acting maliciously by giving away his friend's money instead of his own, or was acting out of a natural state of panic in the face of an *anas*, the law balances the rights and needs of both the *moser* and his fellow by obligating the *moser* to fairly reimburse his fellow for his loss.

HM 259

This fourth example shows that fairness is not just about the balance of power in everyday family, work, and neighborly relationships, but it matters even between people with no personal relationship because they have never met. When a person finds an object that belongs to someone who has accidentally left it there, he enters into a legal

¹⁹ See BT *Sanhedrin* 73a.

relationship with the owner of the item. In the laws of returning found objects, the Tur strikes a balance between protecting the owner of the lost object from theft and the potentially overwhelming burden upon the finder to bring every found item back to its owner.

These laws originate in Deuteronomy 22:1-3:

If you see your fellow Israelite's ox or sheep gone astray, do not ignore it; you must take it back to your peer. 2) If your fellow Israelite does not live near you or you do not know who (the owner) is, you shall bring it home and it shall remain with you until your peer claims it; then you shall give it back. 3) You shall do the same with that person's ass; you shall do the same with that person's garment; and so too shall you do with anything that your fellow Israelites loses and you find: you must not remain indifferent.

The two main commandments in these verses upon which the *halakhah* builds is “you must take it back” (*hashev teshivem*) and “you must not remain indifferent” (*lo yuchal lehitallem*). An individual must bring an object back to its owner, and is forbidden to neglect this responsibility to his fellow. These laws also deal with a gray area in the commandment “do not rob your fellow,” (Lev. 19:13) which we encountered back in the discussion of HM 339. In a normal situation, a person who takes an object that belongs to someone else is stealing. However, as the Tur will discuss, the case of a lost object is less clear, since under certain circumstances, the finder is permitted to keep the found object, and if he does so, this is not considered theft.

The Tur structures his presentation of the *halakhah* of lost and found objects in a way that emphasizes the balance of rights and responsibilities of the parties involved. As is typical, the Tur begins with the general biblical commandment, or in this case, the dual commandments of *hashev teshivem* and *lo yuchal lehitallem*. Then, the Tur introduces

limitations to the commandment. First, he introduces the concept of *ye'ush* (despair). After an object has been missing for long enough, the owner will eventually give up on ever finding it. After this *ye'ush* has occurred, the item is *hefker* (ownerless) and the laws of finding lost objects do not apply. How long an item has been missing is thus one important factor in determining whether the law of finding lost objects applies to it. The second factor after time that helps to determine if an article must be returned comes from the article itself and where it has been found. The Tur presents the following conditions that an item must meet in order for the finder to be obligated to return it to its owner: 1) It was found in a place in which items that are found there must be returned, 2) It was found in a place where it is clear that the item was accidentally left, 3) It can be verified that the item was lost by someone, 4) The item was not left there on purpose, 5) The item is worth a minimum of a *peruta* (a small coin), 6) There is a clear symbol (*siman*) on the item or in the location which indicates the identity of its owner), 7) The finder deems the item worthy enough to go back for if he had accidentally left it somewhere, and 8) The item belongs to someone to whom the finder is obligated to return lost objects. If any single one of these criteria is not met, the finder is not obligated to return the object or to look for its owner. After presenting this major limit to the commandments in Deuteronomy, the Tur then goes on to describe each of these conditions, and in the course of chapters 259-263 explains how one should act if one factor is in question and each of the remaining seven conditions are present for the object. The Tur arranges the teachings in his introductory chapter on the topic to first emphasize to the reader the importance of abiding by these laws, and then to introduce limitations to the rules that temper the severity of the commandments in Deuteronomy.

The laws in these cases protect the owner of the object from theft and from the loss of important resources or cherished possessions. They bring civility to a society because they demand that people do not just care about their own possessions, and can take ownership of any object that they see whose owner is not around to claim it, but rather insist that people look out for one another, even if they don't know each other, and take seriously a case of loss when it happens to someone else. At the same time, the obligation is not supposed to be such a burden on the finder that he then suffers loss himself. If a person were required to seek the owner of every unclaimed article that he encountered, he would have to use his own time and resources to fulfill this mitzvah. If he had to travel on his own horse, or today, pay for the fuel in his own car, and take off work because he had to spend all day bringing objects back to their owners, then the laws would become untenable. One of the most interesting features of these laws is that the individual determines his obligation in the matter. The finder determines for himself if the object meets the criteria of needing to be returned. Of course, he is obligated to perform an honest assessment of the item, but if he does not think that it is clear that the item is lost, but rather was discarded by the original owner, then he does not have to bring it back. Or, as an even more subjective example, if the owner would not go back for the item himself, then he does not have to return it to someone else. As the Tur teaches in chapter 263, this includes cases where the finder would be embarrassed to be seen in public with the item, and so he is therefore not required to suffer the shame of bringing it back to its owner. There is fairness built into the law here in that a person can decide for himself what is manageable and what is overly burdensome for him to execute.

Conclusion

The author of the Tur intends for his work to be a code of law used by communal rabbis, rabbinic judges, and ordinary Jews. It is not merely to be studied, but also to be applied. For this reason, his codifications of laws take account of the need to balance legitimate competing interests fairly, which in turn will contribute to greater communal cohesiveness and solidarity. The Tur is not naïve about the human need to care about one's own financial well-being, safety, and autonomy, nor does the Tur present laws that can only be followed in a utopia where people are driven to act solely for the public good. The Tur cares enough about the laws to make them tenable and realistic for his society and allows them to be instruments of bringing justice into the world.

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