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תנו רבנן, אלו דברים שאבל אסור בהן: אסור במלאכה,
וברחיצה, ובסיכה, ובתשמיש המטה, ובנעילת הסנדל, ואסור
לקרות בתורה ובנביאים ובכתובים, ולשנות במשנה, במדרש
ובהלכות ובתלמוד ובאגדות. ואם היו רבים צריכין לו - אינו
נמנע. (מועד קטן כ"א ע"א)

The following things are forbidden to a mourner: He/ she may not do work, bathe/anoint, have sexual intercourse, or wear sandals. He/she is also forbidden to read Torah, Prophets, or Ketuvim, to recite/teach Mishnah, midrash, halachot, Talmud, or aggadot. However, if **the public needs him/her**, he/she is not prevented from engaging in such activities (Moed Katan 21a, emphasis added)

Introduction

In many ways, this quotation serves as a microcosm of all of the Gemarra I have studied in masechet Moed Katan. It illustrates the basic tension that pervades the material – the rabbis’ desire to balance the needs of a mourning individual with the needs of his/her community. By making the prohibitions listed in the first half of the quotation, the rabbis releases individual mourners from virtually any obligation or activity. As such, mourners have the Talmud’s implicit permission to effectively withdraw from communal life for the duration of their *aveilut*. But what the rabbis giveth with one half of the quotation, they taketh away with the other. As the boldfaced type shows, if the mourner’s community needs him/her to perform one of the otherwise prohibited tasks, the rabbis’ law no longer prevents him/her from doing so.

As is the case with many tensions, this one does not resolve itself neatly. In fact, it gives rise to a whole host of questions. What does it mean for the community to “need” a mourner? Who determines this need? If a mourner is no longer “prevented” from engaging in certain activities, does that mean that he/she *must* do them if called upon? What should the community’s response be if the mourner still refuses to do what is asked of him/her?

These questions point to a central issue within the text of Moed Katan. Most of Jewish mourning law is predicated upon two basic principles. On the one hand, a mourner’s life has

he/she knew it is effectively over. The loss of a loved one means life will never be the same again. On the other hand, life for both the mourner and his/her community does continue; indeed it *must* continue. In other words, there is a recognition that mourners need to withdraw from communal life during their period of bereavement. However, they must ultimately rejoin their community and continue on with their occupations, obligations, and celebrations.

Under normal circumstances, this natural re-integration happens naturally. The rules and regulations of *shiva* and *shloshim* (and in the case of a parent's death, a full *shn'at aveilut*) provide the natural time and emotional buffer for mourners to gradually re-enter society and re-assume their obligations. Indeed, the material in Moed Katan lays out the usual progression that this process takes:

**תנו רבנן: אבל, שבת ראשונה - אינו יוצא מפתח ביתו, שניה -
יוצא ואינו יושב במקומו, שלישית - יושב במקומו ואינו מדבר,
רביעית - הרי הוא ככל אדם (מ.ק. כ"ג ע"א)**

Our rabbis taught: In the first week of mourning, a mourner does not leave his house. In the second week, he goes out, but does not sit in his usual place in the synagogue. The third week he sits in his usual place, but does not speak. The fourth week, he is like any other person (23a).

The question that the Gemarra asks is what happens when a communal need arises that overrides this natural progression. In other words, it asks when the community's need to continue on with life as usual supersedes individual mourners' need to refrain from participating in that life. This paper will look at this question through the eyes of the Talmud and then see how the answers might apply to contemporary Reform Jewish life.

Part I: What Does the Talmud Itself Say?

In the struggle between individual needs and "pressing" communal needs, Moed Katan initially seems to come down strongly on the side of the community. The paradigmatic example comes when a communal festival falls during a time when a mourner would otherwise be in shiva. In straightforward terms, the text declares,

אבל אינו נוהג אבילותו ברגל, שנאמר "ושמחת בחגך" (דברים ט"ז:ד). אי אבילות דמעיקרא הוא - אתי עשה דרבים, ודחי עשה דיחיד. ואי אבילות דהשתא הוא - לא אתי עשה דיחיד ודחי עשה דרבים. (מ.ק. י"ד ע"ב)

"A mourner does not observe mourning behavior during a festival [i.e. Pesach, Shavuot, or Sukkot], for it is said in the Torah, 'You shall rejoice in your festivals' (Deuteronomy 16:14). If the mourning behaviors came before [the festival], the communal positive commandment [to rejoice in the festival] comes and takes precedence over the individual positive commandment [to engage in mourning practices]. If the mourning behaviors came now [i.e. during the festival], the positive commandment to an individual does not take precedence over the communal positive commandment" (Moed Katan 14b, emphasis added).

Like the beginning of many Talmudic arguments, this series of statements is unequivocal about which side "wins" the dispute at hand. The positive communal commandment to observe and rejoice in the festivals clearly trumps any mourner's need to refrain from or avoid such celebration. By extension, mourners themselves must actively participate in the observance of whatever holiday. They may not allow their saddened state to dampen the festivities. In other words, the community's world, especially its celebrations, cannot stop on account of a person's death. In contemporary parlance, the *chag* must go on.

But as often happens in the Gemarra, what begins as an absolute rule applicable in any time and place is quickly parsed into many different conditional rules. After listing the activities mourners must refrain from¹/engage in², the Gemarra begins to nuance its original statement. First, there is a clarification about which *chagim* actually have the force to compel mourners to suspend or cut short their *aveilut*. After some debate, a decision is reached that only the *shalosh regalim* immediately cancel the rest of *shiva* or *shloshim*, and even then only if the mourning period has

¹ The Gemarra forbids mourners to engage in any of the following activities: Cutting one's hair, laying tefillin, responding to inquiries about one's well-being, washing one's clothes, engaging in productive work (*melacha*), bathing, wearing sandals, having sexual relations, or offering sacrifices in the Temple (14b – 15b).

² By contrast, the Gemarra mandates that mourners engage in the following activities: Wrapping one's head, rending one's garments (*keriah*), and overturning one's couch (14b – 15a).

already started. Indeed if one buries a loved one *during* a *regel*, shiva and/or shloshim are postponed until after the *regel*, but the period continues in full at that point. Holidays other than the *shalosh regalim*, e.g. Shabbat, Rosh Hashanah, and Yom Kippur, provide only a temporary respite. In the case of the latter group, when the holiday is over, the mourning period resumes (as do the accompanying restrictions) (19b) The implication here seems to be that the latter group of holidays, all of which are only one or two days in duration, do not have enough force to pull mourners fully out of a period of *aveilut*. They must engage in the observance of that day, but psychologically and temporally, the change in behavior is temporary.

After addressing the question of when, the Gemarra next whittles away at *which* rules and regulations are affected when a *chag* occurs. The text answers this question by looking at a dilemma constructed by Rabbah and Abaye based on the previous *sugiyot*. Abaye's quandary revolves around what happens when a mourner buries a loved one just before a *chag* begins. He notes that according to a *baraita*, the rules for the mourner and the consoling public differ:

אִתִּיבִיָּה: הַקּוֹבֵר אֶת מֵתוֹ שְׁנֵי יָמִים קודֵם הַרְגֵּל - מוֹנֶה חֲמֵשֶׁה
יָמִים אַחֵר הַרְגֵּל, וּמִלֹּאכְתּוֹ נַעֲשִׂית עַל יְדֵי אֲחֵרִים, וְעַבְדּוֹ
וּשְׁפָחוֹתָיו עוֹשִׂים בְּצִנְעָא בְּתוֹךְ בֵּיתוֹ, וְאֵין רַבִּים מִתְּעַסְקִין עִמּוֹ,
שֶׁכֶּבֶר נִתְּעַסְקוּ בּוֹ בְּרִגְלָא. (מ.ק. י"ט ע"ב – כ' ע"א)

He [Abaye] objected [citing a *baraita* that read], "One who buries his dead two days before a festival, he must count five days after the festival, and his *melacha* is done by others. His slaves and servants do their work modestly [in private, out of public view] inside the house. The public does not deal with him [i.e. pay shiva calls and care for him], for they have already dealt with him during the festival" (Moed Katan, 19b-20a)

Before, the text suggested that all semblances of mourning were to cease during a festival. Abaye's point is that this *baraita* seems to contradict that earlier teaching. According to this *baraita*, the public clearly deals with the mourner (i.e. comes to his home, makes minyan, cooks meals, etc.), "*during* the festival" (ibid, emphasis added). Moreover, the rules that apply after the festival is done appear to be different for the mourner than they are for the public. During this time, the

mourner observes some kind of semi-shiva wherein he himself does not engage in work, but others are allowed to do it on his behalf (a deviation from standard mourning practice where no one is allowed to do work for the mourner). The public, on the other hand, returns completely to their regular lives having already discharged their obligations during the festival. In order to reconcile these two teachings, the Gemarra, as it often does, produces a ruling which allows both statements to co-exist:

כללו של דבר: כל שהוא משום אבל - רגל מפסיקו, וכל שהוא משום עסקי רבים - אין רגל מפסיקו (מ.ק. כ' ע"א)

The general rule in such matters is that every [activity or restriction] that applies to the mourner is suspended/canceled by the *regel*. Any [activity or restriction] that applies to the public is neither suspended nor canceled by the *regel* (20a).

In other words, even during a festival, the community must still take care of its mourning brothers and sisters. The mourners themselves need not engage in most of the usual *aveilut* restrictions, but they are permitted, it would seem, to be home receiving consolation for at least some part of the day.

It would seem after looking at all this material that the Gemarra is somewhat schizophrenic about the issue it originally laid out in such concrete terms. Initially, it appears that the Gemarra is primarily concerned that the public not have to give up its celebration of a festival because a member of the community is in mourning. It sounds as though mourners must shunt aside their sadness and join the festivities so that the community is not dragged down. In the end, the Gemarra seems much more concerned that the mourners are cared for, regardless of what other celebrations might be ongoing in the life of the community. Overall, it is not completely clear which side the authors of the Gemarra actually favor.

The text is also vague about what the concern is for mourners. On the one hand, the Gemarra seems to recognize that the rules and regulations it sets up for mourning are beneficial to (and perhaps necessary for) mourners as they try to re-integrate into life as usual. On the other

hand, the text also seems to view those rules as being a burden on mourners and their families, particularly in times of celebration. Said otherwise, it is unclear what the Gemarra is trying to achieve with the system it lays out. Is it lovingly trying to provide a sheltering structure that mourners need to give them time to lick their wounds? Or perhaps it is paternalistically forcing a system on mourners that they would never willingly bring upon themselves? In truth, these two options represent the ends of a dialectic tension, and the answer likely lies somewhere in between the two poles. However, just where between we locate that answer greatly affects the way in which we see our original question.

Remember that at the beginning of this paper, we noticed a text that said that mourners are forbidden from performing certain activities unless the public needs them. If we read the Gemarra as being generally kind to the mourner, then the public's ability to compel a mourner to "perform" is intrusive, an impediment to his/her healing time. If we read the Gemarra as being paternalistic and imposing an unwanted structure on mourners' lives, then the public's ability to compel a mourner to perform actually offers the mourner an "out" from a forced *tircha*. Depending on which view we take ultimately affects how we might apply this text to contemporary situations.

Part II: How Does the Talmud Apply Today?

The Question of the Individual vs. the Community Need, Take 1

In order to apply the Gemarra's wisdom to contemporary society, we need to ask ourselves what the role of mourning is in our culture. A cursory look at our world shows that in many cases, we no longer have a time and a place for people to mourn. As Anne Brener notes in her books *Mourning and Mitzvah*, our society gives little instruction either to mourners or the ones who comfort them.

Modern mourners often don't know how to behave. People who have suffered the loss of someone close may think their feelings are inappropriate or abnormal or that

mourning should be easier than it is. They may feel torn apart, yet try to hide this rupture rather than heal it...It isn't easy for those who want to help mourners either. Would-be comforters often feel uneasy attempting to acknowledge the loss...Because of their shared awkwardness, mourners and comforters often collude in denying the appropriate – and normal – discomfort and pain...This collusion keeps the mourner from fulfilling obligations to the deceased and to the self. It robs the mourner of the mitzvah of mourning (11-12).

This unease of which Brener speaks, when combined with the fast-paced nature of our high-tech world, forms a potent one-two combination. In such an environment, the idea of stopping for a lunch hour sometimes seems ludicrous, let alone stopping life for an entire day to celebrate a festival. The idea of completely stopping one's life for a whole week to mourn a loss can seem downright impossible. As a result, the suggestion often given to those who lose a loved one is to immerse themselves in their usual routines, to make it seem as though nothing has changed. Yet as Sam Baldwin finds out in the movie *Sleepless in Seattle*, the advice that "work will see you through" is well-meant but rarely effective. As much as we might try, we cannot will away the pain and grief that come with the death of a loved one.

Against this backdrop, the mourning regimen that the Gemarra prescribes can be seen as profoundly humane. The rules and regulations set up by the text give a framework and a structure to a time that is otherwise lacking in both. The system gives mourners a cocoon of time and communal support that can help them nurse their wounded souls back to "health," eventually allowing them to re-emerge into their usual routines.

The system, however, is merely rules on paper. It takes an actual community of people willing to serve as *nichumei avelim* in order to make the system work. In the absence of such a support network, the system set up by the Gemarra can actually backfire. Without others around to help console them and take care of their needs, mourners can be left feeling more isolated and lost than if they were to have returned to their place of work. Indeed if a mourner's community is available to her only in public venues then the religious restrictions on her activity actually keep her away from her support network. Furthermore, they leave her burdened and bored within her

own household. A person in such a situation might well see the Gemarra's rules as the burdensome and paternalistic force alluded to earlier.

When we as contemporary Reform Jews contemplate the struggle between a community's need to celebrate and an individual's need to mourn, we need to bear in mind this dual nature of the text. As the previous discussion shows, the rules and regulations of the Gemarra are neither inherently helpful nor inherently hurtful. Their effect is largely dependent upon the social circumstances in which mourners find themselves. Indeed, if a mourner were to ask us whether to suspend observance of *aveilut* in order to celebrate a festival, we would have to know about his/her support network in order to properly advise him/her.

The key question is whether or not the mourner has a community that is willing to shepherd him/her through the mourning periods. If there is such a community present, we could recommend that the mourner not suspend his observance. After all, the Gemarra does suggest that people continue to care for the mourner during the festival, and mourners in the throes of grief can only be helped by that support. If a supportive community is lacking, we could adhere to a more conservative reading of the Talmud and counsel people to end their mourning and celebrate the festival. Doing so would give them the permission to leave their otherwise lonely homes and rejoin their community.

It is important, however, that we be cognizant that such advice is only a band-aid for what may well be a deeper problem. If a person lacks an adequate support network, we as Reform rabbis cannot solve that problem solely by using the text to relieve him/her of the "burdens" of the mourning system. It is much more important that we address the underlying issue. Cases like this should compel us to create caring communities within our congregations, schools, campuses, etc., so that people do not feel that they must leave their homes in order to be cared for in their time of need.

The Question of the Individual vs. the Community Need, Take 2

So far, we have looked at the question of individual vs. community need largely based on the assumption that a mourner would want to be cared for by a community if possible. If we are responsible readers of text, we also need to look at the same question from the point of view of mourners who wish to shun the trappings of mourning halacha and return as quickly as possible to their normal life. We have to recognize that the text as it stands could give people in such a place the “out” that they think they need.

The text that began this paper suggested that a mourner is forbidden from most usual activities unless the public “needs him” (21a). The key point on which we must focus is that ending phrase, **וְאִם הָיוּ רַבִּים צָרִיכִין לוֹ** – if the public needs him, for the Gemarra does little to define those words for us. In fact, the phrase is never repeated in any other part of the Gemarra, so we cannot glean the meaning from other contexts. We are left to our own interpretations of what the phrase might mean.

At one end of the spectrum, we might naturally assume that the standard for need would be if no other person could perform a given task other than the mourner him/herself. Such a rule would be least invasive to the mourner. But in today’s world where the individual reigns supreme, we must consider the other end of the spectrum, one where the decision as to whether the public “needs” the mourner lies entirely within the subjective eyes of the mourner himself.

Reality tells us as modern Reform rabbis that we know many people who consider themselves to be indispensable in one arena or another (whether or not they are actually so is often debatable). Most of us have seen people who have tried to block out the psychological pain of grief, people who quickly return to their work lives because they feel that they are “needed” there. We must be willing to admit that were these people steeped in textual tradition, they could easily find justification for their decision by focusing on our key phrase from Moed Katan. As responsible

readers of text, we would need to point out that the balance of the Gemarra text would not support such a view.

We know that the bulk of the mourning material in Moed Katan focuses on the restrictions that a mourner follows. While there is clearly an emphasis on the balancing of individual and communal needs, the general understanding is that for both religious and psychological reasons³, the rules of mourning provide a healthy (and perhaps necessary) structure for mourners. The only thing that categorically tips the balance from individual to community is a festival observance, and as we have seen, even that rule is not absolute. There is little to support the idea that a person who feels he/she is needed in a place of work is to be excused from the healing process that is mourning ritual. As contemporary Reform Jews, we need to emphasize this fact to our populace.

Part III: Conclusion

In summation, we can see that the tension between an individual's need to mourn and a community's need to go on functioning is still alive and well in our day, thousands of years after the Gemarra was first put to paper. We have seen how the text can still be valuable to us as modern Reform Jews. Despite our denomination's strong emphasis on the individual, this text can help us strike the balance between congregant and congregation.

³ It should be noted that the whole concept of psychology is a modern notion. It is possible, if not likely, that the writers of the Gemarra were not motivated by what we call psychological benefit of the rules they created.

CLAIMING AND RECLAIMING *SEMACHOT* – 3 PRIME EXAMPLES

Introduction

For the past few years, the Reform movement has undertaken the daunting task of revising its siddur. The creation of a new worship instrument is in many ways the climax of a lengthy process of evolution within the movement. In its early years, the movement had abandoned many of the classical elements of Jewish liturgy and praxis saying that they were “not adapted to the views and habits of modern civilization,”¹ and that their observance in contemporary times was “apt rather to obstruct than to further modern spiritual elevation.”² For a variety of reasons, many of these once discarded practices have been gradually reintroduced to Reform Jews across North America (and around the world). Many ideas which were once anathema have been reclaimed and given new meaning.

The issue of meaning has long been important in determining what beliefs and practices define Reform Jewish life. While many (if not most) Jewish customs are rooted in Jewish law (explicitly or implicitly), it is not their legal force that has impressed modern Reform minds. Rather, their value comes from whether or not such practices hold meaning for the Reform Jews of their day. Precisely what constitutes “meaning” has changed over time, but the concept has been a constant in Reform theology since its inception. Indeed, it has appeared in every Reform platform from Pittsburgh to Pittsburgh.³

¹ CCAR Pittsburgh Platform of 1885, <http://ccarnet.org/platforms/pittsburgh.html>

² *ibid*

³ The Pittsburgh Platform of 1885 suggests that people adopt only practices which “elevate and sanctify our lives.” The Columbus Platform of 1937 amended that statement to suggest that Jews retain and develop “such customs, symbols

As the definition of “meaning” has evolved, many of the practices that were once thought to be meaningless have now come to be seen as meaningful. In particular, there are customs and rituals that the founders of Reform rejected because they thought them applicable only to the time in which they were created. Today, Reform Jews are discovering that these customs may have spiritual wisdom and meaning that transcend both time and place.

One area of practice which exemplifies this trend is the Jewish rituals and customs connected with death and mourning. Were the early Reformers to have looked at Jewish death/mourning laws as they appear in text, they likely would have argued that many of them were created for a very specific time period – one clearly not our modern era. However, many people today are finding that these ancient texts can (and do) speak to their modern sensibilities. People are increasingly turning to once-forgotten Jewish mourning rituals to help make meaning out of the grief and despair that often comes with the death of a loved one.

As modern Reform rabbis, we have a responsibility to both sides of this equation. On the one hand, we have a responsibility to our Reform *wissenschaft* heritage. To that end, we need to understand the textual and historical background of Jewish mourning law so that we can know how and why certain laws and customs may have come into existence. This information can help us discern which mourning laws and customs are still pertinent to our modern lives. On the other hand, we must also be of the possibilities for new wine to be drawn from old flasks. In other words, we need to be able to see where new mourning meaning can be drawn from seemingly outdated customs. In the best cases, we may be able to adapt laws so that they reflect these new and modern meanings while remaining true to the principles upon which they were based.

and ceremonies as possess inspirational value.” The Centenary Perspective of 1976 offers a more pragmatic look at meaning suggesting that meaningful practices are those which “promote the survival of the Jewish people and enhance its existence.” In the closing of the 1999 Statement of Principles for Reform Judaism, the authors called upon God “Raise us up to a life of meaning devoted to God’s service and to the redemption of our world.” (See <http://ccarnet.org/platforms> for the full text of all platforms).

This paper, then, aims to take a small step in aiding Reform Jews as they approach this task. It examines a series of *halachot* from *Masechet Semachot*, a minor tractate from the Babylonian Talmud. This one volume work is a primary source-point for much of Jewish mourning law and custom, and as such, it offers a great place to begin to balance the two sides of the tension addressed above. The primary work of comparison is Rabbi Dov Zlotnick's 1966 annotated translation of *Semachot* (hereafter referred to as simply "Zlotnick"), which is regarded as an excellent critical version of this text.

Sometimes our examination of a given issue will lead us to reject a law as it is laid out in *Semachot*. Other times, we may find that we need to alter the law so that it better fits our modern sense of meaning. In other cases, we will find that we are able to "rescue" a seemingly obsolete law and give it new meaning.

Semachot – Chapters and Verses

Issue 1: Impending Death and the Question of the גוסס

Semachot begins with laws dealing with a גוסס, a person is still technically alive but who is on the very precipice of death. The "stamma" of *Semachot* quickly declares that a גוסס is to be treated as a living person in every respect. Such a person retains all legal rights, including those pertaining to inheritance, levirate marriage, and sacrificial offering (Sm 1:1). More importantly, anyone who acts so as to hasten the death of the גוסס or treats him/her as if he/she were already dead is considered to be a murderer (1:2-5). On its face, these injunctions seem to be both broad and absolute. There are, however, some important qualifications that must be understood.

A גוסס is not just anyone who is close to dying. The classification is reserved only for those who are not dying from an obviously fatal organic injury. In fact, one who has sustained such an injury is known as a טריפה (Zlotnick, 9). The primary difference in rabbinic literature seems to be

that the death of the **טריפה** is more imminent, that is to say that the time from injury to death is minimal. A **גוסס** is clearly at death's door, but he/she may well survive as a **גוסס** for some time (ibid).

The text's attitude toward a **גוסס** is understandable given Judaism's natural predilection toward the preservation of life. It flows naturally from the famous text in Sanhedrin 37a which states that one who destroys even a single life is thought to have destroyed an entire world. Nonetheless, the text begs the question of both ancients and moderns: What may be done to the **גוסס** as s/he moves from our world into the next? At first glance, the text seems to be unambiguous. It cites the midrash saying,

Rabbi Meir used to compare a dying man to a flickering lamp: the moment that one touches it he puts it out. So, too, whoever closes the eyes of a dying man is accounted as though he has snuffed out his life (Semachot 1:4).

If we interpret the term "closes the eyes" broadly, we could conclude that any effort to hasten the death of a **גוסס** is forbidden. However, we must look closely at this term in order to understand it in context. Zlotnick points out that it was a common custom of ancient Romans to shut the eyes of those whose death was imminent. While the precise reason for such a practice is not clear, it seems certain that relatives would take this step so their loved ones would not see the affliction that they caused passers-by (18) or more metaphorically, so that they would not have to see the state they were in as they left this world. Zlotnick speculates that the rabbis may have forbidden "closing the eyes" not so much as an injunction to protect the preservation of life but rather merely as a line of differentiation between Jewish practice and Roman custom.

This distinction potentially holds critical importance to us as modern Jews. Today the idea of a **גוסס** has taken on new meaning as we confront the issue of euthanasia. We regularly see cases where a person is on the precipice of death. However, thanks to the miracles of modern medicine,

people can now stay in that state for years at a time. Such scenarios deal with an issue that the authors of the Talmud never really had to consider – quality of life.

If we were to hold to the more broad interpretation of closing the eyes of a גוסס, quality of life would be a non-concern; the default view of preserving the life of a גוסס would prevail. However, if we understand that dictum in a more narrow sense, we can offer alternatives. If, as Zlotnick suggests, the prohibition against closing the eyes of a גוסס was simply a way for Jews to differentiate themselves from their Roman neighbors, then such a statute would be far less compelling to our modern sensibilities.

Armed with that argument, we could then suggest that perhaps there are scenarios where closing the eyes of a גוסס would not be thought of as shedding blood but rather improving quality of life. Such a reading would not override the dictum to preserve life in general, but it might well open legal doors (Jewish and/or secular) to allow for more aggressive pain management or more passive forms of euthanasia. Most importantly for our purposes, such a reading would permit both an honest view of a historical text while simultaneously allowing for modern interpretations that adapt that view to modern life.

Issue 2: The Death of a Child – When Can We Mourn?

The third chapter of *Semachot* focuses on one of the most difficult issues, the death of a newborn child. There is an inherent tension between law and emotion when a child dies. On the one hand, there is no love like that of a parent for a child, even one alive for only a few hours. A child represents (among other things) the hopes and dreams for its parents. As such, the loss of a child cuts a wound of unimaginable depth even though the parents may never have actually “met” or “known” that boy or girl. At the same time, there is an understanding that the death of a

newborn infant is still qualitatively different from the death of an older child and even more different than that of an adult.

At first glance, the text of *Semachot* seems to recognize this tension. It begins by saying that

A one-day-old infant who died is, to his father, mother, and his relatives, like a full-grown groom. Not only is this true for an infant who had lived for a whole day, but even one whose head or the greater part of its body had emerged [from the womb] alive (*Semachot* 3:1).

Clearly this description recognizes the pain and grief that a family feels when a child dies.

On its face, it seems to suggest that to a parent, there is no difference between a child of one day and one of eighteen years. However, it is quite clear from the rest of the text that the mourning rites for a young child are indeed quite different. From other areas in the Talmud, we know that mourning rites are not observed for children who have not lived for thirty days or who have not been in gestation for a full nine months (*Niddah* 44b).

Moreover, the rest of the text of this chapter of *Semachot* expressly lays out ways in which an infant funeral is different than the rites given to an adult. Most notably, an infant is not buried in a coffin but rather in a *חֵיקָה* – a kerchief. S/he is not given a eulogy, and according to some interpretations, the public does not even participate in any activity connected to mourning him/her (Zlotnick, 106).

At first glance, this ancient set of laws seems rather cold and heartless. Such a prescription leaves us no way to mourn what is – by the text's own admission – an incredibly grievous loss. It appears that the only acceptable way to mourn an infant death is to quickly bury the body and then to get on with life as quickly as possible. In an age and culture like ours where infant death is so rare, such advice seems impractical at best and downright sadistic at worst. To that end, many liberal rabbis might well be inclined to reject this law out of hand.

However, in order to glean any insight from this law, we must remember that it was not written in a time when infant death was so uncommon. In fact, it was quite prevalent. Scholars

have pointed out that if people had to undertake the full mourning regimen for every infant that died young, communities would grind to a halt. They would spend more time doing mourning activities than attending to their usual lives (Passamaneck, 11/03).

Moreover, we must be careful not to read too much into the stark tone of the *Semachot* text. The text does say that mourning rites are not observed in the case of an infant death, but it does not say that one is *forbidden* from doing so. When the Talmud wishes to express a complete prohibition of an activity, it often uses the word אסור – meaning forbidden – as opposed to the word use here, לא – meaning simply not to do something. Moreover, no further qualification or punishment is enumerated for one who performs these activities. In many other places in Talmud, (though admittedly not all), certain actions are expressly punishable by a certain sacrifice, a monetary fine, or in the extreme, death. Here, the absence of any specific punishment may well be instructive.

In today's world, Jews have long recognized the wisdom that the text offers in declaring a dead newborn to be as traumatic as the death of a full-fledged groom. At the same time, there is also a recognition that though infant death is extraordinarily painful, the text of *Semachot* makes a point when it acknowledges that there are qualitative differences in how we feel when we lose an infant compared to how we feel if we were to lose an older child. The loss is no less painful, but it is different.

In liberal circles, the legal idea that infant death is painful but different has been reclaimed. However, rather than shunning mourning rites as would have been helpful and appropriate in centuries past, today Jews of all different denominations are using the beginning of this chapter of *Semachot* to create new rituals that help to adequately honor and mourn the loss of a child. This blending of modern innovation and historical understanding helps to bring ancient laws into our modern world.

Issue 3: **אנינות** in a modern context

Chapter 10 of *Semachot* focuses primarily on the laws and restrictions of the mourning period known as **אנינות**, the time after a loved one dies but before he/she is buried. In essence, **אנינות** is both the most restrictive and at the same time, the most freeing period of the entire mourning cycle. The opening verse of *Semachot* says that during **אנינות**, an **אונן** is exempted from reciting Shema, praying the *Amidah*, wearing tefillin, and generally all the commandments written in the Torah (10:1). In our earlier examples, we noted that freedom not to do a specific commandment did not prohibit a person from following that commandment if he/she chooses to do so. However, in this case the Gemarra is far more restrictive, warning that if a mourner wishes to be stricter in his/her observance and engage in these activities, he/she “may not do so because of the honor due to the dead” (*Semachot* 10:1). The effect of this instruction is that an **אונן** is allowed – even required – to focus exclusively on the burial of his/her loved one. The question we must ask is what the motivation for such a practice might be. A look at the text of *Semachot* reveals some interesting possibilities.

Zlotnick notes that at one level, the Gemarra’s intention is highly practical in nature. People who have lost a loved one are in such a state of mental disarray that it is difficult to perform even the most basic functions. People in such a state often forget to do things as simple as eating, much less things that require the thought, concentration and *kavannah* as prayer and Torah reading. Were they required to fulfill all their usual Torah obligations, mourners would be bound to fail. By relieving **אוננים** from their religious requirements, the text of *Semachot* relieves the mourner of what would otherwise be an untenable situation. As Zlotnick puts it, since mourners must devote all their attention to the needs of the dead, they should not be distracted by other obligations, even if the funeral arrangements have been prepared by others (Zlotnick, 150).

But if we look closer at the actual text of *Semachot*, we can see that there may be other reasons behind releasing mourners from mitzvot. The key lies in the law that immediately follows the verse that gives the mourners their freedom. The first verse of the chapter says that a mourner is exempt from reciting the *Shema*. The second verse specifically states that when it comes to the point of the service where everyone would be joining in and saying *Shema*, the mourner “must remain silent and not recite it” (*Semachot* 10:2). Similarly, the first verse releases the mourner from having to recite the *Amidah* in general. The second verse, however, is quite graphic in what the mourner must do instead.

When [the rest of the community] rises for the [*Amidah*], everyone [else] prays while he must justify the judgment that is upon him. And what does he say?

Master of the universe,
I have sinned before Thee
For the least part of my sins
have I been called to account,
Indeed, I have deserved much worse than this.
May it be Thy will
That Thou mend this breach
and comfort me (*Semachot* 10:2).

This remarkably grim prayer sheds a chilling new light onto *Semachot*’s view of mourners. It suggests that not only are they psychologically unable to perform mitzvot, but they are also spiritually unfit to do so, perhaps even unworthy. One cannot help but notice that the text of this prayer places the blame for the recent death squarely on the mourners left behind. Even more shockingly, it expresses a view that in fact, the death of a loved one is not even sufficient a “punishment” for whatever sins he/she may have committed. As if the death of a loved one were not traumatic enough, some greater punishment is “deserved.” In this light, releasing the mourner from the performance of mitzvot is not a gesture of humanity but rather of cruel pity.

Needless to say, this borderline sadistic view of mourners is highly unappealing to our modern sensibilities. Reform Judaism has long since rejected the view that bad things happen to people simply because they have committed sins. This Deuteronomic theology has been excised

from our literature and liturgy time and again (despite repeated attempts to re-introduce some aspects of it).⁴ As modern Reform Jews, it would therefore be understandable if we were to discard the practices of *אנינות* because we reject the basis upon which they were created.

However if we are to be responsible modern Jews, we must look for new meaning in a custom when the old ones no longer prove salient to us. Though we may not agree with the fatalism that *Semachot* connects with the practices of *אנינות*, we can certainly see value in the humanity that Zlotnick finds within the text. Too often, our culture's advice to people who have lost a love one is to immerse themselves in their everyday routine so that they not have to face the hurt and grief that accompanies death. But as we now know, we may be able to bury our feelings at a time of loss, but we cannot rid ourselves of them. The psychological damage that can be inflicted by repressing such feelings is quite great. As modern Reform rabbis, we would be wise to counsel our congregants to embrace the practices of *אנינות* not because we find such people to be unworthy of the practice of mitzvot but because we recognize how vital it is to their well-being to relieve them of their day-to-day responsibilities. Not only should we advise them to be unworried about performing any Jewish ritual functions, but we can also suggest that they set their secular schedules aside as well. In doing so, we can show them that Jewish law gives them the freedom – even the mandate – that they need to take a pause in their lives, to bury their dead and to begin their grieving and healing.

The true proof of the humanity in *Semachot* comes later in the chapter. After making it through the early stage of *אנינות*, the text of *Semachot* lays out a natural progression which allows a mourner to grieve, mourn, and gradually re-enter society.

⁴ As the Reform movement has revisited and revised its liturgy, there have been numerous attempts to put the classical 2nd paragraph of the Shema (Deuteronomy 11:13-21) back into the siddur. Despite some very cogent arguments which point out that that text can be read metaphorically, the liturgy committee has resisted and rejected the efforts to return this text to the official Reform siddur.

On the first Shabbat [after burying his loved one], the mourner should not enter a synagogue. On the second, he may enter, but may not sit in his [usual] place. On the third, he may enter and sit in his [usual] place, but may not speak. On the fourth, he is like everyone else (*Semachot* 10:12).

In the end, we as modern Reform Jews are able to reclaim the practice of **אנינות** for ourselves by giving the practice new meaning for our time. We can certainly understand that the laws connected to **אנינות** were originally written for a different time with different understandings of theology, theodicy and psychology. However, there is still clearly wisdom and meaning to be found in these practices, even if the original reasons for their adoption are no longer relevant.

Conclusion

The study of *Semachot* should be intriguing to us as modern Reform Jews (and especially as rabbis) because the topic it deals with, death and mourning, is one of the areas in which our congregants are most interested. Most rabbis will say that even their least involved and least observant congregants suddenly “get religion” when it comes time to deal with the loss of a loved one. We owe it to them to have a solid understanding not only of the classical laws and customs but also how they are relevant to our lives. This paper only begins to scratch the surface of this topic. However, it is my hope that by looking at these three examples, I have provided a *hashkafah* of how to look at this text in a way that helps us understand both the ancient and the modern meanings of these texts. If we can understand how the laws and customs can evolve, we harness their power for our own day. Indeed, we prove their timelessness and by extension, their value to us all.

HE'S ENTITLED TO HIS OPINION

Introduction

There is a famous legend that explains the history of the Septuagint. As the story goes, the Greek community in Alexandria was very interested in the Hebrew Bible, but few of its citizens had the skill to read the text in its original Hebrew. Accordingly, the Alexandrian king, Ptolemy Philadelphus, convened a council of 70 rabbis and asked them to translate the book into Greek. Each of the 70 translators was to work independently. It was assumed that out of 70 differing versions, some sort of consensus version might be created – a synthesis based upon the most common interpretations of the material. As legend has it, when Ptolemy reconvened the council, he discovered that all 70 translations were exactly the same – down to the very last word.

The precise origin of this story is unclear, but its implications are not. Its authors (whoever they may have been) wanted to show that unlike other documents, there was only one way to understand (and therefore translate) the divine word of God as revealed in the Bible. In other words, it is not so much a miracle that the rabbis produced identical translations. In the “objective” eyes of the writers – there was no other possible outcome.

The historical validity of this *aggadah* is specious at best, but that is not its point. The authors were not so concerned about being factually correct as they were about providing a *hashkafah* through which to view the world. This story is meant to reinforce the idea that the word of God is all-powerful and omnipresent – the source of everything in the world. Its power transcends anything mere mortals could produce. By extension, a translator is merely an instrument to perform a task. It is not his/her acumen that produces the translation. Since the word of God is

inviolable, anyone who truly understands the text would come up with the same results. The identity of the translator is irrelevant.

I cite this example because it is helpful in understanding how to view the Rambam's Mishneh Torah. When Maimonides compiled his famous work, his intent was to create a complete law code that would, in his words, present

...everything in clear language and terse style, so that the whole Oral Law would become thoroughly known to all; *without bringing problems and solutions or differences of view*, but rather clear, convincing, and correct statements, in accordance with the legal rules drawn from all of these works and commentaries that have appeared from the time of Our Holy Teacher to the present (Introduction to the *Yad ha-Chazakah*, Section 41, emphasis added).

As this quotation shows, in the Rambam's mind, he was merely culling the Torah – oral and written – and extracting all of the legal directives they contained. He was not producing anything “new” any more than the translators of the Septuagint were creating a “new” version of the text. According to this worldview, the Rambam, like the translators, was merely an instrument, producing the only thing possible given the texts on which he based his work. In other words, for Rambam, the Mishneh Torah does not in any way represent his personal viewpoint. It is an “objective” distillation of Jewish law into a clear and concise compendium. To Rambam, it was so obvious that his interpretation was the only one possible. As has often been noted, he was so certain of being singularly right that he did not see it necessary to use any kind of reference notes (or any kind of documentation) that would have shown how he deduced the laws in question.

We do not need to be scholars to see the flaws and the folly of the Rambam's approach. It is a basic truth of human nature that everyone brings a bias to the words they read and write. People can attempt to be conscious of their biases and even try to transcend them, but no one can completely overcome them and be purely objective, especially not when writing commentary. The Rambam, as gifted an individual as he may have been, is no exception.

To be fair, the Mishneh Torah is not purely a work of propaganda either. As we look through the Mishneh Torah, we find that Maimonides for the most part stayed true to his stated goal. There is a great deal of material which is lifted wholesale from the original sources (either Torah or Talmud) and presented without much further comment or alteration. However, we need not look far to see instances where Rambam's presentation is much less objective. In order to flesh out this idea more fully, this paper will look at Rambam's treatment of mourning law in his *Hilchot Evel* volume of the Mishneh Torah. As a point of comparison, we will look at places where Rambam draws on the two other works studied for this project: the third chapter of *Moed Katan* and the minor tractate, *Semachot*. As this paper will show, there are clearly times where Rambam inserts himself into the laws of mourning.

Explication

Rambam wastes little time in putting his own personal spin on the laws of mourning. In the very first sentence of *Hilchot Evel*, he posits:

**מצות עשה להתאבל על הקרובים, שנאמר "ואכלתי חטאת היום
הייטב בעיני ה' "**

It is a positive commandment to mourn for one's close relatives, as it says, "Had I eaten sin offering today, would the Lord have approved?" (Leviticus 10:19).

We know from Rambam's introduction to the Mishneh Torah that he wanted to back up his findings with "clear, convincing, and correct statements, in accordance with the legal rules drawn from [the Jewish legal works] and commentaries" (Introduction to the *Yad ha-Chazakah*, Section 41). In other words, he wanted his work not only to list the required/forbidden customs but also to provide textual legal support for those practices. However, in this case he may have jumped too far in an effort to lend credence to his work (and his thinking).

In this particular instance, the Rambam wanted to ground the basic mitzvah of mourning one's *k'rovim* in Torah. Given that goal, the verse he uses is specious at best. The context of the

verse is that Moses asks Aaron, whose sons Nadav and Avihu have just been killed, why he did not eat of the sin offering that had been brought that day. Rambam then cites Aaron's answer, which in effect says that God would have disapproved of Aaron had he eaten of a festive offering.

Rambam seems to be extrapolating from Aaron's response that God's disapproval would have come from the fact that Aaron would have been violating the positive commandment Rambam is trying to create (to mourn for one's close relatives – in this case his sons) by following a different (but better established) commandment (to partake of the sacrificial offerings). The problem for Rambam is that though this kind of textual speculation is common among the rabbis, they never stretched the text this far, at least not with this verse.

Other law codes point out how far afield the Rambam seems to have gone with this reference. The *Kesef Mishnah* points out that the commandment Rambam purports to find is at best "indirect." Moreover, he points out that in other areas of the *Mishneh Torah*, Rambam uses a different verse to support this point. The *Ramah* also points out that the common practice is to follow the opinion that there is no Scriptural basis for the obligation of mourning (*Yoreh Deah* 399:13). Perhaps the most damning piece of evidence against the Rambam is that neither *Semachot* nor *Moed Katan*, the two most basic mourning texts in Jewish law, cites this verse anywhere, much less as a specific proof-text for the commandment to mourn. In short, there is no support that connects this text to any commandment. The Rambam's attempt to include it in the *Mishneh Torah* reflects his desire to ground things textually, but it does not reflect the objective reality of the legal texts themselves.

Rambam's lack of objectivity appears in more subtle ways elsewhere in the text. A prime example comes in 1:10 which begins:

**כל הפורשין מדרכי צבור והם האנשים שפרקו עול המצות מעל
צוארן ואין נכללין בכלל ישראל בעשיית המצות ובכבוד המועדות**

וישיבת בתי כנסיות ובתי מדרשות אלא הרי הן כבני חורין לעצמן [כשאר האומות]

We do not conduct mourning rites for all those who deviate from the path of the community, i.e. *people who throw off the yoke of the mitzvot from their necks and do not join together with the Jewish people in the observance of the mitzvot, the honoring of the festivals, or the attendance of synagogues and houses of study.* Instead, they are like free and independent people like other nations (*Hilchot Evel* 1:10, emphasis added).

At first glance, this section seems like an objective rendering of the law as it is quoted in earlier sources. Indeed, the basic instruction in this paragraph, not to conduct mourning rites for those who deviate from the path of the community, is lifted almost word for word from *Semachot*. However, it is important to note that the text of *Semachot* does not define who these deviators are. The definition here belongs entirely to the Rambam.

It is certainly understandable that a person who writes what he hopes is a complete guide to Jewish observance would be troubled by (if not downright hostile) to those who were less observant. It would be wrong to begrudge the Rambam such an opinion. What we as modern Reform Jews must be aware of is that the definition of **הפורשין מדרכי צבור** here is more the Rambam's opinion than it is legal fact. Indeed, different commentators over the centuries have produced a wide variety of definitions for this term, none with a complete consensus (Zlotnick, 103). We must be wary of Jews in our own day who will cite the Rambam's opinion as if it were a fact, solely in an effort to paint Jews on the more liberal end of the spectrum as **פורשין מדרכי צבור**.

Sometimes the Rambam's decisions are simply cryptic. One of the most interesting conundrums is how he explains the 30-day length of the mourning period. In the beginning of chapter 6 of *Hilchot Evel*, the Rambam asks, **ומנין סמכו חכמים לשלשים יום** –

Which source did our Sages use as a support for the concept of 30 days?" Not surprisingly, he answers his own question saying that the Rabbis relied upon the quotation,

ובכתה את אביה ואת אמה ירח ימים (דברים כא:ג), מכלל שהאבל מצטער כל שלשים יום

"And she shall cry for her father and mother for a month" (Deuteronomy 21:13) – for implied here is that a mourner will feel discomfort for a month (*Hilchot Evel* 6:1).

This answer sounds intriguing, perhaps even compelling. However, it would be more likely to be persuasive if it actually quoted the sources accurately. The fact is that the verse the Rambam cites is *not* the one that the Sages use to support the idea that mourning should last for 30 days. If we look at our other texts, we will find a very different set of verses.

Moed Katan (19b) suggests that we can glean the answers by making a *g'zera shava* – specifically by looking at two uses of the root (פ-ר-ע) that make reference to cutting hair. The first appearance is in Leviticus 10:6 when Aaron and his sons are instructed not to cut their hair during their mourning period. The second use comes in Numbers 6:5 in which a Nazirite is instructed not to cut his hair for 30 days. The Gemarra links the two usages saying that just as the period for the Nazirite hair was 30 days, so too is the period for the mourner.

Semachot 7:9 on the other hand, offers a different text altogether. It cites Deuteronomy 34:8 which states that when Moses died, the Jewish people cried for him for 30 days. By extension, all subsequent mourning periods were set at 30 days.

With such clear-cut references spelled out in the sources, it is unclear why the Rambam chose to cite some other verse. Commentators throughout the centuries have been mystified by this move. The Radbaz suggests that perhaps Rambam was citing from the Talmud Yerushalmi, but such a move would be unusual for someone as learned as the Rambam who would almost never cite the Yerushalmi when an example from the Bavli was available (Touger, 436). Moreover, many commentators point out that the verse the Rambam quotes is not actually referred to in the

Yerushalmi. In either case, the point stands that Rambam had his own reasons for making such an alteration. Though we cannot discern what his motivations may have been, verses like this one allow us to say that he does not quite hold up to the objective standard which he sets for himself.

In the previous case, the Rambam cites a different verse but comes to the same conclusion as the original source texts. In other cases, he cites the same verse but comes to a different conclusion. A case in point is the way in which the Rambam uses II Kings 2:12 which reads,

וְאֵלִישָׁע רָאָה וְהוּא מְצַעֵק אָבִי אָבִי רָכֵב יִשְׂרָאֵל וּפָרָשָׁיו וְלֹא רָאָהוּ
עוֹד וַיִּחְזַק בְּבִגְדָיו וַיִּקְרַעֵם לְשֵׁנִים קָרְעִים:

Elisha saw it, and he cried out, "Oh, father, father! Israel's chariots and horsemen!"
When he could no longer see him, he grasped his garments and rent them in two.

Both the Rambam and the texts pick up on the fact that there is an interesting redundancy in the Biblical text, namely that it tells us that Elisha rent his garments in two. As all parties point out, when people grasp a piece of clothing with their hands and rip it, the rip is by definition into two pieces. Why then, does the text tell us that Elisha grasped his garments and rent them *in two*? Here is where the Rambam and the sources he is compiling part company.

Moed Katan presents one particular solution to this textual conundrum. On page 26a, the Gemarra presents a list of people for whom one must rend clothing [in honor of someone who died] and then not sew up the tear. The Gemarra then asks **וְלֹא מִתְאַחֵין מִנֵּל** – from what source do we know that the tear is not to be sewn up? It then uses the verse from II Kings as a proof-text, saying that Elisha's ripping his clothes "in two," tells us that the rips we make must leave the clothes forever in two pieces – i.e. not sewn up.

The Rambam does concur with the text of Moed Katan that for certain people, the *keriah* tear should not be sewn up (*Hilchot Evel* 9:1-2). They even agree on who should be on that short list. However, when the Rambam cites the verse from II Kings, he uses it not to support the extent of the tear that must be made (i.e. that it should not be repaired), but rather he says,

מכאן שחייב להבדיל השפה – from here [this quotation] we learn that one separates [i.e.

rips the clothing] at the collar (*Hilchot Evel* 9:5). Once again, the reason for this discrepancy between the original texts and the Rambam's compilation is unclear. Even the commentators on the Mishneh Torah are silent on the issue. Nonetheless, we can see with this example a continuing pattern where the Rambam deviates from the texts he is surveying.

There are other places where the divide between the Rambam and the texts is both clearer and more significant. One particular example comes in *Hilchot Evel* 10:3 in which the Rambam states,

**הרגלים וכן ראש השנה ויום הכפורים אין דבר מדברי אבלות
נוהג בהן, וכל הקובר את מתו אפילו שעה אחת קודם הרגל או
קודם ראש השנה ויום הכפורים בטלה ממנו גזירת שבעה**

On the festivals and similarly, Rosh Hashanah and Yom Kippur, we do not observe any of the mourning rites at all. [Moreover, whenever] anyone buries his dead for even one hour [i.e. a short time] before a festival or before Rosh Hashanah or Yom Kippur, the decree requiring him to observe seven days of mourning is canceled and nullified.

At first glance, the Rambam's view seems to be consistent with the source texts. *Moed Katan* does explicitly say that the positive *communal* commandment of rejoicing in a festival supersedes the positive *individual* commandment to mourn for one's dead relatives. As such, "A mourner does not behave as one in mourning on a festival" (14b). The Rambam's comment seems to draw from this statement and the discussion that follows it.

What the Rambam seems to miss is that the Gemarra is actually far more nuanced on this issue than the initial statement might suggest. Indeed, the dictum that we do not observe any mourning rites during a festival is lessened in several different ways in the text of *Moed Katan*. Most notably, the Gemarra declares that

**כללו של דבר: כל שהוא משום אבל - רגל מפסיקו, וכל שהוא
משום עסקי רבים - אין רגל מפסיקו.**

As a general principle on the matter, whatever pertains to the mourner himself, [that] the festival interrupts. Whatever pertains to the [obligations of] the public, that the festival does not interrupt.

The Rambam makes no note of this subtlety in the text. Indeed as some commentators point out, the Rambam's wording is extremely restrictive. It does not even allow for the private aspects of mourning that a mourner observes during Shabbat (Touger, 462). As we have seen, this example fits the established pattern whereby the Rambam is more restrictive, more *machmir* than the texts he is compiling.

Even when the Rambam and the Gemarra are in agreement on a given law, the Rambam still occasionally comes across as being blunt, *machmir*, and un-nuanced. A good example can be found in how the two texts address the issue of carrying a Torah scroll on the bier of a sage. The Rambam unequivocally forbids this practice, stating explicitly that, "We do not place a Torah scroll on the bier of a sage" (*Hilchot Evel* 10:3).

In the end, the Gemarra does support that view, but it is not nearly as straightforward in its presentation. In fact, Touger points that the text of Moed Katan actually suggests that it might well be permissible a Torah scroll to be placed on the bier of a sage as if to say, "He fulfilled what is written within that." However, the Gemarra ultimately concludes that the practice should be forbidden. Even though the Torah scroll would be fitting homage to the sage, it is still at some level disrespectful to the Torah scroll to place anything else on the bier where it lies (Moed Katan 25a). As noted above, Rambam thus captures the final message of the Gemarra without any of the reasoning behind it. In a document that is supposed to be a distillation of the laws, this methodology is understandable, but the argument could well be made that more exposition would be helpful in understanding the subtleties of the law. Such is not the way of the Rambam in the Mishneh Torah.

It would be unfair, however, to categorize the Rambam's writing as intentionally harsh and restrictive. Indeed, Maimonides offers his own *nechemta* to his work in the final chapter.

We need only look at the first halacha of that last *perek* to see the kinder side of the Rambam's writing.

**מצות עשה של דבריהם לבקר חולים, ולנחם אבלים, ולהוציא
המת, ולהכניס הכלה, וללוות האורחים, ולהתעסק בכל צרכי
הקבורה, לשאת על הכתף, ולילך לפניו ולספוד ולחפור ולקבור,
וכן לשמח הכלה והחתן, ולסעדם בכל צרכיהם, ואלו הן גמילות
חסדים שבגופו שאין להם שיעור, אע"פ שכל מצות אלו
מדבריהם הרי הן בכלל ואהבת לרעך כמוך, כל הדברים שאתה
רוצה שיעשו אותם לך אחרים, עשה אתה אותן לאחריך בתורה
ובמצות.**

It is a positive commandment of Rabbinic origin [i.e. not from the Torah itself] to visit the sick, comfort mourners, to prepare for a funeral, prepare a bride, accompany guests, attend to all the needs of burial, carry a corpse on one's shoulders, walk before the bier, mourn, dig [a grave], and bury [the dead], and also to bring joy to a bride and groom and help them with all their needs. These are deeds of kindness which have no limit/measure.

Although all of these mitzvot are of Rabbinic origin, they are included in the Scriptural commandment, "Love your neighbor as yourself" (Leviticus 19:18). In other words, whatever you would like other people to do for you, you should do for your fellow human in the Torah and mitzvot (*Hilchot Evel* 14:1).

There are many different sources that the Rambam draws upon in culling together the first paragraph of this halacha. There is even some debate among commentators about whether or not the Rambam is accurate in saying that all of these commandments are Rabbinic in origin (some are thought to be Scriptural, others not commandments at all), but that is not so much the point here. The key here is that after summarizing the various "priceless" mitzvot, the Rambam adds some commentary that we could all find inspiring. It is worth noting that the Rambam's instruction is still introducing an element of strictness (by raising commandments that are d'Rabbanan to the status of d'Oraita), but the message here is one that at its core asks people to care for one another. In other words, Rambam tells us these commandments about death and mourning are not done solely out of blind obedience, but because they are an expression of love for our fellow human beings.

In the end, it seems clear that the Rambam does what most legal commentators do – he adds his own voice to the laws as he sees fit to explain them. The challenge in reading the Rambam is that he writes in such a way so as to make it seem as though his opinion is the objective truth. By looking at these examples, we are better able to see how the Rambam interjects his views into the laws he compiles. By being aware of this tendency, we can better read the laws of mourning (and indeed, the Mishneh Torah as a whole) with a more critical eye. When we do so, we make it possible to discern law from opinion. By extension, we are better able to see how the laws apply to our modern Jewish lives.