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LEKH LEKHA

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## TOWARD HOLISTIC MODELS OF ASSESSING JUDAIC STUDIES CLASSROOM SUCCESS IN DAY SCHOOLS

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**D**o the educational methods used in Jewish institutions (such as day schools) reflect their larger goals for students' positive Jewish development? It is worth examining the modes of assessment in the Jewish day school and the messages they convey to students. For students to get a holistic Jewish education focusing on intellectual, spiritual, emotional, and behavioral development in the context of Jewish values, greater attention must be paid to students' progress in these areas.

A key challenge in this regard is the fact that classroom, assessments in Judaic Studies are often similar to those of standard academic subjects. *Limmud Torah* often loses its unique flavor as a mode of spiritual direction. In addition to potentially disenfranchising students, this method puts Judaic learning at risk of being treated as any other intellectual pursuit, when the essence of Jewish education is about more than purely intellectual attainment. Many, if not most, Jewish day school classrooms employ traditional letter or number-scale grading systems for both secular and Judaic studies, measuring the amount of knowledge acquired. While this is an important and central goal of secular studies, *limmud Torah* operates on an entirely different system.

*Limmud Torah* as a commandment emphasizes knowledge amassment as well as time spent and effort expended. The Shulchan Arukh, Yoreh De'ah 246:1, frames the commandment as requiring one to commit time to studying Torah daily (being *kove'a itim*). Therefore, while knowledge amassment is important, we cannot ignore the other aspects of the experience and impact of learning Torah. The *Hadran* prayer that is recited upon the completion of a *masekhet* of the Talmud or *sefer* of the Mishnah includes the words "we [when learning Torah] work and receive a reward" to contrast with other kinds of work in which the quality of the final product is the key marker of success rather than the quality of the effort put in. This is an apt contrast to the different forms of educational work students engage in. While various non-frontal and project-based educational models marked by different forms of assessment are being tested for secular subjects, especially STEM, it is still vital to track the objective level of knowledge amassment students attain. We would like to know that the future engineers and doctors we are training are competent in their fields. Yet, in the process of learning

Torah, knowledge amassment matters as much as time and effort spent.

Another argument for assessing progress in Judaic Studies more holistically is that the current letter/number system often inhibits students from developing a whole Jewish self. A successful day school education should provide Torah learning that develops a student's whole Jewish identity, which does not just mean memorization to get good grades in Navi or Gemara. Content mastery is vital for this to happen, but without proper inculcation of the content in a larger context of understanding, a student's Jewish development will be lacking. Content mastery is not enough. Deeper reflection upon the Jewish values guiding one's life, how they function in tandem, and how they influence one's decision-making processes should follow from learning Torah, and a successful Torah classroom should consider how the curriculum enables these thought processes. Grading primarily based on content comprehension places a seal of approval on a student's memorization of class material, diverting attention from the other goal of ensuring that the student imbibes that content in some meaningful way that will stay with them.

An obvious consequence of traditional grading in the Judaic Studies classroom is that students may view lower grades as a sign that they are not succeeding as Jews. Standard classroom grading may push some students away from engagement and interest in the class. There is ample evidence that lower achieving students identify less with the subject in question. Moreover, when students are forced to engage with something they do not identify with, they become even more resentful (Sinclair, 2004).<sup>1</sup> It is particularly striking to observe, based on the research of Yitzchak Tzvi Goldberg (2014), that students placed in lower-ability tracking for Talmud had statistically significantly more negative perceptions of their abilities in Talmud than did students in the middle and higher-level Talmud tracks.<sup>2</sup> This suggests that while the effects of measuring content mastery may limit the high performing students from fully expanding their Jewish selves, the risk is most pressing for the lower-achieving, who may actually pull away from *limmud Torah*.

While both content mastery and making deeper connections to the material are important, and in ideal Torah learning should overlap,

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<sup>1</sup> Sinclair, Alex. "Torah Lishmah or GPA? The Contribution of Practitioner Insights to the Visioning Process of Bible Education in a Day School," *Journal of Jewish Education* 70 (2004): 1–2, 40–50.

<sup>2</sup> Goldberg, Yitzchak Tzvi. "The Effect of Ability Grouping for Talmud on the Academic Self-Concept of Jewish Orthodox Middle School Student" (PhD diss., Walden University, 2014).

this does not always occur in a day school classroom. Students learn at different paces, and it is difficult to objectively measure the extent and ways in which students are internalizing the text. Therefore, progress can be assessed through myriad means. It is precisely for this reason that grading is problematic. It is not that grading merely hampers an elusive “deeper connection” by forcing students to focus on memorization and note taking rather than internalizing and meaning-seeking. By grading we limit the breadth of effects that Torah learning can have on a student.

For example, picture a student learning the *parasha* with the commentary of Rashi. From the perspective of content, we note that students could be fulfilling the mitzvah of *shnayim mikra v'ehad targum* by focusing on getting through a certain quantity of text (if we define content by the amount of text covered, as it often is). But beyond this, students each have different forms of interaction with the content. Some, who may have more *bekiut* oriented minds, will remember more details. Others will notice patterns in parshiot that relate to larger narratives encompassed in that *sefer*. Yet others will focus on chronology and how an unexpected thread in the narrative reflects the principle of “*ein mukdam u'meuchar baTorah*” (“the Torah is not organized chronologically”). And in these patterns of learning, they will come back to remember the content of their learning at their own pace and in the way they can do it best.

Traditional grading practices threaten this individuality so inherent in the process of learning Torah. If students are judged based upon the same benchmark, they would often end up having to take the same steps to get there and this disenfranchises the students who may be unable to learn at the required pace or order, and detracts from students who may indeed have other valid ways of approaching the text.

Additionally, grading can erroneously suggest that Torah learning is linear and clear-cut, which it isn't. Meaningful Torah learning happens not through a one-time overview of a text, but by grappling with difficult ideas over time and sitting with material until the picture becomes clearer. It goes without saying that this applies for theologically or ethically complicated matters, which may take years of Torah learning and patience as well as maturity to understand. If students' minds are occupied with grades, the thought processes leading to longer-term contemplation of various issues may not be given the time and space to take root. This can be the case for any number of important topics in Jewish thought today, ranging from feminism to sexuality to ethics of modern economies. Moreover, when students bring up topics of interest like these, the opportunity to discuss these issues may be shut down due to pressures to cover the planned material.

A system which uses grading may do a disservice to the intangible pleasures of deep understanding. Evidence on mixing intrinsic rewards (i.e. deep connection with the material) and extrinsic rewards (i.e. prizes and grades) shows that intrinsic motivation diminishes when external rewards are used (Stipek, 2002).<sup>3</sup> Even when the information taught in class is meaningful and interesting, testing will decrease the intrinsic value it holds.

Furthermore, students in a Jewish day school also differ in family background. A meta-analysis of 31 educational studies found that

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<sup>3</sup> Deborah Stipek. *Motivation to Learn: Integrating Theory and Practice*. (Boston: Allyn and Bacon, 2002).

parental involvement can increase educational achievement by up to 30 percent (Fan and Chen, 2001).<sup>4</sup> Students coming from families that are less religiously involved have greater needs. Not only are they at a possible disadvantage in terms of Hebrew skills and cultural and lived Jewish knowledge, but they may be even more dependent on the school to help them develop emotional and personal connections to Judaism. A holistic emphasis on classroom progress would be in the interest of students with little Jewish background. Here, the teacher can play a major role in giving a student a well-rounded Jewish identity.

As an alternative to traditional grading, we can tap Jewish wisdom on how to assess internal experiences related to Torah. We might examine the motivations for Jewish involvement that are discussed in Jewish texts. For example, the Rambam writes that although both love (*ahavah*) and fear (*yira'ah*) direct one's service of G-d, *ahavah* is greater, but there is a role for *yira'ah* as well (Rambam, Hilchot Yesodei HaTorah, Yesod 2). Students may discuss when each of those motivates their service of G-d, in light of what Jewish sources say. This way, students may be able to critically examine their Jewish internal lives and what drives them toward the observance of Torah and *mitzvot*, or towards a relationship with G-d. Text sources on educational motivations for *limmud Torah* may shed light on students' own Torah learning habits, and direct them in deciding how they want their learning to take shape.

This would be further reinforced by tracking progress and continuously having students examine their motivations in the service of G-d and understandings of the text they are learning in terms of their own spiritual path and educational background. It would be hypocritical to introduce students to a richer approach to their Torah learning and yet focus on assessing them in an impersonal way. Instead, assessments in the form of feedback from a teacher or guided student-to-student exercises would honestly reflect the importance of personalized experiences in Torah learning. This would help to ameliorate the potential problems that proponents of traditional grading fear with the removal of numerical assessments in Judaic Studies. Students must still be held to a certain standard and expectations must still be made clear. Yet this can be done in a far less demeaning way, particularly for subjects that are not merely academic but also personal and can have lifelong relevance for all students.

Another question for exploration could be: “How am I comparing myself to my friends?” While traditional classroom assessments compare students to one another, the natural modes of *limmud Torah* has a different approach. The gemara states that “*kinat sofrim tarbeh khakhma*” (BT Bava Batra 21a): the envy of scholars [amongst one another] increases knowledge. However, the MaHaRSHA (on BT Bava Batra 21a) comments: “[it says] ‘envy of the student scholars’ (*kinat sofrim*), and not ‘envy of the elders’ (*kinat khakhamim*), because the elders learn Torah without envy for one another”. In other words, while Jewish tradition recognizes that people come to Torah with different personal motivations, striving for spiritually relevant motivations is the ideal. Such passages can help students think about the way they approach their Torah study.

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<sup>4</sup> Fan, Xitao, & Chen, Michael. “Parental Involvement and Students' Academic Achievement: A Meta-Analysis,” *Educational Psychology Review* 13(1) (2001): 1–22.

Students can also examine their emotional connections to Judaism in ways that reflect debates in the traditional sources. For instance, examination of the contexts and purposes of *kana'us* (zealotry) in Jewish texts, including the story of Pinchas and Zimri (Numbers 25:10–30:1), can alert students to the importance of emotional appraisal and critical analysis of personal motivations. Using project-based learning in which students think through a challenging question and work in groups to solve problems will give them practice in stretching their minds to exercise different kinds of thinking and motivational directions.

The self directedness students practice while creating their own paths in *limmud Torah* would have a strong payoff as students develop their own religious life narrative. Importantly, this allows more room to focus on learning to have healthy and positive relationships with teachers built on mentorship and care, rather than judgment and assessment. A Torah teacher can serve as a guide for students learning to develop a personal connection to their Judaism. Even for students who will end up relying on Torah scholars solely for official *halachic* guidance, having a holistic and personable relationship with a teacher that is not primarily based on judgment can help them develop an appreciation for this kind of relationships with Torah scholars.<sup>5</sup>

Many alternative educational models which do not emphasize frontal classroom learning have come into popularity in Jewish day schools. Curriculums focused on Problem Based Learning, where students learn about a subject through “doing” and exploring a problem firsthand, can lead the way in developing autonomous religious identities in the classroom (Krakowski, 2017).<sup>6</sup> Many methods of interactive learning have their roots in tradition. *Chavruta* and open *beit midrash* models allow students to learn collaboratively with their peers and also learn cooperation skills which will serve them in their educational and personal lives.

Interactive classrooms model for students a genuine process of engagement built on incremental growth and problem solving. Rather than running a race against other students to memorize information, students in an interactive classroom can learn to approach their religious growth with a whole-person mindset, exploring Torah on their own pace and autonomously. Importantly, such a classroom replicates the traditional *beit midrash* more naturally. The model of *chavruta* learning has been a staple of *limmud Torah* much longer than the educational style many Jewish day school classrooms employ. Developing a peer relationship based on learning Torah is perhaps one of the most meaningful educational pursuits in the realm of Torah.

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<sup>5</sup>As an aside, Miriam Hirsch (2017) notes that grading creates an automatic power dynamic between teacher and student that in dire cases may enable abuse through the grade manipulation. This could invite sycophantic behavior on the student's part, undermining the environment of respect and ethics inherent in an ideal Torah learning community. Hirsch, Miriam. “Jewish Day School Wounds and What We Can Do About Them,” *Journal of Jewish Education* 83(4) (2017): 367–392.

<sup>6</sup> Krakowski, Moshe. “Developing and Transmitting Religious Identity: Curriculum and Pedagogy in Modern Orthodox Jewish Schools,” *Contemporary Jewry* 37(3) (2017): 433–456.

Adapting *chavruta* style learning models to Jewish day school curriculums would involve an assessment of the attentional, social, intellectual, verbal, and spatial learning skills and habits of students. Based on a proper understanding of students' needs, *chavruta* based learning systems can be tweaked accordingly. This model can create a classroom in which quantitative measurements of learning are unnecessary, and more wholesome assessments of Jewish spiritual growth can adequately take their place. They can enable teachers to harness students' skills and interests and use them to funnel students' mastery of Jewish subjects and values in a personal and well-rounded way.

Within these systems, students must still be held accountable for adhering to the program of study. Yet this accountability can come out of a system of assessment that values students' progress holistically and seeks to measure their growth in multiple ways. Students will be motivated and encouraged by qualitative feedback from teachers that very clearly comes from a place of care and desire for students to grow rather than judgement. Their motivation for learning will be reinforced by the academic curriculum itself, such as the esteem generated by making a *siyum* in front of friends. By challenging those running the Judaic Studies classroom to think more broadly about how to assess students' progress, the goals of holistic Jewish education will be closer to our reach.

## OVERNIGHT EGGS AND THE EVOLUTION OF HUMRAH

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In the *kashrut* certification of a meal on a transatlantic flight this note appears:

The meal is under the supervision of Badatz Edah Haredit Jerusalem and the Ramla Rabbinat. The breads [sic] are *Pat Israel* and the blessing is *mezonot* as for pastries and the like (*pat kisnim*). The eggs are not “*beitzim she-lanu*” – no overnight eggs.

Many readers will not be familiar with the prohibition against “overnight eggs” or even what, precisely, these objects are. Nor will some Orthodox rabbis.<sup>7</sup> This paper examines how “overnight-free eggs” found their way into *kashrut* certification, which provides an ideal case study in the evolution of *humrah*. That this stringency has been reintroduced in the modern period, despite overwhelming halakhic evidence that it is no longer applicable, suggests a novel insight into the anthropological basis for the adoption of stringencies.

### The Origins of the Prohibition

The earliest source that addresses *beitzim she-lanu* is found in the Talmud ([Niddah 17a](#)):

Rabbi Shimon ben Yohai said: There are five behaviors that are so dangerous that one who performs them will forfeit his soul, and the fault is his: 1) one who eats peeled garlic, peeled onions, or a peeled egg; 2) one who drinks diluted wine – any of which [i.e., the garlic, onions, eggs, or wine] have been left overnight; 3) one who sleeps in a cemetery; 4) one who throws his nail clippings into a public space; 5) and one who has sexual intercourse after undergoing [therapeutic] bloodletting.

The Talmud then clarifies the nature of Rabbi Shimon ben Yohai’s warning about peeled garlic, onions, and eggs:

This applies even if they were placed in a sealed basket, which was tied and sealed, because an evil spirit rests on them. This applies only when they had neither their root nor some part of the peelings left attached. However, if their root or some peel was left attached, there is no concern of danger...

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<sup>7</sup> I consulted with five. Each had passed the various tests in *kashrut* that were required to obtain an orthodox *semikhah* (rabbinic diploma) from both the Israeli rabbinat and Yeshiva University. None was familiar with overnight eggs and their relationship to kosher food.

The concern for the peril of peeled eggs left overnight appears in the Talmud as the single opinion of R. Shimon bar Yohai, but never appears in the normative codes of Jewish practice. Neither Maimonides’ *Mishneh Torah* nor R. Yosef Karo’s *Shulhan Arukh* codifies the prohibition of *beitzim she-lanu*.

Indeed, even the one commentary to *Shulhan Arukh* that addresses the issue does so to explain why the prohibition is no longer in effect. *Shulhan Arukh* rules that a person should wash his hands between eating meat and fish “because of the danger of something else, and a danger should be taken more seriously than a religious prohibition.”<sup>8</sup> The mysterious “something else” is left undefined, although later commentators suggest possible candidates.<sup>9</sup> *Magen Avraham*, however, uses this ruling as an opportunity to introduce his own view on the overall question as to what constitutes a “dangerous practice”:

It is possible that today there is not much danger, for we see many things that are described in the Talmud as dangerous because of an evil spirit or for other reasons; but now they cause no problem, because nature has changed. In addition, these things depend on the locality.<sup>10</sup>

R. Shimon bar Yohai’s belief that eating peeled eggs left overnight poses a grave danger to health was not codified as part of mainstream Jewish law.<sup>11</sup> Why then does it now appear on inflight *kashrut* certifications?

### The Prohibition Enters a New Code of Law

R. Shneur Zalman of Liadi (1745-1812) was the driving force behind the early modern adoption of the previously ignored concern for *beitzim she-lanu*. Known variously as the *Ba’al ha-Tanya* or the *Alter Rebbe*, he was the first Hasidic leader of the Chabad-Lubavitch dynasty. Shneur Zalman embedded his profoundly mystical worldview in Jewish practice. To this end, he composed *Shulhan Arukh ha-Rav*, first published in 1816. That work was based on *Shulhan Arukh*, but was amended for use by Shneur Zalman’s *hasidim*. It contains a number of variant practices, one of which is the prohibition against eating peeled eggs left overnight:

A person should not put cooked or other food or drinks under the bed because an evil spirit rests on them. This applies even if they are placed in a metal container. Nor should he eat peeled garlic nor peeled onions nor peeled eggs that have been left overnight, because an evil spirit rests on them – even if they are kept in a sealed cloth. But if he left some of the

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<sup>8</sup> *Orah Hayyim* 173:2.

<sup>9</sup> See for example *Mishnah Berurah* (Loc. cit.), who suggests the “something else” is the biblical affliction of *tzara’at*.

<sup>10</sup> *Magen Avraham Orah Hayyim* 173:2.

<sup>11</sup> This explains why none of the rabbis I consulted had heard of the prohibition of *beitzim she-lanu*.

root... or some of the shell, they are permitted.<sup>12</sup>

This is the first time the prohibition of *beitzim she-lanu* entered a code of Jewish law, albeit one that was not viewed as authoritative outside the tight-knit community of Chabad *hasidim*. Those who did not follow Shneur Zalman would have presumably relied on the permissive ruling of the *Magen Avraham* regarding all Talmudic dangers, coupled with the fact that *beitzim she-lanu* are not mentioned in *Mishneh Torah* or *Shulhan Arukh*.

Following the *Alter Rebbe*, the champion of the modern resurgence of *beitzim she-lanu* was R. Yekutiel Halberstam (1905-1994), who became leader of the hasidic sect of Klausenberg around 1927. In the tragic European *hurban* he witnessed the destruction of his entire community, as well as the murder of his wife and death of his eleven children. After the war, R. Halberstam immigrated to the U.S., remarried, and fathered seven more children. In 1960 he moved to Netanya in northern Israel, where he established the hasidic community of *Kiryat Sanz*, and in 1976 he founded Laniado Hospital.<sup>13</sup> In his responsa *Divrei Yatziv*, Rabbi Halberstam addresses the issue of *beitzim she-lanu*, issuing a forceful condemnation of those who eat these eggs:

The practice of being punctilious about not eating peeled eggs left overnight was widespread among our fathers and mothers. And when I set my heart to explain the issue, I noted that there are those among the later rabbis who issued a number of lenient rulings on the matter. But I will stand to defend the practice and to strengthen the customs of our ancestors, *who were not lenient in any way about this*.<sup>14</sup>

Rabbi Halberstam's investigation of the issue stretches over nine pages of closely-typed Hebrew script. As this responsum is the most extensive of any on the subject, it is important to evaluate the sources he cites. Of the many issues he covers, perhaps the most important is to explain why Maimonides in his *Mishneh Torah* failed to codify the statement about the potential dangers of peeled eggs, onions, and garlic. After all, Maimonides' code was the first systematic attempt to establish normative Jewish practice. If Rabbi Halberstam could explain the oversight of Maimonides, he would have an easier task of establishing the prohibition of *beitzim she-lanu*.

According to Rabbi Halberstam, Maimonides did not include the prohibition because, as a rule, Maimonides did not cite superstitions based on "witchcraft and evil spirits." Underlying this approach was a belief that Jews who lived in Arab lands would be "persuaded to follow those who make a great deal out of these silly beliefs." It was

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<sup>12</sup> *Shulhan Arukh ha-Rav, Hoshen Mishpat, Hilkhos Shemirat ha-Guf* #7.

<sup>13</sup> This biographical information is from Tzvi Rabinowicz. [Hasidism in Israel](#) (New York: Jason Aaronson, 2000), 53-70. See also the [website of Laniado hospital](#) for the details on the pivotal role of R. Halberstam.

<sup>14</sup> *She'eilot u-Teshuvot Divrei Yatziv, Yoreh De'ah* 1:31. Emphasis mine.

in light of these social concerns that Maimonides made the decision not to specifically ban these items. Rabbi Halberstam was certain that his explanation was correct, and that Maimonides had banned these rituals

in order to save masses of Jews from following foolish practices, God forbid, like witchcraft and magic. [It will] prevent them from rejecting their beliefs in the one unique Creator of the universe and the one true religion, and from following foolish idolatry, God protect us. For this reason, he removed any reference to evil spirits and the like. This is the absolute true reason, *and it is as true as the Torah*.

According to Rabbi Halberstam, Maimonides really *did* believe that overnight eggs pose a danger, but codifying this might have increased the likelihood of Jews following other superstitious practices that were part of their surrounding culture. To avoid this, Maimonides left the prohibition out of his *Mishneh Torah*. Having established this claim, Rabbi Halberstam then cites a number of other medieval rabbinic authorities that he believed had declared the eating of *beitzim she-lanu* dangerous enough to be prohibited.

In a footnote to R. Halberstam's review of the prohibition, the editors of *Divrei Yatziv* add a startling dimension to the dangers of eating overnight eggs:

It is right to reproduce here what our teacher and author amplified in his holy talk given at a festive meal on Lag ba-Omer 5736 [1976]:

I have sat and considered the cause of a number of terrible cases, which we learn about to our sadness, in which people fall ill to the well-known disease [i.e., cancer] God forbid, for which there is no cure... And after pondering the matter I have reached a conclusion, which my heart tells me is as clear as day. It is because people are no longer cautious about not eating peeled eggs that have been left overnight in the way that they once were... It is known that the nature of this disease [cancer] is because of growths within that spread and undermine the basis of human life and its continuation. And the rule of causation [that like causes like] explains the spread of this disease: since they are lax about this prohibition for various reasons. Similarly, other incurable malignant diseases are due to the evil spirit in these things. Perhaps this is what is hinted at in the Talmud when it uses the language "the fault is his..." [*lit.*, "his blood is upon his own head."] Immediately after eating [these eggs] it is already a certainty, and he is like a condemned man, God forbid. After being eaten, they immediately cause damage to his organs. They may lay dormant for weeks or years, but they will ultimately

strike him. Hence, from the first time he ingests them “the fault is his.” It matters not whether they are eaten accidentally or deliberately, for in this respect they are like one who consumes poison. It is therefore incumbent on everyone to be especially careful about this matter.<sup>15</sup>

Thus, the prohibition against eating *beitzim she-lanu* was transformed from one that was proposed by a Talmudic rabbi yet never codified in the *Shulhan Arukh*, to one that, according to this hasidic leader of the twentieth century, must be followed because to do otherwise is carcinogenic. This is a shocking charge, to which we will return in our explanation of the anthropological roots of the adoption of *humrot*. Rabbi Halberstam concludes his analysis with a radical reinterpretation of the history of the prohibition:

The conclusion that we should draw is that we have not found anyone who is lenient in this matter. On the contrary, from the words of the *rishonim* who examined this issue we see that they were concerned about it. The great recent authorities, the *Beit Shlomoh* and the *Maharsham*, did not want to rule leniently, and anyone who would rule leniently despite their words places himself in danger.

As we will demonstrate, however, Rabbi Halberstam’s summary of his sources is far from precise, suggesting that something other than just a particular interpretive viewpoint might be at stake in the contemporary question of *beitzim she-lanu*.

#### The Sources Cited in R. Halberstam’s Responsum

Rabbi Halberstam quotes several sources that he feels address, even tangentially, the prohibition of *beitzim she-lanu*, citing them as support for his opinion that there is no one “who is lenient in this matter.” In an apparent effort to avoid any misunderstanding of this position, on the second page of his responsum R. Halberstam makes an even more sweeping claim: “Among the *rishonim* there is no one who was explicitly permissive.” Yet on reviewing the sources that he cites, it appears that they are either not germane to the question of *beitzim she-lanu*, or that they ruled that the prohibition – if there ever was one – is actually no longer in force.

For example, one of the first sources cited by R. Halberstam directly contradicts his own assertion that there is not a single *rishon* who is permissive. It is the *Hagahot Mordehai* by Mordehai ben Hillel (1240-1298), which itself quotes a response issued by a person identified only as Meir.<sup>16</sup>

<sup>15</sup> The editors of *Divrei Yatziv* were Rav Halberstam’s children. Rabbi Halberstam’s opinion that *beitzim she-lanu* are carcinogenic is cited by R. Moshe Sternbuch (b.1926) in his *Teshuvot Vehanhagot* vol. III #256 (n.p. Jerusalem 1997), about which, more below.

<sup>16</sup> R. Halberstam cites this *teshuvah* in the name of “Maharam.” This is most likely to R. Meir of Rothenberg, of whom the Mordehai was a student. However, I have not been able to find the original in any of the published works of R. Meir.

And about the question you asked concerning a peeled egg, as to why we are not concerned about *ruah ra’ah* as is described in the chapter *Kol ha-Yad (Niddah 13b)*: You have written correctly that perhaps this is no longer found in our times, or alternatively that holy books that cover them also protect. In peace, the poor one, Meir.<sup>17</sup>

Meir ruled there was no longer any concern because *ruah ra’ah* was no longer to be found. *Hagahot Mordehai*’s silence suggests that he agrees with this permissive ruling.<sup>18</sup> Here then are two medieval sources cited by R. Halberstam, whose content contradicts Rabbi Halberstam’s argument.

Rabbi Halberstam then cites a seventeenth century commentary on the Mordehai, *Bigdei Yesha* (R. Isaiah Horowitz, c. 1570-1630), who noted a custom to write on peeled eggs.<sup>19</sup> Yet this historical curiosity is of no relevance to the issue of *beitzim she-lanu*. Similarly, Rabbi Halberstam notes that R. Yehezkel Landau (1713-1793) discussed the prohibition of eating cakes or eggs on Shabbat which have been inscribed with letters. But again, this citation contains no material relevant to the issue of *beitzim she-lanu*.<sup>20</sup> In his work *Sefer ha-Rokeah*, which was first published in 1505, Eliezer ben Judah of Worms (c. 1145-1225) also addressed the custom of eating eggs.<sup>21</sup> However, the context is a discussion of various customs performed over Shavuot, and the citation brought by Rabbi Halberstam is again of no relevance to the question of *beitzim she-lanu*.

In 1891 Chaim Medini (1832-1904) of Jerusalem published the first volumes of his encyclopedic work *Sedei Hemed*.<sup>22</sup> In a discussion of the permissibility of using an *etrog* left under a bed, R. Medini cited the discussion of *beitzim she-lanu* in the *Hagahot Mordehai*, concluding that where possible another *etrog* should be used. R. Medini himself did not opine on the issue of *beitzim she-lanu*; consequently Rabbi Halberstam’s citation of this source is also not relevant.

Rabbi Shalom Mordehai ha-Cohen (Galicia, 1835-1911) described the opinion of the *Hagahot Mordehai* as indicating that there was indeed a question as to whether there was a danger from *beitzim she-lanu*: “Since the Gaon, Rabbi Mordehai [in his *Hagahot Mordehai*] was himself uncertain, it is not possible to be lenient about the possibility of danger.”<sup>23</sup> But as we have seen, the *Hagahot Mordehai* cites a ruling that *there is no danger*, and there is simply no evidence of

<sup>17</sup> *Hagahot Mordehai* Shabbat, *Hagahot Perek Hamotzi*, 247, 461.

<sup>18</sup> *Hagahot Mordehai* Shabbat, *Hagahot Perek Hamotzi*, 247.

<sup>19</sup> *Bigdei Yesha*, Amsterdam 1757, 12a. Horowitz is perhaps better known as the author of the *Shnei Luhot ha-Berit*.

<sup>20</sup> *Dagul mei-Revavah*, Prague 1794, #340, 11a-b.

<sup>21</sup> *Sefer ha-Rokeah*, Amsterdam 1557, #296, 43b.

<sup>22</sup> *Sedei Hemed*, Warsaw 1891. I consulted the New York 1952 edition, published by A.Y. Freidman, (*Sedei Hemed* Vol. 3, #141, section 31, 370).

<sup>23</sup> *She’eilot u-Teshuvot Maharsham*. Warsaw 1902. Vol.4 #148. I consulted the Jerusalem 1974 edition. The work was published and emended by the author’s grandson R. Sholom Mordehai ha-Cohen Schwadron, known to some as the Maggid of Jerusalem.

doubt in his writing. R. Shwadron's interpretation of the *Hagahot Mordehai* is not supported by the original text.

In Baghdad in 1889, Abdalah Abraham Joseph Somekh (1813-1889) published *Zivhei Tzedek*, a commentary on *Shulhan Arukh Hilhot Shehitah*.<sup>24</sup> There he noted that his community was not concerned about the prohibition of *beitzim she-lanu*, and often made vegetable dishes in which garlic was used and left overnight. ("Minhag shelanu she-ein anahnu nizharin ba-zeh.") One suggestion R. Somekh offered for this lack of concern was that R. Shimon bar Yohai's prohibition against eating peeled eggs and peeled garlic that have been left overnight applies only when these foods are left by themselves. However, when mixed with other foods, they become safe to eat. R. Somekh then quoted a responsum by a contemporary, the Galician, Rabbi Shlomoh Dreimer (1800-1872), author of *Beit Shlomoh*. R. Dreimer had been asked whether a business practice in which raw egg yolks were separated from the egg whites was permissible, since the raw eggs would be kept overnight.<sup>25</sup> R. Dreimer cited several sources that would allow such a practice, yet in the very last sentence he quoted the Talmud<sup>26</sup> which states that in cases of possible danger (in this case, the possibility of snakes contaminating wine) we adopt a strict approach. "Therefore," he concludes, "we cannot be lenient."

Next, R. Somekh cited in contrast the sixteenth century Polish work *Yam Shel Shlomoh* by R. Shlomoh Luria (1510-1573). R. Luria had written that all concerns about *ruah ra'ah* could be ignored; on this basis R. Somekh allowed garlic and onions which had been left overnight to be eaten. To conclude: although Rav Halberstam cited the work *Zivhei Zedek* to support his strict ruling, *Zivhei Zedek* actually ruled permissively on the issue. This, of course, runs counter to Rav Halberstam's thesis, so Rav Halberstam adds this sentence: "However, in our locales, they were stricter about this [prohibition of *beitzim she-lanu*]," without giving support to this assertion, an assertion which he is in fact attempting to establish.

In 1881 R. David ben Meir Frish (c. 1812-1882) published a short book of responsa entitled *Yad Meir*, in which he addressed the question of *beitzim she-lanu*.<sup>27</sup> R. Frish noted that the custom of his time was not to be concerned about any prohibition, and this was "a good custom for the Jews." He concluded that the entity known as *ruah ra'ah* no longer exists. To explain this, R. Halberstam suggests (without any prior source) that there are several kinds of *ruah ra'ah*, and that the one that caused danger from eating overnight eggs was, contra the *Yad Meir*, still in existence.

In summary, none of these sources cited by R. Halberstam provides support for his claim that "no one is lenient in this matter." In fact, they suggest the very opposite. While the prohibition was followed in a few local communities, the overwhelming majority of *poskim* allowed the consumption of *beitzim she-lanu*.

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<sup>24</sup> *Zivhei Tzedek*. Baghdad 1889. vol.2 # 116, as well as the more recent edition published by the author's grandson (Jerusalem, 2013), which contains extensive footnotes.

<sup>25</sup> *Beit Shlomoh, Yoreh De'ah* vol. 2 # 189. Lvov 1892. He also notes that "many of our brethren, the Children of Israel, refrain from eating [overnight eggs] as it is mentioned in the Talmud."

<sup>26</sup> *Avodah Zarah* 30a.

<sup>27</sup> *Yad Meir* #19. Lemberg 1881. Frish was the head of the Bet Din in the town of Berezhany, now in the Ukraine.

## Overnight Eggs and Contemporary *Kashrut*

In a testament to the halakhic uncertainty surrounding *beitzim she-lanu*, we should note that some of the very same sources cited by R. Halberstam to prohibit them were used by other *poskim* to allow them. In 1979, Rabbi Moshe Feinstein (1895-1986) ruled that it was permissible for a *kibbutz* to store peeled eggs overnight.<sup>28</sup> He cites two prior responsa: *Yad Meir*, which we have seen was permissive, and *Beit Shlomoh*, which prohibited the commercial storage of shelled eggs overnight. R. Feinstein sides with those who permit *beitzim she-lanu* produced commercially, though he does not address whether an individual may also store shelled eggs overnight.

Despite this ruling from R. Feinstein, contemporary *kashrut* organizations have adopted a more stringent approach to the issue. The [Orthodox Union](#) (OU), when asked to provide kosher certification to deviled eggs, notes that<sup>29</sup>

...the overwhelming majority of *Poskim* hold that the *Gemara* [*Niddah* 17a] continues to be relevant nowadays. They address, but do not resolve, the fact that *Shulchan Aruch* doesn't discuss this danger.

The Orthodox Union further notes that according to this "majority," "[o]ne must have absolute proof that a form of *ruah ra'ah* no longer exists before considering [it] irrelevant..." The OU provides no evidence to support the statement that the "overwhelming majority of *Poskim* hold that the *Gemara* continues to be relevant nowadays."<sup>30</sup>

Despite its assertion that the prohibition of *beitzim she-lanu* is relevant today, the OU notes that "[m]any Kosher certifying agencies rely on the *Igrot Moshe*. This would provide a basis for certification of all commercial egg, garlic and onion products but would not permit a caterer to crack eggs for the next day's breakfast or to cut onions and garlic for the next day's salad." But the OU website does not reveal if in fact it does give certification to foods that include *beitzim she-lanu*.<sup>31</sup>

The Kof-K *kashrut* authority is similarly reticent about issuing a firm ruling, but cites Rabbi Yisroel Belsky's view several times, to the

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<sup>28</sup> *Iggerot Moshe Yoreh De'ah* 3:20.

<sup>29</sup> <https://oukosher.org/blog/consumer-kosher/shelled-eggs-peeled-onions-and-garlic-left-overnight-keeping-products-ruach-raah-free/>. Deviled eggs are made by shelling hard boiled eggs, slicing them in two, and mixing the hard-boiled yolk with mayonnaise or mustard, and replacing it.

<sup>30</sup> There is a second, more fundamental issue with the position of the OU that there needs to be "absolute proof that a form of *ruach ra'ah* no longer exists before considering [it] irrelevant." What precisely, constitutes *absolute* proof? An animal study feeding a group of rats a diet rich in overnight eggs? A randomized double-blinded human study? A case-controlled study? A long-term cohort study? Medicine is not mathematics; overwhelming evidence is not the same as an absolute proof. But it is good enough.

<sup>31</sup> Despite this ambivalence, the OU certification does appear on egg products that are *beitzim she-lanu*. For example, they are on [Trader Joe's Cage Free Fresh Hard-Cooked Peeled Eggs](#), and listed on the [OU product search website](#).

effect that:<sup>32</sup> (i) *Ruah ra'ah* applies to both raw and cooked eggs; (ii) Storing peeled eggs in a refrigerator, Ziploc bag, or aluminum foil does not protect against *ruah ra'ah*; (iii) It is permitted to eat commercially produced *beitzim she-lanu*; and (iv) One should not rely on washing the food to remove *ruah ra'ah*. Consequently, (based on *Sdei Eretz* 3:18,) egg salad prepared on Friday for Shabbat should be mixed with other ingredients to nullify the *ruah ra'ah* concern.

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To review: the *humrah* of *beitzim she-lanu* is based on the statement of a single Talmudic sage, ignored by the major codes of Jewish law,<sup>33</sup> and disregarded by communities from Poland to Baghdad. The prohibition underwent a renaissance of sorts, being proscribed in the early nineteenth century by the hasidic leader R. Shneur Zalman of Liadi. More recently another hasidic leader, R. Yekutiel Halberstam, the Klausenberger Rebbe, restated the prohibition. From there the prohibition became more widely observed outside of hasidic communities, until it was noted by the major *kashrut* authorities in both the U.S. and Israel. Within a few more decades, the announcement of the prohibition could be found in the kosher certification of airline meals.

### Contemporary Ambivalence

Even contemporary *poskim* from ultra-Orthodox communities have demonstrated an ambivalence toward enforcing a ban on *beitzim she-lanu* given the economic cost. Consider, for example, the case of R. Moshe Sternbuch, vice president of the *Edah ha-Haredit* in Jerusalem. In his responsum he was asked to opine on the *kashrut* of a bakery in Jerusalem that used raw eggs left overnight.<sup>34</sup> He begins by noting the extremely serious consequence of R. Shimon bar Yohai's prohibition: "He will forfeit his soul, and the fault is his [lit., his blood is on his head]." But R. Sternbuch then notes that "we are discussing a case in which there is a large economic loss (*hefsed gadol*) of about two hundred eggs [sic]." How, the reader wonders, could any economic loss be worth the risk of a lost life?

R. Sternbuch considers, but then dismisses, the possibility that adding "two percent of sugar and other ingredients" allows for leniency. But since the eggs will be later mixed into bread or cookies and are no longer visible, "some could say that in this case the evil spirit can do no harm." This too is rejected, because the dangers are so serious that no leniency may be considered. Despite this, R. Sternbuch suggests another attempt at leniency, using an argument from the prohibition against using water left out overnight.<sup>35</sup>

"Since we do not see any dangers (from evil spirits) we need not be concerned about them, in the same way that we are no longer concerned about snakes

<sup>32</sup> See their statement [Peeled Eggs, Onions, Garlic Left Overnight](#). For other organizations who rule on this issue, see Badatz "Beit Yosef" [here](#). For an example of a stringent *kashrut* ruling, see [this](#) report, published online in 2009. The author states with pride that he denied a *kashrut* certificate to a factory in Turkey that used prepared onions left overnight.

<sup>33</sup> See *Iggerot Moshe Yoreh De'ah*, 3:20.

<sup>34</sup> *Teshuvot ve-Hanhagot* 3:256, Jerusalem 1997.

<sup>35</sup> *Shulhan Arukh Yoreh De'ah* 116:2. This is discussed in more detail below.

[poisoning water left out overnight]. It is only in places where there are a great number of witches, demons, and the like that we need to worry about evil spirits that cause harm. But this is not in our time, as we find in the *Hagahot Mordehai*..."

R. Sternbuch allows the bakery in question to use its overnight eggs because other bakeries with exemplary *kashrut* certification ("*hekhsher me'uleh*") "add two percent of sugar to the raw eggs and leave the mixture overnight, even *lekhatillah*." Despite reaching this tentative permissive conclusion, R. Sternbuch adds that "it is best to be stringent wherever possible even *lekhatillah*. In the specific case about which I was asked, it was after the fact ("*bedieved*") and involved a large financial loss." He concludes by noting that if a bakery has a *mehadrin kashrut* certification it must not use any overnight eggs, and that when in South Africa he "did not allow any place carrying my *kashrut* certification [to use overnight eggs], even in cases of financial hardship."

Two further points should be noted. The first is R. Sternbuch's insistence that both the rabbis of the Talmud and modern times are guided by a "holy spirit" ("*ruah ha-kodesh*").<sup>36</sup> In a world in which *poskim* cannot err because they are imbued with this spirit, there is little room to ignore, or worse still, to oppose their opinions. Difficulties arise when *poskim* guided by *ruah ha-kodesh* produce legal conclusions that directly contradict each other. (Why, the reader wonders, should one trump the other? Which *ruah ha-kodesh* wins?) R. Sternbuch also suggests that even if a practice was totally ignored by Maimonides or R. Yosef Karo (whose *ruah ha-kodesh* led them to do so), it must still be upheld whenever possible, and certainly in the case where it was a *Tanna*, imbued with the holy spirit, who pronounced that it was a matter of life and death.

The second point is his further reasoning for leniency in some cases, based on the verse "God preserves the simple" ([Psalms 116:6](#)). This phrase is used in Talmudic and later rabbinic literature to permit widely observed but dangerous practices. Perhaps the most salient example is the 1962 responsum of R. Moshe Feinstein permitting cigarette smoking.<sup>37</sup> Smoking is dangerous, he notes, but he does not forbid it "...since it is generally so widespread and we find in the Talmud ([Shabbat 129b](#), [Niddah 31a](#)), that "God preserves the simple," and specifically since "so many *Gedolei Torah* in previous generations smoked." R. Sternbuch offered a similar approach in reluctantly permitting *beitzim she-lanu* in certain circumstances.<sup>38</sup>

<sup>36</sup> See for example *Shut Teshuvot ve-Hanhagot*, 3:431, Jerusalem 1997, where he describes Hatam Sofer as having been endowed with *ruah ha-kodesh*.

<sup>37</sup> *Iggerot Moshe Yoreh De'ah* 2:49.

<sup>38</sup> For another example see *Minhat Yitzhak* 2:68. In this 1957 responsum, the author tangentially addresses the question of *beitzim she-lanu*, although the primary question is the *kashrut* of eggs or egg powder purchased from a non-Jewish source. He cited a number of different sources both permitting and forbidding these eggs, and rules that it is best to be strict and not purchase them. However, he continued, "the question of how [those who forbid *beitzim she-lanu*] would permit the buying of bread made by a gentile requires clarification, for perhaps they used eggs that were left unpeeled overnight." There is no suggested resolution and we are left with

Somehow, the threat to life of *beitzim she-lanu* disappeared when the masses eat them.

### Costly Displays of Commitment

If it is challenging to identify a clear historical halakhic chain that might explain the adoption of this novel *humrah*, perhaps we can turn to non-historical explanations. In a lengthy paper on the genesis and application of legal stringencies in Jewish law, Benjamin Brown outlines several of their justifications, including social, theological, and psychological. Some *humrot* are based on mystical or ascetic word views, while others are designed to preserve *minhag*.<sup>39</sup> For example, Brown notes that there are two drivers of *humrah* in the Talmud: the need to remove any doubt as to the correct way to act, and the desire to strengthen the observance of a specific *mitzvah*.<sup>40</sup> The first is the classic case of *humrah*: a question arises as to whether a specific action is permitted or forbidden, and a decision is rendered that is as encompassing as possible in order to avoid an objective error. Another driver of Talmudic *humrah* is the desire to strengthen observance of an otherwise threatened *mitzvah*, or to prevent a prohibition from being breached (as Maimonides puts it, “decrees and rulings that distance a person from the possibility of sin”).<sup>41</sup>

Crucially, Brown notes, from a psychological perspective, although *humrah* results in creating some hardship or a religious requirement to do more, it also provides an important degree of psychological comfort, while leniency does just the opposite. “*Humrah* supplies a degree of security; a person has chosen and performed *everything* that is required.”<sup>42</sup> Observance of *humrot* demands time, money, and/or effort, but in return it provides an individual with a comforting degree of psychological security. While Brown is correct in noting this security as a driver of *humrot*, there are further, more fundamental questions. Why do individuals, and the social networks they form, desire this psychological security in the first place?

To more fully understand this phenomenon, let us turn to anthropology. There are countless examples of religious acts that cause pain, danger, or death to their practitioners. These include extreme, highly objectionable examples of religiously-inspired suicide attacks or Aztec ritual human sacrifice. But there is also a far more familiar, widespread, and mainstream act that causes pain: male circumcision. Worldwide, about one-third of male boys are circumcised by the age of fifteen, the majority of whom are Muslim boys circumcised for religious reasons.<sup>43</sup> Anthropologists have

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another example of the inconsistent way in which the theoretical *beitzim she-lanu* prohibition is applied in practice.

<sup>39</sup> Benjamin Brown (no relation), “The *Humrah*: Five Examples from the Modern Period” (Hebrew) in *Studies in Halakhah and Law* (Hebrew), ed. A. Edreyi (University of Tel Aviv Faculty of Law, 5761 (2001)), 133-150. I am grateful to Marc Shapiro for bringing my attention to this important paper.

<sup>40</sup> Brown, 134.

<sup>41</sup> Rambam, *Peirush ha-Mishnah, Avot*, 1:1. Here, the classic example might be the laws of *muktzeh* on Shabbat.

<sup>42</sup> Brown, *ibid.*, emphasis added.

<sup>43</sup> *Male circumcision: Global trends and determinants of prevalence, safety and acceptability*, World Health Organization 2007. Available [here](#). Some of the following discussion first appeared in my essay, *Great is Milah*, published on [Talmudology](#), June 24 2015. Often circumcision is carried out on older boys, as was the case for Nelson Mandela who was sixteen. For a graphic account of Mandela’s own

inquired why circumcision, and other painful and irrevocable rites of passage, are so common across cultures. One answer comes from the finding that religious, ethnic, and tribal groups which demand more from their members *do better in the long run* than those that demand less. These groups have to ensure that all members contribute meaningfully, and that those who take from the group also give back. One way to ensure this is to demand a costly and irrevocable investment in order to join the group. That investment might be circumcision, tattooing, or scarification, all of which are used as a means to induct new members. Once the costly investment is made, a person will be less likely to leave the group. These investments are called *credibility enhancing displays* (CREDS):

Participation in rituals involving costly acts will elevate people's degree of belief commitment. If the professed beliefs involve group commitment, cooperation toward fellow in-group members, or the hatred of out-groups, then ritual attendees will trust, identify and cooperate with in-group members more than non-attendees.

...In learning how to behave and what to believe, learners give weight to both prestige and CREDS, among other things. Thus, successful cultural forms, especially those involving deep commitment to counterintuitive beliefs, will tend to begin with and be sustained by prestigious individuals performing CREDS. Cues of prestige influence who people pay attention to for learning, while CREDS convince them that the prestigious model really believes (is committed to) his or her professed beliefs. The “virtuous-ness” arises from these prestigious individuals’ role as models. CGS [Cultural Group Selection] will favor, over long swaths of historical time, religions with role models who effectively transmit beliefs and practices that strengthen in-group cooperation, promote intra-group harmony and increase competitiveness against out-groups.<sup>44</sup>

While CREDS are important rituals for the in-group population, they are just as important as boundary markers of exclusion. These costly displays not only evolve from the belief system; they also act upon group members to strengthen their in-group social bonds. The result is called favoritism, in which cooperation is only extended toward those who demonstrate a willingness to suffer hardship or pain. CREDS can be found in the widest spectrum of human society, from hazing and circumcision, which make up initiation rites, to monastic vows of celibacy and fasting. But Moshe Koppel notes that the ever-

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ritual circumcision, and the pain that it carried, see his [Long Walk to Freedom](#) (Back Bay Books, 1995), 25-28.

<sup>44</sup> J. Henrich, “The evolution of Costly Displays, Cooperation and Religion: Credibility Enhancing Displays and their Implications for Cultural Evolution” *Evolution and Human Behavior* 30 (2009): 244–260.

increasing demands in the Orthodox Jewish community are based on these same credibility enhancing displays.:

The effectiveness of signals can, however, vary with time and circumstance. In the world of American Orthodox Judaism, the refusal to eat non-kosher meat or Hostess Twinkies was once regarded as sufficiently onerous, due to the dearth of alternatives, that it could serve as an effective signal. But then the easy availability of kosher meat and snacks rendered such signals ineffective, because they were insufficiently costly. As a result, the old signals were replaced by new ones that were onerous enough to serve as signals. Kosher was replaced by *glatt* kosher, which was replaced by *hasidische shechita*, *yashon*, hydroponic vegetables, and so on up the ladder of costliness and strictness. The easier each of these becomes to obtain, the less useful it is.<sup>45</sup>

We derive psychological security from CREs in general and *humrot* in particular because they make it easier for us to sort out who is in and who is out. If two people practice the same CREs – if they keep the same costly *humrot* – then they are indeed members of the same tribe, and they can rely on each other to supply all the benefits associated with that tribal membership; they can cement a sense of their own inclusion with another’s exclusion.

The *humra* of *beitzim she-lanu* is the perfect new contemporary signal. As a general matter it requires nothing in terms of actual cost, but its observance prevents a person from eating what is considered otherwise to be perfectly kosher food. As other displays of in-group commitment through *kashrut* have become too common to serve as a means of distinction, *beitzim she-lanu* are now a new indicator of commitment.

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### Rewinding the Tape of Jewish Legal History

Costly religious stringencies are not the exclusive result of a need to provide a degree of practical security that “fulfilling all the opinions” offers. They have evolved as the most basic unit of society has grown from family into kin, tribes, villages, and those we cannot recognize as our own. Crucially, to suggest a psychological explanation for the existence of increasingly stringent *humrot* is not to deny their importance to those who practice them. However, the evolution of any *humra* is contingent on the religious milieu in which it was created. Take the following thought exercise. Imagine two historic Jewish populations, each of which starts with a full text of the Hebrew Bible and complete sets of the Talmud Bavli and Yerushalmi. At some point, say around the seventh or eighth centuries, they become so isolated from one another that there is no communication between the two. Will the *halakhot* and *humrot* that develop within each isolated population be identical across the two groups? In regard to some aspects of practice, an outside observer might find no differences between the two. For example, it is unlikely that either

<sup>45</sup> Moshe Koppel. “Judaism as a First Language,” *Azure* 46(Autumn 2011): 81.

group will permit the meat of a kid to be boiled in its mother’s milk. This prohibition is mentioned in the Torah on three separate occasions,<sup>46</sup> and is discussed in depth in the Talmud Bavli.<sup>47</sup> But other prohibitions, such as eating milk after chicken, may be more subject to different interpretations, with the result that different normative halakhic practices develop. The Torah does not mention this prohibition, and it is the subject of a dispute; R. Akiva forbade it as a rabbinic decree, and R. Yosef ha-Gelili permitted it altogether.<sup>48</sup>

This thought exercise leads to another. What would happen if we *replayed* the tape of life that is the history of Halakhah?<sup>49</sup> If we started again at the end of the Geonic period and watched a thousand years of Jewish history replay, can we be sure that we would recognize the halakhic canvas that was redrawn? It is probable that major contours of Halakhah would remain the same, but the details around the edges might not be similar. What is predictable is that a living corpus of law will emerge; what is not predictable are the details of what those laws might be. Any replay of the tape would lead Halakhah down a pathway different than the road actually taken.<sup>50</sup> The knowledge, experience, legal philosophy, and personal plights of the individuals and communities which shaped Jewish law and Jewish tradition were contingent on the vagaries of the historical circumstances in which they found themselves. For indeed, what else could they have been?

And while the thought experiment cannot be realized, we do have a perfect example of the historic contingency of *humrah*: eating fish and meat together.

Although the *Shulhan Arukh* did not codify any ruling about the dangers of *beitzim she-lanu*, it did codify another ruling based on a perception of danger. This ruling, in contrast to that of *beitzim she-lanu*, did indeed become the normative practice for Orthodox Jews. That practice is, of course, the prohibition of eating fish and meat together, which, according to *Shulhan Arukh*, leads to a medical condition known as *tzara’at*.<sup>51</sup>

This prohibition is universally followed across the spectrum of Orthodox Jewish observance, but at its core the prohibition against eating fish and meat together is based on a medical theory for which there is no evidence. The law is more like good practical advice rather than a metaphysical declaration of the distilled will of God. Thus, the possibility arises that it no longer need apply once the medical community declares there to be no danger involved. Indeed, precisely this circumstance occurred: *Shulhan Arukh* originally codifies a prohibition against drinking liquids that stood overnight, but notes that since circumstances have changed, the prohibition no longer needs to be followed:

<sup>46</sup> Exodus 23:19, 34:26; Deuteronomy 14:21.

<sup>47</sup> *Hullin* Chapter 8.

<sup>48</sup> Mishnah *Hullin* 8:4.

<sup>49</sup> This section draws heavily on the important paper by John Beatty, “Replaying Life’s Tape,” *The Journal of Philosophy* 103 (7) ( 2006): 336-362.

<sup>50</sup> From Gould, *Wonderful Life: The Burgess Shale and the Nature of History* (New York: Norton, 1989), 51. This thought experiment can of course take us further and further back, as the rewind button is pressed for longer and longer. The only limit is theological.

<sup>51</sup> *Shulhan Arukh Yoreh De’ah* 116:2.

The sages forbade drinking liquids left uncovered [overnight], because of the concern that a snake had also drank from them, and had left some of its venom into the remaining liquid. However, today, when snakes are not commonly found living among people, it is indeed permitted.<sup>52</sup>

Clearly, then, *Shulhan Arukh* forbade certain foods and drinks not on the basis of a religious teaching, but as a *practical* matter based on an empirical judgment about their safety. Once safety was no longer an issue (as in the case of snakes poisoning a liquid), there was no need for any associated religiously-based decision to forbid them. But the custom to separate meat and fish dishes remains firmly embedded in Orthodox Jewish practice, even though we also understand that eating them together is of no health consequence. Why did the ruling against eating fish and meat together remain widely followed, and why did it become vastly more familiar than prohibition of *beitzim she-lanu*?

By now it should be clear that an effort to find an explanation will be fruitless. Or rather, the explanation is that there is no explanation. If we rewind that tape of Jewish history, we might today find ourselves living in communities in which even the most observant would eat fish and meat together, but in which it was equally common never, under any circumstances, to use raw or cooked eggs left standing overnight.

Given our most basic needs to distinguish between members of our own circle from those who are outside, it is certain that the costly rituals that are *humrot* will be a feature of Orthodoxy far into the future. And it is precisely when, due to technological advances, these *humrot* become easier to perform that they must inevitably be superseded by others that are more challenging.

Understanding the anthropological explanations of credibility rituals helps us acknowledge that, like all groups, we too recognize on whom we can rely, who may come to our aid when we are threatened, and with whom we may safely cooperate. The *humrah* of *beitzim she-lanu* provides an authoritative sign now that previous ones no longer serve their function. Perhaps anthropology is what we have now, instead of theology.<sup>53</sup> The terrors are less, but the religious comforts are nil.

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<sup>52</sup> Ibid., *siman* 1.

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<sup>53</sup> John Updike, "The Accelerating Expansion of the Universe," *Harper's Magazine*, October 2004.

