

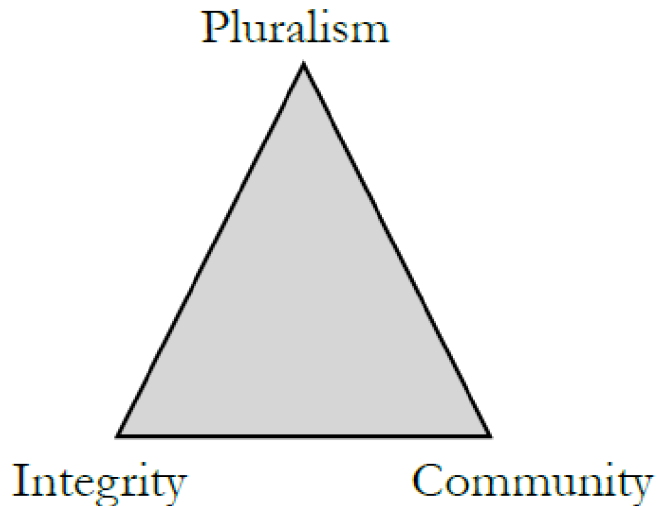
## **Pluralism, Integrity and Community: You Can't Have them All, Part 2**

***By Rabbi Ethan Tucker***

Last time, we introduced three values which are impossible to simultaneously maximize, but all of us in our interactions with other Jews have to balance. They are:

1. **Pluralism** is the commitment to the simultaneous coexistence of conflicting forms of Jewish practice.
2. **Integrity** is the commitment to consistent, uncompromising practice of one's own sense of what is right.
3. **Community** means being in a relationship with someone in a way that makes you vulnerable to them, dependent on their interpretations and decisions.

The best graphic representation of these values is a triangle, where each vertex represents one of the core values we have been discussing. The vertices of the triangle represent the full expression of one value at the expense of the other two. The midpoints of the sides represent prioritizing two of the values to the exclusion of the third. The impossibility of maintaining a full commitment to all three values is illustrated by there being no point on the perimeter of the triangle that is equidistant from all three vertices. All efforts to balance all three values thus take one off of the perimeter, into a messy middle of compromise:



We introduced these ideas with the case of levirate marriage, and the contrary opinions of Beit Shammai and Beit Hillel. We will now move into the medieval period and follow a debate about differing *kashrut* standards. How do we approach understanding conflicts like this with our three values?

## I. Juggling conflicting standards: A medieval example

Beit Shammai and Beit Hillel did not only spar over the laws of levirate marriage; their conflicts extended to areas of purity and impurity as well, and the food affected by their respective legal holdings, as Mishnah Yevamot 1:4 makes clear:

כל הטהרות והטומאות שהיו אלו מטהרין ואלו מטמאין לא נמנעו עושין טהרות אלו על גבי אלו:

And despite all their divergent rulings on purity and impurity, they did not refrain from preparing items in purity with one another.

Food has always been a major divider in Jewish life, both an account of how constitutive eating is of being—“you are what you eat”—and how many intricate laws there are that create almost endless basis for dispute around defining the core violations laid out in the Torah. One particular example from the middle ages emerged as the key paradigm for thinking about *kashrut*, its divergent observance, and the desire to maintain community across those disputed boundaries. We turn now to this practical example, which puts the theoretical framework of pluralism, integrity, and community into practice.

The Torah ordains that the חלב/suet of a sacrificial animal must be burned on the altar. Even when the meat of a sacrifice is consumed—whether by the *kohanim* alone or by the one bringing it as well—the חלב must be burned. This חלב is defined in several places as follows:

ויקרא ג:ז-ד

...אֶת־הַחֵלֶב הַמִּכֶּסֶה אֶת־הַקֶּרֶב וְאֶת־כָּל־הַחֵלֶב אֲשֶׁר עַל־הַקֶּרֶב: וְאֵת שְׁתֵּי הַכִּלְיֹת וְאֶת־הַחֵלֶב אֲשֶׁר עֲלֵהֶן אֲשֶׁר עַל־הַכֶּסֶלִים...

### **Vayikra 3:3-4**

...the suet that covers the entrails and all the suet that is around the entrails; the two kidneys and the suet that is around them, that is on the sinews...

This חלב is not only intended for burning on the altar, but its human consumption is utterly forbidden:

**ויקרא ג:טז-יז**

...פֶּלֶאֱחֵלֶב לִיקְנוֹק: חֶקֶת עוֹלָם לְדֹרֹתֵיכֶם בְּכֹל מוֹשְׁבֵי־תִיְבֵיכֶם פֶּלֶאֱחֵלֶב וְכֹל־דָּם לֹא תֹאכְלוּ:

**ויקרא ז:כג, כה**

...פֶּלֶאֱחֵלֶב שֹׁר וְכֶשֶׂב וְעִז לֹא תֹאכְלוּ: ... בִּי פֶלֶאֱכֹל חֵלֶב מִן־הַבְּהֵמָה אֲשֶׁר יִקְרִיב מִמֶּנּוּ אִשָּׁה לִיקְנוֹק וּנְכֶרֶתָהּ הַגֹּפֶשׁ הָאֹכֶלֶת מֵעַמִּיהָ:

### **Vayikra 3:16-17**

...All suet is the Lord's. It is a law for all time throughout your generations, in all your settlements: you must not eat any suet or any blood.

### **Vayikra 7:23,25**

...You shall not eat the suet of any ox, sheep, or goat... If anyone eats the suet of an animal from which a food gift is presented to the Lord, that person shall be cut off from his kin.

Given the serious penalty of כרת /“being cut off” associated with חלב, one of the key aspects of rendering a slaughtered animal fit for consumption is the complete removal of this forbidden fat. But equally critical is determining what exactly is and is not חלב. Such a determination defines the boundary between innocent eating and unthinkable trespass.

As one would expect, those determinations were not unanimous across time and space. In the middle ages, there was one particularly stark dispute among the sages of 12<sup>th</sup> century Germany. At issue was the חלב הדבוק לחרס—the suet stuck to the stomach. Against the backdrop of a detailed discussion on Talmud Bavli Hullin 49a-b, **Ra'aviah #1128** reports a lengthy debate between his father, **R. Yoel Ha-Levi of Bonn**, and the latter's teacher and contemporary, **R. Efraim of Regensburg**, on this topic. While the details of the correspondence are beyond the

scope of this discussion, suffice it to say that these two authorities were in sharp conflict. R. Yoel Ha-Levi permitted this fat stuck to the stomach and defended his community's live practice to eat it. R. Efraim forbade this fat on penalty of *kareit* and chided R. Yoel and his community for not recanting what he saw as their unwarranted, lenient position.

This conflict lasted into future generations and had significant reverberations. Jews who lived in the Rhineland largely followed R. Yoel's lenient position,<sup>1</sup> whereas those in other parts of Germany and Austria followed the stringent view of R. Efraim. This triggered a host of questions: Could the Jews of the Rhineland be trusted at all with respect to their *kashrut*, given that they ate items considered by other Jews to make them subject to being cut off from the Jewish people? Given that the Rhineland Jews considered the fat attached to the stomach to be permitted, could they be trusted not to serve it to other Jews?

Even more wide-ranging would be the question of the status of the pots of the Rhineland Jews. As a general matter, when forbidden food is cooked in a pot, it becomes forbidden to use that pot again for permitted food until the pot has been kashered. If permitted food was cooked in that pot following its use for forbidden food, the newly cooked food is forbidden as well. Only if a day had elapsed between the pot's use for forbidden and permitted food could the permitted food be eaten, and only then as a *post facto* leniency to avoid throwing it out. If one treated the fat on the stomach as forbidden, wouldn't the pots of the Rhineland Jews be totally forbidden and thus render *all* of their food problematic to eat?

The first description we get of the conflict management comes from inside Germany. In **Sefer Ha-Agudah**, R. Alexander Suslin Ha-Kohen (Germany, 13<sup>th</sup> c.) reports that in his region of Erfurt, they forbade the fat stuck to the stomach, even though most other German Jews permitted it. Nonetheless, in language quite deliberately evocative of the legal conflict between Beit Shammai and Beit Hillel we explored earlier, he describes how the two communities interacted over food:

**ספר האגודה חולין צג.**

אמנם אילו אין נמנעים מכלים של אילו ומבישוליהם אך הכרס אין אוכלין בבואם לקהילות.

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<sup>1</sup> This adherence to the lenient position is attested by R. Modekhai b. Hillel, towards the end of the 13<sup>th</sup> c. He states that there are "some regions" where the practice is to treat the fat stuck to the stomach as a forbidden food, the consumption of which is punished by *kareit*.

**Sefer Ha-Agudah Hullin 93a**

Nevertheless, [the Jews of Erfurt] would not refrain from the utensils of [the Rhineland Jews] nor from their cooked items. Only the stomach itself they would not eat when they visited the [Rhineland] communities.

How should we understand this practice? In keeping with the two Talmuds' approach to the arguments of Beit Shammai and Beit Hillel, we have a practice strongly guided by the value of integrity. Whereas the Tosefta entertained the notion that Beit Shammai and Beit Hillel freely intermarried with the other camp, in a kind of “federalist” acceptance of the other’s rulings, we saw the Talmud Bavli squarely reject that possibility. And in medieval Germany, no “full faith and credit” or “loving justice and peace” was invoked to allow other Jews to eat the fat stuck to the stomach when visiting the Rhineland. Despite the latter’s lenient approach, the visiting Jews must maintain their own principles and avoid the actual forbidden fat. We also seem to see a commitment to pluralism; there is no hint of trying to quash the Rhineland practice in order to promote harmony.

But, in a strong display of the desire for community, we are also told that the visitors did *not* abstain from the hosts’ utensils nor from their cooked food. It is clear from this that there was full trust between the communities, in keeping with the Talmud Bavli’s approach, which assumed that Beit Shammai and Beit Hillel would still turn to one another for reliable information about their respective religious requirements. At a minimum, this dispute between German Jews did not lead to a general breakdown of religious trust. But was there also a degree of turning a blind eye involved here—as we saw in the Yerushalmi—or perhaps even a more modest version of “full faith and credit”? What is the meaning of the statement that “they did not refrain from their utensils?” Do we mean merely that they tolerated food that was cooked in them, or do we even mean to say that the guests used those utensils to prepare food when visiting Rhineland homes, even though they would have required such utensils to be kashered in their own homes, on account of their prior contact with forbidden fat? What is the meaning of the statement that “they did not refrain from eating their cooked food?” Is this just another way of emphasizing the point that they did not forbid food cooked in Rhineland pots? Or is something even more dramatic happening here, whereby the visitors ate food cooked with the forbidden fat, as long as its presence was not obvious?

These ambiguities in this tersely reported practice—treated here and elsewhere as normative and legitimate—return us to our balancing of community, integrity, and pluralism discussed above. German Jews clearly sacrificed some level of community over food. Guests did not just eat forbidden fat in the Rhineland in the spirit of granting full faith and credit to their hosts' standards. But did they sacrifice any of their integrity and consistency, and if so, how much?

**Rema's** restating of the German Jewish practice in his glosses on the Shulhan Arukh indicates that some degree of “full faith and credit” was indeed at work:

שולחן ערוך יורה דעה סימן סד סעיף ט

חלב הדבוק לכרס שתחת הפריסה, אסור. הגה: וכן המנהג בכל מקום, מלבד בני ריינוס, שנוהגין במקצתו היתר, ואין מוחזין בידם שכבר הורה להם זקן. (הגהות אש"י ומרדכי ורוב הפוסקים)... אבל אין אוסרין כלים של בני ריינוס, הואיל ונוהגין בו היתר (חידושי אגודה).

#### **Shulhan Arukh YD 64:9**

The suet that is stuck to the stomach is forbidden. *Note: And this is the practice everywhere, except in the Rhineland, where they are lenient with some of it, and we don't object to their behavior, since an earlier authority instructed them to behave this way... But we don't forbid the vessels of Jews from the Rhineland, given that they treat this fat as permitted.*

R. Yosef Karo begins this passage from the Shulhan Arukh by siding with R. Efraim of Regensburg and forbidding consumption of the suet stuck to the stomach. Rema then adds that Rhineland Jews were lenient and followed R. Yoel of Bonn's permissive ruling. He emphasizes that we maintain a pluralistic approach around this issue, because Rhineland Jews are lenient based on a recognized rabbinic ruling. He then grounds the lenient practice of other German Jews to eat food prepared in Rhineland pots in the fact that the Rhineland Jews “treat the fat as permitted.” He does not argue that the guests don't really consider the fat on the stomach to be forbidden, but rather that the permissive legal holding of the Rhineland Jews itself has some degree of practical effect even on those who disagree with them. While guests may not violate their own integrity at the level of eating the forbidden fat, they *do* compromise their standard norms around pots and kashering to treat Rhineland pots as kosher, even though the same pot

would have required kashering elsewhere in Germany. The fact that the Rhineland Jews have their own internal traditions makes their pots kosher enough not to forbid other foods cooked in them.

This is a significant leniency, though the formulation is still limited. It may well describe nothing beyond the legitimacy of guests to the Rhineland eating food prepared in their hosts' utensils, but the guests would still have had to ensure that the food they were eating in no way contained the fat they treated as forbidden. However, by returning to the language of the Agudah, **Maharshah** (R. Shlomo Luria, Poland, 16<sup>th</sup> c.) emphasizes that a broader permission is intended here:

**יום של שלמה חולין ג:נד**

ונראה בעיני, מאחר שכתב שאין נזהרים אלא מן הכרס עצמו, הא התבשיל שנתבשל עמו אוכלין אותו, וזהו מה שאמר שאין נזהרין מבישוליהון, ולא מבעיא לאותן שנהגו בו איסור לחומרא, או אפי' מסתפקא להו או כדעת ר"א או כדעת ר"י הלוי, ואין ביד להכריע כשל מי, א"כ לא מחמירין כולי האי לאסור בבישוליהם, מאחר שבשאר קהילות נהגו בו היתר לאוכלו להדיא, אלא אפי' כת האוסרי' שהכריעו לאיסור, והיו מחזיקים הכרס עם השומן שעליו באיסור חלב גמור בעונש כרת, אפי"ה לא היו נמנעין מלאכול תבשיליהן, שמסתמא המיעוט חלב שעל הכרס הוא בטל בס' נגד הכרס והמרק או הלפתן שעמו...

**Yam Shel Shlomo Hullin 3:54**

It seems to me from the fact that Sefer Agudah wrote that [guests to the Rhineland] are only careful not to eat the stomach itself, that they would eat the food that had been cooked with it, and this is what is meant by “they were not stringent about their cooked food.” Obviously, those who only forbid [the suet stuck to the stomach] out of mere stringency—or who are merely in doubt and cannot decide whether to follow R. Efraim or R. Yoel Ha-Levi—would not be so stringent as to forbid the others' cooked food, since the other communities regarded it as outright permitted to eat this food itself. But even those who have definitively decided that it is forbidden...and who think its consumption triggers *kareit*, even they would eat from the cooked food [of the Rhineland Jews], since the small amount of suet from the stomach [in whatever they were cooking] would surely be nullified 60:1 by the stomach, the soup or the other vegetables cooked with it...

Maharshah here argues that Rhineland Jews and their guests were considerably more lenient than the language of the Rema alone might have led us to believe. He notes that the Agudah singles

out “the stomach itself” as the thing that the guests did not eat, suggesting that they ate everything else that was served them, including food *cooked with* the forbidden fat. Moreover, such a statement would only be meaningful for someone who truly thought the fat was forbidden on pain of *kareit*. Why would anyone merely in doubt or being stringent refuse to eat their hosts’ food? Indeed, there is further support for this interpretation in the Agudah’s language stating that the guests refrained *neither* from their hosts’ utensils, *nor* from their hosts’ cooked foods. This sounds like a description of two separate categories: First of all, the guests would not forbid their hosts’ pots, ensuring that they could easily eat acceptable ingredients prepared in their homes. But second, they even permitted cooked items that contained potentially forbidden ingredients. How could this be? Wouldn’t this have been an unacceptable violation of the integrity of guests’ *kashrut* standards? Didn’t the Talmud Bavli, in describing the conflict between Beit Shammai and Beit Hillel, essentially rule out this sort of compromise of integrity in the name of community? Maharshal answers: We can presume that the forbidden fat, *even when present in the food*, would not have constituted more than one-sixtieth of the total volume of the dish. Since prohibitions can generally be nullified by a 60:1 ratio of forbidden food, all food served by the Rhineland Jews has the status of presumptively permitted, even for the guests.

It is hard not to hear overtones of the Talmud Yerushalmi’s suggestion that Beit Shammai and Beit Hillel freely intermarried because God made sure that no problematic matches between the groups were even in fact consummated. Here too, with somewhat less divine involvement, Maharshal claims that the general conventions of cooking would have protected the guests from worrying about the consequences of the legal rulings of their Rhineland hosts. As in the case of the Yerushalmi’s formulation, this hints at some legitimate degree of “turning a blind eye” to possible violations of one’s integrity when trying to create community with others. If guests to the Rhineland were actually eating food cooked with the fat they considered forbidden, it seems unlikely that they could guarantee with complete accuracy that they were not eating it. Instead, we seem to have a sufficiently compelling narrative of integrity—grounded here in cooking conventions and likely proportions—to justify finding a way to continue to have community with others through food. In Maharshal’s more robust version of the Rhineland protocols, hosts and guests are not constantly informing one another of lists of ingredients. Rather, against the backdrop of dramatic legal disagreement, they respect the legitimacy of one another’s definitions of *kashrut*, avoid directly misleading one another by serving the actual suet stuck to the stomach,



and otherwise eat the others' food without restriction. This early modern formulation is the strongest post-Talmudic articulation of stretching the limits of one's integrity in order to achieve community in a pluralistic environment. It is also the point of reference for all subsequent attempts to create community out of groups with divergent halakhic practice. The Maharshal shows us what it looks like for the Yerushalmi's instincts to be translated into the principles and discourse of the Bavli. Substantively, pluralism and community prevail, even as integrity and consistency utterly control the discourse.

## **II. Trust and legitimacy**

Let us explore more briefly two of the factors critical in creating the pluralistic community we see described above: trust and legitimacy.

### **A. Trust**

Creating community in pluralistic environments demands not only respect for others, but a willingness of each group to trust that the other side will not deliberately violate the other's integrity, especially in the context of prohibitions that the other side denies even exist. Guests in the Rhineland had to assume that their hosts would not deliberately cook with large amounts of forbidden fat without telling them. Is such trust plausible? Can we in fact say that people will go out of their way to respect commitments that they themselves view as silly or wrong?

#### **1. A Presumption of trust**

On some level, the answer to this question will always be empirical; either such trust exists or it does not. But does the tradition itself take a side as to what our bias should be? Should we, by default, be suspicious of those with divergent standards, or are we justified or even prodded by our sources to begin from a place of trust? **Or Zarua** (R. Yitzhak b. Moshe of Vienna, 13<sup>th</sup> c.)

articulates the religious language and textual basis for why we should indeed assume such trust is possible unless directly confronted with its violation:

**ספר אור זרוע חלק א – הלכות יבום וקידושין סימן תרג**

פשיטא לי אדם שאסר עצמו בדבר המותר לו ואחרים יודעים שהחמיר על עצמו אף על פי שידע שהוא היתר אלא שהדיר עצמו. פשיטא לי שסומך על אחרים ואין לחוש שמא יאכילהו כמו שנזיר אוכל בבית ישראל ולא חיישי' שמא שם בו ישראל יין באותו מאכל דלא עבר משום לפני עור לא תתן מכשול וכן ישראל בבית כהן ל"ח שמא יאכילנו תרומה. אלא בהא נסתפקת... ראובן שפירש עצמו ממאכלים מחמת שנראה לו שאלו המאכלים אסורים לו. ושמעון נוהג בהם היתר גמור ונראה לו שראובן טועה בדבר לגמרי אם יכול ראובן לאכול בבית שמעון מי אמרי' הואיל ששמעון תופס את ראובן טועה. גם ראובן עצמו אם הי' יודע שהוא מותר היה אוכל אלא שמחמת טעותו מניח. הרי יש לחוש לראובן שמא שמעון יאכילנו וה"ל לגבי' דיד' כמו אסור דתנן פ' עד כמה החשוד על הדבר לא דנו ולא מעידו או דילמא לא ספי אינש לחברי' מידי דלא (סבירא) [כשירה] ליה. ויש לדקדק מההיא דאפליגו רב ושמואל דרב אמר לא עשו ב"ש כדבריהם. ושמואל אמר עשו כדבריהם. ואסקינן דעשו ב"ש כדבריהם. והאי דלא נמנעו ב"ה מב"ש משום דמודעו להו ופרשי אלמא שסומך עליו ולא חיישינן דילמא ספי לי'.

**Or Zarua I:603**

Consider the case of a person who voluntarily forbids himself from eating something permitted to him and others know that he is stringent about this food that is permitted to him. It is obvious to me that he can rely on others and need not worry that they might feed it to him, as is the case with a Nazirite who can eat in a Jewish home without worry that the Jew will put wine in the food, because the host will not violate the prohibition on placing a stumbling block before the blind. Similarly, a *Yisrael* can eat in the house of a *Kohen* and need not fear that he will be fed *terumah* [which is forbidden to non-priests]. But here is what I am unsure about... Consider a case where Reuven refrains from eating certain foods because he believes they are forbidden to him, while Shimon eats those foods freely, and he thinks Reuven is totally mistaken to forbid them. Can Reuven eat in Shimon's house? Do we say that since (1) Shimon thinks Reuven is in error, and (2) even Reuven would eat these foods were he to believe he was permitted to and only refrains on account of his (mistaken) religious judgment, we should worry that Shimon will feed the forbidden foods to Reuven? Is Shimon's food considered forbidden from Reuven's frame of reference, in keeping with the Mishnah's principle that "One who is suspect with

respect to a matter may not judge or give testimony about that matter?” Alternatively, perhaps we say that a person does not feed his friend something that is unfit for him.

A close reading [of the Talmud] can give us an answer. Rav and Shmuel argued about whether Beit Shammai actually put their opinions into practice. Our conclusion is that Beit Shammai indeed put their opinions into practice and the reason Beit Hillel did not refrain from marrying women from Beit Shammai is because Beit Shammai told Beit Hillel which women were problematic [according to the latter’s standards] so that they could separate from them. Therefore, we see that he can rely on his host and we do not worry that he may feed the guest the food he considers forbidden.

Or Zarua begins by asserting that we certainly assume that people generally respect the *bona fide* religious obligations of others, even if they don’t share those obligations themselves. Regular Jews do not need to fear that *kohanim* will feed them *terumah*, the priestly food that carries the death penalty if consumed intentionally by a non-priest. Nazirites, or any others who have taken on self-imposed vows, need not be concerned that their unimposed brothers and sisters will feed them what they have proscribed to themselves. This seems self-evident to Or Zarua, and assumed throughout rabbinic literature: The mere fact that something is not obligatory on you does not mean that you don’t treat someone else’s obligation in that matter as being highly serious. As long as a person acknowledges that if he was not a *Kohen* or if she were not a Nazirite the rule for them would be different, we have no reason to suspect any lack of legal empathy.

More complex, however, is how we expect people to respond to obligations and interpretations of law that they perceive to be mistaken. Will people really go out of their way to accommodate (what they feel to be) an erroneous interpretation of Jewish law? Ought we not to expect, until we have clear evidence to the contrary, that this sort of disagreement will find its ultimate expression in contempt and deception? Or Zarua, while granting this possibility, soundly rejects it.

His proof? The Talmud Bavli’s take on the marriage practices of Beit Shammai and Beit Hillel. Recall that the Talmud Bavli prioritized integrity and consistency above the value of community. It assumes that if, at the end of the day, two Jewish groups embrace legal interpretations that are at odds with one another, there is no avoiding some degree of communal rift between them. In the case of Beit Shammai and Beit Hillel, marriage between the groups

would have to be restricted on account of their incompatible standards. Nonetheless, the Talmud says that the groups trusted one another to provide *reliable information* regarding those who *were* fit to intermarry with the other group. In other words, even though Beit Shammai thought Beit Hillel was completely mistaken in their interpretation of the Torah and advocated an opposite view on key matters, Beit Shammai nonetheless would rely on the accuracy of Beit Hillel's genealogical lists to confirm that certain people in their community met Beit Shammai's internal standards. Or Zarua takes this to be a normative: One can presume that other Jews, even those who think your standards are wrong or unnecessary, will not try to compromise your standards coming from a standpoint of contempt.<sup>2</sup> This has important consequences for the dynamics of Jewish communal life. To the extent that Beit Shammai and Beit Hillel are meant to be role models for our own behavior, we are taught not to translate disagreement into distrust. As long as there is mutual awareness of different positions, even those locked in unresolved combat over practice are supposed to presume the best of the other and can rely on the information they provide.

## 2. Trust, but verify?

Or Zarua's presumption of trustworthiness, however, assumes a great deal, perhaps too much. To reach his conclusion and its corollary culture of trust, we must make a few assumptions. First, the two groups must be aware of one another's practices and standards. Second, we must be dealing with people who act in good faith who don't deliberately lie. These two assumptions are generally plausibly true when dealing with conflicts in a pluralistic community. However, there is also an implicit third assumption: that there is something *wrong* with leading someone to violate their own standards of practice, even when you think those standards are wrong. It is a well-established rabbinic interpretation of biblical law that one may not facilitate another person's sin; this is the prohibition of *לא תתן מכשול*/"You shall not place a stumbling block before the blind." But does this prohibition extend to another person's mistaken frame of reference? What if I feel there is no prohibition involved in a certain action? Am I still

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<sup>2</sup> A further articulation of this principle can be found in **Responsa Binyamin Ze'ev #312** (R. Binyamin b. Matityah, Greece, 16<sup>th</sup> c.). See also Shulhan Arukh YD 119:7.

forbidden from aiding and abetting someone who feels that action is forbidden? This is much less clear, as the following Talmudic story suggests:

#### תלמוד בבלי סוכה י:

אתמר, נויי סוכה המופלגין ממנה ארבעה. רב נחמן אמר: כשרה, רב חסדא ורבה בר רב הונא אמרי: פסולה. רב חסדא ורבה בר רב הונא איקלעו לבי ריש גלותא, אגנינהו רב נחמן בסוכה שנוייה מופלגין ממנה ארבעה טפחים, אשתיקו ולא אמרו ליה ולא מידי. אמר להו: הדור בהו רבנן משמעתייהו? - אמרו ליה: אנן שלוחי מצוה אנן ופטורין מן הסוכה.

#### Talmud Bavli Sukkah 10b

If a *sukkah* has decorations that descend more than four *tefachim* from the *s'khakh*: Rav Nahman says: It is valid; Rav Hisda and Rabbah bar Rav Huna say: It is invalid.

Rav Hisda and Rabbah bar Rav Huna were visiting the home of the Exilarch and Rav Nahman arranged for them to sleep in a *sukkah* whose decorations descended more than four *tefachim* from the *s'khakh*. They were silent and said nothing to him. He said to them: Have the rabbis reversed their teaching? They said to him: We are on a *mitzvah* mission and are exempt from the *sukkah*.

The Talmud records a dispute surrounding the validity of a *sukkah* that has decorations that hang low from the vegetative roof, the *s'khakh*. Can these decorations simply be considered to be a part of the roof, or are they impermissible obstructions between that roof and those sitting under it. The answer was a matter of Amoraic dispute. Rav Nahman took a lenient view on this question, whereas his colleagues, Rav Hisda and Rabbah bar Rav Huna, were stringent. But when the latter pair came to visit Rav Nahman, he arranged for them to sleep in just this sort of *sukkah*, the kind they considered invalid! The story ends by revealing that the visitors didn't care, because they felt they were actually exempt from sleeping in a valid *sukkah*, given the nature of their trip. But the story should raise our eyebrows with respect to Rav Nahman's behavior: How could he have deliberately placed his guests in a situation that he knew violated the integrity of their religious practice? **Ritva** raises this question directly:

#### חידושי הריטב"א מסכת סוכה דף י עמוד ב

פי' ואף על גב דאכתי לא ידע ר"נ דהדרו משמעתייהו או דהוו שלוחי מצוה, אגנינהו לפום דעתיה ולא חש דהוי חתיכא דאיסורא לדידהו ויתבי בסוכה פסולה ומברכי התם שלא כראוי והוה כנותן מכשול לפני פקח

**Ritva Sukkah 10b, R. Yom Tov b. Avraham, Seville, 13<sup>th</sup>-14<sup>th</sup> c.**

Even though Rav Nahman did not yet know if they had reversed their teaching or if they were on a *mitzvah* mission, he arranged for them to sleep in conditions that accorded with his own position. He was unconcerned that this would be forbidden for them and they would be inappropriately sitting in an invalid *sukkah* and making blessings. He was placing a stumbling block before one who sees!

The last phrase here—כנותן מכשול לפני פקח/“placing a stumbling block before one who sees”—is a creative spin-off of the normal expression of placing a stumbling block before the blind. It conveys the notion that, not only was Rav Nahman leading them astray, but he was aggressively forcing them to comport to his interpretation of the law. This is a particularly shocking encroachment on their integrity. Rav Nahman almost seems to be saying that, while his guests are welcome to have their own opinion in their own home, when they are on his turf, he expects them to compromise their normal standards and to follow his. This looks a lot like the right side of the triangle we explored earlier: pluralism and community (in this case around sleeping in someone else’s home/*sukkah*) trump integrity. Is it possible to square this with the Talmud Bavli’s clear insistence that integrity must be preserved at all times? And if people act like Rav Nahman, how is it possible to trust those who disagree with us to respect our integrity? Can Rav Nahman’s behavior here be squared with Or Zarua’s case for a presumption of trust?

Ritva continues and offers two possible resolutions:

יש אומרים דמהא שמעינן שהמאכיל לחבירו מה שהוא מותר לו לפי דעתו אין בזה משום לפני עור לא תתן מכשול, ואף על פי שיודע בחברו שהוא אסור לו לפי דעתו וחבירו בעל הוראה, שהמאכיל היה גם כן ראוי להוראה וסומך על דעתו להאכיל לעצמו ולאחרים לפי דעתו ונ"ל דהכא דוקא מפני שהאיסור ניכר לחברו ואי לא סבירא ליה לא ליכול הא בשאינו ניכר לחבירו לא...

Some say that we learn from here that when one feeds something *he* considers appropriate to his friend, there is no violation of “placing a stumbling block before the blind.” This is true even if he knows that his friend considers it forbidden according to his own view and his friend is capable of issuing legal rulings, because the one feeding the food is also capable of issuing a legal ruling and relies on his own position to feed both himself and others.

It seems to me that [it is permitted for the host to serve something his guest considers forbidden] specifically in this case because the prohibition is apparent to his friend, such that if he does not agree [with the host's position], he need not eat it. But in a case where his friend cannot detect the prohibition, it is forbidden.

Let's begin with Ritva's second explanation, his own. He argues that Rav Nahman's case is highly specific. One can plainly see the decorations descending from the roof of a *sukkah*. As such, there is no real "stumbling block before the blind"; the guests can make their own decision as to whether the *sukkah* is valid or not and then decide whether or not they wish to sleep in it. Rav Nahman would not, by contrast, have served food with a hidden ingredient that his guests treated as forbidden. By this standard, one may, without warning, put out a bowl of rice on Pesah when serving Ashkenazi guests, but one may not serve a sauce made with chicken stock to a vegetarian without warning them not to eat it. Make no mistake: This is still a retreat from the Or Zarua's robust culture of trust and mutual respect. The Or Zarua seems to make a normative presumption that hosts will always take their guests' religious principles into account, going to great lengths to accommodate them. In his scheme, omnivores simply don't serve meat when their vegetarian friends visit. By contrast, the Ritva's approach allows for serving all kinds of meat dishes at that meal, provided that they are clearly identifiable as such and that all sauces and hidden ingredients are strictly vegetarian. Nonetheless, even the Ritva's system assumes that there is no need to verify the absence of hidden forbidden food. We can presume no deception on that front.

The first position he cites, however, goes much further, essentially eviscerating the Or Zarua's entire analysis. This first view—which notably makes the Ritva uneasy enough that he proposes his own alternative—asserts that it is in fact *permitted* to serve others something they consider forbidden, so long as you are confident in your view and prepared to rule this matter of law and practice on their behalf. Under this reading, Rav Nahman's behavior was unremarkable; anyone confident of their own ruling is within his rights to foist that policy on someone else. This is not considered to be any sort of stumbling block before the blind, because, in the eyes of the host, there is no stumbling block here at all. Yes, a host cannot serve wine to a Nazirite guest, but that is because the host concedes that Nazirites are forbidden from drinking wine! When a guest, in the eyes of the host, only mistakenly *believes* that he is subject to a prohibition, then the host is unrestricted in his behavior. As a result, the host has no obligation to inform his

guest even of hidden ingredients. This means, in turn, that the guest cannot necessarily presumptively trust the host at all!

How can we square this with the Bavli's picture of completely reliable record keeping by Beit Shammai and Beit Hillel? Wasn't that a strong proof for Or Zarua's way of thinking about this issue? **R. Yaakov Ettlinger** addressed this centuries later:

#### שו"ת בנין ציון סימן סב

...אמנם על הראי' שהביא הא"ז לענ"ד יש להשיב דדילמא ב"ה בקשו מב"ש שיוודיעו להם ואז ודאי היו יכולים לסמוך עליהם בלא חשש דילמא ספי להו איסורא דשארית ישראל לא ידבר כזב וכש"כ הגדולים אבל אכתי לא מוכח שגם אם לא ביקש ממנו כן שאסור ליתן לו:  
...ולכן בנתארח האוסר אצל המתיר שהוא בעל הוראה אם יכול לסמוך עליו שלא יאכילנו מה דלא ס"ל אף דהא"ז מתיר מכ"מ לפי מה שכתבתי שאין ראי' מהא דלא נמנעו ב"ה מב"ש דדלמא בקשו מהם שיוודיעו להם ולכן לענ"ד לא יסמוך עליו בסתם אלא ישאלנו בכל מקום שיש אצלו ספק ורק באי אפשר לשאלו יש לסמוך על פסק הא"ז כנלענ"ד הקטן יעקב.

#### Responsa Binyan Tziyyon #62, R. Ya'akov Ettlinger, Germany 19<sup>th</sup> c.

...In my humble opinion, one can deflect the proof cited by the Or Zarua. Perhaps Beit Hillel requested that Beit Shammai inform them [which of Beit Shammai's foods met Beit Hillel's standards of purity] and at that point they could rely on them without any concern that they might feed them something prohibited, for Jews will not lie, especially their religious leaders. But it would still not be clear that it would have been forbidden for Beit Shammai to give them something Beit Hillel considered forbidden had the latter not asked them not to.

...Therefore, when one who forbids something is a guest of one who permits it, and the host is capable of issuing legal rulings, even though the Or Zarua permits the guest to rely on the host not to feed him something forbidden, nonetheless, according to what I have written... one should not simply rely on the host, but should ask him about anything where the guest has a doubt. Only when one cannot ask him should one rely on the ruling of the Or Zarua...

In other words, argues R. Ettlinger, Jews can be trusted not to lie about matters of Jewish law, *when asked a direct question*. But there is no guarantee—nor firm Talmudic precedent—that Jews will go out of their way to maximize their guests' integrity on matters of legal dispute.



### 3. Conclusion

We are left, then, with several competing models:

1. Or Zarua argues that the presumption of trust is high and broad. As long as Jews are aware of their respective positions, we can assume that everyone accommodates everyone else's frame of reference. As a result, people can freely eat food provided by others with a high degree of confidence.
2. Ritva suggests that Jews can disregard a competing frame of legal reference and serve food others believe to be forbidden. That food, however, must be readily identifiable so that the person can make their own choice regarding the integrity of their position. Nothing should be concealed.
3. A third anonymous view, later largely endorsed by R. Ettlinger, holds that there is only a prohibition on lying. If not asked, a Jew (at least a learned one) can imperialistically impose her frame of legal reference on others. Therefore, anyone wishing to maintain his integrity as a host can trust the host to be truthful, but must verify the ingredients through careful questioning.

These create considerably different dynamics of community. To return to some of our earlier terminology, Or Zarua presumes a high and broad standard of integrity, where everyone must rigorously look out for everyone else's standards. Interestingly, this global commitment to integrity, while it limits the ability of different Jews to eat everything prepared in others' homes, leads to a robust dynamic of trust on the communal level. Ritva tinges this culture of trust with the expectation that people living in pluralistic environments will be tested and tempted to violate their integrity from time to time—whether by being offered certain kinds of food or by being hosted in a *sukkah* they believe to be invalid. Diverse commitments will have to be confronted repeatedly and reaffirmed from time to time. R. Ettlinger whittles away at the notion of vicarious responsibility for integrity, flipping the responsibility from the host to the guest. This simultaneously allows hosts to operate more freely but also inculcates a culture of suspicion and inquisition among the guests, reflecting an overall eroded culture of trust.

As I noted at the beginning, the dynamics of trust are largely empirical, they either are present or they are not. But these various sources show us how those dynamics are deeply shaped by our expectations of how people are supposed to behave. Even if R. Ettlinger is correct that the Talmudic precedent is not cut and dried, and even if he is also correct that people often do *not* feel obligated to accommodate those they disagree with, it seems clear to me that that is not an ideal picture of an observant Jewish society. We ought to work to create a culture where people invest a great deal of time and thought thinking through other's frames of reference. Perhaps the Ritva's model is a healthy way of maintaining that sensitivity without entirely papering over difference or succumbing to the "frummet common denominator." But it strikes me that Jewish communities are at their healthiest when there is a broad culture of trust. Or Zarua teaches us that this is a direct result of our sense that we are obligated not only to our own sense of what is right, but to the sense of others as well.

## B. Legitimacy

Rema emphasized one key element of the protocols that emerged around Rhineland food: The guests, who forbade the suet stuck to the stomach, nonetheless legitimated the legal holding of the Rhineland Jews. Some combination of respect for R. Yoel of Bonn, perhaps combined with substantive appreciation for his (albeit, in their minds, erroneous) decision, allowed other German Jews to grant his ruling some degree of full faith and credit. Whether simply around the issue of pots or, as Maharshal claimed, extending even to food cooked with the controversial suet, this legitimacy enabled these German factions to see one another as comrades in arms with a local dispute. Much like Beit Hillel and Beit Shammai before them, these groups of German Jews did not feel that their legal differences were indicative of broader philosophical and sociological splits. Whenever we encounter Jews who live on the right side of our triangle, substantively (if not rhetorically) embracing pluralism and community at the cost of integrity and consistency, it is clear that they view their opponents as legitimate, albeit misguided.

This is generally the main stumbling block to creating pluralistic systems of communities among contemporary Jews. It is not just that it is hard to get different Jews to agree—as we have seen, that is a storied, and even valued, aspect of our history and tradition—it is that many of the

modern debates over Judaism defy efforts to secure a sense of mutual legitimacy. Some of this is old-fashioned power politics, with different groups using all means at their disposal to secure their preferred outcome. The rhetoric of delegitimation is far more powerful than that of disagreement and more likely to keep waffling constituents from flirting with an opposing view. People don't mind being wrong, but they are more loath to be branded heretics. As with all efforts to delegitimize and stigmatize, good faith is often lacking.

But we delude ourselves if we imagine that the arguments between Beit Shammai and Beit Hillel were any less polarizing in their time than our denominational and other disputes are in our own. One need not look hard to be disabused of that notion. **Yerushalmi Shabbat 1:4** records a tradition that, on the day when Beit Shammai got the upper hand and were able to outvote Beit Hillel, they not only rammed through a set of highly restrictive decrees, but the students of Beit Shammai actually murdered students of Beit Hillel with swords and spears. Whatever the historical accuracy of this picture, the stakes in these debates were clearly felt to be no less urgent and intense than those in our own day.

So what enabled Beit Shammai and Beit Hillel to still break bread together and marry one another? What allowed R. Yoel of Bonn's legal enemies to still share community with him over food? And why, by contrast, is it hard to bridge these gaps among so many contemporary Jews? It is hard to sort out the practical from the ideological on this front. Smaller, less secure communities often need to work together across divides in ways that more robust ones sprout self-sufficient subcommunities that are more isolated. Anyone who has spent time in smaller and larger Jewish communities knows this difference well. It may well be that Beit Shammai and Beit Hillel, still living in an age when rabbinic Judaism had far from consolidated its hold over the Jewish people, felt much more in common with one another than many other Jews, despite their disagreements. Some of the delegitimation in our own day is unquestionably enabled by feelings of self-confidence and self-sufficiency. Israeli Jewry just doesn't need the Diaspora in the same way it once did, and a more confident contemporary Orthodoxy feels it can not only survive, but thrive, without making significant concessions to alternative viewpoints and perspectives.

But I want to call attention to two other dynamics that are critical. The first is canon and lexicon. R. Yoel and R. Efraim diverged sharply on conclusions of ultimate significance. But the lengthy correspondence between them demonstrates a shared lexicon grounded in

interpretation of classical rabbinic sources and a reverence for them. These two communities had mutually exclusive practices, but they were led by leaders who communicated with one another in the same medium. Legitimacy is generally granted to challenging articulations nonetheless offered in a shared language. Many of the divides in the Jewish world today are not simply born of conflicting conclusions, but reflect a deeper estrangement. We don't simply read the same texts differently, we don't read the same texts at all. Many Jews are either ignorant of or dismissive of the power, authority, and wisdom of many of the texts in our tradition. Other Jews deny the potential multiplicity of Torah interpretation and retreat into fossilized caricatures of tradition and traditionalism in order to impose uniformity. Each of these, in a different way, is an assault on one of the vertices of our triangle: the value of pluralism and an appreciation of the full power of Torah. Torah's true value is in its capacity to say multiple things in multiple contexts; to the extent we fail to learn it or shut it down, we impoverish it.

The second, particularly strong in the North American Jewish community, is a dramatic shift away from the ethnic notion of Jewishness towards a more strictly religious definition. Propelled by a culture of individualistic autonomy and a generally post-ethnic milieu, reinforced by high rates of Jewish-Gentile intermarriage, contemporary Jews increasingly think of their Jewishness as being about what they do or don't practice, as opposed to who they are in the core of their being. This dynamic has religious and secular versions, some of which I explored in my earlier series on apostasy. My sense is that the ritually lax and punctilious alike are trending in many communities towards a notion of Jewishness that is fundamentally inextricable from a specific vision of Torah. This is not entirely unprecedented—R. Sa'adiah Gaon (*Sefer Ha-Emunot Ve-ha-De'ot* 3), over a millennium ago, already stated that אומתנו איננה אומה כי אם בדתה/“our nation is only a nation on account of its teachings.” While R. Sa'adiah Gaon was there largely defending the notion of the Torah's eternity and grounding it in the Jewish people's eternity, he gives voice to the notion that the entity of the Jewish people is entirely existentially subservient to the mission it has been sent to fulfill. In our own day, that seed of an idea has more fully flowered in some quarters: What if the Jewish people doesn't meaningfully exist absent its allegiance to Torah? For some Jews, that idea increasingly translates into a feeling that any restrictions around group identity that are not grounded in religious practice (e.g. intermarriage, the Law of Return) risk being nothing more than racism and capricious supremacy. For other Jews, that idea means that Jews who do not accept their vision of Torah

are maximally not meaningfully Jewish and minimally not worth accommodating or understanding in any deep way.

Either way, this dynamic often leads to the evisceration of another one of the vertices of our triangle, that of community. For a larger number of contemporary Jews, the notion that there is a positive obligation to be vulnerable to, and in community with, other Jews, parallel to and independent of one's obligation to the values of pluralism and integrity, is foreign. Granting legitimacy depends not only on shared legal texts and methodologies, but also on *a desire to grant legitimacy*. That desire ultimately stems from a notion that the Jewish people are not merely footsoldiers for the Torah, but a vehicle for God's will in the world, endowed with religious instincts and struggles that must themselves be part of the give and take of Torah. The different groups of German Jews not only ate in one another's homes because they had a shared canon, and felt comfortable saying about the lenient view *כבר הורה זקן* (though that clearly played a critical role)—they also clearly *wanted* to find a way to eat in one another's homes in order to maintain a sense of community over food. According to the Tosefta, Beit Shammai and Beit Hillel did not only intermarry because they needed one another (though that likely played a critical role); they also felt they were heeding the value of *האמת והשלום אהבו*, whereby the dough of their independent religious truths was leavened with a peace-seeking mission for unity between their camps. Absent that mission, the motivation to grant legitimacy to dissenters is weakened, if not crippled.

Next time, we explore these values through the practical case of potluck meals and comment on what course we ought to chart in the contemporary Jewish world.