

## Altruistic Sinning

By Ben Hutman

### Introduction:

Rabbi Michael Gold<sup>1</sup> was raised in an ethnically Jewish, but anti-religious home. His mother disdained observant Jews, claiming that they were “more interested in the law than in people.” Needless to say she was disappointed when her son dropped out of graduate school to begin rabbinic studies at the Jewish Theological Seminary. After failing to convince her son to quit his rabbinic studies, she told her son “I can live with you being a rabbi, but please don’t make law more important than people.”

Gold and a fellow rabbinical student took a cross-country trip during summer break. They stopped for Shabbat in Rapid City, South Dakota and were welcomed warmly by the small Jewish community. There was no rabbi in town and more people than usual attended the Friday night services, intrigued to meet the two rabbinical students that were in town. At the Oneg Shabbat after service, Gold and his friend led a discussion on Judaism. During the discussion a young boy came up to Gold all excited. The boy told Gold that his grandfather had left him religious items but he did not know what they were. The boy proudly showed Gold a velvet bag and took out a pair of *tefillin*, the phylacteries worn by Jewish males thirteen and older. Rabbi Gold told the boy that they were worn by Jewish men during the weekday morning prayers in the

---

<sup>1</sup> Rabbi Gold is the rabbi of Temple Beth Torah in Tamarac, Florida. He is the author of five books including *And Hannah Wept; Infertility, Adoption, and the Jewish Couple* (Jewish Publication Society of America (March 1993), and numerous articles on Jewish topics. He was ordained by the Jewish Theological Seminary in 1979.

fulfillment of the Biblical commandment<sup>2</sup>. Excited, the boy said “Rabbi, show me how to put them on.” This presented Rabbi Gold with a dilemma, as he writes:

I thought about what to do. It was Friday night. The sun had gone down. On Shabbat it is forbidden by Jewish law even to handle a pair of *tefillin*,<sup>3</sup> let alone put them on. I was tempted to say, “Put them away until a weekday.” On the other hand, how many observant Jews passed through this small South Dakota town each year? Who else could show the boy how to wear his grandfather’s *tefillin*? The opportunity may not present itself again. I told him to roll up his sleeve. And slowly at this Friday night *Oneg Shabbat*,<sup>4</sup> I taught the boy how to wear *tefillin*. Wearing his grandfather’s *tefillin* on his arm and forehead we said the *Sh’ma* together. I could see tears in his father’s eyes. There was joy in the boy’s steps as he went home that evening.<sup>5</sup>

After Shabbat Rabbi Gold called his mother and told her the story. Upon hearing that her son had broken the laws of Shabbat to put *tefillin* on a boy, Rabbi Gold’s mother said “maybe you will be a good rabbi after all.”

This story intrigued me. Rabbi Gold had violated the *Halakha*, Jewish law, but had done so completely altruistically, for the religious benefit of another Jew. From a moral standpoint this

---

<sup>2</sup> See *Exodus* 13:16; *Deuteronomy* 6:8, 11:18.

<sup>3</sup> Shulchan Aruch, *Orach Chaim* 31:1; Ramah, *Orach Chaim* 308:4. The Shulchan Aruch is the most widely accepted and authoritative code of Jewish Law it was written in the 16<sup>th</sup> century by Rabbi Yosef Karo. Rabbi Moshe Isserlis, known as the Ramah, an Ashkenazic scholar, added a gloss to the Shulchan Aruch that is considered definitive by Ashkenazi Jews.

<sup>4</sup> Literally “enjoyment of Shabbat,” here it means a small party celebrating the Shabbat.

<sup>5</sup> Rabbi Michael Gold, *My Son the Rabbi*, in CHICKEN SOUP FOR THE JEWISH SOUL 25, 27 (2001).

seems noble, but I wondered what the *Halakha* itself had to say about such a situation. Can one sin in order that his friend should gain?

This paper examines that very question from a halakhic standpoint. In the Part I we will examine a Talmudic discussion that seems to answer the question plainly. In Part II we will see another Talmudic discussion that seems to contradict the first and how some commentators reconcile the two. In Part III we examine a third passage that further complicates matters, the different approaches of some commentators and halakhic decisors. In Part IV we will deal with how this issue impacts modern Jewish life especially in the realm of *kiruv*, Jewish outreach. Finally, in Part V we will return to our first Talmudic discussion and I will pose a third understanding of the discussion and use it to bring a new perspective to Rabbi Gold's problem.

## Part I: Rediyat HaPat

The Talmud, in Tractate Shabbat 4a, states:

Rav Bibi bar Abaye asked "one who sticks dough in an oven (on Shabbat) do we allow him to take it down before it comes to sin-offering culpability or do we not allow him?" Rav Acha bar Abaye said to Ravina "how is this happening? If you say it is unknowingly and it is not realized to him, to whom are we allowing it? And rather if you say not, that he went back and realized, would he be culpable? But it is taught 'all those culpable for sin-offerings are not culpable until the beginning was unknowing and the end was unknowing.' Rather it is when done with knowledge? Then it should have said

‘before it comes to a prohibition of stoning’?” Rav Shila said “really it is unknowingly and to whom are we allowing it, to other people.”

Rav Sheshes asked on this “and do we say to a person, ‘sin, in order that your friend gains?’”<sup>6</sup>

Some explanation is in order. There is a rabbinic prohibition<sup>7</sup> forbidding removing dough or bread stuck to the side of an oven (*rediyat hapat*) on Shabbat.<sup>8</sup> There is a biblical prohibition<sup>9</sup> forbidding baking on Shabbat.<sup>10</sup> If he were to remove the dough before it bakes he can save himself from a biblical prohibition, but to do so would violate the rabbinic prohibition.<sup>11</sup> Thus Rav Bibi is essentially asking whether the rabbis should enforce their prohibition even in the face of a biblical prohibition. The Talmud takes issue with Rav Bibi’s query. Rav Bibi presented the consequence of leaving the bread in the oven as resulting in a sin-offering. Sin-offerings are only brought for certain severe sins committed unknowingly (i.e. he wasn’t aware that it was Shabbat).<sup>12</sup> Yet if he doesn’t know that it is Shabbat how is this question being asked, and if he realized it was Shabbat it would no longer be unknowing but would instead be a more severe violation.

Rav Shila attempts to answer this question by positing the “him”, that Rav Bibi thought might be allowed to remove the dough, is not the person who put it in but rather a friend who happened upon the situation after the dough was already in the oven. In other words Rav Bibi’s

---

<sup>6</sup> Translated by Author. All translations in this paper are by the Author unless noted otherwise.

<sup>7</sup> Prohibition instituted by the rabbis, usually as a prophylactic measure to prevent a violation of biblical prohibition. See *Yevamot* 21a (Babylonian Talmud).

<sup>8</sup> See *Shabbat* 117b; Shulchan Aruch, *Orach Chaim* 254:5.

<sup>9</sup> A biblical prohibition refers to anything understood to be forbidden directly by G-d either in the Pentateuch or the Oral law.

<sup>10</sup> See *Shabbat* 73a.

<sup>11</sup> Rashi, Commentary to *Shabbat* 3b. Rabbi Shlomo Yitchaki, better known by his acronym Rashi, is the author of the most widely used commentary on the Talmud and the Bible. He lived in the 11<sup>th</sup> century.

<sup>12</sup> See *Leviticus* 4:27-31.

question, in this formulation, is the same dilemma that faced Rabbi Gold; whether one person should violate a rabbinic prohibition so that his fellow may keep a biblical commandment.

Unfortunately for Rabbi Gold the Talmud's response is Rav Sheshes' rhetorical question, "do we say to a person, 'sin, in order that your friend gains?'"<sup>13</sup>

The Talmud offers no defense to Rav Sheshes' attack on Rav Shila, implying there is none. Therefore, we see from here a person should not sin, even a minor (rabbinic) sin, in order that his friend should be protected from a serious transgression. It would seem from this discussion that Rabbi Gold really did put people before the law. This passage however is not the only Talmudic discussion on the topic.

## Part II: Prohibitions Big and Small

### A. Eruvin 32b:

The following dispute is recorded in Tractate Eruvin:

Rebbi<sup>14</sup> reasons that it is better for the *Chaver* (someone scrupulous in tithing laws)<sup>15</sup> that he should violate a small prohibition and the *Am HaAretz* (someone not so knowledgeable/scrupulous about tithing and other laws)<sup>16</sup> should not violate a large prohibition. Rabban Shimon ben Gamliel reasons that it is better for the *Chaver* that the *Am*

---

<sup>13</sup> *Shabbat* 4a.

<sup>14</sup> Rabbi Judah the Prince, he is called "Rebbi" because he gathered and edited the Mishna in about 200 A.D. and thus became the teacher of all Israel.

<sup>15</sup> See, e.g., *Pesachim* 4b; Rashi, *ad loc.*

<sup>16</sup> See *Berachot* 47b

*HaAretz* should violate a great prohibition and he (the *Chaver*) should not violate a small prohibition.<sup>17</sup>

This discussion of Rebbi and Rabban Shimon ben Gamliel's (Rebbi's father)<sup>18</sup> reasoning is in reference to a dispute they have if a *Chaver* tells a person he can fill up his basket from the *Chaver*'s figs, whether the person can assume they have already been tithed.<sup>19</sup> Rabban Shimon ben Gamliel argues that you can't assume the *Chaver* tithed the figs because there is a rabbinic prohibition forbidding tithing produce that is not nearby.<sup>20</sup> Thus the "small" prohibition referred to here is a rabbinic and the "large" prohibition is also rabbinic<sup>21</sup> but patterned after a biblical one, eating *tevel* (untithed produce).<sup>22</sup>

In light of this passage, it is strange that Rav Sheshes' question in the *Rediyat HaPat* discussion is left unchallenged. Why did Rav Shila not respond that Rav Bibi's question is whether we should follow Rebbi or his father?

## B. The Tosafists' Answer

This problem is pointed out by the Tosafot<sup>23</sup> commentary on the *Rediyat HaPat* discussion.<sup>24</sup> They answer that the situation in Eruvin is different because the *Chaver*, having told the person

---

<sup>17</sup> *Eruvin* 32b.

<sup>18</sup> *See id.* ("Rebbi said 'my words appear better than my father's words'").

<sup>19</sup> *See id.* at 22a.

<sup>20</sup> *Id.*

<sup>21</sup> Figs, like all fruits, are only subject to tithing rabbinically. *See Berachot* 36a.

<sup>22</sup> *See* Maimonides, *Count of Mitzvos*, Negative Commandments, 153. Maimonides, Moshe ben Maimon, was one of the greatest sages in medieval times. Born in Spain, he lived most of his life in Egypt where he was the leader of Torah Jewry and a physician to Saladin. His most famous work is the *Mishna Torah*, cited below.

<sup>23</sup> Tosafot is a compilation of, mostly, questions and answers on the Talmud from generations of sages known as the *Baalei Hatosafot* or Tosafists. Started by Rashi's grandchildren these schools flourished for over two hundred years from the 12 through 14<sup>th</sup> centuries.

<sup>24</sup> *Shabbat* 4a, Tosafot *ad loc.*

to go collect figs, has put the *Am HaAretz* in a position where he will eat *tevel*. Therefore the *Chaver* has a responsibility, according to Rebbi, to take upon himself a small sin in order to prevent another person from violating a large sin. In *Rediyat HaPat*, in contrast, the person asking if he can remove the dough did not put his friend in this situation.<sup>25</sup>

This answer is far from satisfying, however. The Talmud in Eruvin does not explicitly explain Rebbi's position as being justified because the *Chaver* put the other fellow in his precarious situation. Surely Rav Bibi could be asking just that question: is Rebbi's position, that altruistic sinning is expected, limited to circumstances where one put someone in a position where they are in danger of committing a major sin, or does Rebbi maintain his reasoning in other circumstances as well.

We will return to this question later. For now it suffices to acknowledge that according to Tosafot at least, Rabbi Gold cannot base himself on Rebbi's position in Eruvin.

### Part III: Reproductive Rights and the Prayer Quorum

#### A. The Case of the Half-Slave:

The Mishna in *Gittin* describes a dispute between the Schools of Shammai and Hillel<sup>26</sup> about whether we force an owner to free a half-slave.<sup>27</sup> A half-slave is a person who was a full

---

<sup>25</sup> *Id.*

<sup>26</sup> These two great schools spar in disputes across the Talmud. They flourished as separate schools from about 30 B.C.E until the destruction of the Temple in 70 A.D.

<sup>27</sup> *Gittin* 41a-b.

slave owned by a partnership and one of the partners freed his portion.<sup>28</sup> In the end, both schools agree that the owner is forced to free the half-slave under the rationale that without such freedom the half-slave would be barred from fulfilling the commandment to be fruitful and multiply.<sup>29</sup>

Earlier in Tractate Gittin, Rav Yehuda is quoted as saying in the name of Samuel “anyone who frees his slave violates a positive commandment, for it says ‘forever with them shall you be served.’”<sup>30</sup> The Talmud questions this statement from a story where Rabbi Eliezer came to synagogue and finding them one short of a *minyan*,<sup>31</sup> freed his slave to be the tenth man.<sup>32</sup> How could Rabbi Eliezer have freed his slave, if doing so violates a positive commandment? The Talmud answers “mitzvah is different.”<sup>33</sup>

The simple implication of this passage is one is allowed to violate a biblical commandment in order that others can fulfill their obligations. This idea would also serve to explain why everyone agrees that we force an owner to free his half-slave despite the positive commandment to keep slaves in their slave state. While one might dismiss the *minyan* case as being irrelevant to our discussion because Rabbi Eliezer himself benefited from the violation,<sup>34</sup> the half-slave case seems to contradict Rav Sheshes' confidence that we don't tell someone to sin for another's benefit.

---

<sup>28</sup> Rashi, commentary to *Gittin* 41a.

<sup>29</sup> *Gittin* 41a-b. Slaves are not allowed to marry regular Jews. The half-slave can't marry anyone because his free half is a full Jew and thus forbidden to marry a slave-woman, and his slave half is forbidden to marry a free Jewess.

<sup>30</sup> 38b; see *Leviticus* 25:46.

<sup>31</sup> Ten man quorum required for public prayer services.

<sup>32</sup> *Gittin* 38b.

<sup>33</sup> *Id.*

<sup>34</sup> This would characterize Rabbi Eliezer's action as being one of *essai doche essai*, a positive commandment overriding another positive commandment, a different category of analysis. See Tosafot, *Pesachim* 59a, heading “*Ati Essei*.”



## B. The Tosafists' Answers:

This problem too, is pointed out by Tosafot on the *Rediyat HaPat* discussion.<sup>35</sup> They answer that the commandment to be fruitful and multiply (*pru u'rvu*) is special in that it is a "great commandment."<sup>36</sup> The implication of Tosafot is that if one can save his friend from violating a great commandment, or if one can create an opportunity for his friend to fulfill a great commandment, then he should violate a comparatively small commandment. The issue, therefore, becomes what is considered a "great" commandment? Can we argue that laying *tefillin* is a "great" commandment?

As far as I can tell, the Talmud only uses the phrase "great commandment" (*mitzvah rabbah*) with reference to the commandment of *pidyan shvuim* (redeeming captives).<sup>37</sup> Obviously Tosafot's idea cannot be limited to those commandments referred to in the Talmud as *mitzvah rabbah*, because the commandment of *pru u'rvu* itself is never explicitly called *mitzvah rabbah*. We can say, however, that at the very least, a mistaken violation of Shabbat does not rise to the level of *mitzvah rabbah*, because in the *Rediyat HaPat* discussion the Talmud says that one should not violate a rabbinic prohibition to save his friend from mistakenly violating Shabbat.

For Rabbi Gold's purposes we are left with a question of whether a boy's possible future laying of *tefillin* amounts to a *mitzvah rabbah*. Laying *tefillin* is referred to as *mitzvah rabbah* by

---

<sup>35</sup> Tosafot, commentary to *Shabbat* 4a.

<sup>36</sup> *Id.*; see also *Chagiga* 2b ("the world was not created except to be fruitful and multiply").

<sup>37</sup> *Baba Batra* 8a-b.

the Mordechai<sup>38</sup> and the Pri Megadim,<sup>39</sup> in different contexts, but it is difficult to say that mistakenly violating *tefillin* is worse than mistakenly violating Shabbat.<sup>40</sup>

Tosafot gives an additional answer that the reason we don't tell someone to sin in the case of *Rediyat HaPat* is because the person who put the dough in the oven was negligent and we don't tell someone to sin to save another person from their negligence.<sup>41</sup> According to this answer of Tosafot Rabbi Gold is on solid ground, because a minor raised ignorant of Jewish tradition cannot be considered negligent in not knowing what *tefillin* are or how to put them on.

### C. Rashba's Answer:

Rashba<sup>42</sup> quotes Tosafot's question from the case of the half-slave and their answer. However Rashba disagrees with Tosafot<sup>43</sup> and gives his own answer: "it seems to me, there (the half-slave case) is different since half of him is free there isn't any 'with them shall you be served' because of his free half."<sup>44</sup>

---

<sup>38</sup> *Glosses on the Hilchot Ktanot of the Rif*, 14b. Mordechai ben Hillel, a 13 century halakhic authority, authored a halakhic work known as *The Mordechai*. He and his entire family were murdered in Nuremberg during the Rintfleisch pogroms.

<sup>39</sup> *Mishbetzot Zahav* 545:4. *Pri Megadim* is the name of the most famous work of Rabbi Yosef ben Meir Teomim, an 18<sup>th</sup> Century Polish-German rabbi.

<sup>40</sup> Violating Shabbat on purpose results in spiritual excision (*karet*) and if done after being warned by witnesses could warrant the death penalty. Not laying *tefillin* does not result in any direct punishment. See Maimonides, *Mishna Torah*, Laws of Shabbat 1:1.

<sup>41</sup> Tosafot, *supra* note 24. It is hard to imagine that this answer would work by itself regardless of the type of sins involved. To put it in stark terms, would one be allowed to commit a capital crime in order to prevent someone else from violating a rabbinic prohibition?

<sup>42</sup> Rabbi Shlomo ben Aderet, 13<sup>th</sup> and early 14<sup>th</sup> century leader of Spanish Jewry, he is known for his commentary on the Talmud and his many responsa.

<sup>43</sup> Rashba only disagrees with Tosafot with regard to the concept of *mitzvah rabbah*, he agrees with Tosafot's answer (in Shabbat) that the reason Rabbi Eliezer was able to free his slave to complete the *minyan* was because it was a "commandment of many" (*mitzvah d'rabbim*) and uses the same concept to answer other problematic cases.

<sup>44</sup> *Novellae of the Rashba on Shabbat* 4a.

In other words Rashba is refraining from deducing a broadly applicable principle from the half-slave case, and is rather giving a particularized explanation as to why there is no violation in freeing a half-slave. Therefore according to Rashba we have no source allowing one to sin for another's gain, regardless of how great that gain will be.<sup>45</sup> Does Rashba take this idea to its logical conclusion? What would he say if a child was abducted by people who would bring him up in a different religion on Shabbat? Would he allow someone to drive after them?

#### D. The Practical Difference Between Tosafot and Rashba:

The Beit Yosef<sup>46</sup> cites a responsa of Rashba responding to a question about whether a father could violate Shabbat to rescue his daughter from the clutches of an apostate Jew who had taken her.<sup>47</sup> Rashba responded -in line with his answer regarding the half-slave- that the father could not violate Shabbat to stop his daughter from being converted (there was, apparently, no threat to her life) because one is not allowed to sin for someone else's spiritual benefit, no matter how great that benefit.<sup>48</sup> Thus we see that Rashba was willing to rule in a practical case in line with his understanding of the *Rediyat HaPat* discussion. *A fortiori*, we can say with confidence that Rashba would not have allowed Rabbi Gold to put *tefillin* on the boy that Shabbat night.

The Beit Yosef then quotes Tosafot's two answers to the question of the half-slave: that we will tell someone to sin for their friend when the benefit is a *mitzvah rabbah*; or that we don't tell

---

<sup>45</sup> As noted *supra* note 43, Rashba does hold that one can sin for public benefit.

<sup>46</sup> *Beit Yosef* is the title of an extensive commentary on the *Arbah Turim* (a 14<sup>th</sup> century Halakhic code) written by Rabbi Yosef Caro, the 16<sup>th</sup> century Halakhist and leader of Sephardic Jewry who later authored his own code, the *Shulchan Aruch*, based on the *Arbah Turim* and *Beit Yosef*.

<sup>47</sup> *Orach Chaim*, 306 (quoting *Responsa of the Rashba*, vol. 7, responsa 367).

<sup>48</sup> *Id.*

someone to sin for their friend's benefit when the friend was negligent.<sup>49</sup> Beit Yosef concludes that according to either of these answers Tosafot would allow the father to violate Shabbat to save his daughter from the apostate. According to the answer that we can only sin for another's *mitvah rabbah*, Beit Yosef writes "it is clear that there is no greater mitzvah than saving her" from potential apostasy.<sup>50</sup> According to the answer that differentiates based on negligence "here she was not negligent."<sup>51</sup> Beit Yosef goes on to write that we would even force the girl's father to violate Shabbat on a biblical level because compared to her being converted and violating the Torah all her days any violation the father will do will be "a minor violation."<sup>52</sup>

In the Shulchan Aruch (Code of Jewish Law), Rabbi Caro rules in accordance with his explanation of Tosafot, that we force the father to violate Shabbat to save his daughter from apostasy.<sup>53</sup> However it is unclear from the Shulchan Aruch which of Tosafot's answers he accepted as the reason for this ruling. In the commentaries on the Shulchan Aruch we find diverging views on this issue.

The Magen Avraham<sup>54</sup> writes that the difference between this case of the captive girl and the statement of Rav Sheshes is that in the case of *Rediyat HaPat* "he was negligent in that he stuck the dough."<sup>55</sup> The Mishna Berurah,<sup>56</sup> however, writes that the father can violate any of the thirty-nine forbidden actions prohibited on Shabbat to save his daughter, because if doesn't save her

---

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Orach Chaim*, 306:14.

<sup>54</sup> Rabbi Avraham Gombiner, known by the title of his most famous halakhic work, *Magen Avraham* was a 17<sup>th</sup> Century Talmudist and rabbi in Poland.

<sup>55</sup> *Magen Avraham, Orach Chaim* 306:28 (commenting on Shulchan Aruch, *Orach Chaim* 306:14).

<sup>56</sup> Rabbi Yisroel Meir Kagan, better known as the Chofetz Chaim after the title of his most famous work on the laws of evil speech, he was, a halakhist, ethicist and the founder and Dean of the Yeshiva in Radin, Poland, and widely venerated as a *tzadik*, a righteous man.

she will leave the religion entirely, violate Shabbat and serve idols for the rest of her life, and “if he (the father) violates Shabbat one time it is a small violation in comparison.”<sup>57</sup>

Therefore, according to the Magen Avraham, Rabbi Gold was permitted to violate the rabbinic prohibition of handling *tefillin* on Shabbat so the young boy would be able to put on *tefillin* for the rest of his life because the young man was not negligent in his upbringing.<sup>58</sup> On the other hand, according to the Mishna Berurah, Rabbi Gold was probably not permitted to put *tefillin* on the young man.

#### Part IV: Lifnei Iver, Kiruv and a Return to Rediyat HaPat<sup>59</sup>

##### A. Putting a Stumbling Block in Front of the Blind:

The verse states “do not curse the deaf, and before a blind man do not place a stumbling block, and be fearful of your Lord, I am Hashem.”<sup>60</sup> Although this verse could be understood literally, i.e. not to use people’s handicap against them, the Talmud in Tractate Pesachim derives a broader concept. “Rabbi Natan said ‘from where do we know that one should not hand a cup of wine to a Nazir<sup>61</sup> . . . the Torah says “and before a blind man do not place a stumbling block.”’<sup>62</sup> This is understood to mean that in general one violates a negative prohibition by putting someone else in a position where they would be likely to sin (*Lifnei Iver*).<sup>63</sup>

<sup>57</sup> *Mishna Berurah*, 306:57 (commenting on Shulchan Aruch, *Orach Chaim* 306:14).

<sup>58</sup> See *Yaviya Omer*, vol. 4 *Even HaEzer* 4 (holding that children raised without Torah are not considered negligent).

<sup>59</sup> This part is based primarily on a lecture I heard from Rabbi Yitchak Berkowitz, Shlita, Dean of the Jerusalem Kollel.

<sup>60</sup> *Leviticus* 19:14.

<sup>61</sup> A Nazir is someone who takes a vow to refrain from drinking wine among other things. See *Numbers* 6:2-3.

<sup>62</sup> *Pesachim* 22b.

<sup>63</sup> See Maimonides, *Book of Commandments*, Negative Prohibition 299.

This prohibition presents a significant problem for people, like Rabbi Gold, who are trying to reach out to less observant Jews. For example, when Rabbi Gold agreed to show the young boy how to put the *tefillin* on, Gold was putting the boy in a position where he would be likely to handle the *tefillin* on Shabbat, a rabbinic sin.<sup>64</sup> An even more common problem occurs when an observant person invites a non-observant colleague or friend for Shabbat dinner, knowing that the non-observant person will likely drive. Similarly, can synagogues keep open parking lots knowing that some non-observant Jews will drive to services on Shabbat?

One can argue that this would depend on whether we say you can sin altruistically. When one invites a colleague to Shabbat dinner they are usually doing so in order to introduce their colleague to the beauty of a Shabbat dinner and a Torah atmosphere. This is meant to spur the non-observant person to seek out a greater connection to Judaism and Torah. Can one “absorb” the sin of *Lifnei Iver*, so that his friend will grow closer to Judaism?

## B. Rabbi Auerbach’s Approach:

Rabbi Shlomo Zalman Auerbach,<sup>65</sup> in his work of responsa *Minchat Shlomo*, confronts a case of a non-observant guest, who nevertheless honors Torah and supports its study financially, who comes to visit a member of the administration. On the one hand, if the school administrator doesn’t offer the guest food and drink, the guest might be insulted and stop his support for Torah and weaken his connection to Judaism. On the other hand, serving the guest food will likely

---

<sup>64</sup> Although a detailed discussion of whether there exists a prohibition of *Lifnei Iver* for rabbinic prohibitions is beyond the scope of this article, if you would hold that there is such a prohibition it is presumably rabbinic. See *Achiezer* vol. 3, 65.

<sup>65</sup> Rabbi Auerbach was one of the foremost *poskim*, halakhic decisors, of the twentieth century, he was also the Dean of Yeshivat Kol Torah, and renowned as a saintly man.

result in him not making the proper blessings before and after eating and therefore the host will be in violation of *Lifnei Iver*.<sup>66</sup>

Rabbi Auerbach answers that this not a case of *Lifnei Iver* at all. If one doesn't serve the guest food he will feel ostracized and it would push him further from Judaism, resulting in more sin not less. In contrast, by providing him food, you keep from hating rabbis and the learning of Torah. Rabbi Auerbach writes that this is not causing him to sin, but saving him from a more serious sin.<sup>67</sup>

It is not clear, however, if this logic works for someone wishing to invite a non-observant friend to a Shabbat meal. Rabbi Auerbach's permissive ruling is dependent on the person moving further from Judaism because of your lack of action. If you don't invite a colleague for dinner it is hard to imagine that this will cause him to hate observant Jews and Torah. For Rabbi Gold, however an argument can be made that Rabbi Auerbach's ruling is a saving grace. After all if Rabbi Gold turns down the young boy's request for help in embracing Jewish ritual, might not the boy be left with a bitter taste in his mouth towards rabbis and Judaism in general.<sup>68</sup>

### C. Rabbi Feinstein's Approach:

Rabbi Moshe Feinstein,<sup>69</sup> in his responsa, deals with a question regarding a youth prayer group on Shabbat where it is clear to the organizers of the group that many of the children will

---

<sup>66</sup> *Minchat Shlomo*, vol. 1, responsa 35.

<sup>67</sup> *Id.*

<sup>68</sup> This only helps for the sin of *Lifnei Iver*, of course. The problem of handling *tefillin* on Shabbat, however, would still be problematic.

<sup>69</sup> Rabbi Feinstein, was America's foremost Halkhic authority during the twentieth century, the Dean of Mesifita Tiferes Yerushalayim, and author of numerous works.

be driven to the synagogue.<sup>70</sup> The group was meant to teach Jewish children about prayer and the organizers viewed as being a fulfillment of the mitzvah of *chinuch*,<sup>71</sup> accustoming children in the observance of Jewish laws.<sup>72</sup> The questioner wanted to know if it was proper to have such a group considering it would likely cause Shabbat violations.

Rabbi Feinstein responded that it was absolutely forbidden to have such a group because it was essentially teaching the children that it is okay to drive to synagogue on Shabbat and was therefore not only not educating them in the observance of Jewish law, but quite the opposite, it was teaching them to violate Jewish law.<sup>73</sup>

In the very next responsa, Rabbi Feinstein writes, further, that it is forbidden to ask someone to come to a *minyan* on Shabbat if you know that it is likely they will drive because of *Lifnei Iver*.<sup>74</sup> Rabbi Feinstein's approach presents problems for both Rabbi Gold and people involved in Jewish outreach (*kiruv*) generally. Rabbi Gold in teaching the young boy to put on *tefillin*, viewed himself as fulfilling the mitzvah of *chinuch*, but according to Rabbi Feinstein, Gold was in fact teaching the child to violate Shabbat. Similarly Rabbi Feinstein's position makes it very difficult to be successful in *kiruv*, because observant Jews are severely limited in their ability to hold special beginners' services or invite people to their Shabbat meals. Is there any way one can engage in the noble idea of Outreach without running afoul of *Lifnei Iver*?

---

<sup>70</sup> *Igrot Moshe, Orach Chaim*, vol. 1, responsa 98.

<sup>71</sup> See *Encyclopedia Talmudit*, vol. 16, חינוך.

<sup>72</sup> See e.g., *Succah* 42a.

<sup>73</sup> *Igrot Moshe, supra* note 70.

<sup>74</sup> *Igrot Moshe, supra* note 70, responsa 99.



#### D. Rabbi Berkowitz's Approach:

Let us return to the remaining portion of the discussion of *Rediyat HaPat*, after Rav Shila's suggestion that we are dealing with a different person is dismissed.

Rav Ashi said "really it is with knowledge and it should say "before it comes to a prohibition of stoning." Rav Acha the son of Rava taught it directly: Rav Bibi son of Abaye said "one who sticks dough in an oven, we allow him to take it down before it comes to a prohibition of stoning."<sup>75</sup>

In other words, the conclusion of the discussion seems<sup>76</sup> to be that if the person put the dough in on purpose and if it bakes he will have committed an act punishable by stoning, he may remove the dough. Rabbi Yitchak Berkowitz explains<sup>77</sup> that this can be rephrased as follows: a person may violate a small prohibition to prevent himself from violating a larger prohibition. We thus tell a person "sin, in order that *you* gain."

Imagine a Jew trapped in an idolatrous cult, where the members of the cult are cut off from the outside world completely. The only exception is that once a week, on Saturday, two members drive into town to pick up the mail (which will be censored, of course). Our protagonist is given the opportunity to drive the truck into town one Saturday. He reasons when his fellow cult-member goes into the post office there will be an opportunity to drive off and leave the clutches of the cult forever. The only problem is that doing so would involve driving on Shabbat.

---

<sup>75</sup> *Shabbat*, 4a.

<sup>76</sup> Although it is beyond the scope of this article, it would be remiss not to mention that there are serious problems with this simple understanding of the *Gemara*.

<sup>77</sup> I heard Rabbi Berkowitz's explanation in a lecture in the Ner L'Elef Institute in 2006. Rabbi Berkowitz's explanation is expressed in short form in his collection: *Sources on the Laws Between Man and His Fellow*, Vol. 3.

Should he drive on Shabbat to get out of the cult? Of course he should! Even according to the Rashba, who holds a father cannot violate Shabbat to get his daughter out of the cult, would agree that the daughter herself could violate Shabbat to save herself, based on the conclusion of the discussion of *Rediyat HaPat*.

Rabbi Berkowitz takes this argument a step further. We know that *kiruv* is often successful following certain patterns. One of those patterns begins with people experiencing Shabbat in an observant home. If the not-yet-observant person would ask "I know that it is possible that the way I would become more observant is through experiencing a Shabbat meal, but, like the cult-member, in order to do so I will have to drive on Shabbat, should I drive?" The answer would be "you have to drive!"

This being the case, if someone is a *kiruv* worker and he or she knows that the way this person will most likely become more observant is through a Shabbat experience, then there is no *Lifnei Iver* because for this person to drive on Shabbat is not a sin at all. Furthermore, because we know from experience that people who try to take on too much observance at once end up failing,<sup>78</sup> it is required for those becoming more observant to take it slow and move only little by little.

Rabbi Berkowitz's novel thesis will not help Rabbi Gold, however, because it is predicated on any violation being a first step in a long road to observance. A one-time violation, like in Rabbi Gold's case, that will not be followed up with gentle movement towards observance is not permitted. Furthermore, Rabbi Berkowitz's thesis only deals with the

---

<sup>78</sup> See *Yoma* 80a ("one who grabs much, doesn't grab (anything), one grabs a small amount, grabs (something)").

prohibition of *Lifnei Iver*, it does not deal with Rabbi Gold's personal violation of the rabbinical prohibition of handling *tefillin* on Shabbat.

## Part V: Ramban and Redemption for Rabbi Gold

### A. Ramban on Rediyat HaPat:

Ramban (Nachmanides)<sup>79</sup> in his commentary on the discussion of *Rediyat HaPat*, after citing the questions of Tosafot, takes a different approach entirely. Instead of taking Rav Sheshes' rhetorical question as the standard and altering the simple understanding of the discussion in Eruvin 32b, Ramban takes the dispute in Eruvin on its face and explains what is different about the case of *Rediyat HaPat* that made Rav Sheshes so sure that we would not tell someone to take down the dough if he didn't put it in. Ramban writes:

It is different when he put the dough in the oven mistakenly, because it is not prohibited, because it is within in his ability to be absolved with a sin-offering. And the taking down (of the bread) is nothing except a gain to him that he is relieved from an offering. So it appears to me.<sup>80</sup>

In order to understand this Ramban we must to turn to a Mishna in Tractate Yoma. The Mishna states "A sin-offering (*Chatat*) and an *Asham* certainly absolve, death and Yom Kippur absolve together with repentance."<sup>81</sup> The simple reading of the Mishna is that when it comes to

<sup>79</sup> Rabbi Moshe ben Nachman, was a 13<sup>th</sup> century Talmud and Bible scholar, Kabbalist, Halakhist and physician.

<sup>80</sup> *Novellae of the Ramban* to Shabbat 4a.

<sup>81</sup> *Yoma* 85b.

sins that require a sin-offering no repentance is required, in contrast with death and Yom Kippur where repentance is required.<sup>82</sup> More importantly sin-offerings **certainly** absolve. Therefore when someone mistakenly bakes on Shabbat and is required to bring sin-offering, once he brings the offering there is no spiritual damage to his soul, his ledger is wiped clean with no ill effects.

With this information in hand, we can understand Ramban's explanation of why Rav Sheshes was so sure that we would not tell a bystander to remove the dough. We are dealing with a case where the person who stuck the dough in the oven did so mistakenly and, therefore, even if it bakes he is only required to bring a sin-offering. The sin-offering will completely absolve him. Therefore, nothing is accomplished by removing the dough before it bakes, except that the person who removed the dough saved the person who put it in the cost of an offering. To this Rav Sheshes says "do we tell a person sin, in order that your friend gains?"

## B. Why Ramban's Explanation is the Best:

Ramban's explanation has a few advantages over the other explanations. First, Ramban's understanding explains Rav Sheshes' use of the word "gain" (זכה). Why doesn't Rav Sheshes use the terms "large prohibition" and "small prohibition" like those used in the discussion in Eruvin? Or why didn't Rav Sheshes use the term "sin" for both actors (i.e. "do we tell someone sin, in order to protect your friend from sin")? According to Ramban, however, Rav Sheshes's terms are very precise. He uses the term "gain" just like it is used all over the Talmud in

---

<sup>82</sup> *But see Rashi ad loc.* Many of the commentators explain the Mishna so that that there is at least some sort of repentance needed even for sin-offerings. This doesn't detract from the main point that if someone brings a sin-offering for mistakenly sinning his absolution is guaranteed.

reference to acquiring something for someone outside of their presence (and without being appointed an agent).<sup>83</sup>

Second, according to Ramban we understand why the Talmud in Eruvin never mentioned that the basis of Rebbi's opinion is the *Chaver* putting the *Am HaAretz* in a position where he would sin if the *Chaver* didn't act. According to Tosafot, in contrast, is it odd that the Talmud would neglect to inform the reader the specific circumstance required for Rebbi's reasoning to make sense.

Finally, as we mentioned above, according to Tosafot, why couldn't Rav Shila answer Rav Sheshes' question by saying that Rav Bibi's query was meant to test just this point. Is the position of Rebbi that the *Chaver* should sin in a small way in order to save the *Am HaAretz* a large sin, limited to a case where the *Chaver* put the *Am HaAretz* in a precarious situation, or was Rebbi articulating a generally accepted principle? According to Ramban, Rebbi was articulating a general principle, as his language would suggest, and Rav Sheshes' rhetorical question is limited to the circumstances facing him.

### C. Redemption for Rabbi Gold?

According to Ramban, Rabbi Gold's dilemma is covered, not by the discussion of *Rediyat HaPat*, but rather by the dispute in Eruvin<sup>84</sup> between Rebbi and his father Rabban Shimon ben

---

<sup>83</sup> See, e.g. *Baba Metzia* 12a ("we can acquire a gain for a man outside of his presence" "בפניו שלא לאדם זכין").

<sup>84</sup> 32a-b.

Gamliel. Rabbi holds that it is better for someone to violate a small<sup>85</sup> sin in order to prevent his fellow from violating a large sin and Rabban Shimon ben Gamliel holds that it is better for someone to let his fellow violate a large sin and for he himself not to violate even a small sin.<sup>86</sup> According to Rabbi, Rabbi Gold did the right thing but according to Rabban Shimon ben Gamliel Rabbi Gold did the wrong thing. We therefore need to figure out if the law is like Rabbi or Rabban Shimon ben Gamliel.

Rambam<sup>87</sup> in his magnum opus, the Mishna Torah, rules like Rabbi that the *Chaver* should tithe the produce even though doing so violates a rabbinic prohibition.<sup>88</sup> This would imply that Rabbi's reasoning is correct and therefore according to Rambam, Rabbi Gold was following the law. On the other hand the Bach<sup>89</sup> writes that although when Rabbi argues with a single colleague the law follows Rabbi, when he argues with his father the law follows his father.<sup>90</sup>

Surveying the responsa literature however has convinced me that it is assumed by almost all halakhic decisors that the law is like Rabbi with regard to this dispute, because although many take Tosafot's view of the dispute, none claim the law does not follow Rabbi. For example, the Tzitz Eliezer<sup>91</sup> in a responsa dealing with holding a circumcision on Shabbat when you know people will drive to the event, deals with whether we should violate the mitzvah to circumcise on

---

<sup>85</sup> While it isn't absolutely clear what constitutes a small sin, is it relative to the sin he is preventing or is it limited to rabbinic violations, either way Rabbi Gold's case would be covered because like Rabbi's case it involves violating a rabbinic prohibition to enable someone to keep (or prevent them from violating) a biblical commandment.

<sup>86</sup> Eruvin 32b.

<sup>87</sup> Rabbi Moshe ben Maimon, also known as Maimonides, see *supra* note 22.

<sup>88</sup> The Laws of Tithing 10:10.

<sup>89</sup> Bach is an acronym for *Bayit Chadash* the primary work of Rabbi Yoel Sirkis, a prominent Halakhist of the 16<sup>th</sup> and 17<sup>th</sup> centuries.

<sup>90</sup> *Choshen Mishpat* 290:17 (not dealing with our particular dispute).

<sup>91</sup> *Tzitz Eliezer* is title of large collection of responsa by Rabbi Eliezer Yehuda Waldenberg, a leading posek, halakhic decisor, of the twentieth century. He was a dayan, a judge, on the Supreme Rabbinical Court in Jerusalem and was the rabbi of Shaare Zedek Hospital.

the eighth day in order to prevent people from violating Shabbat.<sup>92</sup> Although he discusses at length Rebbi's position in Eruvin,<sup>93</sup> he never suggests once that the law might be like Rabban Shimon ben Gamliel.

Even more telling is the responsa of Rabbi Ovadya Yosef, the former Sephardic Chief Rabbi of Israel, dealing with whether an observant school could have classes with boys and girls together.<sup>94</sup> Rabbi Yosef cites Rebbi's opinion in Eruvin that we tell the *Chaver* to violate a small prohibition in order that the *Am HaAretz* not violate a large one, and "here if we don't allow them this thing (mixed classes) the parents will decide to educate in public school without any religion or faith . . ."<sup>95</sup>

I conclude therefore, that the consensus is that in this dispute the law follows Rebbi and we tell the learned person to violate a small prohibition in order to protect the less learned from more serious violations. That being the case, according to Ramban's understanding of *Rediyat HaPat*, Rabbi Gold was well within the bounds of Jewish Law when he chose to show the young boy how to lay *tefillin* on that fateful Friday night.

## Conclusion:

We have seen that despite Rabbi Gold's mother's impression Rabbi Gold had much halakhic authority upon which to rely when he agreed to put *tefillin* on the young boy. First, Rabbi Gold could argue that all the future times the boy would now lay *tefillin* constituted a

---

<sup>92</sup> *Tzitz Eliezer* vol. 6, 3.

<sup>93</sup> *Id.*

<sup>94</sup> *Yaviya Omer* vol. 4, *Even HaEzer* 4.

<sup>95</sup> *Id.*

*mitzvah rabbah*. Second, he could argue that since the boy was not negligent in asking Rabbi Gold to put *tefillin* on him, Rav Sheshes' rhetorical question did not apply, but rather the case of the half-slave was the binding precedent. Third, there was no problem of *Lifnei Iver* because, as Rabbi Auerbach wrote, refusing the boy's request would have pushed him away from Judaism and Torah. Finally, we saw that according to Ramban's understanding of Rav Sheshes' rhetorical question, we always tell a more learned person to altruistically sin on small scale for the larger spiritual benefit of someone less learned.

Hopefully the legal soundness of her son's actions will not change Mrs. Gold's mind that her son is a might be a good rabbi after all.



## Bibliography

1. Auerbach, S. (2011). *Minchat Shlomo*. Bar-Ilan Responsa Project.
2. *Baba Batra* (2006). Babylonian Talmud Volume 14. Jerusalem: Mesoret HaShas.
3. *Baba Metzia* (2006). Babylonian Talmud Volume 2. Jerusalem: Mesoret HaShas.
4. *Berachot* (2006). Babylonian Talmud Volume 1. Jerusalem: Mesoret HaShas.
5. Berkowitz, Y. (2007). Sources on the Laws Between Man and His Fellow, Vol. 3. Jerusalem: Center for Jewish Values.
6. *Chagiga* (2006). Babylonian Talmud Volume 6. Jerusalem: Mesoret HaShas.
7. *Deuteronomy* (1990). Jerusalem: HaMeor.
8. Encyclopedia Talmudit, Volume 16 (2011). Bar-Ilan Responsa Project.
9. *Eruvin* (2006). Babylonian Talmud Volume 3. Jerusalem: Mesoret HaShas.
10. *Exodus* (1990). Jerusalem: HaMeor.
11. Feinstein, M. (2011). *Igrot Moshe, Orach Chaim*, Volume 1. Bar-Ilan Responsa Project.
12. *Gittin* (2006). Babylonian Talmud Volume 10. Jerusalem: Mesoret HaShas.
13. Gold, M. (2001). Chicken Soup for the Jewish Soul. Florida: Health Communications Inc.
14. Gombiner, A. (2011). *Magen Avraham*. Bar-Ilan Responsa Project.
15. Grodzinski, C. (2011) *Achiezer* Volume 3. Bar-Ilan Responsa Project.
16. Isserlis, M. (2011). *Mapeh, Orach Chaim*. Bar-Ilan Responsa Project.
17. Kagan, Y. M. (2011). *Mishna Berurah*. Bar-Ilan Responsa Project.
18. Karo, Y (2011). Shulchan Aruch, *Orach Chaim*. Bar-Ilan Responsa Project.
19. Karo, Y. (2011). *Bait Yosef, Orach Chaim*. Bar-Ilan Responsa Project.

20. *Leviticus* (1990). Jerusalem: HaMeor.
21. Maimonides (2011). *Book of Commandments*. Bar-Ilan Responsa Project.
22. Maimonides (2011). *Count of Mitzvos*. Bar-Ilan Responsa Project.
23. Maimonides (2011). *Mishna Torah*. Bar-Ilan Responsa Project.
24. Mordechai ben Hillel (2011). *Glosses on the Hilchot Ktanot of the Rif*. Bar-Ilan Responsa Project.
25. Nachmanides (2011). *Novellae of the Ramban to Tractate Shabbat*. Bar-Ilan Responsa Project.
26. *Numbers* (1990). Jerusalem: HaMeor.
27. *Pesachim* (2006). Babylonian Talmud Volume 4. Jerusalem: Mesoret HaShas.
28. Rashba (2011). *Novellae of the Rashba to Tractate Shabbat*. Bar-Ilan Responsa Project.
29. Rashi (2006). Babylonian Talmud. Jerusalem: Mesoret HaShas.
30. *Shabbat* (2006). Babylonian Talmud Volume 2. Jerusalem: Mesoret HaShas.
31. Sirkis, Y. (2011) *Bayit Chadash*. Bar-Ilan Responsa Project.
32. *Succah* (2006). Babylonian Talmud Volume 5. Jerusalem: Mesoret HaShas.
33. Teomim, Y. (2011). *Mishbetzot Zahav*. Bar-Ilan Responsa Project.
34. Waldenberg, E. (2011) *Tzitz Eliezer* Volume 6. Bar-Ilan Responsa Project.
35. *Yevamot* (2006). Babylonian Talmud Volume 7. Jerusalem: Mesoret HaShas.
36. *Yoma* (2006). Babylonian Talmud Volume 2. Jerusalem: Mesoret HaShas.
37. Yosef, O. (2011). *Yaviya Omer* Volume 4 *Even HaEzer*. Bar-Ilan Responsa Project.