

Section 23

Oaths

According to the Sages, the mitzvot of the Torah were upheld by oath (*shevua*) at Sinai. Not surprisingly then, the laws of oaths are among the most important in the Torah. *Halakha* considers breaking an oath made in God's name to be a capital crime.

The reader is likely familiar with two secular meanings of the word "oath". First, an oath can be a testimony as to the veracity of some fact. For example, in some secular courts a witness swears to tell "the truth the whole truth and nothing but the truth". Second, an oath can be a pledge to behave in a certain way or accomplish some act. For example, the American president swears to "preserve, protect and defend" the constitution of the United States¹.

In addition to these two definitions, however, the *halakhic* oath (*shevua*) also encompasses a third kind of pledge. Some authorities can compel their subjects to act in certain ways via *halakhic* oath. For example, King Saul compelled his soldiers to fast: "and Saul bound the people by oath saying: 'cursed be he who eats food until the evening'" (1 Samuel 14:24). These compulsory oaths are different from the familiar secular concepts of oaths, because (according to some opinions) those bound by the oath need not have given consent for the oath to take effect. Compulsory oaths are discussed in greater detail in §23.5.

The reader should note that the present section of *Adderet Eliyahu* is the last of three sections written by Rav Bashyatzi's student, Rav Calev Afendopolo after Rav Bashyatzi's passing.

The topics covered in this section are:

1. Types of Oaths
2. Valid and Invalid Oaths
3. Forbidden Oaths
4. Compulsory Oaths

"[I]t was said [do not swear by My name falsely] and desecrate the name of God' (Leviticus 19:12), for the oath, when it is kept faithfully, testifies to His existence, may He be exalted, and in the converse [i.e., when an oath is not kept] it testifies to the opposite; therefore, man must be cautious regarding this sin more than all the other sins" - Adderet Eliyahu's Inyan Shevua Ch. 6 Daf 208B Col 2

¹ Readers with an eye for detail might object that the first class of oaths (swearing as to the veracity of some fact) is a subset of the second class (swearing to act in a certain way). Indeed, swearing to "tell the truth, the whole truth, and nothing but the truth" both attests to the veracity of a witness' testimony and acts as a promise by the witness to behave in a certain way (ie: speak truthfully). Even if an oath of testimony is not formulated such that the oath taker explicitly promises to act in a certain way (eg: "I swear I saw him do it"), the oath taker can be said to implicitly be promising to tell the truth (eg: "I swear I am telling the truth when I say I saw him do it"). Nevertheless, the case of swearing as to the veracity of facts is common enough in secular and halakhic discourse that we give it special mention as its own genre of oath.

§23.1 Types of Oaths

The Torah mentions several kinds of oaths. These oaths range from being very general to very specific in nature. The broadest oath the Torah mentions is the generic oath:

“When a man vows a vow to Hashem or swears an oath to bind himself with a bond, he shall not break his word; he shall do according to all that comes out from his mouth” (Numbers 30:3)

Additionally, *halakha* mandates several special kinds of oaths applicable in specific scenarios:

1. If a man is accused of stealing an item but denies the charge, the accused can be made to affirm under oath that he did not steal the object (Leviticus 5:21-26).
2. One who hears a compulsory oath (§23.4) to testify in court becomes bound to testify should he be a witness to the court case in question: “if any one sin in that he hears a voice of an adjuration, and he being a witness, whether having seen or known, if he does not say it, then he shall bear his sin” (Leviticus 5:1).
3. A woman accused of adultery may be made to swear regarding her chastity (Numbers 5:19).
4. A man swears an oath upon engagement to his fiancée. The Sages classically listed the oath made in the betrothal ceremony as an oath required by *halakha*. However, *Adderet Eliyahu* notes that this oath does not technically belong on such a list because it is not a necessary part of a *halakhic* engagement. Rather, the betrothal oath serves to strengthen the gravity of the engagement in the eyes of the betrothed (§18.2a).

Notes on §23.1:

Another special kind of oath mentioned in the Torah is the *neder*. Rav Bashyatzi and Rav Calev Afendopolo had intended to discuss the laws of *nedarim* as part of *Adderet Eliyahu*, but both passed away before their work could be completed. Rav Aharon the Younger, however, discusses *nedarim* in both *Keter Torah* and *Gan Eden*. Rav Aharon holds that the *halakha* concerning *nedarim* and *shevuot* are equivalent:

“[T]he truth is that there is one law for the neder and for the shevua, for in whichever [circumstances] the neder is upheld [so too] is the shevua [upheld] and whatever invalidates the shevua [likewise] invalidates the neder. Therefore, it was said, ‘when [one] vows a neder to Hashem or swears an oath ... he shall do according to all that has left his mouth’ (Numbers 30:3). [Scripture] unites both [the shevua and the neder] together [in this verse].”²

In other words, Rav Aharon argues that because there is one command to uphold both *nedarim* and *shevuot* the conditions by which either is upheld or invalidated are the same.

Why then does biblical Hebrew use separate words for *neder* and *shevua*? Rav Aharon explains that a *neder* is a *shevua* made out of religious motivation³, whereas a general *shevua* can be made for any variety of reasons. This is why Scripture invokes God when it mentions *nedarim*, “when one vows a *neder* to **Hashem**...”, but not when mentioning *shevuot*: “...or swears a *shevua*” (Numbers 30:3).

² Gan Eden *Dinei Nedarim* Ch 1; Daf 172b Col 2

³ Literally “*leshem Hashem*” (“for the name of God”). More specifically, Rav Aharon holds that a *neder* is an oath that is made to make something that is commendable but optional mandatory. (See *Keter Torah* on Numbers 30:3; Daf 44B).

In my opinion, the fact that Scripture refers to the Nazirite vow as a “*neder*” (Numbers 6:2) and not a “*shevua*” further strengthens Rav Aharon’s contention that a *neder* is a *shevua* made out of religious motivations. Nazirite vows are made for the sake of heaven because a *nazir* is said to be “holy to *Hashem*” during “all the days of his naziriteship” (Numbers 6:8). Furthermore, the requirements of the nazirite vow serve no obvious secular purpose—suggesting that the Nazirite vow is purely an expression of religious devotion.

§23.2 Valid and Invalid Oaths

§23.2a Overview

The Torah maintains that one must uphold any *halakhically* valid oath: “When a man vows a vow to *Hashem* or swears an oath to bind himself with a bond, he shall not break his word; he shall do according to all that comes out from his mouth” (Numbers 30:3). Likewise, the Torah prohibits swearing falsely or vainly in God’s name (Leviticus 19:12, Exodus 20:6).

Oaths can be assessed according to two criteria: (i) their validity or (ii) their permissibility. First, an oath can be either valid or invalid. Swearing an invalid oath does not necessarily constitute a sin but is *halakhically* null and void. For example, if one misspeaks when swearing an oath such that the meaning of his words does not match his intent, his oath is invalid: he need not uphold it and is free of guilt. Second, an oath can be either permitted or forbidden. For example, one is forbidden from stating under oath that one has accomplished something which in fact one has not. Swearing a forbidden oath is a sin. Note that a forbidden oath may also be invalid. For example, if one swears to disregard a mitzvah one has made a forbidden oath and his oath is invalid. In other words, he is both guilty of swearing falsely and he must still keep the other mitzvah despite his oath.

At least four criteria are relevant to whether an oath is valid and binding:

1. the language used in the oath;
2. the intent of the person making the oath;
3. the assumptions of the person making the oath; and
4. whether the oath contradicts a prior oath.

Each of these criteria are discussed in the following subsections. While these criteria determine if an oath is *valid* or *invalid*, we will later discuss the criteria for determining if an oath is *permitted* or *forbidden* (§23.3).

§23.2b The Language Used in the Oath

An oath may be made in any language. If one who is mute wishes to swear an oath, he may do so in writing.

One should swear by a specific entity (*i.e.*, God or anything associated with God) when making an oath. It is sufficient to swear by any of God’s names (*e.g.*, “*Shadai*” or “*Elohim*”) to render an oath binding; It is not necessary to invoke the Tetragrammaton in particular. Had Scripture intended to give the Tetragrammaton special status vis a vis oaths, the prohibition on swearing falsely would have read “you

shall not carry up the name of YHVH in vain". Instead, it reads "you shall not carry up the name of YHVH, your God, in vain" (Exodus 20:6). The phrase "your God" indicates that any name of "your God" is sufficient to uphold an oath. Similarly, Scripture states, "do not swear by My name falsely (*Ieshaker*)" (Leviticus 19:12), without specifying the Tetragrammaton, indicating that any of God's names require one to uphold one's oath. Furthermore, one may swear by one of God's aliases to render an oath binding. For example, "*chanun verachum*" (gracious and merciful one). Finally, it does not matter whether one refers to God in the holy tongue or in another language.

Finally, one may swear by anything that is associated with God. For example, one may swear by the covenant, Shabbat, the *brit milah*, the sanctuary, or the prophets. This is because the name of God is said to rest in those things that are associated with Him. For example, regarding the people of Israel Scripture states: "and all the nations of the earth shall see that the name of *Hashem* is called upon you" (Deuteronomy 28:10). Furthermore, regarding the angel that led the Israelites through the desert Scripture states: "My name is in his midst" (Exodus 23:23). Thus, swearing by something associated with God has the same effect as swearing by God's name.

Although an oath sworn by something that is associated with God is binding, many of the Sages held that one is not liable for any punishment should one violate such an oath. According to these Sages, one is only liable for *karet* or punishment at the hands of a *beit din* if his oath invokes a name or alias of God (§23.3e).

Notes on §23.2b:

Often times the phrase "As *Hashem* lives" is used to introduce an oath (e.g., Jeremiah 5:2). However, other formulations can also be used to introduce oaths. One formulation to which we will refer repeatedly throughout this section is the phrase "cursed be he", which introduces a compulsory oath. For example, Saul adjures the people to fast saying, "cursed be he that eats food until evening" (1 Samuel 14:24). Later, his command is clearly referred to as an oath: "your father [Saul] has charged the people by oath saying cursed be he who eats food this day" (1 Samuel 14:28).

§23.2c The Oath-taker's intent

The Sages differed as to whether an oath taker's intent to swear an oath is sufficient to make that oath binding. Some of the Sages held that one's thoughts are sufficient to render an oath binding. For example, if one swears in his mind to pay Reuben a certain sum, then according to these Sages, he would be bound to pay Reuben that sum. These Sages brought the following verse to support their view that one's thoughts alone are sufficient to produce a *halakhic* oath; noting that the contents of a man's thoughts are of central importance to God:

"[T]hese men have set up their idols **in their mind**....therefore speak to them and say to them: thus says the lord Hashem: every man from the house of Israel that sets up his idols in his mind...I *Hashem* will answer him that comes according to the multitude of his idols; that **I may take hold of the house of Israel in their minds**" (Ezekiel 14:2-5).

A second group of Sages held that vocally swearing an oath is a prerequisite to the oath being binding. Even according to this second group of Sages, however, the intent of the oath taker is what becomes binding, not the words used to confirm the oath. For example, if one swears out loud that he will pay Reuben but had intended to say Menashe (instead of Reuben), he is bound to pay Menashe.

Finally, a third group of Sages held that one's words and one's intent must be in accord for an oath to be valid. Thus, if one says under oath that he will pay Reuben but had intended to say Menashe, one's oath is void and he is bound to pay neither. These Sages accepted that intent of an oath is important based on Ezekiel 14:2-5 ("these men have set up their idols in their mind...") – the same verse cited by the first group of Sages. However, they also argued that the spoken words of an oath are equally relevant to its scope as it is written: "when a man vows a vow or swears an oath...according to all that comes out of his mouth he shall do" (Numbers 4:5). They, thus, concluded that both the intent and words of an oath must be in agreement for an oath to be valid. For this reason, the oath of one who is drunk or insane is void. Furthermore, an oath of a child is not binding and he is free from any punishment. If however, the child is old enough to understand the concept of oaths, one should force him to uphold his oath in order to educate him, although he remains free of guilt.

§23.2d The Oath-taker's Assumptions

An oath is valid only so long as the oath-taker's assumptions regarding the context in which the oath was sworn holds true. Let us consider an example case. A man sees two figures harvesting grain in his field and swears to apprehend these apparent thieves. Upon approaching the figures, the man sees that the two people harvesting grain are his children and were within their right to harvest from his field. The man's oath is void because it was made under the false assumption that the harvesters were thieves. Thus, he need not apprehend his children. If however, the man finds that both his children and some thieves were taking from his field, he is bound by oath to apprehend the thieves but not his children.

An oath is nullified if the context of that oath changes. For example, if one swears not to host his fellow on account of some wrong committed by his fellow. If one's fellow later atones for that wrong, one's oath is no longer binding. The Sages confirmed the principle that an oath is valid only so long as the assumptions relevant to the oath are valid from the story of David, Naval, and Avigail. David and his men toiled to protect Naval's shepherds in the wilderness (1 Samuel 25:15). Nevertheless, Naval refused to grant David provisions and hospitality (1 Samuel 25:11). In retaliation, David swears under oath to kill all of Naval's men (1 Samuel 25:22). However, Naval's wife Avigail approaches David with gifts and provisions. David, upon seeing that the assumptions he made regarding the house of Naval were false, calls off his attack on Naval. Scripture does not criticize him for breaking his oath. Thus, we may conclude that an oath is only valid so long as the context of the oath holds true.

§23.2e Contradicting Prior Oaths or Mitzvoth

An oath contradicting a prior oath or a mitzvah is invalid. If such a contradictory oath is made intentionally, one is liable of having made a vain oath (§23.3c-d).

§23.3 Forbidden Oaths

§23.3a Introduction

The Torah prohibits two kinds of oaths. The Sages called these two oaths “*shevuat sheker*” (English: “false oath”) and the “*shevuat shav*” (English: “vain oath”) based on the biblical passages that prohibit each of these oaths:

1. “Do not swear by My name falsely (*leshaker*)” – (Leviticus 19:12)
2. “You shall not carry (*tisa*) the name of Hashem your god in vain (*leshav*)” –(Exodus 20:6)

The meaning of the phrase to “carry” the name of *Hashem* is to swear by Him, as in the verse: “who has not carried Myself in vain, and has not sworn deceitfully” (Psalms 24:4).

§23.3b Shevuat Sheker

A *shevuat sheker* is any oath which testifies to something that is theoretically possible, but which is in reality not true. A *shevuat sheker* may concern one of three time periods:

1. **The Past:** A *shevuat sheker* regarding the past is when someone swears falsely regarding a past event. For example, if someone who has eaten impure food attests that he has not done so.
2. **The Present:** A *shevuat sheker* regarding the present is when someone swears falsely regarding what is currently happening. For example, if someone swears that he is sitting down when he is standing up.
3. **The Future:** A *shevuat sheker* regarding the future is when someone swears that he will do something but does not. For example, if someone swears that he will go to the market but then does not go to the market. If however, circumstances change such that he is prevented from going to the market, he is not liable to uphold his oath (§23.2d).

§23.3c Shevuat Shav

A *shevuat shav* is an oath that is meaningless either because it is redundant or because it attests to something that is obviously true or obviously false. For example, one who swears that “the sun is the sun” has taken God’s name in vain. One who swears that “the sun is the moon” has likewise sinned.

Like a *shevuat sheker*, a *shevuat shav* can reference any of the three time periods. Whether one swears that “the sun was the moon”, “the sun is the moon”, or the “sun will be the moon”, he is equally liable.

The prohibition on *shevuat shav*, also forbids casual, excessive swearing. If one swears excessively, one may be liable of taking God’s name in vain, even if each of one’s oaths taken individually is technically not a *shevuat shav*.

The prohibition on making a *shevuat shav* prohibits one from swearing an oath that abrogates a previous oath. In such a scenario, either the latter oath makes the former oath meaningless (“shav”) or the latter oath is upheld while the former is ignored. Either way, one of the two oaths must be treated

as meaningless (*shevuat shav*). Making an oath meaningless is of course forbidden under the prohibition on *shevuat shav*.

One who swears that he will not uphold one or all of the mitzvot has made a *shevuat shav* (§23.3d). Not only has he sinned, but his oath is invalid and devoid of any *halakhic* force. It is permissible, however, to swear to uphold one or all of the mitzvot. Although such an oath is technically redundant because one is already obligated to uphold the mitzvot, the oath is nevertheless permissible because it serves a practical purpose: strengthening the importance of a given mitzvah in the eyes of the faithful. Furthermore, there are many Scriptural examples of righteous people swearing to uphold the mitzvot (e.g., Nehemiah 10:30).

§23.3d Swearing to Abrogate commandments

As mentioned above, one who swears that he will not uphold one or all of the mitzvot is liable for having made a *shevuat shav*. Furthermore, his oath is without any legal force.

One might argue that the mitzvah to uphold an oath is more important than most or all of the other mitzvot. Under this view, even though one should not *a priori* swear to violate a mitzvah, once one has done so (perhaps accidentally) one must prioritize their oath over the other mitzvot. The Sages argued, however, that the Torah itself was upheld by oath at Sinai: “cursed be⁴ he who does not uphold all the words of this Torah” (Deuteronomy 27:26). Therefore, the prior Sinaitic oath takes precedence over any other oath.

One might object that the case of Joshua and the Givoniim contradicts the principle that an oath cannot abrogate a mitzvah. At first glance, this story appears to suggest that Joshua, a righteous biblical figure, prioritizes an oath over a mitzvah. To determine whether this is so, we must discuss the story in detail.

The Givoniim were among seven nations⁵ living in the land of Israel that the Israelites were commanded to utterly destroy: “you shall smite them; you shall utterly destroy them; you shall make no covenant with them” (Deuteronomy 7:2). During Joshua’s conquest of the land of Israel, however, the Givoniim approached Joshua claiming to be from a distant land (Joshua 9:3-9). Deceived, Joshua and the princes swore an oath of peace with the Givoniim: “Joshua made peace with them and made a covenant with them, to let them live; and the princes of the congregation swore to them” (Joshua 9:15). This covenant appears to be in direct contradiction of a mitzvah: “you shall make no covenant with them”.

Nevertheless, The Israelite princes upheld this covenant even after learning of the *Givoni* deception: “we have sworn to them by *Hashem* the God of Israel, now therefore we may not harm them” (Joshua 9:19).

If mitzvot take precedent over oaths, as the Sages suggest, how could the Israelite’s decision not to harm the Givoniim despite the command to utterly destroy the seven nations be justified? Some of the Sages answered that the command to destroy the seven nations is not an actual requirement, but advice

⁴ The formulation “cursed be he” in this verse is used to introduce a compulsory oath (§23.2b).

⁵ The Givoniim were a subgroup of Amori (2 Samuel 21:2), one of the seven nations the Israelites were commanded to destroy 7:1.

intended to prevent the children of Israel from being seduced by the practices of these nations. This group of Sages compared the advice to destroy the inhabitants of the land to the advice the Torah gives the King “not to acquire great numbers of horses” so as not to lead the people back to Egypt (Deuteronomy 17:16). Just as these Sages held the prohibition on excessive horses to be advice that helps preserve the faith from outside influences but not a precise legal requirement, they held that the command to destroy the seven nations was advice to help preserve the faith but not law.

A second group of Sages, including Rav Afendopolo and Rav Levi, suggest another explanation. This second group held that the commandment to destroy the seven nations was a true commandment, not mere advice. Nevertheless, they argued that the command was contingent on the seven nations rejecting the God of Israel as the only true God. Indeed, the reason given for the commandment is so “that they do not teach you to do after all their abominations, which they have done for their gods” (Deuteronomy 20:18). Yet the Givoniim had already accepted the authority of the God of Israel when they approached the Israelites: “your servants have come for the name of Hashem your God; for we have heard His fame and all that he did in Egypt” (Joshua 9:9). In the absence of the reason for the commandment to destroy the Givoniim being valid (ie: their apostasy), the commandment no longer applied, and the Israelites were under no obligation to destroy the Givoniim.

In fact, had the Givoniim acted honestly, the Israelites would still have refrained from harming them. We know this because Solomon enlisted the non-Givoni remnants of the 7 nations that Israel had been unable to destroy at the time of Joshua for his building projects (1 Kings 9:19-21). This is despite the fact that by Solomon’s time the Israelites had enough power to destroy the remnants of the 7 nations and that these nations had never sworn an oath with the Israelites in the fashion of the Givoniim. Solomon did not kill the 7 nations because by the time of his reign they had accepted the unchallenged authority of Hashem. Likewise, the Israelite spies swore under oath to protect Rachav and her family (Joshua 2:12-14), because she had accepted God’s authority (Joshua 2:9), despite the fact that they knew with certainty that Rachav belonged to one of the seven nations.

Notes on §23.3d:

Would Joshua Really Have Spared the Givoniim?

The Sages argue that Joshua and the people would have spared the Givoniim even had they admitted to the Israelites that they were from the 7 nations. We have already covered the sages substantial support for their argument above. We add here that the Sages argument is supported by Joshua’s question to the Givoniim: “Why have you deceived us saying we are very far from you when you dwell among us?” (Joshua 9:22). Had Joshua’s decision to spare the Givoniim been conditional on their living in the land, his question would have been meaningless, for it would have been obvious to Joshua that the Givoniim were lying to save their lives⁶.

The Story of Yiftach

The story of Yiftach may, at first blush, appear to contradict the principle that mitzvot take precedence over oaths. In exchange for victory in war time, Yiftach vows to give whatever he first sees exit his house to God:

⁶ I thank my brother Oren for pointing this out to me.

“Yiftach vowed a vow to Hashem and said ‘If you will indeed deliver the children of Amon into my hand then it shall be that whatever comes out of the doors of my house to meet me, when I return in peace from the children of Amon, it shall be to God and I will bring it up as a burnt offering” (Judges 11:30-31).

Much to Yiftach’s dismay, Yiftach’s daughter and only child comes out from the doors of his house to greet him. Yiftach nevertheless upholds his oath, and Yiftach’s daughter “bewails her virginity” (Judges 11:38). One might read this to mean that Yiftach sacrifices his daughter as a burnt offering. This would suggest that Yiftach believed his oath to take precedent over the mitzvot prohibiting murder and human sacrifice. Clearly, however, oaths cannot take precedence over the prohibition of murder, because the Torah would under no circumstances condone an act as barbarous as human sacrifice. One could therefore argue that Yiftach was mistaken in his belief regarding the validity of his oath. Scripture takes pain to note that Yiftach partook in the company of “worthless people” (Judges 11:3) and it is possible that he was influenced by their beliefs.

At least some of the Sages, however, offer a different explanation of Yiftach’s actions. Rav Aharon the Elder argues that the proper reading of Yiftach’s oath is “whatever comes out of the doors of my house...shall be to God or I will bring it up as a burnt offering” as opposed to “shall be to God and I will bring it up as a burnt offering”. In other words, depending on the nature of what comes out of his house, Yiftach would either dedicate it to serve God or offer it as a sacrifice to God (should it be an eligible sacrifice). Rav Aharon’s contention that the Hebrew conjunction “ve” can sometimes mean “or” instead of “and” is not without merit. Rav Aharon notes that the prohibition on striking either of one’s parents reads: “he who strikes his father or (ve) mother.” If “ve” could only mean “and”, this verse would permit striking either one or the other parent, only to forbid striking both at once. Thus, “ve” may sometimes mean “or”. If interpreted as such in the context of Yiftach’s vow, it suggests that Yiftach’s daughter was dedicated to God but not sacrificed as a burnt offering (“whatever comes out of the doors of my house...shall be to God or I will bring it up as a burnt offering”). Furthermore, Rav Aharon views his reading of Yiftach’s oath to be more consistent with the fact that Yiftach’s daughter “bewailed her virginity” (Judges 11:38) and not her life⁷.

I would add to Rav Aharon’s argument that the concept of giving a human to God without sacrificing them is not unique to the events surrounding Yiftach. Chana dedicates her son Samuel as a temple servant by means of a vow (1 Samuel 1:11). The language used in Chana’s vow (“I will give him to *Hashem*”) is very similar to that used in Yiftach’s vow (“it shall be to Hashem”), and it therefore seems likely that both intended the same thing. Samuel, however, sires children (1 Samuel 8:3) whereas Yiftach’s daughter bewails her virginity. Perhaps this is because Yiftach’s daughter would not be allowed to leave the Temple service to join her husband’s house. She might therefore have been seen as a very undesirable spouse. Samuel, however, was chosen as a prophet by God. Therefore, he still fulfilled his service “to Hashem” although Samuel’s service allowed him to dwell in his own household away from the Mishkan (1 Samuel 9:18).

§23.3e Punishments for Forbidden Oaths

According to most of the Sages, an intentional, forbidden oath made in God’s name is a capital crime. This is because a *shevuat shav* or *shevuat sheker* is a desecration of God’s name: “you shall not swear by my name falsely so as to desecrate the name of your God” (Leviticus 19:12). We know that desecrating God’s name is a capital crime, because the Torah identifies the lesser sin of desecrating God’s sacrifices as a capital crime: “and he who eats of it shall bear his sin, for he has desecrated the holy thing of

⁷ Mivhar Yescharim on Judges 11:31 Daf 2B Col 2

Hashem, that soul shall be cut off from his people”⁸ (Leviticus 19:8). The Sages disagreed, however, as to whether a forbidden oath made in the name of something associated with God (such as the Torah) carries a penalty. The earlier Sages believed it was a capital crime to swear falsely by anything associated with God. The latter Sages, however, held that while it was a sin to make such an oath, doing so carried no penalty.

Notes on §23.3e:

Although the punishment for making a forbidden oath is usually death, I believe an oath can prescribe its own punishment. For example, a person might swear to “fast for a day, or, failing that, dedicate a given sum of money to the Temple”. Thus, should said person fail to fast, he will pay a financial penalty. He only becomes liable for capital punishment if he refuses to pay his financial penalty because only then has he violated his oath.

When a leader commands his constituents via a compulsory oath (§23.4), he may similarly prescribe a punishment other than death for violating the oath. For example, the leaders of the people in Ezra’s time prescribed a confiscation of property as punishment for those who failed to comply with their compulsory oath: “and they made proclamation throughout Judah and Jerusalem to the children of the captivity that they should gather themselves to Jerusalem and whoever that would not come in three days times according to the counsel of the princes and elders, would have his property confiscated by *cherem*⁹” (Ezra 10:8).

§23.3f Mentioning God’s name in vain

One should not mention God’s name in vain even outside the context of an oath, because the Torah requires us to “fear the glorious and wondrous name” (Deuteronomy 28:58). Thus, if one accidentally mentions a name of God in vain, one should be quick to praise Him so that the mention of God’s name not be in vain.

§23.4 Compulsory Oaths

§23.4a Introduction

Some leaders may compel those whom they lead to act in a certain way by means of a compulsory oath. For example, Saul compels his army not to fast in order that they may have success in the coming war: “Saul adjured the people under oath saying: ‘cursed be the man who eats any food until evening’ ... so none of the people tasted food” (1 Samuel 14:24). Ezra too binds the people by oath to separate themselves from their foreign wives (Ezra 10:5). Although examples of compulsory oaths are common throughout Scripture, the Sages disagreed whether and to what extent such oaths are truly compulsory. Furthermore, *Adderet Eliyahu* discusses precisely which leaders have sufficient authority to issue compulsory oaths. These issues are discussed in the following subsections.

§23.4b Consent Needed to a Compulsory Oath

⁸Being liable to be “cut off from one’s people” (a punishment known as *karet*), is equivalent in severity to being liable for the death penalty (see §1 footnote 6).

⁹ A *cherem* is itself a type of oath.

The Sages disagreed regarding the extent to which an oath can be compulsory. With regards to this issue, the Sages can be divided into three groups, each group granting different amounts of authority to the leaders adjuring the compulsory oaths.

The first group of Sages held that compulsory oaths were binding only if those being put under the oath actively consent to the oath. In this view, a layman is required to answer “amen” or an equivalent in order to become bound by the oath. Scripture frequently notes that the people answer “amen” in response to oaths made by their leaders. For example, when Nehemiah made the people swear to remit debts owed to them, Scripture notes that “all the congregation said ‘Amen’” (Nehemiah 5:13). Even though Scripture does not mention active consent in every case involving compulsory oaths, these Sages argued that the fact that consent is explicitly mentioned in many cases implies that it is a necessary part of all oaths –even if in some cases Scripture neglects to mention verbal consent (presumably for the sake of brevity).

The episode where Saul adjured his army to fast (1 Samuel 14) appears to contradict the view that consent is necessary for upholding a compulsory oath. Saul’s son Jonathan, not having heard his father’s oath, partook from some honey he found in the wilderness. When Saul attempted to inquire of God regarding the fate of an upcoming battle, he received no response. The people cast lots and Jonathan was revealed as the cause of God’s silence. After being singled out, Jonathan confesses his guilt: “I did certainly taste a little honey with the end of the rod that was in my hand” (1 Samuel 14:43). How then could some of the Sages hold that consent is required for an oath to become binding? Jonathan had not even heard his father’s oath when he ate the honey.

The answer in the view of many Sages is that Jonathan was confessing to the wrong crime. Lacking knowledge of his father’s oath, Jonathan was not liable for eating the honey. Instead he was liable for having made light of his father’s oath even after having heard it, thereby tempting the people to break the oath: “My father has troubled the land; please see how my eyes are brightened because I tasted a little of this honey. How much more if the people had readily eaten today of the spoil of their which they found? Would not there have been a much greater slaughter amongst the Philistines?” (1 Samuel 14:29). Whereas Jonathan had no knowledge of the oath upon eating the honey, he knew full well of his father’s oath when he made light of it. Thus, the reading that Jonathan’s sin was mocking his father’s oath and not violating the oath himself is consistent with the opinion that Jonathan would not be held liable for an oath to which he did not give consent. Identifying his sin as one of mocking Saul and not of oath-breaking is also preferable because according to this reading God does not hold Jonathan accountable for an earnest mistake of having broken an oath he never heard.

A second group of Sages argued that any compulsory oaths made by community consensus or by a legitimate leader is binding regardless of whether those bound by the oath gave consent. In support of this view, these Sages pointed to the fact that a witness who hears a compulsory oath to testify in court becomes obligated to testify (Leviticus 5:1). Presumably, this oath is binding even if the witness does not consent to the oath.

The book of Ezra offers further support for the position that consent is not required for a compulsory oath to take effect. According to the book of Ezra, the Israelite elders make an oath to summon the people to Jerusalem: “and they made proclamation throughout Judah and Jerusalem to the children of the exile that they should gather themselves to Jerusalem and whoever that would not come in three days times according to the counsel of the princes and elders, would have his property confiscated by *cherem*¹⁰” (Ezra 10:8). Clearly, those bound by this particular oath did not express consent to the oath. Firstly, those bound by the oath were not in Jerusalem at the time the oath was made. Secondly, the oath instituted a punishment for those who refused to come to Jerusalem. If the oath were optional in the first place, it would not have served any purpose to include a threat of punishment.

Finally, a third group of Sages, including Rav Calev Afendopolo, argued that oaths encouraging the observance of mitzvot or upholding the faith are compulsory even without the consent of those bound by the oath. For example, the Torah itself is upheld through oath at Sinai. Other oaths, however, are optional even if instituted by community leaders or the community at large. For example, if a community swears to avoid entering a certain place or not talk to a certain person on account of personal matters, they may only bind those who consented to the oath.

§23.4c Who has the authority to make compulsory oaths

According to Rav Calev there is a chain of command that establishes who in community has the authority to make compulsory oaths. Rav Calev notes that while he could not find any explicit description of a chain of command in the works of other Sages, the concept follows from the works of his predecessors.

Rav Calev believes prophets hold the highest position of human authority. In the presence of a prophet, it is the prophet who has the authority to make compulsory oaths. The next highest authority is an anointed King. In the absence of a prophet but in the presence of an anointed king, it is the king who has the authority to make compulsory oaths. Furthermore, it is clear that a king has authority over a sage. King Saul compelled his army to fast (1 Samuel 14) although the elders of the people and kohanim were with him. In absence of king or prophet, however, the greatest sage who sits at the head of the highest *beit din* has the authority to adjure the community. For example, Ezra compelled the people by oath multiple times (eg: Ezra 10:8). Finally, a layman never has the authority to make an oath that binds another member of the community.

Occasionally a community's Sages will disagree regarding an oath. Should all Sages be equally learned then the community should follow the opinion of the majority. In the case where one sage is more learned than his fellows, however, the community should follow the opinion of the most learned sage over that of the majority. The exception to this rule is if the community sage and at least two lesser Sages as a whole disagree with the most learned sage. In such a case, the matter should follow the opinion of the community.

¹⁰ A *cherem* is a type of oath

Notes on §23.4:*Authority on Account of Knowledge*

According to Rav Calev, a community's greatest sage generally has the authority to bind the community by oath. Such a sage holds this authority even should he be opposed by the majority of the other Sages. The Karaite attitude towards truth supports this preference of the learned over the majority. Truth, in the Karaite view, is inherent and fundamental, existing independent of popular opinion. The Torah itself states: "you shall not follow the majority to do evil" (Exodus 23:2). It is not implausible then that he who best understands the truth might wield the most authority.

What is perplexing, however, is that Rav Calev restricts the authority of a community's most learned sage in a very specific manner. Namely, a learned sage's oath holds no weight if both of two conditions hold: 1) the community as a whole opposes the oath 2) at least two lesser Sages oppose the oath. The practical appeal of restricting the authority of a leader in cases where an entire community disagrees with the leader is self-evident. What is less clear, however, is how Rav Calev derives these very specific conditions for nullifying a sage's oath. Why do at least two Sages need to side with the community for them to undo the oath of their chief sage? Would not a minimum of three or four Sages be just as reasonable? Furthermore, why does the community as a whole need to disagree with the chief sage? Surely there are other scenarios that could suggest a chief sage has erred. For example, would not all the lesser Sages disagreeing with the chief sage also suggest that the chief sage is likely to be the wrong?

Man Made Law

A compulsory oath, according to some but not all of the Sages, allows a leader to compel his constituents without their consent to perform or refrain from performing some act. A compulsory oath therefore bears resemblance to legislation. Like legislation, an oath imposes a duty or a restriction upon a community without explicit consent from each individual member of that community. In fact, many Sages held that the Torah, itself a body of law, was upheld by oath at Sinai.

Despite the similarities between oaths and legislation, classical Karaite *halakhic* codes are almost if not entirely bereft of any man-made laws. This is in stark contrast to Rabbanite *halakha* which recognizes hundreds of laws as enactments of the Rabbanite Sages. How then should Karaite *halakha* view man-made legislation? More specifically, does the halakhic oath legitimize a system of man-made legislation? Answering these questions requires investigating several sub-questions:

1. Is there ever a need for man-made legislation?
2. Is man-made legislation a violation of the prohibition to add to the Torah?
3. Can an oath be established in permanence?

The order of these sub-questions is not accidental. If there is a practical need for man-made legislation (question 1), then we know that the Torah must allow such legislation¹¹. If, however, there is no need for practical legislation outside the laws already found in the Torah, then man-made legislation may be either permitted or prohibited. If man-made law is prohibited, it is most likely because such law constitutes an illegal addition to the Torah. We thus ask whether man-made legislation violates the prohibition on adding to the Torah (question 2). If man-made law does violate the prohibition on adding, then we know that oaths cannot serve to institute man-made law. If it does not, however, then whether or not compulsory oaths can serve as law remains an open

¹¹ The Torah commands only that which is possible to achieve (§1.1).

question. Many Sages already hold that, like laws, compulsory oaths take effect without explicit consent of those bound by the oath. However, laws are also distinguished by the fact that they remain valid long after the generation who enacted them passes. What remains to be investigated, therefore, is whether compulsory oaths can be enacted in permanence like laws (question 3).

Is There Ever a Need for Man Made Legislation

The Torah does not explicitly legislate many practical matters: Under a halakhic government, how would a traffic system work? How would business fraud be defined? How could a police force be set up given that the Torah leaves the details of its organization completely ambiguous?

There are two possible ways of resolving these issues. First, one might argue that these practical considerations confirm the need for man-made laws and policies. I believe it more likely, however, that the *halakhically* endorsed government is given broad ranging authority to tackle such issues through certain biblical mitzvot. For example, when the Torah commands to “set up for yourselves judges and watchmen in all your gates” (Judges 16:8), it grants the *halakhic* authorities wide ranging discretion in establishing how a judicial and police system would work. The Torah thus allows a robust police force to exist in a diverse range of times and communities by granting the *Halakhically* endorsed government the mandate to set a police force, while not burdening it with overly precise specifications of how this police force must be organized. The Torah’s vagueness regarding the details of a police force is not an oversight that necessitates granting the halakhic authority unchecked power to enact any law of its own crafting; it is an intentional but limited mandate of discretion to the *halakhic* government.

Similarly, when the Torah commands us to keep “just balances, just weights, a just *ephah* and a just *hin*” (Leviticus 19:36), it prohibits more types of fraud than just those made by using false weights. Through *hekeish*, all other forms of fraud are likewise forbidden. Furthermore, just as honest measurement depended at the time of the Torah on adhering to standardized definitions of the *ephah* and the *hin*, honest business practice depends on meeting a standard set of expectations. For example, when one goes to a doctor one expects that the doctor has accomplished a certain level of training. When one reads a financial statement, one expects that its figures are backed up by data of a certain quality. One who abuses these expectations commits fraud. Because fraud is dependent on an implicit agreement between the consumer and the service provider, the Halakhic authority must be given broad discretion in defining what it recognizes as a reasonable implicit agreement. In this way, *halakha* can robustly govern fraud in a myriad of different times and communities.

Another mitzvah that grants the *halakhic* authority broad power is the requirement to build houses with parapets along their roofs (Deuteronomy 22:8). The Torah similarly prohibits negligent conduct when it punishes one who has not taken care to restrain an Ox that has a habit of goring. Presumably, the Torah’s concern for public safety is not restricted to roof or ox related injuries. Through *hekeish*, other forms of irresponsible conduct are prohibited. Oftentimes such conduct can only be avoided by setting universal standards of conduct. For example, if every driver established their own reasonable but slightly different traffic rules, the roads would quickly devolve into chaos. Imagine, for instance, Driver A deciding that a given lane should run from east to west, and Driver B making the equally reasonable decision that the same lane run from west to east. Although each driver has individually made a sound decision, their lack of coordination can lead to tragic results. Thus, when the Torah obligates the *halakhic* authority to punish negligent conduct, we must assume that the Torah also grants it the discretion to define what constitutes irresponsible conduct.

In short, whenever the Torah leaves a policy vague but reason requires that it be precise and standardized¹², the Torah's vagueness can be interpreted as granting broad discretion to *halakhic* government to define that policy. I believe that, all mitzvot considered, the Torah grants halakhic government discretion in a sufficient number of areas such that it may be competent in any conceivable society¹³. Therefore, there is no inherent need to add additional laws completely separate from the mitzvot already in of our Torah. We are here reminded of the words of the Psalmist: "The Torah of Hashem is perfect." (Psalms 19:7).

Does Man-Made Law Violate The Prohibition on Adding to The Torah

The Torah twice prohibits adding or detracting to the Torah:

1. "Do not add to the word which I command you neither diminish from it, to keep the *mitzvot* of Hashem your God that I command you" (Deuteronomy 4:2)
2. "All this matter that I command you, you shall observe to do; do not add to it and do not diminish from it" (Deuteronomy 13:1)

We have previously considered two possible understandings of the prohibition to add to the Torah. First, Rav Bashiatzki understands this command to encompass only laws that claim to have been given at Sinai when in fact they were not. In his words, only those who say "thus says Hashem!" when Hashem has not spoken" (Ezekiel 22:28) are guilty of violating the command of adding to the Torah (§10.3). Rav Bashiatzki's view is supported by the fact that one of the two instances of the prohibition on adding to the Torah directly precedes the passage prohibiting false prophecy (Deuteronomy 13:1). In addition to the false prophecy of the *Tanakh's* time, the Rabbanites' erroneous claim that the Oral Torah was given at Sinai is another example of a violation of Rav Bashiatzki's reading of the prohibition on adding to the Torah. This is because the Oral Torah attributes commandments to God that He never commanded. One who enacts a man-made law, however, has made no such claim and has not violated this prohibition.

Might the prohibition on adding to the Torah also lend itself to a broader reading? One could argue that, when the Torah states "you shall not add" it prohibits any and all human commands. This reading is clearly too broad, however, because we have already established that a leader can command his constituents through compulsory oaths. Furthermore, kings and prophets frequently command the people throughout *Tanakh*. Perhaps then the

¹² Note that there are many *mitzvot* for which the Torah leaves some details ambiguous but that reason does *not* require to be precise and standardized. For example, the Torah does not give many details on how a sukkah is to be built. This does not mean that the *halakhic* government has the authority to specify how we are to construct our sukkah's down to the smallest detail. Indeed, nothing about the *mitzvah* of *sukkah* suggests that it cannot be fulfilled if each person has a slightly different looking *sukkah*. Any requirements regarding sukkot must therefore follow from either *peshat* or *hekeish*.

¹³ I do not attempt to discuss or claim to have researched every instance where the Torah might grant *halakhic* government broad discretion. Neither will I discuss how much government power is actually needed for a functional state. I will note, however, that even our brief discussion above suggests that the Torah provides *halakhic* government enough power to be a so-called "minimal" state. The minimal state, argued to be functional and ideal by many libertarian philosophers, has the essential duties of: 1) providing security for its citizens, 2) governing fraud, and 3) upholding private contract. I have argued above that the Torah grants government the power 1) to set up a police force and to 2) govern fraud. Furthermore, the Torah recognizes 3), contracts between private individuals, in the form of oaths. Thus, the Torah grants halakhic government at least enough authority to become a minimal state.

Clearly the Torah allows for more than a minimal state because it requires that a halakhic government enforce certain "ritual" matters (e.g., violating Shabbat carries a punishment). Furthermore, the Torah may or may not allow for a more expansive state even with regards to governing so-called "secular" matters. I mention the minimal state only because it is the easiest possible connection to make between my exegesis and political philosophy. By showing that the Torah grants *halakhic* government at least enough authority to be a minimal state, I show that *halakhic* government is at least a plausible system of practical government without needing to discuss the essentials of political philosophy that have been better articulated by others.

Torah intends to prohibit only commands that remain in effect as laws. We can differentiate a law from a command because unlike most commands, a law remains in effect long after the people who were first bound by the laws have passed. For example, Americans living in 2015 are still bound by a constitution written 200 years prior. The reading that the prohibition on adding to the Torah is concerned with laws in particular finds support in the fact that in one of two instances the prohibition to add to the Torah is preceded by a discussion specific to the Torah's laws: "Now Israel, obey all the statutes and ordinances which I teach you to do... you shall not add to the thing that I command you neither shall you diminish from it" (Deuteronomy 4:1-2).

I believe, however, that there is an even better reading of the prohibition on adding. Namely, the Torah prohibits only those additions that might challenge its own authority. In line with Rav Bashyatzi's view, this reading includes any law that falsely claims divine authority. However, this view also forbids laws that make no claim of coming from God, but that purport to have equal importance to God's laws. This reading follows directly from the biblical reason given for the command: "you shall not add to the thing that I command you, neither shall you diminish from it *that you may keep the commandments of Hashem your God*" (Deuteronomy 4:2). A law that purports equal authority to the Torah can put one at risk of failing to "keep the commandments of Hashem your God" because in some cases it may force one to choose between a biblical requirement and human enactment. By contrast, a law that recognizes that it is inferior to Torah law does not present such a difficulty. Should one ever be forced to choose between such a law and a biblical mitzvah, both the human and Torah law recognize that the Torah law takes priority.

Thus, we have established that the Torah does not expressly forbid human laws that recognize their own inferiority to Torah law. Nevertheless, the absence of a prohibition on human legislation does not imply that the Torah actively recognizes human law as legitimate. If the Torah does recognize human law, however, it is most likely through the halakhic concept of compulsory oaths, to which we now turn our attention.

Can an Oath Be Established in Permanence

Most laws remain in effect permanently or at least until repealed. When government enacts a law it is binding the present and future generations without their consent. By contrast, the vast majority of compulsory oaths mentioned in Scripture appear to apply only to temporary circumstances. For example, Saul adjures his army to fast for a single day. However, some Scriptural oaths appear to have been established in perpetuity.

First, as the Sages note the Torah itself was upheld by oath at Sinai: "cursed be he¹⁴ who does not uphold all the words of this Torah" (Deuteronomy 27:26). Clearly, the Torah remains binding in perpetuity. One might argue then that other oaths can similarly be established in permanence. This argument overlooks an important distinction, however. Unlike other oaths, the Torah was given by God whose authority is without bounds. An oath declared by God does not need to follow *halakhic* constraints because *halakha* constrains man not God. Therefore, it is not fitting to generalize from the oath made at Sinai.

Arguably, Joshua's oath with the Givoniim was established in perpetuity. Joshua and the Israelite princes swear not to destroy the Givoniim upon entering the land (Joshua 9:19). Generations later, Saul attacks the Givoniim, an act for which God holds Saul's house accountable (2 Samuel 21:1). Could the oath with the Givoniim have remained valid even in Saul's time? According to Rav Moshe Firrouz¹⁵, the oath with the Givoniim was only temporary. Saul was not held accountable because he violated the oath, but because he committed murder. Although the Givoniim were one of the 7 nations the Israelites were commanded to destroy, the Givoniim had accepted God's authority and were thus protected under the general prohibition on murder. Rav Moshe's view is

¹⁴ The formulation "cursed be he" introduces a compulsory oath (Notes on §23.2b)

¹⁵ Rav Moshe has read and confirmed my summary of his position.

consistent with the Sage's claim that the requirement to destroy the 7 nations is valid only so long as these nations continue their idolatrous practices (§23.3d).

Rav Moshe's argument is further supported by the narrative in II Samuel that recounts how God held Saul's house accountable for its acts against the *Givoniim*. God makes no mention of the oath made by Joshua when He professes anger with the house of Saul. Instead, God focuses on the innocent blood that Saul shed, explaining that he plagued the land with famine "because of Saul and his bloody house, for he put to death the Givoniim" (2 Samuel 21:1). While the narrator does mention the Givoniim's oath: "now the *Givoniim* were not of the children of Israel, for they were from the remnants of the Amorites, and the Israelites had sworn to them ..." (2 Samuel 21:2), he mentions the oath as part of a larger parenthetical informing the reader who the Givoniim were. The narrator does not state that the oath has any relevance to God's wrath against the house of Saul, while God does state that He is meting out punishment "because of Saul and his bloody house" (2 Samuel 21:1) .

Other potential examples of permanent oaths are the holiday of Purim and the four fasts. The book of Esther appears to state that Purim is a mandatory holiday:

"The Jews upheld and accepted upon themselves and upon their descendants and upon all who were joining them, without fail to observe both these days [of Purim] according to their writ and their time, every year. And these days of Purim should be remembered and kept in every generation, family, state, and city and these days of Purim should not fail from among the Jews and that their memory should not perish from their descendants" (Esther 9:27-28).

The book of Esther then revisits the mandatory nature of Purim, mentioning also the four fasts¹⁶:

"[Mordechai] sent letters to all the Jews...to confirm these days of Purim in their appointed times, according to what Mordechai the Jew and Esther the Queen had upheld upon them, and as they had ordained for themselves and for their descendants the matter of the fasts and their cries" (Esther 9:31).

The language of both these passages stresses that Purim is mandatory. First, Scripture states that Purim must be observed "without fail". Scripture also makes clear that this obligation is made in permanence: "these days of Purim should be remembered and kept in every generation" (Esther 9:27). Furthermore, Purim appears to be established without the consent of at least two groups of people: Both future generations and converts were not part of the Jewish people when Purim was instituted, but are nevertheless included in the scope of the declaration: "The Jews... accepted upon their descendants and upon all who were joining them...both these days of Purim". Purim is then a likely candidate for a compulsory oath established in permanence. Because Scripture equates Purim and the four fasts (Esther 9:31), the four fasts are an equally likely candidate to be binding in perpetuity.

We cannot be certain, of course, that Purim was upheld by oath, because Scripture does not explicitly mention any oath with regard to Purim. It simply states that the Jews "upheld and accepted" the days of Purim upon themselves. Thus, while the Scriptural language strongly suggests that Purim is mandatory, it simultaneously leaves ambiguous how the Jews could have authority to institute an eternal post-Sinaitic law. Most of the sages to which I have access are similarly ambiguous as to what authority allowed the Jews to institute Purim as a new *halakhic* holiday. While most of these Sages refer to Purim as an "obligation" ("*chiyuv*"), they do not explain how the Jews could have instituted such an obligation. Two exceptions are Rav Aharon the Younger and Rav Yehuda Hadassi. Rav Aharon argues that Purim was instituted as law through the authority of the prophets:

¹⁶ Not all Sages agreed that the mention of the "fasts and their cries" in this verse is a reference to the four fasts (§8.4).

"therefore from that time and onwards both the people of shushan and those dwelling in the unwalled towns became obligated to observe the 14th and the 15th: the days of Purim. And we [too] became obligated and took [the observance of both days of Purim] upon ourselves for this was in the time of prophets and the prophets affirmed [this practice].

However, the Chanuka that the Rabbanites profess, we have not accepted upon ourselves for this was not at that same time of prophets. Also [although] miracles were performed during each and every era, even those performed in the time of prophets were not [always] set as days for rejoicing and [Chanukah] is like these [other miracles]" - Gan Eden Inyan yom HaKiPurim Ch. 5; Daf 64B Col 1.

Rav Aharon's answer is ambiguous on a crucial point, however. Did the prophets endorse Purim through divine revelation or through a compulsory oath upheld by their own authority? Furthermore, if the prophets received no divine command regarding Purim, how do we know that Sages do not wield similar legislative authority? We shall revisit this question, as well as Rav Yehuda Hadassi's on why Purim is mandatory momentarily.

In the meantime, however, it is worthwhile to consider an alternative to the view that Purim is an obligation. Despite the authoritative sounding language of the megillah, Purim may not truly be mandatory. Rav Moshe Firrouz holds by this opinion. First Rav Moshe notes that just as the Torah recognizes that man may voluntarily choose to perform certain religious acts (such as the *neder*) which are beneficial but not required, so too we may choose to observe holidays which despite being beneficial are not required¹⁷. Secondly, Rav Moshe argues that it is illogical that one should have the authority to bind his future descendants without their consent simply on account of having been born before one's descendants.

While Rav Moshe's second argument is compelling, Rav Moshe's moral assumptions are not necessarily a given. The secular world is built on contracts that transcend generations. When two countries sign a treaty, they bind all present and future citizens of each country. Each country does this under the assumption that such an act is moral or at least necessary. When a country ratifies a constitution, it similarly binds future citizens without their consent. Could the Torah sanction oaths that, like secular contracts, transcend generations?

I believe that the answer to this question is a clear "no". In general, Scripture rebuts the idea that men can be trusted with the foresight to make plans even for the short range future. In fact, many of the Scriptural stories involving oaths emphasize the limits of human foresight: Yiftach immediately regrets his oath when he realizes he must dedicate his daughter to the Temple; David does not carry out his pledge to attack Naval's house; the entire Israelite nation regrets the oath at Yavesh Gilad; and even Joshua's oath regarding the Givoniim is soon found to have been made under false assumptions. Likewise, in the modern world major treaties are broken as soon as they are formed (consider the Treaty of Versailles that ended World War I) and constitutions are amended as soon as they are ratified. In the words of the Psalmist: "Hashem knows the plans of man; that they are futility" (Psalms 94:11). Kohelet similarly emphasizes that only adherence to God's law can transcend the futility of human plans: "futility of futilities, said *Kohelet*, all is futility....The end of the matter, all having been heard, is to fear God and keep his commandments, for this is the whole man" (Ecclesiastes 12:12). As a general matter, I therefore agree

¹⁷ Here is Rav Moshe's direct elaboration regarding this point. At his request, I have translated his words from an email he sent me:

"Just as there are mandatory prayers (which are in the morning and the evening) and together with them there are voluntary prayers (neder, nedavah, bakasha, etc.) so too there are mandatory chagim and appointed times that are written in the Torah and which [the Torah] upholds as a straightforward obligation from God may His name be blessed. However, the fasts of the destruction of the temple and the days of Purim - these are religious holidays that were instituted following events that transpired after the giving of the Torah and therefore they have no legal validity from the Torah. That is to say one who does not uphold them will not receive punishment from God (for there is no mitzvah to do them) but one who does uphold them hastens the redemption and strengthens his spiritual connection with God. "

with Rav Moshe's assumption regarding oaths¹⁸: Regular people are not trusted with the wisdom or authority to bind future generations by oath. Even prophets, unless speaking on behalf of Heaven, lack this power. Indeed, except when speaking on behalf of God, even prophets fall prey to the lack of human foresight. For example, when Joshua and the princes made an oath with the Givoniim, they "inquired not from the mouth of Hashem" (Joshua 9:14) and were therefore deceived by the Givoniim. Finally, we may add that oaths are not inherently revocable. Although we have seen some (in my estimation, ultimately flawed) evidence that oaths might transcend generations like a law does, there is no reason to assume that oaths may be repealed with the same flexibility as laws. While it would be possible to build in terms of revocation into an oath (eg: "We hereby swear that the following ordinance shall take effect until this legislature votes to say otherwise"), these flexible terms of revocation are in no way inherent to oaths. Thus, if one holds that the Torah grants man power to bind generations with an oath, he must also grant him the power to do so irrevocably. The practical reasons why this should not and therefore, according to the Torah, cannot be so are obvious.

Nevertheless, I disagree with Rav Moshe that Purim is not a true *halakhic* requirement. The language of the megillah strongly implies that it is mandatory. I therefore believe that Purim and the four fasts, while initiated by the Jewish people (either by oath or by informal consent), were endorsed by direct divine revelation to the prophets. At first glance, such a claim may seem like speculation. However, because the Tanakh is divinely inspired, the very fact that the verses suggesting that Purim is mandatory are included in Tanakh is testimony to the fact that God approved of Purim as a mandatory holiday. Just as we hold that the stories of Genesis are the word of God although they are not preceded with the phrase "And Hashem spoke to Moshe saying", so too the verses of the megillah are divinely affirmed, although there is no direct mention of God having affirmed Purim's legitimacy¹⁹.

It is possible that Rav Yehuda Hadassi used a similar argument to what I have given above to conclude that Purim was mandatory. Like Rav Aharon who holds that Purim is mandatory because "this was in the time of prophets and the prophets affirmed [this practice]" (see above), Rav Yehuda argues that prophetic authority upholds the mandatory nature of Purim. Rav Yehuda, however, states not only that the prophets made Purim mandatory but also that it was they who wrote the megillah:

"The material of Megillat Morderechai and Esther peace be upon them were written by Chagai, Zecharia, and Malachi peace be upon them for this happened in their time²⁰ and they put it and adjoined it next to the book of Lamentations because [the events of Purim] happened after the destruction of the first temple and they made it mandatory throughout the generations"²¹

¹⁸ In opposition to my points, one might argue that, there are many Scriptural examples of descendants bearing the consequences of their ancestor's choices. For example, God punishes all future generations of Eli's house on account of Eli's sins (1 Samuel 2:27-34). This suggests that the Torah is not fundamentally opposed to the idea that people can be bound by the choices of their predecessors. Yet these punishments are made by divine decree not halakhic decree. I argue specifically that humans cannot be trusted with infinite temporal authority because they have very limited foresight.

¹⁹ Importantly, I am not suggesting that all practices adopted by the Jewish people and mentioned in *Tanakh* are *halakhic* requirements (see my discussion below on bewailing Yiftach's daughter or my discussion on Gid Hanashe). In general, to prove that a practice is *halakha* one must appeal to a *peshat* reading of the five books of Moshe, to *hekeish*, or to *sevel hayerusha*. The laws of Purim and the four fasts are exceptions, however, because *Tanakh* states not only that these holidays were practiced but that they are mandatory throughout the generations (Esther 9:27-28,31).

²⁰ There is strong Scriptural evidence for Rav Yehuda's claim that the events of Megillat Esther happened during the time of these prophets. Ezra 4:6 suggests that Achashverosh (from the Purim story) ruled immediately after Darius (who let Ezra and Nehemiah bring the people back to Israel). Thus, it is likely that at least one of Zecharia, Chagai, and Malachi (see Ezra 5:1) who lived at the time of Ezra and Nehemiah were still alive during the events of Purim. There may even be historical evidence or verses proving this even more conclusively that I am not familiar with.

²¹ Eshkol Hakofer Ch 147 Daf 94B Col 1

Arguably, Rav Yehuda Hadassi was making a similar the argument to the one I have given above. That is, Purim is known to be divinely revealed because the verses that state that it is mandatory appear in a divinely revealed text. In Rav Yehuda's view, a text written by the prophets Zecharia, Malachi, and Chagai.

Gid HaNashe

I previously argued that refraining from eating the *Gid HaNashe* is practice not law (Notes on §15.8b). This is because the language of the passage regarding *Gid HaNashe* is very different from that of those verses describing Purim. Whereas Purim is to apply “without fail” and “in every generation” (Esther 9:27-28), the Torah states “the children of Israel do not eat the *Gid HaNashe* until this very day” (Genesis 32:33). As previously argued, the phrase “until this very day” suggests that the Torah is recounting a historical practice that happens to have continued to the present day, not issuing a command that must be continued indefinitely²² (Notes on §15.8b).

Bewailing Yiftach's Daughter

After Yiftach's daughter bewails her virginity (Judges 11:38), the Tanakh (according to common translations) states:

“she returned to her father who did with her according to his vow which he had vowed and she had not known a man. And it became law (*chok*) in Israel that the daughters of Israel went yearly to lament the daughter of Yiftach the Gileadite four days a year” (Judges 11; 39-40)

Based on the above reading of the verse, one might argue that it should still be “law in Israel” to mourn Yiftach's daughter. This view is mistaken, however. First, the reading suggested by the translation above, requires that verse 40 begin with the phrase “and it was law in Israel”. However, the Masoretic punctuation parses these verses such that verse 39 ends with the phrase “and it was a law in Israel”. More importantly, these verses make no mention of implementing an *eternal* law. It is likely that the practice of mourning Yiftach's daughter had never been intended as permanent law. By contrast, the verses describing Purim explicitly state that Purim applies in “every generation”.

²² Although not law, it is no doubt beneficial to refrain from eating the *Gid Hanashe* (Notes on §15.8b).