YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**Shiur #26:**

**The Halakha that Might Never Have Been -**

***Yom Tov Sheini***

**Introduction**

We have spent this year studying the ways in which communications technology in general, and social media in particular, has affected the application of Halakha. As we have noted previously, Halakha affects every part of our lives, and since communications technology has transformed how we live, this must be the case. As we approach *Parashat Hachodesh*, the first national set of commandments given to the Jewish people, and Rosh Chodesh Nissan, it is worth considering two related *mitzvot*, one biblical and one rabbinic, that would have been radically changed by this technology: *kiddush ha-chodesh* (the sanctification of the month) and *yom tov sheini* (the additional festival day observed in the Diaspora).

***Kiddush Ha-chodesh***

In Israel’s final days in Egypt, God gives Moshe several commandments (*Shemot* 12:1-20). The first law mentioned is the following:

This month (*Ha-chodesh ha-zeh*) shall mark for you the beginning of the months; it shall be the first of the months of the year for you. (*Shemot* 12:2, JPS translation)

*Chazal* understand this verse[[1]](#footnote-1) as a biblical mitzva to determine the months based on witnessing the new moon. Playing on the word “this” (*zeh),* they write:

**“This month shall be to you the beginning of months”** ([Exodus 12:2](https://www.sefaria.org/Exodus.12.2)). This teaches that when there is a moon **like this, see** it **and sanctify** the month. When the new moon is seen, the month must be sanctified without delay. (*Rosh Hashana* 20a, Koren translation).

The Mishna in *Rosh Hashana* describe how, once witnesses had been accepted by the court, the court would notify the Jewish world that it was Rosh Chodesh.

It goes on to explore the historical developments in the practice of the rabbinical courts as the *minim* (heretics, literally sectarians) tried to corrupt the calendar to fit their needs. (As *Chazal* understand it, *the* *minim* wanted to ensure that the first day of Pesach would fall on Shabbat so that the *omer* count would begin on Sunday, based on how the *minim* interpreted the phrase “*mi-macharat ha-shabbat”* in *Vayikra* 23:15.)

If [the judges] didn't know [the witness], others were sent with him to testify about him. At first, testimony about the new moon was received from any one; [but] from when the heretics corrupted [and bribed witnesses to lie], it was ordained, that [testimony] should be received only of those witnesses who were known.

At first, bonfires were lighted on the tops of the mountains [to transmit the appearance of the new moon]; but when the Cutheans [the Samaritans] corrupted [the process], it was ordained that messengers should be sent out.

How were these mountain fires lighted? They brought long staves of cedar wood, and shoots, and sticks from oil trees, and the scraps of flax, which were [all] tied on the top of [the staves] with twine; [with these, the court's agent] went to the top of the mountain, and lighted the fire; and waved them to and fro, upward and downward, until he could see his fellow, [and] that [the latter] was doing the same on the top of the next mountain; and so too, [this process was repeated with regards to the next fellow] on the top of the third mountain.

And from where did they light these mountain fires? From the Mount of Olives to Sartava, and from Sartava to Grofina, and from Grofina to Havran, and from Havran to Beit Biltin; and from Beit Biltin, [the agents] did not move from there, but [rather] he would wave [the flaming brands] to and fro, upward and downward, until he could see the whole Diaspora in front of him [lit up] like a torch fire. (Mishna, *Rosh Hashana* 2:1-4, translation from Sefaria)

The Mishna outlines how the heretics first attempted to corrupt the process through false witnesses. Later, however, when the rabbis set up protective measures to protect this, they tried to play with the lines of communication. The rabbis originally had notified the Jewish world through a series of bonfires (similar to those seen in Peter Jackson’s *Lord of the Rings* movies). When the heretics began to set up fake bonfires, the courts had to take a new direction: sending messengers on horseback.

We can only imagine that had the courts had any of the technology that we have now, this could have all been avoided. A phone call, email, Facebook post, Tweet, etc. could have been used to notify the world. Obviously, precautions would have had to be put in place to protect against the use of false accounts, hacking into the official accounts, and the like, but presumably it could have been done. It is no different than how critical information is now spread around the world instantaneously. From a modern perspective, the solution seems so simple (though we are also aware of how easily “fake news” spreads, which creates its own set of problems, as we shall see in our next two *shiurim*).

***Yom Tov Sheini***

The Mishna notes that the messengers would be sent specifically in the months in which there were holidays which needed to be observed, so that people would know what the day the holiday fell on:

For six months messengers go out. [When beth-din sanctified the New Moon, they sent out (messengers) to inform the exile which day they had sanctified, whether the thirtieth, so that the month past was defective; or the thirty-first, so that the month past was full. (And the messengers of beth-din may desecrate neither Shabbath nor yom tov.)]: For Nissan, as it affects (the date of) Pesach; for Av, as it affects the fast (of the ninth of Av) [more afflictions having befallen us then than on (the dates of) the other fasts.]; for Elul, as it affects Rosh Hashanah [They apprise us when it is Elul, and Rosh Hashanah is observed on the thirtieth of Elul in the exile. For on most years Elul is not intercalated. And even though there is the possibility that beth-din might intercalate it, they (those in the exile) have no way of knowing this, so that, perforce, they must follow the majority of the years. And if they did not know when Elul began, they would not know its thirtieth day.]; for Tishrei, as it affects proper institution of the festivals. [The messengers go out the day after beth-din sanctified Tishrei, and go as far as they can until the festival, apprising them whether or not beth-din had intercalated Elul, so that they not be apprehensive on Yom Kippur and Succoth (as to whether they are observing them in their proper times)]; for Kislev, as it affects Channukah; and for Adar, as it affects Purim. And when the Temple stood, they would also go out for Iyyar, as it affects "the minor Pesach" [Pesach Sheni]. (Mishna, *Rosh Hashana* 1:3, translation from Sefaria)

As the Gemara in the first and second chapters notes, the delay that was inherent in sending these messengers meant that many places would not hear in time. This led to the rabbinic institution of *yom tov sheini shel galuyot,* the second day of the festival in the Diaspora. As a lunar month can only be twenty-nine or thirty days, and the Gemara assumes that people would never go a full month without hearing about Rosh Chodesh, they could only ever be one day off from the proper calendar at most. Thus, they kept two days from doubt. Originally, even places in Israel which were on the periphery would keep two days for the same reason.

However, as we noted above, the entire system that led to these delays was only established because of the limited communications technology available to *Chazal*. One must wonder: if, as we described above, modern technology could have ensured safe transmission of the information that it was Rosh Chodesh, wouldn’t it follow that *yom tov sheini* would never have needed to be instituted in the first place?

Of course, this assumes that the only reason for *yom tov sheini* was due to the doubt. Some have attributed more spiritual reasons for the institution. For example, the third Lubavitcher Rebbe, the Tzemach Tzedek, writes in *Derekh Mitzvotekha* 114:1 that holiness takes more time to reveal itself outside of the Land of Israel; thus, two days of *yom tov* are needed.

Rav Eliezer Melamed writes this as well:

As is true in the entire Torah, the *halachic* side is compatible to the ‘*ruchani*’ (spiritual) side; since ‘*kedusha*’ (holiness) is more revealed in the Land of Israel, consequently the ‘*chagim*’ (festivals) in *Eretz Yisrael* are able to be revealed in one day, as the Torah commands. However, those in ‘*chutz la’aretz*’ are farther away from the revelation of ‘*kedusha*’, and therefore, in order to absorb the spiritual “lights” of the ‘*chagim*’, two days are required, as the Rabbis ordained. This is analogous to a flashlight: When held close to an object, its light is strong and concentrated in a small spot, but when the flashlight illuminates an object in the distance, its light is weakened, and dispersed over a large area. Thus, the “lights” of the ‘*chagim*’ are revealed in *Eretz Yisrael* in one, concentrated and focused day, while in ‘*chutz la’aretz*’ the “*lights*” of the festivals are weaker and spread out over two days (*Peninei Halakha,* <http://revivimen.yhb.org.il/page/29/>)

Whatever merit there is to that argument, as Rav Melamed himself notes, the halakhic reason is primary.

It is worth noting that Rav Saadia Gaon is quoted (*Teshuvot Ha-Geonim Musafia* 1) as saying that *yom tov sheini* is a tradition from Moshe. However, as Rav Hai Gaon notes there, this is probably a polemical statement against the Karaites, who rejected Rabbinic Judaism.

**Why do we still keep *yom tov sheini*?**

The rationale for keeping *yom tov sheini* became questionable long before social media. Rav David Brofsky summarizes:

Sometime during the later Amoraic period, the Jewish communities began to observe *Rosh Chodesh* and the Festivals based upon a fixed calendar. The establishment of this calendar and its halakhic basis are the subject of great debate, both Rabbinic and academic… (For more information, see Rambam, *Hilkhot Kiddush Ha-Chodesh* 5:3; R. Avraham bar Chiyya’s *Sefer Ha-Ibbur*, citing R. Hai Gaon, who attributes the set calendar to Hillel in the year 358/9 CE; see also Sacha Stern, *Community and Calendar: A History of the Jewish Calendar, Second Century BCE-Tenth Century CE* [Oxford University Press, 2001]). After the establishment of the calendar, it became customary for communities outside of Israel to observe two days of *Yom Tov,*while those in Israel only observed one. (<https://www.etzion.org.il/en/yom-tov-sheni-1>)

Indeed, Talmudic sources raise the issue:

The Gemara asks: **And now that we know the determination of the** first day of the new **month, what is the reason** that **we observe two** Festival **days** in the Diaspora? **Because they sent** a warning **from there,** from Eretz Yisrael: Although now there is a fixed calendar and there is no uncertainty, **be careful to** observe **the custom of your fathers** that **you received,** because **at times the monarchy** will **issue decrees** of persecution restricting Torah study and the fixed calendar may be forgotten. **And** the people will **come to** have their proper observance of the Festivals **be disrupted** again. (*Beitza* 4b, Koren translation)

The concern of *Chazal* seems have to been well-founded, as a decree that attempted to quash the Jewish calendar was actually issued by Emperor Constantine in 325 CE:

At the council we also considered the issue of our holiest day, Easter, and it was determined by common consent that everyone, everywhere should celebrate it on one and the same day… [I]t seemed very unworthy for us to keep this most sacred feast following the custom of the Jews, a people who have soiled their hands in a most terrible outrage, and have thus polluted their souls, and are now deservedly blind. Since we have cast aside their way of calculating the date of the festival, we can ensure that future generations can celebrate this observance at the more accurate time which we have kept from the first day of the passion until the present time. (“Emperor Constantine to all churches concerning the date of Easter,” <https://www.fourthcentury.com/urkunde-26/>)

The Gemara goes on to debate whether the fact that we keep two days despite this reality makes it as if there are two certain days of *yom tov*, or we still treat it as a case of doubt.

It is unclear whether the central reason to keep *yom tov sheini* is the custom or the fear that the calendar will be corrupted. Additionally, it is unclear whether the Gemara literally means that the status of *yom tov sheini* is a custom or formal decree. Rav Brofsky summarizes:

The *gemara* mentions two reasons for this practice: *minhag avot* (maintaining the custom of one’s forefathers) and *kilkul* (the fear that a government might issue a decree that would lead the community to forget the calendar and become confused regarding ritual). The *Rishonim* differ as to whether the primary reason to observe *yom tov sheni* stems from the fear of *kilkul* or the desire to maintain the well-established *minhag* of the Diaspora communities. Interestingly, the *Yerushalmi* (3:9) only mentions the *minhag*, and not the fear of a government issuing a decree.

In addition, the *Rishonim* question whether to view the observance of *yom tov sheni* as a *minhag*, an ancient custom (Rabbeinu Tam, *Sefer Ha-Yashar, Chelek Ha-Chiddushim* 537, cited by Tosafot, [*Sukka* 44b](https://www.sefaria.org/Sukkah.44b?lang=he-en), s.v. *kan*), or a formal Rabbinic enactment, a *takana* (Ritva, *Rosh Ha-Shana* 18a; Ran [*Sukka* 22a](https://www.sefaria.org/Sukkah.22a?lang=he-en), s.v. *Itmar*). Some confusion surrounds the position of the Rambam (see *Hilkhot*[*Berakhot* 11:16](https://www.sefaria.org/Berakhot.11a.16?lang=he-en), *Hilkhot Yom Tov* 1:21 and 6:14, *Hilkhot Talmud Torah* 6:14, *Hilkhot Kiddush Ha-Chodesh* 5:6).

As the Gemara goes on to note, Rosh Hashana is unique in this regard, as it falls on the first day of the month. Thus, even in Israel, two days were kept. However, once the calendar was established, debates arose as to whether two days of Rosh Hashana should be kept in Israel. Again, Rav Brofsky summarizes:

There is a disagreement, however, as to whether the communities in Israel should continue to observe two days after the establishment of the calendar.

R. Hai Gaon (939-1038, *Teshuvot Ha-Geonim Musafiyah* 1), responding to an inquiry from R. Nissim, acknowledges that the contemporary custom (11th century) of many in the Land of Israel was to observe one day of *Rosh Ha-Shana*, but he argues that they should return to the original custom of their forefathers and observe two days. Similarly, Rabbeinu Chananel (990–1053) also implies that the residents of the Land of Israel should keep two days of *Rosh Ha-Shana* ([*Beitza* 5b](https://www.sefaria.org/Beitzah.5b?lang=he-en&utm_source=sef_linker)). The Rif ([*Beitza* 3a](https://www.sefaria.org/Beitzah.3a?lang=he-en&utm_source=sef_linker)), as well as the Rambam (*Hilkhot* *Yom Tov* 1:21, *Hilkhot Kiddush Ha-Chodesh* 5:8), concurs.

The Rosh ([*Beitza* 1:4](https://www.sefaria.org/Mishnah_Beitzah.1.4?lang=he-en&utm_source=sef_linker)) cites the Rif’s student, Rabbeinu Efraim, who disagreed, ruling that in the Land of Israel, one should observe only one day of *Rosh Ha-Shana*. R. Zarachya Ha-Levi agrees in his *Ba’al Ha-Maor* ([*Beitza* 3a](https://www.sefaria.org/Beitzah.3a?lang=he-en&utm_source=sef_linker)). He insists that the custom in Israel had always been to keep one day of *Rosh Ha-Shana*, as the above cited responsum from R. Hai Gaon implies, although the influence of Provencal scholars had brought about a change in that practice. The Ramban (*Milchamot Hashem*, ibid.) defends the position of the Rif, and insists that although the custom in Israel was indeed to keep one day of *Rosh Ha-Shana*, this was a mistaken custom brought about by the long exile of the Jewish People.

The current practice is in accordance with the Rif, and even in Israel all observe two days of *Rosh Ha-Shana* (*Shulchan Arukh* 601:2).

The question of the exact borders of Israel for the purposes of *yom tov sheini* is the subject of great debate that is beyond the scope of this *shiur*.

For a summary of the question of what an Israeli visiting the Diaspora does on *yom tov shein*, as well as the reverse case, see <https://www.etzion.org.il/en/yom-tov-sheni-2>.

In addition to the rationale offered by the Gemara, as the Gemara notes in the continuation, the general principle is that all rabbinic decrees that were enacted by a vote remain in effect until uprooted by a later court. Thus, even if the reason ceases to apply, the decree remains in effect. While there are many exceptions to this rule, it is difficult to pin down a principle that explains them all.[[2]](#footnote-2)

**The Historical Controversy**

Specifically because *yom tov sheini* is explicitly identified by the Talmud as a decree whose primary reason is no longer relevant, it became one of the first laws rejected by the Reform Movement. Subsequently, it became key in the polemical arguments between the reformers and the traditionalists. For a full discussion of the fascinating history of these debates, see Jacob Katz’s “The Orthodox Defense of the Second Day of the Festivals” in *Divine Law in Human Hands: Case Studies in Halakhic Flexibility* (Magnes Press, 1998), pp. 255-319.

**Back to Social Media**

As noted, the Talmud was already aware that the rationale for *yom tov sheini* no longer exists. Nevertheless, it is binding, either as custom or as a rabbinic decree. What is important for our purposes, however, is to reflect on how much the world has changed. Even without an established calendar, the existence of communication technology like that which we possess would have negated the problems facing *Chazal* from the start. The very fact that the concerns they faced seem so easily solvable in our modern world is testament to our central thesis: life and Halakha have been radically affected by their interaction with communications technology; had such technology existed when Halakha was being formulated, certain laws may have looked very different from the very beginning.

1. The Ramban (ad loc.) derives from this verse that there is a biblical mitzva to count the months from Nissan. The issue of whether this is agreed upon, and if so, what the exact implication are, is subject to much dispute among the Poskim*.* [↑](#footnote-ref-1)
2. Rav Shlomo Brody has recently submitted a doctoral thesis on this topic. [↑](#footnote-ref-2)