

What it Means to Be Different in Prayer and Tanach

Rabbi Jonathan Ziring: jjziring@midgalhatorah.org

I. Difference: Built into Creation

- ❖ The Midrash (cited in part by Rashi) understands Korach's argument with Moshe to have challenged a fundamental truth of creation – that difference exists. How does the Midrash derive this? Are you compelled by the argument?
- ❖ In what ways can people or things be different from each other? Does difference imply hierarchy? How does the Korach story highlight the complexity of defining the way in which things can be different?

1. Bamibdar 16:5

(ה) וַיִּדְבֹר אֶל־קֹרַח וְאֶל־כָּל־עֲדֹתָיו לֵאמֹר בֹּקֶר וַיֵּדַע ה' אֶת־אֲשֶׁר־לוֹ וְאֶת־הַקֹּדֶשׁ וְהַקְּרִיב אֵלָיו וְאֶת־יִבְחָרְבוּ יִקְרִיב אֵלָיו:

(5) Then he spoke to Korah and all his company, saying, “Come morning, the LORD will make known who is His and who is holy, and will grant him access to Himself; He will grant access to the one He has chosen.

2. Midrash Tanchuma, Korach 5

דָּבָר אַחֵר, בִּקְרָא. אָמַר לָהֶם מֹשֶׁה, גְּבוּלוֹת חֶלֶק הַקֹּדֶשׁ בְּרוּךְ הוּא בְּעוֹלָמוֹ. יְכוּלִין אַתֶּם לַעֲרֹב יוֹם בַּלַּיְלָה. זֶהוּ שְׂאֵמֶר הַפְּתוּבָה, בְּתַחֲלָה, וַיְהִי עָרֵב וַיְהִי בֹקֶר, וַיִּבְדֹּל אֱלֹקִים בֵּין הָאֹר וּבֵין הַחֹשֶׁךְ (בראשית א, ד), בְּשִׁבִיל תִּשְׁמִישׁוֹ שֶׁל עוֹלָם. וְכֵשֶׁם שֶׁהִבְדִּיל בֵּין הָאֹר וּבֵין הַחֹשֶׁךְ, כֵּן הִבְדִּיל אֶת יִשְׂרָאֵל מִן הָאֻמוֹת, שְׂנֵאָמַר: וַאֲבָדִיל אֶתְכֶם מִן הָעַמִּים לְהִיּוֹת לִי (ויקרא כ, כו). וְכֵן הִבְדִּיל אֶת־הָאֹר, שְׂנֵאָמַר: וַיִּבְדֹּל אֶת־הָאֹר לְהַקְדִּישׁוֹ בְּקֹדֶשׁ הַקֹּדְשִׁים (דה"א כג, יג). אִם יְכוּלִים אַתֶּם לַעֲרֹב אוֹתָהּ הִבְדִּילָה שֶׁהִבְדִּיל הַקֹּדֶשׁ בְּרוּךְ הוּא בֵּין הַיּוֹם וּבֵין הַלַּיְלָה, כֵּן תוּכְלוּ לְבַטֵּל אֶת זֶה. לְכֵן אָמַר לָהֶם: בִּקְרָא וַיֵּדַע ה' וְגו', כִּבְרָר הוּא מִתְקַן, אֶת אֲשֶׁר יִבְחָר בּוֹ יִקְרִיב אֵלָיו.

Another interpretation (of Numb. 16:5), “In the morning.” Moses said, “The Holy One, blessed be He, has distinguished boundaries for those in His world. Can you confuse morning with evening? And that is what is written in the beginning (in Gen. 1:5), ‘There was evening and there was morning.’ And (in vs. 4) ‘God separated the light and the darkness,’ for its use in the world. And just as he made a separation between the light and the darkness, so did he separate Israel from the nations, [as stated] (in Lev. 20:26), ‘I have separated you from the [other] peoples to be Mine.’ So also did he separate Aaron, as stated (in I Chron. 23:13), ‘Aaron was separated to consecrate the most holy things.’ If you can confuse those distinctions in which he made a separation between the day and the night, you may be able to nullify this.” For this reason he said to them (in Numb. 16:5), “In the morning the Lord will make known [those who belong to Him].” Such a one is already designated; (according to *ibid.*, end) “the one whom He will choose He will have draw near unto Him.” (Numb. 16:6:)

3. Bamibdar 16:7-11

(ז) וַתִּנּוּ בָתָן | אֲשֶׁר וְשִׁמּוֹ עָלֶיְהֶן קִטְרֹת לִפְנֵי ה' מִחֹר וְהָיָה הָאִישׁ אֲשֶׁר־יִבְחָר ה' הוּא הַקֹּדֶשׁ רַבְלְכֶם בְּנֵי לֵוִי: (ח) וַיֹּאמֶר מֹשֶׁה אֶל־קֹרַח שְׂמַעֲרֵנָא בְּנֵי לֵוִי: (ט) הַמַּעַט מִכֶּם כִּי־הִבְדִּיל אֱלֹקֵי יִשְׂרָאֵל אֶתְכֶם מֵעַדְת יִשְׂרָאֵל לְהַקְרִיב אֶתְכֶם אֵלָיו לַעֲבֹד אֶת־עֲבֹדַת מִשְׁכַּן ה' וְלַעֲמֹד לִפְנֵי הָעֵדָה לְשֹׁרְתָם: (י) וַיִּקְרַב אֶתְךָ וְאֶת־כָּל־אֲחֵיךָ בְּנֵי־לֵוִי אֶתְךָ וּבִקְשָׁתֶם גַּם־פְּהִנָּה: (יא) לָכֵן אֶתָּה וְכָל־עֲדַתְךָ הַנֹּעֲדִים עִל־ה' וְאֶתְהֶן מֵהַיּוֹם כִּי תִלּוּנוּ [תִּלְוִינוּ] עִלָּיו:

(7) and tomorrow put fire in them and lay incense on them before the LORD. Then the man whom the LORD chooses, he shall be the holy one. You have gone too far, sons of Levi!” (8) Moses said further to Korah, “Hear me, sons of Levi. (9) Is it not enough for you that the God of Israel has set you apart from the community of Israel and given you access to Him, to perform the duties of the LORD's Tabernacle and to minister to the community and serve them? (10) Now that He has advanced you and all your fellow Levites with you, do you seek the priesthood too? (11) Truly, it is against the LORD that you and all your company have banded together. For who is Aaron that you should rail against him?”

II. Havdala: Tefillah and Tanach

- ❖ How does the Avudraham think prayer was constructed? How does the Talmud capture this idea in the context of Haggada? Based on this, what is the best way to study any prayer, and Havdala in specific?

4. Avudraham, Introduction

ויש לך לדעת כי לשון התפלה הוא מיוסד על לשון המקרא ולכן תמצא כתוב בפירוש הזה על כל מלה ומלה פסוק כמוה או מעניניה, ומלות מעטים יש שלא נמצא להם יסוד במקרא ולכן אביא להם יסוד מהגמרא

And you should know that the language of the Amidah is based on the language of Scripture. Therefore, you will find writ-ten in this commentary, on every word, a verse like it or relating to its essence. There are a few words for which a biblical basis could not be found, and therefore, I will bring for them a basis from the Talmud....

5. Pesachim 103b-104b

פתח ואמר המבדיל בין קודש לחול בין אור לחשך בין ישראל לעמים בין יום השביעי לששת ימי המעשה אמר ליה למה לך כולי האי והאמר רב יהודה אמר רב המבדיל בין קודש לחול זו היא הבדלתו של רבי יהודה הנשיא אמר ליה אנא כהא סבירא לי דאמר רבי אלעזר אמר רבי אושעיא הפוחת לא יפחות משלש והמוסיף לא יוסיף על שבע אמר ליה והאמר לא תלתא אמר ולא שבע אמר אמר ליה איברא בין יום השביעי לששת ימי המעשה מעין חתימה היא

Rava **began** his recitation of *havdala* and **said: Who distinguishes between sacred and profane, between light and darkness, between Israel and the nations, between the seventh day and the six days of work.** Rav Ya'akov bar Abba **said to him: Why do you need all this? Didn't Rav Yehuda say that Rav said** with regard to the statement: **Who distinguishes between sacred and profane, that this alone is the *havdala* of Rabbi Yehuda HaNasi?** Why is this plain statement not enough for you? **He said to him: I maintain in accordance with this statement that Rabbi Elazar said that Rabbi Oshaya said: One who decreases** the number of distinctions in the text of the *havdala* should **not decrease** them to **less than three, and one who increases** the number of distinctions should **not increase** them to **more than seven.** Rav Ya'akov bar Abba **said to him: But the Master did not say three distinctions, nor did he say seven,** as he actually mentioned four distinctions. **He said to him: In truth,** that is inaccurate, as the distinction **between the seventh day and the six days of work** is not considered a separate statement of distinction...

אמר רבי יהושע בן לוי המבדיל צריך שיאמר מעין הבדלות האמורות בתורה מיתבי סדר הבדלות היאך אומר המבדיל בין קודש לחול בין אור לחושך בין ישראל לעמים ובין יום השביעי לששת ימי המעשה בין טמא לטהור בין הים לחרבה בין מים העליונים למים התחתונים בין כהנים ללוים וישראלים וחותרם בסדר בראשית ואחרים אומרים ביוצר בראשית רבי יוסי ברבי יהודה אומר חותרם מקדש ישראל ואם איתא הא בין הים לחרבה לא כתיבא ביה הבדלה סמי מכאן בין הים לחרבה אי הכי בין יום השביעי לששת ימי המעשה נמי מעין חתימה הוא בצר חדא וליכא שבע אמרי כהנים לויים וישראלים תרי מילי נינהו בין לויים לישראלים דכתיב בעת ההיא הבדיל ה' את שבט הלוי בין הכהנים ללוים דכתיב בני עמרם אהרן ומשה ויבדל אהרן להקדישו קדש קדשים מחתם מאי חתים רב אמר מקדש ישראל ושמואל אמר המבדיל בין קודש לחול לייט עלה אביי ואיתימא רב יוסף אהא דרב תנא משמיה דרבי יהושע בן חנניא כל החותרם מקדש ישראל והמבדיל בין קודש לחול מאריכין לו ימיו ושנותיו ולית הלכתא כוותיה

. **Rabbi Yehoshua ben Levi said: One who recites *havdala* must say distinctions similar to the distinctions stated explicitly in the Torah.** One should not add other distinctions. The Gemara **raises an objection** from a *baraita*: **How should one say the order of the distinctions in *havdala*? One recites: Who distinguishes between sacred and profane: Between light and darkness; between Israel and the nations; and between the seventh day and the six days of work; between the ritually impure and the ritually pure; between the sea and the dry land; between the upper waters above the firmament and the lower waters below the firmament; and between priests, Levites, and Israelites.** This is an extended version of *havdala*, which includes references to seven distinctions. The *baraita* continues: **And one concludes the blessing with the order of Creation: Blessed is He Who arranges the order of Creation, or: Who orders Creation. And others say that one concludes with: Who fashions**

Creation. Rabbi Yosei, son of Rabbi Yehuda, says that one concludes with the phrase: Who sanctifies Israel. The Gemara explains its objection: **And if** what Rabbi Yehoshua ben Levi said **is so**, the distinction **between the sea and the dry land** should not be mentioned, as the term **distinction is not written with regard to** this issue. The Gemara answers: **Remove from here** the distinction **between the sea and the dry land**. The Gemara asks: **If so**, the distinction **between the seventh day and the six days of work** should **also** not be counted in the tally of the distinctions, as it **is** mentioned only to repeat something **similar to the conclusion**. Consequently, this text of *havdala* **lacks one** more distinction, **and** this means that **there are not seven** distinctions in total. **They say** in answer to this question: The distinction between **priests, Levites, and Israelites is two matters**, i.e., it counts as two separate distinctions. One distinction is **between Levites and Israelites, as it is written: “At that time the Lord separated the tribe of Levi to bear the Ark of the covenant of the Lord”** (Deuteronomy 10:8). A further distinction is that **between the priests and the Levites, as it is written: “The sons of Amram: Aaron and Moses; and Aaron was separated, that he should be sanctified as most holy, he and his sons forever”** (I Chronicles 23:13). The Gemara asks: **What** formula should be used **to conclude** the blessing of *havdala*? **Rav said** the blessing should conclude with the phrase: **Who sanctifies Israel. And Shmuel said** the concluding phrase is: **Who distinguishes between sacred and profane**. The Gemara adds that **Abaye, and some say** it was **Rav Yosef, cursed it**, i.e., he would become angry at one who concluded the blessing in accordance with **that opinion of Rav. It was taught in the name of Rabbi Yehoshua ben Hananya: Anyone who concludes** the *havdala* blessing with the combined formula: **Who sanctifies Israel and distinguishes between sacred and profane**, God will **lengthen his days and years**. However, the Gemara states: **And** the *halakha* **is not in accordance with** that opinion. Instead, the *halakha* is in accordance with the opinion of Shmuel.

III. The Nature of the Differences in Havdala

- ❖ What is the nature of each distinction mentioned in Havdala, both those accepted and those rejected?
- ❖ How are they related to each other?
- ❖ What light do they shed on the distinction between Jews and Non-Jews specifically?

6. Siddur Ashkenaz, Shabbat, Havdalah

- (א) הַגָּה אֶל יְשׁוּעָתִי אֲבֹטַח וְלֹא אֶפְחָד כִּי עֲזִי וְזַמְרַת יְהוָה וְיִהְיֶה לִי לִישׁוּעָה:
 (ב) וּשְׂאֲבַתֶּם מִיָּם בְּשִׁשׁוֹן מִמַּעֲיָנֵי הַיְשׁוּעָה:
 (ג) לֵה' הַיְשׁוּעָה עַל עַמְךָ בִּרְכַתְךָ סֵלָה:
 (ד) ה' צְבָאוֹת עֲמָנוּ מִשְׁגֵּב לָנוּ אֱלֹהֵי יַעֲקֹב סֵלָה:
 (ה) ה' צְבָאוֹת, אֲשֶׁר־י אָדָם בּוֹטַח בְּךָ:
 (ו) ה' הוֹשִׁיעָה, הַמֶּלֶךְ יַעֲנֵנוּ בְיוֹם קְרָאֵנוּ:
 (ז) לַיהוּדִים הִיטָה אֹרֶה וְשִׁמְחָה וְשִׁשׁוֹן וְיִקָּר:
 (ח) כֵּן תִּהְיֶה לָנוּ:
 (ט) כּוֹס יְשׁוּעוֹת אֲשֶׁא וּבִשָּׁם ה' אֶקְרָא:
 (י) בְרוּךְ אַתָּה ה' אֱלֹהֵינוּ מֶלֶךְ הָעוֹלָם, בּוֹרֵא פְרֵי הַגֶּפֶן:
 (יג) בְרוּךְ אַתָּה ה' אֱלֹהֵינוּ מֶלֶךְ הָעוֹלָם, בּוֹרֵא מִיַּי בְּשָׂמִים:
 (טו) בְרוּךְ אַתָּה ה' אֱלֹהֵינוּ מֶלֶךְ הָעוֹלָם, בּוֹרֵא מְאוּרֵי הָאֵשׁ:
 (יז) בְרוּךְ אַתָּה ה' אֱלֹהֵינוּ מֶלֶךְ הָעוֹלָם, הַמְבַדֵּיל בֵּין קֹדֶשׁ לְחֹל, בֵּין אֹר לְחֹשֶׁךְ, בֵּין יִשְׂרָאֵל לְעַמִּים, בֵּין יוֹם הַשְּׁבִיעִי לְשֵׁשֶׁת יָמֵי הַמַּעֲשֶׂה, בְרוּךְ אַתָּה ה', הַמְבַדֵּיל בֵּין קֹדֶשׁ לְחֹל:

7. Bereishit 1:1-8

- (א) בְּרֵאשִׁית בְּרָא אֱלֹהִים אֶת הַשָּׁמַיִם וְאֶת הָאָרֶץ: (ב) וְהָאָרֶץ הִיְתָה תְהוֹ וְבָהוּ וְחֹשֶׁךְ עַל־פְּנֵי תְהוֹם וּרוּחַ אֱלֹהִים מְרַחֶפֶת עַל־פְּנֵי הַמַּיִם: (ג) וַיֹּאמֶר אֱלֹהִים יְהִי אוֹר וַיְהִי־אוֹר: (ד) וַיֵּרָא אֱלֹהִים אֶת־הָאֹר כִּי־טוֹב וַיְבַדֵּל אֱלֹהִים בֵּין הָאֹר וּבֵין הַחֹשֶׁךְ: (ה) וַיִּקְרָא אֱלֹהִים אֶת־הָאֹר יוֹם וְהַחֹשֶׁךְ קָרָא לַיְלָה וַיְהִי־עֶרֶב וַיְהִי־בֹקֶר יוֹם אֶחָד: (ו) וַיֹּאמֶר אֱלֹהִים יְהִי רְקִיעַ בְּתוֹךְ הַמַּיִם וַיְהִי מְבַדֵּיל בֵּין מַיִם לְמַיִם: (ז) וַיַּעַשׂ אֱלֹהִים אֶת־הַרְקִיעַ וַיְבַדֵּל בֵּין הַמַּיִם אֲשֶׁר מֵעַל לְרְקִיעַ וּבֵין הַמַּיִם אֲשֶׁר מֵתַחַת לְרְקִיעַ וַיְהִי־כֵן: (ח) וַיִּקְרָא אֱלֹהִים לְרְקִיעַ שָׁמַיִם וַיְהִי־עֶרֶב וַיְהִי־בֹקֶר יוֹם שְ�נַי: (ט)

(1) When God began to create heaven and earth— (2) the earth being unformed and void, with darkness over the surface of the deep and a wind from God sweeping over the water— (3) God said, “Let there be light”; and there was light. (4) God saw that the light was good, and God separated the light from the darkness. (5) God called the light Day, and the darkness He called Night. And there was evening and there was morning, a first day. (6) God said, “Let there be an expanse in the midst of the water, that it may separate water from water.” (7) God made the expanse, and it separated the water which was below the expanse from the water which was above the expanse. And it was so. (8) God called the expanse Sky. And there was evening and there was morning, a second day.

8. Vayikra 10:1-11

(א) ויקחו בני־אהרן נדב ואביהוא איש מחתתו ויתנו בהן אש וישמו עליה קטרת ויקרבו לפני ה' אש זרה אשר לא צוה אתם: (ב) ותצא אש מלפני ה' ותאכל אותם וימתו לפני ה'... (ח) וידבר ה' אל־אהרן לאמר: (ט) יין ושכר אל־תשת | אתה | ובניך אתך | בבאכם אל־אהל מועד ולא תמתו חקת עולם לדתיכם: (י) ולהבדיל בין הקדש ובין החל ובין הטמא ובין הטהור: (יא) ולהורת את־בני ישראל את פ־החקים אשר דבר ה' אליהם בידמשה: (פ)

(1) Now Aaron's sons Nadab and Abihu each took his fire pan, put fire in it, and laid incense on it; and they offered before the LORD alien fire, which He had not enjoined upon them. (2) And fire came forth from the LORD and consumed them; thus they died at the instance of the LORD.. **(8) And the LORD spoke to Aaron, saying: (9) Drink no wine or other intoxicant, you or your sons, when you enter the Tent of Meeting, that you may not die. This is a law for all time throughout the ages, (10) for you must distinguish between the sacred and the profane, and between the unclean and the clean; (11) and you must teach the Israelites all the laws which the LORD has imparted to them through Moses.**

9. Vayikra 11:1-3,43-45

(א) וידבר ה' אל־משה ואל־אהרן לאמר אלהם: (ב) דברו אל־בני ישראל לאמר זאת החיה אשר תאכלו מפ־הבהמה אשר על־הארץ: (ג) כל | מפ־רסת פרסה ושסעת שסע פרסת מעלת גרה בבהמה אתה תאכלו:... (מג) אל־תשקצו את־נפשתיכם בכל־השרץ השרץ ולא תטמאו בהם ונטמתם בם: (מד) כי אני ה' אלהיכם והתקדשתם והייתם קדשים כי קדוש אני ולא תטמאו את־נפשתיכם בכל־השרץ הרמש על־הארץ: (מה) כי | אני ה' המעלה אתכם מארץ מצרים להיט לכם לאלקים והייתם קדשים כי קדוש אני:

(1) The LORD spoke to Moses and Aaron, saying to them: (2) Speak to the Israelite people thus: These are the creatures that you may eat from among all the land animals: (3) any animal that has true hoofs, with clefts through the hoofs, and that chews the cud—such you may eat.... (43) You shall not draw abomination upon yourselves through anything that swarms; you shall not make yourselves unclean therewith and thus become unclean. (44) For I the LORD am your God: you shall sanctify yourselves and be holy, for I am holy. You shall not make yourselves unclean through any swarming thing that moves upon the earth. (45) For I the LORD am He who brought you up from the land of Egypt to be your God: you shall be holy, for I am holy.

10. Devarim 10:8

(ח) בעת ההוא הבדיל ה' את־שבט הלוי לשאת את־ארון ברית־ה' לעמד לפני ה' לשרתו ולברך בשמו עד היום הזה:

(8) At that time the LORD set apart the tribe of Levi to carry the Ark of the LORD's Covenant, to stand in attendance upon the LORD, and to bless in His name, as is still the case.

11. I Divrei HaYamim 23:13

(יג) בני עמרם אהרן ומשה ויבדל אהרן להקדישו קדש קדשים הוא ובניו עד־עולם להקטיר לפני ה' לשרתו ולברך בשמו עד־עולם:

(13) The sons of Amram: Aaron and Moses. Aaron was set apart, he and his sons, forever, to be consecrated as most holy, to make burnt offerings to the LORD and serve Him and pronounce blessings in His name forever.

12. Shemot 23:12

(יב) שֵׁשֶׁת יָמִים תַּעֲשֶׂה מַעֲשֶׂיךָ וּבַיּוֹם הַשְּׁבִיעִי תִשְׁבֹּת לְמַעַן יָנוּחַ שׁוֹרְךָ וְחֹמְרְךָ וַיִּנְפֹּשׂ בְּרִאמְתָּךְ וְהָגֵר:

(12) Six days you shall do your work, but on the seventh day you shall cease from labor, in order that your ox and your ass may rest, and that your bondman and the stranger may be refreshed.

13. Shemot 31:12-17

(טו) שֵׁשֶׁת יָמִים יַעֲשֶׂה מְלָאכָה וּבַיּוֹם הַשְּׁבִיעִי שַׁבַּת שַׁבְתוֹן קֹדֶשׁ לַה' כִּלְהַעֲשֶׂה מְלָאכָה בַּיּוֹם הַשְּׁבִיעִי מוֹת יוּמָת: (טז) וְשָׁמְרוּ בְנֵי יִשְׂרָאֵל אֶת־הַשַּׁבָּת לַעֲשׂוֹת אֶת־הַשַּׁבָּת לְדֹרֹתָם בְּרִית עוֹלָם: (יז) בְּיָמֵי וּבְיַם בְּנֵי יִשְׂרָאֵל אֹת הוּא לְעַלְמֵ כִּי־שֵׁשֶׁת יָמִים עָשָׂה ה' אֶת־הַשָּׁמַיִם וְאֶת־הָאָרֶץ וּבַיּוֹם הַשְּׁבִיעִי שָׁבַת וַיִּנְפֹּשׁ: (ט)

(15) Six days may work be done, but on the seventh day there shall be a sabbath of complete rest, holy to the LORD; whoever does work on the sabbath day shall be put to death. (16) The Israelite people shall keep the sabbath, observing the sabbath throughout the ages as a covenant for all time: (17) it shall be a sign for all time between Me and the people of Israel. For in six days the LORD made heaven and earth, and on the seventh day He ceased from work and was refreshed.

14. Shemot 35:2

(ב) שֵׁשֶׁת יָמִים תַּעֲשֶׂה מְלָאכָה וּבַיּוֹם הַשְּׁבִיעִי יְהִי לָכֶם קֹדֶשׁ שַׁבַּת שַׁבְתוֹן לַה' כִּלְהַעֲשֶׂה בּו מְלָאכָה יוּמָת:

(2) On six days work may be done, but on the seventh day you shall have a sabbath of complete rest, holy to the LORD; whoever does any work on it shall be put to death.

15. Yechezkel 46:1-3

(א) כֹּה־אָמַר אֲדוֹשֵׁם ה' שַׁעַר הַחֲצַר הַפְּנִימִית הַפְּנִיָה קִדִּים יְהִיָה סָגוּר שֵׁשֶׁת יָמִים הַמַּעֲשֶׂה וּבַיּוֹם הַשְּׁבִיעִי יִפְתָּח וּבַיּוֹם הַחֲדָשׁ יִפְתָּח: (ב) וַיָּבֵא הַנְּשִׂיא דָרָךְ אֹלָם הַשַּׁעַר מִחוּץ וְעַמֵּד עַל־מְזוֹזַת הַשַּׁעַר וְעָשׂוּ הַכֹּהֲנִים אֶת־עוֹלֹתָו וְאֶת־שְׁלָמָיו וְהִשְׁתַּחֲוֶה עַל־מִפְתָּחוֹ הַשַּׁעַר וַיֵּצֵא וְהַשַּׁעַר לֹא־יִסָּגֵר עַד־הָעֶרֶב: (ג) וְהִשְׁתַּחֲוֶה עַם־הָאָרֶץ פֶּתַח הַשַּׁעַר הַהוּא בַשַּׁבָּתוֹת וּבַחֲדָשִׁים לִפְנֵי ה':

(1) Thus said the Lord GOD: The gate of the inner court which faces east shall be closed on the six working days; it shall be opened on the sabbath day and it shall be opened on the day of the new moon. (2) The prince shall enter by way of the vestibule outside the gate, and shall attend at the gatepost while the priests sacrifice his burnt offering and his offering of well-being; he shall then bow low at the threshold of the gate and depart. The gate, however, shall not be closed until evening. (3) The common people shall worship before the LORD on sabbaths and new moons at the entrance of the same gate.

16. Yechezkel 42:15-20

(טו) וְכִלְהַ אֶת־מְדוֹת הַבַּיִת הַפְּנִימִי וְהוֹצִיאֲנִי דָרָךְ הַשַּׁעַר אֲשֶׁר פָּנָיו דָּרָךְ הַקִּדִּים וּמִדָּדוֹ סָבִיב | סָבִיב: (טז) מִדָּד רֹחַ הַקִּדִּים בְּקִנְהַ הַמְּדָה חֲמִשָּׁאֲמוֹת [מְאֹת] קָנִים בְּקִנְהַ הַמְּדָה סָבִיב: (יז) מִדָּד רֹחַ הַצִּפּוֹן חֲמִשָּׁמְאֹת קָנִים בְּקִנְהַ הַמְּדָה סָבִיב: (יח) אֶת רֹחַ הַדְּרוֹם מִדָּד חֲמִשָּׁמְאֹת קָנִים בְּקִנְהַ הַמְּדָה: (יט) סָבִב אֶל־רֹחַ הַיָּם מִדָּד חֲמִשָּׁמְאֹת קָנִים בְּקִנְהַ הַמְּדָה: (כ) לְאֶרְצֵעַ רֹחוֹת מִדָּדוֹ חֹמֶה לוֹ סָבִיב | סָבִיב אֶרְךָ חֲמֵשׁ מְאֹת וְרַחֵב חֲמֵשׁ מְאֹת לְהַבְדִּיל בֵּין הַקִּדָּשׁ לְחָל:

(15) When he had finished the measurements of the inner Temple [area], he led me out by way of the gate which faces east, and he measured off the entire area. (16) He measured the east side with the measuring rod, 500 [cubits]—in rods, by the measuring rod. He turned (17) [and] measured the north side: 500 [cubits]—in rods, by the measuring rod. He turned (18) [and] measured the south side: 500 [cubits]—in rods, by the measuring rod. (19) Then he turned to the west side [and] measured it: 500 cubits—in rods, by the measuring rod. (20) Thus he measured it on the four sides; it had a wall

completely surrounding it, 500 [cubits] long on each side, to separate the consecrated from the unconsecrated.

17. Yechezkel 44:23

(כג) וְאֶת־עַמִּי יוֹרוּ בֵּין קֹדֶשׁ לְחָל וּבֵין טָמֵא לְטָהוֹר יוֹדְעִים:

(23) They shall declare to My people what is sacred and what is profane, and inform them what is clean and what is unclean.

18. Bamidbar 1:51

(נא) וּבִנְסַע הַמִּשְׁכָּן יוֹרִידוּ אֹתוֹ הַלְוִיִּם וּבַחֲנֹת הַמִּשְׁכָּן יִקְיֵמוּ אֹתוֹ הַלְוִיִּם וְהָזַר הַקָּרֵב יוּמָת:

(51) When the Tabernacle is to set out, the Levites shall take it down, and when the Tabernacle is to be pitched, the Levites shall set it up; any outsider who encroaches shall be put to death.

19. Shabbat 31a

אמר לו כלום מעמידין מלך אלא מי שיודע טכסיסי מלכות לך למוד טכסיסי מלכות הלך וקרא כיון שהגיע והזר הקרב יומת אמר ליה מקרא זה על מי נאמר אמר לו אפילו על דוד מלך ישראל נשא אותו גר קל וחומר בעצמו ומה ישראל שנקראו בנים למקום ומתוך אהבה שאהבם קרא להם בני בכורי ישראל כתיב עליהם והזר הקרב יומת גר הקל שבא במקלו ובתרמילו על אחת כמה וכמה

Hillel said to him, to the convert: **Is it not** the way of the world that **only one who knows the protocols [takhsisei]** of royalty **is appointed king? Go and learn the royal protocols** by engaging in Torah study. **He went and read** the Bible. **When he reached** the verse which says: **“And the common man that draws near shall be put to death”** (Numbers 1:51), the convert said to Hillel: **With regard to whom is the verse speaking?** Hillel said to him: **Even with regard to David, king of Israel. The convert reasoned an a fortiori inference himself: If the Jewish people are called God’s children, and due to the love that God loved them he called them: “Israel is My son, My firstborn”** (Exodus 4:22), and nevertheless **it is written about them: And the common man that draws near shall be put to death; a mere convert who came without merit, with nothing more than his staff and traveling bag, all the more so** that this applies to him, as well.

20. Vayikra 20:26

(כו) וְהֵייתֶם לִי קְדוֹשִׁים כִּי קָדוֹשׁ אֲנִי ה' וְאַבְדֵּל אֶתְכֶם מִן־הָעַמִּים לְהִיּוֹת לִי:

(26) You shall be holy to Me, for I the LORD am holy, and I have set you apart from other peoples to be Mine.

21. Sifra, Kedoshim, Chapter 9 11-12

“והייתם לי קדושים כי קדוש אני”-- כשם שאני קדוש כך אתם קדושים. כשם שאני פרוש כך אתם קדושים.

(11) (Vayikra 20:26) "And you shall be holy unto Me, for I, the L-rd, am holy": Just as I am holy, so, you be holy. Just as I am separate, so, you be "separate."

(יב) [יב] “ואבדיל אתכם מן העמים להיות לי”-- אם מובדלים אתם מן העמים הרי אתם לשמי ואם לאו הרי אתם של נבוכדנצר מלך בבל וחבריו. ר' אלעזר בן עזריה אומר מנין שלא יאמר אדם “אי אפשי ללבוש שעטנז. אי אפשי לאכול בשר חזיר. אי אפשי לבוא על הערוה” אבל “אפשי ומה אעשה ואבי שבשמים גזר עלי כן”? תלמוד לומר “ואבדיל אתכם מן העמים להיות לי”-- נמצא פרוש מן העבירה ומקבל עליו עול מלכות שמים.

(12) (Vayikra 20:26) "and I have set you apart from the peoples to be Mine": If you are separate from the peoples, you are Mine; if not, you are "Nevuchadnezzar's" and his cohorts'. R. Elazar b. Azaryah says: Whence is it derived that a man should not say: I do not desire to wear sha'atnez; I do

not desire to eat the flesh of a pig; I do not desire to cohabit with ervah (illicit relations). I do desire it, but what can I do? My Father in heaven has decreed against it! — From "and I have set you apart from the peoples to be unto Me." It is found, then, that he separates from ervah because he accepted upon himself the Kingdom of heaven.

IV. Difference in Esther

- ❖ We usually cite verses from Esther before Havdala. Does this shed any light on Havdala?

22. Esther 2:12

(יב) ובהגיע תור נערה ונערה לבוא | אלהמלך אחשוורוש מקץ היות לה כדת הנשים שנים עשר חדש כי כן ימלאו ימי מרוקיהן
ששה חדשים בשמן המר וששה חדשים בבשמים ובתמרוקי הנשים:

(12) When each girl's turn came to go to King Ahasuerus at the end of the twelve months' treatment prescribed for women (for that was the period spent on beautifying them: six months with oil of myrrh and six months with perfumes and women's cosmetics,

23. Esther 8:16

(טז) ליהודים היתה אורה ושמחה וששון ויקר:

(16) The Jews enjoyed light and gladness, happiness and honor.

24. Esther 3:8

(ח) ויאמר המן למלך אחשוורוש ישנו עם אחד מפזר ומפודר בין העמים בכל מדינות מלכותך ודתיהם שנות מפלעם ואתדתי המלך אינם עשים ולמלך אישונה להניחם:

(8) Haman then said to King Ahasuerus, "There is a certain people, scattered and dispersed among the other peoples in all the provinces of your realm, whose laws are different from those of any other people and who do not obey the king's laws; and it is not in Your Majesty's interest to tolerate them.

25. Esther 9:1

(א) ובשנים עשר חדש הואחדש אדר בשלושה עשר יום בו אשר הגיע דבר המלך ודתו להעשות ביום אשר שברו איבי היהודים לשלוט בהם ונהפוך הוא אשר ישלטו היהודים המה בשנאייהם:

(1) And so, on the thirteenth day of the twelfth month—that is, the month of Adar—when the king's command and decree were to be executed, the very day on which the enemies of the Jews had expected to get them in their power, the opposite happened, and the Jews got their enemies in their power.

V. Theology of Difference

- ❖ Why do you think difference is important?
- ❖ Below are a few cases from Tanach and Halacha. What do you think about them?

26. Bereishit 1:16-17

(טז) ויעש אלקים את שני המארות הגדלים את המאור הקטן לממשלת הלילה ואת הכוכבים:
(יז) ויתן אתם אלקים ברקיע השמים להאיר על הארץ:

(16) God made the two great lights, the greater light to dominate the day and the lesser light to

dominate the night, and the stars. (17) And God set them in the expanse of the sky to shine upon the earth,

27. Or HaChaim on Bereishit 1:17:2

וטעם שחזר לומר עוד ולהבדיל כאן צוה להם שלא יכנסו זה לגדר של זה וכל אחד מצווה על גבולו לבל יעבור שבזה יהיה ניכר יום מלילה:

(2) And the reason it repeats and again states, "and to separate," is that here He commanded them not to enter [past] the border of [the other] and each one is commanded not to trespass the border of the other, so that with this, day and night will be recognizable.

28. Sefer HaChinukh 389

(א) שלא יתעסקו הכהנים בעבודת הלויים ולא הלויים בעבודת כהנים - שלא יתעסקו הלויים בעבודת הכהנים, ולא הכהנים בעסק הלויים, אלא כל אחד יעשה מלאכתו המיוחדת לו
(ב) משרשי המצוה. לפי שעבודת שתי כתות אלה היא עבודה יקרה ומקדשת, על כן צריכה המלאכה להשמר מאד מן היאוש, מן העצלה והשכחה, ואין ספק, כי כל מלאכה המוטלת על שני אנשים או יותר הפשיעה מצויה בה יותר ממלאכה המוטלת על האחד לבדו, כי הרבה פעמים יסמכו שניהם כל אחד על חברו ותתבטל המלאכה מביניהם, זה דבר ברור לכל אדם, ודרך משל אמרו זכרונם לברכה (ב"ב כד, ב) על כיוצא בזה קדירא דבי שתפי לא חמימא ולא קרירא.

(1) **That the priests not be involved in the service of the the Levites and the Levites in the service of the priests:** That the priests not be involved in the service of the Levites and the priests in the business of the Levites, but rather each one does the work designated for him,

(2) It is from the roots of the commandment [that] because the service of these two groups is a very precious and holy service, therefore the work needs to be very guarded from abandon, from slothfulness and from forgetfulness. And there is no doubt that there is more negligence with any work incumbent upon two people or more, than work incumbent upon one alone. As many times each one of the two of them will rely upon his fellow, and the work will be neglected by both of them. This is something clear to all men. And by way of a parable, they, may their memory be blessed, said about something similar to this (Bava Batra 24b), "A stew of partners is not hot and not cold."

29. Sefer HaChinukh 244

(א) שלא להרביע בהמה מין עם שאינו מינו - שלא להרביע בהמה כלאים, כלומר שלא נרכיב הזכר על שום מין בהמה או חיה שאינו מינו, שנאמר (ויקרא יט יט) בהמתך לא תרביע כלאים. ובבאור אמרו זכרונם לברכה (ב"מ צא א), שאין החיוב עד שיכניס כמכחול בשפופרת ואז ילקה.

(ב) משרשי המצוה. כי השם ברוך הוא ברא עולמו בחכמה בתבונה ובדעת, ועשה וציר כל הצורות לפי מה שהיה צריך ענינו ראו להיות מכוונות כוון העולם, וברוך הוא היודע, וזהו שנאמר במעשה בראשית (בראשית א לא) וירא אלקים את כל אשר עשה והנה טוב מאד. וראיתו ברוך הוא ידיעתו והתבוננותו בדברים, כי הוא ברוך הוא לגדל מעלתו, אינו צריך לראית העין אל הדברים אחר מעשה, כי הכל נגלה וידוע ונראה לפניו קדם מעשה כמו אחר מעשה, אבל התורה תדבר לבני אדם במלות מכוונות אליהם, ותכנה בשם דברים כדברים המכנים בהם, שאי אפשר לדבר עם בריה אלא במה שידוע אליו, כי מי יבין מה שאין בכחו להבין? ועל כיוצא בזה אמרו זכרונם לברכה (מכילתא שמות יט יח) כדי לשבר [לשכך] את האזן מה שהיא יכולה לשמוע. ובהיות יודע אלקים כי כל אשר עשה הוא מכון בשלמות לענינו שהוא צריך בעולמו, צוה לכל מין ומין להיות עושה פרותיו למינהו, כמו שכתוב בסדר בראשית, ולא יתערבו המינין, פן יחסר שלמותן ולא יצוה עליהן ברכתו. ומזה השרש, לפי הנראה במחשבתינו, נמנעו מהרביע הבהמות כלאים, וכמו כן הזהרנו בכך מזה הטעם בצרוף טעם אחר, שכתבנו כבר על מיני הזרעים והאילנות.

(1) **To not mate a beast, a specie with not its specie:** To not mate a beast [in a] forbidden mixture - meaning to say that we not graft a male with any specie of [domesticated] beast or [wild] animal which is not its specie - as it is stated (Leviticus 19:19), "your beast shall you not mate [in a] forbidden mixture." And in its explanation, they, may their memory be blessed, said (Bava Metzia 91a) that the obligation is from when he inserts like 'the brush into the tube' - and then is he lashed.
(2) It is from the roots of the commandment that God, blessed be He, created His world with wisdom, with understanding and with knowledge, and [so] He made and formed all of the forms according to that which it was fitting for its matter to be, to be designed [according to] the design of the world -

and blessed is He that knows [this]. And this is what is stated about the story of creation (Genesis 1:31), "And God saw everything that He had done, and behold, it was very good." And His seeing, blessed be He, is His knowledge and contemplation about things; as He, blessed be He, does not need seeing things with the eye after the act, due to His great level; since everything is revealed and known and apparent in front of Him before the act, [just] like after the act. But the Torah speaks to people with words directed to them, and it calls things by the name of things that are aimed at them, as it only possible to speak with a creature with what is known to him - as who can understand what he does not have the power to understand? And about what is similar to this, they, may their memory be blessed, said (Mekhilta d'Rabbi Yishmael 19:18:2), [it is] in order to break [to assuage] the ear to that which it can hear. And in that God knew that everything He made was designed perfectly for its matter that it needed in His world, He commanded to each and every specie to make its 'fruit' for its specie - as it is written in the Order of Bereshit - and that the species not mix, lest it will take away from their perfection and He [therefore] not command His blessing upon them. And according to what it seems in our thoughts, it is from this root that we were prevented from mating beasts [in a] forbidden mixture. And likewise from this reason were we warned about this, combined with another reason that we already wrote about species of seeds and trees (Sefer HaChinukh 62).

30. Yehoshua 24:1-4

(א) וַיֵּאסֹף יְהוֹשֻׁעַ אֶת־כָּל־שִׁבְטֵי יִשְׂרָאֵל שְׂכֵמָה וַיִּקְרָא לְזִקְנֵי יִשְׂרָאֵל וּלְרֹאשֵׁי וּלְשֹׁפְטָיו וּלְשֹׁטְרָיו וַיִּתְיַצְּבוּ לִפְנֵי הָאֱלֹקִים: (ב) וַיֹּאמֶר יְהוֹשֻׁעַ אֶל־כָּל־הָעָם כֹּה־אָמַר ה' אֱלֹקֵי יִשְׂרָאֵל בַּעֲבַר הַנְּהַר יָשְׁבוּ אֲבוֹתֵיכֶם מֵעוֹלָם תֵּרַח אָבִי אַבְרָהָם וְאָבִי נְחוֹר וַיַּעֲבְדוּ אֱלֹקִים אֲחֵרִים: (ג) וְאָקַח אֶת־אֲבִיכֶם אֶת־אַבְרָהָם מֵעֵבֶר הַנְּהַר וְאוֹלָךְ אוֹתוֹ בְּכַל־אֶרֶץ כְּנָעַן וְאַרְבֵּי [וְאַרְבֵּי] אֶתְזָרְעוֹ וְאֶתְוֹלָדוֹ אֶת־יִצְחָק: (ד) וְאֶתֵּן לְיִצְחָק אֶת־יַעֲקֹב וְאֶת־עֵשָׂו וְאֶתֵּן לְעֵשָׂו אֶת־הָר שְׁעִיר לְרִשְׁתּוֹ אוֹתוֹ וַיַּעֲקֹב וּבְנָיו יָרְדוּ מִצְרָיִם:

(1) Joshua assembled all the tribes of Israel at Schechem. He summoned Israel's elders and commanders, magistrates and officers; and they presented themselves before God. (2) Then Joshua said to all the people, "Thus said the LORD, the God of Israel: In olden times, your forefathers—Terah, father of Abraham and father of Nahor—lived beyond the Euphrates and worshiped other gods. (3) But I took your father Abraham from beyond the Euphrates and led him through the whole land of Canaan and multiplied his offspring. I gave him Isaac, (4) and to Isaac I gave Jacob and Esau. I gave Esau the hill country of Seir as his possession, while Jacob and his children went down to Egypt.

31. Bereishit 37:1-5

(א) וַיֵּשֶׁב יַעֲקֹב בְּאֶרֶץ מְגוּרֵי אָבִיו בְּאֶרֶץ כְּנָעַן: (ב) אֵלֶּה | תְּלֻדֹת יַעֲקֹב יוֹסֵף בְּרֵשִׁבַע עֶשְׂרֵה שָׁנָה הָלַךְ רָעָה אֶת־אֲחִיו בְּצֹאֵן וְהָאֵל נָעַר אֶת־בְּנֵי בְלָהָה וְאֶת־בְּנֵי זִלְפָּה נְשֵׂי אָבִיו וַיָּבֵא יוֹסֵף אֶת־דְּבַרְתָּם רָעָה אֶל־אָבִיהֶם: (ג) וַיִּשְׂרָאֵל אֶהָב אֶת־יוֹסֵף מִכָּל־בְּנָיו כִּי־בָרָךְוָקִיָּם הוּא לֹו וַעֲשֵׂה לֹו כְּתַנְתּוֹ פְּסִים: (ד) וַיִּרְאוּ אֲחָיו כִּי־אֵתוֹ אֶהָב אָבִיהֶם מִכָּל־אֲחָיו וַיִּשְׁנְאוּ אוֹתוֹ וְלֹא יָכְלוּ דַבְּרוֹ לְשָׁלֵם: (ה) וַיַּחֲלֵם יוֹסֵף חֲלוֹם וַיְגִד לְאֲחָיו וַיֹּסְפוּ עוֹד שָׁנָא אוֹתוֹ:

(1) Now Jacob was settled in the land where his father had sojourned, the land of Canaan. (2) This, then, is the line of Jacob: At seventeen years of age, Joseph tended the flocks with his brothers, as a helper to the sons of his father's wives Bilhah and Zilpah. And Joseph brought bad reports of them to their father. (3) Now Israel loved Joseph best of all his sons, for he was the child of his old age; and he had made him an ornamented tunic. (4) And when his brothers saw that their father loved him more than any of his brothers, they hated him so that they could not speak a friendly word to him. (5) Once Joseph had a dream which he told to his brothers; and they hated him even more.

❖ Resource

Havdalah, eds. David Birnbaum and Martin S. Cohen (New York: New Paradigm Matrix, 2016), especially articles by Reuven Bulka, Elie Kaunfer, and Ora Horn Prouser
<http://www.mesorahmatrix.com/havdalah/>

From Havdala to Organ Donation: Halachic Differences between Jews and Others

Rabbi Jonathan Ziring: jjziring@migdalahatorah.org

I. Background – Jews vs. Non-Jews

- a. Read these sources. Do you think the difference between Jews and Non-Jews are fundamental, and if so, how?
- b. See the two understanding of the Mishna summarized by the Tosafot Yom Tov

1. Pirkei Avot 3:14

(יד) הוא הִיָּה אומֵר, חֲבִיב אָדָם שֶׁנִּבְרָא בְצַלֵּם. חֲבִיב יִתְרָה נֹדְעֵת לוֹ שֶׁנִּבְרָא בְצַלֵּם, שֶׁנֶּאֱמַר (בראשית ט) כִּי בְצַלֵּם אֱלֹקִים עָשָׂה אֶת הָאָדָם. חֲבִיבֵינּוּ יִשְׂרָאֵל שֶׁנִּקְרְאוּ בְּנִים לְמִקּוֹם. חֲבִיב יִתְרָה נֹדְעֵת לָהֶם שֶׁנִּקְרְאוּ בְּנִים לְמִקּוֹם, שֶׁנֶּאֱמַר (דברים יד) בְּנִים אַתֶּם לַה' אֱלֹקֵיכֶם. חֲבִיבֵינּוּ יִשְׂרָאֵל שֶׁנֶּתַן לָהֶם כְּלֵי חֲמֻדָּה. חֲבִיב יִתְרָה נֹדְעֵת לָהֶם שֶׁנֶּתַן לָהֶם כְּלֵי חֲמֻדָּה שֶׁבּוֹ נִבְרָא הָעוֹלָם, שֶׁנֶּאֱמַר (משלי ד) כִּי לָקַח טוֹב נִתַּתִּי לָכֶם, תּוֹרַתִּי אֶל תַּעֲזֹבוּ:

(14) He used to say: Beloved is man for he was created in the image [of God]. Especially beloved is he for it was made known to him that he had been created in the image [of God], as it is said: “for in the image of God He made man” (Genesis 9:6). Beloved are Israel in that they were called children to the All-Present. Especially beloved are they for it was made known to them that they are called children of the All-Present, as it is said: “you are children to the Lord your God” (Deuteronomy 14:1). Beloved are Israel in that a precious vessel was given to them. Especially beloved are they for it was made known to them that the desirable instrument, with which the world had been created, was given to them, as it is said: “for I give you good instruction; forsake not my teaching” (Proverbs 4:2).

2. Tosafot Yom Tov on Pirkei Avot 3:14:1

(א) חביב אדם שנברא בצלם חבה יתירה וכו' שנאמר בצלם אלקים עשה את האדם. פירש"י חביב אדם שנברא בצלם. לכן מוטל עליו לעשות רצון קונו. ע"כ. ובכל אדם אמר ר"ע. וכמו שהוא הראיה שממנו הביא שהוא נאמר לבני נח לא לבני ישראל לבדם ורצה ר"ע לזכות את כל אדם אף לבני נח. ומאמר מלא אמר הרמב"ם בפ"ח מהלכות מלכים [הלכה י']. וז"ל צוה משה רבינו ע"ה מפי הגבורה לכונן את כל באי העולם לקבל מצות שנצטוו בני נח. וכל מי שלא יקבל יהרג והמקבל אותם הוא הנקרא גר תושב בל"מ וכו' כל המקבל שבע מצות ונזהר לעשותן. הרי זה מחסידי אומות העולם ויש לו חלק לעוה"ב. והוא שיקבל אותן ויעשה אותן. מפני שצוה בהן הקב"ה בתורה. והודיענו ע"י מרע"ה שבני נח מקודם נצטוו בהן. אבל אם עשאן מפני הכרע הדעת אין זה גר תושב ואינו מחסידי אומות העולם. ולא [צ"ל אל] מחכמיהם. עכ"ל. ומעתה אני תמה למה זה רחקה הדרך מן המפרשים ולא רצו ללכת בה לפרש דברי ר"ע שאמר מאמרו כלפי כל אדם כי אם לישראל בלבד. ונסמכו במאמרם ז"ל אתם קרויים אדם וכו' והרי זה דרש על דרש. ובוזה נכנסו בדוחק ענין הצלם. ובפי' הכתוב שהביא לראיה. אבל בעיני זו הדרך דרך סלולה ומרווחת כי בא ר"ע להישיר לכל באי עולם כאשר נצטוינו מפי מרע"ה כדברי הרמב"ם. ואם בכפיית חרב הרג ואבדן נצטוינו כ"ש בכפיית דברים. להמשיך לבם אל רצון קונם וחפץ צורם. יזכרם לטובה. ושהם חביבים שנבראו בצלם להורות נתן בלבם. כי זאת תורת האדם לעשות חוקי אלקים ומשפטיו מצד אשר הוא צוה כדברי הרמב"ם שהוא יקבלו שחבבו לבראו בצלמו. לכן מוטל עליו לעשות רצון קונו כפירש"י. והשתא אתי שפיר דנקט להך קרא. אע"פ שיש כמה מקראות הקודמים אליו שנאמר נעשה אדם בצלמנו. אבל זה המקרא הוא שנאמר גבי המצות שנצטוו בהם. לכך הביא לזה הכתוב שכן אמרו הש"י בטעם המצוה אשר צוה אותם כי בצלם אלקים עשה את האדם ולבני נח נאמר הכתוב ולבני נח אמר ר"ע דבריו הללו. ואתי נמי שפיר שאמר שנברא בצלם. וחסר הנסמך שהוא אלקים הנאמר בכתוב. ואילו גבי בנים אמר שנקראו בנים למקום. והיינו טעמא שזו ג"כ מדברי התוכחה להוכיחם ולומר שהם נבראו בצלם ובאיזה צלם נבראו בצלם אלקים כאומר שהבריאה היתה בצלם אלקים אבל הואיל ואינם מקיימים מצותיו ואע"פ שאם מקיימים אינם מקיימים מפני אשר צוה אותה אלקים. הנה הם חסרים מתואר צלם אלקים... ולפי זה מדוקדק יפה המשנה שאחר זה הכל צפוי וכו' כמו שאבאר שם בס"ד. ועוד שגם בזה יש ג"כ חבה יתירה נודעת בישראל שאע"פ שכבר חבבם כמו לכל אדם בצלם אלקים אשר עשה בו. אעפ"כ לא זו מחבבן עוד ביתר שאת ויתר עז שנקראו בנים למקום. וזה שאת ומעלה יתירה. ובכלי חמדה היא התורה אשר נתן להם. וזהו עוז. כענין שנאמר (תהילים כ"ט:א) ה' עוז לעמו יתן.*[שדרשוהו ז"ל בפרק פרת חטאת [בזבחים דף קט"ז] על התורה:]

(1) BELOVED IS MAN, WHO WAS CREATED IN THE IMAGE. EVEN GREATER LOVE... AS THE VERSE SAYS, “FOR HE HAS CREATED MAN IN THE IMAGE OF GOD.” **Rashi:** *man is beloved, as he was created in the image. Therefore, he must do the will of his Maker.* R. Akiva was speaking of all men, as the verse he quotes for proof was said to all the sons of Noah, and not only to the sons of Israel. R. Akiva wished to find merit for all men, including Noahides.

Rambam says this clearly in Hilchot Melachim 8:10: *Moses commanded us in the name of G-d to compel all men to accept the seven commandments that the sons of Noah were commanded.*

Whoever does not accept them shall be executed. Such a one as accepts them is referred to as ger

toshav in rabbinic literature... Whoever accepts the seven commandments and is careful to keep them is called one of the “pious of the nations” and has a share in the world to come. This is provided he accepts them keeps them because G-d has commanded them in the Torah and made known through Moses that the sons of Noah had previously been commanded to keep them. But if he does these things because his reason compels him he is not a ger toshav and is not one of the “pious of the nations,” or even [the text should read “but rather”] one of their wise men.

Therefore, I wonder why it is that the commentators remained so distant from this approach and did not want to use it to explain the words of R. Akiva as applying to all men, limiting them instead to Jews alone. They drew support from the passage in the Talmud (Yevamot 61a), “you are called ‘man’, etc.”, stacking one midrashic reading on top of another!¹¹⁷The passage in Yevamot 61a is a midrashic reading of the word “man” in a verse in Ezekiel, and to assume that our mishna is using the word “man” to mean Jews only is likewise a midrashic reading; the end result, therefore, is midrashically reading “man” in our mishna based on further midrashically reading “man” in Ezekiel. Because of this they had to contrive a forced understanding of the “image” and the verse that our mishna brings as proof.

In my opinion, the following approach is the spacious, paved road. R. Akiva intends to instruct all men as we were commanded to do by Moses, per **Rambam** above. If that command extends to threats of destruction by the sword, it certainly includes persuasive speech intended to draw them to the will of their Maker. He speaks well of them and says that they are beloved in that they are created “in the image” in order to show them that the law of man is to keep the statutes and laws of G-d, as **Rambam** says. For since man is beloved of G-d, to the point that they he was created in His image, he must do the will of his maker, as **Rashi** writes.

Now we understand why the mishna chooses this verse, despite the fact that there are several similar verses that precede it, for instance “Let us make man in Our image.” For this verse is the only one that is given as a rationale for a commandment; when G-d commands Noah and his sons not to kill, he gives the reason “because G-d has made man in His image,” and R. Akiva is speaking to the Noahides as well.

We also understand why here the mishna says “in the image” and leaves out the verse’s descriptor “of G-d”, but later in the section about “children” it says “they were called children of G-d”, for this is a rebuke to the nations. They were created “in the image,” i.e. “in the image of G-d”, but only created such—since they do not keep the commandments, or if they do keep them they do not do so because G-d commanded them, they cannot be described as being “in the image of G-d”. ...

Also, this is another facet of why Israel is “especially beloved”—for they are already beloved to G-d as part of mankind, which He made in His image, and they are still more beloved, “foremost in rank and foremost in honor” (Genesis 49:3), on account of two other things: they are children of G-d, which is the “rank” as it is a great virtue, and they possess the desirable utensil, the Torah, which is “honor,” as in “G-d will give his nation honor” (Psalms 29:11) [*which verse the Sages have expounded in the Talmud, Zevachim 116a as referring to the Torah].

❖ *Read the Mishna, with the two textual versions. What is the difference? Which makes more sense?*

3. Mishnah Sanhedrin 4:5

(ה) כִּיצַד מֵאִמּוֹן אֶת הָעֵדִים עַל עֲדֵי נַפְשׁוֹת... לְפִיכָּךְ נִבְרָא אָדָם יְחִידִי, לְלַמֶּדְךָ, שְׂכַל הַמְאֻבָּד נִפְשׁ אַחַת מִיִּשְׂרָאֵל, מֵעֲלֶה עָלָיו הַכְּתוּב כְּאִלּוּ אֵבֶד עוֹלָם מְלֵא. וְכָל הַמְקִיָּם נִפְשׁ אַחַת [בְּכַמָּה גֵרְסָאוֹת] מִיִּשְׂרָאֵל, מֵעֲלֶה עָלָיו הַכְּתוּב כְּאִלּוּ קִיָּם עוֹלָם מְלֵא. וּמִפְּנֵי שְׁלוֹם הַבְּרִיּוֹת, שְׂלֵא יֵאמֶר אָדָם לְחַבְרוֹ אֲבֵא גְדוֹל מֵאֲבִיךָ. וְשְׂלֵא יְהוּ מִיִּנְיָן אוֹמְרִים, הֲרַבָּה רְשָׁיוֹת בְּשָׂמִים. וְלִהְיִיד גְּדֻלְתּוֹ שֶׁל הַקְּדוֹשׁ בְּרוּךְ הוּא, שְׂאָדָם טוֹבֵעַ כְּמָה מִטְּבַעוֹת בְּחוֹתָם אֶחָד וְכֻלָּן דּוֹמִין זֶה לְזֶה, וּמִלְּךָ מַלְכֵי הַמְּלָכִים הַקְּדוֹשׁ בְּרוּךְ הוּא טוֹבֵעַ כָּל אָדָם בְּחוֹתָמוֹ שֶׁל אָדָם הָרֵאשׁוֹן וְאִין אֶחָד מֵהֶן דּוֹמֵה לְחַבְרוֹ. לְפִיכָּךְ כָּל אֶחָד וְאֶחָד חַיֵּב לוֹמֵר, בְּשִׁבְלֵי נִבְרָא הָעוֹלָם. וְשָׂמָא תֵּאמְרוּ מֵה לָּנוּ וְלִצְרָהּ הַזֹּאת, וְהֵלֵא כְּבֵר נֵאמֵר (וַיִּקְרָא ה) וְהוּא עַד אוֹ רָאָה אוֹ יָדַע אִם לּוֹא יִגִּיד וְגו'. וְשָׂמָא תֵּאמְרוּ מֵה לָּנוּ לְחוּב בְּדָמוֹ שֶׁל זֶה, וְהֵלֵא כְּבֵר נֵאמֵר (מִשְׁלֵי יא) וּבִאֲבָד רְשָׁעִים רְנָה:

(5) How did they admonish witnesses in capital cases?... Therefore but a single person was created in the world, to teach that if any man has caused a single life to perish [in some versions: from Israel], he

is deemed by Scripture as if he had caused a whole world to perish; and anyone who saves a single soul from Israel, he is deemed by Scripture as if he had saved a whole world. Again [but a single person was created] for the sake of peace among humankind, that one should not say to another, “My father was greater than your father”. Again, [but a single person was created] against the heretics so they should not say, “There are many ruling powers in heaven”. Again [but a single person was created] to proclaim the greatness of the Holy Blessed One; for humans stamp many coins with one seal and they are all like one another; but the King of kings, the Holy Blessed One, has stamped every human with the seal of the first man, yet not one of them are like another. Therefore everyone must say, “For my sake was the world created.” And if perhaps you [witnesses] would say, “Why should we be involved with this trouble”, was it not said, “He, being a witness, whether he has seen or known, [if he does not speak it, then he shall bear his iniquity] (Lev. 5:1). And if perhaps you [witnesses] would say, “Why should we be guilty of the blood of this man?”, was it not said, “When the wicked perish there is rejoicing” (Proverbs 11:10).]

❖ *See one example of the philosophical position that Jews and Non-Jews are different. In what way is this the case?*

4. Sefer Kuzari 1:109

(109) 103. The Rabbi: Or would it not have been best for all animals to have been reasonable beings? Thou hast, apparently, forgotten what we said previously concerning the genealogy of Adam's progeny, and how the spirit of divine prophecy rested on one person, who was chosen from his brethren, and the essence of his father. It was he in whom this divine light was concentrated. He was the kernel, whilst the others were as shells which had no share in it. The sons of Jacob were, however, distinguished from other people by godly qualities, which made them, so to speak, an angelic caste. Each of them, being permeated by the divine essence, endeavoured to attain the degree of prophecy, and most of them succeeded in so doing ...

II. The Impurity of Human Bodies

a. *Read these sources. What do you think the debate about whether Non-Jewish corpses contract impurity like Jewish bodies is about?*

5. Numbers 19:11-16

(יא) הַנֹּגֵעַ בְּמֵת לְכָל־נֶפֶשׁ אָדָם וְטִמָּא שְׁבַעַת יָמִים: (יב) הוּא יִתְחַטֵּא־בּוֹ בַיּוֹם הַשְּׁלִישִׁי וּבַיּוֹם הַשְּׁבִיעִי יִטְהַר וְאִם־לֹא יִתְחַטֵּא בַיּוֹם הַשְּׁלִישִׁי וּבַיּוֹם הַשְּׁבִיעִי לֹא יִטְהַר: (יג) כָּל־הַנֹּגֵעַ בְּמֵת בְּנֶפֶשׁ הָאָדָם אֲשֶׁר־יָמוּת וְלֹא יִתְחַטֵּא אֶת־מִשְׁכַּן ה' טִמָּא וְנִכְרְתָה הַנֶּפֶשׁ הַהוּא מִיִּשְׂרָאֵל כִּי מִי נִדָּה לֹא־זָרַק עָלָיו טִמָּא יִהְיֶה עוֹד טִמְאָתוֹ בּוֹ: (יד) זֹאת הַתּוֹרָה אָדָם כִּי־יָמוּת בְּאֵהָל כָּל־הַבָּא אֶל־הָאֵהָל וְכָל־אֲשֶׁר בְּאֵהָל טִמָּא שְׁבַעַת יָמִים: (טו) וְכָל־כְּלִי פְתוּיָח אֲשֶׁר אֵין־צְמִיד פְּתִיל עָלָיו טִמָּא הוּא: (טז) וְכָל־אֲשֶׁר־יָגַע עַל־פְּנֵי הַשָּׂדֶה בְּחַלְלֵי־הָרֶב אוֹ בְּמֵת אֲרִבְעָעָם אָדָם אוֹ בְּקִבְר יִטְמָא שְׁבַעַת יָמִים:

(11) He who touches the corpse of any human being shall be unclean for seven days. (12) He shall cleanse himself with it on the third day and on the seventh day, and then be clean; if he fails to cleanse himself on the third and seventh days, he shall not be clean. (13) Whoever touches a corpse, the body of a person who has died, and does not cleanse himself, defiles the LORD's Tabernacle; that person shall be cut off from Israel. Since the water of lustration was not dashed on him, he remains unclean; his uncleanness is still upon him. (14) This is the ritual: When a person dies in a tent, whoever enters the tent and whoever is in the tent shall be unclean seven days; (15) and every open vessel, with no lid fastened down, shall be unclean. (16) And in the open, anyone who touches a person who was killed or who died naturally, or human bone, or a grave, shall be unclean seven days.

6. Numbers 31

(א) וַיְדַבֵּר ה' אֶל־מֹשֶׁה לֵאמֹר: (ב) נָקַם נִקְמַת בְּנֵי יִשְׂרָאֵל מֵאֵת הַמִּדְיָנִים אַחַר תְּאֵסֹף אֶל־עַמִּיד: (ג) וַיְדַבֵּר מֹשֶׁה אֶל־הָעָם לֵאמֹר הַחֲלֹצוּ מֵאִתְּכֶם אַנְשִׁים לְצַבָּא וַיְהִיו עַל־מִדְּוָן לְתֵת נִקְמַת־הָ' בְּמִדְּוָן: ... (ד) וַיִּצְבְּאוּ עַל־מִדְּוָן כְּאֲשֶׁר צִוָּה ה' אֶת־מֹשֶׁה וַיְהִי וַיִּהְיוּ כָּל־זָכָר: (ה) וְאֶת־מַלְכֵי מִדְּוָן הָרְגוּ עַל־חַלְלֵיהֶם אֶת־אֹיְבֵי וְאֶת־רֵקֵם וְאֶת־צֹר וְאֶת־חִיּוֹר וְאֶת־רִבְעֵי חַמְשֵׁת מַלְכֵי מִדְּוָן וְאֵת בְּלָעָם בְּרִבְעוֹר הָרְגוּ

בְּחֶרֶב: ... (יט) וְאַתֶּם חָנוּ מִחוּץ לַמַּחֲנֶה שִׁבְעַת יָמִים כָּל הַרְגַּ נֶפֶשׁ וְכָל | נִגַע בְּחָלָל תִּתְחַטְּאוּ בַיּוֹם הַשְּׁלִישִׁי וּבַיּוֹם הַשְּׁבִיעִי אַתֶּם וּשְׂבִיכֵם: (כ) וְכָל־בְּגָד וְכָל־כְּלִיעוֹר וְכָל־מַעֲשֵׂה עֲזִים וְכָל־כְּלִיעַץ תִּתְחַטְּאוּ: (ס)

(1) The LORD spoke to Moses, saying, (2) “Avenge the Israelite people on the Midianites; then you shall be gathered to your kin.” (3) Moses spoke to the people, saying, “Let men be picked out from among you for a campaign, and let them fall upon Midian to wreak the LORD’s vengeance on Midian. ... (7) They took the field against Midian, as the LORD had commanded Moses, and slew every male. (8) Along with their other victims, they slew the kings of Midian: Evi, Rekem, Zur, Hur, and Reba, the five kings of Midian. They also put Balaam son of Beor to the sword.... (19) “You shall then stay outside the camp seven days; every one among you or among your captives who has slain a person or touched a corpse shall cleanse himself on the third and seventh days. (20) You shall also cleanse every cloth, every article of skin, everything made of goats’ hair, and every object of wood

7. Mishnah Ohalot 18:7

(ז) הַקּוֹנֵה שָׂדֶה בְּסוּרֵיָא, סְמוּכָה לְאַרְץ יִשְׂרָאֵל, אִם יָכוֹל לְהִכְנִס לָהּ בְּטְהָרָה, טְהוֹרָה, וְחִיבָת בְּמַעֲשְׂרוֹת וּבְשִׁבְעִיעִית. וְאִם אֵינּוּ יָכוֹל לְהִכְנִס לָהּ בְּטְהָרָה, טְמֵאָה, וְחִיבָת בְּמַעֲשְׂרוֹת וּבְשִׁבְעִיעִית. מְדוּרוֹת הַגּוֹלִים, טְמֵאִין. כַּמָּה יִשְׁתָּא בְּתוֹכֵן וִיהָא צְרִיד בְּדִיקָה, אַרְבַּעִים יוֹם, אַף עַל פִּי שְׂאִין עִמּוֹ אִשָּׁה. וְאִם הִיא עֶבֶד אוֹ אִשָּׁה מְשֻׁמְרִים אוֹתוֹ, אֵינּוּ צְרִיד בְּדִיקָה:

(7) If one buys a field in Syria near to the land of Israel: If he can enter it in cleanness, it is deemed clean and is subject to [the laws of] tithes and sheviit [produce]; But he cannot enter it in cleanness, it [is deemed] unclean, but it is still subject to [the laws of] tithes and sheviit [produce]. The dwelling-places of non-Jews are unclean. How long must [the non-Jew] have dwelt in [the dwelling-places] for them to require examination? Forty days, even if there was no woman with him. If, however, a slave or [an Israelite] woman watched over [the dwelling-place], it does not require examination.

8. Yevamot 60b-61a

תְּנִיא וְכֵן הִיא ר"ש בן יוחאי אומר קברי עובדי כוכבים אינן מטמאין באהל שנא' (יחזקאל לד, לא) ואתן צאני צאן מרעייתי אדם אתם אתם קרויין אדם ואין העובדי כוכבים קרויין אדם מיתבי (במדבר לא, מ) ונפש אדם ששה עשר אלף משום בהמה (יונה ד, יא) אשר יש בה הרבה משתים עשרה רבוא אדם אשר לא ידע בין ימינו לשמאלו (ובהמה רבה) משום בהמה (במדבר לא, יט) כל הורג נפש וכל נוגע בחלל תתחטאו דלמא איקטיל חד מישראל ורבנן לא נפקד ממנו איש ור' שמעון בן יוחי לא נפקד ממנו איש לעבירה רבינא אמר נהי דמעטינהו קרא מאטמויי באהל דכתיב (במדבר יט, יד) אדם כי ימות באהל ממגע ומשא מי מעטינהו קרא:

§ It is taught in a *baraita*: And similarly, Rabbi Shimon ben Yoḥai would say: The graves of gentiles do not render items impure though a tent, as it is stated: “And you My sheep, the sheep of My pasture, are men [adam]” (Ezekiel 34:31), from which it is derived that you, the Jewish people, are called men [adam] but gentiles are not called men [adam]. Since the Torah introduces the *halakha* of ritual impurity of a tent with the words: “When a man [adam] dies in a tent” (Numbers 19:14), this *halakha* applies only to corpses of Jews but not those of gentiles. The Gemara raises an objection based upon the verse with regard to captives taken during the war against Midian: “And the persons [nefesh adam] were sixteen thousand” (Numbers 31:40), which indicates that gentiles are also referred to as *adam*. The Gemara answers: They are given this title **due to** the need to distinguish the people taken captive from the **animals** that were taken as spoils of war. The Gemara raises another difficulty based upon a verse with regard to the city of Nineveh: “Wherein are more than one hundred and twenty thousand men [adam] that cannot discern between their right hand and their left hand, and also much cattle” (Jonah 4:11). The Gemara answers: There, too, the gentiles are given this title **due to** the need to distinguish them from the **animals** mentioned in the verse. The Gemara continues to question Rabbi Shimon’s ruling based upon a verse pertaining to the war against Midian: “Whoever has killed anyone, and whoever has touched any slain, purify yourselves” (Numbers 31:19). This indicates that gentile corpses convey ritual impurity. The Gemara answers: **Perhaps a Jew was killed**, and the concern was for impurity caused by his corpse. **And the Rabbis** reply that the verse attests: “Not one man of us is missing” (Numbers 31:49). No Jewish soldiers fell in battle, and

therefore the concern for impurity must have been due to the corpses of gentiles. **And Rabbi Shimon ben Yoḥai** responds: The intent of that verse is that **not one man of us is missing** due to **transgression**, i.e., none of them sinned. **Ravina said** that the explanation above is unnecessary: **Granted, the verse excluded gentiles from rendering items impure through a tent, as it is written: “When a man [adam] dies in a tent”** (Numbers 19:14); but **did the verse exclude them from rendering items impure via touching and carrying?** Since gentile corpses convey impurity in these ways, they could have rendered impure the Jews involved in the war with Midian, even according to Rabbi Shimon ben Yoḥai.

9. Zohar Chayei Sarah 131a

אמר רבי יוסי הא חמינן כל זמנא דב"נ קאים ברוחא דא לאו איהו מסאב נפקא נשמתיה מניה איהו מסאב , א"ל ודאי הכי הוא והכי
אתמר דהא ההוא יצר הרע כד נטיל רוחא דבר נש סאיב ליה ואשתאר גופא מסאב ושאר עמין עעכו"ם כד אינון בחייהון אינון
מסאבין דהא מסטרא מסאבא אית לון נשמתין וכד אתריק מניה ההוא מסאבו אשתאר גופא בלא מסאבו כלל

Said R. Yose: We see that as long as a person is alive, they do not defile. As soon as the soul departs, he defiles. He said to him: That is certainly the case and this is what it means: When the yetzer ha-ra (force of evil) takes a human soul, it defiles and what is left is a defiled body. Other nations are impure while alive, because their souls come from the dark side, and when their soul is removed, their body remains without any impurity. [trans. Ibid]

10. Shulchan Arukh, Yoreh De'ah 372:2

(ב) קברי עובדי כוכבים נכון ליהזר הכהן מליך עליהם. (מהר"מ ותוס' פ' המקבל) (אע"פ שיש מקילין (רמב"ם והגמ"י בשם ס' יראים) ונכון להחמיר אבל קבר של מומר לעבודת כוכבי' מטמא כשל ישראל) (רשב"א סי' קצ"ד ורמ"ב):

(2) [With respect to] the graves of heathens, it is proper for a *Kohen*¹ *Glos.* to be careful not to walk upon them,¹⁵*R. Meir of Rothenberg and Tosaf. B.M. 114a-b — G. also Yeb. 61a, Tosaf. s.v. ממגע Cf. Ker. 6b. although there are some [authorities] who adopt a lenient view.*¹⁶*Yad, Ebel III, 3; Hag. Maim. ibid. on the authority of Sefer Yere'im — G. Those who advocate the lenient view maintain that the law rests with R. Simeon b. Yoḥai (Gemara ibid.); those of the stringent view hold that the law rests with R. Simeon b. Gamaliel (v. Ohol. XVIII, 7). The proponents of the lenient view, however, maintain that heathen graves defile through contact and carriage (מגע ומשא) and that only the uncleanness of overshadowing is not applicable to them. And it is proper to adopt the stringent view. However, the grave of an [Israelite] who was an apostate in respect of idolatry,*¹⁷*Or e.g., a Karaite Jew — A.H. imparts uncleanness as [the grave] of one who was a [conforming] Israelite.*¹⁸*RaShBA s. 194 and 242 — G. San. 44a s.v. ישראל; Yeb. 47b s.v. למאי הלכתא; Kid. 36a s.v. בין כך ובין כך.*

11. Siftei Kohen on Shulchan Arukh, Yoreh De'ah 372:4

אבל במגע ומשא י"א דאפילו המקילים אוסרים וכן נראה דעת ב"י ע"ש:

However, with regards to touching, some say that even the lenient ones forbid (and this seems to be the position of the Beit Yosef)

III. Shabbat – Saving a Life

- a. *Why is saving lives on Shabbat limited to Jews? Does it make sense?*
- b. *How does this change over time?*

12. Mishnah Yoma 8:7

(ז) מי שִׁנְפְּלָה עָלָיו מִפְּלֵת, סָפַק הוּא שֵׁם סָפַק אֵינּוּ שֵׁם, סָפַק חַי סָפַק מֵת, סָפַק נִכְרִי סָפַק יִשְׂרָאֵל, מִפְּקָחִין עָלָיו אֶת הַגֵּל. מִצְאוּהוּ חַי, מִפְּקָחִין עָלָיו. וְאִם מֵת, יִנְחוּהוּ:

(7) If an avalanche fell on someone, and it is doubtful whether or not he is there, or whether he is alive or dead, or whether he is an Israelite or a non-Jew, they remove the debris from above him [even on Shabbat]. If they find him alive they remove the debris, but if dead they should leave him there [until Shabbat is over].

13. Yoma 85a-b

וכבר היה ר' ישמעאל ורבי עקיבא ורבי אלעזר בן עזריה מהלכין בדרך ולוי הסדר ורבי ישמעאל בנו של רבי אלעזר בן עזריה מהלכין אחריהן נשאלה שאלה זו בפניהם מניין לפקוח נפש שדוחה את השבת ... ר' שמעון בן מנסיא אומר (שמות לא, טז) ושמרו בני ישראל את השבת אמרה תורה חלל עליו שבת אחת כדי שישמור שבתות הרבה א"ר יהודה אמר שמואל אי הואי התם הוה אמינא דידי עדיפא מדיהו (ויקרא יח, ה) וחי בהם ולא שימות בהם אמר רבא לכולהו אית להו פירכא בר מדשמואל דלית ליה פירכא ...

§ The Gemara relates: **It once happened that Rabbi Yishmael, and Rabbi Akiva, and Rabbi Elazar ben Azarya were walking on the road, and Levi HaSadar and Rabbi Yishmael, son of Rabbi Elazar ben Azarya, were walking respectfully behind them,** since they were younger and did not walk alongside their teachers. **This question was asked before them: From where is it derived that saving a life overrides Shabbat? ... Rabbi Shimon ben Menasya said:** It is stated: **“And the children of Israel shall keep Shabbat, to observe Shabbat”** (Exodus 31:16). **The Torah said: Desecrate one Shabbat on his behalf so he will observe many Shabbatot. Rav Yehuda said that Shmuel said: If I would have been there among those Sages who debated this question, I would have said that my proof is preferable to theirs,** as it states: **“You shall keep My statutes and My ordinances, which a person shall do and live by them”** (Leviticus 18:5), **and not that he should die by them.** In all circumstances, one must take care not to die as a result of fulfilling the mitzvot. **Rava commented on this: All of these arguments have refutations except for that of Shmuel, which has no refutation.**

14. Shulchan Arukh, Orach Chayim 330:2

(ב) עכ"ם אין מילדין אותה בשבת אפי' בדבר שאין בו חילול שבת :

One cannot aid a Non-Jew in giving birth on Shabbat, even if there is no Shabbat violation.

15. Mishnah Berurah 330:8

(ח) עכ"ם אין מילדין - ואפילו בשכר דבחול מילדין משום איבה כמבואר ב"ד סימן קנ"ד הכא אסור משום דיכולה להשתמט ולומר דאין מחללין שבת כ"א להווא דמנטר שבתא וכתב המג"א ובמקום דאיכא למיחש לאיבה גם בכה"ג שרי אם אין בה חלול. ודע דהרופאים בזמנינו אפי' היותר כשרים אינם נזהרים בזה כלל דמעשים בכל שבת שנוסעים כמה פרסאות לרפאות עובדי כוכבים וכותבין ושוחקין סממנים בעצמן ואין להם על מה שיסמוכו דאפילו אם נימא דמותר לחלל שבת באיסור דרבנן משום איבה בין העו"ג [אף דג"ז אינו ברור עיין בפמ"ג] איסור דאורייתא בודאי אסור לכו"ע ומחללי שבת גמורים הם במזיד השם ישמרנו:

One may not assist a Gentile woman to give birth--even for pay, which is permitted during the week for fear

of enmity...this is forbidden on Shabbat because she can evade by saying that Jews do not violate Shabbat

except for one who observes Shabbat. The Magen Avraham wrote that in a case where one fears for enmity

(i.e. where this excuse will not work), it is permitted on Shabbat as well, as long as there is no Shabbat violation. Know that the doctors in our day--even the most observant among them--are not careful about

this at all. Each and every Shabbat they travel long distances to heal Gentiles and they write and grind medicines. They have no basis for this--even if we were to say that it would be permitted to violate rabbinic

Shabbat prohibitions on account of enmity...it is clearly forbidden to violate a Biblical prohibition. These doctors are bona fide intentional Shabbat violators, may God help us! [trans. Tucker, Rubenstein, <https://bit.ly/2LH37gr>]

16. Shut Chatam Sofer 2:131

...ואמנם לחתוך הטבור שהוא מלאכה דאורייתא תצו' לנכרי' הבריאה העומדת על צדה לחתוך ואם יש באיבה זו חשש סכנת נפשות יש להתיר אפילו מלאכה דאורייתא...

However, when cutting the umbilical cord, which is a Biblical violation, the Jewish doctor should tell the Gentile midwife to cut it. But if there is enmity rising to the level of danger to life, one can permit even a Biblical violation... [translation ibid]

17. Shut Igrot Moshe OC 4:79

...אשיב על שאלת מע"כ בדבר עכו"ם, דהא ברור ופשוט שהתירוץ אמר אביי בע"ז דף כ"ו ע"א דיכולין לומר דידן דמנטרי שבתא מחללינן עלייהו דידהו דלא מנטרי שבתא לא מחללינן לא תתקבל תשובה כזו במדינות שלנו לא אצל החולים וקרוביהן ולא לראשי המדינה, שלכן ודאי אם הוא בבית חולים ויאמר תירוץ זה לא רק שלא יועיל כלום דכשלא יהיה שם רופא אחר ולא ירצה לרפא ודאי לא ישגיחו על דבריו ואם לא יהיה שם רופא אחר ודאי ידונו אותו כפושע ורוצח... אבל כשנזדמן שהוא מוכרח להיות שבת בבית החולים או כשהוא כבר רופא קבוע שאף שהמשרד שלו סגור בשבת בא דוקא אליו נכרי חולה בדבר שהוא סכנה הוא מוכרח להזדקק לו אף בחלול שבת באיסור דאורייתא... מאחר דלא מתקבל במדינותינו הדחויים שאמר אביי הוא סכנה ממש גם בעצם לגופו ממש מקרובי החולה, וגם אם הוא אינו חושש שתהא סכנה לו בעצמו יש לחוש לאיבה גדולה כל כך מצד אנשי המדינה וגם מהממשלה שיש ודאי לחוש גם לעניני סכנה מתוצאות זה, ואף שהתוס' שם ד"ה סבר תמהין איך אפשר להתיר משום איבה איסורא דאורייתא, כפי המצב במדינותינו בזמן הזה איכא מצד איבה סכנה גדולה אף במדינות שהרשות לכל אדם מישראל להתנהג בדיני התורה... אבל בזמננו יש לחוש לסכנה כמדומני בכל מקום, וגם מצד פרסום הידיעות ע"י העתונים תיכף מה שנעשה בכל העולם איכא המכשול למילף ממקום למקום וגם הסתה להגדיל השנאה עד לרציחה גדול ע"ז לכן פשוט שבזמננו יש לדון זה כסכנה ממש, ויש להתיר כשנזדמן זה.

...I will answer regarding your question about a Gentile. It is clear and simple that the excuse offered by

Abaye in the Talmud will not be accepted in [the United States], neither by the patients and their families, nor by the authorities. Therefore, if he offers this excuse in the hospital, not only if there is no other doctor

available, in which case they will certainly not listen to him, but even if there is another doctor, they will

consider him to be a criminal and a murderer...

When a case arises where the doctor must be in the hospital on Shabbat or where a Gentile patient in mortal

danger comes to see him...the doctor must treat him, even if Biblical violations of Shabbat are involved...

given that in [the United States] Abaye's excuses will not be accepted and it will be a bona fide danger to himself and his relatives. And even if he does not worry for his own life, we should be worried for the

enormous enmity from the state and the government and the dangerous consequences that could result.

Even though the Tosafot are shocked that we would consider permitting a Biblical violation on account of

enmity, the situation in our countries today is such that there is tremendous danger that could result from

such enmity, even in states where Jews are free to behave according to the laws of the Torah... In our time, it seems to me that we should worry for this danger in all places, also on account of the fact that news from all over the world is now published in newspapers, such that this would quickly become a global problem that would spread incitement until a significant number of Jews could be killed. Therefore, it seems obvious that in our time we treat this as a real danger and one should permit when such cases come up.

18.Meiri Avodah Zarah 26a

הגוים... כל שבא להם ההיזק מאליו אין אנו מצוים להשתדל בהצלתם ואף בזו של גוים צריך אתה לבחון מה שהקדמנו באיזה גוי הוא אומר כן ר"ל שבעובדי האלילים נאמר שלא היו גדורים בדרכי הדתות ואדרבה כל עבירה וכל כיעור יפה בעיניהם וכבר אמר ראש הפילוסופים הרגו מי שאין לו דת הא כל שהוא מעובדי האלהות אף על פי שאינו מכלל הדת אינו בדין זה חלילה וחס וכבר ידעת בגר תושב והוא שקבל עליו שבע מצות שאתה מצווה להחיותו:

When harm comes to Gentiles we are not commanded to try to save them. But in this case of Gentiles as well, you need to apply the distinction we mentioned earlier with regard to the type of Gentile we are speaking about. This refers to idolaters who are not bound by the ways of religion--indeed, all transgressions and disgraceful things are pleasing to them. The chief philosopher said: Kill anyone without religion. Therefore, anyone who worships God, even if he is not part of the religion is not included in this law God forbid! You know that it is a requirement to sustain in life the ger toshav--one who has accepted on himself the seven Noahide laws.

IV. Some Modern Implications

18. Contemporary Halakhic Problems, Vol II, Part I, Chapter III Medical Questions

(10) Study of Anatomy I: Dissection

(11) Anatomical studies which involve dissection of human cadavers are beset with a number of halakhic problems. These questions have been the subject of ongoing halakhic analysis and discussion over a period of centuries. A cursory survey of some aspects of this topic and of the different positions taken by various prominent halakhic authorities is presented by Rabbi Shlomoh Goren in the Iyar 5739 issue of *Shevilinear*. This article is reprinted in the Spring 5740 issue of *Me'orot*, the second edition of a new journal sponsored by the Office of the Chief Rabbinate of Israel. A comprehensive bibliography listing the vast majority of responsa and articles on the topic of anatomical dissection and autopsy was prepared by Rabbi Kalman Kahana and published in the Tevet 5727 issue of *Ha-Ma'ayan* with a supplement in the Nisan 5727 issue of that periodical. This material together with additional references was reprinted in the Av 5734 issue of *Torah u-Mada*.

(12) The primary question, of course, centers upon the prohibition of *nivul ha-met*, or desecration of the dead. According to the position accepted by most rabbinic decisors, this prohibition is suspended in face of *pikuah nefesh*, i.e., danger to life. However, as R. Ezekiel Landau, *Noda bi-Yehudah*, *Mahadurah Tinyana*, *Yoreh De'ah*, no. 210, declares, halakhic prescriptions are suspended for purposes of *pikuah nefesh* only in face of imminent danger. Thus, an autopsy would be warranted in order to secure information useful in treating another patient afflicted by the same disease, but not simply for the purpose of advancement of scientific knowledge even though new information gained as a result of the autopsy might, at some future time, contribute to the cure of gravely ill patients. Both *Noda bi-Yehudah* and R. Moses Sofer, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 236, apply this principle to the question of the propriety of anatomical studies which medical students are required to undertake. On the basis of the principle formulated by *Noda bi-Yehudah*, both he and *Hatam Sofer* reject the contention that the study of medicine may be deemed to be encompassed within the category of *pikuah nefesh*.¹ *The arguments of R. Ben-Zion Uziel, Mishpetei Uzi'el, Yoreh De'ah no. 28,*

sec. 2, were anticipated by *Noda bi-Yehudah* and *Hatam Sofer* and explicitly rejected by those authorities. *Hatam Sofer* applies a *reductio ad absurdum* in declaring that, if violation of a corpse is permissible for purposes of the study of medicine, Sabbath restrictions must also be suspended for the same purpose. Equating the two, *Hatam Sofer* concludes that a medical student may not dissect a cadaver, just as he may not violate the Sabbath for the purpose of pursuing his studies.

(13) The question of whether or not the strictures against *nivul ha-met* apply in the case of a person who in his lifetime has willed his body to science or has granted consent for a post-mortem examination was discussed in *Contemporary Halakhic Problems*, I, 125-126.

(14) Rabbi Goren omits any discussion of what is, in terms of practical application, the most significant possible exception to this prohibition, viz., the question of whether the prohibition is limited to Jewish corpses or whether it encompasses non-Jewish cadavers as well. In reality, virtually all bodies made available to medical schools are those of non-Jews. Barring evidence to the contrary, application of the principle of *rov* (majority) establishes a halakhic determination that the body of unknown origin and religious identity is a member of the class to which the majority of all bodies belong. When the majority of all persons in the area from which the bodies are procured are non-Jews, any individual corpse is deemed to be that of a non-Jew.

(15) The Jewish *yishuv* faced this problem on a communal level for the first time with the establishment of the first medical school in what was then Palestine. The halakhic issue was submitted to the late Rabbi Abraham Isaac Kook for adjudication. In a brief responsum authored in 1931, *Da'at Kohen*, no. 199, Rabbi Kook sanctions use of non-Jewish cadavers without reservation. The primary issue which he addresses is the possibility of anti-Semitic repercussions as a result of adoption of such a policy. In order to obviate this objection he formulates the philosophical basis of the prohibition of *nivul ha-met* as a manifestation of the *kedushah* or sanctity which is unique to the Jew. Jews are forbidden to partake of various foods, not because they are deleterious to health, but by virtue of the unique holiness of the community of Israel. The duty to preserve inviolate the sanctity of the body, explains Rabbi Kook, is an obligation imposed solely upon Jews. He ventures the opinion that fair-minded gentiles will recognize that a people who have been subjected to unspeakable persecution because of their tenacity in adhering to the religious obligations imposed upon them are entitled to respect for their claim to the "privilege of sanctity" as well. Moreover, he adds, inveterate anti-Semites are not likely to undergo a change in attitude even if dissection of Jewish corpses were to be sanctioned.

(16) An opposing view is attributed to Rabbi Joseph Soloveitchik in an article written by Rabbi Immanuel Jakobovits, *Torah she-be-'al Peh*, VI (5724), 64. Rabbi Soloveitchik is quoted as stating that insofar as the prohibition concerning *nivul ha-met* is concerned, no distinction may be made between Jew and gentile. The prohibition is derived from the commandment not to allow the corpse of an executed transgressor to remain hanging overnight "for he that is hanged is a reproach unto God" (Deuteronomy 21:23). The prohibition, it is argued, applies equally to the bodies of both Jews and non-Jews because all men are created in the "image of God."

(17) However, *Tosefet Yom Tov*, *Avot* 3:14, declares that while all men are created in the "image," (*be-zelem*), i.e., with divine potential, non-Jews who do not fulfill God's commandments are not described as created "in the image of God" (*be-zelem Elokim*). Thus R. Akiva, in the Mishnah, speaks of man, meaning all mankind, as created "in the image," but does not speak of mankind as created "in the image of God." *Tosefet Yom Tov's* comments may perhaps best be understood in light of the statement found in *Baba Kamma* 38a concerning the diminished status of Noachides as a result of their renunciation of the Noachide Code.

(18) It may readily be inferred that *Hatam Sofer* also regards the prohibition concerning *nivul ha-met* as being limited to Jewish corpses. *Hatam Sofer* points to the difficulty posed by the narrative recorded in the Gemara, *Bekhorot* 45a. The Gemara relates that the disciples of Rabbi Ishmael, desiring to determine the number of organs in the human body, obtained the corpse of a harlot who

had been executed by the civil authorities and boiled it in order to examine and count the organs. The conduct of these students seems to have been in violation of Jewish law. *Hatam Sofer* declares that no transgression was committed because the woman in question was a gentile. In the context of his discussion *Hatam Sofer* explicitly deduces only that there is no prohibition against deriving benefit from the corpse of a non-Jew. However, it must logically be inferred that the prohibition against *nivul ha-met* is also not operative, else the action of these students would have been prohibited on that account alone. Moreover, it is evident from the context of *Hatam Sofer's* conclusion that he was of the opinion that the corpse of a non-Jew is excluded from the prohibition against *nivul ha-met* since, as any reader who checks the reference will observe, that prohibition is clearly mentioned in the sentence immediately preceding this conclusion.

(19) However, the Sephardic authority *Ben Ish Hai*, in his commentary on *Bekhorot, Ben Yehudah*, explains the incident concerning the students of Rabbi Ishmael in a way which negates the inference drawn by *Hatam Sofer*. *Ben Ish Hai* explains that, as part of her punishment, the civil authorities had ordered the boiling of the body of the executed woman. Hence, this narrative provides no basis for the inference that dissection of the corpse of a non-Jew is not forbidden.

V. Organ Donation, Use of Cadavers – 3 Positions

19. שו"ת דעת כהן (ענייני יורה דעה) סימן קצט

זה מכבר באה אלי שאלתו בענין המתים הדרושים בשביל הנתוח של למוד הרפואה. לדעתי מאחר שניוול המת הוא אחד מהאיסורים המיוחדים לישראל, שהקב"ה צוה אותנו על קדושת הגוף, כמו שאנו מזהירים ממאכלות אסורות לא מצד הטבע של הגוף, אלא מצד הקדושה המיוחדת לישראל, שקראם הש"ת גוי קדוש, והגויים כשם שאינם מקפידים על המאכלות רק באופן טבעי, ככה אין להם שום טעם להקפיד כ"כ על הגוף שלא יתנוול, בשביל איזה מטרה טבעית כמו הרפואה, ע"כ אנחנו צריכים לקנות בכסף מלא גויות מתים מאוה"ע בשביל המטרה המדעית. ואין לחוש בזה משום שנאת הגויים, כי הישרים שבהם יבינו, שסו"ס אומה זו, שנבחרה להביא את אור הקודש של ידיעת ד' אמת בעולם, וסובלת ע"ז צרות מרובות לאין שיעור, היא ראוייה ג"כ לאיזה פריבילגיה של קדושה, והמקולקלים שבהם לא יחדלו להעליל עלילות גם אם נקח מתים מישראל לנתחם. וענין המכירה והמסירה של הגופים בחייהם לא יוכל להועיל, כי איסור ניוול המת הוא בא מצד צלם אלקים שבאדם, שהוא מיוחד לישראל ביותר בהירות מצד קדושת התורה, וחלק גבוה מי יתיר.

20. שו"ת משפטי עוזיאל כרך א - יורה דעה סימן כח

שמא תאמר שאפשר לעשות נתוח זה על ידי נתוח גופות הגויים, זה ודאי לא נתן ליאמר ומכל שכן להכתב שהרי אסור הנוול הוא משום בזיון דכולהו חיי כלומר שבזיון הוא להשאיר אדם הנברא בצלם אלקים ומחונן בשכל ובינה לרדות ולמשול בכל הבריאה כלה שיהא מוטל ע"פ חוצות מנוול ומלא סרחון, וכן דקדק הטור והרמב"ן וכתב: בזיון דכלהו חיי ולא אמר של כל ישראל ובודאי שבזה אין הבדל בין גוי לישראל ובין חייבי מיתה או לא. ואין זה תלוי לא ברצון המת עצמו ולא בהסכמת יורשיהו שאין שום אדם יכול להתיר בזיון ונוול גופו וצלמו.

21. ר' יעקב אריאל

אומנם כשנעמדת לפני התורם הברירה בין חולה ישראל לחולה נוכרי, עליו להעדיף ישראל. אך אם יש חולה נוכרי שרקמותיו מתאימות לאלו של התורם, ואין כרגע ישראל הנוקק לכלייתו, יש לתרום לנוכרי, ולא להמתין עד שיהיה ישראל מתאים.

אם תיאמר אמירה כללית, בפרט אם היא תיאמר בשם תורת ישראל כביכול, שתפסול קטגורית כל תרומה של ישראל לחולה נוכרי, עלולה להתפרץ איבה גדולה. ובימינו החשש לאיבה עלול להביא לסכנת נפשות ממשית, בגלל כלי התקשורת המהירים והרשתות, שבכל הארץ יצא קוים ובקצה תבל מילייהם. ואם חלילה ייוודע שבקצה העולם יהודי נמנע מלהציל גוי בשבת, תתפשט מיד הידיעה מקצה העולם ועד קצהו ותחל לבעור הסתה מתפשטת כאש בשדה קוצים והדבר עלול לעלות בחיי אדם.

ולא מדובר רק באיבה מילולית, אלא בהצללת נפשות של חולים ישראלים, והרי הם לפנינו ומצפים בכליון עיניים לתרומה שתציל את חייהם. כי כשיש הדדיות, ישראל תורם לנוכרי ובמקביל גם נוכרי תורם לישראל, מתגברים הסיכויים שישראל הזקוק להשתלה יינצל ע"י תרומת נוכרי. (ואולי משום כך נהגו להתיר חילול שבת גם עבור גוי, כי בכך אנו גורמים שגם חיי ישראלים יינצלו). מותר, אפוא, לפי ההלכה ליהודי לתרום כליה לגוי.¹⁵

לדעת הרמב"ם (הל' מלכים י, יב) ביקור חולי עכו"ם מותר לא רק משום איבה, אלא משום דרכי שלום ומידת הרחמים, וזו לשונו:

אפילו העכו"ם ציוו חכמים לבקר חוליהם, ולקבור מתיהם עם מתי ישראל, ולפרנס עניהם בכלל עניי ישראל, מפני דרכי שלום, הרי נאמר טוב ה' לכל ורחמיו על כל מעשיו, ונאמר דרכיה דרכי נועם וכל נתיבותיה שלום.

VI. Charity and Kindness

a. Is this a practical need, or a fundamental value?

22. Gittin 61a

אין ממחין ביד עניי נכרים בלקט בשכחה ובפאה, מפני דרכי שלום. ת"ר: מפרנסים עניי נכרים עם עניי ישראל, ומבקרין חולי נכרים עם חולי ישראל, וקוברין מתי נכרים עם מתי ישראל, מפני דרכי שלום.

We don't protest [when] non-Jewish poor people [take] *leket*, *shechicha*, and *peah* [agricultural charity], because of the ways of peace. The Rabbis taught, we support the non-Jewish poor with the Jewish poor, and visit the non-Jewish sick with Jewish sick, and bury the non-Jewish dead with the Jewish dead, because of the ways of peace.

23. **Sanhedrin 76b**

והמחזיר אבידה לנכרי - עליו הכתוב אומר למען ספות הרוה את הצמאה לא יאבה ה' סלח לו.

And one who returns a lost object to a non-Jew – about him the Torah says “that the watered be swept away with the dry, the LORD will not be willing to pardon him

24. **Rashi ibid**

והמחזיר אבידה לנכרי - השווה וחבר נכרי לישראל, ומראה בעצמו שהשבת אבדה אינה חשובה לו מצות בוראו, שאף לנכרי הוא עושה כן שלא נצטווה עליהם.

And one who returns a lost object to a non-Jew – He has equated and joined a Jew to a non-Jew, and shows that returning lost objects is not considered for him a commandment of his creator, as for even a non-Jew he does this, and he was not commanded concerning them.

25. **Rambam Melachim 10:12**

וכן יראה לי שנוהגין עם גרי תושב בדרך ארץ וגמילות חסדים כישאל, שהרי אנו מצווין להחיותן שנאמר לגר אשר בשעריך תתננה ואכלה... אפילו העכו"ם צוו חכמים לבקר חוליהם, ולקבור מתייהם עם מתי ישראל, ולפרנס ענייהם בכלל עניי ישראל, מפני דרכי שלום, הרי נאמר טוב ה' לכל ורחמיו על כל מעשיו, ונאמר דרכיה דרכי נועם וכל נתיבותיה שלום.

And it seems to me that we act with a *ger toshav* with respect and kindness like a Jew because we are commanded to keep him alive, as it says “to the *ger* in your gates you shall give it to eat”... and even an idolater, the sages commanded us to visit their sick, bury their dead with the Jewish dead, support their poor among the Jewish poor, for the ways of peace, as it says “God is good to all and his mercy is on all his handiwork,” and it says “Its ways are ways of pleasantness and all Its paths are peace.”

26. **Rambam Avadim 9:8**

מותר לעבוד בעבד כנעני בפרך, ואף על פי שהדין כך מדת חסידות ודרכי חכמה שיהיה אדם רחמן ורודף צדק ולא יכביד עולו על עבדו ולא יצר לו ויאכילהו וישקהו מכל מאכל ומכל משתה, חכמים הראשונים היו נותנין לעבד מכל תבשיל ותבשיל שהיו אוכלין, ומקדימין מזון הבהמות והעבדים לסעודת עצמן, הרי הוא אומר כעניי עבדים אל יד אדוניהם כעניי שפחה אל יד גבירתה, וכן לא יבזהו ביד ולא בדברים לעבדות מסרן הכתוב לא לבושה, ולא ירבה עליו צעקה וכעס אלא ידבר עמו בנחת וישמע טענותיו וכן מפורש בדרכי איוב הטובים שהשתבח בהן אם אמאס משפט עבדי ואמתי בריבם עמדי הלא בבטן עושה עשהו ויכוננו ברחם אחד, ואין האכזריות והעזות מצויה אלא בעכו"ם עובדי ע"ז אבל זרעו של אברהם אבינו והם ישראל שהשפיע להם הקדוש ברוך הוא טובת התורה וצוה אותם בחקים ומשפטים צדיקים רחמנים הם על הכל, וכן במדותיו של הקדוש ברוך הוא שצונו להדמות בהם הוא אומר ורחמיו על כל מעשיו וכל המרחם מרחמין עליו שנאמר ונתן לך רחמים ורחמך והרבך.

It is permissible to have a Canaanite slave perform excruciating labor. Although this is the law, the attribute of piety and the way of wisdom is for a person to be merciful and to pursue justice, not to make his slaves carry a heavy yoke, nor cause them distress. He should allow them to partake of all the food and drink he serves. This was the practice of the Sages of the first generations who would give their slaves from every dish of which they themselves would partake. And they would provide food for their animals and slaves before partaking of their own meals. And so, it is written [Psalms 123:2](#): "As the eyes of slaves to their master's hand, and like the eyes of a maid-servant to her mistress' hand, so are our eyes to God." Similarly, we should not embarrass a slave by our deeds or with words, for the Torah prescribed that they perform service, not that they be humiliated. Nor should one shout or vent anger upon them extensively. Instead, one should speak to them gently, and listen to their

claims. This is explicitly stated with regard to the positive paths of Job for which he was praised [Job 31:13](#), 15: "Have I ever shunned justice for my slave and maid-servant when they quarreled with me.... Did not He who made me in the belly make him? Was it not the One who prepared us in the womb?" Cruelty and arrogance are found only among idol-worshipping gentiles. By contrast, the descendants of Abraham our patriarch, i.e., the Jews whom the Holy One, blessed be He, granted the goodness of the Torah and commanded to observe righteous statutes and judgments, are merciful to all. And similarly, with regard to the attributes of the Holy One, blessed be He, which He commanded us to emulate, it is written [Psalms 145:9](#): "His mercies are upon all of His works." And whoever shows mercy to others will have mercy shown to him, as implied by [Deuteronomy 13:18](#): "He will show you mercy, and be merciful upon you and multiply you."

27. **Rambam Avel 14:1**

מצות עשה של דבריהם לבקר חולים, ולנחם אבלים, ולהוציא המת, ולהכניס הכלה, וללוות האורחים, ולהתעסק בכל צרכי הקבורה, לשאת על הכתף, ולילך לפניו ולספוד ולחפור ולקבור, וכן לשמח הכלה והחתן, ולסעודם בכל צרכיהם, ואלו הן גמילות חסדים שבגופו שאין להם שיעור, אף על פי שכל מצות אלו מדבריהם הרי הן בכלל ואהבת לרעך כמוך, כל הדברים שאתה רוצה שיעשו אותם לך אחרים, עשה אתה אותן לאחיק בתורה ובמצות.

It is a positive commandment of Rabbinic origin to visit the sick, comfort mourners, to prepare for a funeral, prepare a bride, accompany guests, attend to all the needs of a burial, carry a corpse on one shoulders, walk before the bier, mourn, dig a grave, and bury the dead, and also to bring joy to a bride and groom and help them in all their needs. These are deeds of kindness that one carries out with his person that have no limit.

Although all these mitzvot are of Rabbinic origin, they are included in the Scriptural commandment [Leviticus 19:18](#): "Love your neighbor as yourself." That charge implies that whatever you would like other people to do for you, you should do for your comrade in the Torah and mitzvot.

28. **Bava Metzia 71a (regarding lending money)**

אם כסף תלוה את עמי את העני עמך, עמי ונכרי - עמי קודם, עני ועשיר - עני קודם, ענייך ועניי עירך - ענייך קודמין, עניי עיר אחרת - עניי עירך קודמין.

When you lend to my nation and the poor with you: my nation and a non-Jew, my nation comes first. A poor and rich person, the poor person comes first. Your poor and the poor of your city, your poor come first. The poor of the city and the poor of another city, the poor of your city come first.

HaMavdil Bein Kodesh LeChol: Fire, Spice and Wine

Ora Ziring: oraziring@gmail.com

I. The Mitzva of *Havdala*

- ❖ What is the biblical mitzva of *havdala*? How should this mitzva be fulfilled? What is the purpose of this mitzva?

1. Exodus 20:8

(ח) זְכוֹר אֶת-יוֹם הַשַּׁבָּת לְקַדְּשׁוֹ

(8) Remember the sabbath day and keep it holy.

2. Pesachim 106a:5

תנו רבנן זכור את יום השבת לקדשו זוכרהו על היין אין לי אלא ביום בלילה מנין תלמוד לומר זכור את יום השבת לקדשו

The Sages taught in a *baraita* with regard to the verse: “**Remember the day of Shabbat to sanctify it**” (Exodus 20:7): **Remember it over wine**, through the recitation of *kiddush*. **I have only** derived that there is a mitzva to recite *kiddush during the day*, as the verse is referring to the day of Shabbat. **From where** do I derive that one must also recite *kiddush at night*? **The verse states: “Remember the day of Shabbat to sanctify it,”** which indicates that one should also remember Shabbat as soon as it is sanctified.

3. Pesachim 117b:8

אמר רב אחא בר יעקב וצריך שיזכיר יציאת מצרים בקידוש היום כתיב הכא למען תזכור את יום וכתוב התם זכור את יום השבת לקדשו

Rav Aḥa bar Ya’akov said: **And one must mention the exodus from Egypt in the daytime *kiddush*** of Shabbat, despite the fact that Shabbat is not directly connected to the Exodus. The proof is that **here**, with regard to Passover, **it is written: “That you may remember the day** when you came out of the land of Egypt all the days of your life” (Deuteronomy 16:3); **and it is written there**, with regard to Shabbat: **“Remember the Shabbat day to sanctify it”** (Exodus 20:8). By means of a verbal analogy of the word “day,” these verses teach that one must also recall the Exodus on Shabbat.

4. Mishneh Torah, Sabbath 29:1

(א) מִצְוֹת עֲשֵׂה מִן הַתּוֹרָה לְקַדֵּשׁ אֶת יוֹם הַשַּׁבָּת בְּדַבָּרִים שְׁנֹאָמַר (שמות כ ח) “זְכוֹר אֶת יוֹם הַשַּׁבָּת לְקַדְּשׁוֹ”. כְּלוֹמַר זְכָרְהוּ זְכִירָתָ שָׁבַח וְקִדּוּשׁ. וְצָרִיךְ לְזָכְרְהוּ בְּכִנּוּסְתוֹ וּבִיצִיאָתוֹ. בְּכִנּוּסְתוֹ בְּקִדּוּשׁ הַיּוֹם וּבִיצִיאָתוֹ בְּהַבְדֵּלָה:

(1) It is a positive duty to express the sanctity of the Sabbath day in words, for it is written: "Remember to sanctify the Sabbath day" (Exodus 20:8); that is to say, remember it in terms of praise and sanctification. One should remember it at its beginning and its conclusion by reciting the *Kiddush* when the Sabbath begins and the *Havdalah* when it ends.

5. Mishneh Torah, Sabbath 29:11

(יא) יֵשׁ לוֹ לְאָדָם לְקַדֵּשׁ עַל הַכּוֹס עֶרֶב שַׁבָּת מִבְּעוֹד יוֹם אֶף עַל פִּי שְׁלֹא נִכְנָסָה הַשַּׁבָּת. וְכֵן מִבְּדִיל עַל הַכּוֹס מִבְּעוֹד יוֹם אֶף עַל פִּי שְׁעֵדִין הִיא הַשַּׁבָּת. שְׁמִצְוֹת זְכִירָה לְאָמְרָה בֵּין בְּשַׁעַת כְּנִיסָתוֹ וּבִיצִיאָתוֹ בֵּין קִדְּמָה לְשַׁעַת זֹו כְּמַעֲט:

(11) 11 One may make Kiddush over a cup on the eve of Shabbat while it is still day, even though Shabbat has not come in. And likewise may he make Havdalah over a cup while it is still day, even though it is still Shabbat. For the commandment of its mention is either to say it at the time of its entry and exit or a bit before that time.

6. Ramban on Exodus 20:8:1

לרבותינו עוד בו מדרש ממלת לקדשו, שנקדשהו בזכרון, כענין וקדשתם את שנת החמשים שנה (ויקרא כה י), שהוא טעון קדוש ב"ד לומר ביובל מקודש מקודש, אף כאן צוה שנזכור את יום השבת בקדשנו אותה

Our Rabbis had another derivation of the word "to sanctify" - that we should sanctify it by mentioning it, such as "and you shall sanctify the fiftieth year," which requires the sanctification of the court to say for the Yovel: Sanctified, Sanctified. Here too, we must mention the Shabbat when we sanctify it.

7. Shabbat 150b:11-12

אבל מחשיכין: ואף על גב דלא אבדיל והאמר רבי אלעזר בן אנטיגנוס משום רבי אליעזר בן יעקב אסור לו לאדם שיעשה חפציו קודם שיבדיל וכי תימא דאבדיל בתפלה והאמר רב יהודה אמר שמואל המבדיל בתפלה צריך שיבדיל על הכוס וכי תימא דאבדיל על הכוס כוס בשדה מי איכא תרגמא רבי נתן בר אמי קמיה דרבא בין הגיתות שנו אמר ליה רבי אבא לרב אשי במערבא אמרין הכי המבדיל בין קודש לחול ועבדינן צורכין אמר רב אשי כי הוינא בי רב כהנא הוה אמר המבדיל בין קודש לחול ומסלתין סילתי:

We learned in the mishna: **But one may wait for nightfall** at the Shabbat boundary in order to guard one's produce. The Gemara asks: **And is this the case even if he has not recited the blessing of distinction [havdala] marking the end of Shabbat? But didn't Rabbi Elazar ben Antigonos say in the name of Rabbi Eliezer ben Ya'akov that it is prohibited for a person to tend to his weekday affairs after Shabbat before he recites havdala? And if you say that this is referring to a case in which one already recited havdala during prayer, as formulated by the Sages in the blessing of: Who graciously grants knowledge, didn't Rav Yehuda say that Shmuel said that one who recites havdala in prayer must still recite havdala over a cup of wine? And if you say that this is an instance in which one already recited havdala over a cup of wine, does one have a cup of wine in the field? Rabbi Natan bar Ami explained this before Rava: They taught this halakha with regard to a unique case in which the edge of the Shabbat boundary was situated among wine presses, and one took wine from the wine press and recited havdala over it. Rabbi Abba said another explanation to Rav Ashi: In the West, in Eretz Yisrael, we say this at the end of Shabbat: The One who distinguishes between the sacred and the mundane, and then we attend to our needs, as reciting havdala over a cup is unnecessary in order to begin doing labor after Shabbat. It is therefore possible that the mishna addressed a similar case. Similarly, Rav Ashi said: When I was in the house of Rav Kahana, he would say: The One who distinguishes between the sacred and the mundane, at the end of Shabbat, and we would cut wood to burn for light and heat.**

8. Rashi on Shabbat 150b:12:1

להיכרא בעלמא ללוות את המלך:

As a distinction, to escort the king.

9. Mishneh Torah, Sabbath 29:5-6

(ה) אסור לאדם לאכול או לשתות יין משקדש היום עד שיקדש. וכן משיצא היום אסור לו להתחיל לאכול ולשתות ולעשות מלאכה או לטעם כלום עד שיבדיל. ולשתות מים מתר. שכח או עבר ואכל ושתה קדם שיקדש או קדם שיבדיל הרי זה מקדש ומבדיל אחר שאכל:
(ו) מדברי סופרים לקדש על היין ולהבדיל על היין. ואף על פי שהבדיל בתפלה צריך להבדיל על הכוס. ומאחר שיבדיל ויאמר בין קדש לחל מתר לו לעשות מלאכה אף על פי שלא הבדיל על הכוס. ומברך על היין תחלה ואחר כך מקדש. ואינו נוטל את ידיו עד שיקדש:

(5) One must not eat anything or drink wine once the Sabbath has arrived until he has recited the *Kiddush* benediction. Similarly, when the Sabbath has come to an end, one must not begin to eat or to drink, to do any work or even to taste anything at all, until he recites the *Havdalah*; one may, however, drink water.

(6) The sages ordained that both the *Kiddush* and the *Havdalah* should be recited over wine. Even though he has already said the *Havdalah* as part of the evening service, he must recite it again over a cup of wine.— —

10. Shulchan Arukh, Orach Chayim 299:10

(י) אסור לעשות שום מלאכה קודם שיבדיל ואם הבדיל בתפלה מותר אע"פ שעדיין לא הבדיל על הכוס ואם צריך לעשות מלאכה קודם שהבדיל בתפלה אומר המבדיל בין [הקודש ובין החול] בלא ברכה ועושה מלאכה: הגה וכן נשים שאינם מבדילין בתפלה יש ללמדם שיאמרו המבדיל בין קודש לחול קודם שיעשו מלאכה [כל בו] ו"א דכל זה במלאכה גמורה כגון כותב ואורג אבל הדלקת הנר בעלמא או הוצאה מרשות לרשות אין צריך לזה [רי"ו נ"ב תי"ט] ומזה נתפשט המנהג להקל שמדליקים נרות מיד שאמר הקהל ברכו אבל העיקר כסברא ראשונה ו"א לדלות מים בכל מוצאי שבת כי בארה של מרים סובב כל מוצאי שבת כל הבארות ומי שפוגע בו וישתה ממנו יתרפא מכל תחלואיו [כל בו] ולא ראיתי למנהג זה וע"ל סי רס"ג מי שמוסיף מחול על הקודש אם מותר לומר לאחר שהבדיל לעשות לו מלאכה:

It is forbidden to perform melacha before making Havdala, and if he made Havdala in prayer it is permitted, even though he did not yet make Havdala on a cup. If he must perform melacha before making Havdala in prayer, he should say "he who separates between the holy and the mundane without a blessing, and perform melacha.

Rama: And women who do not say Havdala in prayer should be taught to say "he who separated between the holy and the mundane" before they perform melacha. And some say that this is only referring to full melacha, such as writing and weaving, but merely lighting a candle or carrying from one domain to another, does not require this. [R. Yerucham]

11. Mishnah Berurah 299:33

היינו אפילו משתחשך כיון שלא הבדיל עדיין חל במקצת קדושת שבת עליו ואסרו חז"ל במלאכה:

Meaning even after dark. Since he has not made Havdala, a partial sanctity of Shabbat still is in effect on him and Chazal forbade melacha.

II. Besamim

- ❖ What is the purpose of using *besamim* in the ceremony of *havdala*? How does it facilitate this purpose?

12. Berakhot 51b:15

בית שמאי אומרים נר ומזון בשמים והבדלה ובית הלל אומרים נר ובשמים מזון והבדלה

Just as they dispute the order of the blessings in *kiddush*, they dispute the order of the blessings in *havdala*. If a meal continued until the conclusion of Shabbat, **Beit Shammai say:** One recites the blessing over the **candle**, then the Grace after **Meals** blessing, then the blessing over the **spices**, and finally the blessing of *havdala*. **And Beit Hillel say:** The order is **candle, spices, Grace after Meals, and havdala**.

13. Tosafot on Pesachim 102b:4:2

רב אמר יקנ"ה - ומה שאין מזכיר בשמים פירש רשב"ם דטעם בשמים משום איבוד נשמה יתירה וביום טוב נמי איכא נשמה יתירה. וקשה דאם כן במוצאי יום טוב אמאי לא תקינו בשמים לכך נראה דביום טוב ליכא נשמה יתירה

The reason that we do not mention spices [on Yom Tov]: Rashbam explains that the reason for spices is the loss of the extra soul and on Yom Tov there is also an extra soul. However, this is problematic. If this was the case, on Yom Tov, why did they not enact spices? Therefore, it seems that on Yom Tov there is no extra soul.

14. Peninei Halacha

The Sages enacted the recitation of a *berakha* on smelling fragrance on Saturday night, because after

Shabbat our spirits are despondent over the departure of the *neschama yeteira*. In order to revive them, we smell fragrance, which, according to the Sages, brings joy to the soul. Even one who does not feel pain at the departure of Shabbat will come to appreciate Shabbat's greatness and realize that he should feel sorrow at its end, and that he should revive his soul with something aromatic.

One makes a *berakha* over fragrance following Shabbat, but not following Yom Tov, because on Yom Tov we are not granted a *neschama yeteira*. Additionally, when Yom Tov begins on Saturday night, one does not make the *berakha* over fragrance, because the joy of Yom Tov and its foods serve to comfort the soul (SA 491:1 and MB).

Similarly, one does not make the *berakha* over fragrance after Yom Kippur. Since we fast on Yom Kippur, there is no *neschama yeteira*, and there is not much sorrow at the conclusion of Yom Kippur (SA 624:3).

All those listening to *havdala* must smell the fragrance; therefore the person reciting *havdala* should wait until all listeners have smelled the fragrance, and only afterward continue with the *berakha* over fire. If the person making *havdala* continues to the next *berakha* before some listeners have a chance to smell the fragrance, they should listen to the next *berakhot*, and smell the fragrance afterward. One unable to smell does not make the *berakha* over the fragrance (SA 297:5; MB 13; SSK 61:8).

15. Beitzah 16a:12

דאמר ר' שמעון בן לקיש נשמה יתירה נותן הקב"ה באדם ערב שבת ולמוצאי שבת נוטלין אותה הימנו שנאמר (שמות לא, יז) שבת וינפש כיון ששבת ווי אבדה נפש:

As Rabbi Shimon ben Lakish said: The Holy One, Blessed be He, gives a person an additional soul on Shabbat eve, and at the conclusion of Shabbat removes it from him, as it is stated: "He ceased from work and was refreshed [*vayinafash*]" (Exodus 31:17).

Rabbi Shimon ben Lakish expounds the verse as follows: **Since he ceased from work**, and now Shabbat has concluded and his additional soul is removed from him, **woe [*vai*]** for the additional soul [*nefesh*] that is **lost**.

16. Tosafot on Beitzah 33b:6:1

וגם אין שייך לפרושי טעמא משום אש גיהנם שמתחיל לשרוף ולהסריח

And we cannot explain that the reason is because of the fire of Gehennom which begins to burn and stink...

17. Rashi on Beitzah 16a:11:2

נשמה יתירה - רוחב לב למנוחה ולשמחה ולהיות פתוח לרוחה ויאכל וישתה ואין נפשו קצה עליו:

Expansiveness of heart for rest and joy, to be open to expansiveness, to eat and drink, and one's soul will not detest it.

18. Ramban on Exodus 31:13

והיא נשמה יתירה (ביצה טז) הבאה מיסוד עולם אשר בידו נפש כל חי (איוב יב י).

It is the extra soul which comes from the source of the world in Whose hands are the souls of all living things.

19. Meiri Meshiv Nefesh 2:12

אבל משבת ליום טוב או מיום טוב לחול אין מברכים על הבשמים, והוא מה שאמרו נשמה יתירה יש לו לאדם בשבת וכו', כלומר פנויה והרחבת שכל מצד הפנותה עורף אל הדברים הגשמיים .. וכיוונו להעיר זה בתחלת השעה הנתונה להתעסקות בדברים הגשמיים, והוא אצלי שאין ברכת בשמים אלא ביציאה מיום שכלו לה' ליום שרובו מלאכה...

However, from Shabbat to Yom Tov or Yom Tov to the week, one does not make a blessing on spices. This is what they said concerning the extra soul that a person has on Shabbat. This means that he is open and expansiveness from turning his back on physical things... And they intended that we note this at the beginning of the time that is for involvement in physical things. This is how I understand it, that the blessing on spices is only from a day which is completely for God to a day which is all work.

III. Fire

- ❖ Why is fire a part of the *havdala* ceremony? How is this part of the ceremony performed?

20. Berakhot 53b:1-2

ואין מברכין על הנר עד שיאותו: אמר רב יהודה אמר רב לא יאותו יאותו ממש אלא כל שאילו עומד בקרוב ומשתמש לאורו ואפילו בריחוק מקום וכן אמר רב אשי בריחוק מקום שנינו

We learned in the mishna: **And one does not recite the blessing over the candle until he derives benefit** from its light. **Rav Yehuda said that Rav said: Benefit does not** mean that the one reciting the blessing must have **actually benefited** from the light of the candle. **Rather, as long as one could stand close to the candle and utilize its light**, anyone who sees it may recite a blessing over it, **even** if he is standing **at a distance**. **And similarly, Rav Ashi said: We learned this halakha**, that one may recite a blessing over the light of a candle even with regard to those standing **in a place that is distant**.

21. Peninei Halacha

The Sages instituted making a *berakha* over a candle on Saturday night, to commemorate God's granting Adam the insight to strike two stones together to produce fire.

Ideally, one makes the *berakha* over an *avuka* (lit., "torch"), that is, a braided candle that has at least two wicks. Since its flame has two sources, its light is great. If one does not have a braided candle, he may light two matches, which can also be considered an *avuka*. *Be-di'avad*, if there is no alternative, one may recite the *berakha* over a candle with only one wick (SA 298:2).

The candle must be bright enough that even without an electric light, one could use it to distinguish between different coins. The custom is to ensure this by looking at the lines in one's palm and at the base of the fingernails; this is considered a good omen (SA 298:3-4).

Those who hear *havdala* also need to see the candlelight. One who is standing far away should move closer so that he may benefit from the light – close enough for him to see the lines in his palm and the base of his fingernails. One who heard *havdala* but did not see the flame has fulfilled his obligation of *havdala* but has not fulfilled the mitzva to thank God for fire. It is a mitzva for him to light a candle and recite the *berakha* of "*borei me'orei ha-esh*" (MB 297:13; 298:13). If he saw the flame but was not close enough to make out the lines on his palm, he should not make the *berakha* again, since some maintain that he fulfilled his obligation by seeing the candle (*Orhot Hayim* quoted by *Beit Yosef* 298:4; *Kaf Ha-hayim* 298:22).

Those who beautify the mitzva turn off the electric light when reciting the *berakha* over the candle, so that the benefit they derive from the candlelight is evident, and so that even those who are standing far away will be able to see the lines of their palms by its light (see SSK 61:33).

One may make the *berakha* only over a candle that was lit to provide light, not over a candle lit to honor someone or something. For example, one does not make the *berakha* over a *yahrzeit* candle or over the candles placed in front of the *hazan* in the synagogue, because those are candles that are lit for honor, not to provide light (MB 298:30).

Some Aĥaronim made the *berakha* of *Me'orei Ha-esh* over an electric light bulb, since electricity has the status of fire. However, many maintain that one should not make the *berakha* over an electric

bulb because it is not considered fire; fire requires oxygen, and there is no oxygen in electric bulbs, only a heated metal filament. Furthermore, even if an electric light bulb can be considered fire, one should not make the *berakha* over fire covered by glass. Since this *berakha* was established to remind us of the fire that Adam produced on Saturday night, it must be similar to that fire – open, without a glass cover.^[4]

[4]. Some leading Aḥaronim made the *berakha* on Saturday night over an electric bulb. They wanted to dispel the mistaken notion that electricity is not fire and may be activated on Shabbat. It was thus the custom of R. Ḥayim of Brisk, R. Ḥayim Ozer Grodzinski, and the Rogatchover Gaon to make *havdala* on electric light. However, most *poskim* maintain that one should not make the *berakha* over an electric light, since it does not burn with the aid of oxygen like fire does. Additionally, a light bulb has a glass cover, and according to SA 298:15 one does not make the *berakha* over a candle inside of glass, and BHL states that this is the opinion of many *poskim*, because a covered fire is not similar to the fire produced by Adam. This is also the explanation of *Har Tzvi*, Oḥ 2:114 and *Yabi'a Omer*, Oḥ 1:17-18. All agree that the *berakha* may not be recited over a fluorescent bulb, because its light is from gas, not a filament (SSK 61:32).

IV. Women's obligation in *havdala*

- ❖ What is the nature of a woman's obligation in *havdala*? What is the ideal way to fulfill this mitzva

22. Shevuot 20b:9-10

(שמות כ, ז) זכור (דברים ה, יא) ושמור בדיבור אחד נאמרו מה שאין יכול הפה לדבר ומה שאין האוזן יכול לשמוע בשלמא התם בדיבור אחד נאמרו כדרב אדא בר אהבה דאמר רב אדא בר אהבה נשים חייבות בקידוש היום דבר תורה דאמר קרא זכור ושמור כל שישנו בשמירה ישנו בזכירה והני נשי הואיל ואיתנהו בשמירה איתנהו נמי בזכירה

“Remember the Sabbath day, to keep it holy” (Exodus 20:8), and: “Observe the Sabbath day, to keep it holy” (Deuteronomy 5:12), were spoken in one utterance, in a manner that the human mouth cannot say and that the human ear cannot hear. The Gemara asks: Granted, there, “remember” and “observe” were spoken in a single utterance in order to teach the halakha that Rav Adda bar Ahava says; as Rav Adda bar Ahava says: Women are obligated to recite kiddush sanctifying the seventh day, by Torah law, even though it is a positive, time-bound mitzva, since the verses state: “Remember,” and: “Observe,” indicating that anyone who is obligated to observe, i.e., is prohibited from performing labor on Shabbat, is obligated to remember, by reciting kiddush. And these women, since they are obligated to observe, they also are obligated to remember

23. Rashi on Shevuot 20b:10:1

כדרב אדא - כלומר להקיש זכור לשמור בקידוש היום דנפקא לן מזכור את יום השבת זכרהו על היין ואף ע"ג דשאר מצות עשה שהזמן גרמא נשים פטורות בזו חייבות דאיתקש לשמור בדיבור אחד כל שישנו בשמירת לאוי שבת ישנו בקידוש והנשים ישנו בשמירה דכל מצות לא תעשה בין שהזמן גרמא בין שלא הזמן גרמא נשים חייבות:

We equate the *zechira* and the *shemira* to obligate women in reciting *kiddush*, even though women are typically exempt from performing time-bound mitzvot. Since women are obligated in the *shemira* (prohibitory acts) they are obligated in *zechira* (positive acts) whether they are time-bound or not.

24. Shulchan Arukh, Orach Chayim 296:8

(ח) נשים חייבות בהבדלה כשם שחייבות בקידוש ויש מי שחולק: הגה ע"כ לא יבדילו לעצמן רק ישמעו הבדלה מן האנשים:

(8) Women are obligated in *Havdalah*, just as they are obligated in *Kiddush*. And there is someone who argues. Hagah: Therefore, they should not recite *Havdalah* to themselves, rather they should hear *Havdalah* from men.

25. Magen Avraham 296:11

ואפשר דדעת רמ"א במצוה שיש בה עשיה רשאין לעשות ולברך אבל בדבר שאין בה אלא הברכה כגון כאן אין רשאות ואפשר דמהאי טעמא לא נהגו לקדש הלבנה

It could be that the Rama's position is that by a commandment where there is an action done they can bless, but something that only has a blessing, such as here, they may not. It could be that this is the same logic for the fact that they are not accustomed to say Kiddush Levana.

26. Turei Zahav on Shulchan Arukh, Orach Chayim 296:7

שהמנהג שהנשים מברכות על מ"ע שהזמן גרמא כו' שאני התם דהחיוב אצל אנשים הוא דאורייתא משא"כ כאן יש תרתי לפטור שהוא מדרבנן אפילו באנשים והוא מצות עשה שהזמן גרמא

Typically women do have the ability to perform time-bound mitzvos, but that is when men are obligated to perform it on a biblical level. However, here there are two reasons to exempt - it is rabbinic even for men, and it is time bound positive commandment.

27. Peninei Halacha

It is a mitzva to conclude Shabbat with havdala, in which we give verbal expression to the difference between the sanctity of Shabbat and the ordinary weekdays. The laws pertaining to havdala are similar to those pertaining to kiddush. Just as one must mention the sanctity of Shabbat on Friday night both during prayer and over a cup of wine, so too, at the conclusion of Shabbat one must recite havdala both during prayer and over a cup of wine.

It is true that originally, when the Men of the Great Assembly formulated havdala, they designed it for prayer alone. This was because it was at the time of the building of the Second Temple, and the Jews were poor. Therefore, the Sages did not wish to burden them with an additional expense by requiring wine for havdala. However, later on when the Jews' financial situation improved and they could afford it, the Sages ordained that havdala be recited over a cup of wine. There was a period of time when people made havdala only on a cup of wine, not during prayer. Eventually it was decided that havdala would be done both during prayer and over a cup of wine. Women, who do not generally pray Ma'ariv, fulfill their obligation by hearing havdala over a cup of wine. Similarly, if one forgot to add the havdala insertion in the Amida, he does not repeat the prayer. Rather, he fulfills the obligation by hearing havdala over a cup of wine (SA 294:1)...

Women are obligated in havdala like men. Even though it is a time-dependent positive mitzva, from which women are generally exempt, since it is linked to the mitzva of kiddush, women are obligated to recite havdala just as they are obligated in kiddush (as explained above in 6:1). Nevertheless, there is an opinion that since havdala is time-dependent, women are exempt from it (Orhot Hayim). In deference to this, le-khatîla women generally do not make havdala for themselves, but rather hear it from a man. However, if there is no man present, a woman must make havdala for herself, reciting all four berakhot of havdala. Even if there is a man present, if he has already fulfilled his havdala obligation, it is proper that the woman make havdala for herself (MB 296:36). Only if she does not know how to make the berakhotherself can a man who already fulfilled his obligation make havdala for her.[1]

[1]. According to Rambam, She'iltot, Smag, Hînukh, and most poskim, havdala is a Torah obligation, included in the mitzva of Zakhôr. Just as women are obligated by Torah law in kiddush, so too they are obligated by Torah law in havdala. Even according to Rosh and those Rishonim who maintain that havdala is a rabbinic obligation, many explain that the Sages modeled it after kiddush. Accordingly, just as women are obligated in kiddush, so too they are obligated in havdala. This is the opinion of Me'iri, Nimukei Yosef quoting Ritva, and Magid Mishneh. However, Orhot Hayim states

that the rabbinic requirement of havdala is not connected to the mitzva of Zakhor, and therefore women are exempt, since it is a time-dependent positive commandment. Rema takes this opinion into account and writes that therefore women should not make havdala for themselves, but rather should listen to a man make havdala (296:8). However, Bañ, MA, and other Añaronim state that a woman who wants to make havdala may do so, since according to most poskim a woman may perform and recite berakhot on time-dependent positive mitzvot from which she is exempt. This is also the position of Rema 589:6. Even though according to SA women do not make a berakha before performing a mitzva from which they are exempt, nevertheless, since the decisive majority of poskim feel that women are obligated in havdala (quite possibly by Torah law), they may make havdala for themselves and not worry that they might be guilty of making a berakha le-vatala (a blessing in vain). Furthermore, a man who has already fulfilled his obligation may, if necessary, make havdala for them. BHL implies that women should not make a berakha over the candle since this berakha is not really a part of havdala. This is the ruling in SSK 58:16 as well. However, many Añaronim find this surprising, and maintain that the berakha over the candle is considered part of havdala and that women who are making havdala should recite all four berakhot. Indeed, this is the position of Igrot Moshe ĤM 2:47:2, Yehaveh Da'at 4:27, and Tzitz Eliezer 14:43.

28. R. Doniel Neustadt <https://torah.org/torah-portion/weekly-halacha-5774-mishpatim/>

Question: Can one fulfill his obligation to hear Havdalah by listening to the words recited over a telephone, a microphone or a loudspeaker?

Discussion: In order to be motzi another person with Havdalah (or any other blessing or mitzvah), the listener must hear the words directly from the mouth of the speaker. But is a voice heard over the telephone considered as if one is hearing the speaker's actual voice? In the early days of voice amplifying technology, when the science was not well understood, some halachic authorities were of the opinion that the amplified sound was the speaker's actual voice, only amplified. ¹ Accordingly, one who hears Havdalah recited over the telephone is yotzei. But today, it is universally agreed that the listener is not hearing the speaker's actual voice but rather an electronically generated version of his voice. [Both the telephone and the microphone "transform" sound waves in the air, the spoken words, into an electrical current within the instrument, and ultimately back into sound waves. Those sound waves are then heard by the audience.] In that case, one cannot fulfill his obligation to hear Havdalah by listening over the telephone or microphone according to the vast majority of poskim, and even b'diavad, the Havdalah would have to be repeated. ²

Still, a minority view among the poskim suggests that even if we assume that the voice heard over the telephone is not the actual voice of the speaker, perhaps one is nevertheless yotzei since the voice is still generated by the power of the speaker's voice and the Havdalah is heard at the exact same time that it is being recited. ³ The poskim who suggest this approach stress that they remain undecided as to whether or not their argument should be relied upon, and therefore, it is only under extenuating circumstances—when no other possibility exists—that one may fulfill his obligation of hearing Havdalah over a microphone or telephone. ⁴ In practice, therefore, it is clear that when there is another option, voice amplifiers should not be used for fulfilling a mitzvah or listening to a berachah. ⁵ For example, a woman who is home alone and has no one to make Havdalah for her should rather recite Havdalah herself ⁶ than listen to it being recited by someone else over the telephone. Even if she cannot or will not drink wine, grape juice, or beer, it is preferable that she recite Havdalah over coffee, ⁷ tea (with or without milk), ⁸ or milk alone ⁹ (and, according to some poskim, ¹⁰ undiluted grapefruit, orange or apple juice as well) than listen to Havdalah recited over the phone ¹¹