

The Role of Ḥumrot

By: DANIEL GOLDSTEIN

Introduction

Fewer than twenty times in the entire Mishna Berura does the author use the phrase, “He who is stringent will be blessed.” This is surprising for two reasons. On the one hand, it is amazing that in a compendium of thousands of laws pertaining to every aspect of religious life, only a handful is left to the discretion of the individual. On the other hand, given the highly regulated *halakhic* system that accounts for every jot and tittle, one might have argued that every debate ought to be resolved in accordance with specified rules.¹ Nonetheless, the concept of personal stringency, *ḥumrah*, is one that transcends the Mishna Berura’s limited application. It is the purpose of this paper to explore the conceptual underpinnings of *ḥumrah* and to highlight some of its practical ramifications.²

What is the source of *ḥumrah*?

A general overview of instances in the Talmud where *ḥumrah* is applied would lead one to the conclusion that *ḥumrah* is simply the consequence of a “better safe than sorry” approach to certain irreconcilable *halakhic* quandaries. For example, the common rule *safeke d’orayta l’ḥumra*³ teaches us that it is better to be more stringent in the case of doubt when a biblical law is in question. Similarly, Rav Ashi teaches in Brachot 51b, in a matter pertaining to the proper way to hold a cup of wine: “Since the *rishonim* (previous generations of rabbis) raised the issue and did not resolve it, we must therefore be stringent.”

Yet this source, and others like it in the Talmud, do not address the issues of *ḥumrah* as we relate to it today. The debates in

Daniel Goldstein is the *rav* of Kingsway Jewish Center located in Brooklyn, New York.

the Talmud were for the purpose of determining the normative law. Once the law was determined, along with the procedural rules relating to unresolved issues, the option for personal stringency should have been closed. Where do we find the right to adopt personal stringencies for ourselves? The tension between the normative law and personal practice can be seen in a comment of the Rosh, based on a passage from Kiddushin 81b. The Talmud records a debate between Rav Assi and Shmuel regarding *yibud*.

“R. Assi's name: A man may be alone with his sister, and dwell with his mother and daughter [alone]. When he stated it in Samuel's presence, he said: One may not be alone with any person interdicted in the Torah, [and] even with an animal.... Abaye cleared them (animals) from the whole field. R. Shesheth had them put on the other side of the bridge. R. Hanan of Nehardea visited R. Kahana at Pum Nehara. Seeing him sitting and studying while an animal stood before him, he said to him, ‘Do you not agree, "even with an animal"?’ ‘I was thoughtless,’ he replied.

The Rosh states that according to Tosafot, the law is in accordance with Rav Assi, the reason being that Rav Assi was greater than Shmuel and the *halakha*, therefore, is in accordance with his opinion. What is interesting is the Rosh's next comment. If the *halakha* is in accordance with Rav Assi, asks the Rosh, why did many of the rabbis follow Shmuel's stringent view? The Rosh answers that they were stringent on themselves, (*maḥmirim al atzḡmam hayu*) and he who is stringent should be blessed (*v'hamahmir tavo alav beracha*). It is interesting to note that the Rosh did not offer a more simple answer, namely, that the rabbis quoted in the passage did not agree with Rav Assi. Rather, the Rosh opted to say that these rabbis took upon themselves a personal stringency. With that, the Rosh has resolved the latent tension in this passage. If the normative rules of *halakhic* decision making lead us to Rav Assi's opinion, simply dismissing them is not an option. One may, however, adopt a personal stricture, and such adoptions are laudatory.

All that is missing from the Rosh's comments is the elusive proof-text, and R. Yona Gerondi⁴ provides it for us (Isur V'Heter Shaar 57:15).

To prohibit defects [*tereifot*] in addition to those enumerated is itself prohibited. However, if one wishes to be stringent upon oneself and not eat from an animal over which a question was raised or a dish in which non kosher taste was imparted via a secondary vessel, or which was nullified by a ‘majority’ or ‘sixty-times fold’⁵.... he is permitted to do so ... Likewise, Maharam has written that any person can sanctify oneself with that which is permitted [and prohibit it] and is not considered to be adding to the Talmud... and it is indeed a *mitzvah* as the Sages expounded on the verse: For you are a holy people to ‘Hashem your God’ (Deuteronomy 7:6).

It appears that the source for *humrah* is derived from the biblical imperative to be holy. Rabbi Eliyau deVidas, in his work *Reishit Hochma*, cites the same underlying view.⁶

So too, with regard to food, the Torah at the end of Parshat Shemini discussed permitted and prohibited food and said: And you shall be holy and do not defile your souls [Lev. 11:42] And the Zohar explains thatanyone who eats impure foods shows that he has no interest in holiness. ... And therefore, it is fitting for a person to be strict on himself in regard to food, and it should not have any degree of prohibition at all. For Ezekiel the prophet praised himself for not eating meat from an animal over which a question was raised even though a sage ultimately permitted it, since a doubt was raised regarding it, as it says in the third chapter of *Hullin*.⁷ And behold, there are many things subject to debate among the experts of Jewish law—this one prohibits and this one permits. Certainly, Ezekiel the prophet would not have partaken of such food,⁸ for to him it would be considered as absolutely prohibited food, more severe than meat permitted by a sage.

The comments of *Reishit Hochma* lead us to an interesting question. Our sense of holiness may lead us to stringencies, but how are those stringencies viewed *halakhically*? How does the presence of a lenient view affect the status of the stringent view? True, he compares the food of the lenient position to non-kosher food, but is that comparison a *halakhic* one? Let us frame the question this way. Is

the adoption of a personal stringency an extension of normative law, and as such, would it follow the same dynamic as normative law, or is personal stringency to be considered a qualitatively different action that follows its own dynamic? Does *humrah* become the objective law for its observer, or does *humrah* remain subjective law made to accommodate the normative law?

As opposed to R. Yona's cases, where there is no basis in normative *halakha* to be strict, this question becomes especially thorny when approaching the Reishit Chochma's *halakhic* issues in which some opinions are stringent and some lenient. For example, if one drinks only classical *halav yisrael* milk, one may not capriciously decide to abandon that practice. It is for him, the 'normative law.' If, however, one finds one's self in a situation where a host has made coffee, may one drink it? Perhaps, one can claim to like coffee black. What if that is not possible? What if the host has gone to great lengths to accommodate a religious guest but was unaware of this stricture? What principles of *halakha* are used when determining the proper course of action? Do one's Ezekielean strivings render any compromise impossible? Must one adhere to this *humrah* as though the milk were non-kosher? Or are there different principles at play that guide the practitioner through the thicket of one person's personal stringencies and someone else's leniencies?

What follows are three instances in which normative *halakha* and *humrah* interact.

***Yuhara*, Showing off**

The Mishna in Berakhot 16b teaches:

If a bridegroom desires to recite the Shema on the first night, he may do so. Rabban Simeon b. Gamaliel says: not everyone who desires to pass as a scholar may do so.

And the Gemara 17b comments:

May we conclude from this that Rabban Simeon b. Gamaliel deprecates showing off and the Rabbis do not deprecate it? But do we not understand them to hold the opposite views, as we have learnt: In places where people

are accustomed to work in the month of Ab they may work, and in places where it is the custom not to work they may not work; but in all places Rabbinical students abstain from study. R. Simeon b. Gamaliel says: A man should always conduct himself as if he were a scholar. We have here a contradiction between two sayings of the Rabbis, and between two sayings of R. Simeon b. Gamaliel! — R. Johanan said: Reverse the names; R. Shisha the son of R. Idi said: There is no need to reverse. There is no contradiction between the two sayings of the Rabbis. In the case of the recital of the Shema, since everybody else recites, and he also recites, it does not look like showing off on his part; but in the case of the month of Ab, since everybody else does work and he does no work, it looks like showing off. Nor is there a contradiction between the two sayings of R. Simeon b. Gamaliel. In the case of the Shema, the validity of the act depends on the mental concentration and we are witnesses that he is unable to concentrate. Here, however, anyone who sees will say, He has no work; go and see how many unemployed there are in the market place.

This passage deals with the tension created by the intersection of normative *halakha* and individual piety. When such an interaction creates the sense that the practitioner is “showing off,” the act is not allowed. The individual, good intentions notwithstanding, is prohibited from being scrupulous because his individual piety is at odds with other religious considerations.

This idea is extended to other areas as well. There is a debate among the *rishonim* as to the proper time for reciting the Shema at night. Rashi is of the opinion that one must wait until nightfall, whereas Rabbeinu Tam rules that one can fulfill the obligation from sunset. R. Israel Isserlin (Shut Terumat Hadeshen 1) writes as follows:

Mordechai, Hagaot Maimon, and Ravyah wrote that the ruling is in accordance with Rabbeinu Tam. Anyone who wants to be stringent and wait to fulfill the opinion of the others is “showing off” and is called a fool.

Even though it is possible to fulfill all the opinions, one is not permitted to do so!⁹ Once the ruling of Rabbeinu Tam is accepted as

the normative *halakha*, an act of “holiness” which is an act of hubris is not an act of “holiness.” The *humrah* must be evaluated in the context of the normative law. Therefore, the notion of *humrah* in the face of *yubara* is stillborn.

The Fat Attached to the Stomach

In *yubara*, we see an instance when normative practice prevents the development of a *humrah* from inception. Is there an instance when a *humrah* is practiced, yet its full implementation is muted under certain circumstances?

The Torah prohibits certain fats of the cow while permitting others. While there is general agreement on the identity of the majority of the fat, certain fat found under the membrane of the stomach is subject to debate between Rabbeinu Ephraim, who prohibited it, and Rabbeinu Yoel who allowed it. The *Shulchan Aruch* (Yorah Deah 64:9) cites the stringent opinion of Rabbeinu Ephraim. However, R. Moshe Isserlis (Rema) adds the following note in his gloss:

And so is the common custom in every place, with the exception of the Jews of the Rhineland who are lenient, and one should not correct them, for the ‘elder has ruled.’ As for places where the custom is to be strict, the fat is to be considered as any other prohibited food and is nullified only with sixty. However, the utensils of the Rhineland Jews are not to be considered prohibited since they are lenient.

The discrepancy between the need for nullification and the permissibility of the utensils is to be noted. Generally, prohibited substances generate a prohibition of the utensils in which they are cooked. Why should the case of the fat be any different? Rema addresses a similar question in his response (Shut HaRema 132, 15). He was asked by a person who observed the law of *hadash* if he was allowed to partake of food cooked in utensils of those who do not observe this regulation. Rema ruled that he should be lenient with the utensils. Since there is a doubt about whether or not the food used in the utensils was *hadash*, and even if it was, it was nullified in the

majority of non-*hadash*. “Certainly one can be lenient in this case” Rema continues, “since *hadash* is a *humrah*, and only the scrupulous observe it.”

Rabbi David ben Solomon ibn Avi Zimra (Radvaz) relates to a question regarding utensils, as well. He was asked (Shut Radvaz vol. 4, 296) to comment on the practice of a group of rabbis in a certain town who did not trust the *shechita* of a second group. The first group would not eat food prepared in utensils in which the suspected meat was cooked unless the utensils were koshered. Radvaz responded that the koshering of the utensils was not necessary for the following reasons: The meat may have been slaughtered by a trustworthy *shohet* from the group. Even if the *shohet* was not trustworthy, he may have done a proper slaughter this time. Even if he hadn’t, once the utensil sat unused for twenty-four hours, the taste of non-kosher meat is no longer imparted. Even if it didn’t sit for twenty-four hours, the amount of imparted taste would be nullified. Therefore, the utensils need not be koshered, and can be eaten from (*l’hatbila*.) Radvaz concludes with two noteworthy comments. First, he writes that, in fact, while he abstained from eating a certain type of fruit out of considerations of *arlah*, he did not refrain from eating from the utensils of people who he knew for certain did not share the same concern. And second, he pleads that it would be better to sit at home and not eat than to require someone to kosher their utensils thereby, ipso facto, declaring their irreligiosity.

It is important to note what both Rema and Radvaz say, and what they don’t say. Each of their rulings is based on normative *halakhic* principles, such as *rov*, *safeq*, *eino ben yomo*, etc. They do not say that one may ignore his own *humrah* in the case of utensils.¹⁰ But they do allow all of the relevant normative *halakhic* rules and leniencies to dilute the scope of the *humrah*. I would imagine that if someone asked Rema if he could eat kosher food cooked in the home of a gentile, he would not be told that it was permissible i.e., no one knows if the pot ever had anything not kosher in it, and even if it had, the utensils have been unused for twenty-four hours (Yoreh De’ah 122:6). Despite the fact that those are legitimate principles of *kasbruth*, the normative practice does not allow for those leniencies. However, when the issue is not non-kosher food, but rather food that is subject to legitimate *halakhic* debate, the lenient position challenges the stringent position, as it were, to answer for all possible leniencies.

The *humrah* is not accepted as a normative law with all of its ancillary rules, but rather, it is one *halakhic* principle competing with others. Thus, principles which are not normative in the face of non-kosher, become operative in the face of *humrah*.¹¹

Bread of a Heathen

In the issue of utensils, we see how the *kulah* reorients the *humrah*. The question is, why? Why not accept the *humrah* at face value with all of its eventual repercussions and ramifications? The answer to that question is at the heart of *humrah*'s greatest exception: the bread of a heathen.

Shulchan Aruch (Yoreh De'ah 112:15) states:

He who is careful not to eat bread baked by a heathen may eat from the same bowl as one who is not careful. And even though the taste of the heathen-made bread is infused in the Jewish-made bread, he need not worry.

Rema adds:

There are those who rule that when one who is careful not to eat bread baked by a heathen eats with those who are not careful, he may eat from the bread baked by a heathen to avoid strife. Since abstaining from bread would be abstaining from the main part of the meal, the rabbis allowed him (to violate his custom) on account of possible ill feelings. However, one is not to extend this to other prohibitions!

Here we find an explicit case where a *humrah* is to be overlooked in deference to the feelings of another. However, the question remains. Why is only the *humrah* regarding bread, and no other *humrah*, treated in this lenient fashion? R. Shabbtai HaCohen (Shach) related to this issue in his comments on Rema (ibid 112:26):

However, one is not to extend this to other prohibitions--even the prohibition of eating butter made by a heathen, which is considered more lenient than the prohibition against eating bread because, "man shall live on bread."

But with regard to other foods, a person can claim that he doesn't like butter.

We see from the Shach that the reason one may eat bread is not inherently related to the prohibition against eating bread. After all, the prohibition against butter is considered less severe and it is never lifted. The reason one may eat bread is because the *humrah* qua *humrah* is considered less severe than the repercussion of ill feelings that will result.¹²

In truth, the case of bread of a heathen is not the exception to the rule, but is the lone application of the rule. For the rule is that one should be strict upon one's self and follow his own strictures unless this will absolutely cause ill feelings. Now it may just be that, on the practical level, the *halakha* recognizes that quandary only in the case of bread. The underpinnings of the *halakha*, however, are found in considerations outside of bread, namely, the tension between the *humrah* which is regarded as the domain of the individual, and how that relates to the community in general.

Others state this implication explicitly. R. Eliyahu of Vilna in his notes to Shulchan Aruch (ibid 112:33) cites a comment of the Rosh.

The Mishna in *Pesahim* cites two dictums:

“He who goes from a place where they work to a place where they do not work, or from a place where they do not work to a place where they do work, we lay upon him the restrictions of the place whence he departed and the restrictions of the place whither he has gone. And a man must not act differently [from local custom] on account of the quarrels [which would ensue]” (*Pesahim* 50a).

The Gemara discusses the inherent contradictions within these two rules.

“He who goes from a place etc.” As for [teaching], “he who goes from a place where they do work to a place where they do not work . . . we lay upon him the restrictions of the place whither he has gone, and a man must not act differently, on account of the quarrels,” that is well, and he must not work. But [if he goes] “from a place where they do not work to a place where they do

work . . . a man must not act differently, because of the quarrels,” — [that is] he is to work? But you say, “we lay upon him the restriction of the place whither he has gone and the restrictions of the place whence he has departed!” — Said Abaye: It refers to the first clause. Raba said: After all it refers to the second clause, but this is its meaning: This does not come within [the scope of] differences which cause quarrels. What will you say: He who sees will say, ‘[He regards] work as forbidden?’ [No:] they will indeed say, ‘how many unemployed are there in the market place!’ (Ibid 51b).

According to Abaye, allegiance to one’s custom supercedes whatever friction will result. But what is Raba’s opinion? He has found a way to reconcile the contradiction in the Mishnah as it relates to not working on the eve of Passover. What would Raba say, however, when such reconciliation is impossible?

To that point, the Rosh rules (*Pesahim* 4:4):

The implication is that if it were impossible to avoid a quarrel, he should perform the work, for great is peace. And one should therefore violate one’s practice since we are not dealing with a biblical prohibition, but rather a custom of stringency that was adopted.

Conclusion

When dealing with the concept of *humrah* we must balance two factors. On the one hand, since the context of every *humrah* is the specific *halakha* we are trying to observe, be it the laws of Sabbath or the kosher laws, we tend to treat *humrah* as though it were the law itself. This might be true if *halakha* was decided in a vacuum. However, the *halakhic* system, as it plays out in reality, is a multifaceted system of checks and balances, pressures and counter pressures. The Talmud has an expression that sometimes a *humrah* is “strictness which leads to [unwarranted] leniency.” That is the *halakhic* equivalent (*mutatis mutandis*) of Newton’s law that for each action there is an equal and opposite reaction. A *humrah* “here” may have a repercussion “there.” From all of the sources above, one common theme emerges. Practical *halakha* is not decided in a

vacuum. When there is no room to be lenient, we are not. And even when there is room to be lenient, the dictates of our teachers, our conscience and our religious striving may move us in the direction of “be holy,” and away from every leniency. Yet, it may be argued that striving is but one of many considerations to be taken into account when determining the proper action in a particular case.¹³ Perhaps, a position of stringency has to be weighed in any given case against many factors including the lenient position, issues of *rov*, *safek*, *ben yomo*, *notein tam*, etc.

The *halakbic* system is geared to accommodate the pursuit of two things simultaneously: the pursuit of Godliness and holiness, and the abundance of peace in the world. Holiness comes through discipline and stringency, while peace comes through accommodation and compromise. As we carefully navigate the two, may we benefit from the blessing of R. Eleazar who spoke in the name of R. Hanina: “The disciples of the wise increase peace in the world. Great peace have they who love Thy law, and there is no stumbling for them” (Berakhot 64a). ❧

NOTES

¹ See Beitza 3b. See also A. Z. 7a, *Mishneh Torah* Mamrim 1:5. Furthermore, the Talmud and the Rishonim took great pains to establish a rabbinic hierarchy in order to avoid *halakbic* ambiguity.

² The purpose of this paper is a hypothetical exploration of the subject, and in no way meant to convey authoritative *halakbic* opinions.

³ See Beitza 3b. It should be noted that there is a debate whether the principle of *safek d'orayta l'chumra* is a biblical imperative or a rabbinic one. See Shev Sh'mat'ta 1:1.

⁴ The author of *Isur V'Heter* is identified by Chida in *Shem Hagedolim*, Maarechet Hasefarim Alef: 125, as a student of R. Yisrael Iserlin, [author of *Terumat Hadeshen*]. R. Iserlin was born in 1390 and died in 1460. Thus, this R. Yona Gerondi is not the R. Yona ben Avraham Gerondi, author of *Shaarei Teshuva*, who died in 1263.

⁵ In any of these cases, the normative law permits eating.

⁶ *Reishit Hochma*, Shaar Hakedusha chapter 15

⁷ 44b: "Behold it is written: Then said I, 'Ah Lord God! behold my soul hath not been polluted; for from my youth up even till now have I not eaten of that which dieth of itself or is torn of beasts; neither came there abhorred flesh into my mouth' [Ezek. 4:14] And it has been interpreted as follows... 'Neither came there abhorred flesh into my mouth,' for I did not eat the flesh of an animal which a Sage declared to be permitted. It was reported in the name of R. Nathan that this means: I did not eat of an animal from which the priestly dues had not been set apart! — This applies only to a matter which was declared to be permitted as the result of a logical argument; Rabbah b. Bar Hana, however, relied upon his tradition."

⁸ I.e., of food which is subject to varying opinions. His sense of holiness would have always led him to be strict.

⁹ The concept of *yuhara* excludes those who are known as scrupulous in every detail and are known as pious. The conduct of such a recognized person would not be considered hubris, and thus it would not upset the equilibrium between normative *halakha* and personal stringency. See Rema Orach Haim 235:1. It is hubris only when the community in general has accepted a lenient position and one wishes to set one's self apart as particularly scrupulous in one area. When the appellation "*mahmir*" cannot be consistently applied to all areas of a person's life the designation of

yuhara would apply. If, however, a *humrah* in any area would not be seen as setting one's self apart from the community, the designation of *yuhara* would not apply.

¹⁰ See Shach Yoreh Deah 119:20 in the name of the R. Levi ibn Haviv. It seems that he disagrees with Radvaz on two counts. First, he distinguishes between *humrah* as a result of custom or “family practice”, and *humrah* as a result of *halakhic* conclusions (*Nireh lo badin kach*). In the case of the former, he is willing to dispense with the prohibitions of the utensils being that the custom, most likely, never included utensils. In the case of the latter, he treats the *humrah* as one would treat non-kosher food. Also see R. Ovadia Yosef *Yechaveh Da'at* 5:32 for a discussion of Ashkenazi Jews and *kitniyot* on Passover.

¹¹ See Pitchei Teshuva 64:10, and Shach 119:20. There is a wide spectrum of opinion *vis-a-vis* the extent of freedom the *mahmir* has to eat food containing a mixture of the substance he purports to prohibit. Likewise, there is debate about the level of responsibility the *meikel* has towards a guest who is *mahmir*.

¹² See Shut Maharil 35 who prohibited butter of a heathen for those who are stringent even if they are dining with those who are lenient. Yet he was lenient if the food in question had a mixture of the butter in it.

¹³ The following anecdote was brought to my attention. A *mobel* who lived in a city in which the *eiruv* is subject to dispute was asked to perform a circumcision in a synagogue on Sabbath. He could, of course, have left his things in the synagogue before Sabbath, according to his practice. And the child could be carried to the synagogue by his parents on Sabbath, according to their practice. The *mobel*, however, refused to perform the *mila* unless it would be done at home. The *mobel* demonstrated the point of view that not only was his *humrah* to be followed, but that it dominated the *halakhic* landscape so as to eclipse all other *halakhic* consideration. In the opinion of this writer, that may be an oversimplified way to approach the proper conduct in that case. Consider the following issue: If a non-Jew brings food to a Jew from outside the Sabbath boundaries, the Jew is prohibited to eat it until sometime after the conclusion of Sabbath. If there is a doubt as to whether or not it came from outside the boundary, it is prohibited nonetheless. Even though the general rule is *safek derabanan l'kulah*, in this case, since the food is considered a *davar sheyesh lo matirin*, since it is permitted after the Sabbath, it remains prohibited during the Sabbath. See *Mishna Berurah* 325:47. Yet, see *ibid* 318:2. In that case, the following scenario is discussed: Food cooked by a Jew in violation of the

Sabbath is prohibited to other Jews until after Sabbath. However, food which is cooked in accordance with a lenient position is not prohibited to a Jew who holds a stringent position, because of the rule *safek derabanan l'kulah*. Even though in this case the same prohibitive principle of *davar sheyesh lo matirin* should be operative, it is not. We see that a lenient ruling is not treated as a full-fledged prohibition even regarding those who reject the leniency. A lenient ruling does not create the status of food prohibited by dint of its having been made on Sabbath, and even those who are stringent regarding its method of cooking may eat it on Sabbath. In the case of *maaseh Shabbat*, the *humrah* is not taken *ad absurdum*. Even Rabbi Levi ibn Hāviv's approach might not apply in this case. There, he asserts that one must apply the stringency of the *humrah* to the utensil. The status of the utensils is the direct result of the cooking. It could be argued that consistency would dictate that one should regard the utensil as an extension of the food as it relates to the consumption of food cooked therein. Here, it is hard to see the relevance to the *mohel's* heavenly ledger of transgressions of how the child got to the synagogue. Perhaps, to paraphrase Radvaz, it would have better for the *mohel* to say that he had a scheduling conflict.