

LETTERS TO THE EDITOR

Shulchan Arukh

Marc B. Shapiro writes:

In *Hakirah* 33 (Winter 2023), R. Ari Storch offers a revisionist approach to explain R. Joseph Karo's purpose in writing the *Shulchan Arukh*. He states: "Evidence suggests that Rav Karo did not intend for it to be a halachic work; rather, it was intended mainly as a tool to remember the information contained in the *Beis Yosef*" (p. 318). Storch is not the first one to explain the *Shulchan Arukh* as something other than a practical halakhic work. Prof. Eliav Shochetman also argued in this fashion, though for a different reason than Storch. See his essay in *Asupot* 3 (1989), pp. 323-329. Shochetman points to the many contradictions in the *Shulchan Arukh* as creating a difficulty in seeing it as a practical halakhic work. For Shochetman, the *Shulchan Arukh* should be seen as a collection of halakhic views from which scholars can decide on the correct halakhah.

To Storch's point I can only respond the same way the late Prof. Meir Benayahu responded to Shochetman (*ibid.*, p. 330): R. Joseph Karo's introduction to the *Shulchan Arukh* leaves no doubt that his purpose was to write a practical halakhic work. You cannot get any clearer than these words of R. Karo:

בספר זה אשר כולו מחמדים הלכה
פסוקה באין אומר ואין דברים

Ari Storch responds:

I would like to thank Prof. Marc B. Shapiro for reading my article in *Hakirah* 33 (Winter 2023) and taking time to respond to the editor with comments. As I acknowledged in the article, "Rav Karo's own writings can be used to support the assertion that the *Shulchan Arukh* was intended: (i) for use as a tool to master the *Beis Yosef*, (ii) **as a work to derive halachic guidance** or (iii) as a complementary work to enhance the *Beis Yosef* by making it more accessible and comprehensive" (p. 318, emphasis added). In the article, I reference the line Shapiro cites in his letter and state that it insinuates that the *Shulchan Arukh* was intended as a standalone halachic work, as Shapiro claims. I reference great scholars, such as *Rema*, and more recently R. Asher Weiss, who embrace this overall viewpoint. I certainly recognize and appreciate this understanding of the *Shulchan Arukh*.

As discussed in the article, however, there are competing statements within Rav Karo's writings, including *Shulchan Arukh*, that indicate Rav Karo had a different objective for his *Shulchan Arukh*. For example, the statement just prior to the one Shapiro references states that the purpose of the *Shulchan Arukh* is to provide a tool to review the *Beis Yosef*, as opposed to serving as an independent halachic work. Further, the strength of the state-

ment Shapiro cites may be tempered by the greater context in which it is found. That paragraph is directed toward “התלמידים הקטנים” whom Rav Karo elsewhere forbids from ruling on halachic matters, thereby casting doubt that by הלכה פסוקה he meant they may *pasken* directly from the *Shulchan Aruch*. Consequently, isolating this one statement may not present Rav Karo’s fully nuanced objective.

In conclusion, while I acknowledge that Rav Karo may have intended for the *Shulchan Aruch* to be used as a halachic code as Shapiro contends, I also understand why great luminaries such as *S”ma*, and more recently R. Herschel Schachter, do not find the line Shapiro cites sufficiently compelling to come to that conclusion.

Answering Honestly

Yaakov Jaffe writes:

Rabbi Asher Bush’s recent essay in *Hakirab* is important in drawing our attention towards the issue of lying in Judaism with a critical practical application for schools in America and Israel today. The conclusions of the essay are largely unassailable, and the implications are vast.

Still, I disagree somewhat with the route Rabbi Bush takes towards

his conclusion.

There are two broad schools of thought in traditional and contemporary Jewish Thought as to the basis and source for the importance of truth telling. The approach that resonates with me is the one perhaps best captured by the Rav, זצ”ל, (*Shiurim to Shavuot* 31a) that the injunction against lying is derived from the general command to imitate G-d (*ve-halakhata be-drakhav*), whose very nature is truth (*Shabbat* 55a, *Rosh Hashanah* 17b, *Hilkebot Yesodei Ha-Torah* 1:1). However, there is no specific *mitzvah* which forbids lying. Rabbi Bush takes an alternative view that lying is always prohibited as a prohibited act, a view taken by authorities writing in the moral tradition (see Rabbeinu Yonah, *Avot* 1:18 and *Sha’arei Teshuvah* 3:181; *Sotah* 42a, *Sanhedrin* 102b) but not in the halachic tradition.

To put it differently, while Rabbi Bush is a deontologist, much in the vein of the Kantian tradition, the Rav was a consequentialist, only forbidding lying when the negative consequence of the lying outweighs legitimate contrary spiritual positive benefit.

Which view is borne out of the sources? The Torah prohibits: lying under oath;¹ lying in court;² (the punishment);³ giving a false verdict⁴

¹ *Va-Yikra* 5:1-3, 19:12, Rambam *Lo Ta’aseh* 61, *Aseh* 94.

² *Shemot* 23:7 (See Ibn Ezra, Rashbam, and Rambam *Lo Ta’aseh* 281, 285, and *Shavuot* 30b-31a), *Va-Yikra* 19:11 (Rashi, Rashbam, *Lo Ta’aseh* 248, 249), *Devarim* 5:17.

³ *Va-Yikra* 5:20-26 and *Devarim* 19:15-21, *Semag* 107, *Avot* 1:18.

⁴ *Shemot* 23:3-6, *Va-Yikra* 19:15, *Devarim* 24:17, Rambam, *Lo Ta’aseh* 273, 280.

along with pragmatic lies and untruths that harm another person by facilitating theft,⁵ and the idea of *Gneivat Da'at* which also applies to business (*Hullin* 94a, see Ritva), or that damages a reputation (*Hilkhot Dei'ot* 7:12). The Torah, however, never prohibits lying in general, or outside of these contexts—such as when there is no financial loss or oath in the name of G-d (*Yereyim* 235, *Semak* 236). This strongly suggests that Judaism takes a consequentialist approach to the injunction against lying and not a deontological one. The consequences of lying are what are prohibited, not the specific act of lying.

The advantage of this approach to lying is evidenced by how Rabbi Bush struggles to explain the numerous exceptions of when lying is permitted (preserving peace, modesty, to avoid embarrassment, to avoid a loss, to disprove Christians.)⁶ Rabbi Eliezer Melamed finds similar pressure in *Peninei Halakha* as he simultaneously expands the prohibition of lying beyond the cases forbidden in the Bible and Talmud, and yet must somehow neutralize all the many exceptions when lying is encouraged. Some people might always tell the truth (see *Makkot* 24a, *Dei'ot* 5:7), but they engage in supererogatory behavior, not the standard expectation.

After all, most Biblical prohibited actions are always prohibited;

why would lying be unique in allowing for so many exceptions? Only by taking the consequentialist view to lying—that it is the impact rather than the action of lying—are those exceptions easy to explain. Truth is often subjected beneath other values in Jewish Law because peace and modesty are as much values in Judaism as telling the truth. The Jew of fine character pursues all these values in concert, not privileging truth over others as it is in the Kantian system.

Rabbi Bush's conclusions are reasonable and well-argued, although the avenue he uses to get there might be subject to some disagreement.

Asher Bush Responds:

I thank Rabbi Jaffe for his letter and most importantly for the way in which he addressed his questions. While not seen in his letter to *Hakirah*, before writing this letter he reached out to me personally for clarification, and we had an exchange of ideas. This is certainly the correct way for *bnei Torah* to 'disagree.'

I would like to address Rabbi Jaffe's concerns regarding the status of the prohibition to lie from a few different perspectives.

Perhaps the most confusing part of this entire picture is the fact that, as he pointed out, there are so many exceptions when this prohibition

⁵ *Va-Yikra* 19:35-37, *Devarim* 25:13-16, Rambam *Lo Ta'aseh* 271, 272, *Va-Yikra* 25:14-17/19, Rambam *Lo Ta'aseh* 250, 253.

⁶ *Bava Metz'ja* 23b-24a, *Yevamot* 65b, *Ketubot* 16b, *Sanhedrin* 11a, *Eruvin* 53b, *Yoma* 83b, *Shabbat* 116b, *Nedarim* 62b, Rashi, *Sanhedrin* 44b.

seems not to apply. When it comes to Shabbos and Yom Kippur, to use well-known examples, the exceptions are generally cases of medical emergencies and the like, in which Shabbat or Yom Kippur are set aside. This is in striking contrast to the realm of *בין אדם להבירו*, interpersonal *mitzvot*, where it is often not just a matter of exceptions under extenuating circumstances, but that either the Torah itself or life's circumstances create numerous cases where choices must be made. To cite a few examples, the fact that the Torah prohibits *lashon ha-ra* or *rekbilus* means that there are times when telling the truth may not be allowed; and while that does not necessarily mean that lying is the only alternative, there are cases when it certainly might be. Similarly, as much as the Torah has commanded *הווכח תוכיח*, to rebuke an offending party, this may not be done in violation of other laws, such as causing public embarrassment. Or to use the famous example of the Gemara, when compliments are the norm at a wedding, what should be said when such compliments don't seem to be in order? At least on the surface, it would seem that something has to give. In many ways, none of these cases should be surprising because dealing sensitively with others is likely one of the most challenging activities, which we are called upon to navigate every day. So, whether in the realm of halakhah or just good judgment, choices must be made.

Focusing on this last case of the wedding, the fact that the Talmud presents this discussion between

Shammai and Hillel as a genuine debate makes it most difficult to suggest, as Rabbi Jaffe does, that "there is no specific *mitzvah* which forbids lying," as it is clear from this passage that the details matter. This is contrasted to "my approach" that lying is "always forbidden," something clearly not suggested in my article or borne out by the sources. More correctly, lying is a forbidden act. At the same time, it is one of many interpersonal *mitzvot* and values, and as such will be set aside in various cases as seen in the Talmud and *poskim*. Similarly, the statement that "there is no specific *mitzvah* which prohibits lying" is not really what Rabbi Jaffe and his sources are suggesting. He quotes Rav Soloveitchik, זצ"ל, as "only forbidding lying when the negative consequences of the lying outweighs legitimate contrary spiritual positive benefit." While that is presented as a major point of disagreement, he too is not quoted as saying that lying was not permitted, and in fact, I believe this point is a rather minor detail, as will be explained below.

The most important foundation for all of this is that all the conflict and seeming vagueness that Rabbi Jaffe observed notwithstanding, with rare exceptions, our Sages clearly do rule or simply take for granted that there is a real prohibition to lie. Aside from the basic reading of the Talmudic debate between Hillel and Shammai regarding the bride, as is clear from the *מוני המצווה*, including the *Hinukh*, *Smak*, *Smag*, *Yereim* and *Hareidim*. Just to point to a few of the great *poskim*, the *Shulhan Arukh* (YD

402:12) rules that while there is no obligation to inform a person that their loved one has passed away (thus obligating them in *aveilut*), if asked by that family member it is forbidden to lie based on the words מדבר שקר תרחק. The Chafetz Chaim (ספר חפץ חיים, פתיחה מצות עשין י"ג, ובאר מים חיים שם) lists this verse as one of the Torah violations one will incur if speaking *lashon ha-ra* (in a case where it contains falsehood). In his *Be'er Mayim Hayyim* he quotes Smag (עשין ק"ז) that lying is a violation of מדבר שקר תרחק.

In a case regarding the fabrication of non-essential facts while writing articles for medical journals, Rav Waldenberg (vol. 15, #12) takes for granted that lying is forbidden, acknowledging that a minority of *risbonim* (such as the ספר (יראים סי' רל"ה) limit that to cases where another person is harmed. Quoting from both *Rabbeinu Yonah* and *Haredim*, he states that even lies that do not harm others are still included in this prohibition, as the *mitzvah* of מדבר שקר תרחק is violated in all cases. This is also the ruling of the יד קטנה and Chofetz Chaim. But even this last limitation (mentioned by Rabbi Jaffe in the name of Rav Soloveitchik) does not minimize the nature of the prohibition. Rather such cases may not be under the technical violation of the rule, being viewed as frivolous or perhaps, like so many laws in the Torah while undesirable, they do not rise to the threshold of culpability (perhaps comparable to a שיעור or שנינוי on Shabbos).

This is all summarized by Rav Yaakov Ettlinger (ערוך לנר, יבמות)

who asks how was it permitted for the brothers of Yosef to lie to him; after all, this would be a violation of מדבר שקר תרחק? Additionally, he points out that the Talmud never said it was permitted to lie, rather מותר לשנות, it is permitted to 'change' or 'alter.' He concludes that in fact, they did not really lie. Instead, they used ambiguous language that could be understood to mean that their father had directly commanded forgiveness for his being sold into slavery. The permission spoken of here in the Talmud is not permission to lie, rather to use such ambiguities even though they may give a somewhat false impression. At no point does he consider that lying is not prohibited. It is worth noting that in this case no one is harmed by their lie, as it is all about forgiving past offenses, and still it would be prohibited to lie.

But more to the point of what the Torah has prohibited; the long list of cases mentioned by Rabbi Jaffe are all striking precisely because they are not about lying in a formal *Beit Din* setting, but about falsehood, in most cases being non-testimony aspects related to legal action. Similarly, the concept of גניבת דעת is not about direct lies but about gaining undeserved good will under false pretenses. Examples are certainly not confined to the world of business where others may be harmed, as even walking into a *shivah* house with a fancy-looking basket that contains very limited contents (one of the cases mentioned in the Talmud) violates this concept.

While some sources might be read to imply that lying may be

somewhat less than a full prohibition, a basic understanding of the bulk of sources from the Talmud, *rishonim*, *aharonim* and later *poskim* make it clear that they took for granted that lying is a prohibited act, which like all interpersonal *mitzvot* must be balanced with each other.

Again, I thank Rabbi Jaffe for the appropriate way in which he addressed these matters both prior to writing his letter and in the language

and tone of his letter. It is my sincere hope that this should serve as a model for Torah debates. I also thank him for giving me the opportunity to delve more deeply into this matter, which is not just about students applying to yeshivah or seminary, but key to an ethical life based on the Torah and its values long after one's student years have ended.

