

BEYOND A REASONABLE DOUBT? YESODOS IN SEFIRAS HAOMER AND TORAS HASFEIKOS¹

Often, by analyzing a פרט in הלכה, we gain a deeper understanding of a כלל, whether in that area of הלכה or throughout כולה. What I want to do here is use a הלכה in ספירת העומר to learn a general יסוד that applies to many areas of הלכה and bring that יסוד back to develop a new perspective on the nature of ספירת העומר.

Many people are מיקל to daven מעריב immediately following שקיעה, in the window of time known as בין השמשות. Is one similarly allowed to be מיקל to count ספירת העומר during this time as well? One opinion comes from "זכר" ד"ה "תוספות מנחות סו. Since nowadays ספה"ע is only דרבנן, we can apply the principle of ספק דרבנן לקולא, and one can לכתחילה count already from בין השמשות (even with a ברכה). However, the "וכי היכי" בדפי הר"ף ד"ה "פסחים כה. argues that the operative principle of ספק דרבנן is only a contingency בדיעבד, and therefore one cannot לכתחילה choose to put himself in a situation of ספק. What's the נקודת המחלוקת? Rav Sobolofsky explains that they're arguing about the very nature of ספק דרבנן לקולא. The opinion of תוספות first assumes that the principle of ספק דאורייתא is itself only דרבנן (like the רמב"ם). Therefore, to differentiate דיני דרבנן (for the purposes of avoiding issues of תוסית), they instituted that we can be מיקל in a ספק דרבנן, and that works to have the חיוב be fulfilled ודאי בתורת ספק. Perforce, relying on the ספק is completely לכתחילה. The ר"ן would assume (like the רשב"א) that ספק דאורייתא לחומרא is a ספק דאורייתא, and the only reason we can be מיקל for a ספק דרבנן is because the רבנן didn't want to be מטריח us to be מחמיר when the stakes aren't as high. Being that this isn't fundamental to the גזירה, while being מיקל in a ספק means you're יוצא, it's only בתורת ספק. When you can, לכתחילה you should try to avoid the ספק, and not לכתחילה put yourself in a situation of ספק.

What emerges from this שיטה of the ר"ן is that if you have a situation where there is a ספק דרבנן, but being מחמיר wouldn't be any more of a טירחא, we will NOT say ספק דרבנן לקולא. The גמרא in סנה"ע says that the חיוב of הסיבה only applies by either the first 2 כוסות or by the last 2, but the גמרא isn't sure one way or another. Therefore, the גמרא concludes that we should lean by all 4. Asks the "והשתא" ד"ה "בדפי הר"ף ד"ה "פסחים קח. He gives 2 answers, the first of which is less famous, but that's the one we'll focus on. The first answer is that when it's טירחא ביה דלית ביחסי, we should be מחמיר as a "רווחא דמילתא". Most people explain this as the simple answer, but it's really teaching us the יסוד we've been developing; relying on a ספק דרבנן only works בדיעבד as a ספק דרבנן, so when there is no טירחא, one is חייב to be מחמיר and fulfill the מצוה as a ודאי בתורת ספק. The second answer of the ר"ן is that it's impossible to be מיקל in either direction by ד' כוסות, so being מיקל both ways would be a תרתי דסתרי. We need this answer to teach that in such a scenario, regular דיני ספיקות are ignored, and perforce, the only remaining possibility is to be מחמיר.

This יסוד of the ר"ן, that ספק דרבנן לקולא is mitigated when there is no טירחא, can help us understand a strange גמרא that is fundamental to the nature of ספה"ע. While אב"י says the מצוה is to count both days and weeks, אמימר would count only the days and not the weeks, as a זכר למקדש. What's behind counting only the days, and why does זכר למקדש justify doing so? If anything, making it a זכר למקדש would mean to do it EXACTLY as it was done in the בית המקדש, which would be both days and weeks! Rav Soloveitchik (as quoted by Rav Schachter) strengthens the question just a bit: Is

¹ דברים אלו מבוססים בעיקרן מספר מקור הברכה (שער א סימן ב אותיות ב-ד) מאת מו"ר הרב כבי סבלפסקי שליט"א, וספר מפניני הרב (קונטרס ספירת העומר) מאת מו"ר הרה"ג הרב כבי שכטר שליט"א, וספר מנחת אשר על המועדים (חלק ב סימנים לו-לז) מאת הרה"ג הרב אשר וייס שליט"א

² עיין עוד בזה רמב"ם הל' ממרים ב.ט, ס.א.ב. ולחם משנה, ורמב"ן בהגותו לספר המצוות שורש א

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it really such a טירחא to count weeks as well? To put the question in terms of the יסוד of the ר"ן: Even though nowadays is only ספח"ע, since it's not a טירחא to count weeks, we should be מחמיר to count days and weeks ובתורת ודאי! Rav Soloveitchik answers both questions by figuring out what exactly זכר למקדש really means. There is a סוגיא in **מא. סוכה** that we take לולב all 7 days as a זכר למקדש. When the גמרא looks for the source of the idea of the concept of זכר למקדש, it quotes the פסוק in ירמיה of ירמיה in פסוק, inferring that there is a need to be דורש for ציון. However, there is another סוגיא in **ס: בבא בתרא** that says that we make a זכר למקדש as a way of mourning the חורבן, such as leaving an area of a house unfinished or putting ashes on the head of a חתן. The source that the גמרא quotes for this practice is **אם** אשכחך ירושלים תשכח ימיני. These 2 גמרות demonstrate that there are really 2 aspects of זכר למקדש, what Rav Soloveitchik called "זכר למקדש" and "זכר לחורבן". In the absence of a אב"י, we would think that the ספירה we do nowadays is זכר למקדש (and maybe that's what אב"י holds), but אמימר is teaching us that it's זכר לחורבן, and that's why we do less than what they did in the **בהמ"ק**. This can also explain why the **בדפי הר"ף** **בעל המאור פסחים כח.** says we don't say a שהחיינו on **ד"ה "כל הלילה"** because it brings about נפש עגמת, as well as why **תוספות מגילה כ: ד"ה "כל הלילה"** says to say (הרחמן) for the return of the **בהמ"ק** after we count (what we know as the **הרחמן**).

If we assume that ספח"ע operates as a form of אבילות, an interesting הלכה can follow as a result. We saw in the second answer of the ר"ן by הסיבה during the כוסות ד' that we cannot rely on חידושי הרמב"ן כתובות ד. However, the תרתי דסתרי will lead to a ספק דרבנן לקולא when being מיקל. Therefore, someone can start COUNTING their אבילות on ז' ימי אבילות, even though they can't do אבילות. This being the case, I wanted to suggest that if someone forgot to count ספירה the whole day, and now finds themselves in השמשות, they can count the previous day (to preserve תמימות) AND count the upcoming day (assuming like תוספות, which the שו"ע sort of says works מעיקר הדין). I saw that this probably isn't true להלכה, as the **פסקי תשובות תפסכד** quotes from אומר יביע שו"ת in a different scenario that we should try and avoid a תרתי דסתרי in ספירה. I then realized that perhaps the idea of being מיקל even תרתי דסתרי במקום אבילות would probably apply exclusively to אבילות, but we would not be able to extend that to any regular זכר לחורבן.

By being דורש in the מצוה of ספירת העומר, hopefully we gained a greater appreciation for the מצוה, and want to fulfill it to its fullest extent with the עומר. We should be זוכה to do so very soon, in the rebuilt המקדש in בית הירושלים.

הרחמן הוא יחזיר לנו עבודת בית המקדש במקומה במהרה בימינו אמן סלה.