

# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

www.TorahLeadership.org

"Taking Responsibility for Torah"

## KEEPING HERETICS SAFE AND OUT OF PITS

Rabbi Aryeh Klapper, Dean

There is a sort of analogue in Torah to the scientific suspicion of unrepeatable results. If only one scholar in history has ever seen a particular textual phenomenon as significant, or a particular conceptual approach as plausible, then I might well be hesitant to implement it as *halakhab*, or to give it a vital role in a curriculum. Conversely, if I find two great scholars widely separated in time and space independently coming up with the same approach, I have increased confidence that this approach has “real legs,” that it is a plausible or compelling read of the tradition.

One of the most famous modern rabbinic texts is *Chazon Ish* to *Shulchan Arukh Yoreh* Laws of *Shechitah* 2:16. As with many such rabbinic texts, the price of fame has been significant loss of nuance, even distortion. I intend here to reclaim its original meaning, make explicit the radical presumptions that generated it, argue that those presumptions are shared by a very different thinker, and, finally, argue that this convergence should give us more confidence in following them.

Among the more challenging rabbinic texts for moderns is the *beraita* (*Avodah Zarah* 26a) that rules that informers, heretics and religious rebels “we lower (into pits) but do not raise (out of pits).” *Shulchan Arukh* YD 158 codifies this ruling and adds the piquant illustration of removing one’s ladder from a pit on the excuse of a family emergency, and then conveniently forgetting to return it. The sense seems to be that the person is left to starve, although the literary resonances to the Joseph story seem an almost unveiled hint that actually implementing this ruling would be reprehensible.

To my knowledge there is no record of it being applied in practice to anyone other than informers, who could also be directly killed as dangers to the entire Jewish community in an environment of pervasive genocidal anti-Semitism. However, it nonetheless colored the relationship “Orthodox” Jews had to perceived heretics, and perhaps even more so, the relationship of self-perceived heretics to Orthodox Judaism. It may be easier to disregard a law that is “merely on the books” when it relates to one as executioner than when it relates to one as executee.

*Chazon Ish* states that this ruling has no relevance in modernity. He is often quoted as adopting this position because all contemporary heretical Jews are *tinokot nishbu*, infants captured by Gentiles and raised in Gentile culture. Now the Talmud claims that such infants are exempt from punishment for their specific misdeeds since they had no real opportunity to make proper Jewish choices, and *Chazon Ish* allegedly extends this category to all contemporary nonobservant Jews so as to obviate our ruling.

This approach was adopted in a limited fashion by R. Yaakov Ettlinger in the nineteenth century, and extended in startling ways by Rav Moshe Feinstein in the twentieth. But it bears little relationship to *Chazon Ish*’s actual statement.

Here are *Chazon Ish*’s actual words:

חזון איש שחיטה ב:טז

עיקר מורידין ע"כ הוא משום מגדר מלתא וכדאמר סנהדרין מו. מכוין...  
ועונשין שלא מן הדין והכא קבעו ב"ד הראשנים שאלו המומרים פורצין גדר  
עולם ושעה צריכה לכך לעשות גדר לצורך שעה...  
ונראה דאין דין מורידין אלא בזמן שהשגחתו יתברך גלויה

*The mission of the Center for Modern Torah Leadership is to foster a vision of fully committed halakhic Judaism that embraces the intellectual and moral challenges of modernity as spiritual opportunities to create authentic leaders. The Center carries out its mission through the Summer Beit Midrash program, the Rabbis and Educators Professional Development Institute, the Campus and Community Education Institutes, weekly Divrei Torah and our website, [www.torahleadership.org](http://www.torahleadership.org), which houses hundreds of articles and audio lectures.*

ויספר לעם את כל דברי ה' ואת כל המשפטים-

דע דבני נח הוזהרו על הדינים (סנהדרין נו, ב),

ושיטת ראשונים דהוא נימוסים שדעת האדם נותן עליהם,

אבל לכופ ולרדות על חוקי התורה ונדריה הוא רק מצד ש'כל ישראל ערבים זה בזה' (שבועות לט, א ועוד), ואם יעבור אחד, הוא מזיק לחבירו ולהכלל כולו, בזה יש לבית דין לכופ ולשפוט העובר את מצות השם יתברך, דבלא זה אין זה מהראוי שיתערב אחד במה שיש להאדם עם קונו.

לכן מקודם אמרו (פסוק ג) "כל הדברים אשר דבר ה' נעשה" - ולא קיבלו

עדיין המשפטים, אבל כי זרק הדם על העם (פסוק ח) להכניסן בברית וכמו דאת אמרת במכילתא יתרו (פרשה ג ד"ה ויקח ספר הברית), אמר להם אתם קשורים ענובים ותפוסים, וזה "ספר הברית" (פסוק ז) שכרתו כל ישראל יחד,

לכן אמרו "כל אשר דבר ה'" (פסוק ז) - בין ה"דברים" בין ה"משפטים" - "נעשה", שהעובר מצות ה' הוא גדר בין אדם לחברו, שמזיק להכלל ודו"ק

"He told to the nation all the words of Hashem, and all the mishpatim" -

Know that Noahides are commanded regarding denim (the obligation to establish an effective legal system)

and the position of the rishonim is that these refer to laws that appeal to human reason,

but to coerce and compel regarding the statutes and commitments of Torah is justified only on the ground that "All Jews are guarantors for each other," so that if one transgresses, he damages his friend and the entire community, and therefore beit din is justified to coerce and to judge the one who transgresses the commands of Hashem the Blessed, as without this it would be inappropriate from one person to mix into another person's relationship with his creator.

The *Mesbekeh Chokhmah* goes beyond *Chazon Ish* and argues that even the formal legal punishments authorized by the Torah for religious offenses can be justified only by the practical good of the community; otherwise, irreligion is by nature a private matter between each human being and G-d.

For both *Mesbekeh Chokhmah* and *Chazon Ish*, religious voluntarism is not a concession to modernity accompanied by a yearning for the halcyon days of religious coercion. Rather, religious coercion was a prudent concession to the reality of collective Divine punishment. Surely *Chazon Ish* looked forward to the restoration of explicit Providence, and *Mesbekeh Chokhmah*, if he agreed with *Chazon Ish*'s diagnosis of modernity, to the restoration of genuine collective responsibility. But they also recognized the virtue and opportunity of a world in which religion and state are disentangled. *Shabbat Shalom!*

כמו בזמן שהיו נסים מצויין ומשמש בת קול, וצדיקי הדור תחת השגחה פרטית הנראית לעין כל, והכופרין אז הוא בגליונות מיוחדות בהטיית היצר לתאוות והפקרות, ואז היה ביעור רשעים גדרו של עולם שהכל ידעו כה הדחת הדור מביא פרעניות לעולם ומביא דבר וחרב ורעב בעולם,

אבל בזמן ההעלם שנכרתה האמונה מן דלת העם, אין במעשה הורדה גדר הפרצה אלא הוספת הפרצה, שיהיה בעיניהם כמעשה השחתה ואלמות ה"ו, וכיון שכל עצמנו לתקן, אין הדין נוהג בשעה שאין בו תיקון, ועלינו להחזירם בעבותות אהבה ולהעמידם בקרן אורה במה שידינו מגעת

*The fundamental law of "lowering (into pits)" must be for practical purpose (creating a necessary fence), under the same authorization as the statement on Sanhedrin 46a that "We flog and punish even when there is no formal legal justification for such punishment," and here the early beit din established that those apostates who breach the fences of the world, when it is the need of the hour - therefore to create a fence and to meet the need of the hour (we lower them into pits) . . .*

*So it seems to me that the law of "lowering" applies only when His the Blessed's Providence is evident,*

*because in the time that miracles were common and Heavenly voices were in use, and the righteous of the generation were under specific Providence evident to all, so that denying (G-d and His Providence) at that time required radical boldness and being turned by one's evil inclination to lusts and license, so in that circumstance the excision of the wicked sets the fence of the world, because everyone knew the power of the straying of the generation to bring punishment to the world, and to bring plague and sword and famine to the world, but in a time where His presence is obscured, when faith has been cut off from our poor nation, the deed of "lowering" does not fence the breach but rather adds to the breach, as it will seem in their eyes like an act of destruction and intimidation chas veshalom, and since our whole purpose is to improve, this law is not practiced in a time where it would not accomplish improvement, and it is our obligation to return them via the bonds of love and to stand them up in the realm of light to the extent that this is in our power.*

*Chazon Ish* argues that extra-legal punishment can be justified only on practical but not religious grounds. Religious violations *per se*, however egregious, do not justify human reactions unless specifically mandated by Torah. In our age, where such punishments would be practically counterproductive, there is no excuse for implementing them. I am unaware of any clear precedent for *Chazon Ish*'s analysis in the Talmudic context, or in *Shulchan Arukh*. But there is a parallel idea, perhaps even more radical, in *Mesbekeh Chokhmah* to *Shemot* 24:3.

משך חכמה שמות פרשת משפטים פרק כד פסוק ג

***The mission of the Center for Modern Torah Leadership is to foster a vision of fully committed halakhic Judaism that embraces the intellectual and moral challenges of modernity as spiritual opportunities to create authentic leaders. The Center carries out its mission through the Summer Beit Midrash program, the Rabbis and Educators Professional Development Institute, the Campus and Community Education Institutes, weekly Divrei Torah and our website, [www.torahleadership.org](http://www.torahleadership.org), which houses hundreds of articles and audio lectures.***