

Freedom of Religion and Chickens

by: Rabbi Jeremy Rosen

Several recent legal decisions in the USA prevent the custom of taking chickens and swinging them above one's head before the Day of Atonement. This symbolic ceremony of atonement is called Kaparot (atonements). The apparently mystical idea is that the chicken represents one's own body, which might deserve death for the sins it has committed. But instead, as in the case of sacrifices in eras gone by, the chicken is a replacement. The poor bird is then ritually killed and is usually given to the needy.

It is (or was, to be more accurate) a minority custom, that found favor in Kabbalist communities and hence passed on into the Chasidic world. Many medieval rabbis strongly disapproved. The great mystic and commentator Ramban, Nachmanides (13th century), said it was a pagan custom. As indeed it was, to ward off evil spirits, long before its appearance in Jewish circles. The greatest Halachic authority of Spain, the Rashba (Shlomo ben Aderet, 14th century), said it was witchcraft. And Rabbi Yosef Karo, of the Shulchan Aruch, simply called the custom foolish. But the great Safed Kabbalist Yitzchak Luria approved, and that was how the Chasidim came to adopt it.

Their opponents, the Mitnagdim, followers of the Gaon of Vilna, disapproved, and in Lithuanian communities it was frowned on. My father, who was an alumnus of the Lithuanian yeshiva system, did not do it. I once asked my Rosh Yeshivah in my alma mater, Mir in Jerusalem, what he thought. He said that they never did it back home. But that since the Chasidim were doing it, and at the time Orthodoxy was on the defensive, he did not want to undermine them by publicly condemning it. But he said he approved of giving money to charity instead. Nowadays the Chasidim seem to have won, and even Mitnagdim are doing it. Shouldn't I just ignore it?

I find the way chickens are reared and slaughtered throughout the world absolutely disgusting and cruel. In comparison you might think that a few thousands of chickens suffering at the hands of Chasidim are barely a drop in the ocean of pain. But I don't see it that way. I see any suffering as contradicting our fundamental Torah principle of Tsar Baaley Chayim (forbidding pain caused to sentient beings). I am not as learned, pious, or as sanguine as my Rosh Yeshivah. So I am not going to put up and shut up. I find the ceremony offensive, and frankly, I am delighted that some non-Jewish authorities in the USA have banned it. I only wish more did.

Is the issue one of freedom of religious practice? This is, after all, a core, if rarely consistent, value of civilized societies. But surely there has to be a difference between essential practices and peripheral ones. Between studying Torah or circumcision and, say, wearing a fur hat instead of a synthetic one. Male circumcision is an essential. Shechita is essential but optional. A shtreimel is optional. I believe the first and the second are examples of core Jewish practice. A shtreimel is not. And even in the case of circumcision, which is clearly core, there are additional customs and

refinements associated with it that are not essential, however strong the custom.

As with any legal system, there are constant test cases. Practices allowed in one supposedly enlightened country are forbidden in others. Those who tout the honesty of western societies might note that pressure to ban circumcision and shechita reached their apogee at times of anti-Semitism. They have now receded, because no one wants to offend Muslims. There are more of them, after all.

The problem of concessions to alien legal systems was dealt with in the Talmud. Shmuel, living in Babylon 15 hundred years ago, instituted the principle that “the law of the land is the law”, Dina DeMalchuta Dina—on civil matters. There was subsequently much debate as to how far this extended. Assuming the laws of the land were applied equally and fairly to all citizens and assuming they applied only to civil matters, it became ingrained in Jewish law that this is the standard we follow. The gray area, of course, is where to draw the line on issues of religious ritual. Authorities inevitably differ. I come down on the side of those who are flexible on matters of non-core customs. I would not, for example, consider that one should defy the law if there were ever a ban on wearing red thread around one’s wrist or wearing one’s tzitzit out instead of in. Where one draws a line is going to be disputed forever. Those who want to martyr themselves over swinging chickens are welcome to.

Shechita (ritual method of taking animal lives for food) is an undisputed positive law, obligatory on all practicing Jews going back thousands of years. Objectively it is not inhumane; it is painless when carried out properly, more so than other methods. The trouble is that sometimes it isn’t done properly—as we saw in the infamous PETA recording of what went on under the Agriprocessor regime at Postville—despite its religious stamp of approval. But Kaparot is not a religious obligation of anywhere near the same seriousness. It is a custom. It causes pain and suffering to living animals. And there are religiously approved alternatives.

Here is the case for the chicken swingers:

[“In United Poultry Concerns v. Chabad of Irvine, a group of chickens’-rights activists petitioned a federal judge to prohibit a California Jewish organization, Chabad of Irvine, from engaging in Kaparot, a Jewish ritual. The judge initially granted the plaintiffs’ request and prohibited a Chabad rabbi, from engaging use of live chickens for Kaparot. Eventually the judge lifted the ban, but only after it was already too late for Chabad to perform the ritual this year... such a ban highlights a disturbing trend currently playing out in America’s public and legal understandings of religious liberty... foes of religious liberty argue that only the legislature can determine “legal and moral behavior in the State of California.” The plaintiffs do not want to control only Chabad’s conduct. They want to control its conscience...They also asked the court to grant a temporary restraining order to stop Chabad from](#)

exercising its faith while the lawsuit progressed.”

Swinging chickens is crucial to our faith? It is a matter of conscience? You kidding me? You mean I am not a practicing Jew because I don't? Where is the threat to our religion? Could they not atone in any other way? Were they banned from keeping Yom Kipur? I have rarely heard a sillier argument.

What if there were a law against shokeling, swaying during prayers (assuming, for instance, some doctors argued it damaged the brain)? Would this really be an existential threat to Judaism? It too is a custom that goes back a long way, but it is hardly essential. The chicken swingers should put up and shut up. There are bigger battles to fight over religious freedom. They should keep their powder dry for a real threat.

PS. We all know that Donald Trump won because his daughter went to pray at the Rebbe's grave! And given that the custom of kaparot is taken very seriously by Chabad, one can assume that Trump will not take steps to ban the practice. Too bad. Can we find a candidate next time who will?