



The Best Way Out of Nidui

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□ Apr 21, 20 □ 1 Comment

by R. Gidon Rothstein

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Gd seems to be showing us some light at the end of the tunnel. Some countries have reached a point where they are starting to open up, and other places are on the verge of taking such steps. *Ahenu Bene Yisrael* in Israel have had a bit of loosening of restrictions, and we pray Gd will allow that to continue without any resurgences of illness.

The easing of an *et tzarah*, a time of trouble, has the danger of letting us think it is past and we need not continue to learn its lessons (as many political leaders have been reminding us). As we—I hope—make our way out, I want to think about lessons we can take with us, as merits to support our prayers for continued and continuing release.

Over Pesah, the recommended physical distance of six feet reminded me of *nidui*. As *Shulhan Aruch Yoreh De'ah* 334 tells us, *nidui* was a form of discipline, a way for society and particularly Torah scholars to show their displeasure with a Jew's conduct.

We will come to what could spark *nidui* and why it is relevant here in a second; first, let's remember the primary expression of *nidui*, as per *Yoreh De'ah* 334;2: other than the disciplined person's close relatives—spouse and children (Rema allows other members of the household as well)—*everyone else* physically distances from the *menudeh*, a

distance of four *amot*.

A *menudeh* can also not be part of a *minyán*, the quorum for crucial prayer practices such as *kaddish*, and is not supposed to get a haircut or launder his clothing. Should the situation deteriorate further, the person might be put in *herem*, a more stringent form of excommunication, where people will do business with him only to the extent of supporting his basic (essential) life needs.

Eerily familiar. The most popular version of four *amot* thinks of it as six feet (there is debate as to the length of an *amah*, ranging from 18 to 24 inches). Barbershops are closed, and we're mostly doing business on essential services, other than what we can do from home.

I worried I was being too loose or metaphorical in applying a human form of discipline to our relationship with Gd, and then came across *Mo'ed Katan* 15a (I found it in the course of studying Onkelos for *Tazri'a*, my other weekly column on Torah Musings). The Gemara uses the phrase *menudeh la-Shamayim*, has been put in *nidui* by Heaven.

To explain, Rashi points us to a Mishnah on *Ta'anit* 12b, where we are told how people would conduct themselves if the entire series of thirteen communal fasts had failed to elicit a redemptive response from Gd (we should shudder to think of it, and remember to worry Gd might decide to leave us in an *et tzarah* for weeks, months, or years).

In such a situation, we are told, people reduce their business involvements, and their social greetings. To explain that last, *Ta'anit* 14b tells us people would cover their faces (as does the *metzora* and the mourner, the reason it came up in Onkelos to *Tazri'a*), and sit like mourners *u-menudin*, those in *nidui*, like people *ha-nezufin la-Makom*, whom Gd has rebuked.

We have not had thirteen communal fasts, so my comparison is not ironclad. Even without, though, the way the coronavirus has hit has put us in a situation remarkably similar, and we know tradition recognizes the status of *menudeh la-Shamayim*. Perhaps by looking at how human *nidui* works, we can gain insight into most successfully and permanently leaving what certainly looks like *nidui* and *nezifah* from Gd.

Yoreh Deah 334;43 offers twenty-four reasons to place someone in *nidui*. This isn't the place to analyze all of them, and the list might not be comprehensive, but more than a few converge on a basic issue. Listing those will point us in a productive direction for thinking about how we might react to what feels like *nidui*.

Torah scholars or other authorities properly declare *nidui* of a Jew for: mistreating (*ha-mevazeh*, disgracing) a Torah scholar or a messenger of the court; calling a fellow Jew a slave; ignoring or treating lightly a rabbinic rule, let alone a Torah law; failing to make a mandated court appearance; refusing to accept a court's decision; not keeping the second day of holidays outside of Israel; mentioning Gd's Name for no valid purpose, or for an oath on meaningless matters; causing a group sacrilege of Gd's Name; a butcher who fails/refuses to show his knife to the local Torah scholar (he was supposed to do so as a sign of respect); a Torah scholar whose behavior leads to negative rumors;

declaring *nidui* on another without proper cause.

All those, I think, reflect a lack of respect, for institutions or individuals. Translated to Gd, it would suggest one good area of focus—to the extent the comparison to *nidui* feels accurate, and we think our reacting well shapes how Gd treats us going forward—would be the question of whether we might be being called to reconsider how we do in terms of respect for Gd, of treating Gd with the appropriate awe/fear.

To repeat what I have written earlier in this series: I am not claiming this *is* the reason for what is happening, I am suggesting that noticing the virus has led us to adopt practices very similar to those of *nidui* presents the possibility and opportunity to improve in ways we can hope would be sufficient merits to have Gd free us of the current crisis. And the most likely lead-in to *nidui* is lack of respect.

There are two ways we can treat Gd with a lack of respect I could imagine leading to *nidui*. In an earlier column, I threw out the idea of being more careful about speaking during communal prayer. Skeptical friends objected, thought it too minimal a flaw to fuel our current troubles.

Had I meant the talking itself, they'd have been right. But when I notice or speak of talking in *shul*, I mean it more as an expression of a lack of awe or awareness of Gd. I don't believe who talk in *shul* (including me, too often) don't care about ignoring proceedings of service of Gd, I believe they don't experience the proceedings as service of Gd.

Similarly, when I first started writing about reacting to the *magefah* from a theological perspective, a well-thinking friend thought it a hopeless task, told me people today *just don't think that way*. Another friend told me I was preaching to the choir, as if only those who already agree with me could ever come to see this crisis as a matter of our relationship with Gd.

That would be one kind of disrespect I could easily imagine worthy of *nidui*, the refusal of even ostensibly religious people to cast events in this world in religious terms. I will point out the relatively easy way out of *nidui* in a second, but there's an almost flip side of failure to respect to think about as well.

Many people ignored lockdown measures, for many reasons, but the group that concerns me here are those—Jewish and not—who were certain Gd would never strike *them* as part of the current plague. They could have their church services, their weddings, their funerals, because clearly Gd was on their side.

It reminded me of *Yirmiyahu 7:4*, where the Jewish people disregard the prophet's warnings of impending doom because of their certainty Gd would never allow His Mikdash to be destroyed (pardon the gendered pronoun). There is a disrespect in overly confident familiarity, perhaps as much as the disrespect of too little attention.

Fortunately, the way out of *nidui* is clear: to apologize and commit to doing better. *Nidui la-shamayim*, we can hope, has a similar way out.

If we consider where we do or do not include respect for Gd in our life experience, realize where we have gone too far to one side or other, and commit to better, I believe that would be a very good step, one likely to contribute mightily to the future going better than it currently looks like it will.

Rambam, *De'ot* 3;3, points to *Mishlei* 3;6, as the guide to a life of respect of Gd. *Be-khol derakheha da'ehu*, know Gd in all your ways, the verse says, telling Rambam we should make all our decisions with one question in mind—how will this enhance our service of Gd? For one example, he asks us to ask ourselves whether we sleep for the pure pleasure of it, or because it will help us have the strength to again serve Gd well.

As we ask the question, we should also remember the answer will not always be intuitive. Overconfidence that we know Gd perfectly leads us to think our sanctuaries could never be destroyed, for they are *heikhal Hashem*.

A thought experiment, useful because it is not currently relevant, and therefore not immediately threatening. Obligation 172 in Rambam's *Sefer Ha-Mitzvot* requires a Jew to obey any lawful command of a prophet (prophets cannot order us to worship a power other than Gd, but can call for almost anything else). Imagine a well-certified prophet approached you and told you Gd had told him/her you must immediately sell all your possessions, and move to... Timbuktu, with no explanation.

Don't tell me whether you'd do it, tell me whether you can *imagine it happening*. I think many of us cannot, because we are far from the time of prophets, and also because we have gotten used to a Judaism we largely understand. But it's not understanding that constitutes respect/awe/fear of Gd, it's obedience.

Another example. Someone recently asked me why, after donating twenty percent of one's income to charity, there should be any other concerns about how the person spends his/her money. The question assumes once we've "rendered unto Gd," we've successfully pushed Him off to the side, Gd forbid. (Wikipedia tells me that *Yerushalmi Ta'anit* 4;5 as well as *Eikhah Rabbah* think Bar Kokhba would ask Gd only not to help his enemies before a battle, he would do the rest himself.)

We show the extent of our respect for our Creator in all our decisions. Where we sit on the continuum of environmental concern, choosing a society involved in Gd's service, building a life where Torah study has a place, and more, all show where we currently are in terms of respect of Gd., how we do or do not know Gd in all our ways.

Rambam opens *Hilkhot De'ot* with a reminder of the *shevil ha-zahav*, the golden middle path, where we eschew extremes for the middle in almost all cases. It's not one or the other, time for Torah or time for other pursuits, spending money on ourselves or on causes with a clear Gd component. It is, choice by choice, a moderate adoption of a life where we can honestly say—ideally, in consultation with those of insight into these issues—keeping Gd in the picture, every step of the way.

Each time of trouble each has its own shape, calls for its own reaction. For *this* plague, with the outcomes it forced on us, *nidui* seems where we are, and the way out of *nidui* is respectful re-engagement with the One Whom we have failed to respect or notice in the past.

Next time, let's consider weddings and funerals, ceremonies also radically altered by the novel coronavirus.

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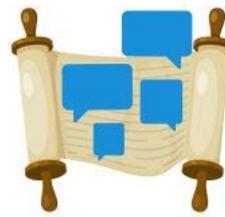
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Welcome to Nidui

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[First Steps in Nidui, to Maybe Get Out of Nidui La-Shamayim](#)

Relatively early in our struggles with this *et tzarah* and *magefah*, time of trouble and plague, back when I was optimistic Gd might relieve us of it quickly, I [suggested](#) the need for social distancing was evidence we were *menudim min ha-Shamayim*, placed in *nidui* by Heaven, and offered some thoughts on how to “convince” Gd to release the *nidui*.

The pandemic continues, and my sense of *nidui* only increases, spurring me to delve deeper into the rules of human *nidui*, in the hopes our study will itself be a merit for it to be lifted and also help us focus us on acting in ways Heaven will appreciate, as it were, and free us to return to all and only the good parts of our former lives.

The Source and Basic Parameter

Arukh Ha-Shulhan Yoreh De'ah 334;1 starts with a reminder Jews always followed local laws and ordinances. In his time, only Muslim governments allowed Jewish communities to wield *nidui* as a form of discipline. European Jews obey the government, so *nidui* is entirely academic. Someone, perhaps [Prof. Simha Fishbane](#), who published the section of *Arukh HaShulhan* on oaths and vows from manuscript, tells us he wrote this to assuage censors.

Arukh Ha-Shulhan characterizes the source verse for the idea of *nidui* as being from the Torah. Actually, it is a verse in *Shofetim*, Judges, a reminder of the complex *halakhic* interplay between Torah and the rest of Tanakh as sources of Jewish practice.

Mo'ed Katan 16a quotes the verse in the question, from the Song of Devorah, where she and Barak call for Meroz and his people to be cursed for not coming to Gd's aid, as it were. Two side points of interest: *Arukh Ha-Shulhan* gives the whole backstory, Meroz was a wealthy man who stayed away from the war against Sisera, despite the call from Devorah and Barak. After their victory, as part of their Song, they discipline him for his failure. He apparently doubted his readers—who had to be somewhat educated to be able to read the book—knew the story.

Second, *Shofetim* 5:23 speaks of a *malakh Hashem* cursing Meroz, usually translated an angel of Gd. *Arukh Ha-Shulhan* reminds us Torah scholars and prophets are *also* referred to as *mal'akhim* in Scripture, because the word really means messenger, and they too are messengers of Gd.

Fundamentally, *nidui* announces a requirement to separate from a certain Jew, not to eat and drink with him/her, not to be within four *amot* (6-8 feet, depending on the length of an *amah*). The verse also tells us what Meroz did, telling us we are supposed to announce what a sinner did that led to his/her *nidui*.

What Causes *Nidui*

Shulhan Arukh itself did not give any background, jumped right in with the idea we declare *nidui* on anyone who violates a prohibition. *Arukh HaShulhan* 334:4 points out the *halakhic* lack of clarity around placing someone in *nidui* for violating a rabbinic prohibition. The Gemara clearly discusses *makkat mardut*, rabbinic lashes for such flouting, is less clear about *nidui*. *Arukh Ha-Shulhan* tells us Ran in *Pesahim* distinguished those rabbinic rules with a connection to a Biblical law from those purely rabbinic. Someone who doubts or denies the *right* of rabbis to make rules, however, would certainly be eligible for *nidui*, according to *Kesef Mishneh*, who also notes *Eruvin* 63a tells of rabbis putting a man in *nidui* for using a tree on Shabbat, a rabbinic problem. He leaves the question unresolved, although such people are certainly called sinners.

Nidui can come for financial crimes as well, like refusing to obey a court summons or adhere to its rulings, discussed in *Hoshen Mishpat*. There, warning is required, Monday/Thursday/Monday, before *nidui* will be declared. (The Monday/Thursday/Monday rhythm seems valuable to stress, because many in our times find ways to stretch and delay intolerably. While Rema wanted us to know financial *nidui* does come only after warning, it takes only a *week*.) *Shakh* adds sources from *Beit Yosef* who thought some warning was needed for other prohibitions as well, just not the formal Monday/Thursday/Monday.

The *nidui* here is assumed to last thirty days (*Shakh* has *Beit Yosef* with the example of a Torah scholar passing through who placed

someone in *nidui*—a right of his—and then moved on; the local court removes the *nidui* after thirty days, on the assumption it was the scholar's intent), in Israel. Outside of Israel, *nidui* was seven days, and *nezifah*, a lesser expression of displeasure with a Jew's conduct, would be only one day instead of the seven in Israel.

Should the sinner stand firm, *nidui* can be repeated and, if repentance is still not forthcoming, the person will be put in *herem*. *Shakh* thought the faster pace of *nidui* outside Israel, would mean *herem* could be appropriate after two one-week *niduiyim*, where in Israel, the sinner would have two one-month *niduiyim* before hit with the more serious excommunication. *Shakh* recognizes the novelty of his suggestion, having seen no one else who agreed, and therefore refuses to enact it in practice, says to ramp up from *nidui* to *herem* seems to require two full thirty-day bans, sinner steadfast in his refusal to repent.

Nidui is not interrupted by holidays (in contrast to mourning).

The Danger of Discipline

Rema opens a can of worms with his codification of *Terumat Ha-Deshen's* view a court should declare *nidui* regardless of how the sinner will react. Some sinners, he already knew, will rebel, leave the religion (and community), called going *le-tarbut ra'ah*, literally a bad culture. *Terumat Ha-Deshen* and Rema held a court must enforce discipline. Sinners' bad choices in response is their problem, not the community's.

Taz' vigorous disagreement highlights the need to consider the balance between a community's obligation to express its disapproval of wrong conduct and the worry it will backfire for the individual. Taz first assumes whoever leaves Judaism will not come back, so if the community's actions tip him/her over the edge, the community thus dooms the person to a life of distance from proper observance.

Taz also thinks R. Isserlein (the author of *Terumat Ha-Deshen*) read too much into *Kiddushin* 72a, where R. Yehudah Ha-Nasi speaks of R. Aha *berebbe* Yehoshu'a having placed certain people in *nidui*, they then having abandoned Judaism. R. Isserlein thought R. Yehudah Ha-Nasi told the people around his deathbed about it to ratify R. Aha's choice; if people deserve *nidui*, we put them in *nidui*, and leave their reactions to them.

Taz has another view of R. Yehudah Ha-Nasi, freeing him to also disagree about the use of *nidui*. He thinks R. Yehudah Ha-Nasi spoke of R. Aha as a way to prove he was at that moment at the level of prophecy, knew what was then occurring far away (R. Aha *berebbe* Yehoshu'a was in Bavel), to prove the truth of his other deathbed claims. Confident he is right, Taz could then ignore the story as a matter of whether to ban someone or not when that person might leave the religion.

To him, a passage earlier in *Kiddushin*, 20b, proves the opposite. The Gemara requires Jews to redeem a Jew who sold himself in servitude to a worship of a power other than Gd, chopping wood or whatever. *Tanna de-bei R. Yishma'el* inferred the rule from *Vayikra* 25:48, after he was sold, *ge'ulah tihyeh lo*, he should still

be redeemed. The *tanna* refers to the Jew who sold himself as one who had gone and become a priest for a worship of powers other than Gd.

In other words, Taz says, the Jew has done wrong, yet the Torah tells us to redeem him; would we then imagine being the *cause* of a Jew joining another religion?

Before we look at one more proof of his, we already see the outlines of the disagreement. Taz thinks we save Jews from themselves even at cost to the community's ability to promote or enforce correct behavior, where *Terumat Ha-Deshen* and Rema think communities act as needed, leaving each Jew to choose his/her reaction.

Letting a Couple Marry

Shu"t Mahari Mintz 5 is Taz' last source. He cites only one line, where Mahari Mintz says he saw the need to save two Jewish souls from leaving the religion (with the same phrase, *she-lo yetz'u le-tarbut ra'ah*, they not go to a bad culture), and therefore allowed a nursing mother to marry. He permitted the couple to violate a rule to protect their Jewish observance (nursing mothers are not supposed to marry, for fear the new marriage will affect the mother's willingness or ability to nurse, and endanger the baby; *poskim* today often find workarounds), implying to Taz we should certainly refrain from acting in a way likely to push someone away from observance.

The fuller responsum shows the analogy isn't ironclad. The woman in question had moved to a town with rampant legalized prostitution, and was being pressured to join the ranks of the "sex workers," as people today like to call them. A man had saved her from the original push, but the authorities had found her again, and were tempting her with promises of financial support she could not match or muster in any other way. She had suggested marrying her savior, and he was agreeable, but if it did not happen then, she would yield to the pressure.

It seems to me Taz' enthusiasm for helping fellow Jews led him to elide a significant difference. The couple in Mahari Mintz' question had to that point acted exemplarily, and were anxious for ways to continue staying within the dictates of *halakhah*. He was worried they might abandon religion, true, but they already had a hold on his sympathies because of their previous displays of commitment and dedication.

In Favor of *Nidui*, Where Needed

Once we think in those terms, the Jew who sold himself to an idol also matches up with the *nidui* case less well than Taz takes for granted. True, the Jew has mishandled the financial pressure bearing down on him, and we rhetorically call it becoming a priest to a power other than Gd. In fact, though, the Jew has only signed on for menial tasks that in no way constitute worship. The Torah's telling us to redeem this Jew addresses a different question than when a Jew is flouting *halakhah* or the courts, as in the *nidui* case.

I think *Peri Megadim* agrees with me (so I [got](#) that going for me, which is nice), although he registers another distinction. He says all of

Taz' proofs can be refuted, because here it is a *court* putting the Jew in *nidui*, and without it, the whole Jewish legal system would fall into disuse (as is too close to true today, when courts and communities have power only over those who voluntarily submit to it).

Arukh Ha-Shulhan says "there is one who went on at length with proofs to dispute Rema's idea," then says many important Torah scholars agreed with Rema. He adds the caution the court should be *matun*, temperate, in making use of the disciplinary measure, and if the court itself or the community would be put at risk by banning a Jew (such as where s/he is politically well connected and can take revenge), the court need not. The crucial element is intention, that they act *le-shem Shamayim*, to honor Gd's Name by standing up to malfeasance and abrogation of observance.

Nidui separates a Jew from the community, to call attention to his/her choice of nonobservance. It is limited, but can grow, and is a central way for the community to express its concern and disapproval over another Jew's actions.

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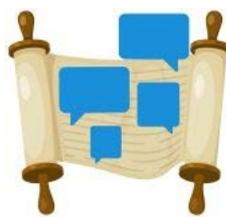
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The Restrictions of Nidui

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Shulhan Arukh Yoreh De'ah 334 next
lays out the parameters of *nidui*.

Before we discuss them, let's consider *Arukh Ha-Shulhan* 334;6, who tells us Rambam thought the court would declare the person in a state of *shamta*, where Ra'avad thought *shamta* was more serious than *nidui*.

Options and Concerns Within Nidui

The issue matters to us because *Arukh Ha-Shulhan* then notes the court certainly *may* declare the higher level reaction—using the word *arur*, cursed, in addition to the *nidui*, the forms of separation we will see below—the Hebrew equivalent of *shamta*. The court can also adjust the length of *nidui*, longer or shorter than the usual thirty days in Israel and seven days outside we saw last time.

The court has the power also to include extra forms of pressure, such as refusing to allow the circumcision of the man's sons [we assume the person put in *nidui* will be a man, because women then generally did not act in public enough to run afoul of authorities; today, when women are part of public life as well, we hope they wouldn't be foolish enough to imitate men by misbehaving in ways deserving *nidui*], threaten to refuse to let him be buried in an honored spot, expel his

children from school and his wife from *shul* until he accepts the discipline of the court/community. (The list reminds us *halakhah* views the family as a unit, the man's actions implicating his wife and children.)

Arukh Ha-Shulhan adds a crucial point that lays bare an underlying problem in the discussion. He says these tactics may be used if the court believes they will produce obedience. Without it, to punish the children or the wife seems unfair, even if the children are minors (and therefore somewhat subject to the vicissitudes of their father's life). Were it to be effective, *Arukh Ha-Shulhan* and others seemed comfortable with the cost. Modern-day *poskim*, I think, are less so, perhaps because of the lesser likelihood of it working.

To me, his words put the challenge of *nidui* in a nutshell. It is a tool of communal discipline, because communities properly need ways to enforce their will, yet *nidui* can and does go very wrong when the person instead just rebels, as happens almost any time a community tries *nidui* in our times. To our detriment, I believe, because the community does not function as it properly should.

Communities properly and appropriately enforce certain types of conformity even as some communities go too far in this. We know this particularly well in our times of coronavirus, when resistance to and rejection of what seem to be responsible standards articulated by responsible authorities (with refusal to obey in the general populace, not just Jews) has led to more illness and death than it seems HKBH originally decreed, shows us downsides of excessive individualism. A reminder of the value of the middle road, individuals with rights, communities with power.

But let's see more of what was supposed to happen when *nidui* still worked.

The Separation from the *Menudeh*

The first marker of *nidu* is separation, everyone in the society required to stay four *amot* (6-8 feet, remarkably similar to the guidance around social distancing for the novel coronavirus) away from the *menudeh*, the person being shunned, with exceptions only for his wife and children, and some say all members of his household (the family pod, in current terms).

Shakh adds the distance is on all sides, meaning the *menudeh* creates a circle around him of four *amot* radius. This is in public as well (we might have thought people would insist on their right to walk where they want, refuse to be inconvenienced by the *menudeh*) or a space belonging to no one, *hefker*, but not someone else's house. (The comment isn't quite clear to me; I think *Shakh* means the *menudeh* can only enter a house if the homeowner agrees to the necessary distancing, but cannot impose it by entering without specific permission.)

Others should not eat with the *menudeh*, or include him in a *zimmun*, the three to recite the special part of *Birkat Ha-Mazon*, nor include him in anything requiring a *minyán*. He is socially *shunned*, more than distanced (as we are by the coronavirus). Rema reminds us this

applies only to someone formally banned, not just any sinner or communal rebel. *Shakh* says this extra level applies only to one placed in *nidui* for problems in observance; the *nidui* for financial wrong allows the person to partake of *zimmun* or *minyán*, unless the court decides otherwise.

A side comment by *Rema* shows how seriously they took the distancing. Prayers can proceed despite the presence of the *menudeh* (*Shakh* here repeats, unless the court made that part of this person's *nidui*); the custom to evict the man from the synagogue was only because he blocked a lot of space, made it harder to find a place to pray not within four *amot* of him.

In other words, the *menudeh* was to be significantly excluded from society. He was expected to refrain from laundry, haircuts, and wearing shoes, like a mourner, but could learn Torah by himself or listen to others (from four *amot* distance). He could work for his living, and people could be employed by him.

I worry people think I am being hyperbolic when I suggest we are currently in a state of international *nidui*, when I mean it fairly literally. The list of ways a *menudeh* would act seem to me remarkably close to what health officials find necessary to try to reduce the spread of the novel coronavirus—we are urged to socialize only with family, or from a distance of at least six feet, not to have meals with others, and for a long time, we were unable to attend *shul*, and learned Torah at a distance.

I won't come back to this each time, so I hope you remember and ponder this: the practices medical science is finding effective are precisely those *halakhah* used to impose social exclusion.

***Herem* Is Worse**

Herem ramps up the pressure. A Jew in *herem* cannot be included in Torah study (he may study himself only to avoid forgetting what he has already learned), cannot be employed or employ others, and Jews patronize his business—and he can run his business—only enough for bare sustenance.

Shulhan Arukh explicitly permits speaking with these people, unless the court made a rule against it. *Rema* cautions not to go too far, to speak only as necessary, as with a mourner [the similarities between a *menudeh* and a mourner—along with a *metzora*, someone afflicted with *tzara'at*—provide a convenient shorthand for the experience of the *menudeh*, he is supposed to experience mourning of a sort for having stepped too far outside propriety.

Shakh notes he is not required to tear his clothing, or wear a covering on his head and mouth—different than the form our current *nidui* takes, as every court is allowed to make rules specific to its *nidui*, and apparently the Heavenly Court has decided we need face masks—may wash and anoint himself with oil, may engage in marital relations, wear *tefillin*, and greet people, who may greet him as well. While some thought he should not wear ordinary shoes, *Shakh* says the consensus is this is not a necessary practice for the *menudeh*].

The need to distance doesn't force the ordinary people to leave where they were, should the *menudeh* come and sit there, Rema says; his violation of the rules is not other Jews' problem. On the other hand, the *menudeh's* house is all considered his four *amot*, and other Jews may not enter the whole structure. *Shakh* notes an open question as to whether a moving *menudeh* obligates staying out of the moving four *amot* circle, much like runners today.

Being part of society is a right, I think these rules are trying to say, and with that right comes the responsibility to be a good citizen. Those who refuse, in ways we have not yet specified, and choose to flout communal norms, lose their privileges of membership. At first a bit, to give them a taste of their path, and then more and more, in the hopes they will realize the poor choice they are making.

It reminds me of the verse Rambam referenced at the beginning of *Laws of Fasts*, if we go with Gd *be-keri*, ignoring early-stage calls to improve, Gd will go with us *be-hamat ker*. As with *menudim*, we hope they and we learn the lesson soon enough to have the *nidui* suspended early, a topic we will see next time.

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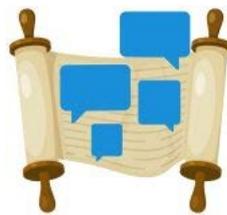
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Early Release From Nidui

□ Posted by: Gidon Rothstein □ in Magazine, Nidui, Posts □ Aug 18, 20 □ 0

by R. Gidon Rothstein

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I am studying *nidui* because I think Gd has designated humanity for *nidui* for wrongs we all have committed (I continue to stress, not *one* wrong, many wrongs, different people and different groups perhaps with different wrongs). In that light, the paragraphs of *Shulhan Arukh* we are up to have particular resonance, how a sinner does or does not find a way out of *nidui*.

Banned Mourning

Yoreh De'ah 334;3 tells us someone who dies while in *nidui* (although the person *could* just happen to die during the first experience of *nidui*, I think the more assumed scenario was one who refused to rectify his/her situation for an extended period), the court places a stone on the coffin, symbolically stoning the stubborn and unrepentant rebel. Mourners for such a person would not be permitted to rend their clothing, and no eulogies would be given, a remarkable expression of communal discipline. Imagine acting this way in our times, when mourning practices have become disproportionately important.

Shulhan Arukh does limit this extreme punishment to a *nidui* administered for rebelliousness, refusal to abide rabbinic discipline. As part of a financial dispute, where *nidui* was to bring the person to court to resolve an issue, the *nidui* goes away with death.

Shakh reminds us some practices of mourning are about and for the mourners rather than the deceased, and would take place. People would stand in two rows to give the mourners their first comfort after the burial, they would sit *shiva* and accept comfort, and the deceased would be buried in the usual way, with the usual shrouds, in a family burial plot. *Nidui* may follow someone to the grave, but not in all ways.

Extending It Beyond the Usual

Yoreh De'ah 334;5 says those who eat and drink with the person in *nidui* will not themselves be considered also placed in *nidui*. *Arukh Ha-Shulhan* adds the court did have the right to decide the sin was significant enough to need further response, could announce that anyone who ate with this person and/or sat too close to him/her *would* be automatically *menudim*, placed in *nidui*.

Further stringencies (or leniencies) he ratifies, if a well-intentioned court finds them necessary: setting up the original *nidui* for longer (or shorter) than thirty days; leaving the *menudeh* able to count towards the three for a *zimmun* in *Birkat Ha-Mazon* or the ten for a *minyan* or, in reverse, prohibiting the *menudeh* from doing so even when the *nidui* arose out of a financial dispute; and, placing the person in *herem* immediately after a *nidui*, without waiting for a second thirty-day *nidui*.

The possibilities confront us with the conundrum underlying this and all communal enforcement: it works best with those already prone to accept communal discipline. If people are going to ignore an announcement of *nidui* by continuing to eat and drink with that person, will placing them in *nidui* have any significant effect? Perhaps, but often not.

It seems to me to lead either to the evisceration of *nidui* as a useful tool (to the community's detriment, I believe, because norms are then no longer norms), or to an arms race of enforcement, dependent on the cooperation of the broader community.

As I have noticed in many other contexts, especially in the last few years, the rank evildoer is not usually the main problem, it's all those who find ways to let themselves go along with him or her. Were each potential rebel to know s/he would be on his/her own, the odds of rebellion would lower, because people would understand they must follow communal standards.

Letting the *Menudeh* Go

On the more cheerful side of the process, a person who does follow the rules of *nidui*, has renounced the bad behavior that landed him/her there, can be restored to social functioning after thirty days even without the court yet formally releasing him/her (because the *nidui* was set at thirty days, so its social restrictions fade away without formal release, as long as the Jew in question obeyed the rules).

If the Jew did *not* repent, 334;7 says, the court can release him/her anyway, although it is probably better not to, so people do not get used to bearing the occasional *nidui* as a cost of acting as they want

(is the point of a speeding ticket to stop the speeding or just collect a fine?).

Taz cannot accept the simple reading of the *Shulhan Arukh*, insists he has to mean the person did not come to court to apologize for his/her behavior. To release someone who is still acting exactly as before carries too much moral hazard to be contemplated, reinforces the behavior rather than discourages it. Rather, *Shulhan Arukh* must have meant a formal apology is not necessary; stopping the precipitating behavior was a bare minimum, *Taz* is sure.

Taz also thinks the *menudeh* must request relief and release from the court. I will skip his lengthy discussion of ambiguous positions among the *rishonim*, but he ends up holding both that appeasing the original insulted Torah scholar—one way *nidui* happens, a Jew mistreating a Torah scholar—and, after serving his *nidui*, coming to court and asking for release are necessary.

What about appeasing the offended party *early*, could that lead to early release? With varying indications in the writings of earlier scholars, *Taz* suggests it depends on whether the *nidui* was about a certain time or about a certain offense. Sometimes, a Torah scholar saw reason to place someone in *nidui* but then left the scene; in such cases, *nidui* is a flat punishment, thirty days of separation to teach a lesson. Similarly, a court could decide the person's conduct required a thirty-day response regardless of remorse or repentance.

Other times, the *nidui* was only about the misdeed, and appeasing the offended party could lead to early release.

Nezifah

There is much to say about who can place others in *nidui*, and whom that obligates to shun the *menudeh*, so we will leave that for next time. Let's close here with a relatively self-contained rule, *nezifah*. It is a lower level of punishment, and also shorter, a week as compared to a month in Israel, a day as compared to a week outside.

Shulhan Arukh 334:14 tells us it happens when an *adam gadol*, an important Jew (usually an important Torah scholar) says "how impudent so and so is," or some other expression of significant displeasure. (Rabbi Paysach Krohn started a story in one of his enjoyable *Maggid* books with the interesting point that in certain places in Europe, if the rabbi slapped you in the face, you had to leave town; it's a complicated idea, certainly vulnerable to misuse or abuse, and I think the the Jew in that story was then lost to observance. It still seems to me to valuably remind us of what reverence for Torah scholars means—more important than kissing their hands or standing when they enter a room. I am not suggesting we return to that standard; I am suggesting we remember *nezifah*, if we run afoul of a Torah scholar, it's on us to see we've done wrong. I think we all would benefit if we did).

The person reprimanded was to self-isolate, shelter at home in embarrassment (not in the offended sense of "look what he did to me," embarrassed we acted in a way that led to this situation; today, we usually insist whoever causes embarrassment must be wrong; not

always, *nezifah* tells us).

Out of his/her sense of shame, the recipient of the *nezifah* should also avoid the person who reacted that way, restrict his/her laughter, conversation, and general activity, and make clear to all his/her distress over having done this. S/he need not adopt other practices of *nidui*, can eat and drink with people as usual, greet them, and so on. Nor is there a formal apology or release process—if the *nazuf* adheres to this for the period of *nezifah*, a week in Israel, a day outside, s/he can return to ordinary life.

Arukh Ha-Shulhan accepts Rema's idea, *nezifah* can happen without the Torah scholar saying anything, as long as another Jew knows the Torah scholar is irritated. The sensitive and concerned Jew will act as if s/he had received *nezifah*, and spend the day as we have described.

I freely acknowledge how counterintuitive many of these ideas sound to modern ears and sensibilities; in fact, it is what attracts me to the topic. When *halakhah* is sure of something, times may have changed enough to make those strategies less useful than they once were, may mean we need to adapt them, but if we find ourselves unable to imagine the conceptual underpinnings, we have a chance to see we have fallen out of step with Jewish tradition.

A tradition where communities and leaders can discipline others, even harshly, where appropriate, and those others and their peers need to adhere to the social norms involved, for the good of the society.

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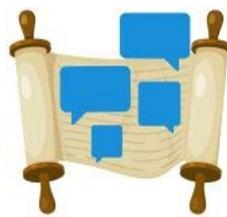
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Effective and Ineffective Nidui

□ Posted by: Gidon Rothstein □ in Magazine, Nidui, Posts □ Aug 25, 20 □ 0

by R. Gidon Rothstein

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Various people and/or institutional bodies have rights to place Jews in *nidui*, some more broad than others. *Shulhan Arukh* 334:12 says a court's *nidui* for a Jew's refusal to obey a summons, reckless disrespect of a court, violation of *halakhah* and/or a court's rulings each bring *nidui* all Jews must respect and follow.

The *nidui* takes effect even if someone other than the court declared it. Since the person's actions objectively deserve *nidui*, anyone can declare it and it then obligates all Jews everywhere. (We will soon see this is not true of every example, so *Shulhan Arukh* is saying these wrongs properly bring about universal *nidui*.)

The Challenge of *Nidui* in a Nutshell

I won't belabor the point I am about to make, but I do hope we each think about it as we confront the examples raised here: *halakhah* is comfortable with the unavoidable subjectivity and possibility of excess of an institution like *nidui*. One person's *afkiruta*, reckless disrespect, or sins clearly worthy of *nidui*, will look to others like not so much.

I personally believe *Shulhan Arukh* was telling us we are supposed to accept, generally anyway, the *nidui* of any legitimate authority, not judge ourselves whether that was the right way to handle it. If, for the

current example, a local court places a man in *nidui*, outsiders are supposed to cooperate in shunning him/her as indicated, even if they might have handled it differently. They might contact the original *nidui*-placing authority to discuss, for example, but the *nidui* needs to be respected.

That's the challenge, going along with another authority where that authority acted legally correctly even if we think they are handling it badly.

Partial *Nidui*

Some versions of *nidui* have more limited scope. A *talmid*, someone not yet fully qualified as a Torah scholar, can declare *nidui* at another Jew's disrespect for his Torah; a city other than the Jew's home town can put him in *nidui* for acts of disrespect in that (other) city, but neither situation leads to a universal *nidui*. Most Jews who hear about it should distance themselves from the offending Jew, but not all—the *talmid's* teacher, for example, is not bound by the student's *nidui*, and a man's home town is not bound by another town's *nidui*. Nor must the person himself take on mourning practices.

A recognized Torah scholar, a *rav*, creates fuller *nidui* if he feels a Jew has treated him with disrespect. [A point I still think we miss: a Torah scholar has the absolute right to react punitively when treated with disrespect, and it is not a sign of lack of humility or excessive concern with personal honor.] The *nidui* obligates all that scholar's students, but not other Torah scholars (*aharonim* disagree about whether nonstudent Torah scholars of lesser rank than this one might also be obligated by his *nidui*.)

This right cannot be limited by a town council or similar body: Any ordinance they pass prohibiting local Torah scholars from placing others in *nidui* does not take effect.

The student's *nidui* does obligate non-scholars and, in some views, scholars of lesser rank to distance themselves from the subject of the *nidui*, unless the *talmid* did it in front of his own teacher. To do so itself constitutes disrespect, unless the teacher had made some specific gesture of respect towards this student, giving him the right to guard his own honor even in his teacher's presence.

Where It's Not a Matter of Personal Right

Non-Torah scholars, of course, have no right to use *nidui* as a tool to guard their honor, because this is about the honor to *Torah*, not to people. That includes a rabbi set up by the government, who is not a qualified Torah scholar, and anyone who secures a communal position by force or purchase. Full-fledged Torah scholars, too, can only use *nidui*, not *herem*, unless the offending Jew holds onto the debate too much (another place for subjective judgments).

However, a student who hears his teacher treated with disrespect can place the person in a *nidui* that obligates everyone other than greater Torah scholars, because it is about the respect for the Torah of a Torah scholar.

More, all this has been where the reason for the *nidui* was respect;

where a Jew acts badly in other ways—refuses the orders of a court, violates the Torah in public, and more that we will see later in the chapter—*anyone* can place the Jew in *nidui*, and then all Jews, from that city or other cities, of whatever rank, including the *nasi*, the Torah leader of the generation, must abide by it until the offending Jew rehabilitates.

Limitations on *Nidui*

The full-fledged Torah scholar can declare *nidui* only where the offending Jew has not promised to change. If the other had promised to appease the Torah scholar—who, for some reason, did not believe it and declared the *nidui* anyway—it does not obligate even the man's students (another example of where judgments come into play; the Torah scholar clearly thought he had reason to disregard the man's promises, yet *halakhah* seems to allow his *students* to disagree).

Nor can the Torah scholar declare a *nidui* for other *halakhically* valid needs. Rema says it as the Torah scholar wanting to profit financially, a shocking idea, or because he dislikes the other Jew, as evidenced by his putting *this* Jew in *nidui* when he did not react to other Jews who did the same thing (selective enforcement—when *we* get pulled over for speeding while ten other cars are also speeding, it suggests another agenda on the officer's mind. Not that any of us would speed.)

Arukh Ha-Shulhan 334;18 helps us see this more defensibly. A responsum of Rosh, *Kelal* 28, noted *Mo'ed Katan* 17a, a Jew owed Resh Lakish money, and Resh Lakish placed him in *nidui*. The other Jew complained, apparently correctly, because *nidui* is only for disrespect, not other issues, however *halakhically* valid. Here, too, *Arukh Ha-Shulhan* thinks Rema meant the Torah scholar declared a *nidui* to recover money owed to him; still not valid.

He also quotes *Hagahot Maimoniyot*, who stressed *nidui* responds to *disrespect*, not failure to extend proper respect. A Jew who regularly refuses to stand for a particular Torah scholar, wrongly, still has not opened himself to *nidui*.

Hometown, Other Town

When a man's place of residence, puts him in *nidui*, all other cities across the world are required to abide by it (yet another weak link, because those other cities frequently decide they are not bound by the other city's *nidui*). But if a Jew manages to offend some other city, his home city is not obligated to follow the *nidui* (although I assume they *are* obligated to *consider* the *nidui*; it is hard to imagine *halakhah* would be fine with their serving as a safe haven for a man who acts with improper disrespect. I *think* the *halakhah* worried those other cities might misunderstand the man, have less insight into how he behaves and what constitutes flagrant disrespect from him).

Rema adds that the exception is only for where the *menudeh* lives; other cities must abide by the *nidui*. *Arukh HaShulhan* adds as long as they are not larger, I think because larger cities have more importance and—like a teacher for his student—need not involve themselves with guaranteeing the honor of smaller cities.

334;21 says that a *nas's nidui* obligates all other Jews, but not vice versa.

Perhaps the most common, but also the most complicated, version of *nidui* involves safeguarding respect, reacting to disrespect, and it comes with levels and parameters, depending on the right to honor of the person or body declaring the *nidui*, and the required cooperation or not of other Jews around the world.

Next time, procedures for release from *nidui*; as we get further into Elul, the month of preparation for Rosh HaShanah, it will be a propitious time to think about how we can earn release from our current coronavirus *nidui*.

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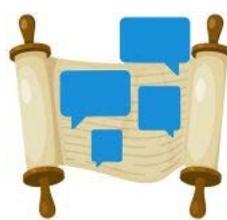
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Some Versions of Release From Nidui

□ Posted by: Gidon Rothstein □ in Magazine, Nidui, Posts □ Sep 1, 20 □ 0

by R. Gidon Rothstein

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We're really up to discussing the ways people are released from *nidui*, a topic close to my heart as we head further into Elul, closer to our Rosh Hashanah judgement, where I (and I assume we) pray our Creator will see fit to release us from the current plague (and *nidui*, in my personal reading of events). Before we get there, *Arukh Ha-Shulhan* 334;21 throws in a reference to a custom that has fallen into disuse.

Stopping Services, Stopping Injustices

He is copying from *Be'er Ha-Golah*, notes to *Shulhan Arukh* I don't have in my Bar-Ilan, who says there was a *takkanat ha-nashim*, a way for women to secure justice, as well as others. Mistreated women had the right to interrupt services, not let them continue until reassured the communal leaders would look into her situation. For instance, a man could not separate from his wife for more than eighteen months (admittedly, a long time), Jews were not allowed to rent from non-Jews if another Jew had already rented it, those who left the religion and returned had the right to not be reminded of their former misdeeds, reading other people's letters was not allowed, nor was

buying from a thief (even if the purchaser has no knowledge *this* material was stolen).

I've skipped some examples, and some details of these examples (like, whether people's sending mail unsealed constituted indifference to others' reading it), because I am more interested in the overall idea, and what it says about *nidui*: *halakhah* always knew the legal system itself did not and could not cover all conditions. When the system went wrong, it had a nonjudicial procedure to secure rectification.

Because this version would inconvenience the public, the person had to stop weekday prayers three times before s/he could interrupt the Shabbat or Yom Tov prayers (imagine the whole community forced to wait on a holiday morning, when Yizkor was due to be said, until some oppressed person was satisfied his/her issue would be addressed!).

Removing the *Nidui*

Just as the prayers would be stopped until the offended party relented, the *nidui* stayed in effect until suspended. *Shulhan Arukh* 334;23-4 tells us it must be verbal, the people releasing the person in *nidui* saying the words: *sharui lakh*, it is released for you, *mahul lakh*, it is forgiven for you, etc.

Arukh Ha-Shulhan reports *Taz* knew of a custom to announce it had happened, especially when the release was done outside the person's presence. Otherwise, s/he might think it just went away on its own (and learn to ignore it, because it would go away). Later in the *siman*, *Arukh Ha-Shulhan* speaks about the difference between where the *nidui* originally happened in front of the person or not. Where it did, we want the release in front as well, for this worry; where the original *nidui* happened outside his/her presence, we worry less about it, because when the person sees others no longer treating him/her as a *menudeh*, s/he will put two and two together— just as the *nidui* happened elsewhere, the release did as well.

Removing a *nidui* requires a court of three, or a *yahid mumheh*, a single expert. For vows, we usually assume we no longer have such experts, although *Shakh* notes *Bah* did not make that point here, as if he thought a lone expert was still a factor for *nidui*, perhaps because the laws are less complicated.

Sometimes, three people place someone in *nidui* and then go away; once the person improves in the causal area of the *nidui*, three others can release him/her. However, *Shulhan Arukh* wants those three others to be the equals of the first in wisdom, fear of Heaven, greatness, and age (many of these hard categories to track; I think *Shulhan Arukh* means roughly equal).

Shakh notes Ra'avad thought the need for equality was only if the *nidui* was being released early (because the person changed for the better); if it had run its course, any three could end it. They did, however, have to end it, as par. 27 says, the assumed thirty-day period of *nidui* doesn't automatically end it, it has to be formally ended.

In paragraph 23, *Arukh Ha-Shulhan* thinks a *nidui* set by an unknown

person can only be released by the *nasi*, the head of the Sanhedrin, because only he is certainly the equal of whoever originally placed the ban. In our days, where there is no *nasi*, *Arukh Ha-Shulhan* thinks we accept the *gadol ha-dor*, the leading Torah scholar of the generation (one more place for subjective judgments).

The three judges do not have to gather to end the *nidui*, they could each say it wherever they are, and as long as all three have done it (or two, with the permission of the third), the *nidui* is ended.

Limits on Release

Someone who did not abide by the rules of the *nidui* cannot be released without observing the *nidui* for the number of days until his/her behavior changed to merit release. For example, imagine a person was placed in *nidui* for disrespect to a Torah scholar, spent a week ignoring the *nidui*, then went and apologized. Before s/he could be restored to regular life, the week of *nidui* would have to be observed.

Arukh Ha-Shulhan 334;26 notes contradictory indications as to whether one could release a *nidui* before it took effect. In the example he notes, a man puts himself in *nidui* if he fails to do *x* by *y* time. Then, before the deadline arrives, he wants to remove the *nidui*, an escape route definitely not allowed for a vow (regret for having made a vow can be used to nullify it only after it has taken effect). *Arukh Ha-Shulhan* thinks we should be strict about this, although he entertains the possibility it is only where others placed the Jew in *nidui*, not where the Jew did it to him/herself.

Where a Torah scholar placed himself in *nidui*, and has the right to undo it, he can do it before it takes effect as well. (An ordinary Jew can place him/herself in *nidui*, but 334;34 says it might take a *minyan*, ten Jews, to release it.)

As a last example of how difficult it can be to get out of *nidui*. 334;32 knows of a person who places him/herself in *nidui* in this world and the next, a situation some considered irrevocable. Similarly, *Arukh Ha-Shulhan* 334;25 held a conditional *nidui* takes effect even if the condition was not met. *Makkot* 11b tells us Yehudah's bones rolled in their coffin because he had told Ya'akov he would accept *nidui* should he fail to bring Binyamin back. Despite his successfully protecting Binyamin, the *nidui* still happened.

Dream Nidui

The last example of a complicated *nidui* release comes where a person dreams s/he was placed in *nidui*; *Pithei Teshuvah* tells us Radvaz extended this to where someone *else* had the dream. *Shulhan Arukh* requires treating it as *nidui*, even if the person saw him/herself released from the *nidui* in the dream itself. *Shakh* explains dreams always have nonsense material (*Arukh Ha-Shulhan* pointed out a sharper formulation in *Gittin* 52b, words of dreams do not add or detract), but we don't always know which is which, so we have to worry the release wasn't real, but the *nidui* was (although, obviously, it could have been the reverse.)

Release here requires ten scholars (Taz says because Gd is present where ten gather, so the One Who placed the ban will be part of releasing it), ideally who know how to learn *halakhah*. If such scholars are not available—the person has to walk up to a *parsah*, about a 72 minute walk, to see if any can be found—*Shulhan Arukh* has a hierarchy, the next step being those who study Mishnah, who know how to read the Torah, and then, if none of those are to be had, allows any three people to do it. Some insisted on the ten learned people (Tur in the name of his father, Rosh), and the person would have to travel the world gathering release agreements from ten learned scholars.

Arukh Ha-Shulhan thought it likely the Jew would have to walk the *parsah* if there a court of those who knew only Mishnah, and would have to find the best three (in wisdom, age, and righteousness) even at that distance. He thought it was clearly better to follow Rosh, travel the world for ten scholars to sign his release form, a remarkable example of *halakhah* incorporating the metaphysical into ordinary life: a *nidui* witnessed in a dream should be taken so seriously as to lead the person to gather release consents from the most significant scholars s/he can find.

The *halakhot* of release from *nidui* show how important it is to avoid getting into it to begin with. Next time, I hope to look at the kinds of missteps that can get us in such trouble, the sins (other than disrespect for Torah scholars, which we've already seen a bunch of times) that incur *nidui*.

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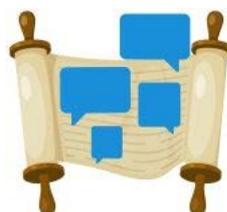
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Nidui Punishes—What?

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This is the last essay in the current series on *nidui*, a follow-up to the series of ideas about the novel coronavirus back when it was novel. As Rosh HaShanah approaches, the end of our study of *siman* 334 of *Yoreh De'ah* leaves us with three weeks for issues of Rosh HaShanah and Yom Kippur—this year, I hope to study the six calls to repentance Rabbenu Yonah taught us in the second *sha'ar* of *Sha'arei Teshuvah*— and then, after *Sukkot*, briefly return to *Akedat Yitzhak*, before moving on to my next project, an attempt to flesh out the mitzvah of *halikhah bi-drakhav*, walking in Gd's ways.

The Honor of a Torah Scholar, and Abusing the Privilege

The last piece of the *siman* lays out reasons a Jew would legitimately be placed in *nidui*. We have already seen the most prominent example, treating a Torah scholar with disrespect, and I will focus away from that, to leave time to discuss other misdeeds also worthy of *nidui*. I will just remind us that awe and fear of Torah scholars, certainly our personal teachers but also any qualified *talmid hakham*, is an important value, and Jews who trample on such respect deserve to be ostracized until they change.

Our concern with the honor of Torah leads to 334:42's idea, one many might see as favoritism for Torah scholars. *Shulhan Arukh* tells us if a

Torah scholar, even as high ranking as a former head of a court, Gd forbid turns to a wrong way of acting, we never publicly declare *nidui*. Before I turn to the one exception *Shulhan Arukh* names, I note *Shulhan Arukh* says we would administer lashes to the scholar, privately. In addition, if people are hearing of his misdeeds, creating a *hillul Hashem*, a sacrilege of Gd's Name, the court *would* place him in *nidui*.

The avoidance of *nidui* was for where his failings are not broadly known, *nidui* would spread the sad word, shaming the broader project of Torah with which this person has become linked, and we therefore avoid it. Where it's already known, damage is already done, the court declares the *nidui*, to be clear they distance themselves from his actions. But it's a distasteful business all around, and no one wins, [each rabbinic scandal I hear about, one of the ways it upsets me is the tragedy for the honor of Torah], the reason *Shulhan Arukh* makes a point of how exceptionally righteous Torah scholars would praise themselves for never having joined a court for *nidui* on a Torah scholar.

Another exception is if the Torah scholar acts like Yerov'am, defined by *Arukh Ha-Shulhan* as where the Torah scholar misleads the public into sinning. In *Shulhan Arukh's* list of twenty-four causes of *nidui*, nos. 15, 17, and 18 are about these kinds of actions, causing the community to sacrilege Gd's Name, misleading people who do not know better (physically or intellectually blind, as *Arukh Ha-Shulhan* points out), or preventing the public from fulfilling their obligations. No. 23 is a Torah scholar who develops a bad reputation.

Par. 44 of the *siman* gives more examples of how a Torah scholar can misbehave in a way deserving *nidui*. He might allow a woman to remarry if her husband disappeared in *mayim she-ein lahem sof*, water whose edges are not visible; while we are all intuitively certain he drowned, *halakhah* worried he might have survived without our seeing where he came up and out of the water. Or, the Torah scholar could misuse Torah logic to arrive at an incorrect idea, such as offering an incorrect *gezerah shavah* or *kal va-homer*, ways we *do* infer valid Torah ideas. Or, he might rule on matters of *halakha* when his teacher is available to be asked; and more.

There is power and protection in being a Torah scholar, unless it is abused.

Obligation and Risks of Declaring *Nidui*

In paragraph 37, *Shulhan Arukh* says if a Jew hears another Jew deliberately mention Gd's Name for no valid reason, or swear falsely, or make a blessing the Jew knows to be unnecessary, the one hearing it is *obligated* (that's not me speaking, *Shulhan Arukh* says *hayyav*, obligated) to declare *nidui* on the original person (number 13 in the list). If the Jew who hears it does not, he himself deserves *nidui*.

Taz infers a disagreement between Rambam and Semag as to what qualifies as *shogeg*, unwitting, to spare the person *nidui*. Rambam seems to think any lack of awareness— Gd's Name slipped out, for example, the person who said it wasn't thinking—spares him/her from *nidui*, where Semag seems to think only a lack of awareness of

the law. If a Jew thinks *halakhah* allows some particular false oath, no *nidui* would come, but if the Jew simply didn't control him/herself, that's not *shogeg* for these purposes (because, it would mean, *nidui* is about restoring discipline regardless of level of blame; we don't need the person to have been malicious to put him/her in *nidui*. As long as s/he knew something was wrong, doing it even unthinkingly can incur *nidui*, for Semag.)

While a second ago, we spoke of an obligation to declare *nidui*, mistakes in that realm have consequences, too. If a Jew places another Jew in *nidui* wrongly, and the second party (who has to be a Torah scholar, perhaps of an equal level, the ins and outs of which I am skipping) reverses it—no, *you* should be in *nidui*—the second one might win, if he has correctly diagnosed the situation.

Most of the List

Paragraph 43 gives twenty-four causes of *nidui*. Here are the ones I found most relevant (that I haven't already mentioned): 1) We've spoken of denigrating a Torah scholar, *Shulhan Arukh* includes after the scholar's death. 2) So too for a messenger of the court (much of *nidui* is about enforcing respect for institutions and their representatives, because institutions make society function, a fact many seem to have forgotten today). 3) Calling a fellow Jew a slave (casting aspersions on his lineage and status.)

Number 4 calls for *nidui* for mocking any Rabbinic law or treating it lightly, and all the more so Torah law. (I can't not pause to stress how far-reaching this is: treating *any* Rabbinic rule disrespectfully deserves temporary removal from full social membership in the community). 11 adds the violation of the second day of Yom Tov, for all it is "only" a *minhag*, a custom, rather than formal Rabbinic law.

5 and 6 are about courts, ignoring summons or refusing to abide by a verdict.

7-9 are about damaging others, 7 by being in possession of something that damages (I once knew people with a dog that tended to bite but refused to take care of it), 8 by selling land to non-Jews, in a context where it was reasonable to expect those non-Jews would somehow damage the Jewish neighbors, and 9 by giving testimony in non-Jewish court, whose verdict will cost a Jew money *halakhah* did not think that Jew owed.

Nos. 19 and 20 are about butchers, a reminder of how important kosher meat is to the Jewish people. A butcher found to pass off non-kosher meat (*terefah*, an animal wounded in a way that makes ritual slaughter ineffective for *kashrut* purposes) or who does not show his knife to the local Torah scholar deserves *nidui*.

How Important is the *Nidui* We Have Lost

The closing paragraph of the *siman* lays out how to handle *nidui* where the non-Jewish government prohibited it. If misconduct towards the religion was the cause—rather than an interpersonal matter, such as his suing another Jew in non-Jewish court, deserving of *nidui* but of a less communally vital kind—*Shulhan Arukh* says Jews should bear the

possibility of punishment by the authorities to uphold our way of life.

He is going to backtrack, and Taz will take it further, but I want to pause for a moment to absorb what he is saying. In his view, this informal and extrajudicial form of communal discipline, which reasonable people can disagree about when to apply and can be wielded wrongly, is vital enough to the conduct of Jewish communities that it is worth risking a fine or other punishment by external authority.

Shulhan Arukh then backtracks in a way relevant beyond the world of *nidui*, saying for all we bear an obligation to remonstrate with each other, and/or to protest when other Jews sin, we are not required to spend or lose money on it. Therefore (he says, in the 16th century, let alone now), people are lenient about objecting to sin, for fear those sinners will find a way to cost us money.

Taz adds two more concerns, from the *Derisha*, for a time when *nidui* isn't handled well (either by the ones declaring the *nidui*, or those on the receiving end of it). First, where the institution doesn't work, the sinner for whom this was supposed to be a wakeup call might take it as a reason to reject religion more broadly, and we don't want that. (A topic to which Taz is very alert; I think he objected to disciplining a sinner who would choose to leave the religion as well.) In addition, people get so angry—he says—fights will start, and one person might murder another.

I wouldn't have thought it would go that far, but *Shulhan Arukh* and Taz highlight the problem of *nidui*, a problem I believe we would all do well to take with us and think about in this Yamim Noraim season: it has a real value for society, as long as the members of the society are able to respect the institution and react appropriately. Sadly, *centuries* of Jewish society have known its downsides, for them, outweighed its value and upsides. We need not question their judgment to realize it means they and we live in a less good world than we might, for our many failings.

An appropriate way to end our discussion of *nidui*, as we head into a Yamim Noraim season where we have all the appearance of being (and I personally believe we are) *menudim la-shamayim*, and can only hope we find our way back to a better version of ourselves, and merit being released—fully—from our *nidui*, to again work on perfecting the world in the service of the One Who has limitless blessings and bounty to give us.

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