

# **Lev Yodea Marat Nafsho:** **Trans Bodies & Self-Determination in Halakha**

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## **Mishlei 14:10**

לב יודע מרת נפשו ובשמחתו לא יתערב זר:

The heart alone knows its bitterness, And no outsider can share in its joy.

## **I. Lev Yodea Marat Nafsho**

### **Mishnah Yoma 8:5**

**MISHNA:** With regard to a pregnant woman who smelled food [and was overcome by a craving to eat it], they feed her until her soul returns.

With regard to a *holeh*, they feed him according to experts. If there are not experts present, they feed him according to himself, until he says "enough."

מתני' עוברת שהריחה  
מאכילין אותה עד שתשיב  
נפשה

חולה מאכילין אותו ע"פ  
בקיאים  
ואם אין שם בקיאים מאכילין  
אותו על פי עצמו עד שיאמר  
די

### **Talmud Bavli Yoma 83a**

It was taught in the mishna: With regard to a *holeh*, they feed him according to experts.

Rabbi Yannai said: If a *holeh* says "It is necessary [that I eat]," and a doctor says "It is not necessary," they listen to the *holeh*.

What is the reason?

It is because the verse states: **The heart knows the bitterness of its soul** (Proverbs 14:10).

It is obvious that a person knows himself better than anyone else does! What would you have otherwise said?

A doctor has more standing [i.e. is authoritative in this case].

חולה מאכילין אותו על פי  
בקיאים  
אמר ר' ינאי חולה אומר צריך  
ורופא אומר אינו צריך  
שומעין לחולה  
מ"ט  
(משלי יד, י) לב יודע מרת  
נפשו  
פשיטא מהו דתימא  
רופא קים ליה טפי

This comes to teach that indeed, a person knows herself best.

קמ"ל

If a doctor says "It is necessary," and the *holeh* says "It is not necessary," they listen to the doctor.

What is the reason?

Perhaps *tunba* [a coma-like stupor] has taken hold of the ill person.

רופא אומר צריך וחולה אומר  
אינו צריך שומעין לרופא  
מ"ט  
תונבא הוא דנקיט ליה

...

...

Mar bar Rav Ashi said: Any instance where a one says "It is necessary," even if there are one hundred experts who say it is not necessary, we listen [to the person herself], as it is said: "**The heart knows the bitterness of its soul**" (Proverbs 14:10).

מר בר רב אשי אמר כל  
היכא דאמר צריך אני אפי'  
איכא מאה דאמרי לא צריך  
לדידיה שמעין שנאמר לב  
יודע מרת נפשו

We learned in the mishna: If there are not experts present, they feed him according to himself, until he says "enough." The reason [that we feed him in this case] is that there are no experts present.

Therefore, if there are experts present, no [we would not feed him]!

This is what the mishnah says: In what case is this statement [that one follows the opinion of the experts] said? When the one says "It is not necessary [that I eat]." But if he said "It is necessary," there are no experts at all; they feed him according to himself, as it is stated: "**The heart knows the bitterness of its soul**" (Proverbs 14:10).

תנן אם אין שם בקיאים  
מאכילין אותו ע"פ עצמו  
טעמא דליכא בקיאים  
הא איכא בקיאים לא  
ה"ק בד"א דאמר לא צריך  
אני אבל אמר צריך אני אין  
שם בקיאים כלל מאכילין אותו  
ע"פ עצמו שנאמר לב יודע  
מרת נפשו

## II. Self-Determination in Halakha?!

### Michelle O'Brien, "Gender Skirmishes on the Edges: Notes on Gender Identity, Self-Determination and Anticolonial Struggle" (2003)

Self-determination means honoring the rights of each person to make their own choices concerning their body, their identity, their languages and the way in which they present their gender. Being a gender revolutionary isn't about having a gender that's more legitimate or transgressive than someone else; it isn't about locating oneself in a discourse of gender identity that one sees as privileged or more valuable than another. It is about, I believe, being committed to building a world where each and every person is able to express and live their gender and bodies in ways that are liberating, full and healing. Each

person—genderqueer, transsexual, neither—has the absolute right to self-determine their own choices around body modification, gender presentation and gender identity. It is our work to challenge the numerous obstacles that encroach on people's abilities to make those decisions for their own.

I talk with medical providers and social service workers about respecting trans people's rights to self-determination. It's not the job of medical providers, I argue, to evaluate or judge the legitimacy of someone's desire to access services; their job is to provide adequate care. And in the end the only proper judge of the care needed is a patient or client themselves. So I talk with providers about acknowledging, respecting and standing by the rights of trans people to self-determine their access to services, their choices with transforming their own bodies, and the languages other they are comfortable with other people using to refer to their bodies and identities...

### **Eliezer Berkovits, Not in Heaven: The Nature and Function of Halakha (1983)**

The way of halakha is to retain the meaning of the legal principle and yet to find solutions to the daily problems arising from the confrontation between the written word and the ethical needs of the concrete situation...

I believe that we may say that Halakha is the wisdom of the application of the written word of the Torah to the life and history of the Jewish people. However, this wisdom and its implementation cannot be contained in any book. No written word can deal in advance with the innumerable situations, changes of circumstances, and new developments that normally occur in the history of men and nations. The eternal word of the Torah required a time-related teaching in order to become effective in the life of the Jewish people. This was the tradition passed on by the living word from generation to generation, the Torah she'baal'Peh, the Oral Torah, beside the Torah she'be'Ktav, the Written Torah.

### **III. Lev Yodea Marat Nafsho: The Unfolding Principle**

#### **Perush HaRa"n on Yoma 83a (commenting on the Ri"ף)**

*This extensive commentary written by Rabeinu Nisim of 13-14th century Spain is published with the Ri"ף's Sefer HaHalakhot (11th century Spanish code of law) as a foundational text for tracing the evolution of the law from the Talmud.*

If someone says *I need...* even though others say *It is not necessary*, they feed him on his own account. What is the reason? *Lev yodea marat nafsho*. And he is believed on himself more than 100 people.

ואי אמר איהו צריכנא אע"ג דאמרי  
אחריני לא צריך מאכילין אותו על פי  
עצמו מ"ט לב יודע מרת נפשו. והוא  
נאמן על עצמו יותר ממאה איש

**Tur, Orach Chaim 618:1**

*Arba'ah Turim, often called simply the Tur, is an important Halakhic code composed by Rabbi Jacob ben Asher (Cologne, 1270 – Toledo, Spain c. 1340, also referred to as Ba'al Ha-Turim). The four-part structure of the Tur and its division into chapters (simanim) were adopted by the later code Shulchan Aruch.*

A patient that needs to eat [on Yom Kippur], if there is an expert doctor who says *If they do not give him food, it is possible his sickness will worsen for him and he will be put in danger*, they feed him on the mouth [i.e. the account] of the doctor." And it is not necessary that he should say *perhaps he will die*.

If there is not a doctor, feed him on account of him [i.e. his own request] since it has already been made known to him that it is Yom Kippur, and he asks to eat, and it is not necessary to be further punctilious on him.

And if he says that it is necessary [to eat], and there are even 100 doctors who say that it is not necessary, they give it [the food] to him.

חולה שצריך לאכול אם יש שם רופא  
בקי שאומר אם לא יתנו לו אפשר  
שיכבד עליו החולי ויסתכן מאכילין  
אותו על פיו ואין צריך שיאמר שמא  
ימות

ואם אין שם רופא מאכילין אותו על  
פיו שמאחר שהודיעוהו שהוא י"ה (יום  
הכיפורים) והוא שואל לאכול אין צריך  
לדקדק עליו יותר

ואם הוא אומר שצריך ואפי' מאה  
רופאים אומרים שאינו צריך יתנו לו

### Beit Yosef, Orach Chaim, Siman 618:1

*Composed in Adrianople/Safed. Beit Yosef, by Rabbi Joseph Caro, is a long, detailed commentary on the Arba'ah Turim. Karo began the Beit Yosef in 1522 at Adrianople, finished it in 1542 at Safed in the Land of Israel; he published it in 1550–59. This work analyzes the theories and conclusions of the Tur and opinions of authorities not mentioned by the latter.*

And the **Rosh** writes... "And it seems to me that this is a great stringency [*humra gedolah*] in *safek nefashot*, for there is not a doctor present to say *If he does not eat he will die*, rather, it is the way of the doctor to say *If he will not eat perhaps his sickness will worsen for him and he will be put in danger*, and even for many of the books that it is written in them *If I do not eat I will die*, we do not learn from them, for they are specifically about feeding a person in the case of doubt of death [i.e. it is likely that he will die], that the language of the mishnah is not specific [like that]. But it is the way of the sick person to say ["I need to eat"] because of the fear of death."

וכתב הרא"ש ... ונ"ל דחומרא גדולה היא  
זאת בספק נפשות דאין לך רופא שיאמר  
אם לא יאכל שמא ימות אלא הרופא דרכו  
לומר אם לא יאכל אפשר שיכביד עליו  
החולי ויסתכן ואפי' לספרים שכתוב בהן אי  
לא אכילנא מיייתנא אין ללמוד מזה דדוקא  
על ספק מיתה מאכילין דלישנא דמיייתנא  
לאו דוקא אלא שדרך החולה לומר כן  
מחמת פחד מיתה עכ"ל

And so writes the **HaGahot Maimon[iot]** in Ch. 2 of *Shevitat Asor* with regard to the patient who says *I need* and the doctors who say *It is not necessary*, we feed him, and there are **Geonim** of Blessed Memory that adjudicate that this applies when he says "I will be in danger if I do not eat," but if he said "I will not be in danger if I do not eat," it is forbidden to feed him, and so comments Rabeinu Yitzhak.

But **Rabeinu Tam** disputes this, and taught the *halakha lema'aseh* to permit, and since *holim* are prophets or experts, since the patient knows that it is Yom Kippur or Shabbat, and he says "I need, and I cannot endure from my sickness," they feed him even if the patients think they are not in [great, life-threatening] danger."

### Teshuvot HaRadbaz Volume 4:1138

Composed in Cairo, Egypt. A collection of Responsa written by Rabbi **David ben Solomon ibn Zimra** (Radbaz). The Radbaz (c. 1479 - 1517) was an important halakhic decisor who lived in Spain, Cairo, Fes, Jerusalem, and Tzfat.

**Question:** A beloved friend asked of me about a patient who said I need a certain medicine, which would involve *hillul Shabbat*, and the doctor says it is not necessary. And this is a patient where there is danger [of death], but the medicine that he speaks about, the doctor says he does not need it. And this is like that which they said with regard to Yom Kippur (BT Yoma 82a/83a), that a sick person [who] says I need to eat, and even 100 doctors say it is not necessary, we feed [the sick person]. And here too it is not different, for *lev yodea marat nafsho*.

And there are some wise ones that said that it is not similar at all, because since with regard to eating it is pertinent to say *lev yodea marat nafsho*, but with regard to other medicines, the patient is not an expert in their own sickness, and they should listen to the experts, not the patient. And even though that we establish [the principle] that a case of doubt [of a loss of life] should be [ruled] leniently,

וכ"כ בהגה' מיימון פ"ב משביתת עשור גבי חולה אומר צריך אני והרופאים אומרים א"צ מאכילין אותו וז"ל יש גאונים שפסקו דה"מ כשאומר אסתכן אם לא אוכל אבל אם אמר לא אסתכן אם לא אוכל אסור להאכילו וכן פר"י (פרוש רבינו יצחק)

אבל ר"ת נחלק על זה והורה הלכה למעשה להיתר וכי החולים נביאים הם בקיאים הם אך כיון שיודע החולה שי"ה הוא או שבת ואומר אני צריך ואיני יכול לסבול מחמת החולי מאכילין אותו אפי' סבורים החולים שאינם מסוכנים

**שאלה** שאלת ממני ידיד נפשי על חולה שאמר צריך אני לתרופה פלונית שיש בה חלול שבת ורופא אומר אינו צריך והוא חולה שיש בו סכנה אלא שתרופה זו שאומר עליה אומר הרופא שאינו צריך לה ודמית לאותה שאמרו ביום הכפורים חולה אומר צריכני לאכול אפילו ק' רופאים אומרים אינו צריך מאכילין אותו והכא נמי לא שנא דלב יודע מרת נפשו.

ויש מקצת נבונים שאמרו דלא דמיא כלל דבשלמא גבי אכילה שייך למימר שפיר לב יודע מרת נפשו אבל לגבי שאר תרופות אין החולים בקיאים בחולי שלהם ולבקיאים שומעים ולא לחולה ואע"ג (אף על

it is not here even a case of doubt, and [therefore] we do not desecrate [Shabbat].

And their reasonings rely [the fact that] this law is not mentioned with regard to Shabbat, rather it was taught regarding Yom Kippur, that for the the rest of the desecrated [days] the ruling is not so and so I would like to make my opinion on the matter known.

**Answer:** Those who say that they do not desecrate [Shabbat] for a patient in a case of danger [of the loss of life] when he says, *It is necessary for me...* even when the doctor says *It is not necessary*—we are lenient with regard to saving a life (*pikuach nefesh*)—the spirit of the sages does not rest from those who say [this]. The one being asked about is degraded [by this line of questioning], and the person asking the question is like one who spills blood [i.e. a murderer]...

And from this it is not necessary to say if the medicine that the patient asked for is from the things that are normative to do for this sickness, for it obvious that they listen to the patient, and not to the doctor, **but even for things that are not normative, they listen to the patient, because lev yodea marat nafsho.**

The general rule that arises from these words is that *lev yodea marat nafsho* is relevant whether it is a matter of eating, or it is a matter of medicine, but there is a division as to whether he said “I need to eat” even if the doctor said that the the food will cause him damage, they listen to the patient, for *lev yodea marat nafsho*.

But if he said “I need to a certain medicine,” and the doctor said that this medicine will cause him harm, they listen to the doctor, because of the danger to the patient, even when it is not Shabbat.

גב) דקי"ל (קיימא לן) ספק נפשות להקל אין כאן אפילו ספק ולא מחללין

וסייעו את סברתם זו ממה שלא הוזכר דין זה בשבת אלא לגבי יום הכפורים משמע דלגבי שאר חלול אין הדין כן ורצית שאודיעך דעתי בזה:

**תשובה** אותם שאומרים דאין מחללין על חולה שיש בו סכנה בזמן שאומר צריך אני אפי' שרופא אומר אין צריך מקילין בפיקוח נפש דאין רוח חכמים נוחה מהם שאמרו הנשאל הרי זה מגונה והשואל כאלו שופך דמים...

ומעתה אין צריך לומר אם התרופה ששאל החולה היא מהדברים שרגילין לעשות לאותו חולי דפשיטא דלחולה שומעין ולא לרופא אלא אפילו אינו מהדברים שרגילין לעשות שומעין לחולה **משום לב יודע מרת נפשו.**

**הכלל** העולה מדברי אלה דטעמא דלב יודע מרת נפשו שייך בין באכילה בין בתרופה אלא שיש חילוק שאם אמר צריך אני לאכול אפילו שאמר הרופא שהמאכל יזיקהו שומעין לחולה **דלב יודע מרת נפשו.**

אבל אם אמר צריך אני לרפואה פלונית ורופא אמר שאותה תרופה יזיקהו שומעין לרופא משום סכנת חולה ואפי' בחול.

But if he said "I need a certain medicine," and the doctor said that this is not necessary, but the medicine will not cause him harm, they listen to the patient, for *lev yodea marat nafsho*.

And all the moreso if the doctor says "It is not dangerous with regard to this same medication, but that it will instead be good for him," that in this case surely we violate Shabbat, and you could even say that this is a case of doubt [as to whether it will be good for him], we are lenient with regard to cases in which there is doubt and a life is involved, *even* if it is a second-order doubt [*s'feik s'feika*]. And this is what is clear according to my humble opinion, which I have written.

אבל אם אמר חולה צריך אני לרפואה  
פלונית ורופא אומר אינו צריך לה  
אבל לא יזיקהו שומעין לחולה דלב  
יודע מרת נפשו

וכ"ש (כל שכן) אם הרופא אומר אינו  
מסוכן אצל אותה תרופה אבל  
תועילהו דודאי מחללין ואפילו את"ל  
(אם תמצא לומר) דספיקא הוי ספק  
נפשות להקל ואפילו ספק ספיקא.  
והנראה לעניות דעתי כתבתי: