

PARASHAT SHOFTIM

The Prohibition of Divination:

Rambam vs. the Sages of Provence

By Rav Elchanan Samet

A. DIVINATION AND IDOLATRY

The Torah prohibits divination in two separate places. The first is in Vayikra 19:26 -

"You shall not eat [meat] with the blood; you shall not DIVINE nor shall you observe times."

The second appearance is in our parasha, where it is included among a detailed list of prohibited practices, most of which are meant to reveal future events or hidden things by supernatural means:

(18:9) "When you come to the land that the Lord your God gives you, you shall not learn to act in the manner of the abominations of those nations.

(10) There shall not be found among you one who passes his son or his daughter through fire, an enchanter, an observer of times, ONE WHO USES DIVINATION (menachesh), or a soothsayer,

(11) nor a charmer, a medium or a necromancer.

(12) For all who engage in these are an abomination to God, and because of these abominations the Lord your God drives them out from before you.

(13) You shall wholeheartedly follow the Lord your God.

(14) For these nations, which you shall dispossess, listen to observers of times and enchanters - but the Lord your God does not allow you to do this.

(15) The Lord your God will raise up for you a prophet like me from your midst, from among your brethren; you shall listen to him."

Three times the Torah calls the nine forbidden practices in verses 10-11 an "abomination:" once in the introduction to the list - (9) "You shall not learn to act IN THE MANNER OF THE ABOMINATIONS OF THOSE NATIONS" - and twice in the reason for their prohibition, following the list - (12) "For all who engage in these are AN ABOMINATION TO GOD, and it is because of these ABOMINATIONS that the Lord your God drives them out from before you." From this explanation we learn that, although these practices do not represent actual idolatry, they are profoundly connected to the world of paganism, its beliefs and customs. Therefore, the fact of the nations' involvement in them is included as one of the reasons for their banishment from the land.

B. RAMBAM'S RULING CONCERNING DIVINATION

Rambam begins chapter 11 of his Hilkhot Avodat Kokhavim (Laws of Idolatry) as follows:

"We do not follow the customs of the nations, nor make ourselves resemble them... Rather, a Jew should be distinguished from them and recognizable by his dress and by his other habits, just as he is distinguished from them by his knowledge and by his character traits."

In laws 4-5, the Rambam details which type of divination is prohibited and which permissible:

Law 4: "One is not to divine like the nations, as it is written (Vayikra 19:26), 'You shall not divine.' What is this divination?"

1. For example, those who say: 'Because some bread fell from my mouth, or because my staff fell from my hand, I shall not go to such-and-such place today, for if I go, my intentions will not be fulfilled.'
2. [Or] 'Because a fox passed by my right side, I shall not step out of the door of my house today, for if I go out, a swindler will take advantage of me.'
3. Likewise, those who hear the chirping of birds and say, 'It shall be so, and it shall not be such; it is good to do such-and-such and bad to do something else.'
4. Also those who say: 'Slaughter this rooster that crowed at night; slaughter this chicken that crowed like a rooster.'
5. And those who make signs for themselves: 'If such-and-such happens to me, I shall do X, and if that does not happen to me, I shall not do it' - like Eliezer, the servant of Avraham.

Anything similar to these things is prohibited. Anyone who performs an act because of any of these things is punished with lashes."

Law 5:

1. "One who says: 'This house that I built has been a good sign for me; this woman whom I married, or this animal that I purchased, was blessed, for since the purchase I have become rich.'
2. Likewise, one who asks a child, 'Which verse are you learning?' If the child answers him a verse from the [Torah's list of] blessings, he is happy, and says: 'This is a good sign.'

All of these and the like are permissible. Since the person has not planned his actions, nor refrained from action [on the basis of things that he saw or things that happened to him], but rather regards them as a sign for himself concerning something that has already been - it is permissible."

The Rambam brings five examples of forbidden divination and two examples of the type that is permissible. What is the fundamental difference between them? The Rambam explains at the end of law 5: "Since HE DID NOT PLAN HIS ACTIONS, NOR REFRAIN FROM ACTION, but rather regards them as a sign for himself CONCERNING SOMETHING THAT HAS ALREADY BEEN - it is permissible."

His phrase, "something that has already been," concerns the first example that he brings for the permissible type. In this instance, the building of a person's house (or the suchlike) serves as a good sign for the person, because he has been blessed since he did it; this, then, is a sign "concerning something that has already been." It does not influence his actions or lack of action. The second example, on the other hand, does not specifically concern the past (in fact, it may actually concern the future). But here, too, it does not affect his actions or lack of action; it affects only his frame of mind, and therefore it is permissible.

Thus, the definition of prohibited divination, according to Rambam, is the planning of one's behavior in accordance with arbitrary signs, whether superstitions that are shared with other people (examples 1-4) or those that one determines for himself (example 5).

Concerning the punishment for transgressing this prohibition - lashes - a distinction must be made. If the behavior of the diviner in accordance with these signs is active, he is given lashes, but if the signs lead him only to refrain from action, then he has admittedly transgressed a negative command, but he is not given lashes. Lashes are not administered as punishment for a transgression if no action is involved.

Rambam's rulings in Hilkhhot Avodat Kokhavim 11:4-15 are built on the series of prohibitions mentioned in Devarim 18:10-11, but he introduces some changes in the order of these laws. Although in the verse it is listed fourth, Rambam deals with the prohibition of divination before any of the rest. The reason for this seems to be that divination is the most common among all the prohibited actions listed in these verses. Moreover, divination of the type described by Rambam requires no "professional knowledge," nor is a special person needed. It can be performed by anyone - which is not the case when it comes to reading times, witchcraft, and enchantment - all of which require a person with these special skills.

C. THE TALMUDIC BASIS FOR RAMBAM'S RULING

Let us now discuss the Rambam's source for the last example he brings of forbidden divination, as well as for the two examples of permissible divination in law 5. The source for all of these laws is to be found in the Talmud (Chullin 95b). The Gemara there recounts the following:

"Rav was on his way to the home of Rav Chanan, his son-in-law. He saw a ferry coming his way [to help him cross the river]. He said, 'A ferry is coming towards me - a feast awaits me.'

He went, stood at the gate [of his son-in-law's house], looked through a crack in the door, and saw an animal [carcass] hanging [on a hook]. He knocked at the door, and everyone came out to meet him, including the cook. Rav did not take his eyes off the meat. He said to them, 'Are you [the cook] then going to serve forbidden meat to my family?' [For Rav maintained that any meat not continually supervised is forbidden for consumption, lest any opportunity arise for it to have been exchanged for forbidden meat.] Rav did not eat of that meat."

The Gemara asks:

"For what reason [did Rav not eat]?"

If it was because it had not been continually supervised - we are told that Rav did not rehearse from it [although the cook had done so].

RATHER, HE DIVINED. But Rav [himself] taught: ANY DIVINER WHO IS NOT LIKE ELIEZER, SERVANT OF AVRAHAM, OR LIKE YONATAN, SON OF SHAUL, IS NOT A DIVINER.

But this was a voluntary feast (i.e., not an obligatory feast attached to a mitzva), and Rav would not derive benefit from a voluntary feast."

Three different answers are proposed for the question of why Rav did not eat of the meat. The first two are rejected. For the purposes of our discussion, we are interested in the second one, and its rejection.

The Gemara suggests that Rav refrained from eating the meat because he "divined" when he said, "A ferry is coming towards me - a feast awaits me." Since he had transgressed the prohibition of divination, he did not wish to derive benefit from the meal of that festive day concerning which he had divined.

This possibility is rejected in the Gemara on the basis of Rav's own definition of prohibited divination. In his view, only a diviner like Eliezer, the servant of Avraham is considered a diviner. Eliezer said, at the well (Bereishit 24:14), "The girl to whom I shall say, 'Please let down your

pitcher and let me drink', and she shall say, 'Drink, and I shall also water your camels' - SHE SHALL BE THE ONE YOU HAVE APPOINTED FOR YOUR SERVANT, FOR YITZHAK." He also cites another example of a diviner: Yonatan, son of Shaul. In the battle of Mikhmas, Yonatan tells his servant (Shemuel I 14:9-10) "If they say to us, 'Stay put until we reach you,' then we shall stand where we are and shall not go up to them. But if they say, 'Come up to us,' then we shall ascend, for God has given them into our hand, AND THIS SHALL BE OUR SIGN." Any divination that is not like these, is not considered divination.

The "divination" of Rav is completely unlike these, for Eliezer and Yonatan made their actions dependent on divination, while Rav did not decide on any action or inaction on the basis of his divination. Rav, then, did not transgress any prohibition of divination, and his statement at the river did not represent grounds for refraining to eat that meat.

From this story and the discussion surrounding it in the Gemara, we may deduce two conclusions regarding the laws of divination, one strict and one lenient.

- a. What Eliezer and Yonatan each did was a "private" divination - they decided for themselves a sign in accordance with which they would act. Apparently, the definition of divination includes even this, and not only behavior in accordance with generally known and accepted signs. This is the source for the Rambam's ruling in example 5:

"And those who make signs for themselves: 'If such-and-such happens to me, I shall do X, and if that does not happen to me I shall not do it' - LIKE ELIEZER, THE SERVANT OF AVRAHAM... all of it is prohibited. Anyone who performs an act because of any of these things, is punished with lashes."

- b. >From the distinction that the Gemara draws between the divinations of Eliezer and Yonatan, on the one hand, and Rav's statement at the river, on the other, we may conclude that past actions are irrelevant. In other words, a person who takes consideration of something that has already happened and says, "This thing is a good sign for me, or a good sign for something that will happen to me," transgresses no prohibition. This conclusion is close to what Rambam writes in his examples at the beginning of law 5 concerning permissible divination.

However, the examples cited by Rambam in law 5 for permissible divination have no need for indirect sources. The continuation of the same sugya contains explicit sources for these examples:

"Rav would look out for a ferry; Shemuel would guess from books; Rabbi Yochanan would ask a child [Rashi: He would ask the child which verse he was studying]."

It is the example of Rabbi Yochanan that serves as Rambam's source at the end of law 5:

"Likewise, one who asks a child, 'Which verse are you learning?' If the child answers him a verse from the blessings, he is happy, and says: 'This is a good sign.'"

The sugya later quotes a baraita, with Rabbi Eliezer's comment:

"We learn: Rabbi Shimon ben Elazar says, 'A house, a child and a woman - although they do not involve divination, they are a sign.'

Rabbi Eliezer says: 'If it recurs three times.'"

This baraita serves as the source for the Rambam at the beginning of law 5:

"One who says: 'This house that I built has been a good sign for me; this woman whom I married, or this animal that I purchased, was blessed, for since the purchase I have become rich'... this is permissible."

D. RA'AVAD'S CRITIQUE AND THE SAGES OF PROVENCE

The Ra'avad challenges the Rambam on both law 4 and law 5. In law 4 he addresses Rambam's fifth example of prohibited divination:

"[Rambam writes:] 'Those who make signs for themselves: "If such-and-such happens to me, I shall do X, and if that does not happen to me I shall not do it" - like Eliezer, the servant of Avraham" – [this is forbidden].'

[Ra'avad responds:] This is a great mistake, FOR THIS IS DEFINITELY PERMISSIBLE. Perhaps [the Rambam] was misled by the formulation that he saw: 'Any diviner who is not like Eliezer and Yonatan is not a diviner,' and he believed that the intention there was to indicate the prohibition. But this is not so; the text merely means: 'It is not worth relying [on such signs].' How could [the Rambam] attribute this transgression [of divination] to such righteous people? Had they been alive, they would send out a fiery flame at him (see Bava Metzia 47a)!"

The Ra'avad comments as follows on law 5 of the Rambam:

"[Rambam writes:] 'All of these and the like are permissible. Since the person has not planned his actions, nor refrained from action, but merely regards them as a sign for himself concerning something that has already been - it is permissible.'

[Ra'avad responds:] Here again, where the Sages taught, 'A house, a child and a woman - although these do not involve actual divination, they are a sign' - their intention was to indicate not whether the act is permissible or forbidden, but

rather its reliability: whether it is worth relying on these signs. They concluded that it is worth relying [on such signs] after a threefold recurrence."

The Ra'avad's comments here are brief and opaque, and were misunderstood by several commentators. However, since he was the leading sage of Provence, his comments become clearer when we read the writings of later Provencal sages. A perusal of Radak and Ralbag's commentaries on Sefer Shemuel, concerning Yonatan's act, and of Rabbi Menachem Ha-Meiri's "Beit Ha-Bechira" on Massekhet Sanhedrin demonstrates that they maintained a unique tradition concerning Chullin 95b. Their understanding of this talmudic passage differed greatly from those of Rashi, Tosafot, Rambam and the Spanish commentators.

The debate begins with divergent understandings of Rav's statement, "Any diviner who is not like Eliezer... or like Yonatan... is not a diviner." Most rishonim, Spanish and French alike, understand that Rav's intention is to define the divination prohibited by the Torah by means of the examples of Eliezer and Yonatan. This interpretation leads us to conclude that Eliezer and Yonatan transgressed the prohibition of divination. This is a problematic claim, and also does not sit well with the impression we get from the biblical text. Therefore, the Ran explains, in rather forced fashion, that the actions of Eliezer and Yonatan did not really involve divination; Rav merely learned from their acts the technique of forbidden divination.

The rishonim of Provence were spared this predicament because they interpreted Rav's statement in a completely different manner. They understood that the statement was not made in a halakhic context of the laws of divination, but rather in the context of the "way of the world" and good advice. Just as there is forbidden divination, whereby one who makes his actions dependent upon it transgresses a biblical negative command, so there is a permissible type of divination that involves no transgression. What is the distinction between the prohibited type and the permissible type? The Meiri explains:

"are forbidden to divine... but in any event there are things that are permissible, AND THESE ARE NOT THINGS THAT ARE AGREED UPON BY EVERYONE, BUT RATHER ONE MAKES THEM A SIGN FOR HIMSELF... This is the type of divination employed by Eliezer, servant of Avraham, and by Yonatan, the son of Shaul. If this is so, then when the Sages teach, 'Any diviner who is not like Eliezer... or like Yonatan... is not a diviner' - does this mean that any instance similar to these is divination and is consequently forbidden? [No, it does not mean that.] KNOW THAT IT IS NOT [meant as an indication of] PROHIBITION OR PERMISSIBILITY, for if [theirs was prohibited] then God would not have agreed to their proposed sign. RATHER, IT IS SAID CONCERNING WHETHER IT IS PROPER TO RELY ON THEM OR NOT: Any sign where the person has not thought about the sign he is looking for before it happens, is not worthy of being relied upon." (Beit Ha-Bechira, Sanhedrin, p. 249 in Sofer edition)

According to the above, making a practical decision based on a personal sign is a permissible form of divination. But it is not always worthwhile to rely upon such a sign, and for this precise

purpose Rav makes his statement. Rav teaches that it is worthy and proper to value only such signs as have been determined in advance, like those of Eliezer and Yonatan, but not those where a person decides only after the sign has happened to make his actions dependent on it.

This interpretation of Rav's teaching is not so simple from the point of view of its context in the sugya. The Gemara asks why Rav did not eat the meat, and answers: "Rather, he divined." The accepted interpretation of this is that the divination lay in his words concerning the ferry that came towards him: "a feast awaits me" - and therefore Rav "punished" himself by not partaking of the feast because he had transgressed the prohibition of divining. If this is indeed the meaning of this interpretation, then the rejection of the interpretation - "But Rav himself said: Any diviner who is not like Eliezer... is not a diviner" - must mean that Rav did NOT transgress the prohibition, for what he says about the ferry is not a forbidden divination according to his own criteria, when compared to Eliezer and Yonatan. If this is the correct interpretation of the sugya, then the explanation of the Ra'avad and those who follow his lead does not match, "since this would mean that the divination of Yonatan and of Eliezer was prohibited!" (Meiri).

The Meiri explains the sugya in a way that fits in with the interpretation of the Sages of Provence:

"The meaning of [the gemara's] question is as follows. How can we say [that Rav did not eat the meat] because of his divination - i.e., that he divined [permissibly] that they set the feast [but they acted wrongly in not guarding the meat], such that that feast would not be worthy of blessing? This cannot be so, because the divination here is not worthy of being relied upon [since he did not determine the sign in advance of it happening]!" (ibid., p. 250)

The debate between the Rambam and Ra'avad also hinges on the interpretation of the continuation of the sugya:

"Rav would look out for a ferry; Shemuel would guess from books; Rabbi Yochanan would ask a child [which verse he was studying]...

We learn in a baraita: Rabbi Shimon ben Elazar says, 'A house, a child and a woman - although there is no divination, they are a sign.'

Rabbi Eliezer says, 'This is so only if they were repeated three times.'"

The Rambam derives from this sugya a number of permissible forms of divination (see law 5 above). These are permissible "since he did not plan action, nor did he refrain from action, [based on signs,] but rather made a sign for himself concerning something that HAD ALREADY HAPPENED."

Here, again, the Provencal interpretation claims that what is at stake in this sugya is not the question of permissible or prohibited divination. We see here no generally accepted signs based

on human superstition (e.g. black cats), but rather signs that various sages CHOSE FOR THEMSELVES individually. What is, in fact, discussed in the sugya is which signs are worthwhile to rely upon (within the category of permissible divination). The sugya does not permit or prohibit, but rather gives good advice.

According to the view of the sages of Provence, taking a sign from a ferry, from a book or from a child is both permissible and worthwhile, even - and especially - if a person directs his actions in accordance with it. For example, a person who decides to take a sign from a ferry may (and even should) say: "If I find a ferry waiting (or a bus at the bus stop, etc.) - it will be a sign that my outing will be successful, and I shall go. But if I do not find one waiting, it is a sign that my outing will not be successful, and therefore I shall return home." Likewise, a person may decide to act or to refrain from acting based on a verse upon which he chances in a book, or one uttered by a child. But in the Rambam's view, one who acts has transgressed a prohibition and is deserving of lashes!

The Meiri explains the Provencal interpretation of "a house, a child and a woman:"

"If a person bought a house, and from the moment of his purchase he suffers [unrelated] losses, HE IS ENTITLED TO SELL IT. If, from the moment of purchase, he makes great profits and is showered with blessings, but [for whatever reason] he must still sell something AND HE DIVINES THAT HE SHOULD NOT SELL THE HOUSE [because it has been a sign for blessing], and he therefore sells other items from the rest of his property on the basis of this divination - THIS IS PERMISSIBLE, for it is a sign that he accepts for himself; it is not a divination that is ancient or one that is generally accepted."

Here again, one who acted in such a way would be deserving, according to the Rambam, of lashes!

What, then, is the intention of the baraita concerning the "house, child and woman" which "although they involve no divination, they are a sign"? Meiri explains:

"Although they are not absolute signs [i.e., that may be relied upon], because the person did not set them as signs before they happened, nevertheless they are a sort of sign and IT IS WORTHWHILE for one to pay attention to it. For this reason the Gemara mentions it recurring three times, to teach: since it happened by chance [i.e., without the person first intending it to be a sign], it is not worthy to pay attention to unless it happens three times. But if the person set it as a sign in advance, before it happened, then it is proper to rely upon it even after only one instance."

A great abyss separates the approach of the Sages of Provence to this sugya in Chullin, and the definition of divination that arises from it, from that of the other rishonim. The ramifications of this abyss are exegetical, halakhic (practical) as well as philosophical. The difference in

perception is so great that certain rishonim, who discerned the tip of the iceberg in Ra'avad's comments on the Rambam, never imagined its depth. But now, with the above clarification by the Meiri (first published from manuscript only in 1930), who preserved the teachings of his teachers from Provence, we are able to return to the Ra'avad's comments on the Rambam and understand his intention properly.

In truth, it was not necessary to wait for the publication of the Meiri's works in order to discover this approach to the sugya. It is to be found in its entirety in the words of Radak (the Provencal scholar R. David Kimchi) in his commentary on Shemuel I 15:9, which we shall examine below.

E. THE BASIS OF THE DISPUTE

Belief in divination is based on pagan philosophical-religious foundations, and therefore divination is prohibited. The measure of success that a person enjoys in his endeavors is based on two types of factors: first - the rational, natural factors that require him to act with sensible discretion, and second - the moral-religious factors, which are related to a system of reward and punishment and of divine providence. The attributing of the success or failure of human endeavor to some arbitrary factor represents a severe religious defect, and this is what the Rambam defines as divination. It seems, therefore, that the Rambam is correct in not making any distinction between an arbitrary factor that is agreed upon by society in general and an arbitrary factor that a person chooses for himself. Therefore he writes that "those who make signs for themselves: 'If such-and-such happens to me, I shall do X, and if that does not happen to me I shall not do it'... ALL OF IT IS PROHIBITED. And anyone who performs an act because of any of these things, is punished with lashes."

What is the view of the sages of Provence, who disagree with the Rambam? One could have suggested that in their view, divination is socially defined, since it is one of the "abominations of the nations." Only what was prevalent among the pagan nations involved a hint of idolatry, while whatever signs a person chose for himself could not possibly be suspected of being related to idolatry.

This explanation, however, is not sufficient. The sages of Provence speak not only of the type of divination that is permissible, but also of the type that may be relied upon and which the Sages recommend as good advice! The debate between these sages and the Rambam is polar: what he defines as a biblical prohibition, they regard as an act recommended by the sages of the Talmud!

The full explanation of their view is hinted at in the commentaries of the Radak and the Ralbag on Shemuel I 15:9. I shall quote the latter:

"You should know that future events may be revealed in various ways; sometimes it happens that God influences events in a weak manner so as to produce a weak message that a person regards as a proof, as it was told to Gidon..."

In this view, the signs that a person makes for himself, in advance, are to be regarded as a sort of "divine echo." They are a weak form of communication from God, guiding a person by means of these signs as to what will happen in the future, or how to decide a matter before him.

According to this approach, a person who is not a prophet - and living at a time when there is no prophecy - may, AND EVEN SHOULD, develop personal "channels of communication" with God in order to thereby receive Divine guidance.

If this is the case, then we are speaking not of the inexplicable arbitrariness that characterizes the pagan magical worldview, and which represents the very definition of prohibited divination. Rather, this represents a profound religious belief that God's providence and His will are revealed to a person in various ways throughout the course of his life, and that even in the absence of prophecy there is still a concept of Divine communication.

We have no way of knowing for certain how the Rambam would have reacted to such an idea, but there is reason to believe that he would have regarded it as religious audaciousness, bordering on impudence.

Those who disagree with Rambam's approach to this matter - Radak, Ralbag and Meiri - are generally loyal followers of the Rambam. Nevertheless, they represent an independent exegetical tradition concerning the sugya in Chullin. This tradition was prevalent among the scholars of their country, and was first formulated by Ra'avad.

(Translated by Kaeren Fish.)

The unabridged Hebrew version of this shiur is archived at the VBM website and appears on HaTanakh.com.

This shiur is provided courtesy of the *Virtual Beit Midrash*, the premier source of online courses on Torah and Judaism - 14 different courses on all levels, for all backgrounds.

Make Jewish learning part of your week on a regular basis - enroll in the Virtual Beit Midrash

(c) Yeshivat Har Etzion 2002 All rights reserved to Yeshivat Har Etzion

Yeshivat Har Etzion
Alon Shvut, Israel, 90433
office@etzion.org.il

