

HALOCHOSCOPE

This week's question:

Someone forgot that he had *davened mincha* early, and went to *shul* and *davened* again at the usual time, close to sunset. May he attribute the extra *tefila* to *maariv*?

The issues:

A) *Zmanei mincha umaariv*, the times for *mincha* and *maariv*

B) *Tefilas nedava*, a voluntary *tefila*

C) *Maariv*

A) *Zmanei mincha umaariv*

Many poskim maintain that the basic obligation of daily *tefila* is a Scriptural obligation. However, the three daily *tefilos* and their rules are Rabbinically instituted. They were initially observed by the forefathers. Avraham emphasized *shacharis*, Yitzchok emphasized *mincha* and Yaakov emphasized *maariv*. The formal Rabbinical institution was patterned on the service in the *Bais Hamikdash*. *Mincha* corresponds to the afternoon *tamid*, daily communal offering. It must be offered while it is still considered day. Thus, when the time for *mincha* ends, the day ends. The ideal time is called *mincha ketana*, three and a half hours after noon, when the blood of the afternoon *tamid* was thrown.

The earliest time for *mincha* is a half hour after noon, when the sun casts a small shadow. This is called *mincha gedolah*. The Talmud debates the end time for *mincha*. In one opinion it is evening. That is sunset, or according to some, nightfall. [The blood of the *tamid* could not be thrown after sunset, but if it was begun at sunset, it could be completed after sunset until nightfall.] The poskim who follow *kabalah* advocate *davening mincha* as late as possible. This is based on a debate in Talmud Yerushalmi whether one should be praised or condemned for *davening* around sunset.

The other opinion limits it to *plag hamincha*, literally 'half *mincha*'. This view maintains that the *tamid* was never offered after this time, although according to one commentator, it could have been offered then. This time is calculated by dividing the time between *mincha ketana* and nightfall in two. The second half is called *plag* (half) *hamincha*. The Talmud gives no basis for this time. Though Talmud Bavli links both views to the *tamid*, some say that this opinion links *mincha* to *ketoress*, the incense offering. It was offered after the *tamid* and is presumed to have taken until *plag*. Some say the reason the *tamid* was not brought later was because of the *ketoress*. According to the view linking *mincha* to *ketoress*, one must assume that *ketoress* was offered no later than *plag*. Others say that this time was deemed too late to be called *bain ha'arbayim*, between [the beginning and the end of the] afternoon. The afternoon services had to be done by then.

There are two sources for *maariv*. The Talmud corresponds it to burning the fats of the afternoon *tamid*. This could take place by day, but usually took place by night, before

daybreak. Poskim also base it on a *passuk* in Tehilim, cited by the Talmud in similar context, that refers to serving Hashem “evening, morning and afternoon”. One opinion connects *maariv* to *ketoress*, which was offered at or just after *plag*. The Talmud Yerushalmi states specifically that ***mincha*** corresponds to *ketoress*, which took about an hour and a quarter to process and offer, immediately following the *tamid*.

All this indicates that *plag hamnicha* is an arbitrary time. It is not the true beginning of night, which is *halachically* the next day. It was the time chosen for parts of the service in the *Bais Hamikdash* to begin or end. Our *tefilos* correspond to the service, so this time is relevant to timing our *tefilos*. For *mitzvos* requiring nightfall or a new *halachic* day *plag* should be of no consequence. Yet a prominent minority opinion. Followed by many, permits saying the evening *shema*, a Scriptural obligation, at *plag*. Yaakov Avinu *davened* the first recorded *maariv* before sunset. [The commentaries suggest that he followed the view permitting this.] Unless he prophetically followed the service in the *Bais Hamikdash*, the implication is that those permitting *maariv* after *plag* consider it night.

The concept of *halachic* night beginning early exists. *Tosafos Yom Hakipurim*, extending *Yom Kippur* by adding some time at its onset, is of Scriptural origin. One should bring in *Shabbos* early so that one can say *kiddush mibe'od yom*, while it is still day. The northern and southern extremes of the world have summer days with no sunset. Presumably, one may perform *mitzvos* associated with nightfall anywhere. Therefore, it must be possible to attribute some daylight time to night. One may not usher in *Shabbos* before *plag hamincha*. Thus, it appears that *plag* is not really arbitrary.

Based on the above discussion, it would appear that once it is time for *maariv*, it is too late for *mincha*. The Talmud does not rule on the debate about the timing of *mincha* and *maariv*, leaving it to the individual to choose between *plag* and evening. However, on the same day, one may not practice leniency both ways. Ideally, one may not say *mincha* after *plag*, and *maariv* before nightfall. This is called *tarti desasrei*, two overlapping contradictory rulings. Nonetheless, on *Erev Shabbos*, the poskim permit this. Some attribute this to the burning of the fats of *Erev Shabbos*, that could only be burned before nightfall. Yet many *shuls* *daven mincha* after *plag* and *maariv* before sunset every day.

The main answer is that it is difficult to gather a *minyan* two separate times. It is deemed more worthy to *daven maariv* right away, following a valid but contradictory view. There is a view that the other opinion does not disagree on this. *Maariv* can be *davened* early anyhow. It corresponds to burning the fats, which could take place immediately after the blood was thrown. Thus *maariv* can always follow *mincha* immediately. The debate is whether *mincha* may be said after *plag*, but not about the earliest time for *maariv*. In our case, the person *davened mincha* earlier than *plag*, thinking he might not get to *shul* later. In the end he made it to *shul*, and *davened* again by mistake. At the time he *davened* the second time, it was after *plag* and close to sunset. This is why he wants to know whether he may count this *tefilah* towards *maariv*. [See Brochos 2a-b 26a-27b Yerushalmi Melech Shlomo (Mishna) Shabbos 34b-35b Eruvin 7a Psachim 58a-59a 93b-94a Rosh Hashana 9a Beitzah 30, Poskim. Rambam Tefilah 3, Temidin Umusafin 1, commentaries. Terumas Hadeshen 1. Tur Sh Ar OC 233-235 261:2-4 263:4 10-14 267:2, commentaries. Minchas Cohen (Mevo Hashemesh) 1:13 2:6-9. Shaagas Arye 17.]

B) *Tefilas nedava*

Time-bound *mitzvos* cannot be performed in the wrong time. Thus, as we mentioned, one should not be able to *daven* earlier or later than the proper times. The Talmud uses the term '*avar yomo batel korbano*, when the day passes, the *korban* is lost.' Certain *mitzvos* can be made up later if they were missed. The time for *korban Pesach* is the afternoon of the fourteenth of *Nissan*. If it was brought in the morning, though this is debated by the Talmud, it is invalid. If one missed it due to specific circumstances, the Torah provides for a make-up date on the fourteenth of *Iyyar*, *Pesach Sheini*. *Tefilos* are similar to *korbanos*. The actual *temidin* cannot be made up, but the Talmud provides for making up a missed *tefilah*. *Tefilah* includes an aspect of supplication, which should not be tied to a specific time. Therefore, a compromise exists, allowing *tashlumin*, a make up *tefilah* in the period reserved for the next *tefilah*. The person recites two *tefilos*. The first is the one he is obliged to recite then, and the second corresponds to the missed *tefilah*.

An individual can offer a *korban nedavah*, voluntary offering. Assuming that *tefila* is a verbal *korban*, the individual should be able to offer a *tefilas nedavah* as well. Thus, if one already *davened* that *tefilas chova*, obligatory *tefilah*, he may add a second *tefila* voluntarily. The Talmud cites an opinion that says "If only we could *daven* all day!" Originally, *tefilas nedava* must include something new, such as a fresh request during the middle *brochos*. Since *tefilos* involve multiple utterances of Hashem's names, and since it really requires concentration, and people are often distracted, we do not allow people to say *tefilas nedavah* for no good reason. However, if one is in doubt about having fulfilled his obligation, he may say a new *tefillah* with a provision: "If I already fulfilled this *tefila*, let this be considered *tefilas nedava*. If not, let this be my *tefila* obligation!"

The basis of *korbanos* imposes a restriction as well. One may not offer more than one *korban chova*. This involves the Scriptural *mitzvah bal tosif*, do not add to the *mitzvah* or the *mitzvos*. Furthermore, one may not offer a *korban* half-*nedavah*-half-*chova*. Thus, if one began *davening* and realized that he had already *davened*, he should stop in the middle. He cannot count it as an additional *chova*. Nor can he decide in the middle to count it towards *nedava*. His intent at the beginning was as a *chova*, and he cannot change that retroactively. [See Section A. Tur Sh Ar OC 107, commentaries.]

C) *Maariv*

In our case, the person wishes to retroactively count his mistaken second *mincha* as an early *maariv*. This involves changing one *chova* to another *chova*. However, since the initial intent is important, maybe one cannot do this. The poskim discuss relevant cases.

The Talmud debates: *tefilas arvis reshus* or *chova*; is the institution of *maariv* voluntary or compulsory? We follow the opinion that it is *reshus*, but some say that those who *daven* it regularly have adopted it as *chova*. Thus, the poskim raise the issue of one who remembers in the middle of *maariv* that he already *davened* it. Since it is essentially *reshus*, the *tefila* can be considered a type of *nedava*. We could say that when he began, he was always *davening nedava*. He should be able to finish the *tefila*. He would not be converting a *chova* to a *nedava* in the middle. The consensus of the poskim is to stop in the middle anyhow, due to the view that *arvis* is a self-imposed *chova*. Thus, his intent was to *daven* a *chova*, and it cannot be converted to *reshus*. In our case, perhaps this

could be invoked in the opposite way. He could say that although he meant it as a *chova* for *mincha*, he can now consider it as a *chova* for *maariv*. On the other hand, if *arvis* is really a *reshus*, but is only treated as a *chova* voluntarily, he certainly could not convert *mincha* which is *chova* to *maariv* which is really *reshus*. This would be true even if he realized his mistake in the middle of *shemone esrai*. In our case, he is trying to convert it after the fact. Furthermore, it is clear from the poskim that one cannot retroactively change a *tefila*, or even the first half of one, after the fact. Moreover, while the poskim tend to stringency, saying that one should consider *arvis chova* and not continue as *reshus*, they might not rule this way when it leads to leniency, as in our case. [Perhaps leniency is really relative. If he repeats *tefilas maariv*, he is lenient on the extra *shaimos*.]

One who forgets *yaaleh veyavo* in *shacharis* on *Rosh Chodesh* has not fulfilled his obligation. He must repeat *shemone esrai* with *yaaleh veyavo*. If one started *musaf* and realized after the first three *brochos* that he forgot *yaaleh veyavo* in *shacharis*, he should switch to *shacharis*. The first three *brochos* were said with *musaf* in mind, yet they can be converted retroactively to *shacharis*. Thus, in our case, where the timing works for *maariv* as well as *mincha*, perhaps one can switch the *tefila* retroactively! There is a big difference between the cases: In our case, the entire *tefila* was recited by mistake. In the *Rosh Chodesh* case, it was recited correctly for *musaf*. It is being converted retroactively to *shacharis*. Perhaps a mistaken intention cannot be salvaged at all. On the other hand, we see that a mistaken beginning could have worked retroactively, had one been able to convert intent for *chova* to *nedava*.

There is another small issue here. By *davening maariv* early, one intends to consider it night for himself. As we explained, this can be relative to the individual. If the person meant to *daven mincha*, he clearly did not intend it to be night for himself. Thus, his *maariv* was too early! The Talmud discusses a congregation who *davened* early *maariv* on *Erev Shabbos* under the mistaken impression that it was already night. The poskim debate whether the *maariv* counts. The conclusion is that it counts for a congregation, but an individual needs to repeat *maariv*. [See Sections A and B. Tur Sh Ar OC 107:1 233-236 263:14 422:1, commentaries. Betzel Hachochma V:22.]

In conclusion, it would appear that then person cannot convert his extra *mincha* retroactively. However, he should stipulate that his *maariv* is *nedava* if he is not obliged.

On the parsha ... *Noach built an altar and offered of all the clean animals .. [8:20] he reasoned that Hashem ust have told him to take seven of these in order that he could make the offerings [Rashi].* Clearly, Noach was not commanded to make the offerings. Yet it is also obvious that Hashem wanted him to do this [see *Rashi* 7:2]. There always existed the concept of a *korban*. Sometimes it is a *chova*. At other times, a *nedava* can have the standing of a *chova*. It appears to have had that effect here. A *nedava*, it is not really totally voluntary. After all, Hashem is Master of everything anyhow. Rather, one has chosen to undertake what Hashem really wishes anyhow, but never commanded as full obligation.

Sponsored in honor of the 16th birthday of Yehuda Yona Plotkin, on Yom Kippur, and the engagement of Yehuda Yona Silver to Chava Meth. Mazal tov.

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