



## The Golden Years – Part II: Calling it Quits

*"Speak to Aharon and say: Any man of your offspring throughout the ages who has a defect shall not approach to offer the food of his God." (Vayikra 21:17)*

Last week, we discussed the phenomenon of increased life expectancy throughout the developed world. This leads directly to an important discussion about the retirement age. In some jurisdictions, an employer can legally terminate employment when an employee reaches the age of retirement. A self-employed person can also retire at this age and be eligible to collect his pension or retirement benefits that accrued during the years he was working. In welfare states, he may also receive an old-age pension.

In the past, employees desired retirement in order to pursue activities that they enjoyed, spend more time with their family, and, if they were so inclined, to engage in full-time Torah study. However, in recent years, there has been growing opposition to the notion of mandatory retirement, for several reasons:

1. Studies have shown a direct correlation between retirement and a decreased cognitive ability, along with an increased risk of dementia and Alzheimer disease.
2. The improved quality of life now enjoyed by the elderly raises the question of whether the age of retirement is too early.
3. From an economic perspective, the retirement of a skilled worker from the workforce constitutes a burden on the government, particularly when he is to receive a pension for many years.

Practically speaking, retirement is often arbitrary or unnecessary, and people can continue working productively for many years after reaching retirement age. Physicians (who cannot continue to see patients in a public health setting) see patients privately. Rabbanim who are not subject to mandatory retirement according to Israeli law, often continue to serve their congregations until well into their eighties. The self-employed also often choose to continue working past retirement age.



In the following two essays we will attempt to gain a Torah perspective on two questions:

1. Does the notion of retirement appear in the Torah, and in what context?
2. May people of certain occupations continue to work in their old age?

This week's essay will focus on the status of *Levi'im*, *Kohanim*, soldiers, and the Sanhedrin.

### ***Levi'im***

In *Parshas Beha'alosecha*, the Torah discusses the ages at which the *Levi'im* would work in the Mishkan (*Bamidbar* 8:23-26). They would begin working at the age of 25 (when they would begin five years of study and preparation – *Chulin* 24a) and continue until the age of 50. The *Rambam* (*Hilchos Klei haMikdash* 3:8) maintains that at age 50 they were only disqualified from singing (“as their voices deteriorate due to their more advanced age”), but they were still capable of guarding the gates of the Beis haMikdash. The Gemara (*ibid.*) adds that this only applied in the Mishkan, but a *Levi* could continue to sing in the Beis haMikdash beyond the age of 50 if his voice had not deteriorated.

Why was there a distinction between the Mishkan and the Beis haMikdash? The *Ramban* (*Hagahos to Sefer haMitzvos, Shoresh* 3) explains that *Levi'im* would only sing and guard the doors in the Beis haMikdash, but in the Mishkan they were also expected to carry and transport the *Aron haKodesh*. The Torah wanted to prevent a situation in which an elderly *Levi* would attempt to carry the *Aron* – it therefore placed an age limit on his participation in the singing. However, it did not forbid him from guarding the gates or loading the wagons because those tasks did not take place within the Mishkan itself and there was no concern that he would also be asked to carry the *Aron* due to his participation in those tasks. In the Beis haMikdash, where the *Levi'im* were not expected to carry the *Aron*, there was no reason to limit an elderly *Levi's* participation in singing either.

*Rashi* (*Bamidbar* *ibid.*) disagrees with the *Rambam*. In his view, a *Levi* was only disqualified at age 50 from carrying and transporting, not from singing, closing the gates, or loading the wagons.

Either way, *Rashi* and the *Rambam* agree that the main reason to disqualify an elderly *Levi* is that he is not capable of carrying the *Aron*. The only matter of



dispute is whether he should also be forbidden from singing due to the concern that this may lead to him to carrying the Aron.

### ***Kohanim***

The Mishna (*Chulin* 24a) rules that *Kohanim* are only disqualified due to blemishes, not advanced years. The Gemara elaborates that they may perform the Avoda from when they develop signs of physical maturity ("*Shtei Sa'aros*") until old age. However, it goes on to say that they may only serve "*Ad she'Yerateis*."

*Rashi* explains that "*Ad she'Yerateis*" means "until his arms and legs shake due to a lack of strength". The *Rambam* (*Hilchos Bi'as Mikdash* 7:12) explains that it refers to "an elderly person who trembles and shakes while he stands". *Rabbenu Gershom* discusses whether he is disqualified if he has tremors in his hands but not his legs.

The Mishna, which states unequivocally that advanced years do not disqualify a Kohen, seems to imply that there is no upper age limit at all. Assumedly, the only factor in determining whether a Kohen should serve is whether he is capable of fulfilling his tasks. One would also have assumed that this is the intent of the Gemara which rules that they may only serve "*Ad she'Yerateis*". In other words, a Kohen may serve until his physical condition prevents him from doing so. This would also mean that there would be a distinction between the various tasks, and that a Kohen could continue to perform certain tasks even once his frailty disqualifies him from others.

However, this does not seem to be the intention of the aforementioned *Rishonim* who argue over the exact definition of *Ad she'Yerateis*. They imply that there is an upper age limit placed on the *Kohanim* and that we do not judge each Kohen on an individual basis as to whether he is still capable of fulfilling all or some of his duties. This is also evident from *Tosfos* (*Bava Kama* 110a).

We can explain this in a number of ways:

1. Perhaps the condition of *Ad she'Yerateis* is due to a concern that the Kohen will not be able to fulfill his duties. This is why *Rashi* explains that a Kohen is only disqualified if both his arms and legs shake, for then he is utterly incapable of performing any task. If only his legs tremble, he can still perform some tasks adequately with his arms.
2. Perhaps, even if only part of his body trembles, he should be broadly disqualified, due to the concern that he will perform tasks that he should not. This may have been the intent of *Rabbenu Gershom* who disqualified



him even if he only has tremors of his arms. Since the majority of tasks are performed with the arms, such a Kohen should be broadly disqualified, even from performing tasks that don't require his upper body.

3. The *Rambam* appears to have had a different approach. He codifies this Halacha in the section discussing *Ba'alei Mumin* (blemishes which disqualify *Kohanim*). This implies that he is not disqualified because he cannot perform his tasks adequately but because he has the status of a *Ba'al Mum* (*Chasdei David ibid.* 1:10).

An important ramification of this *Machlokes* emerges in a case when an elderly Kohen performs the *Avoda*. It is clear in the Gemara (*Bava Kama* 110a) that if he was capable of adequately performing the task at the time – even if it was difficult for him – the *Avoda* is valid. *Tosfos (ibid.)* explain that this is because there is no upper age limit to the service of a Kohen – it was only the *Chachamim* who imposed a limit of “*Ad she'Yerateis*”.

There are two ways to explain *Tosfos'* position. One possibility is that *Tosfos* understood that the Gemara was discussing a Kohen who had certainly passed the stage of *Ad she'Yerateis*. Nevertheless, his *Avoda* is valid *Bedieved* because there is no actual upper age limit for *Kohanim*. The other possibility is that the Kohen was only *approaching the stage of Ad she'Yerateis* which is why the Gemara ruled leniently. If he had certainly reached that stage, we would have to be stringent and disqualify his *Avoda*, even *Bedieved*.

The first possibility could only work according to either the first or second approaches above as both explain that the disqualification of an elderly Kohen is due to his incapability to perform some or all of the *Avoda*. Therefore, if he did manage to perform it adequately, it would be valid *Bedieved*. However, according to the *Rambam*, an elderly Kohen is disqualified as a *Ba'al Mum*. If so, his *Avoda* would certainly be invalid *Bedieved*. The *Rambam* must ascribe to our second approach to *Tosfos*, namely, that the Gemara is only discussing a Kohen who is close to *Ad she'Yerateis*. This is also the conclusion of the *Mishna l'Melech (Hilchos Isurei Mizbeach* 2:6).

### **The Military**

There is also mandatory retirement from military service. When the Torah describes the demise of the *Dor haMidbar* due to the sin of the *Meraglim* it states, “*And it was when the men of war stopped dying*” (*Devarim* 2,16). The Gemara (*Bava*



*Basra* 121b) reveals that the decree that all the men of that generation would die only applied to those between the ages of 20 and 60. This implies, as the Chief Rabbi of Israel – Rav Shlomo Yosef Zevin – noted (*l'Or haHalacha – Milchama* p19), that the age of retirement from the army is 60. (In fact, the *Rashash* in *Maseches Shabbos* 152a wonders why this fact is not mentioned in the Gemara or *Rambam*.)

When it comes to retirement age from the military, it is easy to understand why there is a need for a uniform age limit. The military is a vast system in which each member must be able to rely on his colleagues. It requires a variety of abilities like physical strength, effective communication, and mental resilience. It is difficult, perhaps impossible, to test the abilities of each individual soldier.

### ***The Sanhedrin***

Retirement age from the Sanhedrin is a fascinating topic. The cases above have all been related to concerns of declining physical strength, but the members of the Sanhedrin do not perform any physical duties. If anything, the accumulated wisdom and experience of elderly Dayanim, as well as the more measured and patient attitude that is characteristic of seniority<sup>1</sup>, should place them at an advantage over younger peers. However, it is not as straightforward as it might seem.

The Gemara in *Sanhedrin* (36b) rules that one may not appoint an elderly, sterile, or childless person to the *Sanhedrin*. R' Yehuda adds that one may also not appoint a cruel person. Why may an elderly person not be appointed? Rashi explains, "*He has forgotten the difficulty of raising children and is not merciful.*"

According to *Rashi*, elderly, sterile, and childless people are all disqualified for the same reason, namely, they are lacking in mercy as they are not occupied in raising children. The *Rashba* concurs with *Rashi* – "*the reason [to disqualify a Dayan due to] old-age is mercilessness*" (*Shu"t* 6:191). The *Yad Rama* (*Sanhedrin* *ibid.*) suggests another reason why an elderly person is predisposed to mercilessness, namely "*Da'ato Ketzara*". This means that he is impatient and fails to appreciate the motives of those who come to him for Din Torah.

The *Rambam* (*Hilchos Sanhedrin* 2:3) has a unique approach to this question: *We do not appoint to any of the Sanhedrin – neither an extremely elderly nor a sterile person as they are merciless, nor a childless person – so that [the Dayan selected] will be merciful.*

---

<sup>1</sup> See Part I of this series.



The Rambam makes a distinction between an elderly or sterile person whom he deems “*merciless*” and a childless person who is merely lacking mercy. Seemingly, an elderly and sterile person are completely detached from the “regular” activities of the world, which revolve around childrearing. This detachment breeds mercilessness. However, a childless person is not so detached from the world such that he would be fundamentally merciless. It is only that he has not yet developed the trait of compassion which characterizes those who are occupied in raising children.<sup>2</sup>

This Gemara appears to contradict another Gemara in *Sanhedrin* (17a) which rules that one may only appoint tall, wise, attractive, and elderly people to the Sanhedrin. This Halacha is also codified by the Rambam – “*One should endeavor to ensure that they are all ‘Ba’alei Seiva.’*” *Ba’alei Seiva* are those above the age of 70 (*Avos* 5 and *Shulchan Aruch*, Y.D. 244:1).

Perhaps an elderly person is only disqualified if he is *extremely* old (as implied by the *Rambam*, above). If he is only a “*Ba’al Seiva*” – above age 70 – he is still qualified. (This is also the answer of the *Lechem Mishna*.)

At first glance, it is difficult to justify this distinction. Given that the reason to disqualify an elderly person from the *Sanhedrin* is because he is no longer occupied with raising children, there would seem to be no basis for permitting a 70-year-old to serve as a Dayan.

Perhaps we could suggest that an elderly Dayan’s lack of compassion is not only due to his detachment from childraising, but also due to the deterioration of his mental faculties. In fact, it is this deterioration which itself may cause him to forget the difficulty of child raising. Therefore, a 70-year-old whose mental acuity has deteriorated, and who does recall the difficulty of childraising, would remain compassionate. He is therefore a valid Dayan.

The *Meiri* has a fascinating approach to this topic. Most *Rishonim* hold (see, for example the *Rashba* – *Shu”t* 6:191 and *Rabbenu Yona, Sanhedrin ibid.*) that old age is not only a reason to preclude somebody’s appointment to the *Sanhedrin*, but is also

---

<sup>2</sup> Assumedly, this Halacha only applies to capital cases where the Torah commands the Dayanim to show mercy to the defendant.



a reason to retire. However, the *Meiri* holds that if somebody has already been appointed to the Sanhedrin, he need not retire when he grows old!

At first, this seems an astounding position. If an elderly person is invalid as a Dayan, why should he be permitted to continue to serve in his position? The *Meiri* answers: "***Since he is accustomed to capital cases, there is no reason for concern.***"

The *Meiri's* intent is that a Dayan who has dealt with capital cases since his youth is accustomed to a certain mode of discussion based on proper values. These values remain with him in his old age as well. For example, he is accustomed to discussing cases patiently, examining them carefully, and searching for ways to acquit the defendant and not mercilessly and hastily find him guilty. Even if his natural feelings of compassion dissipate in his old age, he will not necessarily forget the processes of the court. We can assume that he will continue to judge correctly.

In summary, the Torah considers a person's physical and mental state when determining whether he can work in certain positions. In certain fields, a person is automatically disqualified on the basis of age, mainly for fear of performance that does not fulfill the job requirements. According to some opinions, this disqualification only applies to aspects of the job for which the elderly person is no longer qualified. According to the *Rambam*, *Kohanim* need to be in an optimum physical state regardless of whether they are capable of performing the *Avoda*. In fields that do not require physical effort, such as sitting on the Sanhedrin, old age is considered an advantage and one should strive to appoint elderly people to the position. Nevertheless, a person's mental faculties and acuity can affect his ability to perform his duties properly. Therefore, in a field such as capital punishment, being of very advanced age disqualifies him.

Next week we will examine additional cases and perspectives on the obligation of retirement and conclude the discussion.