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HaRav Yosef Grossman zt"l

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## YOU CAN SAY THAT AGAIN: PLAGIARISM IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

AP reports:

Harvard University President Claudine Gay resigned Tuesday amid plagiarism accusations and criticism over testimony at a congressional hearing where she was unable to say unequivocally that calls on campus for the genocide of Jews would violate the school's conduct policy.

Gay is the second Ivy League president to resign in the past month following the congressional testimony—Liz Magill, president of the University of Pennsylvania, resigned Dec. 9...

Following the congressional hearing, Gay's academic career came under intense scrutiny by conservative activists who unearthed several instances of alleged plagiarism in her 1997 doctoral dissertation. The Harvard Corporation, Harvard's governing board, initially rallied behind Gay, saying a review of her scholarly work turned up "a few instances

of inadequate citation" but no evidence of research misconduct.

Days later, the Harvard Corporation said it found two additional examples of "duplicative language without appropriate attribution"...

In this article, we introduce some basic Torah perspectives on plagiarism, and in a follow-up we will *iy"H* consider various halachic questions involving plagiarism.

It is important to distinguish between the legal concepts of intellectual property and infringements thereof discussed in the halachic literature—which are roughly analogous to the modern legal concepts of copyright and copyright infringement—and plagiarism. Copyright and its halachic analogues are *economic* frameworks, and their core concept is *permission*, i.e., these frameworks establish the right of an author to deny others the right to reproduce his work

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1 Steve LeBlanc and Collin Brikkley: Harvard president Claudine Gay resigns amid plagiarism claims, backlash from antisemitism testimony, AP News, <https://apnews.com/article/harvard-president-claudine-gay-resigns-841575b89bcdc062cdf979e647a2539e>



PARSHAS VA'EIRA

NONPROPHET STATUS

Excerpted and adapted from a shiur by  
Rav Moshe Ze'ev Granek

Hashem said to Moshe, "See I have made you a master over Par'o, and Aharon your brother shall be your spokesman (*nevi'echa*)."

Shmos 7:1

Rashi writes that "*nevi'echa*" means your *meturgaman*, which is a person who conveys a speaker's message to others. Rashi explains that just as a *navi* (prophet) conveys Hashem's rebuke to Bnei Yisrael, Aharon would convey Moshe's rebuke to Par'o. Ibn Ezra explains that just as Hashem communicates secrets to a *navi*, Moshe would communicate secrets to Aharon.

This dispute might be linked to another. The Gemara (Megillah 3a) says that Daniel was not a *navi*, despite his seeing visions not seen by Chananyah, Mishael, and Azaryah, who were *nevi'im* and standing nearby. Rashi explains that he was not called a *navi* because he never communicated any message from Hashem to the people. But the Rambam (Moreh Nevuchim 2:45), Ramban (Bereishis 18:1), and Abarbanel (Ma'aynei Hayeshuah) hold that Daniel only experienced *ruach hakodesh* and visions from Hashem, not the higher level of *nevuah*. The Rambam explains that for this reason, Sefer Daniel is part of Ksuvim and not *Nevi'im*. Rashi there is consistent with his explanation here, while the Rambam and others side with Ibn Ezra that a *navi* is one who communicates closely with Hashem, so Daniel, who lacked

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## Into the Mix

Q What *bracha* is made on cholent?

A In general, when determining the *bracha* of a dish that has multiple components, if one is the *ikar* (main component) and others *tafeil* (secondary), making a *bracha* on the *ikar* exempts the *tafeil* (O.C. 204:12). *Min dagan* (a grain product), if present, is considered the *ikar* even if it is the minority, and only *mezonos* is recited (O.C. 208:2). Accordingly, many *poskim* say to make only *mezonos* on cholent on account of the barley. (Make sure there is some

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without permission. Plagiarism, however, is about *dishonesty*, and its key concept is *attribution*, i.e., the impropriety of representing another's work as one's own.

Attribution is irrelevant to copyright: Wherever copyright or its halachic analogues apply, they prohibit the reproduction of a work even if the work is clearly attributed to the author, and permission is not a defense against plagiarism. Even if the original author consents to someone else taking credit for his work (e.g., in the cases of essay mills and essay banks), the failure to properly attribute the work still constitutes plagiarism, although the misconduct is obviously greater if in addition to taking credit for someone else's work, the plagiarizer unjustly deprives the real author of the credit due to him. Plagiarism constitutes a fraud against the author's audience, which is led to believe that the plagiarizer is the author, and usually involves the additional iniquity of depriving the author of credit.

### A TALE OF TWO YITZCHAKS

One of the most interesting cases of alleged plagiarism in rabbinic history involved two *gedolei Torah* of late-fifteenth-century Spain: R' Yitzchak Arama (the Akeidas Yitzchak) and R' Yitzchak Abarbanel (the Abarbanel). They both composed classic *peirushim* on the Torah, and that of the latter seems to have incorporated many innovative ideas that originally appeared in that of the former, without attribution. While R' Yitzchak Arama's own feelings on the matter are unknown, his son R' Meir Arama released a letter accusing the Abarbanel of plagiarism. He writes that had the Abarbanel but included proper attribution of his father's ideas, he would have had no objection, and on the contrary, the Abarbanel would have done the ideas a favor by publicizing and disseminating them. He goes on to explain that he is not envious of the Abarbanel's great eminence, nor is it his intention to increase his own family's honor, but his purpose is rather to forestall the accusation, by those in future generations who will be unaware that his father's work came first, that it was actually his father who plagiarized from the Abarbanel!<sup>2</sup>

The Abarbanel never addressed the allegation that he had plagiarized from the Akeidas Yitzchak. In various places in his writings, however, he adopts contradictory positions on the acceptability of citing the work of others without attribution. In a couple of places, he criticizes R' Dovid Kimchi (the Radak) for allegedly plagiarizing from R' Avraham ibn Ezra, and he proudly declares that he, on the other hand, "will attribute everything to its author, lest I be one of the plagiarizers."<sup>3</sup> But elsewhere he declares that there is nothing wrong with the authors of books citing each other without

attribution, because "the source of everything is Hashem Yisbarach."<sup>4</sup>

### R' CHAIM SOFER AND THE PLAGIARIST SOFER

R' Chaim Sofer (author of *Shu"t Machanei Chaim*; a *talmid* of a *talmid* of the Chasam Sofer, no relation) was asked about a sofer who was discovered to have passed off *teshuvos* composed by various *gedolei Torah* as his own, by sending *teshuvos* that he had received from *gedolim* to other *gedolim*, under his own name. Should this sofer be disqualified from his profession, he was asked, and should the *sifrei Torah*, *tfillin*, and *mezuzos* that he had already written be deemed invalid?<sup>5</sup>

Rav Sofer analyzes at length the nature of the sin of plagiarism from the perspective of the Torah, focusing on the misdeed of depriving the true author of the credit to which he is entitled and whether this is violative of "*Lo sasig gvul reiacha* (You shall not move a boundary of your fellow),"<sup>6</sup> which the *Sifri* says refers to one who switches the words of R' Yehoshua with those of R' Eliezer, and the words of R' Eliezer with those of R' Yehoshua<sup>7</sup>, or even actual theft. He concludes that stealing someone else's Torah does indeed constitute theft, at least in certain circumstances, but for various reasons, the plagiarist in his case is not disqualified from serving as a sofer:

The bottom line is that although the man has acted brazenly and sinned greatly by perpetrating such an outrage, to clothe himself in garb that is not suitable for him, to steal the Torah wisdom of *gedolei Torah*, he is nevertheless not disqualified from serving as a sofer, and he should accept upon himself sincere *teshuvah* for the sin that he committed against Hashem and man, and he will repent and be healed.<sup>8</sup> He, the Merciful One, is forgiving of iniquity,<sup>9</sup> and the rabanim as well will (or perhaps "should") forgive him, because nothing stands in the way of *teshuvah*.<sup>10</sup>

R' Moshe (Maharam) Schick (in a *teshuvah* addressed to R' Chaim Sofer, commenting on his correspondent's above analysis), disagrees and maintains that plagiarism does not constitute theft, but he concedes that it is nevertheless prohibited, primarily on the grounds of the deception involved (rather than the offense of depriving the true author of credit):

But in truth, one who steals *chidushei Torah*, i.e., he says in his own name that which another *talmid* chacham has innovated, this is prohibited under "Distance yourself from a false word,"<sup>11</sup> or it is prohibited under *gneivas da'as* (deception), like every form of fraud by

<sup>4</sup> Nachalos Avos (New York 5713) 4:5 p. 233. See Wikipedia.

<sup>5</sup> Shu"t Machanei Chaim cheilek 2 C.M. siman 49.

<sup>6</sup> Dvarim 19:14.

<sup>7</sup> Sifri ibid. os 188. Cf. Inyano Shel Yom, cheilek 3 (Purim) from p. 135.

<sup>8</sup> Yeshayah 6:10.

<sup>9</sup> Tehillim 78:38.

<sup>10</sup> Zohar Chadash 251.

<sup>11</sup> Shmos 23:7.

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barley in the spoonful upon which the *bracha* is recited.)

Other *poskim* are hesitant about this for two reasons:

- The Chayei Adam (51:13) says that *min dagan* is only primary if the other ingredients aren't recognizable. In cholent, because the potatoes and meat are visible, they aren't *tafeil* to the barley. (Biur Halacha 112:1 cites this opinion but ultimately disagrees.)
- In cholent, the barley is intended as filler, not to flavor the other components. In such cases, *min dagan* isn't considered the *ikar* (Teshuvos Vehanhagos 2:146).

According to these views, *mezonos* is made on barley and then *ha'adamah* on a potato. This is so even if the barley is the minority, because *min dagan* is never *tafeil*. The *ha'adamah* should not be made on the beans, because they may be considered *tafeil* to the barley. A *shehakol* is made on the meat, because the pieces are easily discernible. If the meat has fallen apart, it is *tafeil* (ibid.)

One should only recite the *bracha acharonah* of *al hamichya* on cholent if a *kezayis* of barley was eaten *toch kedei achilas pras* (within 3-9 minutes); otherwise, only *borei nefashos* is recited. If *al hamichyah* will be made, it is uncertain whether *borei nefashos* is required, because according to the first view, the other ingredients are *tafeil* to the barley and are covered by the *al hamichyah*. A good practice is to eat or drink something else to incur a definite obligation and avoid the *safeik*.

which one person defrauds another, similar to *ona'ah* (fraudulent dealing)...<sup>12,13</sup>



RAV ARYEH FINKEL

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that high level of communication, isn't classified as a *navi*.

A halachic implication of not being a *navi* is that if such a person instructed Klal Yisrael to violate a mitzvah temporarily, he would not be heeded, whereas a *navi* would

be. (See Dvarim 18:15 and Rambam, Hilchos Yesodei HaTorah).

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