

# **RAV SCHACHTER**

## **ON THE PARSHA**

*Insights and Commentary*  
*Based on the Shiurim of*  
**Rav Hershel Schachter**

Adapted by  
Dr. Allan Weissman

Third Edition  
Paperback Edition

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Published by Shikey Press in partnership with RIETS Press  
ShikeyPress.com • yu.edu/riets/press

HaDaF Typesetting  
HaDaF.Dovid@gmail.com

ISBN: 978-1-958542-31-6

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הרה"צו' שטר  
ראש ישיבה וראש כולל  
ישיבת רבינו יצחק אלחנן

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הטג אהחגס אכילג התורה  
צ'ו שטר  
חשן תשע"ג



In Memory of

דינה בת דוד אריה ע"ה  
*Agnes Dina Moskowitz a"h*

נפטרה כ"ה שבט ה'תשע"ו

*Woman of Grace and Dignity ☞ Generous of Heart and Steadfast in Faith ☞ A Treasured Wife ☞ A Devoted Daughter ☞ A Mother of Unparalleled Love ☞ A Grandmother of Boundless Giving ☞ A Soul Mate to her Sister ☞ A Friend to So Many ☞ An Inspiration to All*

*May her Memory Be a Blessing Forever*

And in Memory of

יהודה גרשון בן יוסף ז"ל  
*Leo Honigwachs z"l*

*Man of Courage ☞ Gentle of Spirit ☞ Holocaust Survivor ☞ Faith Builder ☞ Lover of All Jews ☞ G-d Fearing and Pious ☞ Brave of Spirit ☞ Humblest of Men ☞ Longed for the Holy Land ☞ Learned of Mind ☞ Pillar of his Shul ☞ Patriarch of his Family*

*He will be sorely missed by all*

יהי זכרו ברוך

*May the Torah learning from this sefer  
be an everlasting zechus for their neshamos*

*Norman Moskowitz  
Forest Hills, N.Y.*



*In Memory of  
our Dear Parents*

**יהושע בן יוסף ישעיה ועטיל בת יהודה ז"ל  
Sigmund and Ethel Gluck z"l**

*and*

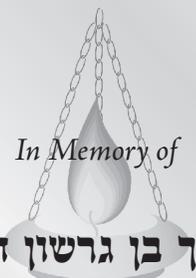
**מרדכי בן אברהם ורחל בת צבי ז"ל  
Martin and Rose Gedalovitz z"l**

*May the Torah learning from this sefer  
be an everlasting zechus for their neshamos*

---

*In Honor of all of our Beautiful  
Children, Grandchildren,  
and Great-grandchildren*

*Eugen and Jean Gluck  
Forest Hills, N.Y.*



*In Memory of*

**אלימלך בן גרשון דוד ז"ל**

***Martin Beer z"l***

*A gentle and upright man  
who was deeply devoted to  
his heritage, his family, and his community*

*He formed close relationships with  
Rabbonim and their Torah institutions  
and leaves behind a legacy of generations  
of shomrei Torah u'Mitzvos*

*May the Torah learning from this sefer  
be an everlasting zechus for his neshamah*

*Seme and Bernice Jozsef  
Woodmere, N.Y.*

*In Memory of our Beloved Parents*

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לזכר ולעילוי נשמת

נחמה בת הרב עבי הירש ע"ה  
*Nechama (Norma) Kletzel a"b*

*Yitzy and Yaffy Buchen*

# CONTENTS

Acknowledgments.....	xv
Introduction.....	ixx
<b>PARSHAS BEREISHIS</b>	
That it was Good.....	1
<b>PARSHAS NOACH</b>	
The Chosen Land.....	5
<b>PARSHAS LECH LECHA</b>	
A Great Nation.....	9
<b>PARSHAS VAYEIRA</b>	
The <i>Akeidah</i> .....	16
<b>PARSHAS CHAYEI SARAH</b>	
Jewish Burial.....	19
<b>PARSHAS TOLDOS</b>	
Genuine <i>Masorah</i> .....	23
<b>PARSHAS VAYEITZEI</b>	
Jewish History .....	27
<b>PARSHAS VAYISHLACH</b>	
The Definition of <i>Mitzvah</i> .....	33
<b>PARSHAS VAYEISHEV</b>	
Challenges.....	37

<b>PARSHAS MIKEITZ</b>	
Piety .....	41
<b>PARSHAS VAYIGASH</b>	
The End Result .....	45
<b>PARSHAS VAYECHI</b>	
Individuality .....	48
<b>PARSHAS SHEMOS</b>	
The Third <i>Beis HaMikdash</i> .....	53
<b>PARSHAS VA'EIRA</b>	
The Heritage of Eretz Yisrael .....	58
<b>PARSHAS BO</b>	
<i>Kiddush HaChodesh</i> .....	63
<b>PARSHAS BESHALACH</b>	
<i>Klal Yisrael as a Tzibbur</i> .....	68
<b>PARSHAS YISRO</b>	
Precedence in Halachah .....	73
<b>PARSHAS MISHPATIM</b>	
<i>Geirus at Sinai</i> .....	78
<b>PARSHAS TERUMAH</b>	
The <i>Mikdash Me'at</i> .....	84
<b>PARSHAS TETZAVEH</b>	
Inauguration of the <i>Menorah</i> .....	89
<b>PARSHAS KI SISA</b>	
The True <i>Am HaNivchar</i> .....	93

<b>PARSHAS VAYAKHEL</b>	
The Definition of <i>Kedushah</i> .....	99
<b>PARSHAS PEKUDEI</b>	
The Definition of <i>Ge'ulah</i> .....	104
<b>PARSHAS VAYIKRA</b>	
The Dream of the <i>Ohr Same'ach</i> .....	111
<b>PARSHAS TZAV</b>	
Partnership .....	115
<b>PARSHAS SHEMINI</b>	
<i>Birchas Kohanim</i> .....	119
<b>PARSHAS TAZRIA</b>	
<i>Tzaddik VeRa Lo</i> .....	123
<b>PARSHAS METZORA</b>	
The Essence of Torah.....	130
<b>PARSHAS ACHAREI MOS</b>	
The Moment of Death .....	137
<b>PARSHAS KEDOSHIM</b>	
Holiness.....	142
<b>PARSHAS EMOR</b>	
<i>Tum'as Kohanim</i> .....	151
<b>PARSHAS BEHAR</b>	
<i>Heter Mechirah</i> .....	156
<b>PARSHAS BECHUKOSAI</b>	
The Temple Mount .....	164

<b>PARSHAS BAMIDBAR</b>	
<i>Piryah VeRiyyah</i> .....	171
<b>PARSHAS NASSO</b>	
Ten Levels of <i>Kedushas HaMikdash</i> .....	177
<b>PARSHAS BEHA'ALOSCHA</b>	
<i>Nevu'as Moshe</i> .....	182
<b>PARSHAS SHELACH</b>	
Archaeological Evidence .....	187
<b>PARSHAS KORACH</b>	
The Rebellion.....	192
<b>PARSHAS CHUKAS</b>	
Halachic Formulas.....	197
<b>PARSHAS BALAK</b>	
The Coming of <i>Mashiach</i> .....	203
<b>PARSHAS PINCHAS</b>	
<i>Halachah LeMoshe MiSinai</i> .....	209
<b>PARSHAS MATTOS</b>	
Arguments with the <i>Kara'im</i> .....	214
<b>PARSHAS MASEI</b>	
Division of the Land.....	220
<b>PARSHAS DEVARIM</b>	
The <i>Masorah</i> of <i>Sefer Devarim</i> .....	225
<b>PARSHAS VA'ESCHANAN</b>	
Love of <i>Hashem</i> .....	231

<b>PARSHAS EIKEV</b>	
The Immutability of Torah.....	238
<b>PARSHAS RE'EH</b>	
Yerushalayim was Not Divided .....	246
<b>PARSHAS SHOFTIM</b>	
The Judicial System .....	251
<b>PARSHAS KI SEITZEI</b>	
The Private Role of Women .....	258
<b>PARSHAS KI SAVO</b>	
The Second <i>Bris</i> .....	270
<b>PARSHAS NETZAVIM</b>	
The Hint to the <i>Gr" a</i> .....	276
<b>PARSHAS VAYEILECH</b>	
The Six Hundred and Thirteenth <i>Mitzvah</i> .....	280
<b>PARSHAS HA'AZINU</b>	
<i>Hester Panim</i> .....	286
<b>PARSHAS VEZOS HABERACHAH</b>	
The Last Eight <i>Pessukim</i> .....	291



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## ACKNOWLEDGMENTS

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ברוך המקום ברוך הוא ברוך שנתן תורה לעמו ישראל ברוך הוא.

Praised be the Omnipresent, praised be He. Praised be He who has given the Torah to His people *Yisrael*, praised be He.

I AM GRATEFUL to Rav Hershel Schachter *shlit"á* for allowing me the privilege of adapting a selection of his *shiurim* into writing. His influence as a *marbitz Torah* and as a role model for thousands of young men, as well as an equal number of *balabatim* around the globe and hundreds of *rabbonim* serving the Jewish community throughout the world, is incalculable. He has humbly served in this capacity for me and my family for over thirty years, as he has for a multitude of *talmidim*, and there are no words to express the appreciation that we all feel.

I would like to wish Rebbi, together with his Rebbetzin, many more years filled with *berachah* and *hatzlachah*, good health and happiness, and much deserved *nachas* from their beautiful children and grandchildren, as well as from the scores of *talmidim* and *talmidei talmidim* whose lives they have so enriched.

Everything I have ever accomplished was made possible due to the continued efforts of my dear, devoted parents, Mr. and Mrs. Joseph and Sonia Weissman of Hillcrest, N.Y. It was they who inculcated in me the recognition of the obligation to serve *Hashem* in learning and in deed, and it was they who enabled me to learn in Rav Schachter's *shiur* for four years as a

young adult. May my parents be blessed with many more years together filled with good health, happiness, and continued *nachas* from their children and grandchildren.

I am fortunate to have enjoyed a warm relationship with a second set of parents as well, my dear, devoted in-laws, Mr. and Mrs. Norman and Dina *a"h* Moskowitz of Forest Hills, N.Y. They have always expressed their pride in my accomplishments, and this work is no exception. May my father-in-law be blessed with many more years of good health, happiness, and *nachas* from his children and grandchildren. The untimely passing of my dear mother-in-law, דינה בת דוד אריה ע"ה, and of her brother-in-law, יהודה גרשון בן יוסף, Mr. Leo Honigwachs *z"l*, leaves a void that will never be filled. In their memory, my father-in-law has graciously co-sponsored the production of this *sefer*.

Since its inception more than thirty-five years ago, Mr. Eugen Gluck has regularly attended and ardently supported Rav Schachter's weekly *Gemara* shiur in the Young Israel of Forest Hills, organized by Dr. Stanley Landsman. Mr. Gluck and his wife, Jean, have been dear friends of our family for an even longer period of time. The Glucks have dedicated this *sefer* in memory of their parents, יהושע בן יוסף ישעיה ופטיל בת יהודה, Sigmund and Ethel Gluck *z"l*, and מרדכי בן אברהם ורחל בת צבי, Martin and Rose Gedalovitz *z"l*. The *sefer* is also dedicated in honor of all their many beautiful children, grandchildren, and great-grandchildren.

Mr. and Mrs. Seme and Bernice Jozsef of Woodmere, N.Y. have also graciously co-sponsored the production of this *sefer*. I am most honored that they are doing so in the memory of דוד אלימלך בן גרשון דוד, Mr. Martin Beer *z"l*, a wonderful and upright man whom I had the pleasure of knowing since my youth.

May the Torah that is learned and taught from this *sefer* be an everlasting *zechus* for the *neshamos* so memorialized.

I am grateful to a number of erudite scholars who gave of their time to review and make insightful comments and helpful suggestions regarding significant portions of the manuscript. These include: Dr. David Berkovitz, Rabbi Dr. Richard Ehrlich, Dr. Eugene Gorman, Rabbi David Pahmer, and Rabbi Michael Weingarten.

I am especially grateful to Rav Schachter *shlit"á* himself for graciously reviewing and commenting on the entire manuscript as well.

I would like to express my great appreciation to Rabbi Dovid Feinberg for his patience and skill in seeing all aspects of the manuscript through to the production of the *sefer*, which made the journey a most smooth process. I thank him along with his talented staff:

A great debt of gratitude is due to Rabbi Michael Zylberman, who has brought his prodigious talents to bear on the editing of the manuscript. Working with him to significantly improve the original manuscript has been an absolute delight. In addition, I am very thankful to Mrs. Meira Mintz, whose considerable literary talents further enhanced the quality of the *sefer*. Mrs. Hadassah Feinberg was proficient in her proofreading, which is much appreciated. I also extend thanks to Rabbi Robert Shur, who produced a magnificent cover design.

It gives me great pleasure to be able to express my heartfelt appreciation, in print, to my greatest source of strength, encouragement, and understanding – my dear wife and life partner, Chaya (Susan) שתחי – who continues to provide my life with more bliss than can be expressed. She has done her utmost to enable me to devote almost all of my free time and energy to concentrate on this project, and she has an equal share in the undertaking.

My wife and I continue to thank *Hashem* for all of the wonderful *berachos* He has bestowed upon us. We are particularly appreciative to have enjoyed the recent weddings of our dear

son, Simcha, to his wonderful wife, Omrit, of the Secemski family of Teaneck, N.J., and of our dear son, Shimon, to his wonderful wife, Adina, of the Simon family of Hollywood, Florida. May the young couples be *zocheh* to grow in *yiras shamayim* and *ahavas haTorah* together, with an abundance of *berachah* and *hatzlachah* for many happy and healthy years. May we, together with our dear *mechutanim*, merit to enjoy much *nachas* from them as they build their **בתי נאמן בישראל**.

We offer a *tefillah* to the *Ribono Shel Olam*, that we merit sharing in the future accomplishments of each of our other beloved children, Bracha, Hindi, Sara, Rachel, Miri, Dovid, and Chezky, as they similarly grow in *yiras shamayim* and *ahavas haTorah*. May they enjoy much *berachah* and *hatzlachah* in all they do, and may we merit to derive much *nachas* from them.

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## INTRODUCTION

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PARTICIPATING in a *shiur* of Rav Hershel Schachter *shlit"á* represents an encounter with something unique. One is initially struck by the clarity of the presentation, making listening to the *shiur* a very enjoyable and rewarding experience. Then, one detects how Rav Schachter brings with him to every *shiur* a rich and weighty *masorah*, based especially on the Torah he personally learned from his great *Rebbi Muvhak*, HaGaon HaAdir Maran Rav Yosef Dov HaLevi Soloveitchik *zt"l*. The principles that the Rav taught Rav Schachter in his earlier years have been supplemented, over time, by the commentaries and interpretations of the great *Acharonim* of the last several centuries. Indeed, the *talmidim* in Rav Schachter's *shiur* are introduced to these luminaries – the *Netziv*, Rav Yosef Engel, the *Keren Orach*, the *Sfas Emes*, the *Ohr Same'ach*, Rav Chaim Soloveitchik, the Brisker Rav, Rav Menachem Ziemba, among many others.

Above and beyond the elucidations of the *sugya* by means of the methodology of *iyun* (the analytical process), Rav Schachter's *shiur* is grounded in a conformity to practical *psak halachah*, as codified in the *Shulchan Aruch* and as informed by the *piskei halachah* of the greatest *Poskim* of the last several centuries, including the *Mishkenos Ya'akov*, Rebbi Akiva Eiger, the *Chasam Sofer*, Rav Yitzchak Elchonon Spektor, the *Avnei Nezer*, Rav Chaim Ozer Grodzinsky, the *Chazon Ish*, and Rav Moshe Feinstein, to name a few. Their analyses are interwoven

into the fabric of the presentation of the *lomdus*, all flowing in a seamless and logical progression.

The sum total paints a glorious portrait of *Torah SheBe'al Peh*, both its attention to detail as well as the broad strokes that depict its overarching themes and principles. Rav Schachter's students take it for granted that the scope of the *shiur* is absolutely apolitical, as the words of the *Minchas Elazar* and the Satmar Rebbe are quoted alongside those of Rav Tzvi Hirsch Kalischer and Rav Avraham Yitzchak HaKohen Kook, all to form the tapestry that is an accurate reflection of *Hashem's* Torah. Rav Schachter's only concern is to transmit the truth of Torah to the best of his understanding.

Then there is Rav Schachter himself. Those who personally attend the *shiur* have the feeling that they are sitting at the feet of someone who has achieved greatness of character. That is because, as hard as it may be to imagine, all this weighty material, with all its splendor and brilliance, is transmitted with an unparalleled sense of honesty, humility, gentleness, pleasantness, humor, and passion. Indeed, the combination of self-effacement, intellectual integrity, and patience when responding to questions, and especially to challenges, in the course of the *shiur*, are nothing short of spellbinding. It is breathtaking to consider that in this inimitable style, Rav Schachter has transmitted his considerable *masorah*, on a daily basis, for half a century.

Rav Schachter exudes a palpable feeling of love for *Hashem*, for His Torah, and for *Klal Yisrael* into the *shiur* room. We have all watched in awe from time to time that deep, authentic, expression of emotion when Rebbe is confronted with an example of *mesirus nefesh* or *tza'ar* of a member of *Klal Yisrael*. The brief cry gives way to the joyous words of Torah that quickly follow, providing relief from that painful moment. Most of us have never witnessed quite such a thing before; the experience provides a glimpse into the heart of our master *maggid shiur*.

Indeed, each of these elements transforms the *shiur* experience from a merely intellectual one into a most spiritual and

inspirational one. The *talmidim* feel a certain sense of honor to be in Rav Schachter's presence, and there is a fraternal bond amongst the *talmidim* in the *shiur*. Generations of his *talmidim* adore their Rebbe, and they have an intense loyalty to him.

Of course, all are encouraged to personally attend any of Rav Schachter's countless public *shiurim*, or at least to listen to the thousands available online. The complete experiential aspect of the oral delivery cannot be communicated by the written word. Nevertheless, this work can serve to introduce the Torah of our Rebbe to those who have not yet experienced it. Part of the intent of this endeavor is to spread the influence of Rav Schachter's sweet words to those who have not yet tasted them. It is our hope that the *sefer* will open up new vistas of opportunity to enrich and inspire the Torah learning, *shmiras hamitzvos*, and *yiras shamayim* of as many individuals as possible.

Despite the fact that this *sefer* represents but a small fraction of the Torah that Rebbe transmits over the course of even one year, I feel that after learning this *sefer*, one will come away with an accurate representation of the *hashkafah* and the *lomdus* for which Rebbe is so well-known. Whenever possible, bracketed cross-references are provided to selections in Rebbe's six *sefarim* (*Eretz HaTzoi*, *B'Ikvei HaTzon*, *Ginas Egoz*, *Nefesh HaRav*, *MiPninei HaRav*, and *Divrei HaRav*), as well as other articles, to afford the reader an opportunity for a fuller analysis of a given topic.

It goes without saying that any lack of accuracy or clarity in any of these pages is the sole responsibility of the one who adapted the oral *shiurim* to the written form.

Allan Weissman  
Kislev 5777



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## PARSHAS BEREISHIS

# THAT IT WAS GOOD

---

THE TORAH'S description of Creation includes multiple repetitions of the phrase, וַיֵּרָא אֱלֹהִים כִּי טוֹב - "And Hashem saw that it was good" (e.g. *Bereishis* 1:10). The *Ramban* (1:4) wonders what this phrase could mean in relation to Hashem's creations. When a human being sets out to construct something with a vision or blueprint of the final product, once the construction is complete, he is able to say whether the final product met his expectations or not. However, when Hashem creates something, the final product is exactly the way He intended it to be. If Hashem had desired an "average" world, that is how the world would have been. Since Hashem desired a beautiful world, the resultant creation "was good." What, then, is added by the *passuk*, "And Hashem saw that it was good?"

The *Ramban* explains that the phrase "that it was good" carries with it the connotation of *kiyum* (permanence). Since nothing at all existed prior to Creation, the status quo of everything in the world was a state of nothingness. Even once Hashem created something, after a split second, it should have reverted back to its original state of nonexistence. The only reason that anything in the world continues to exist is that Hashem continuously wills its existence, thereby defying its natural state. If Hashem were to remove His continuous will from any item, it would revert back to a state of nothingness. This is the meaning

of the phrase, המחדש בכל יום תמיד מעשה בראשית – “Who renews every day continuously the act of Creation.”

The *Ba'al HaTanya* (*Sha'ar HaYichud VeHaEmunah, perakim* 1-2) elaborates on this theme with a *mashal* (parable). When *Hashem* desired to split the *Yam Suf*, He used the *ruach* (wind) as a barrier to the flowing waters. Had *Hashem* interrupted that *ruach*, the waters would have resumed their original positions and flooded those passing through the *Yam Suf*. The same is true with any one of *Hashem's* creations and with the entire universe in general. As the *passuk* in *Tehillim* (119:89) states, לעולם ד' דברך נצב בשמים – “Forever, *Hashem*, Your word stands firm in the heavens.” All of creation has a merely dependent existence. Only *Hashem* Himself has a מציאות אמיתית (independent existence). This is the significance of the *passuk* in *Yirmiyah* (10:10), וד' אלקים אמת, – “But *Hashem*, G-d, is True.” The meaning is not that *Hashem* does not deal dishonestly, but that only *Hashem* has a “true” independent existence.

The *Ba'al HaTanya* explains that this understanding forms the basis of a logical proof against heretics who argue that while *Hashem* created the world, He left it alone to run its course according to the physical laws of nature that He had created. Such an approach could only be envisioned in the realm of human construction or creation. When a human builds a table or a building, he is merely taking previously existing raw materials and rearranging them to form the final product. Therefore, the table or building will continue to exist even after the builder has died or has left the project to move on to a different one. However, in the case of *Hashem's* creation, in which the created item has only a **dependent** existence reliant on the continuous will of *Hashem*, it would be impossible to imagine a situation in which the Creator left His Creation alone. *Hashem* must have a constant *yedi'ah* (knowledge) of and involvement in the world's current affairs, for absent *Hashem's* Will, all of Creation would instantaneously cease to exist.

Therefore, concludes the *Ramban*, וירא אלקים כי טוב should not be understood as a judgement or appraisal of what had been created. It is an additional Divine command representing the fact that *Hashem* sees fit to allow all that He originally created to **continue** to exist. This command, in fact, has continued from the very beginning of time up until the present.

There is a related interpretation of the Ari z"l (*Sefer HaLikutim* and *Likutei Torah, Parshas Eikev*) on the *passuk*, – כי לא על הלחם לבדו יחיה האדם כי על כל מוצא פי ד' יחיה האדם – "For not by bread alone does man live, but rather by everything that **emanates from the mouth of Hashem** does man live" (*Devarim* 8:3). Just as the world was originally created through ten Divine utterances (עשרה מאמרות), so too the true *chiyus* (life force) within each and every object or being is due to the *devar Hashem* (**word of Hashem**) contained within it. Thus, the *passuk* means, "For not through the physical component of the bread alone, but through its *chelek ruchni* (spiritual dimension), a result of the *devar Hashem* at the time of Creation that continues until today, is Man nourished."

This innate *devar Hashem* is what the *mekubbalim* call ניצוצות הקדושה (sparks of holiness), which are present within every object and which cause every object to yearn to be involved in the service of *Hashem*. When an object is elevated through use for *mitzvah* observance, its purpose in creation has been fulfilled. This is why, the *mekubbalim* explain, *Klal Yisrael* travels throughout the world during *galus* – in order to gather and "fix" these sparks of holiness throughout their travels. These sparks are considered to be trapped within their host objects, waiting to be released, at which point those objects will realize their purpose in Creation.

The story is told of one of the Gerrer Rebbes that he advised a *sofer* to endeavor to use, in the making of *tefillin* and *mezuzos*, the hide of a kosher animal that died a natural death, thereby rendering it a *neveilah* and thus inedible. The Rebbe argued that

a kosher animal that underwent a proper *shechitah* has already experienced its *tikkun* (correction), as a *berachah* had been recited over its *shechitah* and its meat will nourish those who perform *mitzvos*. In contrast, the *neveilos*, which have not yet been able to play any role in the service of *Hashem*, are in need of a *tikkun* and should be used for *mitzvah* purposes.

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## PARSHAS NOACH

# THE CHOSEN LAND

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WE USUALLY think of the *kedushah* of Eretz Yisrael as taking hold after the fourteen years of Yehoshua's conquest and division of the land. However, in fact, Eretz Yisrael played a central role as the ארץ הנבחרת (Chosen Land) starting from a much earlier time. The *Gemara* in *Yoma* (54b) tells us that the *even shesiyah* (foundation stone) inside the *Kodesh HaKodashim* is so named because "from [this stone] the world was founded." This was the first land that *Hashem* created, and the rest of the earth is an extension of that original piece of land.

The way in which the *mabul* occurred was certainly miraculous, and one of the extraordinary aspects of the *mabul* was that Eretz Yisrael was somehow unaffected (*Zevachim* 113a, according to Rebbi Yochanan). The *Seforno* (*Bereishis* 11:31) comments that since Eretz Yisrael was singled out in this way, its climate was never adversely affected by the *mabul's* rains. It was recognized as a healthier place to live, with cleaner air; as the *Gemara* in *Bava Basra* (158b) teaches, אוירא דארץ ישראל מחכים – "the air of Eretz Yisrael makes one wise." This may be the reason that Terach set out to move to Cana'an. It is also possible that the fact that Eretz Yisrael was spared from the devastation of the *mabul* led to its recognition as a land predisposed to bringing about intellectual elevation, and Terach therefore

journeyed to the land because of its potential for spiritual excellence.

The *Gemara* in *Kiddushin* (69a) tells us that Eretz Yisrael is “higher” than the other lands and that the *Beis HaMikdash* in Yerushalayim is the “highest” area within Eretz Yisrael. This is why we refer to traveling to Eretz Yisrael as *aliyah* (ascent) and leaving Eretz Yisrael as *yeridah* (descent) (*Rashi, Bereishis* 45:9). Clearly, the *Gemara* cannot be referring to the height above sea level, as the Swiss Alps are topographically higher than Eretz Yisrael. In fact, the *Gemara* in *Yoma* (31a) explicitly mentions that the area of Ein Ittim has a greater elevation than did the *Beis HaMikdash*.

Rather, the *Gemara* is referring to “height” in the following sense. Recognizing that the earth is a sphere, what point on the globe occupied the uppermost position at the first moment of Creation? The placement of the North Pole in the uppermost position, the center of the upper (northern) hemisphere’s surface, is merely an arbitrary designation. The *Gemara* teaches us that Eretz Yisrael, and specifically the area of Yerushalayim, occupied the “highest” point of the upper hemisphere at the time of Creation. This assertion has practical halachic implications, as it may form the basis of the placement of the Date Line according to Halachah.

We recognize that the sun rises and sets in easterly locations earlier than in westerly ones. We understand, therefore, that as we move eastward from a particular starting point, the local time at any particular location becomes later and later. If we take any point on the globe at a specific time – the start of Shabbos at 6:00 PM on Friday, for example – as we move eastward from that starting point, the local times at the new locations become 7:00 PM, 8:00 PM, etc., and Shabbos will have already started at those locations. If we continue moving completely around the globe (360 degrees) back to our starting point, we encounter a difficulty, the circumnavigator’s paradox:

instead of the local time being 6:00 PM on **Friday** as it was when we started, it is 6:00 PM on **Shabbos**, even though we have returned back to the exact same location! We must therefore recognize the existence of a Date Line, so that as we move eastward and cross over to the area east of that line, the day of the week will jump backward to be one day earlier than it is in areas west of that line. This way, if we continue completely around the globe and reach our starting point in the example above, although the **hours** have gotten progressively later, since the **day** has jumped backward, the local time will remain 6:00 PM on Friday.

The location of the modern day International Date Line is arbitrary, passing through the middle of the Pacific Ocean, but deviating to pass around some territories and island groups. The *poskim* presented different possibilities for the Date Line.

The *Chazon Ish* (*Kuntres Shemoneh Esrei Sha'os*, first published in 1945 and reprinted in *Chazon Ish, Orach Chayim-Mo'ed, siman 64*), basing himself on the interpretation of the *Ba'al HaMa'or* (*Rosh Hashanah 20b*) and several other *Rishonim*, concludes that the halachic Date Line corresponds to a location that is six hours to the east of Yerushalayim (the meridian 90 degrees east of Yerushalayim). This is because the Eurasian landmass is considered to lie within the main hemisphere of the world and, with Yerushalayim at its **center**, it extends approximately 90 degrees east and 90 degrees west. The *Ba'al HaMa'or* refers to "the beginning of inhabitation" as the point 90 degrees east of Yerushalayim. This understanding is consistent with the *passuk* in *Yechezkel* (38:12) referring to *Bnei Yisrael* in Eretz Yisrael as **יושבי על טבור הארץ** - "dwelling upon the navel of the earth." Thus, Yerushalayim is considered the **midpoint** and "highest" point of the upper hemisphere. Since the entire hemisphere consists of twelve time zones, the halachic Date Line runs six hours to the east of its centerpoint, Yerushalayim.

The resultant Date Line cuts through Siberia and Australia, leading to further discussion among the *poskim* as to the proper classification of these particular land masses. The *Chazon Ish* maintained that continuous landmasses should belong entirely to one side of the dateline, and that Siberia and Australia should be included in the area west of the Date Line, as that area represents Earth's principle hemisphere.

[See *Eretz HaTzvi*, p. 67; for a further analysis of Rav Schachter's position regarding the halachic Date Line, see R. David Pahmer, "The International Date Line and Related Issues," *The Journal of Halacha and Contemporary Society* XXI, pp. 60-83.]

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## PARSHAS LECH LECHA A GREAT NATION

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**H**ASHEM TOLD Avraham Avinu to go to Eretz Yisrael and that, once there, **וַאֲנִי אֶעֱשֶׂה לְךָ גוֹי גָּדוֹל** - “I will make of you a great nation” (*Bereishis* 12:2). The Torah uses the term **גוי** (nation) in contrast to the other nations of the world, which the subsequent *passuk* labels as **משפחות האדמה** (families of the earth). The Halachah declares that the Jewish Nation is the one and only **גוי**, as we state in Shabbos *Minchah*, **וְיִשְׂרָאֵל גּוֹי אֶחָד בָּאָרֶץ** - “And who is like Your people Israel, one nation on earth” (*Divrei HaYamim I* 17:21). Rav Soloveitchik explained that the word **גוי** is related to the word **גויה** (body), and only *Klal Yisrael* is viewed as a singular entity to which the term **גוי** may be applied. [A similar comment may be found in Rav Hirsch’s commentary, which the Rav was fond of studying, to *Shemos* 25:20 and to *Tehillim* 2:1.]

Rav Yosef Engel (*Otzros Yosef, drush 2*) demonstrates that this concept can be found in the *Gemara* in *Nazir* (61a-b). The *Gemara* teaches that *nezirus* only applies to one who belongs to a *tzibbur* (congregation), and not to a non-Jew, who would only be accepting *nezirus* upon himself as an individual. A non-Jew is not subject to the *dinim* of *tum’ah*, nor, by extension, to the *dinim* of *nezirus*. The source of this distinction is the *passuk*, **וְאִישׁ אֲשֶׁר יִטְמָא וְלֹא יִתְחַטֵּא וְנִכְרְתָה הַנֶּפֶשׁ הַהוּא מִתּוֹךְ הַקְּהָל** - “The man who will be unclean and does not purify himself, that soul shall be cut off from the midst of the congregation” (*Bamidbar* 19:20), excluding a non-Jew, who is not included in any

congregation (*kahal*). [According to this understanding, any Scriptural use of the word גוי in connection with the other nations of the world must be understood not as a precise legal term, but as a borrowed term.]

Whenever there is a mixed marriage in which one parent is a *Kohen* or *Levi* and the other is not, the status of the child is determined by the *yichus* (lineage) of the father. This is based on the *passuk*, למשפחותם לבית אבותם – “according to their families, according to their fathers’ household” (*Bamidbar* 1:2). The same is true regarding non-Jews, when the two parents come from different nationalities. Certain nations, such as the *Mitzri'im*, *Edomim*, and *Amalekim* have a special status in Halachah, and if there is an intermarriage between two different nationalities, the status of the children is determined based on that of the father alone.

Why, then, is it that in a case of a mixed marriage between a Jew and a non-Jew, the lineage does not solely follow the father? There were three opinions among the *Tanna'im* as to the parental requirement that results in Jewish offspring – that both parents be Jewish, that either the father or the mother be Jewish, or to follow solely the lineage of the mother (*Tosfos, Yevamos* 16b, s.v. *oved*). The first two opinions were rejected over two thousand years ago, and the accepted opinion is to follow the lineage of the mother alone. The most logical opinion, one would have thought, should have been a fourth possibility – that the *yichus* should be determined solely by the **father**. Yet, such an opinion was never advanced.

The reason seems to be based on the distinction we made above between a גוי and a משפחה. We follow the lineage of the father to determine which משפחה the child belongs to, both in the case of the non-Jewish משפחות האדמה as well as in the case of משפחות כהונה and משפחות לוייה. However, determining whether someone is Jewish or not is not a function of which משפחה he comes from, because the Jewish Nation is a גוי.

The institution of *geirus* demonstrates that this must be the case. Through *geirus*, a non-Jew can become Jewish even though he is not a blood relative of any Jewish family. A *ger* has the same Jewish status as someone who was born Jewish because he has joined the Jewish **גוי**, even though he is unable to join the Jewish **משפחה**. Since determining one's status as a Jew is dependent on the classification of **גוי** and not on the classification of **משפחה**, all of the *Tanna'im* understood that this status is not governed by the child's **paternal** lineage. Rather, it must be based on different criteria, and the accepted opinion is to follow the child's **maternal** lineage.

This is why the institution of *geirus* was given to Avraham Avinu at the same time that he was told that the nation he would found would be classified as a **גוי**. The *Gemara* in *Yevamos* (63a) provides an added level of interpretation of the phrase **ונברכו בך כל משפחות האדמה** – "And all the families of the earth will be blessed through you" (*Bereishis* 12:3): "The Holy One, Blessed be He, said to Avraham, 'I have two good shoots to **graft** (להבריך) into you – Rus HaMo'aviyah and Na'amah Ha'Ammonis.'" Based on this *Gemara*, the *Rashbam* explains in his commentary on the Torah that the word **ונברכו** is related to the term **הברכה** – the grafting of the branch of one tree onto another tree. The meaning of this *passuk* is thus that non-Jews will be able to be "grafted" onto the Jewish People – in other words, that we will be able to accept *geirim*. This is solely due to *Klal Yisrael's* status as a **גוי**, in contrast to **משפחה**.

*Hashem* conveyed this message to Avraham in conjunction with his receiving Eretz Yisrael, as alluded to in the phrase, **ומי כעמך ישראל גוי אחד בארץ** – "and who is like Your people *Yisrael*, a unique **nation** in the **land**" (*Shmuel II* 7:23). This is because the principal place for the *tziruf* (combination) of *Klal Yisrael* as a **גוי** is in Eretz Yisrael, its National Homeland. There are certain *mitzvos* that only apply in Eretz Yisrael because they are strictly agricultural in nature. However, there are other

*mitzvos* that are unrelated to the land per se, yet only apply in Eretz Yisrael because they are obligations incumbent upon the *tzibbur* as a whole.

The *Rambam* (*Peirush HaMishnayos, Bechoros 4:3*) explains that this is the reason that *semichah* may only be conferred in Eretz Yisrael. The bestowing of *semichah* is not a private matter between a *rebbe* and his *talmid*. Rather, it is a public matter performed on behalf of *Klal Yisrael*. Since the act of conferring the *semichah* is an act of the *tzibbur*, it may only take place in Eretz Yisrael.

When the *Rambam* (*Hilchos Sanhedrin 4:6*) cites the *halachah* that *semichah* may only be conferred in Eretz Yisrael, he writes that “all of Eretz Yisrael that was settled by the *olei Mitzrayim* (in the days of Yehoshua) is fit for *semichah*.” This is most surprising because we generally maintain that the *kedushah rishonah* bestowed at the time of Yehoshua was nullified; only those areas endowed with *kedushah* through the subsequent *kedushah sheniyah* at the time of Ezra currently possess *kedushas ha’Aretz* (sanctity of the Land). Thus, the boundaries acceptable for conferring *semichah* should have been limited to the areas settled by the *olei Bavel*, for only that land has *kedushas ha’Aretz*.

The *Radvaz*, quoting the *Kaftor VaFerach*, explains the *Rambam* by distinguishing between two distinct aspects of the uniqueness of Eretz Yisrael. Using the terminology of Rav Soloveitchik, Eretz Yisrael possesses a *kedushas ha’Aretz*, necessary for the application of the *mitzvos hateluyos ba’Aretz* (agricultural *mitzvos*) such as *terumos* and *ma’asros*. In addition, we recognize the concept of *shem Eretz Yisrael* (**status** of Eretz Yisrael). The *Rambam* in this ruling teaches that the *shem Eretz Yisrael* applies to any land that was once endowed with *kedushas ha’Aretz*, even if it no longer possesses that *kedushah*. It is specifically in the land that possesses a *shem Eretz Yisrael* in which the primary *tziruf* of the *tzibbur* of *Klal Yisrael* exists and in which *semichah* may be conferred. [See *Nefesh HaRav*, pp. 79-82.]

According to the *Ritva* (*Gittin* 2a, in contrast to the opinion of *Tosfos*, s.v. *v'Ashkelon*), it seems that this is the definition of Eretz Yisrael relevant for the *mitzvah* of *yishuv ha'Aretz* (settlement of the Land) as well. The *Ritva* writes that it is possible that Acco was not settled by Ezra and was not endowed with *kedushah sheniyah*. Yet, it still would be suitable for the fulfillment of the *mitzvah* of *yishuv ha'Aretz*, because it possesses a *shem Eretz Yisrael*. [See *The Journal of Halacha and Contemporary Society* VIII, pp. 20-23.]

The *Rambam* proves that Eretz Yisrael serves as the *metzaref* of *Klal Yisrael* from the *Gemara* in *Horayos* (3a) describing the *korban* פֶּר הָעֵלָם דְּבַר שֶׁל צִיבּוּר (bull for the communal error). This is a special *korban* brought on behalf of the congregation as a whole when a majority violates a serious *din* based on a mistaken ruling of the *Sanhedrin*. The *Gemara* explains that for the purposes of this *korban*, we define the majority based on those Jews living in Eretz Yisrael, not the majority of world Jewry. Jews living outside of Eretz Yisrael are simply not considered to be part of the *kahal* of *Klal Yisrael*.

The *Avnei Nezer* (*Orach Chayim* 314:4) writes that this idea is implicit in the *Rambam's Sefer HaMitzvos* (*Mitzvos Aseh* 153). The *Rambam* writes that *kiddush hachodesh* (the sanctification of the month) and *ibbur hashanah* (the intercalation of the year) are functions that the *Sanhedrin* may only perform in Eretz Yisrael. He adds that if a Jewish presence were ever to cease to exist in Eretz Yisrael, חֲלִילָה לְקַל מַעֲשוֹת זֹאת – “G-d should forbid this from occurring,” we would simply be unable to establish a day as Rosh Chodesh (and, by extension, Yom Tov) based on the calculations of Jews in *Chutz La'Aretz*, because this function must be done by the *kahal* of *Klal Yisrael*.

The *Minchas Chinuch* (*Kometz Minchah*, *Mitzvah* 284) presents a similar explanation of the *Gemara* in *Megillah* (14a), which teaches that we do not recite *Hallel* on Purim because the *nes* occurred outside of Eretz Yisrael. He suggests that the Jews

outside of Eretz Yisrael, though they may be numerous, are only considered *yechidim* (individuals), and *Hallel* may be only enacted on behalf of a *nes* that occurs to *Klal Yisrael* as a whole.

The *Minchas Chinuch* derives this from the response of Rebbi to the residents of Ninveh, as recorded in the *Gemara* in *Ta'anis* (14b). The residents of Ninveh needed to pray for rain in the summertime, so they asked Rebbi whether to insert the request in the *berachah* of *Shome'ah Tefillah*, the appropriate place for **personal** requests, or in the *berachah* of *Birchas HaShanim*, the appropriate place for such a **communal** request, since it was an entire city that required rain. Rebbi ruled that the request of the entire city should be compared to an individual's request, since the city was in *Chutz La'Aretz*.

Furthermore, the *Minchas Chinuch* understands the rule (*Ta'anis* 12b), אין תענית צבור בבבל – “There is no public Fast Day in Bavel (with the exception of Tish'ah B'Av, with the stringencies of fasting on the night of the fast and abstaining from the wearing of leather shoes),” as a manifestation of this principle that the residents of *Chutz La'Aretz* have the status of *yechidim*. This is why the *Gemara* in *Pesachim* (8b) learns from the *passuk*, ולא יחמוד איש את ארצך בעלותך לראות את פני ד' אלקיך שלש פעמים בשנה – “No man will covet your land when you go up to appear before Hashem, your G-d, three times a year” (*Shemos* 34:24), that one who does not own land in Eretz Yisrael is not obligated in *aliyah laregel*. [*Tosfos* in *Pesachim* (3b, s.v. *mei'alyah*) goes even further, suggesting that such a person is exempt from bringing the *Korban Pesach* as well.] *Aliyah laregel* is a חובת הציבור, and one who lives in *Chutz La'Aretz* is not included in **the tzibbur**.

This is similarly why the *Gemara* in *Sanhedrin* (43b) teaches us that the *din* of *arous* (guarantorship) only began once *Bnei Yisrael* crossed the Yarden. With entry into our National Homeland, we became a *tzibbur*, such that every Jew bears responsibility for the actions of his fellow Jew.

This, then, is the full connotation of **ואעשך לגוי גדול**. Now that Avraham Avinu will be given Eretz Yisrael as a **National Homeland**, the nation of *Klal Yisrael*, with the special status of **גוי**, could emerge.

[See essays for *Parshas Bo* and *Parshas Ki Savo*; *Eretz HaTzvi*, pp. 118-123; *B'Ikvei HaTzon*, p. 209; *The Journal of Halacha and Contemporary Society* XVI, pp. 78-79.]

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## PARSHAS VAYEIRA

# THE AKEIDAH

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THE RAMBAM writes in *Moreh Nevuchim* (3:24) that the Torah records the story of the *Akeidah* in order to emphasize the clarity of the prophecies of the *nevi'im*. Although other *nevi'im* did not reach the level of *nevu'ah* of Moshe Rabbeinu, which is termed *אספקלריא המאירה* (a “clear glass” vision), their *nevu'ah* was not at all ambiguous. Avraham Avinu would certainly not have been prepared to sacrifice his son had his *nevu'ah* not been totally clear! Even though the *nevi'im* received prophecies through dreams and visions, they recognized them to be undoubtedly clear, with the vividness of something experienced physically.

We may wonder how to reconcile these words of the *Rambam* with the comment that *Rashi* cites from the *Midrash* (*Bereishis* 22:12):

Avraham said to [Hashem], “I will set my words before You. Yesterday, You said to me, *כי ביצחק יקרא לך זרע* - ‘Since through Yitzchak will offspring be considered yours.’ And You subsequently said, *קח נא את בנך* - ‘Please take your son [and bring him up there as an offering].’ Now, You say to me, *אל תשלח ידך אל הנוער* - ‘Do not send forth your hand at the lad.’ [How am I to reconcile these statements?]” The Holy One, Blessed be He, said to him, “When I said to you, ‘Take,’ I did not say to you, ‘Slaughter him,’ but rather, ‘Bring him up.’ You have brought him up. [Now,] take him down.”

According to this *Midrash*, it seems as though Avraham misunderstood this *nevu'ah*, whereas according to the *Rambam*,

the *Akeidah* teaches us how clear and truthful the various prophecies were to the *nevi'im*!

Rav Chaim Soloveitchik (*Chiddushei HaGri"z MiPi HaShmu'ah Al HaTorah, siman 18*) notes that the command, והעלהו – “Bring him up,” merely connotes the *kiddush* (sanctification) of Yitzchak as a *Korban Olah* (Burnt Offering). This *nevu'ah* was indeed clear to Avraham, who obeyed *Hashem's* command and proceeded to sanctify Yitzchak as a *korban*. Avraham assumed **on his own** that something sanctified as a *korban* should also be offered as such, just as an animal that is found in the absence of its owner but known to have been sanctified as a *korban* must be offered in the name of its owner (*Shekalim 7:4*). This *halachah* was **not** part of the *nevu'ah*. Therefore, the subsequent *nevu'ah* was necessary to explain to Avraham that in this particular case, this *halachah* would not apply. Rather, *Hashem* explained, Avraham was to perform the *avodah* of Yitzchak upon the “ram, caught in the thicket by its horns” (*Bereishis 22:13*), instead of upon Yitzchak himself.

This is why *Chazal* understood that Yitzchak in fact attained the full status of a *Korban Olah*. Commenting on the *passuk*, וזכרתי את בריתי יעקוב ואף את בריתי יצחק ואף את בריתי אברהם אזכור וזכרתי את בריתי יעקוב ואף את בריתי יצחק ואף את בריתי אברהם אזכור – “I will remember My covenant with Ya'akov, and also My covenant with Yitzchak, and also My covenant with Avraham will I remember, and I will remember the land” (*Vayikra 26:42*), *Rashi* quotes the *Midrash*:

Why was “remembering” not stated with reference to Yitzchak? Rather, [“remembering” is not necessary in the case of Yitzchak, because] the ashes of Yitzchak appear before Me, gathered up and placed on the *mizbe'ach*.

How are we to understand the reference to Yitzchak's ashes if Yitzchak ultimately was not offered as a *korban*? Apparently, although Yitzchak himself was not physically offered, the ashes of the ram, which was offered in his place, were considered to be “the ashes of Yitzchak.”

Similarly, when there was a famine in the land, *Hashem* told Yitzchak, “Do not descend to Mitzrayim, for you are a blemish-free offering, and [territory] outside the Land [of Israel] is not worthy of you” (*Rashi, Bereishis 26:2*). At first glance, this is also difficult to understand, as the disqualification of removing a *korban* from a more sanctified area to a less sanctified area only applies **after** the *shechitah* of the animal. Since Yitzchak was never slaughtered, why was he considered a *korban* that could not leave Eretz Yisrael?

Apparently, the *shechitah* of the ram was considered on some level a *shechitah* of Yitzchak, giving him the elevated status of a **post-shechitah korban**. This is the meaning of the *passuk*, ויעלהו לעולה תחת בנו – “And [Avraham] offered [the ram] up as an offering **instead** of his son” (*Bereishis 22:13*). The ram did not merely serve as a physical replacement for Yitzchak, but also as an actual embodiment of Yitzchak himself. It is for this reason that, to this day, *Klal Yisrael* invokes the merit of the *Akeidah* when we pray on Rosh Hashanah: ועקדת יצחק לזרעו היום ברחמים תזכור – “And may You mercifully remember today the *Akeidah* of Yitzchak for the sake of his offspring.”

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## PARSHAS CHAYEI SARAH

# JEWISH BURIAL

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**A**FTER SARAH'S passing, Avraham Avinu purchased *Me'aras HaMachpeilah* as her burial plot. The Jew lives differently, dies differently, and is even buried differently. The Torah formulates the *mitzvah* to bury the dead in the context of the *passuk* that refers to a person executed by *beis din*: **כִּי קִבּוּר תִּקְבְּרֵנוּ בַיּוֹם הַהוּא כִּי קָלְלַת אֱלֹקִים תְּלוּי** (Devarim 21:23). *Rashi* explains that a hanging body constitutes "a degradation of the King, for man is made in the likeness of His image, and *Yisrael* are His children." *Rashi's* interpretation alludes to an important point. The *passuk* does not mean that since all humans, including non-Jews, are created **בְּצֶלֶם אֱלֹקִים** (in the image of G-d), it would be considered a "curse of G-d" to leave the body uninterred, for the obligation to bury the dead is limited to **Jewish** bodies. Rather, the *passuk* refers to the more enhanced level of "the image of G-d" possessed only by Jews, referred to as **בְּנֵי מִלְּקוֹם** - "sons of the Omnipresent" (*Avos* 3:14).

Since the *passuk* could have been read to include even non-Jewish bodies in the burial obligation, as they too were created in the Divine image, what was the basis of *Chazal's* differentiation between Jewish and non-Jewish bodies in regard to *kevurah*?

Perhaps the explanation is based on the distinction between religious articles that are **תשמישי קדושה** (accessories to sacred items) and those that are **תשמישי מצוה** (objects used for the performance of a *mitzvah*) (*Megillah* 26b). Objects in the former category, such as *sefer Torah* mantles and *tefillin* bags, must be buried in *genizah* (an archive) when they become unfit for use, since their *kedushah* remains intact. In contrast, objects in the latter category, such as a *lulav*, *shofar*, or *tzitzis*, may be discarded when they become unusable, since the object's *kedushah* no longer exists.

The *Nefesh HaChayim* (*sha'ar 4, perek 30*) explains that the criterion to determine which category a religious article belongs to is whether it contains or services **written words of Torah**. This is because the root source of all *kedushah* is *Hashem* Himself, and the words of Torah are considered to be a description of His Divine Essence. This is why a *sefer Torah* has more *kedushah* than *tefillin*, and *tefillin* has more than a *mezuzah*; the object with a greater amount of written Torah has a greater degree of *kedushah*. Even within the category of *tefillin*, the *shel rosh* has more *kedushah* than the *shel yad*, as it contains the additional letter "ש" on the outside of its *bayis*. The *Rambam* (*Hilchos Sefer Torah* 10:10) writes that the *Aseres HaDibros* engraved on the original *luchos* were the very same as those that are written in every *sefer Torah*, implying that the "Author's copy" of the original *luchos* themselves, although they would be priceless, would not have any more *kedushah* than any *sefer Torah*. On the contrary, a *sefer Torah* would have **more** *kedushah* than the *luchos* because of the greater amount of words of Torah it contains!

The same analysis applies to the physical body as well. In the case of non-Jews, whose bodies enable them to perform the seven Noachide *mitzvos*, the physical body falls into the category of **תשמישי מצוה**. Although fully deserving of respect while still able to perform the *mitzvos*, these objects lose their *kedushah* when they become unfit for use, that is, upon death.

In contrast, the body of the Jew, which is infused with words of Torah learning, falls into the category of **תשמישי קדושה**. These objects, even when they become unusable, never lose their *kedushah* status and require *genizah* in the form of proper burial.

Even the body of a non-observant Jew, through which Torah learning never flowed during his lifetime, was still exposed to words of Torah. The *Gemara* in *Niddah* (30a) indicates that a *mal'ach* teaches the entire Torah to every Jewish fetus. Although the newborn child does not consciously remember the Torah studied in utero, that study still makes a subconscious impression, and this is what endows every Jewish soul with the status of **גופיה קדושה** (the sacred item itself) and every Jewish body with the status of **תשמישי קדושה**.

Rav Soloveitchik expanded upon the principle that the status of *kedushah* may only be attained through the incorporation of words of Torah in analyzing the source of the *kedushah* of the *Beis HaMikdash*. He explained that the *kedushah* of the *Beis HaMikdash* flowed from the words of Torah written upon the *luchos* that were inside the *aron*.

Thus, the *Mishkan* was called **משכן העדות** because it contained the **לוחות העדות**. This is why the *Rambam* (*Hilchos Beis HaBechirah* 4:1) adopted the opinion that during the time of the Second *Beis HaMikdash*, the *aron* with the *luchos* remained situated within the *Beis HaMikdash*, albeit in an underground vault originally designated by Shlomo HaMelech for this purpose. The *Rambam* apparently maintained that the Tannaitic dispute on this matter was not simply a matter of historical interest, but one with halachic ramifications. If the *luchos* would not have been housed within the *Beis HaMikdash*, *kedushas Beis HaMikdash* could not rest upon it.

Similarly, Rav Soloveitchik maintained, based on the wording of the *Rambam* (*Hilchos Tefillah* 11:2), that a room used for communal *tefillah* on a regular basis but which does not contain

a place to house a *sefer Torah* cannot achieve the status of *kedushas Beis HaKnesses*. [See *Eretz HaTzvi*, pp. 89-92.]

Rav Soloveitchik similarly noted this point in the context of his discussion of the source of *kedushas Eretz Yisrael* (*Shiurim LeZecher Abba Mari Z"l I*, 1983 ed., pp. 169-178). He asked, if the source of all *kedushah* is words of Torah, were there words of Torah written on the trees and mountains of Eretz Yisrael? The Rav explained that when the first *kiddush* (sanctification) was effected in the days of Yehoshua bin Nun, it was not the conquest of the Jewish Army that enabled the sanctification. Rather, it was the *aron habris* containing the words of Torah engraved upon the *luchos*, which served to conquer, and thus to sanctify, the land.

Given that the first *kiddush* of the land by Yehoshua was nullified upon the first *galus* (*Rambam, Hilchos Beis HaBechirah* 6:16), what led to the second *kiddush* of the land in the days of Ezra? It would seem that while the first *mekadesh* of Eretz Yisrael, was the Torah *SheBichsav*, as represented by the *luchos* inside the *aron*, the second *mekadesh* was the Torah *SheBe'al Peh*. This is based on the rabbinic tradition that the Purim miracle occurred shortly before the rebuilding of the Second *Beis HaMikdash*. The *Gemara* in *Shabbos* (88a) tells us that upon the occasion of that miracle, there was a communal re-dedication to the Torah, and the *Midrash Tanchuma* (*Parshas Noach* 3) teaches that this refers specifically to an acceptance of Torah *SheBe'al Peh*. It was through the medium of the words of Torah *SheBe'al Peh* that *kedushah* rested upon Eretz Yisrael this second time, and to this very day.

[See *MiPninei HaRav*, 2001 ed., pp. 335-337.]

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PARSHAS TOLDOS  
GENUINE *MASORAH*

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ויחפור את בארות המים אשר חפרו בימי אברהם אביו ... ויקרא להן שמות  
כשמות אשר קרא להן אביו.

And [Yitzchak] dug anew the wells of water that they had dug in the days of Avraham his father ... and he called them by the same names that his father had called them. (*Bereishis* 26:18)

**R**AV SOLOVEITCHIK (see also *HaKesav VeHaKabbalah*, based on a source in the *Zohar*) explained that the connotation of this *passuk* is that Yitzchak followed the exact *masorah* (tradition) of his father. This is why earlier in the *parsha*, when there was a famine in the land, Yitzchak traveled to Gerar, intending to dwell in Mitzrayim, just as his father had done earlier.

*Rashi* (26:2) cites the *Midrash* that *Hashem* said to Yitzchak, "Do not descend to Mitzrayim, for you are a blemish-free offering, and [territory] outside the Land [of Israel] is not worthy of you." *Hashem* was explaining to Yitzchak that by going to Mitzrayim, he was, in fact, **not** following in the footsteps of his father. Following the incident of the *Akeidah*, Yitzchak had attained the *kedushah* of a *Korban Olah* (Burnt Offering) and was not permitted to leave Eretz Yisrael. This restriction was unique to Yitzchak and never applied to Avraham, who was permitted to leave Eretz Yisrael.

People often believe that by acting in the same way as their ancestors, they are following their *masorah*. However, if the

circumstances have changed, performing the same act is not necessarily following the same tradition. Yehoshua bin Nun was most certainly a loyal student of Moshe Rabbeinu. Upon conquering Yericho, he placed a *cherem* (ban) upon the spoils captured in that battle, just as his teacher Moshe had done earlier after his battles. When Achan violated the *issur* of the *cherem*, the punishment for which was the defeat of the Jewish Army in Ai, *Hashem* chastised Yehoshua, saying, "You caused [this calamity to befall] them" (*Sanhedrin* 44a).

The *Acharonim* wonder about Yehoshua's guilt in this regard, for he apparently was simply following the tradition of his teacher. The *Maharsha* explains that by the time of Yehoshua, circumstances had changed. Once *Bnei Yisrael* had crossed the Yarden, the *din* of *arvus* (guarantorship) had become operational, placing blame upon the entire community even if an individual were to violate the *cherem*. In the current situation, even Moshe, Yehoshua's teacher, would not have placed such a *cherem*. Although Yehoshua had intended to duplicate the exact practice of his great teacher, he was, in fact, deemed responsible for deviating from the proper procedure given the current reality. [See *B'Ikvei HaTzon, Pesichah*, pp. 1-2.]

The *halachah* is that one who forgets the insertion of *Ya'aleh VeYavo* in the *Shacharis Shemoneh Esrei* of Rosh Chodesh must repeat the *Shemoneh Esrei*. Rav Chaim Soloveitchik understood that the reason for the repetition is in order to fulfill the obligation to praise *Hashem* (within each one of the day's various timeframes) for the day's particular quality, in this case by invoking the status of Rosh Chodesh (*Berachos* 40a). The repetition is **not** necessary in order to fulfill his obligation to recite a **valid** *Shemoneh Esrei*, for we find that if the *shali'ach tzibbur* makes a similar error, he need not repeat the *chazaras hashatz*, but may rely on the fact that he will recognize the day as Rosh Chodesh when he davens the *Mussaf Shemoneh Esrei* (*Rashi, Berachos* 30b, based on *Behag*). If a *Shemoneh Esrei* with-

out *Ya'aleh VeYavo* were to be deemed **invalid**, such a dispensation for the sake of *tircha detzibbura* (public inconvenience) would be impossible. Rather, argued Rav Chaim, the requirement of offering a valid *Shemoneh Esrei* per se has already been fulfilled even in the absence of *Ya'aleh VeYavo*. When the *Shemoneh Esrei* is repeated, it is really a rabbinic dispensation, **allowing** one to offer a *tefillas nedavah* (voluntary prayer) so as to be able to fulfill a different obligation – to recognize the day's status as Rosh Chodesh.

If so, Rav Chaim continued, the proper practice would be different nowadays, when, due to our inadequate concentration during *Shemoneh Esrei* in general, we shy away from offering *tefillas nedavah*. Nowadays, even an individual who forgot *Ya'aleh VeYavo* in *Shacharis* should act in accordance with the practice of the *shali'ach tzibbur* and rely on the fact that he plans to mention Rosh Chodesh in the *Mussaf Shemoneh Esrei* (during the morning *tefillah* timeframe), rather than rely on the dispensation to offer a *tefillas nedavah* and repeat his *Shacharis Shemoneh Esrei*. Here, the **halachah** has not changed, for the Torah is a representation of *Elokus* (G-dliness) and *Hashem* Himself, of course, never changes. Rather, the required action of the one who forgot *Ya'aleh VeYavo* has changed because the **circumstances** have changed, as now the offering of a *tefillas nedavah* is generally not recommended. [See *Eretz HaTzvi*, pp. 43-44.]

In a similar application of the above principle, the *Shulchan Aruch* (*Yoreh De'ah* 102:3) rules that if a pot that requires *kashering* became mixed with many kosher pots, one is not required to perform *hag'alah* (scalding with water) to *kasher* all the pots in question, for we are able to rely on *bittul berov* (nullification in a majority). The pot is not considered to be a **דבר שיש לו מתירין** – something that has a ready method to make it permissible (in this case, through *kashering*) – which would disallow reliance on *bittul berov*, due to the great expense

involved in undertaking the *hag'alah* of so many pots. Rav Soloveitchik pointed out that nowadays, due to the rather inexpensive nature of heating water for *hag'alah*, one would indeed be obligated to *kasher* all the pots in question. The application of the previously held *halachah* has changed due to a changed set of circumstances.

Rav Shimon Schwab *zt"l* once made the following observation when he saw someone who, in preparation for *tefillah*, removed his necktie, tying it around his waist to be used in place of the customary *gartel*. The donning of the *gartel*, a sash worn around the waist, is a fulfillment of the *passuk*, *ישראל* הכון לקראת אלקיך ישראל - "Prepare to greet your G-d, *Yisrael*" (*Amos* 4:12). Rav Schwab felt that nowadays, the more appropriate way to fulfill that *passuk*, and in fact to **preserve** the *masorah* of his community, would be to don a **necktie** prior to *tefillah*. Thus, in thinking he was fulfilling the custom of his ancestors by replacing his necktie with a *gartel*, the man was actually forfeiting the fulfillment of that very practice!

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## PARSHAS VAYEITZEI

# JEWISH HISTORY

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והנה סולם מצב ארצה וראשו מגיע השמימה והנה מלאכי אלקים עולים ויורדים בו.

And behold, a ladder was set earthward and its top reached heavenward; and behold, angels of *Hashem* were **ascending and descending** on it. (*Bereishis* 28:12)

**C**HAZAL (*Bereishis Rabbah* 68:21; *Pirkei DeRebbi Eliezer* 35, cited by *Ramban*) find this description in Ya'akov's dream difficult, as we usually visualize the *mal'achim* as residing in *shamayim*, and as such, we would have expected Ya'akov to first see the *mal'achim* **descend** and then **ascend**.

The *Midrash* suggests that these *mal'achim* represent the guiding ministers appointed to attend to the affairs of their respective nations (as mentioned in *Daniel* 10:20), and the description "ascending and descending" refers to the rise and fall of the Four Kingdoms. *Hashem* showed this to Ya'akov as one of the Founding Fathers of the Jewish Nation, promising him that his nation's fate would not rest in the hands of the *mal'achim*; *Klal Yisrael* would be "the portion of *Hashem*." *Hashem* would always be with Ya'akov and with the Jewish People, as He said, וְהָנָה אֲנִי עִמָּךְ וְשָׁמַרְתִּיךָ בְּכֹל אֲשֶׁר תֵּלֵךְ - "Behold, I am with you; and I will guard you wherever you go" (*Bereishis* 28:15).

The *Ramban* explains that if one analyzes the history of any civilization, he will find a predictable rise and fall, domination

followed by utter demise. The Jewish Nation, however, is *למעלה מן הטבע* (above nature) and its history is solely dependent upon *mitzvah* observance. The *Ramban* considers this rule of *אין מזל לישראל* (there is no constellation associated with *Yisrael*), the idea that *Bnei Yisrael* are not subservient to the dominion of the stars and constellations, as one of the *ikarei ha'emunah* (Principles of Faith). The fate of every other country is governed by the rules and regulations of history, but that of the Jewish Nation is not.

When *Hashem* brought Avraham outside, *ויוצא אותו החוצה* (*Bereishis* 15:5), *Chazal* explain that *Hashem* was telling him, "Go out from your astrology, through which you have seen, through the signs of the zodiac, that you are not destined to bear a son" (*Rashi*). *Hashem* was saying, "Abandon your astrological calculations, for your history will be 'above nature.'" Rav Soloveitchik noted that if one were to draw a chart outlining Jewish history, it would be represented by multiple cycles of peaks and troughs, not by one predictable rise and fall, as in the case of the other nations. Indeed, it is **not** natural that, as spelled out in the Torah, we will continue to reside in Eretz *Yisrael* only if the *shemittah* is observed, or that we may expect rainfall in its season only if we properly perform the *mitzvos*.

The *Netziv* (*Ha'amek Davar*, *Shemos* 12:2) expands upon this concept. The *Mishnah* in *Rosh Hashanah* (1:1) teaches that for the purpose of dating documents, Jewish kings count their years starting from the month of Nissan, while non-Jewish kings date their reign from Tishrei. The *Netziv* explains that regarding non-Jews, who follow the **natural** rules of history, Tishrei is the appropriate month to use as their starting point, since all of Nature began in Tishrei with the act of Creation. In contrast, the Jewish Nation follows a **supernatural** pattern, exemplified by the miraculous events surrounding *yeti'as Mitzrayim* in Nissan. This month, therefore, is the appropriate first month

of the year for *Klal Yisrael*. This explains why only Jewish kings mark the beginning of their reign from Nissan.

The *Radak* explains the *issur* of *gid hanasheh* in a similar fashion. על כן לא יאכלו בני ישראל את גיד הנשה ... כי נגע בכף ירך יעקב בגיד הנשה – “Therefore, *Bnei Yisrael* are not to eat the *gid hanasheh* ... because [the angel] struck Ya’akov’s hip-socket on the *gid hanasheh*” (*Bereishis* 32:33). Ya’akov’s struggle with the angel teaches us the principle that although the nations of the world have been interested in annihilating the descendants of Ya’akov for centuries, *Bnei Yisrael* will always prevail, albeit in a somewhat damaged state. The forces of nature represented by the angel will never succeed, because when טבע (nature) comes into conflict with a force that is למעלה מן הטבע, the latter will prevail. Thus, the *issur* of *gid hanasheh* ingrains within us belief in the Principle of Faith that *Bnei Yisrael* are truly “above nature.” Indeed, the *passuk*, עם זו יצרתי לי תהלתי יספרו – “This people which I fashioned for Myself, that they might declare My praise” (*Yeshayah* 43:21), teaches that there was a **separate creation** for *Bnei Yisrael*, apart from the creation of the rules of nature that govern the rest of the world.

On Rosh Hashanah, the *krias haTorah* containing the *Akeidah* concludes with five *pessukim* that present the genealogy of the family of Avraham’s brother, Nachor. The simple explanation for why we include these additional *pessukim* is that they are necessary to allow for the requisite fifth *aliyah* of this day. Rav Soloveitchik, however, suggested a deeper meaning behind the inclusion of these *pessukim*. Perhaps we want to contrast Jewish history with the history of non-Jews. These *pessukim* describe how Nachor’s family established itself, with apparent ease, with marriages and births proceeding along a natural course of events. In contrast, Avraham’s family development followed a different course. First, both he and Sarah were infertile, not having children until an advanced age. [Indeed, the *Gemara* in *Yevamos* (64a) tells us that all of the *Avos* were *akurim* (unable to

bear children).] Then their only child was almost taken from them during the *Akeidah*. Every step in the emergence of *Klal Yisrael* was accomplished through its rising to the challenge of difficulty and *nisayon*, because the course of *Klal Yisrael's* history is *למעלה מן הטבע*. According to the rules of nature, *Klal Yisrael* should not exist.

This may well explain the mysterious phenomenon of anti-Semitism, which has existed throughout the ages but the cause of which has not been satisfactorily explained by sociologists. As can be seen in the case of organ transplantation, a body naturally rejects foreign objects. *Klal Yisrael*, which is a distinct *למעלה מן הטבע* creation of *Hashem*, is incongruous with the natural system by which the rest of the world operates. We can therefore understand why it would be natural for the nations of the world, which are part of *טבע*, to reject the “foreign body” of *Klal Yisrael*.

The *Midrash (Shemos Rabbah 15:26)*, commenting on the *passuk*, *החודש הזה לכם ראש חדשים* – “This month shall be for you the beginning of the months” (*Shemos 12:2*), depicts the cyclical nature of Jewish history. The Jewish Nation uniquely follows a lunar monthly calendar, and, as such, the moon is representative of Jewish history. The moon gradually increases in size over the first fifteen days of the month and then gradually decreases over the next fifteen days, only to become invisible until it reappears as a New Moon.

Similarly, there were fifteen generations from Avraham until Shlomo HaMelech, whose rule is considered to be the period of a “full moon” – a time of abundant peace, wealth, Divine Presence in the *Beis HaMikdash*, and a united kingdom comprised of all twelve *shevatim*. From that time on, the kingship gradually became weaker, first as a divided kingdom, until fifteen generations later, *ואת עיני צדקיהו עור* – “[The King of Bavel] blinded Tzidkiyahu’s eyes” (*Yirmiyah 39:7*). We now find ourselves within the period of the moon’s invisibility, the

time of “the blinded eyes of Tzidkiyahu,” the last Davidic king of the First *Beis HaMikdash* period. This period will conclude with the reappearance of the moon, the re-establishment of the Davidic dynasty with *Melech HaMashiach*.

Rav Soloveitchik felt that the resurgence of *malchus Beis Dovid* is the main message of the *haftorah* of “*Machar Chodesh*,” read on the Shabbos that immediately precedes Rosh Chodesh. One of the considerations motivating *Chazal* to institute the reading of the *haftorah* was the goal of strengthening belief in the future Messianic days, as articulated in the *berachah* of *Magen Dovid* recited after the reading of the *haftorah*. The time in which we live, the period of the moon’s invisibility, is analogous to a time of “*machar Chodesh*” – “**tomorrow** is the New Moon,” when we eagerly await the moon’s reappearance. Just as the *haftorah* describes Dovid’s salvation from the aggression of Sha’ul Ha-Melech, leading to the realization of the fulfillment of *malchus Beis Dovid*, we too anticipate a time of renewal, for, as we recite in the *berachah* of *Kiddush Levannah*, *Bnei Yisrael* “are destined to renew themselves like [the moon]” – שהם עתידים להתחדש כמותה”

In *Parshas Vayetzei*, in reference to the unique pattern of the history of the Jewish Nation, *Hashem* assured Ya’akov, והנה אנכי עמך ושמרתך בכל אשר תלך. This points to the special *hashgachah pratis* afforded those who are closer to *Hashem*. That is why a righteous individual enjoys more direct Divine protection, as רגלי חסידיו ישמור – “He guards the steps of His devout ones” (*Shmuel I* 2:9), as well as a stricter degree of Divine retribution, as הקב”ה מדקדק עם סביביו כחוט השערה – “The Holy One, Blessed be He, is exacting with those who surround Him to a hairsbreadth” (*Yevamos* 121b). In the same way, in the context of Ya’akov’s dream, *HaKadosh Baruch Hu* guaranteed Ya’akov that the Jewish Nation would always have this extra *hashgachah pratis*, even when in *galus*. Indeed, without this protection, the Jewish Nation would have disappeared a long time ago. *Hashem* promised that He would descend with us

into *galus*, and that upon its conclusion, He will not merely return the Jewish People to their land, but that He will return **with** them to their land.

The *mekuballim* understood this concept of *galus haShechinah* as analogous to the *halachah* that when a student is sent to an *ir miklat* (city of refuge) after committing an unintentional murder, his *rebbe* accompanies him there to provide for a pleasant life for his student (*Makkos* 10a). This is based on the *passuk*, **וְחָי** הוא ינוס אל אחת הערים האלה וחי – “he shall flee to one of these cities and **live**” (*Devarim* 19:5). *Galus* is not meant to be a place of utter despair and suffering; the exile of the *rebbe* provides for a pleasant life for his student, albeit in *galus*. On the whole, Jews have been successful wherever they have settled, and this is because throughout the *galus*, the *Shechinah* has always been with us.

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PARSHAS VAYISHLACH  
THE DEFINITION OF *MITZVAH*

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THE *GEMARA* records a *machlokes* among the *Tanna'im* regarding the *issur* of *gid hanasheh* (*Chullin* 100b, 101b). According to Rebbi Yehudah, the *gid hanasheh* prohibition is “from the sons of Ya’akov.” The *Chachamim* responded, “It was stated at Sinai, but it was written in its place [in the Torah].” *Rashi* understands that the argument revolves around **when** this *issur* took effect. The *passuk* states, על כן לא יאכלו בני ישראל את גיד הנשה ... כי נגע בכף ירך יעקב בגיד הנשה – “Therefore, *Bnei Yisrael* are not to eat the *gid hanasheh* ... because [the angel] struck Ya’akov’s hip-socket on the *gid hanasheh*” (*Bereishis* 32:33). Rebbi Yehudah holds that the subject, *Bnei Yisrael*, posits an *issur* specifically upon the children of Ya’akov, as Ya’akov’s name would soon be changed to Yisrael. The *Chachamim* maintain that the term “*Bnei Yisrael*” refers to the Jewish Nation, not to the children of Ya’akov themselves. According to this opinion, the *issur* began only at *Matan Torah*; the Torah includes this *passuk* here only to provide the proper historical context for the subsequent *issur*.

The *Rambam* (*Peirush HaMishnayos*, *Chullin* 7:6), however, suggests a different understanding, writing that “one should take to heart the great principle included in this *Mishnah*.” Elsewhere (*Hilchos Melachim* 9:1), he quotes the *Midrash* (*Shemos Rabbah* 30:9; *Shir HaShirim Rabbah* 1:16), which outlines the following historical order of commandments. Initially, *Hashem*

commanded Adam to observe six of the *mitzvos Bnei Noach*. Since mankind was prohibited from eating meat until the *mabul*, the *issur of eiver min hachai* (consuming a limb of a living animal) only took effect at that time. Later, Avraham received the *mitzvah* of *bris milah*, Yitzchak the opportunity to separate *ma'asros* (that the separation is effective), and Ya'akov the prohibition of *gid hanasheh*. Since, in this view, Ya'akov himself received the *issur* of *gid hanasheh*, the argument among the *Tanna'im* must be understood differently than *Rashi* had presented it. According to the *Rambam*, the disagreement instead pertains to the **binding nature** of the *issur* of *gid hanasheh*. The *Tanna'im* dispute whether we observe this *issur* today because it was given to Ya'akov, or solely because of its repetition at *Matan Torah*.

The latter view, which is the majority opinion, reflects the "great principle" mentioned by the *Rambam*, according to which any command given to a *navi* other than Moshe Rabbeinu may only be temporary in nature, a *hora'as sha'ah*. In contrast to *hora'as sha'ah*, "*mitzvah*" is a technical term that connotes the fact that the *din* remains in effect throughout all future generations. This is consistent with the comment of *Rashi* (*Vayikra* 6:2), "[The word] צו (command) expresses urging for the immediate moment and for future generations." A מצוה, as such, may only be relayed through the *nevu'ah* of **Moshe**.

We derive this principle from the concluding *passuk* of *Sefer Vayikra*, אלה המצות אשר צוה ד' את משה אל בני ישראל בהר סיני – "These are the *mitzvos* that Hashem commanded Moshe to Bnei Yisrael on Har Sinai" (*Vayikra* 27:34), which *Chazal* understand as teaching that אין נביא רשאי לחדש דבר מעתה – "A *navi* is not permitted to introduce anything new from now on" (*Megillah* 2b). Similarly, continues the *Rambam*, we observe the *mitzvah* of *bris milah* today, not because it was given to Avraham, but because it was repeated to Moshe. [According to the *Rambam*, the *pessukim* in the section of *bris milah* in *Parshas Lech Lecha* that apply to future generations were not told to

Avraham, but were added on later, when *Hashem* dictated the Torah to Moshe.]

The *Sifrei*, cited by *Rashi* in the beginning of *Parshas Mattos* (*Bamidbar* 30:2), teaches us the following difference between the *nevu'ah* of Moshe and that of the other *nevi'im*. Other *nevi'im* prophesied with the phrase *כה אמר ד'* - "So said *Hashem*," but Moshe, uniquely, prophesied using the phrase *זה הדבר* - "This is the word that *Hashem* has commanded."

The *Kedushas Levi* (*Shemos* 11:4) explains that the other *nevi'im* perceived a vision in a dream, which they then interpreted using the *ruach hakodesh* that rested upon them, in their own language and from their own perspective. They introduced their *nevu'ah* with *כה אמר ד'* because their *nevu'ah* reflected the general message that *Hashem* showed them, but was not transmitted in the actual words of *Hashem*. This is why two *nevi'im* would never prophesy using the same language (*Sanhedrin* 89a). Even if two *nevi'im* would be shown the exact same vision, they would each interpret it from their unique perspective, using their own language.

In contrast, Moshe's *nevu'ah*, introduced with *זה הדבר*, consisted of an exact dictation given to him by *Hashem*, word for word and letter for letter. *Chazal* call this *אספקלריא המאירה* - a "clear glass" vision. Since his *nevu'ah* contained *אותיות ונקודות* (precise letters and vowels) there was no need for his personal commentary and explanation. This is what *Chazal* mean when they state that *שכינה מדברת מתוך גרונו* - "the *Shechinah* was speaking from inside his throat." Moshe's *nevu'ah* to *Bnei Yisrael* did not involve his own interpretation, or even his own powers of communication. He was simply a conduit through which the words of *Hashem* reached *Bnei Yisrael*.

The *Kedushas Levi's* distinction highlights the fact that Moshe was the only *navi* able to transmit a *mitzvah*. In contrast, the *nevu'os* of other *nevi'im*, preceded by *כה אמר ד'*, were not intended to convey a *mitzvah* for all future generations, but

rather only a *hora'as sha'ah* (or a message that did not contain a particular *mitzvah*).

Following this line of reasoning, the phrase 'כה אמר ד' would be appropriate even to introduce a *nevu'ah* of Moshe if it was only a *hora'as sha'ah*. This is why Moshe's *nevu'ah* regarding *Makkas Bechoros* is introduced with 'כה אמר ד' in the *passuk*, ויאמר משה כה אמר ד' כחצות הלילה אני יוצא בתוך מצרים – “Moshe said, ‘So said Hashem, At about midnight I shall go out in the midst of Mitzrayim’” (*Shemos* 11:4), for it contained no *mitzvah* for future generations. This *nevu'ah* was apparently not through an *המאירה*, and was thus akin to the level of *nevu'ah* of the other *nevi'im*.

In a similar vein, the *Kedushas Levi* points out a difference in phraseology between two *pessukim* that appear prior to *yetzi'as Mitzrayim*. After Moshe instructs *Ziknei Yisrael* regarding the *Korban Pesach*, we read, וילכו ויעשו בני ישראל כאשר צוה ד' את משה ואהרן – “*Bnei Yisrael* went and did as Hashem **commanded** Moshe and Aharon” (*Shemos* 12:28). Just a few *pessukim* later, we read, ובני ישראל עשו כדבר משה וישאלו ממצרים כלי כסף וכלי זהב ושמלות – “*Bnei Yisrael* carried out the **word** of Moshe; they requested from the *Mitzri'im* silver vessels, gold vessels, and garments” (12:35). The Torah here is very specific in its use of the phrase **כדבר משה**. The plundering of *Mitzrayim* was merely a one-time obligation, and the term “*mitzvah*” is therefore inappropriate; that term is reserved for an everlasting obligation, such as that of the *Korban Pesach*.

[See *B'Ikvei HaTzon*, pp. 131-132.]

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## PARSHAS VAYEISHEV CHALLENGES

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וישב ישראל בארץ מגורי אביו בארץ כנען.

Ya'akov settled in the land of his father's sojournings, in the land of Canaan. (*Bereishis* 37:1)

THE MIDRASH, cited by *Rashi*, is troubled by the contrast between the words וישב, which implies permanence, and מגורי, which implies wandering. The *Midrash* infers that at this point, after his lengthy exile, Ya'akov "sought to dwell in tranquility, but the ordeal of Yosef sprung upon him." Ya'akov wanted וישב, but he received מגורי. Although the righteous seek tranquility, *Hashem* has other plans for them. This world is not one in which the righteous can expect tranquility.

Righteous people may set up a system for themselves through which they can accomplish their *avodas Hashem*. They may wish to wake up and go to *Shacharis*, learn the *daf yomi*, go to their job, learn *mishnayos* during their lunch break, etc., but *Hashem* does not allow them to lead a calm life. There are always stormy issues that arise because the purpose of life is to exercise one's Free Will to navigate his way through his challenges and attempt to overcome his difficulties.

Absent the *yetzer hara*, the purpose of life would go unfulfilled. The *pessukim* in *Zechariah* (5:8) present an obscure *nevu'ah*: – ויאמר זאת הרשעה וישלך אותה אל תוך האיפה וישלך את אבן העופרת אל פיה – "And he said, 'This is the Evil One.' And he cast it into

the *ephah*, and he cast the lead stone on its mouth.” Chazal (Yoma 69b) had a tradition that this *nevu'ah* means that the *Anshei Kenesses HaGedolah* (Men of the Great Assembly) at the beginning of the Second *Beis HaMikdash* period were successful in their prayer to eradicate the *yetzer hara* for *avodah zarah*. For this reason, the tremendous desire to worship *avodah zarah* that existed for so many generations simply does not exist nowadays. Indeed, the *Gemara* in *Sanhedrin* (102b) relates that after Rav Ashi disparagingly referred to Yerovam, Achav, and Menashe, the idolatrous kings of Israel, as “our colleagues,” he was visited in a dream. Menashe said to him, “Had you been [living in my times], you would have lifted the bottom of your garment and run after me [to worship idols]!”

After witnessing their success in eradicating that *yetzer hara*, the *chachamim* prayed to have the *yetzer hara* for *gilui arayos* (forbidden relations) delivered into their hands. Again, their prayers were answered – to the point that a freshly laid egg was not to be found throughout Eretz Yisrael, for the elimination of this *yetzer hara* had caused a complete halt to the impulse for procreation in both males and females, animal and human. Since without procreation the world would become desolate, the *chachamim* withdrew their original prayer, only “blinding the eyes” of the *yetzer hara*, thereby minimizing the drive for incestuous relationships.

The *Gemara* seems to imply that after one of the major aspects of the *yetzer hara* had been subdued, a new *yetzer hara* had to come into being, apparently because a fulfilled life **requires** challenges. At this period, a wave of *apikorsus*, or *minus* (heresy), descended upon the world. The *Mishnah* in *Berachos* (9:5) teaches that when the *Tzeddukim* (Sadducees) or *minim* (heretics) corrupted the faith by declaring that there is only one world, the *chachamim* instituted the addition of the phrase, *ברוך ד' אלקי ישראל מן העולם ועד העולם* – “Blessed is Hashem, G-d of *Yisrael*, from the World until the World,” into

the text of every *berachah* recited in the *Beis HaMikdash*, thereby fortifying belief in the existence of *Olam HaBa*.

It seems that this insertion was instituted precisely during this period after the elimination of the *yetzer hara* for *avodah zarah*, at the start of the Second *Beis HaMikdash* (*Maharatz Chayes, Berachos 54a*). Indeed, the entire Second *Beis HaMikdash* era was fraught with arguments between the *Perushim* and *Tzeddukim*. The *Rambam (Hilchos Avodas Yom HaKippurim 1:7)*, while discussing the necessity of the oath taken by the *Kohen Gadol* to properly place the *ketores* upon the burning coals only inside the *Kodesh HaKodashim*, depicts the days of the Second *Beis HaMikdash* as a time of the flourishing of *minus* and *Tzeddukim*, who lacked faith in the *Torah SheBe'al Peh*.

The *Gemara* in *Kiddushin* (30b) states, "My son, I have created the *yetzer hara*, and I have created Torah as its antidote. If you involve yourselves in Torah, you will not be delivered into its hand." We may therefore suggest that there had to be a transition in the primary method of Torah learning along with the shift in the *yetzer hara* from *avodah zarah* to *minus*. *Nevu'ah* and *Torah SheBichsav* served as the antidote to counter the *yetzer hara* of *avodah zarah*. However, a different antidote was needed in the Second *Beis HaMikdash* period – namely the study of *Torah SheBe'al Peh*. It was at this time that we find a blossoming of Tannaitic expositions and derivations, as the Oral Torah was now being developed.

Notably, our tradition has it that this era was closely preceded by the Purim miracle. The *Gemara* in *Shabbos* (88a) teaches that at the time of *Matan Torah*, *Hashem* had to suspend *Har Sinai* over our heads like a barrel to coerce us to accept the Torah. The *Gemara* continues to explain that even though there was an element of coercion in the original acceptance of the Torah, it was ultimately accepted willingly in the days of *Achashveirosh* as a reaction to the Purim miracle. This is indicated by the *passuk*, *קימו וקבלו* – "They confirmed and

accepted" (*Ester* 9:27), which connotes a confirmation of what had been **previously** accepted.

The *Midrash Tanchuma* (*Parshas Noach* 3) explains that the seemingly unforced statement of *Bnei Yisrael* at Har Sinai, **ונעשה ונשמע**, referred to their willing acceptance of only *Torah SheBichsav*, while the coercion at that time was necessary for the *Torah SheBe'al Peh*. If so, the willing reacceptance of Torah at the time of Purim must likewise have related to the *Torah SheBe'al Peh*. It may be that in the merit of that **קימו וקבלו**, there followed a period of flourishing study and development of the *Torah SheBe'al Peh*, after the Purim episode, during the Second *Beis HaMikdash* period. [See *B'Ikvei HaTzon*, p. 139.]

This life is not intended for relaxation. People are supposed to have difficulties, but they are given the ability to overcome those difficulties. *Hashem* does not give us *nisyonos* (tribulations) that we cannot deal with. A guest from Eretz Yisrael related the story of a Sefardi family who lost each of their three sons in three different Israeli wars. Those who came to console the mourning parents were at a loss as to what to say. The mourning father related, in the name of the *Sava Kadisha*, the following interpretation of the *passuk*, **הנותן שלג כצמר**, – "He Who gives snow **like** fleece" (*Tehillim* 147:16). *Hashem* gives "snow" based on how much "fleece" the person has. He who possesses more "woolen clothing," a metaphor for emotional fortitude and resilience, will be able to withstand greater tribulations, here depicted as snow. *Hashem* only gives *nisyonos* to those to whom He has already given the strength to overcome those challenges.

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## PARSHAS MIKEITZ

# PIETY

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ויריצהו מן הבור ויגלח ויחלף שמלתיו ויבא אל פרעה.

They rushed him from the pit and he shaved his hair and changed his clothes, and he came to Paroh. (*Bereishis* 41:14)

**R**ASHI NOTES that when Yosef was brought before Paroh, he shaved out of respect for royalty. According to the tradition of *Chazal* (*Rosh Hashanah* 10b), Yosef's release from prison took place on Rosh Hashanah, which raises a question. If our forefathers fulfilled the *dinim* of the Torah, even before the Torah was given, how could Yosef have violated the prohibition of shaving on Rosh Hashanah?

The *Chasam Sofer* (*Al HaTorah*) answers that our forefathers' fulfillment of the *dinim* of the Torah was discretionary, observing them as an **אינו מצווה ועושה** (one who performs a *mitzvah* voluntarily). Such practice would be regarded as *middas chassidus* (a pious trait). Although such practice is ordinarily laudable, one must abstain from pietistic practices when they come into conflict with a bona fide *din*, such as showing respect to kingship. Part of the Noachide *mitzvah* of *dinim* (to set up an organized system of government) is to respect its leaders, and Yosef therefore fulfilled what was incumbent upon him to do as a **מצווה ועושה** (one who performs a *mitzvah* upon command), rather than fulfill what would have been only a voluntary practice.

Rav Yaakov Kamenetsky *zt"l* (*Emes LeYa'akov*, p. 199) made a similar suggestion regarding the custom that the *Avos* had taken upon themselves not to marry more than one woman.

Ya'akov had already proposed to Rachel, and they had planned for seven years to get married. Now that Ya'akov found himself married to Le'ah, he also found himself in a conflict between a pietistic practice and a strict *din*. He wished to observe his *middas chassidus*, to refrain from marrying two women. However, he was unable to act in accordance with this *chumra* because it was at the expense of leaving Rachel in a forlorn state and severely disappointing her. There is a time and place for *middas chassidus*, but not if its observance will hurt another's feelings.

Indeed, it is critical to know whether a particular practice is prohibited due to its status as a Torah violation, a rabbinic violation, the violation of a *minhag*, or merely a lack of *middas chassidus*. This hierarchy becomes especially significant in situations of conflict, when avoiding one violation may come at the expense of other competing considerations.

For example, aside from the Biblical *issur* regarding the *gid hanasheh*, there is a rabbinic *issur* not to partake of the *shuman hagrid* (the fat surrounding the actual *gid*). The language of the *Gemara* in *Chullin* (91a) is: "Its fat is permitted [under Biblical law], but the Jews, who are holy [and create safeguards for Biblical law], adopted the **custom** of treating it as forbidden." This suggests that the *issur* of *shuman hagrid* is not even rabbinic in nature, but merely due to *minhag*.

The Torah tells us that the *Korban Pesach* may be prepared "only roasted over fire - its head, its legs, with its innards" (*Shemos* 12:9). Based on this *passuk*, the *Rambam* (*Hilchos Korban Pesach* 10:11) writes that the *Korban Pesach* must be broiled whole, and only later divided into portions prior to its consumption. Undoubtedly, certain parts of the animal, such as the forbidden fats and large blood vessels, must be removed prior to the broiling for the sake of *kashrus*, but the *gid hanasheh* is left in place during the broiling and is removed prior to consuming the *korban*. In characteristic fashion, the *Ra'avad* proclaims, "There is no greater *issur* than this, to roast the

*Pesach* with the *gid hanasheh*. If I would merit to eat the *Pesach* and he would bring this before me, I would throw it on the ground before him!”

In defense of the *Rambam*, the *Kesef Mishnah* explains that we hold אין בגידין בנותן טעם – sinews do not possess a flavor – and the *gid hanasheh* therefore does not contribute prohibited flavor to the meat it is cooked with. A difficulty remains, however, regarding the *shuman hagid*, which **does** have the ability to contribute prohibited flavor to the remainder of the meat. To counter this difficulty, the *Kesef Mishnah* asserts that the *Rambam* must be of the opinion that since it is a *minhag* which conflicts with a bona fide *din*, the custom should not be observed. It is true that roasting the animal that still contains the *shuman hagid* causes prohibited flavor to be absorbed in the meat. Nevertheless, once a year, all Jews must violate the custom to refrain from eating *shuman hagid* in order to fulfill the optimal preparation of the *Korban Pesach*, to roast it as an intact animal, “its head, its legs, with its innards.”

Rav Yisroel Gustman (*Kuntresei Shiurim, Maseches Kiddushin* 24:16) expresses a similar notion regarding a woman who, due to a particularly short monthly cycle, would be unable to conceive if she were to observe the full period of *shiv'ah nekiyim*. According to Torah law, *shiv'ah nekiyim* is a requirement only for the special case of the *zavah* (a female with a discharge outside of her monthly period), not for the typical case of *niddah* (menstruant). The *Gemara* in *Niddah* (66a) records the statement of Rabbi Zeira: “The daughters of Israel have accepted upon themselves the stringency that even if they see a drop of blood the size of a mustard seed, they wait seven clean days because of it.” Thus, according to some *Rishonim*, in a situation in which there is no doubt of *tum'as zivah*, the need for *shiv'ah nekiyim* may only be a *minhag*. If observance of the *minhag* would preclude the possibility of fulfilling the *mitzvah* of *piryah verivayah*,

in combination with other reasons for leniency, there may be grounds to allow for overriding the *minhag*.

The *Gemara* in *Berachos* (6b) teaches that if one is accustomed to attending a *Beis HaKnesses* regularly, *Hashem* inquires about his absence when he is not present. If the absence is due to his involvement in a *mitzvah*, it is excused. However, if he pursued a personal matter instead of *davening* in the *Beis HaKnesses*, he will be punished.

The *Netziv* (*Meishiv Davar* 2:48, 2:73, 4:6) offers an interpretation of this *Gemara* along the lines of the above mentioned rule. He explains that strictly speaking, there is no obligation to engage in *tefillah betzibbur* (*davening* with a *minyan*). The whole purpose of *tefillah*, however, is to have one's requests heard by *Hashem*, and one stands a greater chance of having his prayers answered when he *davens* with a *minyan*. Therefore, one who is in the habit of *davening betzibbur* has established this practice for himself as a *minhag tov*, which is binding rabbinically as a *neder*. If the *minhag* comes into conflict with a *mitzvah*, he is obligated to violate the custom and fulfill the *mitzvah*, and therefore his absence is excusable. However, since the *minhag tov* is otherwise binding, forgoing his custom in favor of an optional endeavor may be subject to punishment.

Another application of this principle relates to the *minhag* not to shave during *Sefiras HaOmer*. It is very questionable whether one should refrain from shaving before Shabbos in observance of this *minhag*, as preparation for Shabbos is a fulfillment of the *mitzvah* of *kevod Shabbos*.

One who mistakenly recites a *berachah* over a dairy product and realizes before eating the food that he has not yet waited the requisite six hours after eating meat is faced with a similar conflict. Since the practice of waiting six hours is based on a *minhag* (*Rama, Yoreh De'ah* 89:1), if more than one hour has already elapsed since his meat meal, he should taste the food to avoid violating the prohibition of *berachah levatalah*.

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## PARSHAS VAYIGASH

# THE END RESULT

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ועתה אל תעצבו ואל יחר בעיניכם כי מכרתם אותי הנה כי למחיה שלחני אלקים  
לפניכם.

And now, be not distressed and do not reproach yourselves for having sold me here, for it was as a supporter of life that *Hashem* sent me ahead of you. (*Bereishis* 45:5)

**I**N THIS WAY, Yosef comforted his brothers, attempting to relieve them of their embarrassment. In other words, “Since, in the end, all has turned out for the good, you need not regret your actions, selling me as a slave so many years ago.” It is quite surprising that a positive outcome should have absolved the brothers of responsibility for their previous actions.

The *passuk* teaches, *ויסלח לה אישה הפרם וד’ יסלח לה* – “Her husband has annulled [her *nedarim*], and *Hashem* will forgive her” (*Bamidbar* 30:13). The *Gemara* in *Nazir* (23a) explains that if a wife violated a *neder* that, unbeknownst to her, had already been revoked by her husband, she nevertheless requires forgiveness. Since, in her mind, she intended to sin, and she then acted on that intention, her act is a sinful one. [*Chazal* teach that *Hashem* does not punish for a sinful intention if the planned act is not carried out. This leniency would not apply, however, if an action was carried out, but a technical exclusion resulted in the act being a permitted one.] Thus, the *Gemara* continues, “one who intended that pork meat should come into his hand, but instead lamb’s meat came into his hand, is in need of *kapparah* and

forgiveness.” Accordingly, in our *parsha* as well, the brothers of Yosef should most certainly have required forgiveness for their prior evil intentions and actions.

The *Kli Chemdah* (*Vayechi*, 3-4) suggests that there should be a fundamental difference between עבירות שבין אדם למקום (sins between Man and *Hashem*) and עבירות שבין אדם לחבירו (sins between Man and Man) with respect to this point. Regarding עבירות שבין אדם למקום, such as the violation of an annulled *neder*, the sinful intent alone is considered rebellion against *Hashem*, and this requires *kapparah*. However, in the realm of עבירות שבין אדם לחבירו, the overriding consideration is the **end result**, not the initial intent. Were the intended victim to know in advance that the act committed against him would turn out to be a source of his salvation, he would have gladly accepted it upon himself, and the evil intent is therefore not punishable. The basis of the *issur* of עבירות שבין אדם לחבירו is to avoid **causing** evil to one’s friend, but in this case, his friend is thankful.

The *Ran* (*Chiddushei HaRan*, *Sanhedrin* 84b, s.v. *Rav*) shares a similar approach. The Torah’s description of accidental murder, punishable by *galus*, involves one who was engaged in chopping down trees in the forest when a projectile chip of wood fatally injured a bystander. Ostensibly, this act should fall under the legal category of *misasek* (**accidental** acts) since there was no murderous intent at all, and not in the category of *shogeg* (**unintentional** acts), which do require *kapparah*. In this case, the *Ran* notes, we should not consider it as if the act relates to the perpetrator at all. It is as if the act occurred on its own, and no punishment should therefore be associated with that act. To explain why the one who swung the axe is nevertheless held responsible, the *Ran* writes that when it comes to actions בין אדם לחבירו, everything is judged based on the final result. If the victim is dead, the one who caused the death carries the responsibility. [Although his opinion is not

codified in the *Shulchan Aruch*, according to the *Ramban* (*Shitah Mekubetzes, Bava Metzia 82b, s.v. v'asa*), in the realm of *nezikin*, one who damages through an *ones gamur* (complete accident) is indeed liable. Perhaps his understanding is also that in interpersonal dealings, it is only the end result, not intent, that determines liability.]

The *Sifrei*, cited by *Rashi* (*Devarim 24:19*), similarly teaches that one who accidentally lost money that was later found and used by an indigent person will be rewarded. This is based on comparison to the institution of *shichechah*, wherein one who inadvertently left a bundle of wheat while harvesting his field may not return to collect it, but must instead leave it for the poor. *Chazal* understand that the harvester is rewarded because of that bundle of wheat even if he never realizes that he lost it. The mere fact that the poor benefit from what was left behind is a credit to him, and his unintentional act is deserving of reward. In the case of an accidental act that leads to the giving of *tzedakah*, even in the absence of any positive intent, it is the **outcome** that ultimately determines how the act is judged. This seems to be the case for both negative and positive acts.

It may be that it is with this understanding that *Yosef* declared, "Now that everything has turned out well in the end, I have no right to harbor ill feelings towards you." In the realm of interpersonal relations, everything is judged by the end result.

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## PARSHAS VAYECHI

# INDIVIDUALITY

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THE **T**HE פר העלם דבר של ציבור is a special *korban* brought on behalf of *Klal Yisrael* as a whole when the majority of the nation violate a serious law based on a mistaken ruling of the *Beis Din HaGadol*. The *Mishnah* in *Horayos* (1:5) records that each of the twelve *shevatim* had its own *Sanhedrin*, and there is a dispute among the *Tana'aim* regarding whether the institution of the פר העלם דבר של ציבור applies to a mistaken ruling of a particular *shevet's Sanhedrin* or only to the *Sanhedrin* of all of *Klal Yisrael* that was seated in Yerushalayim. We see from here that there is a legally-binding concept of distinct *shevatim*, such that the members of each *shevet* are bound to follow the rulings of that particular *shevet's Sanhedrin*. This is why Ya'akov, before his death, blessed each *shevet* individually, איש אשר כברכתו ברוך אותם - "He blessed each according to his appropriate blessing" (*Bereishis* 49:28).

Every *shevet* represents a different approach to serving *Hashem*, and all the different approaches are acceptable. The *Ba'al HaTanya* (*Likutei Amarim, perek 27*) expands on a comment of the *Zohar* on the *passuk* describing Yitzchak's request of Eisav prior to blessing him, ועשה לי מטעמים כאשר אהבתי - "And make me delicacies such as I love" (*Bereishis* 27:4). Just as Yitzchak enjoyed a meal full of variety, so too does *Hashem* appreciate a variety in our service of Him.

This idea is also the basis of the rule, *אלו ואלו דברי אלקים חיים* – “These and those are the words of the living G-d” (*Eiruvin* 13b). The *Gemara* in *Menachos* (29b) tells of the additional crowns that *Hashem* attached onto the letters of the Torah so that in later generations, Rebbi Akiva would be able to “expound upon each and every point [of the *taggin* attached to certain letters] heaps and heaps of *halachos*.” We have no record of any of these derived laws, apparently because the Halachah did not accept Rebbi Akiva’s teachings in these cases. Nevertheless, *Hashem* was interested in placing the crowns onto these letters to allow for the possibility of Rebbi Akiva’s future expositions. There is more than one correct approach to Halachah and Rebbi Akiva’s approach, necessitating the additional *taggin*, was a valid one, even if his opinion was not accepted practically.

Eretz Yisrael is endowed with its complete measure of *kedushah* only when *כל יושביה עליה* – “all its inhabitants are upon [the land]” (*Arachin* 32b). We derive this from the *passuk*, *וקראתם דרוור בארץ לכל יושביה* – “You shall proclaim liberty throughout the land for all its inhabitants” (*Vayikra* 25:10, later engraved on the Liberty Bell). In order for the *dinim* of *yovel*, and presumably the *dinim* of *shemittah*, to apply, the majority of the world Jewish population must be living in Eretz Yisrael and there must be representatives of **each of the *shevatim*** living in their assigned territories.

The Ari z”l (partially cited by *Magen Avraham, Orach Chayim*, beginning of *siman* 68) teaches that just as *Yechezkel* (end of *perek* 48) describes that in the days of *Mashiach* there will be twelve different gates through which to enter Yerushalayim, there are similarly twelve gates of *tefillah* in *shamayim*. These correspond to twelve different *nuschaos* of *tefillah*, each of which is compatible with the *neshamos* of the people of each *shevet*. The Ari z”l continues that there will be a thirteenth gate of Yerushalayim, “*Sha’ar HaKollel*,” for those who do not recognize their particular

*shevet*, and that there is a corresponding thirteenth all-inclusive *nusach* (*Nusach HaKollel*), the *Nusach Ari*, which anyone may use. As entering Yerushalayim represents coming closer to *Hashem*, the different gates represent different paths of *avodas Hashem*, each one equally valid.

Similarly, the *Gemara* in *Ta'anis* (31a) teaches that in the future, *Hashem* will sit in *Gan Eden* in the midst of the circle that He will make for the *tzaddikim*. Each one of the *tzaddikim* will point with his finger toward *Hashem* and will proclaim, – הנה אלקינו זה קוינו לו וישיענו זה ד' קוינו לו נגילה ונשמחה בישועתו – “Behold, this is our G-d; we hoped to Him and He saved us; this is *Hashem* to whom we hoped; let us exult and be glad in His salvation” (*Yeshayah* 25:9). All the *tzaddikim* along the circumference of the circle will view the center point, where *Hashem* is positioned, from a different perspective. Yet, each one will face towards *Hashem* with the purpose of drawing close to Him, and they will all be equidistant from Him.

There are supposed to be **different** approaches to the service of *Hashem*, and *Hashem* appreciates this variety. We bring this imagery to life when we dance around the *bimah* each year during the *hakafos* on Simchas Torah. [Rav Soloveitchik had a family tradition that the Vilna Gaon was careful that no one stood on the *bimah* during the *hakafos*, since the center of the circle is reserved for the *Shechinah*. See *Eretz HaTzvi*, p. 91.]

The *Gemara* in *Berachos* (58a) tells us that within any group of people, “their minds are not similar to each other just as their faces are not similar to each other.” Each individual has a different way of thinking. Therefore, each person may perform the same *mitzvah* with a different twist and style. We are supposed to introduce personal intentions into each *mitzvah*. Indeed, the most lengthy passage in the *Midrash Rabbah* is found in *Parshas Nasso* (*parsha* 13-14), describing the different intentions of each *Nasi*, even though each one brought the identical set of *korbanos* for the inauguration of the *Mishkan*.

While we are all obligated to perform the same *mitzvos*, *Hashem* wants each person to be **unique** when he fulfills those *mitzvos*.

The *Gemara* in *Chagigah* (3a) explains that *ד' אחד* means that *Hashem* is **unique**. *אתם עשיתוני חטיבה אחת בעולם* - "You have made Me a unique praise in the world." Rav Soloveitchik explained that because of this definition, the Chabad *Haggadah* does not include *אחד מי יודע* - "Who knows One?" This *piyut* implies that *ד' אחד* simply means that there exists only one G-d, not two. According to the *Gemara*, however, "*Hashem* is One" refers to the **uniqueness** of *Hashem*. Part of this uniqueness is that there is only one G-d, but there is much more to the concept of *ד' אחד* than the unity of *Hashem*. Since we were all created *בצלם אלקים* (in the image of G-d) and are obligated to "walk in His ways," each human being must endeavor to be unique and not to imitate another person's *avodas Hashem*.

The *Gemara* in *Megillah* (27b) tells us that the disciples inquired about the practices of different *Tanna'im*, asking, "On account of which [meritorious practice] have you attained longevity?" Each of the *chachamim* responded by citing a variety of different righteous practices that he personally observed. A similar *Gemara* in *Shabbos* (118b) records a series of statements from various *Amora'im* who were exceedingly punctilious regarding a particular *mitzvah* or *issur*. Each sage exclaimed, "May a reward come to me because I observed such and such *mitzvah* properly." The *Sefer Chareidim* (*perek* 61) comments that this *Gemara* teaches us that aside from the six hundred and thirteen *mitzvos* that we each must perform to the extent that we are able, everyone should feel as if he has his own special mission in life. Every person should identify a particular *mitzvah* and try to observe it in a most complete manner, with absolute regularity, and with his full strength.

Rav Soloveitchik quoted the explanation of Rav Kook (*Olas Re'iyah, chelek* 2, p. 356) regarding the *tefillah* that we add toward the very end of the *Shemoneh Esrei* on Yom Kippur:

אלקי עד שלא נוצרתי איני כדאי ועכשיו שנוצרתי כאילו לא נוצרתי – “My G-d, before I was formed I was unworthy, and now that I have been formed, it is as if I had not been formed” (*Berachos* 17a). Rav Kook interpreted the *tefillah* as follows: “Before I was born, איני כדאי – there was no **reason** at all for me to have been created,” because there was nothing in the world that needed me. One’s unique contribution is only relevant to the particular time and place into which he is born. “Now that I have been created,” obviously, the time has come that I am needed in order to complete some aspect of the “wholeness of existence.” In this particular set of circumstances, I should have been able to actualize my unique destiny. Yet, I bemoan the fact that I have fallen short of fulfilling my purpose of creation; “it is as if I had not been formed at all.”

[See *Nefesh HaRav*, pp. 59-60, 66-67.]

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PARSHAS SHEMOS  
THE THIRD *BEIS HAMIKDASH*

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IN ORDER for Moshe to establish himself as a true *navi*, he needed to perform certain signs and wonders. *Hashem* gave him three signs to perform for *Bnei Yisrael*. First, he was to turn his stick into a snake and back again into a stick. Then he was to change his hand into a leprous one and back again to one with normal skin. Finally, he was to pour water from the river and convert it into blood on the dry land.

Interestingly, the Torah uses the term *אחרון*, usually translated as “last,” when referring to the middle sign, even though it was to be followed by the third and final sign. והיה אם לא יאמינו לך - “It shall be that if they do not believe you and do not heed the voice of the first sign, they will believe the voice of the *os acharon*” (*Shemos* 4:8).

This indicates that in Biblical Hebrew, in contrast to Modern Hebrew, the terms *ראשון* and *אחרון* do not necessarily mean “first” and “last.” Rather, *ראשון* may also mean previous or prior, and *אחרון* may mean subsequent or latter. The word *ראשון* in the *passuk*, *הראשון אדם תולד* - “Were you born before Adam?” (*Iyov* 15:7), means “prior” to Adam. Similarly, *האות האחרון* does not mean the last sign, but the **latter**, second sign.

This forms the basis of the *Tosfos Yom Tov*'s answer (*Demai* 7:3) to a question prompted by the *passuk*, *גדול יהיה כבוד הבית הזה* - “The glory of this **last** *Beis HaMikdash* will be

greater than that of the first" (*Chaggai* 2:9). How is it that we pray for the building of the Third *Beis HaMikdash* if the *navi* Chaggai told us that the Second *Beis HaMikdash* would be the final one? The *Tosfos Yom Tov* explains, using the *passuk* in our *parsha* as the proof-text, that the term אחרון means **latter**, and not last. Thus, this *nevu'ah* in no way contradicts the fulfillment of other prophecies foretelling the building of the Third *Beis HaMikdash*.

A similar usage of אחרון emerges from a *passuk* in the context of Ya'akov's preparation for his encounter with Eisav: וישם את השפחות ואת ילדיהן ראשונה ואת לאה וילדיה אחרונים ואת רחל ויوسف אחרונים – "He put the handmaids and their children first, Leah and her children next, and Rachel and Yosef last" (*Bereishis* 33:2). Here too, it is obvious that the word אחרונים referring to the second camp of Leah and her children means latter, and not last.

The Rebbe of Ruzhin suggested further support for the *Tosfos Yom Tov's* explanation based on an interpretation of the *passuk* referring to Hashem's passing over the houses of *Bnei Yisrael* during *Makkas Bechoros*: והיה הדם לכם לאות על הבתים – "The blood shall be a sign for you upon the houses" (*Shemos* 12:13). In classic Chassidic style, he suggested, "The third sign, that of the blood, will serve as a sign for you regarding the בתים – the *Batei Mikdash*." The sign of the blood proves that there will be a Third *Beis HaMikdash*. Since the sign of the blood followed the sign of the leprous hand, which is referred to as האחרון, we understand that this term must mean latter, and not last. This then proves that the Second *Beis HaMikdash*, also described by Chaggai as האחרון, was **not** the final one, as we await the building of the Third *Beis HaMikdash*.

Rav Matisyahu Strashun (the son of the *Rashash*; see the notes printed in the back of the Vilna Shas, *Bava Basra* 3a), basing himself on the *Zohar*, offers a somewhat different interpretation of the *passuk* in *Chaggai*. The *passuk* should be

read as if *הזה* and *האחרון* are hyphenated, *הבית הזה-האחרון*, *הזה* referring to the Second *Beis HaMikdash* and *האחרון* to the Third *Beis HaMikdash*. Thus, the *navi* was saying that the Second *Beis HaMikdash* was considered the beginning of the Third *Beis HaMikdash*. The uplifting message of Chaggai was that the glory of the **Second-Third** *Beis HaMikdash*, with the third viewed as a continuation of the second, will outshine that of the First *Beis HaMikdash*.

Rav Soloveitchik, quoting Rav Chaim (*Chiddushei HaGri"z MiPi HaShmu'ah al HaTorah, siman 121*), suggested a similar explanation of the *nevu'ah* of Zecharyah (4:1-14) that is read on Shabbos Chanukah. In the *nevu'ah*, the *navi* saw two olive trees, with two clusters of olives next to two golden presses. Golden oil flowed miraculously through seven ducts into each of the seven lamps of a golden *menorah*. The two trees represented two anointed men (4:14), the *Kohen Gadol* and the king of the *Malchus Beis Dovid*, both of whom are to be anointed with olive oil. Thus, the vision alluded to a Golden Era of the *Beis HaMikdash*.

The *navi* could not understand this, because it simply did not correspond to reality. The Second *Beis HaMikdash* period during which Zecharyah lived was not graced by a Davidic King; there was no Jewish sovereignty until the time of the *Chashmona'im*. The *Kohanim Gedolim* were elevated to their position by wearing the special garments associated with *Kehunah Gedolah*, not through anointing, as the *shemen hamishchah* (anointing oil) had been concealed earlier by King Yoshiyahu. Furthermore, the Second *Beis HaMikdash* period was plagued by yearly replacements of the *Kohen Gadol* and by arguments between the *Perushim* and *Tzeddukim* – hardly a Golden Era of Divine Presence!

Thus, the *navi* asked, *מה אלה אדני ויען המלאך הדבר בי ויאמר אלי*, “What are these, my Lord?” – *הלוא ידעת מה המה אלה ואמר לא אדני*. The *mal'ach* who was speaking to me spoke up and said to me,

‘Do you not know what they are?’ And I said, ‘No, my Lord’” (4:4-5). In response, the *mal’ach* explained with the cryptic words, ‘לא בחיל ולא בכח כי אם ברוחי אמר ד’ – “Not through armies and not through might, but through My spirit, says Hashem” (4:6).

Rav Chaim explained this answer based on the *Rambam’s* statement (*Hilchos Beis HaBechirah* 6:16) that Yehoshua’s *kiddush* (sanctification) of Eretz Yisrael was accomplished through *kibbush* (conquest), while the second *kiddush* of Ezra was accomplished through *chazakah* (settlement). [There was no Jewish conquest of Eretz Yisrael in the days of Ezra. There did not exist an independent Jewish government until the days of the *Chashmona’im*, in the middle of the Second *Beis HaMikdash* period.] At the time of the destruction of the First *Beis HaMikdash*, once the Babylonian armies conquered Eretz Yisrael from the hands of the Jews, the *kiddush* of Yehoshua vanished, since his conquest was reversed. However, Ezra’s *kiddush* was “not through armies and not through might, but through My spirit” – that is, the desire of Hashem to rest His *Shechinah* on the Land. This type of *kiddush* could not be undone.

Zecharyah’s vision was in essence a representation of the *hashra’as haShechinah* (Divine Presence) that will accompany the **Third** *Beis HaMikdash*. Hashem showed this vision to Zecharyah at this juncture, the beginning of the Second *Beis HaMikdash* period, because the vision referred to the truly glorious Third *Beis HaMikdash* Era, which really began with the building of the **Second** *Beis HaMikdash*. The wondrous and splendid description of a Golden Era of the *Beis HaMikdash*, *malchus*, and *Kehunah Gedolah* did, in fact, apply to this Second *Beis HaMikdash*, in the sense that it began a continuum that will conclude in the Third *Beis HaMikdash* era.

Rav Soloveitchik added that this is the meaning of the *navi’s* description, והוציא את האבן הראשה תשאות חן חן לה – “He will

bring out the cornerstone with cheers of 'Grace! Grace!' for it" (*Zecharyah* 4:7). This does not merely refer to the placement of the cornerstone of the Second *Beis HaMikdash* at the time of Zecharyah, but also connotes the fact that the entire enterprise of the building of the Second *Beis HaMikdash* was to serve as the foundation of the Third *Beis HaMikdash*. The Second *Beis HaMikdash* **itself** was the cornerstone of the Third *Beis HaMikdash*.

[See *B'Ikvei HaTzon*, pp. 115-117; *Nefesh HaRav*, pp. 76-77.]

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PARSHAS VA'EIRA  
THE HERITAGE OF ERETZ YISRAEL

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וגם הקמתי את בריתי אתם לתת להם את ארץ כנען את ארץ מגוריהם אשר גרו בה.

Moreover, I established My covenant with them [Avraham, Yitzchak, and Ya'akov] to give them the Land of Canaan, the land of their sojourning, in which they sojourned. (*Shemos* 6:4)

**H**ASHEM TOLD Moshe that He had made a *bris* (covenant) with our *Avos* to give Eretz Yisrael to *Bnei Yisrael*. Apparently, there was a need for the establishment of a *bris*, despite the fact that *Hashem* had already given the Land to Avraham when he walked around its borders, thereby acquiring it: קום התהלך בארץ לארכה ולרחבה כי לך אתננה – “Arise, walk about the Land through its length and breadth, for to you will I give it” (*Bereishis* 13:17). [The *Gemara* in *Bava Basra* 119a concludes that Avraham’s walking in the land was a *kinyan chazakah*, a legal acquisition, and that *Bnei Yisrael* thus legally possessed Eretz Yisrael from the time of the *Avos*.]

Why was this *bris* necessary? The *Chazon Ish* (*Shevi’is* 21:5) explains that under ordinary circumstances, when one owns property, he is able to relinquish that ownership by selling it. In addition, there is an international principle of *kibbush milchamah* (conquest in war), whereby the victorious nation acquires all of the property and land of the losing nation (*Gittin* 38a). As such, one might have thought that if Eretz Yisrael was passed down as an inheritance from Avraham to Yitzchak, and

then to Ya'akov, and then to *Bnei Yisrael*, it could be sold or relinquished to another nation in battle.

As the *Ramban* explains numerous times in his commentary to Torah (see *Bereishis* 6:18 and 15:7; see *Nachlas Ya'akov* to *Bereishis* 9:13), the *bris* served to establish that *Bnei Yisrael's* possession of Eretz Yisrael is **על כל פנים** – **in any event**, under all circumstances. Eretz Yisrael belongs to the Jewish Nation as an eternal possession, throughout the history of the world. When a Jewish government was established in Eretz Yisrael in 1948, it was not that the United Nations or Great Britain, out of the goodness of their hearts, gave Eretz Yisrael to the Jewish Nation. Rather, the Land belonged to *Bnei Yisrael* since the days of Avraham Avinu as a function of this *bris*.

As we noted previously (*Parshas Shemos*), the *Rambam* (*Hilchos Beis HaBechirah* 6:16) writes that the sanctification of Eretz Yisrael in the days of Ezra was predicated on “*chazakah*,” a term coined by the *Rambam* himself. Years ago, a visiting Rav delivered a guest *shiur* in Rav Soloveitchik's class, adopting the understanding (as did Rav Isser Zalman Meltzer *zt"l*, *Even Ha'Azul*, *Hilchos Beis HaBechirah* 6:16), that the term *chazakah* refers to one of the methods used to acquire property, as in the *Mishnah's* principle, ובשטר ובחזקה, נכסים שיש להם אחריות נקנין בכסף ובשטר ובחזקה – “Real property [land or houses] may be acquired by means of money, a document, or *chazakah* – a proprietary act” (*Kiddushin* 26a). According to this understanding, the Jewish Nation lost its ownership of Eretz Yisrael during the seventy years of *galus Bavel* due to the rule of *kibbush milchamah*, and we therefore needed to effect a new acquisition of the Land via *kinyan chazakah*. With all due respect to the visiting Rav, Rav Soloveitchik argued that he was incorrect – the Jewish Nation **never** lost their ownership of Eretz Yisrael. What the *Rambam* meant by the term “*chazakah*” was **settlement**, not a *kinyan chazakah*. The *chazakah* at the time of Ezra was a way to **sanctify**, not to acquire, the Land.

In this vein, the Torah continues:

והבאתי אתכם אל הארץ אשר נשאתי את ידי לתת אותה לאברהם ליצחק  
וליעקב ונתתי אותה לכם מורשה אני ד'.

I shall bring you to the land about which I raised My hand to give it to Avraham, Yitzchak, and Ya'akov; and I shall give it to you as a **heritage**, I am Hashem. (*Shemos* 6:8)

Hashem's raising His hand is symbolic of a *shevuah* (oath), which is tantamount to the *bris* mentioned above. The term מורשה also connotes the uniqueness of *Klal Yisrael's* possession of Eretz Yisrael. While it is true that Eretz Yisrael is a ירושה (inheritance) passed down from Avraham Avinu, מורשה reflects an additional facet. An inheritance is under the sole control of the heir, who is able to sell it at will. A heritage, however, is the heir's responsibility; he must transmit it in an intact fashion to the next generation, for it is the property of generations before and after (Rav Mordechai Gifter *zt"l*).

That is why the term מורשה appears in the Torah in only two contexts: here in reference to Eretz Yisrael, as well as in *Parshas Vezos Haberachah* in reference to the Torah itself: יקב – תורה צוה לנו משה מורשה קהילת יעקב – “The Torah that Moshe commanded us is the heritage of the Congregation of Ya'akov” (*Devarim* 33:4). The Torah must be transmitted from generation to generation, and we have no right to delete or amend parts of the Torah. We similarly have no right or ability to transfer Eretz Yisrael to others.

A *Gaon* of the previous generation advanced a related argument against the *heter mechirah*, in which parts of Eretz Yisrael are sold to a non-Jew for the duration of the *shemittah* year in order to avoid the stringencies of *shemittah*. He understood that at the time of the destruction of the First *Beis HaMikdash*, the principle of *kibbush milchamah* removed any individual's private ownership of land, although the national ownership of Eretz Yisrael by the Jewish Nation remained unaffected. [Apparently, the episode recounted in *Sefer Yirmiyah*

(*perek* 32) in which *Hashem* told Yirmiyah to acquire a parcel of land prior to the impending *galus* and to be careful to safeguard the deed to that land for future generations was only symbolic in nature. In fact, Yirmiyah's ownership was legally canceled with the Babylonian conquest.]

This *Gaon* argued that this situation continues to exist up until the present time, because there was no subsequent division of the Land amongst the members of *Bnei Yisrael* that would serve to convert the nation's collective ownership of the Land into each individual's private possession. Accordingly, he concluded, although there is an institution of *kinyanim* whereby individuals may transfer ownership of land, land owned by the Jewish Nation and not by individuals – as in the case of Eretz Yisrael – does not lend itself to those *kinyanim*. There is thus no mechanism enabling *Klal Yisrael* as a whole to sell Eretz Yisrael. Based on this line of reasoning, the sale of land through the *heter mechirah* would not have legal validity.

It seems, however, that the approach of this *Gaon* is very questionable. The *Gemara* in *Yoma* (12a) discusses the opinion that one cannot sell or rent his house in Yerushalayim because ירושלים לא נתחלקה לשבטים – Yerushalayim was not apportioned among the *shevatim*. The clear implication of the *Gemara* is that this limitation applied only to Yerushalayim, whereas land in the rest of Eretz Yisrael could be sold, even during the time of the Second *Beis HaMikdash*.

A more logical approach may be that the national possession of Eretz Yisrael, which remained constant despite the Babylonian conquest, remains in force with respect to an individual's ability to settle a parcel of land and thereby convert it from a collective ownership into his private possession. In this way, the ownership of the Land is similar to *terumah*, which, after being separated, becomes communal property of the *Shevet Kehunah* for the purpose of private acquisition by an individual *Kohen* at a later time. Once a parcel of land has been

transformed from the nation's collective ownership into an individual's private property, it would be subject to sale, as in the *heter mechirah*.

The status of Eretz Yisrael as a מורשה does not impede an **individual's** ability to sell his land. Rather, the מורשה status affects the sovereignty of the Land - namely, which nation Eretz Yisrael belongs to. The heritage of Eretz Yisrael ensures that it will always remain the **national** possession of the Jewish Nation.

[See *Eretz HaTzvi*, pp. 212-214; *Nefesh HaRav*, pp. 81-82.]

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PARSHAS BO  
*KIDDUSH HaChodesh*

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החודש הזה לכם ראש חדשים.

This month shall be for **you** the beginning of the months.  
(*Shemos* 12:2)

**A**CCORDING TO the *Rambam* (*Sefer HaMitzvos, Mitzvos Aseh* 153; *Hilchos Kiddush HaChodesh* 5:1-2, based on the *Mechilta*), this *passuk* – referring to Moshe and Aharon (along with a third member, since a *beis din* may not consist of an even number of judges) – teaches us that *kiddush hachodesh* (sanctification of the new moon) and *ibbur hashanah* (intercalation of the year) must be carried out under the auspices of the *Beis Din HaGadol* (High Court).

The *Ramban* (*Hasagos to Sefer HaMitzvos, Mitzvos Aseh* 153) disagrees, claiming that while it would be improper for an ad hoc group of three judges to determine the *kevi'as halu'ach* (establishment of the calendar) on behalf of the Jewish Nation without the authorization of the *Sanhedrin*, its determination would, post facto, be legally binding.

The *Ramban* argues that this must be the case because we know that *kiddush hachodesh* was performed until the days of Abaye and Rava by their counterparts in Eretz Yisrael, even though the *Beis Din HaGadol* had ceased to exist many years earlier. The *Sanhedrin* only maintained its special status when it

met in its official location, the *Lishkas HaGazis* (Chamber of Hewn Stone) inside the *Beis HaMikdash* (*Sanhedrin* 14b). This status was lost from the time the *Sanhedrin* was exiled from this location forty years before the destruction of the First *Beis HaMikdash*.

Apparently, explains the *Megillas Ester*, the *Rambam* maintained that the requirement of the official location for the *Sanhedrin* only applied with regard to meting out capital punishment, not to other *Sanhedrin* functions. Along similar lines, *Tosfos* (*Sotah* 7b, s.v. *mah*) notes that the administration of *sotah* water, which also must be carried out under the auspices of the *Sanhedrin*, indeed continued after the *Sanhedrin* was exiled from the *Lishkas HaGazis* and until the time of Rabban Yochanan ben Zakai. Thus, for the *Rambam*, the institution of the *Beis Din HaGadol*, though not in its official location, **did** continue until the days of Abaye and Rava for the purposes of *kevi'as halu'ach*. [See *MiPninei HaRav*, 2001 ed., pp. 325-326.]

Even the *Ramban*, who maintains that *kiddush hachodesh* may be effected even without the *Beis Din HaGadol*, requires that the members of the *beis din* have authentic *semichah*, as part of a direct chain back to Moshe Rabbeinu. If so, how is it that we sanctify the months nowadays, when the chain of *semichah* has been broken? The *Ramban* explains that Hillel HaSheini, realizing that the chain of *semichah* would be broken, was *mekadesh* all of the *chodashim* in advance until the time that *semichah* will be reinstated with the coming of *Mashiach*.

Regarding this point as well, the *Rambam* (*Sefer HaMitzvos* and *Hilchos Kiddush HaChodesh* 5:2,13) disagrees and assumes that the Jews living in Eretz Yisrael are responsible to be *mekadesh* the *chodesh*, even today. Those Jews, even if they constitute a small fraction of the world Jewish population, are the ones who are classified as "*Klal Yisrael*," and it is the body of *Klal Yisrael* that is assigned the role of being *mekadesh* the *chodashim* (*Avnei Nezer*, *Orach Chayim* 314:4). The *Rambam*

claims that there is a *Halachah LeMoshe MiSinai* that in the absence of the *Beis Din HaGadol*, the *mitzvah* is incumbent upon the body of *Klal Yisrael*.

The *Ramban* questions this assertion, arguing that such a *Halachah LeMoshe MiSinai* is not mentioned anywhere in the Talmud. To this, the *Brisker Rav* (*Kuntres MeiChiddushei Maran Ri"z HaLevi al Inyanei Kiddush HaChodesh Yoma VeSukkah, Hilchos Kiddush HaChodesh 5:1*) responds that this is in fact the meaning of the *Gemara's* reference to the סוד העיבור, "the secret of intercalation" (*Rosh Hashanah 20b*, as explained by *Rabbeinu Chananel* in the name of the *Ge'onim*) – that *Klal Yisrael* has the ability to sanctify the months in place of the *Sanhedrin*.

*Rav Soloveitchik* explained in his first *yahrzeit drashah* (*Shiurim LeZecher Abba Mari Z"l I*, 1983 ed., pp. 129-131, 137-139; *Kovetz Chiddushei Torah*, pp. 52-56) that the *Beis Din HaGadol* functioned in two primary capacities – as the final arbiter of halachic matters and as the representative of *Klal Yisrael*. The *Rambam's* requirement that the *Sanhedrin* oversee *kiddush hachodesh* is **not** a manifestation of its role as the Supreme Court of the Jewish People, responsible for rendering the final legal decision on halachic matters. *Kiddush hachodesh* does not necessarily involve a complicated *psak halachah* that requires the greatest legal minds of the Jewish Nation. Rather, in performing *kiddush hachodesh*, the *Beis Din HaGadol* serves to represent *Klal Yisrael*. In this sense, the *Sanhedrin* fills a role akin to that of the Congress in the United States.

As such, the responsibility of *kevi'as halu'ach* ultimately rests upon *Klal Yisrael* as a whole. When there is a *Beis Din HaGadol*, it performs this task as the representative of *Klal Yisrael*. When a *Beis Din HaGadol* is not available, the *mitzvah* reverts back to *Klal Yisrael* itself. When its members recite *birchas hachodesh* and observe the *dinim* associated with Rosh Chodesh (*Ya'aleh VeYavo, Mussaf, Hallel, se'udah*), they demonstrate that the day is Rosh Chodesh and sanctify it as such.



population” is calculated based solely on those Jews living in Eretz Yisrael. The *Gemara* derives this from the *passuk* describing Shlomo HaMelech’s inauguration of the First *Beis HaMikdash*: “At that time, Shlomo instituted the celebration, and all *Yisrael* was with him, a huge *kahal* (**congregation**) from the approach of Chamas [the northernmost point of Eretz Yisrael] until the brook of Mitzrayim [the southernmost point of Eretz Yisrael]” (*Melachim I* 8:65). Eretz Yisrael is the National Homeland of the Jewish people and so only the Jews there constitute the *kahal*, the nation.

[See essays for *Parshas Lech Lecha* and *Parshas Ki Savo*; *Eretz HaTzvi*, p. 231; *B’Ikvei HaTzon*, p. 209; *Nefesh HaRav*, pp. 79-80; *The Journal of Halacha and Contemporary Society* XVI, pp. 78-79.]

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PARSHAS BESHALACH  
*KLAL YISRAEL AS A TZIBBUR*

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ויקח משה את עצמות יוסף עמו כי השבע השביע את בני ישראל לאמר פקוד  
יפקוד אלקים אתכם והעליתם את עצמותי מזה אתכם.

Moshe took the bones of Yosef with him, for he had firmly ad-  
jured *Bnei Yisrael* saying, '*Hashem* will surely remember you, and  
you shall bring up my bones from here with you.' (*Shemos* 13:19)

**R**ASHI NOTES, "[Yosef] made [his brothers] swear that they  
would make their children swear" to take his remains with  
them when they would leave *Mitzrayim*. Yosef knew that  
his brothers would not live until the time of *yetzi'as Mitzrayim*,  
and he therefore did not make them swear to take his remains  
along with them when they themselves left *Mitzrayim*. Instead,  
he made them swear to make others swear. This is the meaning  
of the repetitive use of the verb, השבע השביע.

In the 1920s, students all over Europe would send questions  
on postcards to the Rogatchover Gaon, who would respond to  
them in writing. Subsequently, many of these postcards were  
collected and printed in *She'eilos U'Teshuvos Tzafnas Pa'anei'ach*.  
In one inquiry (143:2), a student asked for the Rogachover's  
opinion about the *shalosh shevu'os* (Three Oaths), one of which  
relates to the establishment of a Jewish government in Eretz  
*Yisrael* before the days of the Final Redemption.

The *Gemara* in *Kesubos* (111a), teaches that *Klal Yisrael* and  
the nations of the world took three oaths. The *Gemara* bases  
itself on the thrice-repeated *passuk* in *Shir HaShirim*:

השבעתי אתכם בנות ירושלם בצבאות או באילות השדה אם תעירו ואם תעוררו את האהבה עד שתחפץ.

I have adjured you, O daughters of Yerushalayim, by gazelles or by hinds of the field, should you wake or rouse the love until it pleases. (2:7, 3:5, 8:4)

The Gemara then interprets these *pessukim* as follows:

In regard to what were these three oaths administered? One, that the Jewish People should not converge [upon Eretz Yisrael] in a wall [of force]; one, that the Holy One, Blessed be He, adjured the Jewish People not to rebel against the nations of the world; and one, that the Holy One, Blessed be He, adjured the idolators not to subjugate the Jewish People more than is sufficient.

The Rogachover responded that he was always bothered by how these *shevu'os* could be binding on the Jewish People living today, since they were taken so long ago. A *shevuah* is only binding on the one who personally took the oath. This is illustrated by the fact that in the case of the *shevuah* taken by Yosef's brothers, it was necessary for each generation to make the subsequent generation take its **own** *shevuah* in order for the oath to be binding. If not for this, the original *shevuah* taken by Yosef's brothers would **not** have been binding upon the Jews leaving Mitzrayim generations later.

The Rogachover suggested that the difference between these *shevu'os* is that the one taken by Yosef's brothers preceded *Matan Torah*, whereas the one described in *Shir HaShirim* followed *Matan Torah*. *Matan Torah* served as the *metzaref* (coalescer) of *Klal Yisrael*, making it into "one, eternal entity." The *passuk* uses the singular verb in describing *Bnei Yisrael's* encampment at Har Sinai, ויחן שם ישראל נגד ההר - "And *Yisrael* encamped there, opposite the mountain" (*Shemos* 19:2), and *Chazal* famously teach that the huge multitude of people encamped "as one man, with one heart" (*Rashi*). *Klal Yisrael* attained the status of a Nation only through the Torah.

This is reflected in the *Gemara* in *Nazir* (61a-b), which teaches that *nezirus* only applies to one who belongs to a *tzibbur* (congregation), and not to a non-Jew who would only be accepting *nezirus* upon himself as an individual. A non-Jew is not subject to the *dinim* of *tum'ah*, or, by extension, to the *dinim* of *nezirus*, based on the *passuk*, וְאִישׁ אֲשֶׁר יִטְמָא וְלֹא יִתְחַטֵּא וְנִכְרְתָהּ – “The man who will be unclean and does not purify himself, that soul shall be cut off from the midst of the congregation” (*Bamidbar* 19:20), excluding the non-Jew, who has no *kahal* (Rav Yosef Engel, *Otzros Yosef, drush* 2).

Rav Soloveitchik was fond of quoting the line in Rav Sa'adyah Gaon's *Emunos VeDe'os (ma'amar 3)*, אֵין אֹמְתַנּוּ אֹמֵהּ – “Our Nation is not a Nation, but through her Torah.” The Rav thus explained the practice that the *chazan* holds onto the *sefer Torah* as we proclaim, חֲבֵרִים כָּל יִשְׂרָאֵל – “all *Yisrael* as comrades,” at the time of *birchas hachodesh*. Basing himself on the words of the *Rambam* in *Sefer HaMitzvos (Mitzvas Aseh 153; see above, Parshas Bo)*, the Rav explained that *kiddush hachodesh* must be performed by the *Beis Din HaGadol* (High Court) because they act as representatives of *Klal Yisrael*. Now that there is no *Beis Din HaGadol*, the *mitzvah* reverts back to the body of *Klal Yisrael*. By holding onto the *metzaref* of *Klal Yisrael*, the *sefer Torah*, and proclaiming חֲבֵרִים כָּל יִשְׂרָאֵל, the **united** Jewish Nation throughout the world declares the day of the coming Rosh Chodesh.

The Rogachover similarly explained that when *Klal Yisrael* took the *shevuah* spoken of in *Shir HaShirim*, it was as a *tzibbur*, and as such, that *shevuah* remains binding on all future generations who are part of that timeless *tzibbur*. In contrast, the *shevuah* taken by the brothers of Yosef took place **before** *Matan Torah*. Since there was no entity of *Klal Yisrael* at that time, it was a *shevu'as hayachid* (oath of an individual), which is only binding on the one who actually took the oath. [See *Eretz HaTzvi*, pp. 120-121.]

This concept of *shevu'as hatzibbur* serves as the basis of *minhagei hatzibbur* (communal customs). The *Gemara* in *Nedarim* (15a) teaches that a *minhag tov* is binding and its violation would be considered *בל יחל מדרבנן*; it is included rabbinically in the *passuk's* prohibition, "he shall not desecrate his word" (*Bamidbar* 30:3).

When it comes to a *minhag hayachid*, if an individual performs a proper custom once with the intention of continuing to do so in the future, or if he performs that custom three times without any particular intention regarding the future, it is considered on a rabbinic level as if he actually took a *neder* to carry out that custom in the future. [On a *d'oraisa* level, a *neder* must be enunciated verbally in order to be binding. The exception to this rule is a *neder* regarding *hekdesh*, based on the *passuk*, *כל נדיב לב עולות* – "and all those with generous hearts [brought] burnt-offerings" (*Divrei HaYamim* II 29:31). On a rabbinic level, we extend the efficacy of this unarticulated *neder* to a *neder* relating to any *hanhagah tovah* (commendable practice).]

In the same way, the community as a whole may adopt a *minhag*, such as waiting six hours after a meat meal before eating dairy, or abstaining from "gebrochts" or *kitniyos* on Pesach. In these cases, it is considered as if the *tzibbur* took the *neder*, which is then binding on all the members of that *tzibbur* even if they never took such a *neder* themselves. The *Chumash* itself only speaks of *shevu'as hayachid*, but the *passuk* in *Shir HaShirim*, *השבעתי אתכם בנות ירושלם*, clearly assumes that there is such an institution of *shevu'as hatzibbur*.

When an individual takes a *neder* or *shevuah*, there is a method of *hataras nedarim* (annulment of vows). This is performed by a *beis din*, based on the individual's subsequent realization that he cannot abide by the *neder*, or on his regret over having taken that *neder*. It would seem that only an **individual's** private *nedarim* or *minhagim* would be subject

to *hatarah*. In the case of *minhagei hatzibbur*, since no one individual is the *ba'alim* ("owner") of the *neder*, no individual would be in the position to have it annulled by a *beis din*. The *neder* is not **his**; it applies to him because he is a member of a particular *tzibbur*, and the only way to have the *neder* annulled would be for the entire *tzibbur* to have it annulled. Alternatively, he could break his affiliation with that specific *tzibbur* and join a different one, thereupon becoming obligated in all of the customs of that particular community. A *neder* may only be undone when the *ba'al haneder* comes before a *beis din* for *hataras nedarim*, not by an individual who seeks to free himself from a *minhag hatzibbur*.

[See *Beis Yitzchak*, Volume 39 (5767), pp. 513-520.]

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## PARSHAS YISRO

# PRECEDENCE IN HALACHAH

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PRIOR TO *Ma'amad Har Sinai*, Moshe instructed *Bnei Yisrael*, **היו נכנים לשלושת ימים אל תגשו אל אשה** – “Be prepared after a three-day period; do not draw near a woman” (*Shemos* 19:15), teaching that a *ba'al keri* and a *poletes shichvoas zera* (both of whom are *tamei*) were not permitted to participate.

The *Gemara* in *Bava Kamma* (82a-b) lists ten *takanos* made by Ezra, one of which was that a *ba'al keri* must immerse in a *mikvah* before studying words of Torah. His source was the *passuk*, **והודעתם לבניך ולבני בניך יום אשר עמדת לפני ד' אלקיך בחורב**, – “You shall make them known to your children and your children’s children, the day you stood before *Hashem*, your G-d, at *Chorev*” (*Devarim* 4:9-10). In addition to the simple meaning of the *passuk* – to recount the episode of *Ma'amad Har Sinai* to one’s children – the *Gemara* in *Berachos* (22a) presents an additional level of interpretation. We must study or teach Torah to our children in the **same fashion** in which we received the Torah at Har Sinai.

Just as the Torah was received, due to the associated *gilui Shechinah* (Divine Revelation), **באימה וביראה וברתת ובזיע**, – “amidst dread and awe, with trembling and with fear,” so too must these elements be present whenever Torah is taught. Since the impurity associated with *ba'al keri* is typically brought about through levity, such an individual does not possess the reverential attitude necessary for Torah study.

The *Gemara* relates that in later generations, the *Tana'aim* repealed this *takanah* of Ezra, allowing a *ba'al keri* to study Torah. They expounded the *passuk*, 'הלווא כה דברי כאש נאם ד' – "Behold, My words are like fire, thus says Hashem" (*Yirmiyah* 23:29), understanding that words of Torah, like fire, cannot contract *tum'ah*.

The *Rishonim* are bothered by the fact that this seems to contradict the rule, אין בית דין יכול לבטל דברי בית דין חבירו אלא אם כן – "One court may not override the rulings of another court, unless it is superior to [the other court] in wisdom and in number" (*Megillah* 2a). How were the *Tanna'im* able to repeal Ezra's *takanah*?

The *Rashba* and the *Ritva*, in the name of the *Ba'alei HaTosfos*, present the following suggestion. Although Ezra's interpretation of the *passuk* does not reflect its simple meaning, it is an elucidation of the *passuk* on a *d'oraisa* level – not merely a rabbinic enactment, as the term *takanah* usually implies. When it comes to a *d'oraisa* law, expounding the Torah based on the *מדות שהתורה נדרשת בהן* (exegetical principles), there is **no** requirement for the subsequent *beis din* to be greater in wisdom and in number. In such a situation, we follow the *passuk*, ובאת אל הכהנים הלויים ואל השופט אשר יהיה בימים ההם – "You shall come to the *Kohanim*, the *Levi'im*, and to the judge who will be in those days" (*Devarim* 17:9), from which we learn that we must submit to the authority of the judge in **our** days, even if he is not as great as the judges who preceded him. The *Gemara* says, יפתח בדורו כשמואל בדורו – "Yiftach in his generation is like Shmuel in his generation" (*Rosh Hashanah* 25b).

*Tosfos* (*Rosh Hashanah* 9a, s.v. *veRebbi*) quotes the *Yerushalmi* to this effect: בשעה שהיתירו למקרא סמכו – "At the time they allowed it, they relied on [an exposition from] Scripture." Thus, Rabban Gamliel expounded *pessukim* to derive the permissibility of work on a field prior to the *shemittah* year, just as work is permitted up until sunset on *erev Shabbos*.

Indeed, in the *Chut HaMeshulash* (end of *siman* 9), Rav Chaim Volozhiner *zt"l* recounts the instruction given him by the Vilna Gaon, not permitting him to simply follow a previous *psak* if he was unconvinced of its validity. Doing so would constitute a violation of *לא תשא פני דל ולא תהדר פני גדול* – “You shall not favor the poor and you shall not honor the great” (*Vayikra* 19:15), tantamount to a judge showing favor to one litigant over another.

The *rabbonim* who are qualified in every generation are entitled and obligated to express their honest opinion, even if it is in disagreement with those who preceded them, and even if those who preceded them were greater in wisdom and in number. For example, Rav Moshe Feinstein *zt"l*, in his *Iggros Moshe*, at times disagreed with the *Noda BeYehudah* or the *Chasam Sofer*. This was not due in the slightest to any sense of arrogance on Rav Moshe’s part. He was, in fact, an extremely humble person, who would be the first to admit that the earlier *gedolim* were greater in Torah knowledge than he was. Since he was asked so many questions by those who felt that he was entitled to an opinion, he was permitted and obligated to express that opinion.

Obviously, the permissibility of a rabbi to express his opinion is limited to a case in which he is, in fact, **entitled** to an opinion. In every generation, unfortunately, there have been arrogant people who, despite their lack of knowledge, felt qualified to express their opinions. They make use of secondary sources due to their unfamiliarity with the primary ones, and they are truly ill-equipped to render a knowledgeable opinion. Naturally, even one entitled to render an opinion would be wise to think “more than twice” when disagreeing with the decisions of the *gedolim* of previous generations.

There is, however, an important limitation of this license to disagree with halachic precedent. The *Rama* (*Choshen Mishpat* 25:1) rules that if, on the strength of clear proofs in a *posek’s*

analysis, he feels that the correct ruling is not in accordance with the earlier *psak halachah* of the *Ge'onim*, he has a right to rule against them. However, this is **not** the case if his ruling goes against a dictum of the *Amora'im* in the *Gemara*.

The Vilna Gaon cites, as the source for this statement, the *Gemara* in *Bava Metzia* (86a), which brings a quotation from the *Sifra D'Adam HaRishon*. In this Book of Adam HaRishon, *Hashem* showed Adam how world history would develop based on the free choice and actions of humankind, but with the guiding Hand of *Hashem* seeing to it that history progresses in a particular direction. This is the case not only regarding world history, but also regarding the development of *Torah SheBe'al Peh*. To that end, *Hashem* showed Adam each generation's Torah scholars, even recording details regarding certain scholars, such as the fact that only Rav, and not his contemporary Shmuel, would receive *semichah* from Rabbi Yehudah HaNasi.

One of the lines from this *sefer* that is cited by the *Gemara* is, *רב אשי ורביןא סוף הוראה* – “Rav Ashi and Ravina [shall be] the last [of the *chachamim* of the era] of adjudication.” This statement has the connotation that a *talmid chacham* from a later period does not have the ability to disagree with the consensus of opinion formulated before the *chasimas haTalmud* (conclusion of the Talmud) at the time of Ravina and Rav Ashi (approximately the year 500 CE). One may not add onto, subtract from, or disagree with the analysis of the *Gemara*. However, with the exception of such a *machlokes*, in all other generations, a *talmid chacham* **may** disagree with rulings of an earlier generation.

A comment of the *Kesef Mishnah* (*Hilchos Mamrim* 2:1) is in line with this understanding as well. He writes that, in truth, *Amora'im* had the legal ability to disagree with the earlier generations of *Tanna'im*, and they even did so on rare occasion. However, the *Amora'im* accepted upon themselves to avoid such a disagreement, to acquiesce to the teachings of the earlier

generations of *Tanna'im*. For this reason, the *Gemara* generally considers it a refutation of the words of an *Amora* if they are found to be in disagreement with a *din* recorded in a *Mishnah* or *Beraisa*.

Why is it that the *chasimas haTalmud* serves as a cutoff point? Rav Moshe Soloveitchik *zt"l* suggested that the answer is along the following lines. We usually assume that although Rebbi Yehudah HaNasi edited the *Mishnah* in approximately the year 200 CE, the *mishnayos* were still recited orally until the days of Ravina and Rav Ashi. Rebbi edited the *mishnayos* with respect to how they should be recited orally, but he did not publish and disseminate the *Mishnah* in written form. It was only after the *chasimas haTalmud* that *mishnayos* were taught and studied from a written text. Therefore, the *talmidei chachamim* before Ravina and Rav Ashi, who were still studying and transmitting the *Torah SheBe'al Peh* **orally**, in its intended form, possessed a more elevated status of *ba'alei masorah*. After that time, because all of our learning is from a written corpus, *talmidei chachamim* possess a lower status of *ba'alei masorah* from a halachic perspective. That is why post-Talmudic *talmidei chachamim* are legally unable to disagree with Talmudic ones.

With the exception of this unique situation, disagreement with a Talmudic dictum, the concept of legal precedent is not absolutely binding in the halachic system. Since the time of the *chasimas haTalmud*, each generation's scholars have the right, and even the obligation, to express their honest opinions, even if they are in disagreement with the opinions of greater scholars of former generations.

[See *Nefesh HaRav*, pp. 36-37.]

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## PARSHAS MISHPATIM GEIRUS AT SINAI

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THE GEMARA in *Kereisos* (9a) derives the *dinim* of *geirus* from the experience of *Bnei Yisrael* at *Ma'amad Har Sinai*. This is based on the *passuk*, כַּכֵּם כְּגֵר יִהְיֶה לְפָנַי ד' – “like you like the convert shall it be before *Hashem*” (*Bamidbar* 15:15). Just as *Bnei Yisrael* undertook *milah*, *tevilah*, and *hartz'a's dam* (*korbanos*) leading up to their acceptance of the Torah, so too must future converts receive a *bris milah* (for males), immerse in a *mikvah*, and bring a *korban*.

The *Gemara* understood that the circumcisions performed before *Bnei Yisrael* left *Mitzrayim* served a dual function – to permit the consumption of the *Korban Pesach*, as well as part of the *geirus* completed seven weeks later.

To demonstrate the requirement of *tevilah*, the *Gemara* does not cite the *passuk* in *Parshas Yisro*, וּקְדַשְׁתֶּם הַיּוֹם וּמָחָר וּכְבַסוּ שְׂמֹלוֹתֵיכֶם – “and you shall sanctify them today and tomorrow, and they shall wash their clothing” (*Shemos* 19:10). That *tevilah* was specifically for the *ba'al keri* (who was *tamei*), to enable him to experience *gilui Shechinah* (Divine Revelation), which was one aspect of the experience of *Ma'amad Har Sinai*. Instead, the *Gemara* derives the *tevilah* for *geirus* from the requirement of *haza'ah* (sprinkling) in the *passuk*, וַיִּקַּח מֹשֶׁה אֶת הַדָּם וַיִּזְרוֹק עַל הָעָם – “Moshe took the blood and sprinkled it upon the people” (24:8).

*Rashi* on *Chumash* quotes the translation of the *Targum*, זורק על מדבחה לכפרא על עמא – “He sprinkled it on the *mizbe’ach* to atone on behalf of the people.” However, the *Tana’aim* in the *Gemara* disagree with this interpretation and understand that the *passuk* refers to the *haza’ah* of blood on the people themselves. The *Gemara* had an oral tradition that whenever *haza’ah* is done, one must first immerse in a *mikvah* in order to properly “accept” that *haza’ah*, just as we find regarding *haza’ah* of the water of the *parah adumah* for one who is *tamei meis*.

Finally, just as *Bnei Yisrael* offered *korbanos* in connection with the new *kedushas Yisrael* (24:5), so too, for all generations, a *ger* must bring a *korban*. The *Gemara* teaches that we are still able to accept *geirim* nowadays, despite the impossibility of bringing a *korban*. It must be possible to accept *geirim* even without a *korban* because of the following reasoning. The *passuk* states, וכי יגור אתכם גר או אשר בתוכם לדורותיכם – “When a proselyte sojourns with you or one who is among you **throughout your generations**” (*Bamidbar* 15:14), and the Torah itself describes a time in which it will not be possible to bring *korbanos* in a *Beis HaMikdash*: והשמותי את מקדשיכם – “and I will make your sanctuaries desolate” (*Vayikra* 26:31).

Initially, following the destruction of the *Beis HaMikdash*, *geirim* were instructed to set aside money for a *korban*, which would be brought in the event that the *Beis HaMikdash* would be rebuilt in their days. Setting aside this money was considered the beginning of the process of offering a *korban* (*Avnei Nezer*, *Yoreh De’ah* 343:3-4). However, due to the possibility of misuse of this consecrated money, *Rabban Yochanan ben Zakai* enacted a *takanah* against setting aside this money (*Rosh Hashanah* 31b).

The *Rishonim* (see *Tosfos*, *Yevamos* 45b, s.v. *mi*; *Tosfos*, *Kiddushin* 62b, s.v. *ger*) point out that there is another component of *geirus* not explicitly mentioned in the *Gemara* in *Kereisos*:

*kabbalas ol mitzvos* (acceptance of *mitzvah* observance). Just as *Bnei Yisrael* declared נעשה ונשמע – “We will do and we will obey” (*Shemos* 24:7), a *ger* must have a *kabbalas ol mitzvos* as well. Without this, the *geirus* is invalid. [There is usually an additional ceremonial acceptance of *mitzvos* before the *beis din*, just prior to the act of *tevilah*; the absence of this dramatic acceptance would not invalidate the *geirus*.]

Rav Yochanan (*Yevamos* 46b) derives that a *beis din* must be present for *geirus* from the term משפט – “judgement” (*Bamidbar* 15:16), which is used in connection with *geirus*. The *beis din* should optimally be present for all three stages – the *milah*, *tevilah*, and *kabbalas ol mitzvos*. The *Acharonim* ask how there could be a requirement of a *beis din* if the *dinim* of *geirus* are derived from the *geirus* of *Ma’amad Har Sinai*, where a *beis din* was not present.

Rav Yehoshua MiKutno (*Yeshuos Yisrael, Choshen Mishpat, siman* 3) asks a second question regarding *geirus*. The *ger*, in his act of *geirus*, forges a new *bris* (covenant) with *Hashem*, and any agreement or contract requires the presence and consent of both parties. At *Ma’amad Har Sinai*, the national *geirus* of *Klal Yisrael*, this was accomplished through the attendant *hashra’as haShechinah* (Divine Presence), as well as the presence of all of *Klal Yisrael*. Why, then, do we not insist on a requirement of *hashra’as haShechinah* in order to accept *geirim* in future generations?

What emerges from his explanation is that one question is answered by the other. At *Ma’amad Har Sinai*, it was specifically because there was a *gilui Shechinah* and both parties to the agreement were present that there was no need for a *beis din*. Only in the future, when there will be no obvious *gilui Shechinah*, is a *beis din* required in order to represent the *Shechinah*, which is present at least in a concealed fashion. The presence of the *beis din* assures an accompanying *hashra’as haShechinah*, based on the *passuk*, אלקים נצב בעדת קל בקרב אלהים ישפוט –

“G-d stands in the Divine assembly; in the midst of judges, shall He judge” (*Tehillim* 82:1).

Based on this understanding of the significance of the *beis din* for *geirus*, the *beis din* must act according to the “best interests” of the *Shechinah*, which it represents. The presence of the *beis din* does not merely fulfill a technical requirement of the *geirus* ceremony akin to the requirement of witnesses at a marriage, who need not agree to the appropriateness of the *shidduch*. In the case of *geirus*, if it does not seem that the potential *ger* is appropriately motivated, the *beis din* cannot accept his *geirus* on *Hashem’s* behalf!

Furthermore, if a *beis din* witnesses a *tevilah* but is unaware that it is being done for the sake of *geirus*, it would be invalid. Similarly, in the case of a pregnant *giyores* who undergoes *tevilah* for *geirus* under the auspices of a *beis din* (in which case the *tevilah* suffices for the fetus as well), if the *beis din* is unaware of her pregnancy, that *tevilah* would be invalid for the *geirus* of the fetus (see *Dagul MeReavah*, *Yoreh De’ah* 268:6). Without an awareness of the *geirus*, we cannot consider the *tevilah* to have been performed **before** the *beis din*; the *beis din* cannot be viewed as representing the *Shechinah* in consenting to the *geirus* agreement if the judges had no direct knowledge of the *geirus* itself. [See *Ginas Egoz*, pp. 132-133.]

One of the principles of *geirus* is *גר שנתגייר כקטן שנולד דמי* – “A convert who converts is like a newborn baby,” unrelated to his previous relatives (*Yevamos* 22a). If two brothers convert, one would be able to testify regarding the other. Similarly, if a brother and sister convert, according to Torah law, they are able to marry each other because they are no longer related to each other. In contrast, upon the national *geirus* of *Klal Yisrael*, the *Maharal* (*Gur Aryeh*, *Bereishis* 46:10) writes, this rule did not apply. That is why we find that *Bnei Yisrael* were *בוכה למשפחותיו* – “weeping in their family groups” (*Bamidbar* 11:10), because of the longer list of forbidden relatives that had been given to

them at Har Sinai. If the above rule were applicable to them, they would have been permitted to marry **any** relative and would have no reason to be distressed at this time. Rav Yosef Breuer commented that we **must** say that כקטן שנוולד דמי did not apply to the *geirus* at *Sinai*. If it did, the Jewish Nation would have forfeited its *yichus* (lineage), and we would be unable now to consider ourselves descendants of Avraham, Yitzchak, and Ya'akov!

Rav Soloveitchik suggested a rationale for the inapplicability of the status of כקטן שנוולד דמי to the *geirus* at Har Sinai. The *Chasam Sofer* (*Avodah Zarah* 64a) comments that he was unable to find the source of this important principle, כקטן שנוולד דמי. He suggests that *Chazal* may have understood this rule from the *din* of *gezel hager*, which stipulates that property stolen from a *ger* who died without an heir must be returned to the *Kohanim*. The only way that a Jew could die without an heir is if he is a *ger* to whom the rule of כקטן שנוולד דמי applies. However, the *Chasam Sofer* is not satisfied with this suggestion, since this situation could exist in the case of freed slaves or foundlings as well.

Rav Soloveitchik proposed, instead, that we learn the principle of כקטן שנוולד דמי from the rule that *kiddushin* does not take effect between a Jew and a non-Jew (*Kiddushin* 68b). *Tosfos* (*Gittin* 43a, s.v. *v'iy*) explains that this is not limited to a relationship of *kiddushin*; there cannot exist **any** *yachas* (familial relationship) between a Jew and a non-Jew. Therefore, if a brother and sister convert at two different times, their pre-*geirus* familial relation is lost at the time of the first one's *geirus*. At the time of the second one's *geirus*, a sibling relationship cannot begin anew; a brother is only related to his sister from the time of birth.

Rav Soloveitchik continued that the above holds true for a typical case of *geirus*. However, in the case of a woman who converts while she is pregnant with twins, there **would** exist a

sibling relationship between the twins, since their conversions occurred at the same time (*Yevamos* 97b). Similarly, on the occasion of *Ma'amad Har Sinai*, there was but one act of *geirus* on behalf of all the thousands of people present. The proof is that only one set of *korbanos* was brought on behalf of all of *Klal Yisrael*, which sufficed for the one act of national *geirus*. Thus, just as the “non-Jews” prior to Har Sinai had family relatives, after they all underwent *geirus* together and became Jewish, they **maintained** those family relatives. Since there was no moment in time in which some were Jewish and some were non-Jewish, the familial relationships remained intact, and the rule *דמי שנוולד דמי* did not apply. [See *Eretz HaTzvi*, p. 113.]

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PARSHAS TERUMAH  
THE *MIKDASH ME'AT*

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THE RAMBAN, in his introduction to our *parsha*, writes that the main purpose of the *Mishkan* and the *Beis HaMikdash* was to serve as a continuation of the *hashra'as haShechinah* (Divine Presence) that was revealed at *Ma'amad Har Sinai*. Therefore, since *Bnei Yisrael* received the *luchos ha'edus* at Har Sinai, the *Mishkan*, referred to as *Mishkan Ha'Edus*, served as a Sanctuary to house those *luchos*.

The *Gemara* in *Yoma* (52b) tells us that towards the end of the period of the First *Beis HaMikdash*, Yoshiyahu HaMelech hid the *luchos* in a special vault beneath the Temple Mount, constructed for this purpose by Shlomo HaMelech. The *Gemara* (53b-54a) brings a dispute among the *Tanna'im* as to whether the *luchos* remained in this location during the period of the Second *Beis HaMikdash* or whether they were removed and taken to Bavel. Interestingly, the *Rambam* (*Hilchos Beis HaBechirah* 4:1) takes a stand on this *machlokes*, ruling in accordance with the first opinion.

Rav Soloveitchik noted that the very fact that the *Rambam* renders a ruling regarding this *machlokes* indicates that he viewed it not merely as a historical issue, but as one that has halachic significance. The *machlokes* revolves around the question of whether it is possible to have a *Beis HaMikdash* without the presence of the *luchos*. The accepted opinion maintains that

in order for the *Beis HaMikdash* to be invested with *kedushah*, it must function as a *Mishkan Ha'Edus*, housing the *luchos*. As such, the Second *Beis HaMikdash*, by definition, must have housed the *luchos*, albeit in an underground vault.

The *Ramban*, quoted by the *Ran* in his commentary to *Maseches Megillah* (8a in *Dapei HaRif*), claims that *kedushas Beis HaKnesses* is similar to the status of *tashmischei mitzvah* (objects used in the performance of a *mitzvah*). A *sukkah* or *esrog* is considered *huktzah lemitvaso* (set aside for the performance of its *mitzvah*) during the duration of *Sukkos*, when it may be used for a *mitzvah*. A *Beis HaKnesses* enjoys this same status because it enables a more enhanced performance of the *mitzvah* of *tefillah*. According to this approach, on a *d'oraisa* level, once a *Beis HaKnesses* falls into disuse and will no longer be used for *mitzvah* performance, it does not retain its *kedushah*. [The restrictions on its sale and the use of the resulting funds for purposes of greater *kedushah* are all rabbinic.]

This is a novel approach, as one could have argued that the term “*tashmischei mitzvah*” includes only those items **necessary** for the performance of a *mitzvah*, and not a *Beis HaKnesses*, which merely enables the performance of a *mitzvah* in a superior fashion. Indeed, the *Ran* disagrees and maintains that the nature of the *kedushah* of a *Beis HaKnesses* is similar to that of the *Beis HaMikdash*, which has a status similar to that of *tashmischei kedushah*. This is based on the *passuk* referring to a time when *Bnei Yisrael* will be in *galus*: *וואהי להם למקדש מעט* – “Yet I will be for them a miniature sanctuary” (*Yechezkel* 11:16). The *Gemara* in *Megillah* (29a) explains that this is a reference to the *בתי כנסיות ובתי מדרשות שבבבל*, which the *navi* promises will be available to *Klal Yisrael* even in *galus*.

While the *Ran* writes that this interpretation is only an *asmachta* (a Scriptural allusion to a rabbinic *mitzvah*), the *Sefer Yere'im* (*siman* 394) maintains that *kedushas Beis HaKnesses* is

*d'oraisa* in origin. The *Chayei Adam* (17:6) rules that we should follow the opinion of the *Yere'im* that the *Beis HaKnesses* possesses a *kedushah d'oraisa*, and we should therefore be stringent to abstain from non-*mitzvoah* functions within the *Beis HaKnesses*.

Rav Soloveitchik (and *Sdei Chemed*, *Ma'areches HaBeis*, 43) pointed out that the *Rambam* (*Minyan HaMitzvos* found in the beginning of the *Mishnah Torah*) seems to share the opinion of the *Yere'im*. In the listing of *Lo Sa'aseh* 65, לא תעשון כן לר' אלקיכם – “You shall not do this [cause destruction] to Hashem, your G-d” (*Devarim* 12:4), the *Rambam* writes that it is forbidden to remove a stone from the *mizbe'ach* or from *Batei Kneissiyos* or *Batei Medrashos*. The *Beis HaKnesses* seems to be included in the description of this *lo sa'aseh* on a *d'oraisa* level.

We can therefore well understand why the *Rambam* (*Hilchos Tefillah* 11:2) writes, in discussing the *dinim* of *kedushas Beis HaKnesses*, that there should be a designated *aron hakodesh* in which to house the *sefer Torah*, seemingly a mandatory requirement. This makes sense if *kedushas Beis HaKnesses* is subsumed under the same *d'oraisa* category of *kedushas haMikdash*, as *kedushas haMikdash* stems from the presence of the *aron*, which housed the *luchos*. The Rav continued that even if a room is regularly used for the purpose of *tefillah*, it would not attain the status of *Beis HaKnesses* as a *Mikdash Me'at* if it does not have an *aron hakodesh* to house a *sefer Torah*.

*Tosfos* (*Nazir* 23b, s.v. *uvechol*), like the *Rambam*, implies that *kedushas Beis HaKnesses* stems from the *Torah SheBichsav*, the presence of a *sefer Torah* inside the *aron hakodesh*. Interestingly, *Tosfos* suggests that *kedushas Beis HaMedrash* emanates from the study of *Torah SheBe'al Peh* there. It is noteworthy that the *Gemara* in *Megillah* (27a) records a dispute as to which possesses a higher level of *kedushah*, a *Beis HaKnesses* or a *Beis HaMedrash*, and the final ruling assumes that a *Beis HaMedrash* possesses greater *kedushah*. Perhaps *Tosfos* understands that

this is a function of the greater importance assigned to *Torah SheBe'al Peh* over *Torah SheBichsav*, and not to the greater importance of Torah study in a *Beis HaMedrash* as opposed to *tefillah* in a *Beis HaKnesses*.

In what sense is a *Beis HaKnesses* classified as a *Mikdash Me'at* (miniature *Beis HaMikdash*)? Rav Soloveitchik (*Shiurim LeZecher Abba Mari Z"l I*, 1983 ed., pp. 65-68) pointed out that the stricter *din* of *mora* (reverence), forbidding even the wearing of shoes, applies to the *Beis HaMikdash*, in contrast to the requirement of *kavod* (respect) that applies to a *Beis HaKnesses*. In defining the nature of this difference, Rav Soloveitchik cited the *Gemara* in *Berachos* (63a), which states that one may not use a *Beis HaKnesses* as a shortcut, just as this activity would not be tolerated in *ביתו* – one's own house. A *Beis HaKnesses* must be treated with the same degree of respect as one's own home. The Rav felt that just as it was common practice at the time for one to remove his galoshes before entering his house, entering a *Beis HaKnesses* wearing galoshes would be a violation of *kevod Beis HaKnesses*.

Thus, a *Beis Haknesses* is **our** house, to which *Hashem* comes to visit. In contrast, the *Beis HaMikdash* is termed *Beis Hashem*, where we come to visit with Him. In both locations, Man has a "rendezvous" with *Hashem*; the difference between the two locations is whether Man is the visitor or the one being visited.

The Rav proceeded to draw a similar distinction between Shabbos and Yom Tov. The *Shulchan Aruch* (*Orach Chayim* 529:1), based on the *Talmud Yerushalmi* (*Kiddushin* 1:4), rules that while one may not wear weekday clothing on either Shabbos or Yom Tov, Yom Tov clothing should be superior to Shabbos clothing. The Rav explained that on Yom Tov there is an obligation of *simchah*, as we are to appear *lifnei Hashem* (in front of *Hashem*) in **His** home, the *Beis HaMikdash*, to fulfill the *mitzvah* of *aliyah laregel*. When visiting the King in His royal

palace, a most splendid manner of dress is mandated. On Shabbos, when we say **בואי כלה** and greet the *Shechinah*, which comes to visit us in **our** home, we require less regal clothing.

[See *Eretz HaTzvi*, pp. 88-91.]

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PARSHAS TETZAVEH  
INAUGURATION OF THE *MENORAH*

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THERE IS a famous *machlokes* between the *Rambam* and the *Rashba* regarding how many times a day the *menorah* was kindled in the *Beis HaMikdash*. According to the *Rambam* (*Hilchos Temidin U'Mussafin* 3:12), the *hadlakah* was performed twice a day, once in the morning and once in the afternoon. The *Rashba* (quoted by *Lechem Mishnah*) disagrees, since the *passuk* states, מערב עד בוקר - “from evening until morning” (*Shemos* 27:21), implying that the *menorah* was only kindled in the afternoon.

Based on this, the *Binyan Shlomo* (*siman* 53) explains the custom in some communities to light the Chanukah *menorah* in the *Beis HaKnesses* during *Shacharis*, in addition to the lighting performed between *Mincha* and *Ma'ariv*. The *Beis HaKnesses* is considered a *Mikdash Me'at* (miniature *Beis HaMikdash*), and so, as a remembrance of the Chanukah miracle that affected the morning *hadlakah* as well according to the opinion of the *Rambam*, some communities also light in the morning.

The *Rashba* questions the *Rambam's* view based on the *Mishnah* in *Menachos* (49a): “We do not inaugurate the *menorah* with anything other than its seven lamps [kindled] in the afternoon.” A *kli shares* (service utensil) achieves its *chinuch* (inauguration) when it is utilized for the performance of its *avodah* (*Sanhedrin* 16b). If the *menorah* is kindled in the morning

as well, as the *Rambam* maintains, why could the *menorah* not be inaugurated through the morning *hadlakah*?

When dedicating a particular *kli* for future *avodah* in the *Beis HaMikdash*, the *avodah* required for that *chinuch* must be the **initial** *avodah* performed with that *kli*. For example, the same *Mishnah* in *Menachos* teaches that the *mizbe'ach* may be inaugurated only with the *tamid shel shachar* (morning *tamid*-offering). The first *Korban Tamid* offered on a *mizbe'ach* not only fulfills that day's requirement for that particular *avodah*, but also serves as the *chinuch* of that *mizbe'ach* for any future *avodah*.

That is why the Torah discusses the daily *Korban Tamid* both in our *parsha* (*Shemos* 29:38-42) and in *Parshas Pinchas*. In our *parsha*, the purpose of the *Korban Tamid* is to serve as part of the *chinuch* of the *Mishkan*, in contrast to the *Korban Tamid* in *Pinchas*, which is recorded as part of the daily *avodah* in the *Mishkan*. The reason that only the **morning** *tamid* may serve to be *mechanech* the *mizbe'ach* is that it is the **first** in the series of the daily *korbanos*. The proper daily *seder* of *avodah* started with the *tamid shel shachar*, followed by the day's other communal and private *korbanos*, and concluded with the *tamid shel bein ha'arbayim* (afternoon *tamid*-offering) (*Pesachim* 58b-59a).

According to the *Rambam*, the same logic holds true regarding the *chinuch* of the *menorah*. Although the *menorah* was lit twice a day, it is the afternoon lighting, lasting "from evening until morning," that is considered the **beginning** of the *mitzvah*; the morning lighting is considered the conclusion of the *mitzvah*. Therefore, the *chinuch* of the *menorah* must be performed through the afternoon *hadlakah*.

This understanding of the process of *chinuch klei shares* will shed light on an interesting historical incident. The *Kaftor Va-Ferach* (*perek* 6) writes that in 5017 (1257), *Rabbeinu Yechiel MiParis*, one of the *Ba'alei HaTosfos* who moved to Eretz Yisrael, advocated building a *mizbe'ach* and offering *korbanos* on it.

Hundreds of years later, in 1837, Rebbi Akiva Eiger requested of his son-in-law, the *Chasam Sofer*, that he try to persuade the Ottoman ruler of Jerusalem to allow the building of a *mizbe'ach* on the *Har HaBayis* and the offering of *korbanos*. The *Chasam Sofer* (*Yoreh De'ah* 236) wrote back that unfortunately this would not be possible, as a non-Moslem would be forbidden access to the Temple Mount, much less to offer *korbanos* on a *mizbe'ach* at the site of the mosque on the Mount. In the context of his response, the *Chasam Sofer* comments on the plan of Rabbeinu Yechiel and proceeds to analyze a number of the halachic issues associated with such an undertaking, such as our current state of *tum'ah*, the lack of *Kohanim me'yuchasim* whose lineage can be proven, lack of the precious stones for the *Kohen Gadol's choshen*, and the need to purchase communal *korbanos* with *machatzis hashekel* funds.

Regarding this last issue, the *Chasam Sofer* cites the comment of Rav Ya'akov Emden that Rabbeinu Yechiel may have only advocated the offering of the *Korban Pesach*, as that *korban* is not brought from communal funds, but rather from the funds of a small group of individuals.

The *Netziv* (*Ha'amek Davar*, *Vayikra* 26:31; *Meishiv Davar*, 2:56) provides another reason to account for the consideration of offering only the *Korban Pesach*, and not the *Korban Tamid*, at that time. In the *tochechah*, the *passuk* describes, **והשמתי את מקדשיכם ולא אריח בריח ניחוחכם** – “I will make your sanctuaries desolate; I will not savor your satisfying aromas” (*Vayikra* 26:31). In addition to causing the destruction of the *Beis HaMikdash*, it seems that *Hashem* will not be interested in smelling the *re'ach nicho'ach* (satisfying aroma) of the *korbanos*. Thus, even if, as in the *Rambam's* view, the location of the *Beis HaMikdash* retained its *kedushah* after the *churban*, we would still be unable to offer *korbanos* at this time, as *Hashem* told us that He is not interested in the *re'ach nicho'ach* of our *korbanos* (*Binyan Tziyon*, *siman* 1)! It is most striking, continues the

*Netziv*, that the *Korban Pesach* is the one and only *korban* that is never described in the Torah as providing a *re'ach nicho'ach*. Precisely because the *Korban Pesach* is exceptional in this regard, the *Rishonim* considered the possibility of offering this *korban* in particular even without a *Beis HaMikdash*.

A number of *Acharonim* (see Rav Tzvi Pesach Frank, *Mikdash Melech*, perek 11) are bothered by the following question. How could the offering of the *Korban Pesach* have been a possibility in the days of the *Ba'alei HaTosfos*, given that the *mizbe'ach* would first have to be dedicated to be fit for *avodah* and that *chinuch* may only be accomplished by first offering the *tamid shel shachar*? It would seem that bringing the *Korban Tamid* was out of the range of possibility because, as mentioned, this *korban* must be purchased with the communal funds of the *machatzis hashekel*, which must, in turn, be donated by the whole of *Klal Yisrael*.

We may suggest an answer to the question of the *Acharonim* along the following lines. Although, as mentioned, the usual order of *hakravas korbanos* in the *Beis HaMikdash* followed the rule that all *korbanos* were to be brought after the *tamid shel shachar* and before the *tamid shel bein ha'arbayim*, there was an exception to this rule. The *Korban Pesach* stands alone, as it was brought **after** the *tamid shel bein ha'arbayim* (*Pesachim* 58b). Thus, it can be said that all the *korbanos* of the year belong to one *seder*, while the *Korban Pesach*, uniquely, forms a *seder* unto its own. Therefore, while it is true that on all the other days of the year, the *mizbe'ach* can only be inaugurated with the *tamid shel shachar*, on *erev Pesach*, the *chinuch* can take place with the ***Korban Pesach***. The *Korban Pesach* is the beginning of this *seder avodah*, and it could serve as a means through which to be *mechanech* the *mizbe'ach* at the same time it accomplishes its own particular *avodah*.

[See *Ginas Egoz*, pp. 202-203.]

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PARSHAS KI SISA  
THE TRUE *AM HANIVCHAR*

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OUR *PARSHA* describes a major difference between the first *luchos* and the second *luchos*. The first time Moshe ascended to receive the *luchos*, he did not take any material with him: והלוחות מעשה אלקים המה והמכתב מכתב אלקים הוא – “The tablets were *Hashem’s* handiwork, and the script was the script of *Hashem*” (*Shemos* 32:16). The *luchos* are described as being made of stone, but they were formed from a heavenly material.

However, regarding the second *luchos*, *Hashem* said to *Moshe*, פסל לך שני לוחות אבנים כראשונים וכתבתי על הלוחות את הדברים אשר היו – “Carve for yourself two stone tablets like the first ones, and I shall inscribe on the tablets the words that were on the first tablets, which you shattered” (34:1). *Moshe* was to ascend with stone *luchos* from this world, to serve as the substance upon which *Hashem* would engrave the *Aseres HaDibros*.

The *Beis HaLevi* (*drush* 18) expands upon this difference, citing *Midrashim* that explain that not only the *Aseres HaDibros*, but *kol haTorah kulah* (the **entire** Torah), including what is now *Torah SheBe’al Peh*, was miraculously engraved upon the first *luchos*. The engraved script of the second *luchos*, however, was limited to the *Aseres HaDibros* themselves. [Notably, the only mention (in *Shemos* 34:28 and *Devarim* 10:4) of the writing of the *Aseres HaDibros* onto the *luchos* is in connection with the **second** set, not the first.]

The *passuk* cited above, **וּכְתַבְתִּי עַל הַלִּוּחוֹת אֶת הַדְּבָרִים אֲשֶׁר הָיוּ עָלַי** is interpreted to mean, "I shall inscribe onto the second *luchos* only those words that were on the first *luchos* **at the time you shattered them.**" The additional letters and words on the first *luchos* that comprised the **entire** corpus of Torah "flew" into the air at the time of the *chet ha'egel*. All that remained on the *luchos* at the time they were smashed were the letters of the *Aseres HaDibros*, and only these letters were later engraved on the second *luchos*.

This explains why the *Gemara* in *Shabbos* (104a), when giving an example of how some of the letters of the engraved script of the *luchos* miraculously remained in their place, chooses words that do not appear in the text of the *Aseres HaDibros*. Since the text of the first *luchos* actually contained *kol haTorah kulah*, those words were, in fact, present on the *luchos*.

[This would seem to be in accordance with the opinion of the *Tanna'im* that the *luchos* were dropped, not smashed, by Moshe. Now that all of the hollow spaces formed by the additional letters turned into solid rock, the *luchos* simply became too heavy for a human to carry. The other opinion of the *Tanna'im* (*Shabbos* 87a) is that Moshe actively smashed the *luchos*, whereupon *Hashem* said to him, **יִשָּׂר כּוֹחַךְ שֶׁשָּׁבַרְתָּ** – "More strength to you, because you broke them."]

The *Beis HaLevi* notes that we celebrate two separate Yomim Tovim commemorating *Matan Torah*, *Shavuos* and Yom Kippur. The *Gemara* in *Ta'anis* (30b) tells us, "The Jewish People had no days as festive as the fifteenth of Av and Yom Kippur ... Yom Kippur [is considered an especially festive day] because ... it was the day on which the second *luchos* were given." Two Yomim Tovim are necessary because *Shavuos* commemorates the giving of the Torah *SheBichsav*, whereas Yom Kippur celebrates the giving of the Torah *SheBe'al Peh*. Since *kol haTorah kulah* was engraved on the first *luchos*, the

entire Torah was *Torah SheBichsav* at that point. What would in the future become the oral section of Torah was **not** engraved on the second *luchos*, as it was on the first, but was left out of *Torah SheBichsav* in order to be transmitted *ba'al peh*. Thus, Yom Kippur is the day of the creation of the entire concept of *Torah SheBe'al Peh*, and the giving of the second *luchos* on Yom Kippur is synonymous with the giving of the *Torah SheBe'al Peh*.

Rav Soloveitchik used this connection between Yom Kippur and the *Torah SheBe'al Peh* to explain an enigmatic teaching of the *Gemara* in *Yoma* (32a). The *Gemara's* teaching is quoted by *Rashi* on the *passuk*, *וּבֹא אַהֲרֹן אֶל אֹהֶל מוֹעֵד* – “Aharon shall come to the *Ohel Mo'ed*” (*Vayikra* 16:23), which describes his removal of the coal-pan and ladle from the *Kodesh HaKodashim*: “The entire *parsha* is stated according to the order [in which the Yom Kippur service was performed] except for this ‘coming.’” The *Gemara* proves this from the fact that there is a *Halachah LeMoshe MiSinai* requiring that the *Kohen Gadol* immerse himself five times on Yom Kippur, once for each change of garments, and that each *tevilah* involves two sanctifications of hands and feet. If the “coming” in this *passuk* were indeed stated in order, there would be only three changes of garments, not the requisite five.

The question is obvious. Why didn't the Torah write this *passuk* in its rightful location, teaching the entire *seder avodah* in the correct sequence? The Rav explained that specifically because Yom Kippur is the day of the celebration of the giving of the *Torah SheBe'al Peh*, the *Torah SheBichsav* was purposely vague here regarding the precise order of the *avodah* of this day. It required the Oral Torah's *Halachah LeMoshe MiSinai* to properly elucidate the correct order of the *avodah*. Indeed, the lesson taught in this *parsha* is that we cannot accurately understand the cryptic *Torah SheBichsav* without the *Torah SheBe'al Peh*. [See *Nefesh HaRav*, p. 293-294.]

The *Beis HaLevi* explains that *Hashem's* original plan was to have the entire body of the Torah written on the first *luchos* since at that point, there was no need to divide the Torah into *Torah SheBichsav* and *Torah SheBe'al Peh*. This changed after the *chet ha'egel*, when *Hashem* decreed that *galus* and the subjugation of *Bnei Yisrael* would be a future possibility. This new post-*chet ha'egel* reality is what necessitated the division of the Torah into its current two sections, with the *Mishnah*, *Gemara*, and *Aggadah* remaining in an oral form, and this division was reflected in the second *luchos*.

Why did the possibility of *galus* make an oral Torah necessary? *Tosfos* (*Gittin* 60b, s.v. *atmuhi*) quotes a *Midrash Rabbah* that cites the *passuk*, *כמו זר נחשבו* – “I have written for him [*Bnei Yisrael*] the major parts of My Torah; they have been regarded as foreign” (*Hoshe'a* 8:12). The *Midrash* explains that when *Hashem* taught Moshe the Torah on Har Sinai, Moshe asked if he should put all of it in writing. *Hashem* replied that there will come a time when the nations of the world will have dominion over *Bnei Yisrael* and take as their own whatever is in written form. Those nations would then be able to claim that **they** are the true *Am HaNivchar*, the Chosen Nation. If the majority of the Torah would have been in written form, the text being available to all nations, the Jewish Nation would lose its uniqueness. However, an oral transmission from *rebbei* to *talmid* bars access of the nations of the world to this section of Torah. The institution of a *Torah SheBe'al Peh* thus ensured that the Jewish Nation would have a heritage uniquely its own, which clearly demonstrates that **it** is the true *Am HaNivchar*.

Thus, the *passuk*, *כי על פי הדברים האלה כרתי אתך ברית* – “For on the basis of these words, I have established a covenant with you” (*Shemos* 34:27), is explained by *Chazal* to mean that *Hashem* sealed His covenant with *Bnei Yisrael* specifically through

the *Torah SheBe'al Peh* (Gittin 60b). Notably, this *passuk* was said in connection with the **second** *luchos*.

Indeed, as the *Midrash* alluded to, for centuries and up to this very day, the Catholics have claimed that the Jewish Nation lost its status as *Am HaNivchar* because it rejected *Oso Halsh*, and that **they** are the true Chosen Nation. That is the background to understand the history of the relationship between the Catholic Church and the Jewish People. Throughout the Second World War, the Church stepped up missionary activity all over the world in an attempt to convert Jews to Christianity, claiming that it was obvious, in light of the Holocaust, that the Jews were no longer the Chosen Nation. Subsequently, they have claimed that the Jewish Nation is not entitled to Eretz Yisrael because that Land is the *Eretz HaNivcheres* (Chosen Land), reserved for the *Am HaNivchar*.

This explains the Catholic reaction to the Zionist movement for over one hundred years. At first, the Catholic response was that Eretz Yisrael will never be given over to the Jewish Nation. It would be impossible for the Chosen Land to be given to the Jews, who are not the Chosen Nation. When the State of Israel was established in 1948, the Catholic Church was forced to give an explanation. For many years, the Vatican did not recognize the State, hoping that it would disappear, because the existence of the State is against this basic tenet of their religion. As time went on, they were forced to explain that the Jews only possess the modern sections of the Land, not the "real" parts of Eretz Yisrael, such as Chevron and the *Ir Ha'Atikah*. Those areas will **never** be possessed by the Jewish Nation, they claimed.

With the Six-Day War in 1967 came the **תיובתא** (irrefutable question) against the whole idolatrous philosophy that they have been preaching for so many centuries! Therefore, the day after the conquest of Yerushalayim, the Pope announced that Jerusalem must be internationalized, and ever since, every

subsequent Pope repeats this suggestion. Of course, according to the Catholics, Yerushalayim **must** be surrendered, because Jewish dominion over this city runs contrary to their religion.

Despite the Catholic rhetoric, the promises of the *nevi'im* were fulfilled. Eretz Yisrael was given back to *Bnei Yisrael*, not to the Catholics. We must recognize the significance of the fact that we have merited to witness a time when the Jewish possession of both the *Torah SheBe'al Peh* and Eretz Yisrael serves as a clear indication that **we** are the true *Am HaNivchar*.

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PARSHAS VAYAKHEL

**THE DEFINITION OF *KEDUSHAH***

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THE TORAH singles out the *melachah* of הבערה (kindling) in the *passuk*, לא תבערו אש בכל מושבותיכם ביום השבת – “You shall not kindle fire in any of your dwellings on the Shabbos day” (*Shemos* 35:3). The *Gemara* in *Shabbos* (70a) brings two opinions as to why this *melachah* was mentioned separately from the remainder of the thirty-nine forbidden *melachos* of Shabbos. One opinion holds that הבערה ללא יצאת – kindling was singled out because it is a mere *issur* (subject only to *malkos*), not a capital offense. We accept the other Tannaitic opinion, that הבערה לחלק יצאת – it was singled out to separate the *melachos* of Shabbos, indicating that each one carries separate liability with it. This means that if one’s lapse of awareness caused him to accidentally violate all of the thirty-nine forbidden *melachos* on one Shabbos, he would be required to offer thirty-nine different *Korbanos Chatas*.

Rebbi Yochanan (70b) explains that this is the reason the *Mishnah* specifies the numeric total of “thirty-nine *melachos*” when it enumerates the prohibited *melachos* – to teach this principle of חילוק מלאכות. If a person was aware of the *kedushah* of Shabbos but was unaware of the prohibited nature of all the thirty-nine *melachos*, and he violated each of them, it is not considered as if he violated the same *issur* repeatedly, requiring only one *Korban Chatas*. Rather, it is considered that he committed thirty-nine **separate** *issurim*, requiring thirty-nine

separate *Korbanos Chatas*. [If he was unaware of the entire concept of Shabbos, or did not realize that the day on which he did the prohibited actions was the day of Shabbos, he would bring only one *Korban Chatas*, for his error is singular in nature.]

The *Gemara* continues with an interesting question: "In what respect did this person 'know' about the Shabbos?" The *Gemara* answers, "He 'knew' about the Shabbos with regard to the *din of techumin* (the boundary limiting the distance one may travel), according to the opinion that this is a *d'oraisa* prohibition."

The underlying message of this *Gemara* is that there is no concept of *קדושה ערטילאית*, abstract holiness. If one's sole knowledge of the concept of Shabbos is that it is a "holy day," endowed with ethereal *kedushah*, that is tantamount to a complete lack of awareness of the entire concept of Shabbos. In order to be considered someone who is aware of the *kedushah* of Shabbos, one must be aware of a **practical** application of this *kedushah*, such as the *issur* of *techumin*. This is because the very definition of *kedushah* entails an obligation to observe additional *issurim* in practice.

For example, the *kedushah* of a *Kohen* forbids him from coming into contact with a *mes* (corpse) and from marrying a *gerushah* (divorcee). The *kedushah* of *terumah* makes it forbidden to the *tamei* individual and to the non-*Kohen*. The *kedushah* of the *Beis HaMikdash* forbids entry of one who is *tamei* and allows for the offering and consumption of *korbanos*. The *kedushah* of Eretz Yisrael obligates its produce in the various *mitzvos* that are dependent on the Land. Indeed, the *Mishnayos* in *Maseches Keilim* (1:6-9), which enumerate the ten distinct levels of *kedushah* of geographic locations, starting with Eretz Yisrael in general and ascending in stepwise order towards the *Kodesh HaKodashim*, cite a practical *issur* that demonstrates each additional level of *kedushah*.

This discussion has relevance to the *mitzvah* obligation upon women as well. When *Hashem* declared to *Bnei Yisrael*,

וְאַתֶּם תְּהִיוּ לִי מַמְלַכַת כֹּהֲנִים וְגוֹי קָדוֹשׁ – “You shall be to Me a kingdom of ministers and a holy nation” (*Shemos* 19:6), it was said equally לְבֵית יִשְׂרָאֵל ... לְבָנֵי יִשְׂרָאֵל – “to the House of Ya’akov [referring to the women] and ... to the Children of Israel [referring to the men]” (19:3). This indicates that the level of *kedushah* of the women amongst *Klal Yisrael* is equal to that of the men (*Iggros Moshe, Orach Chayim* 4:49).

Rav Soloveitchik elaborated on this point in explaining the ruling of the *Rama* (*Orach Chayim* 17:2), based on the opinion of Rabbeinu Tam, that women are permitted to recite a *berachah* over time-bound positive *mitzvos*. Although the text of the *berachah* reads, אֲשֶׁר קִדְּשָׁנוּ בְּמִצְוֹתָיו וְצִוָּנוּ – Who has sanctified us with His *mitzvos* and has commanded us,” women may recite this text, even though they are exempt from performing these *mitzvos*.

Since the *kedushas Yisrael* of women is equal to that of men, and, as mentioned, the definition of *kedushah* entails practical *mitzvah* obligation, the correct way to view the relationship of women to time-bound positive *mitzvos* is as follows. Women **were commanded** to perform time-bound positive *mitzvos*, and then **were exempted** from this obligation. [The Rav contrasted the status of women with that of the *eved Cana’ani*, whose exemption from time-bound positive *mitzvos* indicates that he possesses only a partial *kedushas Yisrael*. This is in line with the opinion of the *Rambam* (*Hilchos Issurei Bi’ah* 13:12, as explained by Rav Chaim) that the second *tevilah* of the *eved Cana’ani*, performed when he is freed, is a *d’oraisa* obligation. This is because he possessed an incomplete *kedushas Yisrael* up to this point and the *tevilah* is necessary for him to gain a full *kedushas Yisrael*.]

We may infer one additional point from the *Gemara* cited above. When the *Gemara* questioned, “In what respect did he ‘know’ about the Shabbos?” the *Gemara* could have responded simply, “He ‘knows’ of Shabbos through the *mitzvah* of *Kiddush*

and the offering of *Mussaf korbanos*." Apparently, this knowledge of the **positive** *mitzvos* of Shabbos is insufficient for him to be classified as one who is "aware of the *kedushah* of Shabbos." The concept of *kedushah* requires specifically a practical outcome relevant to ***issurim* (prohibitions)**. If one is not aware of any *dinim* of Shabbos preventing him from certain activities, then he is unaware of the *kedushah* of Shabbos. [This definition of *kedushah* may have relevance to the *kabbalas ol mitzvos* (acceptance of *mitzvah* observance) necessary for the process of *geirus*. It would seem that an acceptance of *mitzvos* by the *ger* is insufficient; he must be ready to accept the restrictions of the Torah as well.]

This additional point was expressed by Rav Soloveitchik (and similarly by Rav Menachem Ziemba *Hy"d* in *Otzar Ha-Sifrei*, pp. 19-21) in discussing the *Mishnah* in *Keilim* (1:6) mentioned above, which teaches, "Eretz Yisrael is holier than all other lands. And what constitutes its holiness? That we bring from it the *omer*, *bikkurim*, and the *shetei halechem* [on Shavuot]." There are two versions of the text of the *Mishnah*, one of which deletes "*bikkurim*" from the list of *dinim* that differentiate the *kedushah* of Eretz Yisrael from that of other lands. That is, the *din* that only the produce of Eretz Yisrael is subject to the *bikkurim* obligation is not a function of the *kedushas ha'Aretz*.

In fact, one opinion in *Tosfos* (*Bava Basra* 81a, s.v. *hahu*) does not consider *bikkurim* to be among the "*mitzvos hateluyos ba'Aretz*," but instead views it as a personal obligation, akin to *tzitzis*. Rav Soloveitchik explained that this may be the case because the *mitzvah* of *bikkurim* does not carry with it any *issur*; if one neglects to designate *bikkurim* and bring them to Yerushalayim, there is no *issur* of *tevel* (untithed produce) regarding the consumption of the remaining produce. Since *bikkurim* is not associated with *issurim*, perhaps it is not demonstrative of the elevated *kedushah* that Eretz Yisrael enjoys over other lands.

*Yahadus* does not recognize abstract *kedushah*, only *kedushah* rooted in practical performance of *mitzvos* and restriction from *aveiros*. This is how *Yahadus* defines *kedushas Shabbos*, *kedushas Eretz Yisrael*, and *kedushas Yisrael* itself.

[See *Nefesh HaRav*, pp. 77-78; *Eretz HaTzvi*, pp. 96-97.]

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PARSHAS PEKUDEI  
THE DEFINITION OF *GE'ULAH*

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THE RAMBAN, in his introduction to *Chumash Shemos*, comments that the overall theme of this *Chumash* is the *galus* in Mitzrayim and the *ge'ulah* therefrom. Even though *Bnei Yisrael* did not enter Eretz Yisrael by the conclusion of this *Chumash*, this *Chumash* is still considered to include the *ge'ulah*. The *Ramban* explains that the primary tragedy of *galus* is not that we are dwelling outside of Eretz Yisrael per se. Rather, the tragedy is that we no longer experience *hashra'as haShechinah* (Divine Presence).

In the days of the *Avos*, paraphrasing the *passuk* in *Iyov* (29:4), Avraham, Yitzchak, and Ya'akov experienced a state of סוד אלוך עלי אהליהם – “the counsel of *Hashem* above their tents.” The *Midrash Rabbah* comments similarly on the *passuk*, ויכל לדבר אתו ויעל אלקים מעל אברהם – “And when He had finished speaking with him, *Hashem* ascended from upon Avraham” (*Bereishis* 17:22), האבות הן המרכבה – “the *Avos*, they themselves were the Divine chariot.” The *Avos* experienced a continuous *hashra'as haShechinah*, and that departed upon *Bnei Yisrael's* descent to Mitzrayim.

Once the *Mishkan* was built, we read in the concluding passages of *Sefer Shemos* (40:34-38) that the *Shechinah* returned:

ויכס הענן את אהל מועד וכבוד ד' מלא את המשכן ... כי ענן ד' על המשכן.

The cloud covered the *Ohel Mo'ed*, and the glory of *Hashem* filled the *Mishkan* ... For the cloud of *Hashem* would be on the *Mishkan*.

In that sense, *Bnei Yisrael* attained their *ge'ulah*, and it is with this that *Chumash Shemos* closes.

Thus, the definition of *ge'ulah* is **the building of the *Beis HaMikdash* with *hashra'as haShechinah***, and *Bnei Yisrael* were therefore able to experience *ge'ulah* even without entry into Eretz Yisrael. The converse is also true. Although we have today returned to Eretz Yisrael and the *Yishuv* grows larger and larger, absent a *Beis HaMikdash*, we have not yet experienced *ge'ulah*. After the establishment of the State of Israel, the *Chazon Ish* was quoted as saying, "This is the *sof hagalus*, but it is not yet the *ge'ulah*." The *Chazon Ish* was presumably using the *Ramban's* terminology. It is the conclusion of the *galus* because we are now free to reside in Eretz Yisrael, but it is not yet the *ge'ulah*, as we lack *hashra'as haShechinah*.

The *Gemara* in *Rosh Hashanah* (11a) famously tells us that *ליגאל בניסן נגאלו בניסן עתידין ליגאל* – "In Nissan, they were redeemed; in Nissan, they are destined to be redeemed." It would seem that the first statement is not as much based on the fact that *yeti'as Mitzrayim* occurred in Nissan as it is based on the dedication of the *Mishkan* in Nissan one year later. Similarly, the basis for the second statement of *Chazal* is the *pessukim* in *Yechezkel* (45:18-25), which describe the special *korbanos* that will be brought for the *chinuch* of the Third *Beis HaMikdash* for more than six months – from Rosh Chodesh Nissan, at which time the construction of the *Beis HaMikdash* will be complete, until the middle of the following Tishrei. The future "*ge'ulah* in Nissan" corresponds to the completion of the building of the Third *Beis HaMikdash* at that time.

The *Gemara* in *Sanhedrin* (20b) teaches that *Bnei Yisrael* were commanded to perform, in specific order, three *mitzvos* upon their entry into Eretz Yisrael: to establish a Jewish government, then to wage war to eradicate Amalek, and then to build the *Beis HaMikdash*. The *Sefer HaChinuch* (*mitzvah* 95) writes that "entry into Eretz Yisrael" means that the majority of the world

Jewish population lives in Eretz Yisrael. The *Acharonim* explain that according to this opinion, the building of the Second *Beis HaMikdash* must have been a *hora'as sha'ah* (temporary ruling), not the principal *mitzvah* of *ועשו לי מקדש* – “They shall make a Sanctuary for Me” (*Shemos* 25:8), because the majority of the Jewish population remained in Bavel and did not return to Eretz Yisrael with Ezra. This is clearly the case because at that time, the first prerequisite was also not fulfilled, as there was no independent Jewish government until the days of the *Chashmona'im*, two hundred years later.

Rav Tzvi Hirsch Kalisher, a student of Rebbi Akiva Eiger, wrote *Derishas Tziyon*, in which he advocated the building of a *mizbe'ach* in the *makom haMikdash* in order to bring *korbanos*. He published an open letter to Baron Rothschild urging him to support this cause, mentioning that if he would be instrumental in bringing the enterprise to fruition, the Baron might come to be the *Melech HaMashiach*. Rav Kalisher may have intended his suggestion to be a fulfillment of the *mitzvah* to build a *Beis HaMikdash*, but he was not suggesting that there was an obligation to do so. There was clearly no obligation to build the *Beis HaMikdash*, because the first two *mitzvos* in the three-part series had not been accomplished (and, according to the *Chinuch*, because the majority of world Jewry was not yet residing in Eretz Yisrael).

In 1967, after the Six-Day War, when finally *הר הבית בידינו* – “we had the Temple Mount under our control,” some felt that we had an obligation to build the *Beis HaMikdash* and start to bring *korbanos*. Rav Soloveitchik said at the time that there was no such obligation, because of the ongoing security issues in Eretz Yisrael, which continues to be surrounded by her enemies to this day. Only after the government wages war against Amalek and the land is secure would such an obligation begin. The third step in the process, the building of the *Beis HaMikdash*,

only becomes obligatory once it is absolutely peaceful in Eretz Yisrael. [See *Nefesh HaRav*, pp. 96-97.]

Rav Ya'akov Ettlinger (*Binyan Tziyon, siman 1*) responded to Rav Kalisher that the building of a *mizbe'ach* and a *Beis HaMikdash* would be an impossibility for another reason. On the *passuk*, *לשכנו תדרשו* - "you shall seek out His Presence" (*Devarim* 12:5), the *Sifrei* expounds, *דרוש על פי נביא* - "seek [the details of the construction] from the instruction of a *navi*." Others maintained that since the *Gemara* never quoted this comment of the *Sifrei*, the *Gemara* does not hold of such a requirement.

This does not seem to be the case, however. Although the *Rambam* (*Hilchos Beis HaBechirah* 6:14) holds that Shlomo HaMelech's *kiddush* (sanctification) of the area of the *Beis HaMikdash* was everlasting, the *Ra'avad* believes that one who enters that area nowadays would not be subject to *kares*. The *Ra'avad* holds that both Shlomo and Ezra realized that the *Batei Mikdash* that they sanctified would later be destroyed, and each *Beis HaMikdash* was therefore sanctified only temporarily. Shlomo's knowledge of this eventuality was based on the *passuk* in the aftermath of the *cheit hameraglim*, *ויבכו העם בלילה ההוא* - "the people wept that night" (*Bamidbar* 14:1), regarding which we learn, "The Holy One, Blessed be He, said to them, 'You wept a weeping without cause; therefore, I shall establish for you a weeping for generations [on this day, Tish'ah B'Av]'" (*Ta'anis* 29a).

Shlomo HaMelech then wrote, by means of *ruach hakodesh*, *אם חומה היא נבנה עליה טירת כסף ואם דלת היא נצור עליה לוח ארז* - "If she be a wall, let us build on her a silver crown; and if she be a door, let us enclose her with cedar panel" (*Shir HaShirim* 8:9). The *Gemara* in *Yoma* (9b) expounds, "Had you [*Bnei Yisrael*] made yourself like a wall and gone up all together in the days of Ezra, you would have been comparable to silver [metal],

which is not subject to decay.” This has a double meaning; the Second *Beis HaMikdash* would have been everlasting, never to be destroyed, and *Bnei Yisrael* would have continued to produce *nevi'im*. The *Gemara* continues: “Now that you have ascended only partially, you are comparable to cedar wood, which is subject to decay.” Since, unfortunately, the reality of the *aliyah* for the Second *Beis HaMikdash* was in line with the latter possibility, it was understood from the outset that this *Beis HaMikdash* as well would be destroyed (*Sfas Emes*) and that *Bnei Yisrael* would no longer merit the guidance of *nevi'im*.

Yet, the *Gemara* in *Zevachim* (62a) tells us, “Three *nevi'im* [Chaggai, Zechariah, and Malachi] ascended with them from the [Babylonian] exile.” The Brisker Rav (*Chiddushei HaGri"z*, *Bechoros* 17b; *Inyanim, siman* 48) understood this to be a fulfillment of the directive, *הכל בכתב מיד ד' עלי השכיל* – “Everything is in writing, by the Hand of *Hashem*, which He gave me the understanding [to know the Divine plan for the *Beis HaMikdash*]” (*Divrei HaYamim I* 28:19), in agreement with the above-mentioned *Sifrei*. Despite the fact that *Hashem* was disappointed with this *aliyah* and that *nevu'ah* would therefore be withdrawn from *Bnei Yisrael* in the future, these three *nevi'im* **had** to be sent at this time, because a *Beis HaMikdash* simply cannot be built unless it is under the instruction and auspices of a *navi*.

Thus, it appears that the *Gemara* does subscribe to the requirement of a *navi* for the construction of a *Beis HaMikdash*, even if the various *Beis HaMikdash* areas and the location of the *mizbe'ach* could be correctly ascertained archaeologically.

Once we have established the definition of *ge'ulah*, we can begin to discuss the meaning of the phrase, *אתחלתא דגאולה* – “the **onset** of the Redemption.” Many Hungarian *rabbanim* were upset with Rav Kook, insisting that he invented the concept of *אתחלתא דגאולה*. They argued that there are only two stages, *galus* and *ge'ulah*, not the intermediate stage that he

spoke of. In fact, however, this is a Talmudic term, and the *Acharonim* did attach halachic significance to it. The *Gemara* in *Megillah* (17b) teaches that מלחמה נמי אתחלתא דגאולה היא – “War is also considered the beginning of the Redemption.” *Rashi* (*Sanhedrin* 97a) explains that this refers to wars between Jews and non-Jews, presumably relating to control over Eretz Yisrael. We readily understand why this would be called אתחלתא דגאולה, since after a victorious conclusion to this war, a Jewish government would be able to be established, forming the first stage in the three-part process mentioned above, leading up to the building of the Third *Beis HaMikdash*.

The *Chasam Sofer* in his diary (*Sefer HaZicharon*), quoted by the *Minchas Elazar* (4:5), assumed that other wars are also included in the term אתחלתא דגאולה. They therefore ruled that since it is prohibited to slow down the process of *ge'ulah*, it is prohibited to pray that other wars should conclude.

The *Nesivos*, in his commentary to *Megillas Ester* (*Megillas Setarim* 9:19), discusses a second *halachah* that is related to אתחלתא דגאולה. We do not have the right to establish a new rabbinic Yom Tov unless it is related to *ge'ulah*, defined above as *hashra'as haShechinah* in the *Beis HaMikdash*. Otherwise, it would be considered a violation of *bal tosif* (adding onto the body of the Torah). The *Gemara* in *Rosh Hashanah* (18b-19b) discusses *Megillas Ta'anis*, a scroll that lists many days of Yom Tov added by the *chachamim* of the Second *Beis HaMikdash* period, on which fasting was prohibited. The *Gemara* explains that the days listed all revolved about protecting or fortifying the *Beis HaMikdash*, the *avodah* therein, or its institutions, such as the *Sanhedrin* and the *kehunah*. That is why these days of Yom Tov could be established.

The *Nesivos* wonders how the *chachamim* were justified in adding the Yom Tov of Purim, since, according to Talmudic tradition, the miracle of Purim occurred **prior** to the Second *Beis HaMikdash* period, during the seventy years of *galus Bavel*,

and does not seem to be related to the *Beis HaMikdash*. It must be, the *Nesivos* explains, that the *chachamim* of that generation felt that the miracle of Purim would in some way serve as an **אתחלתא** דגאולה, **leading** to the building of the Second *Beis HaMikdash*. He suggests (as does the *Sfas Emes*, *Purim* 5643, s.v. *inyan*) that they may have felt this way because the destruction of the descendants of Amalek, the stage immediately prior to the building of the *Beis HaMikdash*, was accomplished through the execution of Haman and his sons.

We may add that the Purim miracle did, in the final analysis, enable the building of the Second *Beis HaMikdash*. From a political perspective, the Persian King Daryavesh (Darius, son of Ester and Achashveirosh) granted permission to continue the building of the *Beis HaMikdash* (*Ezra* 4:24). Moreover, from a religious perspective, the renewed acceptance of *Torah SheBe'al Peh* engendered by the Purim miracle was a necessary prerequisite for Ezra's entry into Eretz Yisrael and the *ge'ulah*, the building of the Second *Beis HaMikdash* (*Sfas Emes*, *Purim* 5638, s.v. *mah*).

[See end of essays for *Parshiyos Chayei Sarah* and *Vayeishev*; *B'Ikvei HaTzon*, pp. 113-114, 211-221; *The Journal of Halacha and Contemporary Society* XVI, pp. 81-85, 91-92.]

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PARSHAS VAYIKRA

**THE DREAM OF THE *OHR SAME'ACH***

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**T**HE *OHR SAME'ACH*, Rav Meir Simcha of Dvinsk, in his *sefer* on the *Rambam* (*Hilchos Ma'aser Sheni VeNeta Revai* 7:3), offers an original interpretation of a *Gemara* in *Chullin* (22a). He concludes with the following brief note (brought in the "*Milu'im*" section following *Sefer Zemanim*):

Subsequently, I saw that the *Rashba* (*Teshuvos* 1:276) was asked about a certain version of the *Gemara Chullin* ... and was perplexed by it, and he wrote that it is an incorrect text. However, according to the explanation advanced, it is a most exact *nusach*, and I was exceedingly joyous that *Hashem* led me on a truthful path.

In his introduction to the *sefer Mekor Baruch*, Rav Chaim Stein, who reprinted the *sefer*, reports an incident that was recounted by the author of the *sefer* and heard personally from Rav Meir Simcha, which expands upon this cryptic statement. Apparently, Rav Meir Simcha had a dream in which the heavenly angels were discussing the lack of those who understood the truth in Torah. The *Rashba* interceded, disagreeing with that assertion. He reported that there is one rav in Dvinsk who, through his diligent Torah study, offered the correct explanation of a problematic *Gemara* text, an explanation that had eluded the *Rashba* in his lifetime. Rav Meir Simcha had ascertained the truth more than he had! The *Rashba* had written in his *teshuvos* that due to the inexplicable nature of that

*Gemara*, the Talmudic text must be incorrect and should be erased. However, after the *Ohr Same'ach* offered his explanation, the *Rashba* agreed that the true interpretation of this *Gemara* had been revealed, rendering any emendation of the text unnecessary.

The *Gemara* in *Chullin* under discussion teaches that an *olas ha'of* (bird *Korban Olah*) may not be brought at night. The *Gemara* derives this from the *passuk*, *וְאֵת הַשֵּׁנִי יַעֲשֶׂה עוֹלָה כַּמִּשְׁפֵּט* – “And the second [bird] he shall make an *olah* according to the law” (*Vayikra* 5:10), which *Chazal* understand to mean, “according to the law of a *chatas beheimah* (animal *Korban Chatas*).” The *Gemara* then questions why there should be a need to derive this *din* of *olas ha'of* from the *din* of *chatas beheimah*. This *din* should be subsumed under the general rule prohibiting the four principle *avodos hadam* (blood-related services) from being performed after sunset, based on the *passuk*, *בְּיוֹם צִוָּתוֹ* – “on the **day** of his commanding” (7:38). Only those *avodos* that do not relate to *avodos hadam*, such as *haktaras ha'eimurim* (burning of the sacrificial fats) and *nisuch hayayin* (wine libation), may be performed in the evening.

The *Gemara*, according to the questionable version, answers with the following distinction: “I would have said that the rule [that *avodah* be performed during the daytime] would apply to the *chatas ha'of*, but not to the *olas ha'of*; thus, [by means of the additional *passuk*], we are taught [that this rule applies to the *olas ha'of* as well].”

An obvious question troubled the *Rashba*: Why should the *avodah* of the *olas ha'of* be any different than that of the *chatas ha'of* regarding the rule that the *avodah* of any *korban* must be performed during the daytime? Because of this question, the *Rashba* emended the above version and replaced it with the phrase we find in our *Gemara*: *כְּדִי נִסְבָּה* – “This law is mentioned here [incidentally], for no reason.” In other words, the *Gemara* concedes that the *din* requiring daytime *avodah* of the *olas ha'of*

can be derived from the general rule regarding all *avodos hadam*; it need not be derived from the *chatas beheimah*.

The *Ohr Same'ach* offered the following explanation. Our *parsha* speaks about the institution of a קרבן עולה ויורד, a *korban* that varies based on the financial resources of its owner (5:6-13). This *korban* atones for three specific *aveiros*, שבועת העדות (an oath of testimony), טומאת מקדש וקדשיו (contamination of the *Mikdash* and its sanctities), and שבועת ביטוי (a spoken oath) (5:1-4). The Torah describes three different forms of this *korban*. If the owner of the *korban* who is required to atone for the *aveirah* is wealthy, the *korban* is brought *ba'ashirus* (in a state of wealth) and consists of a *chatas beheimah*. If the owner is unable to afford an animal *korban*, he offers a *korban* of *dalus* (poverty), consisting of two birds, one brought as a *chatas ha'of* and one as an *olah ha'of*. A third level, *dalei dalus*, is applicable to one who cannot afford even the bird-*korban*, and consists solely of a *Korban Minchah*.

The *Ibn Ezra* (*Vayikra* 5:7) is bothered by the following question. If a rich person achieves *kapparah* for his *aveirah* through bringing just one *korban*, a *chatas beheimah*, why should one in the middle financial category be required to bring two bird-*korbanos*, an *olah* and a *chatas*? If the Torah does not require an *olah* in the former case, the same should be true in the latter case. The poor man's requirement should be satisfied with just the *chatas ha'of*. What is the purpose of this *olah ha'of*?

The *Ibn Ezra* proceeds to offer an original suggestion. When one brings a *chatas beheimah*, aside from the consumption of the meat by the *Kohanim*, there is also *haktaras ha'eimurim* (burning of specified parts of a *korban*) upon the *mizbe'ach*. However, when one brings a *chatas ha'of*, there is no *haktaras ha'eimurim* on the *mizbe'ach*; the blood is sprinkled and pressed onto the *mizbe'ach* (*mitzui*) and the *Kohanim* consume the meat of the *korban*. The Torah wanted to provide a replacement for the *haktaras ha'eimurim* component of the *chatas beheimah avodah*, which

would have been performed had the owner been able to afford this *korban*. Thus, the Torah requires that in addition to the *chatas ha'of*, a poor person offer an *olas ha'of*, which is completely burnt upon the *mizbe'ach*.

The *Ohr Same'ach* explains that based on this, we can understand the puzzling text of the *Gemara*. The entire purpose of the *olas ha'of* in the case of one who is obligated to bring a *קרבן עולה ויורד* is to replace the *haktaras ha'eimurim* of a *chatas beheimah*. As mentioned above, *haktaras ha'eimurim* **may be** performed after nightfall. Thus, the *Gemara* was justified in its *havah amina*, questioning whether **this** *olas ha'of* - one being brought as part of a *קרבן עולה ויורד* - could be brought after nightfall. The *olas ha'of* may well be viewed as being distinct from its *chatas ha'of* counterpart. The *Gemara* was considering the possibility that this *korban* in particular would **not** fall under the general rule requiring that all *avodos hadam* be performed only during the daytime. In *shamayim*, it was agreed upon that the *Ohr Same'ach's* explanation of the *havah amina* of the *Gemara* was correct.

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## PARSHAS TZAV

# PARTNERSHIP

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THE END of the *parsha* discusses the special *korbanos* that the *Kohanim* were required to bring in order to be endowed with the unique *kedushas kehunah*, over and above the *kedushas Yisrael* that they already possessed. The Brisker Rav (*Chiddushei HaGri"z, Temurah 2a*) points out that it appears that each of the special *korbanos* of Aharon and his sons – the *פר החטאת*, the *איל העולה*, and the *איל המילואים* mentioned in our *parsha* (*Vayikra 8:14,18,22*) – was a special type of *korban hashutfim*, a *korban* of partners.

Usually, when a *Korban Shelamim* is brought in partnership, one of the partners is appointed to perform the *tenufah* (waving) on behalf of the others. They cannot all participate in the *tenufah*, because one partner's hands would be considered a *chatzitzah* (separation) between another partner's hands and the animal. Additionally, the partners cannot do the *tenufah* one after the other, because only one *tenufah* may be performed on any particular *korban*.

Similarly, all the partners may not perform the *semichah* (leaning on the *korban*) together because one partner's hands would be a *chatzitzah* between another partner's hands and the head of the animal. However, since this procedure may be performed multiple times on a single *korban*, each of the partners performs the *semichah* one after the other (*Menachos*

93b-94a). This is the procedure in the case of an ordinary *korban hashutfim*.

However, with regard to the special *korbanos hashutfim* in our *parsha*, the *Tosefta* (*Menachos* 10:4) teaches that all of the *Kohanim* performed the *semichah* on the איל המילואים at the **same time**. Here, notably, each partner was not an independent entity, who, of his own accord, paired himself with other partners to share in the cost of the *korban hashutfim*. The *hora'as sha'ah* (temporary ruling) was such that Aharon and his sons **needed to** bring one set of *korbanos* together in partnership.

The Brisker Rav explains that in a case of שותפות בעל כרחו (**forced** partnership), all of the partners are joined together to be considered as "one owner." Since, here, all of the partners became one unit, as if there was only one owner of the *korban*, there was no disqualification due to *chatzitzah* when one partner's hands separated between another partner's hands and the animal. Aharon and his four sons were thus able to perform the *semichah* on these *korbanos* at the same time.

The Brisker Rav maintains that the same logic would apply to the *tenufah* on these *korbanos* as well. The *passuk* states, ויתן את הכל על כפי אהרן ועל כפי בניו ויגף אותם תנופה לפני ד' – "He [Moshe] put it all on Aharon's palms and on the palms of his sons, and he waved them as a wave-service before Hashem" (*Vayikra* 8:27), implying that all the owners could perform a **single** *tenufah* at the same time and there would not be any disqualification due to *chatzitzah*. [However, the *Ra'avad*, in his commentary to *Toras Kohanim* (1:28), maintains that they performed the *tenufah* sequentially, not at the same time.]

There may be practical relevance of the Brisker Rav's conceptualization of שותפות בעל כרחו in the case of a community that seeks to join together in the construction of an *eiruv* to permit carrying on Shabbos. After the construction of the *eiruv*, it is necessary for all of the members of the community to partner in the ownership of an *eiruv chatzeiros* (typically a

box of *matzos*), thereby converting the neighborhood into “one private property,” as if everyone resided in “one house.” Typically, a community rabbi will effect a *kinyan* to acquire a share in this box of *matzos* on behalf of each of the members of the community via the vehicle of *זכין לאדם שלא בפניו* (acquisition for an individual who is not present). When the vehicle of *זכין* is used, if one is not interested in that acquisition, he is able to protest, and thereby prevent it (*Chullin* 39b). There may be an individual in the community who objects to the *eiruv*, who, by preventing his *kinyan* of a share in the “box of *matzos*” and by not participating in the *eiruv*, is able to render the *eiruv* ineffective! We may, however, suggest that it would not be within his power to prevent his acquisition in this case.

In the case of a capital crime in which there is a split vote amongst the twenty-three-member *beis din*, we follow a majority of thirteen to carry out the sentence. Rav Chaim (*Chiddushei HaGra”ch Al HaShas, Bava Kamma* 27b) explains that the rule *רובו ככולו* (the majority is viewed as the whole), derived from the *passuk*, *להטות רבים* - “yield to the majority” (*Shemos* 23:2), renders it as if the verdict was delivered by the **complete** twenty-three-member *beis din*. Because the body of the *beis din* forms **one unit**, we are able to apply the rule of *רובו ככולו*. If not, the final decision of the *beis din* would not be valid, because it would have been issued by an invalid *Sanhedrin* consisting of only thirteen *dayanim*.

*Tosfos* (*Bava Kamma* 27b, s.v. *ka mashma lan*) expresses a similar understanding. In monetary matters, we are not able to extract money from one’s possession based on a majority - *אין הולכין בממון אחר הרוב*. How, then, is it possible to follow the ruling of a three member *beis din* in monetary matters when the verdict is rendered as a result of a split vote? *Tosfos* explains that since the three-member *beis din* forms **one unit**, it is considered as if the minority view is **not present** at all, based on the principle of *רובו ככולו*.

Following the reasoning of the Brisker Rav in distinguishing between two different kinds of *korban hashutfim* – voluntary partnership versus forced partnership – it is possible to make the following distinction. In the former type of partnership, when each partner has the option not to join the partnership, each partner is considered a distinct entity and could express an opinion in line with his self-interest. However, when each partner is unable to refuse to join the partnership, we should view all the partners in combination as “one owner,” as was the case regarding the *semichah* and *tenufah* of the *korban* of Aharon and his sons.

Such a *שותפות בעל כרחו* exists in the case of a community *eiruv*, which is essentially thrust upon each partner as a result of his living within a particular community. There is room to say that in this **one unit**, we should apply the principle of *רובו ככולו* and consider only the opinion of the majority, as we do in the cases of twenty-three and three-member *batei din*. The opinion of the minority is totally discounted, as if **not present**. Thus, the individual who objects to the community *eiruv* does not have the legal ability to prevent his *kinyan* of a share in the “box of *matzos*.” He does not have the status of an independent owner in such a partnership and is not able to express his personal opinion regarding the community *eiruv*.

[See *Ginas Egoz*, pp. 183-185.]

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PARSHAS SHEMINI  
***BIRCHAS KOHANIM***

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וישא אהרן את ידיו אל העם ויברכם וירד מעשות החטאת והעולה והשלמים.

Aharon raised his hands toward the people and blessed them; then he descended from having performed the sin-offering, the elevation-offering, and the peace-offering. (*Vayikra* 9:22)

**T**HIS *PASSUK* describes the first *Birchas Kohanim*. The *Gemara* in *Sotah* (38a) learns from this *passuk* that this *mitzvah*, colloquially referred to as “*duchening*,” takes place at the conclusion of the offering of the *korbanos tzibbur*. For this reason, Rav Ya’akov Emden (*Mor U’Ketzi’ah*) writes that nowadays, the *mitzvah* of *duchening* must be only rabbinic in nature, given the lack of a *Beis HaMikdash* in which to offer *korbanos*.

The *Mishnah Berurah* (in a footnote to *Orach Chaim* 128:44) brings this opinion, but explains based on multiple sources in the *Gemara* and *Midrash* that *duchening* remains a *mitzvah d’oraisa* even nowadays. Similarly, the *Keren Orah* on the above-mentioned *Gemara* in *Sotah*, quoting the explanation of his older brother, the *Mishkenos Ya’akov* (*Orach Chaim, Teshuvah* 90), explains that *duchening* is a *mitzvah d’oraisa* nowadays, despite our inability to offer actual *korbanos tzibbur*.

Rav Soloveitchik expanded upon this theme in light of the *berachah* of *Retzei* in the *Shemoneh Esrei*. *Retzei* immediately follows *Shema Koleinu*, in which we ask that *Hashem* should accept our prayers, וקבל ברחמים וברצון את תפלתנו – “and accept, with compassion and favor, our prayer.” What, then, is added

by our request in the beginning of the very next *berachah*, **תַּתְּנוּ לָנוּ יְיָ אֱלֹהֵינוּ בְּעַמְּךָ יִשְׂרָאֵל וּבְתַפְלַתָּם** - “Be favorable, *Hashem*, our G-d, toward Your people *Yisrael* and their prayer,” which seems to be a restatement of our previous request?

Rav Soloveitchik explained that the *berachah* of *Retzei* was recited by the *Kohanim* in the *Beis HaMikdash* after the sprinkling of the blood of the *Korban Tamid*, in order to ensure that the *korban* would be accepted with favor (*Mishnah Tamid* 5:1). Thus, the term “*ritzui*” is a technical term that, in the vast majority of its usage in *Tanach*, appears in connection with *korbanos*. **וְנִרְצָה לוֹ לְכַפֵּר עָלָיו** - “and it shall become acceptable for him, to atone for him” (*Vayikra* 1:4) and **פְּגוּל הוּא לֹא יִרְצָה** - “[If it shall be eaten on the third day,] it is rejected; it shall not be accepted” (19:7) are examples of this usage.

The *Ba'al HaTanya* (*Iggeres HaTeshuvah*, perek 2) explains that the *passuk*, **הֲכִיָּה זֶה יוֹם רְצוֹן לְד'** - “Can such be the fast I choose ... Do you call this a fast and a **day of favor** to *Hashem*?” (*Yeshayah* 58:5), uses the term “*ritzui*” in relation to a *ta'anis* because a fast day shares this element with the offering of *korbanos*. This is in line with the *tefillah* that Rav Sheshes added onto the conclusion of his *Shemoneh Esrei* when he observed a *ta'anis*: “May it be Your will to consider my fat and blood that have been decreased as if I had offered them before You on the *mizbe'ach*, and **favor** me” (*Berachos* 17a).

Thus, the innovation of *Retzei* is that in this *berachah* we add the request that *Hashem* consider our *tefillos* **as if we had brought a *korban***. It is not only that our *tefillos* correspond to the *korbanos*, but that the *tefillos* themselves are considered to be **as *korbanos***. The element that serves to convert the *tefillah* into a *korban* is the *berachah* of *Retzei*.

Rav Soloveitchik continued that when one recites *Retzei* in his private *Shemoneh Esrei*, his *tefillah* is accepted by *Hashem* as if he had brought the *korban yachid* of the individual. When a *shaliach tzibbur* recites *Retzei*, the *chazaras hashatz* is now

converted into the *korban tzibbur* of the community. This is because of the concept of תפילת הציבור, which is to be seen as distinct from תפילה בציבור. תפילה בציבור is when each individual recites his own silent *Shemoneh Esrei* at the same time as the other members of a *minyán* of ten men. However, תפילת הציבור is the *chazaras hashatz*, in which the *chazan* serves as the messenger of the *tzibbur* to offer **one tefillah** on behalf of the entire *tzibbur* as a whole. In this way, the *chazan* is comparable to the *Kohen* offering a *korban tzibbur* in the *Beis HaMikdash* – one *korban* on behalf of the entire *tzibbur*.

The *Shiltei HaGibborim* (*Rosh Hashanah*, 12a in *Dapei HaRif*) writes that the *shaliach tzibbur* is able to discharge the *tefillah* obligation of the עם שבשדות (people in the fields) who are unable to attend the *tefillah* in the *shul*, because of this relationship between *tefillah* and *korban*. This would not be the case for other obligations, such as *teki'as shofar* and *krias haMegillah*, which would require the people's presence, as they would have to hear the *shofar* and the *Megillah* in order to discharge their obligation via the vehicle of *shomei'ah ke'oneh* (hearing from others is equivalent to answering oneself).

Based on this understanding of *chazaras hashatz* as serving as a תפילת הציבור, Rav Soloveitchik had the custom of remaining standing with his feet together during its recitation, as one would for the silent *Shemoneh Esrei*. Additionally, it would seem that the entire text of the *Shemoneh Esrei* of the *tzibbur* would have to be audible, including the *pesukim* ד' שפתי תפתח and יהיו לרצון, the entire *Modim*, and the אלקינו ואלקי אבותינו recited prior to *Birchas Kohanim*. [See *Eretz HaTzvi*, pp. 48-49.]

Rav Shlomo HaKohen (*Av Beis Din* of Vilna in the late 1800s and the *magi'ah* of the Vilna Shas) adds that this is the intent of the *tefillah*, ותערב לפניך עתירתנו כעולה וכקרבן, – “May our entreaty become pleasing before You as an *olah*-offering and as a sacrifice,” which is recited just prior to *Birchas Kohanim* on *Yomim Tovim*. Absent *korbanos tzibbur*, we are unable to engage in

*Birchas Kohanim*. This is really the theme of the beginning of the *berachah* of *Retzei* as well; it is re-emphasized in ותערב because the transformation of our *tefillos* into *korbanos* is indispensable to *Birchas Kohanim* (*Binyan Shlomo, Tikunim VeHosafos, siman 1*). We also understand the requirement for the *Kohen* to ascend to the *duchan* (platform) during the recitation of the *berachah* of *Retzei* in particular (*Sotah 38b*), since it is this *berachah* that establishes the *chazaras hashatz* as a *korban tzibbur*, which in turn makes it possible for the *Kohen* to *duchen*.

Thus, when the *shaliach tzibbur* recites *Retzei* in the *chazaras hashatz*, the communal תפילה הציבור is transformed into a *korban tzibbur*. This occurs on the level of *d'oraisa*, allowing for *Birchas Kohanim* to be *d'oraisa* as well, even nowadays. *Birchas Kohanim* is, in fact, taking place at the conclusion of *korbanos tzibbur*, as described in our *parsha*.

The *Mishkenos Ya'akov* adds that although *tefillah* on a daily basis may be only rabbinic in nature (according to the *Ramban*), if it is a תפילה בציבור with *chazaras hashatz* to lead up to *duchening*, that *tefillah* would attain the status of a *d'oraisa*, similar to *Birchas Kohanim* itself.

[See *Nefesh HaRav*, pp. 121-127.]

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PARSHAS TAZRIA  
*TZADDIK VERA LO*

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**R**ASHI AT THE beginning of *Parshas Tazria* (*Vayikra* 12:2) brings an interesting teaching of the *Midrash Rabbah* in the name of Rebbi Simla'i: "Just as the fashioning of man came after all cattle, beasts, and fowl in the act of Creation, so is his law explained after the law of cattle, beast, and fowl." This is why the *dinim* of human *tum'ah* and *taharah* in the *parshiyos* of *Tazria* and *Metzora* follow the *dinim* outlining the *kashrus* and *tum'ah* of animals in *Parshas Shemini*. *Rashi* is alluding here to the symmetry that exists between the physical world and the Torah's halachic system. What is true for the account of the creation of the world holds true in the realm of ritual law as well.

This teaching echoes the well-known teaching of *Chazal*, אסתכל באורייתא וברא עלמא - "[*Hashem*] looked into the Torah and created the world" (*Zohar, Terumah* 161:1). The physical world is patterned after the words of the Torah, which served as the blueprint of Creation itself. Here, *Chazal* underscore the parallel relationship between *teva ha'olam* (nature) and the *dinim* of the Torah.

Similarly, the *Midrash (Bereishis Rabbah* 61:1), when teaching that Avraham Avinu observed Torah Law even before *Matan Torah*, explains that Avraham was aware of the *dinim* of the Torah because כליות יועצות - "the kidneys (seen as the seat of intellect) advise." Because he was especially attuned to it,

Avraham was able to intuit the Torah's laws by observing nature itself. Since the Torah is a blueprint of the world, careful observation of nature can lead to an understanding of Torah Law.

The *Rambam* (*Hilchos Yesodei HaTorah* 2:10) expresses the idea, הדיע והוא הידוע והוא הידוע והוא הידוע – “He is the Knower, and He is the Known, and He is the Knowledge.” The *Ba'al HaTanya* (*Likutei Amarim, perek 2*) explains this to mean that הוא וחכמתו אחד – He and His Wisdom are One. The Torah is חכמתו של הקדוש ברוך הוא, and since He and His Wisdom are one, the Torah is, in its essence, a description of *Elokus* (G-dliness). Indeed, any author or artist who creates a work of art imparts some of his personality into the product that he produces. If he creates enough, he will present his full inner-self within his creations.

This is the underlying message of the perfect symmetry described in this *Midrash*. *Hashem* patterned the world after the blueprint of the Torah because both the Torah and the Creation reflect their Creator; both are descriptions of *Elokus*.

To us, nature and the *dinim* of the Torah not only seem to lack symmetry, but seem to be contradictory. We see צדיק ורע לו – the righteous one who suffers – and רשע וטוב לו – the wicked one who prospers. The ethical and moral standards of the Religious Law seem to be at odds with Natural Law. Nevertheless, we believe that these two laws do blend together, and that a person attuned to it will be able to appreciate this correspondence. Thus, the *Midrash* teaches us that *teva ha'olam* is patterned after Torah Law, and that even the order in which those *dinim* appear in the Torah corresponds to the order in which the various elements of Creation appeared in the world.

The following *passuk* in שיר ליום השבת relates to this symmetry as well: עלי עשור ועלי נבל עלי הגיטן בכנור – “Upon a ten-stringed instrument and upon lyre, with singing accompanied by a harp” (*Tehillim* 92:4). *Chazal* tell us that the harp of the *Beis HaMikdash* consisted of seven strings, the harp of the days of

*Mashiach* will be of eight strings, and the harp of *Olam HaBa* will be of ten strings (*Arachin* 13b). The ten-stringed instrument used for the *mizmor* of Shabbos can be viewed as an allusion to both the *Aseres HaDibros* as well as to the *Asarah Ma'amaros* – the Ten Statements through which the world was created (see Rav Shlomo Yosef Zevin's *LeTorah U'LeMo'adim, Parshas Kedoshim, ma'amar* 3). The *Aseres HaDibros* represent Religious Law, while the *Asarah Ma'amaros* represent Natural Law. These two systems should conform to each other and should exhibit the correspondence that we mentioned above.

However, when we are confronted with the question of *לוי רשע וטוב לו צדיק ורע לו רשע*, when the righteous seem to suffer while the wicked seem to prosper, we face a perceived breakdown of this uniformity. According to Religious Law, as outlined in the *Aseres HaDibros*, those righteous individuals who live in consonance with the Torah's ideals should enjoy a prosperous existence; the wicked individuals who live in a manner contrary to the Torah's ideals should suffer as a consequence of their misdeeds. All too often, however, what we observe within the realm of Natural Law is exactly the opposite. What we have here is an apparent contradiction between the *Aseres HaDibros* and the *Asarah Ma'amaros*.

If we examine this *mizmor* (92:7-13), we find that this conflict is really its central theme:

איש בער לא ידע וכסיל לא יבין את זאת בפרח רשעים כמו עשב ויציצו כל פעלי און להשמדם עדי עד ... צדיק כתמר יפרח כארוז בלבנון ישגה.

A boor cannot know, nor can a fool understand this: When the wicked bloom like grass and all the doers of iniquity blossom, it is to destroy them till eternity ... A righteous man will flourish like the date palm, like a cedar in the Lebanon he will grow tall.

Part of the approach that can be used to resolve this conflict is to endeavor to attain the faith in *Hashem* that allows us to shift our focus from the present reality and to instead set our eyes towards the time of *Olam HaBa*.

Indeed, the *Mishnah* in *Tamid* (7:4) states that this *mizmor* is a *mizmor* for the future era, for the day that will be entirely Shabbos, contentment for eternal life." We have *emunah* that at that time, just as a harp is able to blend together various musical notes into one beautiful melody, the **ten**-stringed harp of *Olam HaBa* will blend together the *Aseres HaDibros* with the *Asarah Ma'amaros*. We will then somehow grasp the perfect symmetry between these two systems.

The *Gemara* in *Chullin* (60b) teaches that the two luminaries, the sun and moon, were initially created equally great. Subsequently, the moon protested to *Hashem*, "Is it possible for two kings to utilize the same crown?" *Hashem* then replied, "Go and diminish yourself!" The *Gemara* continues that the moon further protested, "[Is it fitting that] because I said a correct thing before You I must diminish myself?" *Hashem* responded, "Bring a *kapparah* on My behalf for having diminished the moon." As a result, although the *sa'ir* offered in the *Korban Mussaf* of each Yom Tov is described simply as a "*chatas*," in regard to Rosh Chodesh, it is described as a **חטאת לד'**. This phrase, which literally means "a *chatas* to *Hashem*," is taken by the *Gemara* to mean "a *chatas* **for Hashem**."

Rav Soloveitchik explained that in kabbalistic sources, the concept of *mi'ut halevanah* alludes to the above-mentioned problem of evil in the world, and how it is that *Hashem* allows tragedies to occur. When *Hashem* responded, "Bring a *kapparah* on My behalf," He was acknowledging a measure of "guilt" due to the **appearance** that certain injustices have taken place. *Hashem* feels that He cannot explain His actions at this time, but when all of history will have unfolded, we will understand how everything was for the good.

A *berachah* must be recited based on one's current perception of a situation, and that is why one recites the *berachah*

of the הטוב והמטיב (“Who is good and does good”) over good tidings and דיין האמת (“the true Judge”) over bad tidings. Nevertheless, in his heart, one is urged to endeavor to accept a misfortune with joy, just as a positive development is received with happiness. At this time, it is only with a sense of *emunah* that one can declare, כל דעביד רחמנא לטב עביד – “Whatever the Merciful One does, He does for the best” (*Berachos* 60b), but in the future, even the perception will be in line with what is currently only a belief. We *daven* for the advent of that time, when we recite in *Kiddush Levanah*, ויהי רצון מלפניך ... למלאת פגימת הלבנה ולא יהיה בה שום מיעוט – “May it be Your will ... to fill the flaw of the moon, that there be no diminution in it.”

Rashi brings an important comment of *Chazal* on the *passuk*, כי יד על כס קה מלחמה לד' בעמלק מדור דור – “For G-d has placed His hand on His Throne [and has sworn to] maintain a war against Amalek, from generation to generation” (*Shemos* 17:16), to explain why the words כסא and יקוק are spelled incompletely: “The Holy One, Blessed be He, swore that His Name is not whole, nor is His Throne whole, until the name of Amalek will be completely eradicated.”

Amalek represents the presence of all evil in the world, and the continued existence of Amalek is the symbol of the success of the ways of *resha'im*. Seeing *tzaddikim* suffer and *resha'im* prosper gives us the false impression that *Hashem* is powerless, that He is not the King of the world. If there was a second Supreme Being, or if G-d did not have complete control over His world, or if He was not omniscient and merciful, *chalilah*, צדיק ורע לו רשע וטוב לו we could well understand the situation of צדיק ורע לו רשע וטוב לו. We, who believe that there is no secondary power, but only one G-d who is All-Powerful, Omniscient, and Merciful, are left with the difficult question of צדיק ורע לו. As long as the question of צדיק ורע לו remains with us, His Name and His

“Throne” are incomplete, for it seems as if He does not have full control of the goings-on in the world, and that is why seeming inequality exists and tragedies occur.

The *Tzlach* (*Berachos* 58a) adds that this is the reason that **ירושלים** is written incompletely, as **ירושלם**, without a *yud*, in almost every instance of its appearance in *Tanach*. The *passuk* in *Yirmiyah* (3:17) refers to Yerushalayim as **כסא ד'** – “the Throne of *Hashem*” – because *Hashem* is the official King over Eretz Yisrael and Yerushalayim serves as the capital of His Kingdom. The human king of *Malchus Beis Dovid* merely serves as the representative of *Hashem*, who is the true King over Eretz Yisrael. The **כסא ד'**, Yerushalayim, is as yet incomplete.

The *Cheshek Shlomo* (found in the end of the Vilna Shas, *Sukkah* 2a) makes a similar point in reference to the word **סוכה**, which also represents the *Malchus* of *Hashem*, as in the *passuk*, **ביום ההוא אקים את סכת דויד הנופלת** – “On that day I will raise up the fallen *sukkah* of Dovid” (*Amos* 9:11). In all of *Tanach*, the word **סוכה** appears in the *chasser* form, **סכה**, except for one time: **ויהי בשלם סוכו ומעונתו בציון** – “Then His *sukkah* will be in Yerushalayim, and His dwelling in Tziyon” (*Tehillim* 76:3). That *passuk* refers to the time in the future when His Name and His Throne will be complete, **בשלם**, because at that time the memory and worldview of Amalek will be eradicated. [See *B'Ikvei HaTzon*, pp. 224-225.]

In this context, Rav Moshe Soloveitchik explained how the usual name of *Hashem*, **יקוק**, is replaced by **קה** due to the outlook of Amalek. He suggested that the *yud* and *heh* of this Name of *Hashem* do not simply consist of the first two letters of the name **יקוק**. Rather, the name **קה** is comprised of the *yud* and the **last** *heh* of the name **יקוק**. The *yud* at the beginning of a verb connotes a future orientation (as in **יעשה** – he **will** do), while a *heh* at the end of a verb corresponds to the past tense (as in **עשה** – he **did**). Regarding these two realms, *Hashem's* Name **is** complete, for we have witnessed *gilui Shechinah* in the past

and we will witness it in the future. We certainly have seen לו רשע ורע לו צדיק וטוב לו רשע ורע לו in the past and we will see it again in the future. It is specifically in regard to the **present** that the Name of *Hashem* is incomplete. The middle two letters of יקוק, the letters "הו" from the word הווה (the present), are the ones absent from the Name of *Hashem* as long as Amalek exists in the world. [See *MiPninei HaRav*, 2001 ed., p. 288.]

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PARSHAS METZORA  
THE ESSENCE OF TORAH

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THE GEMARA in *Sanhedrin* (71a) quotes three different *Beraisos* in which three *Tanna'im* teach that there are certain *mitzvos* that have never happened and never will happen. These are the *ben sorer umoreh* (the rebellious son), the *ir hanidachas* (the idolatrous city), and the *bayis hamenuga* (the leprous house) discussed in our *parsha*. As the *Gemara* explains, there are so many specific conditions that must be met in order for these *mitzvos* to apply that it is virtually impossible for them to become a practical reality. The *Gemara* explains that the reason that these *mitzvos* are included in the Torah is so that *דרוש וקבל שכר* – “we can expound them and receive a reward.”

This reason is very difficult. Isn't there enough Torah for which to receive reward for its study, even without the few *blatt* of *Gemara* that deal with these three *mitzvos*?

The *Ba'al HaTanya* (*Likutei Amarim, perakim 4-5*) discusses the phenomenon of the Torah's inclusion of *dinim* that may not occur in practice, and Rav Soloveitchik expanded on his words in order to explain this *Gemara* (*Ish HaHalachah 1:6*). The Torah indeed includes many positive and negative *mitzvos*. However, those *mitzvos* are not really the essence of the Torah; they are ancillary in nature. The essence of the Torah is to give a presentation of what *Elokus* (G-dliness) is, a description of the Creator. In the words of the *Tanya*:

When a person understands and comprehends a particular *halachah* in the *Mishnah* or *Gemara* correctly and clearly ... he thereby comprehends, grasps, and encompasses with his intellect the will and wisdom of the Holy One, Blessed be He, whom no thought can grasp.

For this reason, the Rav described how he felt as if *Hashem* revealed Himself to him when he discovered something new in Torah, as if he perceived a glimpse of *Elokus* at that time. When he understood a new insight in Torah, he came into the presence of *Hashem*. This, the Rav felt, should lead the student of Torah to melt into insignificance, to be overcome by a profound sense of humility, never arrogance.

The *Ramban* (*Hakdamah* to his commentary on the Torah) cites from the *Zohar* that the Torah is referred to as שמוותיו של הקב"ה – “the names of *Hashem*,” containing within it the personality and characteristics of *Hashem* Himself (see *Nefesh HaChayim* 4:19). The difficulty is that the essence of *Hashem* is too esoteric and abstract for us to comprehend, כי לא יראני האדם וחי – “For no human can see Me and live” (*Shemos* 33:20). As Rav Yosef Albo (*Sefer Halkarim, ma'amar 2, perek 30*) wrote, אילו ידעתי הייתי – “If I would know [what *Elokus* is], I would be [Him].”

*Hashem* simplified *Elokus* by explaining it to us through the practical *mitzvos* of the Torah. In a similar way, one might present the abstract concepts of atomic energy to children using different colored balls to represent the interaction of protons, neutrons, and electrons. Those models do not accurately depict the actual workings of atomic particles, but serve as a *mashal* for the uninformed to facilitate a basic understanding of these concepts.

The Torah is similarly a *mashal*. The *passuk* in *Shmuel I* (24:14) says, כאשר יאמר משל הקדמוני מרשעים יצא רשע, – “As the ‘Proverb of the Ancient One’ says, ‘Wickedness emanates from the wicked.’” *Rashi* (*Shemos* 21:13) explains that the phrase משל הקדמוני is a reference to the Torah itself, which is the “proverb” of *Hashem*, the “Ancient One.” Thus, the meaning of the *passuk* in *Shmuel*

is that the **Torah** taught us the lesson that “wickedness emanates from the wicked” when it stated, *והאלקים אנה לידו* – “And G-d brought it [the unintentional manslaughter] to his hand” (*Shemos* 21:13).

The *Chofetz Chaim* (*Shem Olam* 1:12) explains that this not only means that the Torah is the Divine *mashal* authored by *Hashem*, but that it is actually a *mashal of Hashem*. The *Chofetz Chaim* likens the Torah to a photograph of the king. Even if one has never actually seen the king himself, he is able to recognize the king when he meets him based on the photograph. In the Torah, *Hashem* gave us a “*mashal of a mashal of a mashal*” of a representation and image of what *Elokus* is about, so that we may at least begin to understand *Elokus* itself.

The *passuk* in *Iyov* states, *אז ראה ויספרה הכינה וגם חקרה* – “Then He looked and recorded it; He prepared it and perfected it” (28:27). The *Midrash* (*Shemos Rabbah* 40:1) explains that *Hashem* “prepared” the Torah numerous times before He actually gave it to *Bnei Yisrael*. [For this reason, the *ba'al korei* must prepare, either two or three times, before *krias haTorah* (*Orach Chaim* 139:1).] This *passuk* refers to the idea that *Hashem* could not present **actual** *Elokus* in the Torah; instead, He provided an **illustration** of *Elokus*, on simpler and simpler levels, which could be grasped by human intellect. In the words of the *Tanya*, “The Torah has journeyed in a descent through hidden stages, stage after stage ... until it clothed itself in material matters.” *Elokus* has been concealed within the Torah.

The overwhelming majority of the *dinim* of the Torah were given on a level that Man can understand and experience practically. In this way, Man is able to have a connection with *Elokus*. Of course, we must be careful to fulfill in practice all the *mitzvos* of the Torah and be careful not to violate any of its *issurim*, but the ultimate purpose of all of the *mitzvos* is to serve as a description of *Elokus*.

Apparently, there were certain aspects of *Elokus*, corresponding to the three *mitzvos* mentioned above, that could not be simplified to the level of practical reality; they had to remain in their initial state. That is why these three *mitzvos* never happened and never will happen. Still, they had to be included in the body of the Torah because all the six hundred and thirteen *mitzvos* are necessary for the full description of the image of *Hashem*.

It is obvious that if the purpose of the Torah were merely to present all the rules in *Hashem's* lawbook, there would be no reason to include in it *dinim* that have absolutely no practical relevance. The fact that there exists even one *mitzvah* that never happened and never will happen sheds light on the balance of the entire corpus of *mitzvos* of the Torah. This is what the *Gemara* is teaching us in its answer, דרוש וקבל שכן. We must learn the lesson of these three *dinim* and extend that lesson to the rest of the Torah – that the **essence** of Torah is to teach us the personality and characteristics of *Hashem* Himself.

We can now better appreciate that the *Rambam's* ninth Principle of Faith – “That this Torah will not be exchanged” – is a direct outgrowth of the *passuk*, כִּי אֲנִי ד' לֹא שָׁנִיתִי – “For I, *Hashem*, have not changed” (*Malachi* 3:6). Change is relevant only to created beings, not to the Creator Himself. Since the Torah is the wisdom of *Hashem*, and He and His wisdom are One, the *dinim* of the Torah, the description of *Elokus*, are also not subject to change.

This fundamental nature of the body of Torah and its study is borne out by the words of the *Maharshal* (*Yam Shel Shlomo*, *Bava Kamma* 38a). The *Gemara* relates a story in which, according to the understanding of the *Maharshal*, the Roman government sent two officers to the *chachmei Yisrael* to determine whether Jewish law discriminated against non-Jews. The officers asked specific questions, including a question

about the financial responsibility of a Jew who owns an ox that gores the ox of a non-Jew. The Jew is not responsible to pay for damages in this case, while in the opposite case, when the ox of a non-Jew gores, the non-Jew would be responsible for full compensation. The rabbis must have been aware that their truthful response to the officers' questions could lead to a situation of *sakanas nefeshos* (grave danger). Why, then, the *Maharshal* questions, did the rabbis feel compelled to respond truthfully?

There are three cardinal sins that may not be violated even in situations of *pikuach nefesh*. One of these is the *aveirah* of *avodah zarah*, and misrepresentation of Torah Law, the *Maharshal* argues, falls under that broad category. It was therefore forbidden to alter a *halachah* even under these pressing circumstances. Since Torah Law comprises within it an illustration of *Elokus*, misrepresentation of the Halachah is tantamount to an idolatrous misrepresentation of *Elokus* itself, a description of a "different" Creator.

The *Nefesh HaChayim* (4:6) comments that this elucidation of the essence of the Torah has great relevance to the *mitzvah* of *ahavas Hashem* (love of Hashem). *Rashi* (*Devarim* 6:6) questions the juxtaposition of two *pessukim* which contain unrelated themes, *וואהבת את ד' אלקיך ... והיו הדברים האלה אשר אנכי מצוך היום על לבבך* – "You shall love Hashem, your G-d ... And these matters that I command you today shall be upon your heart." Commenting based on the *Sifrei*, *Rashi* explains that it is through the words of the Torah that one will come to recognize Hashem and cleave to His ways. Here, *Chazal* teach us that the way for one to achieve a relationship of love with Hashem is to place the words of the Torah upon his heart. Just as one must have knowledge of the personality and characteristics of the beloved in order to love that being, one must possess knowledge of Torah in order to bring himself to love Hashem. One can come to love Him after being exposed to His personality, and this is accomplished

through the medium of His Torah. [See *Ginas Egoz, Pesichah*, pp. 2-3; *Eretz HaTzvi, Pesichah*, p. 1.]

Rav Soloveitchik added that this explains the significance of dancing with the *sifrei Torah* in a circle during the *hakafos* on Simchas Torah. The *minhag* of these *hakafos* is based on the *Gemara* in *Ta'anis* (31a), which teaches that in the future, *Hashem* will sit in *Gan Eden* in the midst of the circle He will make for the *tzaddikim*. Each one will point with his finger toward Him and proclaim, *הנה אלקינו זה קוינו לו ויושיענו זה ד' קוינו לו נגילה ונשמחה בישועתו* – “Behold, this is our G-d; we hoped to Him and He saved us; this is *Hashem* to whom we hoped; let us exult and be glad in His salvation” (*Yeshayah* 25:9). It is reported that the Vilna Gaon was therefore careful that no one stood on the *bimah* during the *hakafos*, since the center of the circle is reserved for the *Shechinah* itself.

The Rav explained that the symbolism behind such a circle is that all the points along the periphery facing the center strive to reach their purpose in the middle of the circle. The intent of the *hakafos* with the *sifrei Torah* is to demonstrate that it is *limmud haTorah* that leads us close to the *Shechinah*, which is in the center. [See *Eretz HaTzvi*, p. 91.]

There is another important principle elaborated on in the *Tanya* (*Likutei Amarim, perek 15*) – that every Jew has within him a hidden love, *אהבה המסותרת*, for *Hashem*. Rav Soloveitchik felt that the source of this love is the act of the *mal'ach* who teaches each child the entirety of the Torah while in his mother's womb. As described in the *Gemara* in *Niddah* (30b), before birth, the *mal'ach* hits the baby on his mouth to cause him to forget all this learning. Even though the baby does not seem to possess any factual Torah knowledge upon birth, we should not view the teaching of the *mal'ach* as an act of futility. The purpose of the learning must be in order to form an impression on the Jew's heart. It is in order to implant the “hidden love” for *Hashem* that will stay with him throughout

his entire life, specifically through Torah learning, as the *Sifrei* teaches. That is why, deep within his personality, every Jew possesses a natural inclination to have a feeling of love towards *Hashem*.

Rav Soloveitchik continued that this “hidden love” inside every Jew forms the backdrop to understand a *din* brought by the *Rambam* (*Hilchos Geirushin* 2:20). If the *beis din* proscribes that a man must divorce his wife, but he nevertheless resists, the *beis din* may beat him until he says, רוצה אני – “I want [to give the *get*].” This is considered a valid *get*, even though a *get* given against a husband’s will is invalid.

The *Rambam* explains that the true “I” of any Jew really wants to do what is right and obey the *beis din*; there is a “pseudo-personality” that does not allow him to do so. When the court beats the man and he says, “I want,” that statement is coming from his true “I.” This inner will buried within the heart of every Jew stems from the “hidden love” that he possesses, which prompts him to crave a closeness to *Hashem*.

Rav Soloveitchik explained further that this principle articulated by the *Tanya* forms the basis of the statement of the *Rambam* (*Hilchos Teshuvah* 7:5) that there exists a *havtachah* (promise) that in the end of time, *Bnei Yisrael* will certainly do *teshuvah*. How can there be such a promise if we have a principle of faith that guarantees Man *bechirah chafshis*? Are the Jewish People not free to choose evil rather than good?

The answer must be that innately, the Jew does not want to sin. Any *aveirah* committed runs contrary to his true nature; sin is an aberration. Therefore, the natural course of events is such that the Jew, even though he has the full ability to exercise his free will, will eventually return to his root nature. This inner nature reflects the אהבה המסותרת gleaned from the Torah study experienced even before birth, and we are bidden to intensify this love for *Hashem* through Torah learning subsequently throughout our lives. [See *Nefesh HaRav*, pp. 72-74.]

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PARSHAS ACHAREI MOS  
**THE MOMENT OF DEATH**

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THE RISHONIM disagree about in which *melachah* of Shabbos the act of *chavalah* (wounding) is subsumed. According to *Tosfos* (*Kesubos* 5b, s.v. *dam*), it is included in *netilas neshamah*, a *toldah* of *shochet* (slaughtering). This is the case even though the victim remains alive; *chavalah* is like a partial *shechitah*. As an explanation of this assertion, *Tosfos* invokes the phrase, *מה לי קטליה כולה מה לי קטליה פלגא* – “what difference is there whether he killed it entirely or whether he killed it partially” (*Chullin* 35b, *Niddah* 55b), to teach that the spilling of blood is tantamount to the taking of life. This understanding is based on the *passuk*, *כי נפש כל בשר דמו היא* – “For the life of any creature is its blood” (*Vayikra* 17:14; similarly, 17:11, and *כי הדם הוא הנפש* – “for the blood is the life” in *Devarim* 12:23), used to describe the *issur* of consuming blood and the *mitzvah* to cover the blood of a slaughtered animal.

The Torah emphasizes that the flow of blood represents life. Accordingly, the definition of the death of an organ should be the **cessation of blood circulation**, when the heart no longer sends oxygen in the blood to that particular organ. [Obviously, in order for the cessation of blood circulation to be considered the death of the particular organ, the cessation would have to be of an irreversible nature.]

Rav Moshe Feinsein (*Iggros Moshe, Orach Chaim* 1:8) discusses whether one can fulfill his obligation of tying *tefillin* on his arm if the arm is paralyzed. He rules that the arm, which has suffered an interruption of function of the nervous system, is still considered to be alive, and it is therefore fit for the *mitzvah* of *tefillin*. [He writes that his father suffered a stroke several months before he passed away and continued to tie *tefillin* on his paralyzed arm.] However, if the arm were gangrenous due to an interruption of the circulatory system, the arm would be considered to be dead and not fit for the *mitzvah* of *tefillin*. This is based on the *Gemara* (*Bechoros* 37a, *Chullin* 46b) that teaches that lack of blood flow would be considered a *mum* in an animal regarding the *dinim* of *bechor* and *tereifah*.

The *Gemara* in *Yoma* (85a), basing itself on the *passuk*, כל אשר נשמת רוח חיים באפיו - "All in whose nostrils was the breath of the spirit of life" (*Bereishis* 7:22), teaches that "breath" is synonymous with "life." Thus, if rescuers discover a person under rubble on Shabbos, and he lacks respiratory function, he is deemed dead and they may not further desecrate the Shabbos on his behalf. A minority of *rabbonim* understood this *Gemara* to teach that the definition of death is related to a cessation of function of the respiratory system, which occurs in a situation of Brain Death.

However, recognizing Brain Death as the definition of death is a highly questionable approach, as this *Gemara* should be understood in a different light. The *Gemara* is not teaching that respiratory function is the factor that **determines** whether death has occurred, but that it may be used as a very reliable *siman* (**sign**) to more easily identify whether death, as determined by **other** criteria, has occurred (*Teshuvos Chasam Sofer, Yoreh De'ah, siman* 338; see *Toldos Mahari"tz Chayes*, pp. 168-175). That is why the *Rambam* (*Hilchos Avel* 4:5) implies that a certain amount of time must pass after the cessation

of respiratory function in order to declare that a person is dead.

If death of an organ is based on blood circulation, we should use the same criterion in order to determine the time of death for an entire organism. There are several *sugyos* (*Nazir* 21b, *Temurah* 10b, *Arachin* 20a) that speak of the concept of **אבר שהנשמה תלויה בו** (an organ upon which life depends). This category includes the brain, the liver, and (according to the *Rambam* in *Peirush HaMishnayos*, *Arachin* 5:3) the heart. It is unclear whether the Halachah recognizes other organs as being vital organs as well. The “death” of these organs due to lack of blood circulation has implications for the designation of the “death” of the organism, but it is questionable whether one, the majority, or all of the vital organs must be classified as dead in order to label an entire organism as dead. Notably, Rav Soloveitchik is quoted as having said that if the Vilna Gaon would be alive in our generation, even he would not have “broad enough shoulders” to make a decision on the issue of whether a brain-dead patient is considered alive or dead, as there are insufficient sources in the *Gemara* to prove one position over another.

Whatever the definition of death is, it must be a concept that was known to the *Tanna'im*, such as blood circulation. We cannot present a definition of death based on a concept unknown to the *Tanna'im*, as they were the ones who established the categories used in Halachah. The *Gemara* in *Avodah Zarah* (9a) teaches, “The Academy of Eliyahu taught a *Beraisai*: The world is [destined to exist for] six thousand years – two thousand of nothingness, two thousand of Torah, two thousand of the days of *Mashiach*.” The *Chazon Ish* (*Yoreh De'ah* 5:3) comments that although Torah study has clearly continued into the third two-thousand-year unit, the intent of the *Gemara* is that the establishment of halachic definitions was fully completed by the end of the second two-thousand-year unit, roughly the time Rabbi Yehudah HaNasi passed away.

The various definitions of death currently used in medical practice are based on cerebral function, the details of which were totally unknown to the *Tanna'im*. It would seem that we should not accept any of these modern definitions, because there are no sources in the Talmud to validate them. One could argue that Brain Death should be recognized as the definition of death, not on the basis of cessation of cerebral function, but due to the irreversible lack of blood flow to that single organ, as mentioned above. It should be noted, however, that if one is prepared to accept Brain Death as the definition of death on this basis, then he should accept Liver Death as constituting death as well.

Before printing my *teshuvah* on this topic, as Rav Moshe Feinstein had already passed away, I sent it to Rav Elyashiv. He asked what the "bottom line" regarding the status of a brain-dead patient was according to this *teshuvah*, and when told that I thought this patient would be considered a *ספיקא דדינא* (a case of doubt according to the Halachah), Rav Elyashiv said that I should quote in his name that he felt the same way. According to this, a brain-dead patient would be considered a *מת ספק חי ספק מת* (doubtfully alive as well as doubtfully dead). Rav Elyashiv did not accept the position of those who maintain that a brain-dead patient is not even considered a *gosses* (one in whom the process of death has begun), nor did he feel that it is correct to say that this patient is *ודאי מת* (definitely dead), nor that this patient is *ודאי חי* (definitely alive).

Years ago, Rav Eliezer Shapiro reported that the *Rabbanut* in Eretz Yisrael voted that it is permissible to remove organs from a brain-dead patient based on a combination of three considerations. First, there are several doctors involved in removing the organ, and this act would therefore be classified as *שנים שהרגוהו* (two people who murdered the patient), which is not punishable by death. Second, the *Rabbanut's* ruling only applied to a patient who had been involved in an automobile accident.

Such a person is deemed a **גוסס בידי אדם** (one whose imminent death was caused by human intervention), the murderer of whom is not punishable by death. Third, it is a *safek* if the brain-dead patient is really considered alive.

I countered that the second consideration (which is also questionable in its own right because the accident victim should really be considered a **גוסס בידי שמים**) is identical to the first one. More importantly, although such acts do not receive the death penalty, they are not permitted! I therefore did not agree with this position of the *Rabbanut*. I believe that if any one of the vital organs has undergone an interruption of adequate blood flow, the patient should be considered a **ספק חי ספק מת**.

If the Halachah is not prepared to accept Brain Death as the definition of death, the question arises whether a potential organ recipient would be able to accept a vital organ taken from a brain-dead patient, on whom a possible act of *retzichah* was committed. One could present an argument, based on Talmudic sources, that it is not permissible to accept such an organ. Even though the questionable act of murder will be committed whether this recipient accepts this organ or not, it is possible that one is not permitted to save his own life at the expense of another person's life. However, many *rabbonim*, although they have not accepted Brain Death as the definition of death, have ruled that it is permissible to accept such an organ, because the donor's life is unaffected by this choice of the recipient.

While such a position leads to the serious issue of inequality vis-à-vis organ donation, as those who follow the Halachah would be permitted to receive but not to donate organs, we nevertheless cannot permit a questionable act of *retzichah* just because of the social pressure that this inequality creates.

[See *B'Ikvei HaTzon*, pp. 240-253.]

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## PARSHAS KEDOSHIM

# HOLINESS

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THE MISHNAH (*Avos* 3:14) teaches, “Beloved is Man, for he was created *betzelem* (in the image of G-d) ... Beloved is *Yisrael*, for they are called *banim laMakom* (children of the Omnipresent).” The explanation of this distinction would seem to be that non-Jews have the potential to develop the *middos Elokus* (characteristics of G-dliness) within themselves. *Bnei Yisrael*, however, have a “*tzelem Elokim* squared,” a deeper degree of “the image of G-d” – innate spiritual qualities that we possess from *Hashem* Himself. Just as children possess the genes of their parents, *banim laMakom* means that a Jew is not born as a *tabula rasa*; rather, he has the *middos Elokus* as “spiritual DNA” already built into his system. Therefore, the *passuk* that teaches, *קדשים תהיו כי קדוש אני ד' אלקיכם* – “You shall be holy, for holy am I, *Hashem*, your G-d” (*Vayikra* 19:2) can be understood as follows. Since I, *Hashem*, have *kedushah* and I created you, *Bnei Yisrael*, with a status of *banim laMakom*, you are obligated to preserve that degree of *kedushah* already implanted within you and not to distort that *tzelem Elokim*.

This seems to parallel the *passuk*, *והלכת בדרכיו* – “And you shall go in His ways” (*Devarim* 28:9). This is not a *mitzvoah* to imitate something that we are not. Rather, we are commanded to maintain the “ways of *Hashem*” that we were born with, to see to it that we do not tarnish those *middos Elokus*. The very next *passuk* explains the natural consequence of successfully

going in the ways of *Hashem*: וראו כל עמי הארץ כי שם ד' נקרא עליך – “Then, all the peoples of the earth will see that the Name of *Hashem* is proclaimed over you.” From the proper way in which we conduct ourselves, we will serve as לאור גוים – “a light unto the nations” (*Yeshayah* 49:6). Once we will demonstrate by example that we have succeeded in preserving our *tzelem Elokim*, the result, as described in the end of the *passuk*, will be: ויראו ממך – “the nations of the world will learn from us how to act with *yir'as Shamayim*.” The nations of the world also have *tzelem Elokim*, albeit not to the degree of *banim laMakom*, and they will be able to learn this lesson from *Bnei Yisrael* and preserve that *tzelem Elokim* (*Gr" a, Divrei Eliyahu*).

Just as a firstborn child is expected to aid his parents in the raising of his siblings, *Bnei Yisrael*, referred to as בני בכורי ישראל – “My firstborn son, *Yisrael*” (*Shemos* 4:22), are called upon to serve as role models for the nations of the world. This is what being the *Am HaNivchar* (Chosen Nation) means – that we have the responsibility to influence the other nations by impressing upon them the values of honesty, integrity, and decency by which we live.

On the *passuk*, ויכל לדבר אתו ויעל אלקים מעל אברהם – “And when He had finished speaking with him, *Hashem* ascended from upon Avraham” (*Bereishis* 17:22), the *Bereishis Rabbah* (47:8) comments: האבות הן הן המרכבה – “the *Avos*, they themselves were the Divine chariot.” There was a continuous *hashra'as haShechinah* upon the *Avos*. The *Mesillas Yesharim* (*perek* 26) understands that this quality was not limited to the *Avos*, but applies to all *tzaddikim* who are a *merkavah laShechinah*. A *tzaddik* is supposed to act with a degree of *kedushah*, maintaining the *tzelem Elokim* that was implanted within him, so that the Divine Presence is recognizable through his actions.

*Bnei Yisrael*, as *banim laMakom*, are required to act in keeping with their unique status. They should dress and speak properly, in a dignified and honorable fashion, and not like the

lower class of society. The basis of the obligation of *kavod habriyos* is due to Man's creation *betzelem Elokim*. This obligation not only applies in regard to others, but also obligates every person to maintain his **own** self-dignity.

This is the simple explanation of the *Ramban's* comment regarding **קדשים תהיו**, that the Torah warns that one not be a **נבל ברשות התורה** – “degenerate within the parameters of what is permitted by the Torah.” Since, according to Torah law, one may marry many wives, one could arrange that he would always have one of his wives available to him. A person could be careful to make sure that all the food he eats is kosher, but eat in a gluttonous fashion. Such a person, without refined eating habits and an elegant style in his interpersonal relations, is one who is a **נבל ברשות התורה** which the command **קדשים תהיו** addresses.

Many have the mistaken impression that a life of asceticism, consisting of frequent fasting, abject poverty, and withdrawal from social interaction, is considered to be a life of *kedushah*. This does not seem to be in line with *Yahadus's* definition of *kedushah*. The *Gemara* in *Yoma* (86a) understands the *passuk*, **וואהבת את ד' אלקיך** – “You shall love Hashem, your G-d” (*Devarim* 6:5), to include the requirement **על ידך שיהא שם שמים מתאהב** – “that the name of Heaven become beloved through you.” One should act in such a way that those who observe him should “fall in love” with Hashem. People should see the way a Jew acts and become so enamored with *Yahadus* that they feel compelled to join the Jewish religion. Clearly, in our world, one who lives an ascetic lifestyle will not likely be able to influence others.

Rav Shimon Shkop *zt"l* (introduction to *Sha'arei Yoshner*) provides an additional understanding of **קדשים תהיו**. He defines *kedushah* as doing for others. The *Midrash* on **קדשים תהיו** considers whether the Torah requires that we attain a level of *kedushah* identical to that of Hashem Himself. The *Midrash*

concludes that since the *passuk* continues, 'כי קדוש אני ד', we understand that קדושתנו למעלה מקדושתכם – “My *kedushah* is of a higher level than yours” (*Vayikra Rabbah* 24:9). [The *sefer Da'as Sofer* (p. 214) explains that the *Tanna'im* expounded the *passuk* in this way because קדשים תהיו is written in the *chaser* (incomplete) form, without a “*vav*,” while כי קדוש אני is in the *malei* (full) form, with a “*vav*,” implying that only *Hashem* has the full degree of *kedushah*.]

Using his definition of *kedushah*, Rav Shimon explains the *Midrash* as follows. *Hashem* is totally altruistic, as He lacks nothing; He never does anything for His own benefit. Therefore, *Chazal* considered the possibility that we too must be required to concern ourselves **exclusively** with the needs of others, ignoring our own needs. However, just as Rebbi Akiva posits, חייך קודמים לחיי חבירך – “Your own life takes precedence over your fellow’s life” (*Bava Metzia* 62a), *Chazal* here conclude קדושתנו למעלה מקדושתכם, that human beings should not act in the completely altruistic fashion of *Hashem*.

Rav Shimon suggests this as an interpretation of the *Mishnah*, אם אין אני לי מי לי, וכשאני לעצמי מה אני – “If I am not for myself, who will be for me? And if I am for myself, what am I?” (*Avos* 1:14). A person must be somewhat selfish; he cannot negate his own needs. However, it is improper to have the attitude that he will act exclusively for himself. Rather, when he is satisfying his own needs, it must be with the recognition that “if I am for myself, what am I?” He must broaden his definition of self to include his spouse, his family, his community, his nation, and ultimately the whole world. He **is** doing for himself, but he views himself as part of a larger group; he extends “himself” to include the concerns of many others.

According to Rav Shimon, the *Ramban's* warning not to be a נבל ברשות התורה means that if one involves himself with an overabundance of food and marriage partners, that pursuit will not spill over to help those many others. It will satisfy him

alone. One must be selfish enough to meet his own needs only to the extent that by doing so he will be in the position to enable others to satisfy their needs. He will then be able to extend assistance to the many others who are dependent upon him.

There is an ancient custom to read *Megillas Rus* on Shavuos. It is usually assumed that the connection between these two is that they share the element of *geirus*. *Ma'amad Har Sinai* is considered to have been the national *geirus* of *Bnei Yisrael* (see essay on *Parshas Mishpatim*), and this *Megillah* describes the *geirus* of Rus (*Bi'ur HaGr" a*, *Orach Chaim* 490:9, from *Avudraham*).

We may, however, suggest an additional connection. There is a famous *Midrash* that teaches that *Megillas Rus* does not include *dinim* relating to *tum'ah* or *taharah*, to *issur* or to *heter*. It was written entirely to teach us the great reward reserved for those who bestow acts of kindness upon others (*Rus Rabbah* 2:15). Because Rus was so kind to her impoverished and widowed mother-in-law, Na'omi, Rus was rewarded by having the *Malchus Beis Dovid* descend from her. It is interesting that according to Rav Shimon's understanding, bestowing acts of kindness upon others is synonymous with the concept of *kedushah*. This is the reason *Megillas Rus*, the "Megillah of kindness," is also the "Megillah of *geirus*," because *geirus* is the acceptance upon oneself of *kedushas Yisrael*.

*Mesillas Yesharim* (*perek* 26) seems to present yet another definition of *קדשים תהיו*. By way of introduction, the *Radak* comments on the *passuk*, *ד' משה עבד ד'* - "Moshe, servant of Hashem" (*Yehoshua* 1:1), that the term "*eved Hashem*" should be understood in the same way as one who is a servant to his human Master. In regard to the acquisitions of an *eved*, *Chazal* teach, *מה שקנה עבד קנה רבו* - "Whatever a slave acquires, his Master automatically acquires" (*Pesachim* 88b). Moshe is described as an *eved* because his entire life was dedicated to the service of *Hashem*. He led his life for the sole purpose of the

performance of *mitzvos*. He gave himself over to *Hashem* and belonged fully to Him. This is similar to *Rashi's* comment on the *passuk*, וירד משה מן ההר אל העם - "Moshe descended from the mountain to the people" (*Shemos* 19:14). Moshe did not attend to his own business, but rather went directly from the mountain to the people. This attitude is not only reserved for *tzaddikim*; *Hashem* desires that all of us be *avodim*, כי לי בני ישראל עבדים - "For *Bnei Yisrael* are servants to Me" (*Vayikra* 25:55).

The *Rambam* (*Hilchos De'os* 3:2) elaborates on this theme in explaining the *passuk*, בכל דרכיך דעהו - "In all your ways know Him" (*Mishlei* 3:6). Whatever one does in the course of his daily life, including eating, sleeping, or working, should be done *leshem Shamayim*. For example, eating a nutritious meal in order to maintain good health, including some dessert to put one in a good mood, can be viewed as being done *leshem Shamayim*. However, excessive eating, as in the *Ramban's* description of the גבל ברשות התורה, is not performed for the sake of good health and cannot be viewed as being done *leshem Shamayim*. Following this approach to life is how one can "know" *Hashem* in all of his ways.

The *sefer Yesod VeShoresh Ha'Avodah* (*sha'ar* 1, *perek* 8), elaborating on what he refers to as the "*klal hagadol* (great principle) of the *Chovos HaLevavos*" (*Sha'ar Avodas Ha'Elokim*, *perek* 4), teaches that there are not really three categories of human activities - obligatory *mitzvos*, prohibited *aveiros*, and a middle category of *devar reshus* (optional activities). In truth, there are only two categories, because the term *devar reshus* is a misnomer. The middle category is termed *devar reshus* only because those activities are not absolute *mitzvos* or *aveiros*, but rather are dependent upon one's particular circumstance. In the case of food, for example, if one must consume a given food to be healthy and satisfied, then partaking of the food is **obligatory**. If the food is unnecessary and excessive, it is **prohibited** to partake of it. There is no truly optional

activity that one has the choice to perform or to abstain from.

This is the basis of the *Mesillas Yesharim's* concept of *kedushah*. Just as כהנים אוכלים ובעלים מתכפרים – “the Kohanim eat [the *korban*] and the owners then gain atonement” (*Pesachim* 59b), a purely physical act can be a source of great spirituality as long as it is performed *leshem Shamayim*. Once considered within the realm of *kedushah*, the concept of פשטה קדושה בכלולה – “the sanctity spreads through the entire being” (*Kiddushin* 7a) will apply to it. Moreover, the principle of מוסיפין מחול על הקודש – “we add from the profane (weekday) onto the holy” (*Yoma* 81b) applies. Whenever it can, *kedushah* spreads and extends itself. The purely physical acts performed *leshem Shamayim* will lead to a sense of פשטה קדושה בכלולה, and **all** of one's actions, בכל דרכיך, will be considered *leshem Shamayim*.

Perhaps we may add the following contemporary message. On the phrase קדשים תהיו, *Rashi* quotes the comment of *Chazal*, “Be removed from the forbidden relationships and from sin [of immoral nature], for wherever you find restriction of immorality, you find *kedushah*.” The *Mishnah* reports a related teaching of the *Anshei Kenesses HaGedolah*: עשו סייג לתורה – “Make a guard for the Torah” (*Avos* 1:1).

*Mesillas Yesharim* (*perek* 26) writes that it is a common mistake to think that the obligation to create *harchakos* (safeguards) rests solely on the *Sanhedrin*. In truth, the obligation, ושמרתם את משמרתי (*Vayikra* 18:30), expounded to mean, עשו משמרת למשמרתי – “Make a safeguard for My charge” (*Yevoamos* 21a), devolves upon each individual as well. Whatever *Chazal* saw fit to prohibit as a *seyag* is applicable in every place and time, in all situations. But each person, depending on his own occupation, society, and generation, must realize that if he finds himself in a situation in which he may be led to sin, he must make his own **personal** *harchakos*. We live in a society with a great deal of *pritzus* and *geneivah*, and it would seem

that we are obligated to make our own personal *harchakos* in these areas.

While it is true that one should endeavor to lead his life in a manner that is *מעורבת עם הבריות* – “compatible with people” (*Kesubos* 17a), “that only applies if they are humans who conduct their lives as humans, not if they are humans who perform animalistic actions” (*Mesillas Yescharim, perek* 5). The Torah warns us specifically, “Do not perform the practice of the land of Egypt, in which you dwelled, and do not perform the practice of the land of Canaan to which I bring you” (*Vayikra* 18:3).

There is, of course, much that is positive that we can learn and gain from the nations of the world. The *Midrash* teaches, *אם יאמר לך אדם יש חכמה בגוים תאמין* – “If one will tell you there is wisdom by the nations, believe it” (*Eichah Rabbasi* 2:17), and the *Gemara* describes certain rules of etiquette that we gleaned from the Persians (*Berachos* 8b).

We must be extremely careful, however, not to pick up the negative characteristics of the lower levels of society. In order to properly differentiate, one needs to have a strong *masorah*, which informs our attitudes, not just our halachic system. Proper *hashkafah* is also part of our *Torah SheBe’al Peh* tradition. This is clearly indicated by the opening line of *Pirkei Avos*, the *Maseches* dedicated to the transmission of what the Torah considers to be ethical behavior: *משה קבל תורה מסיני* – “Moshe received the Torah from Sinai.”

The *Yalkut HaRe’uveini* (from *Midrash HaNe’elam*) attributes great significance to the inverted *nunim* found before and after the section of *ויהי בנסוע הארון* in *Parshas Beha’aloscha* (*Bamidbar* 10:35-36), teaching that the non-Jews have been excluded from these *nunim* and that it is through these *nunim* that *Hashem* is destined to redeem *Bnei Yisrael* in the times of *Mashiach*. The word “*nun*” in Aramaic means fish, and the *Gemara* in *Avodah Zarah* (39a) tells us that a sign of a kosher fish is that it possesses a spine, enabling it to survive in a river in which the

waters flow forcefully. The inverted form of these *nunim*, then, represents the idea that the Jewish People must be like the kosher fish, which has the ability to swim **upstream**, against the powerful force of the current of societal pressure. One must consult with our *ba'alei masorah* to determine which aspects of our society are acceptable and lend themselves to an attitude of **מעורבת עם הבריות**, and which unacceptable aspects require of us to be unyielding, to travel against the tide.

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PARSHAS EMOR  
*TUM'AS KOHANIM*

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THERE IS a fundamental *machlokes* between the *Rambam* and the *Ra'avad* (*Hilchos Nezirus* 5:16) regarding the *passuk*, לֹא יִטְמָא בְּעַמִּי לִנְפֶשׁ לַאֲדָמָה – “To a [dead] person he [a *Kohen*] shall not become impure among his people” (*Vayikra* 21:1). According to the *Rambam*, if a *Kohen* were to touch a corpse multiple times on the same day and he was warned to abstain from this activity each time, he would receive *malkos* for each infraction. The *Ra'avad* disagrees and maintains that just as there is no additional violation if the *Kohen* touches a second *mes* at the same time he is touching one *mes*, there is no additional culpability for each of the subsequent times he comes into contact with a *mes* on the same day; he is only liable to one set of *malkos*.

The simple understanding of the rationale behind this *machlokes* is that it relates to how to define the *issur* of *tum'as Kohanim*. Is it, as the *passuk* implies, an *issur* to avoid becoming *tamei* from a *mes*, or is it an *issur* to avoid **התקרבות למה** (**coming in contact** with a corpse)? According to the *Ra'avad*, since the *Kohen's* subsequent contact with the *mes* did not cause any additional *tum'ah*, there is no additional violation. However, according to the *Rambam's* definition of the *issur*, although there is no change in the *Kohen's* *tum'ah* status due to the subsequent contact, since each contact is an act of **coming in contact** with a *mes*, there is a separate violation upon each contact.

*Maseches Semachos* (4:21) states that any *tum'ah* that would not lead to a violation of one's *neder* of *nezirus* and cause him to have to restart his period of *nezirus* does not impose an *issur* of forbidden contact on a *Kohen*. The implication of this statement seems to be that the impurity of *tum'as mes* is not the significant factor in the *Kohen's issur*. Rather, **contact with עצמו של מת** (the actual dead body) is what is prohibited to the *Kohen*.

It is possible to contract *tum'as mes* without actually coming into contact with a dead body itself. One such example is the rule **חרב הרי הוא כחלל** – “the sword (or any similar utensil that became *tamei* through contact with a *mes*) attains [a degree of *tum'ah*] equivalent to that of the *mes* itself” (*Nazir* 53b). Rabbeinu Tam and Rabbeinu Chaim Kohen (*Tosfos, Nazir* 54b, s.v. *ta shema*) argue regarding whether the *Kohen* is prohibited from coming into contact with such a utensil. In this case, the level of *tum'ah* that the *Kohen* contracts is identical to that of one who came in contact with the *mes* itself, but the *Kohen* has not actually come near any *mes*.

Another situation, discussed by the *Beis Yosef* (*Yoreh De'ah* 371:1) as an exclusion based on the above statement in *Maseches Semachos*, involves the rule of **סוף טומאה לצאת** – “the *tum'ah* will ultimately exit,” whereby *tum'ah* spreads through the exit through which the *mes* will eventually be removed, even if the exit door is presently closed (*Mishnah Oholos* 3:6). The *Kohen* in that doorway will contract *tum'as mes* without actually coming into contact with the dead body, since the unopened exit door serves as a partition between the *mes* and the *Kohen*.

In practice, we are lenient in the former situation involving **חרב הרי הוא כחלל** (*Rama, Yoreh De'ah* 369:1), but we are stringent in the latter situation involving **סוף טומאה לצאת** (*Yoreh De'ah* 371:4). Since logically these two situations would seem to be interrelated, the *Terumas HaDeshen* explains that our avoidance of **סוף טומאה לצאת** is not a halachic requirement, but is rather in

keeping with an earlier custom that has been adopted by *Kohanim*.

The *Shach* (*Yoreh De'ah* 371:1) cites a comment of the *Roke'ach* regarding the entry of a *Kohen's* pregnant wife into a room in which a *mes* is present. If the fetus inside her is male, there should be an *issur* for an adult to actively cause this *Kohen* to become *tamei*. [There is no *issur* of contact with a dead body upon female *Kohanos*.] We derive this from the *passuk* at the beginning of the *parsha*, אמור אל הכהנים בני אהרן ואמרת להם, לנפש לא יטמא בעמיו – “Say to the *Kohanim*, the sons of Aharon, and you shall say to them, ‘To a [dead] person he shall not become impure among his people’ “ (*Vayikra* 21:1). The redundant use of the word “say” enjoins the adults with regard to the minors: אמור ואמרת להזהיר גדולים על הקטנים (*Yevamos* 114a).

The *Roke'ach* rules leniently in this case on the basis of it being considered a *ספק ספיקא* (double doubt). First, we are unsure whether the pregnancy will result in the birth of a baby or whether the woman will miscarry. Second, even if a baby will be born, it may be a female. [In the case of the *ספק ספיקא*, if the doubts are easily discernible, or if one knows that the *Kohen's* wife is pregnant with a male fetus, the *Roke'ach's* leniency should not apply.] The *Magen Avraham* (*Orach Chaim* 343:2) questions this *Roke'ach* because the *Gemara* in *Chullin* (71a) teaches that טהרה בלועה – a *tahor* object that is completely “swallowed up” – does not acquire *tum'ah* from other objects. Thus, even without the logic of the *ספק ספיקא*, there should be no *issur* in the case of a fetus, which is totally concealed within its mother!

Both Rav Chaim Ozer Grodzinsky *zt"l* (*Teshuvos Achiezer* 3:65:5-6) and Rav Elchonon Wasserman *Hy"d* (*Kovetz Shiurim* 2:41) offer the following resolution to the question of the *Magen Avraham* (brought in *Teshuvos Lev Aryeh* 2:8). Apparently, the *Roke'ach* is of the opinion that the *issur* of *tum'as Kohanim* applies even if the *Kohen* does not actually contract any *tum'ah*.

The nature of the *issur* is that the *Kohen* is not permitted to be **in contact** with a dead body, even if, due to a legal technicality, no *tum'ah* was contracted. This situation is exactly the opposite of the two cases mentioned above, in which the *Kohen* was permitted (according to the strict *din*) to come into contact with the **חרב הרי הוא כחלל** and to be unconcerned about the situation of **סוף טומאה לצאת**. In those cases, the *kohen* **will** contract *tum'ah*, but because he is not coming into contact with a dead body, it is permissible.

A *Chacham* in recent times suggested an original leniency, allowing *Kohanim* in medical school to come into contact with cadavers. A *Kohen* would be allowed to come into contact with a dead body if he is already holding a metal utensil that has previously contracted *tum'ah* due to **חרב הרי הוא כחלל**. This contact is permissible, as he is not adding any *tum'ah* over and above the *tum'ah* he had already contracted.

However, according to the above analysis, this *heter* is untenable. According to the *Rambam* and *Roke'ach*, a *Kohen* is prohibited from **nearing** a *mes*, even if he is doing so in a way in which he will not become *tamei* at all. The only time a *Kohen* is permitted to come in contact with a *mes* is when he is at the same time already in contact with another actual *mes*.

The Kozeglover Gaon (*Teshuvos Eretz Tzvi, siman 93*) questions how a *Kohen* is permitted to ride in an airplane, given that it is almost certain that he will find himself directly over a *mes* at some point in the journey, thereby forming an *ohel* over the *tum'ah*. The airplane would presumably not serve as a barrier from the *tum'ah*, because it is a metal utensil that is *mekabel tum'ah* (susceptible to contracting *tum'ah*), and something that is *mekabel tum'ah* cannot serve as a barrier from *tum'ah*. Interestingly, Rav Moshe Feinstein (*Iggros Moshe, Yoreh De'ah 2:164*) suggests that an aluminum utensil, such as an airplane, may not be *mekabel tum'ah*, since it is not one of the six types of metals specifically listed in the Torah. Nevertheless,

we should not be able to rely on the airplane as a barrier from the *tum'ah*, as an *ohel zaruk* – a moving enclosure – does not insulate from *tum'ah* (*Eiruvim* 30b).

Once an airplane is above the clouds, there is room to argue that the *tum'as mes*, which is "עולה 'עד לרקיע" – ascends "until the sky" (*Oholos, perek* 9), does not extend to the area above the clouds, which is classified as **ברקיע** – in the sky. *Tosfos* (*Eiruvim* 45b, s.v. *leima*) makes a similar point regarding the *issur* of *techumin* (moving an object, in this case rainwater, outside of its established Shabbos residence), claiming that an object cannot be *koneh shevisah* (acquire a residence) in the area **above** the clouds, since this area is considered distinct from the surface of the earth. However, we are left with the difficulty involved in the *Kohen* traveling in an airplane while it is ascending to and descending from the area above the clouds.

A possible suggestion for leniency may be that although the *tum'ah* ascends to the area in which the plane is flying, a *Kohen* who is so distant from the source of the *tum'ah* cannot be considered as one who has come near a dead body. Just as contact with a **חלב הוא כחלל** is permitted even though *tum'ah* is contracted, the *Kohen* in this case, who would become *tamei*, may also be viewed as being too far away to have violated the *issur*, which is defined as **התקרבות למת** – **nearing** a corpse.

[See *B' Ikvei HaTzon*, pp. 232-238.]

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PARSHAS BEHAR  
*HETER MECHIRAH*

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THE OPENING *pessukim* of our *parsha* deal first with the *dinim* of *shemittah*, followed by the *dinim* of *yovel*. Regarding the counting of the *yovel* year, there is a *machlokes* among the *Tanna'im* as to whether that fiftieth year is considered a “blank” year, not belonging to any seven-year *shemittah* cycle. The opinion of Rebbi Yehudah is that the *yovel* year is also counted as the first year of the next seven-year *shemittah* cycle. The year after *yovel* is already the second year of the next cycle. This is in contrast to the opinion of the *Chachamim*, the accepted opinion, that the *yovel* year is **not** part of any cycle; the next *shemittah* cycle commences at the conclusion of the “blank” *yovel* year.

The *Gemara* in *Arachin* (32b) tells us that towards the end of the First *Beis HaMikdash* period, after Sancheiriv exiled the *shevatim* of Re'uvein, Gad, and the half-*shevet* of Menashe, the observance of the *dinim* of *yovel* were annulled. This is based on the *passuk*, וקראתם דרור בארץ לכל יושביה, – “And you shall proclaim liberty throughout the land unto all its inhabitants” (*Vayikra* 25:10, later inscribed on the Liberty Bell), which teaches that the *dinim* of *yovel* are to be observed only when כל יושביה עליה – “all its inhabitants are on [the Land],” and not after some of them have been exiled. The majority of the world Jewish population must be in Eretz Yisrael, and each *shevet* must be in

its respective territory. Only this state is considered a proper representation of each *shevet* in Eretz Yisrael, necessary for the *dinim* of *yovel* to apply.

Apparently, the Jewish Nation and Eretz Yisrael enjoy a symbiotic relationship, each having a positive effect on the other. The fact that the majority of *Klal Yisrael* resides in Eretz Yisrael gives the Land a deeper *kedushah*, and the *dinim* of *yovel* then apply. Similarly, since Eretz Yisrael is considered to be our National Homeland, it accomplishes a *tziruf* (combination) of the Jews living there, who are then considered the primary *tzibbur* of *Klal Yisrael*. This is in contrast to the Jews residing in *Chutz La'Aretz*, who are only classified as individuals. [See essays for *Parshas Lech Lecha* and *Parshas Bo*.]

David Ben Gurion used to say, "Whoever does not live in Eretz Yisrael is not Jewish." Since his concept of *Yahadus* failed to recognize the individual Jew's *kedushas Yisrael* and consisted only of the idea of Jewish Nationhood, he was correct to state that the Jew in *Chutz La'Aretz* is "not Jewish." We, however, who believe in a two-fold *kedushah* – a *kedushas hatzibbur* as well as a *kedushas hayachid* – recognize that the individual Jew's *kedushas Yisrael* remains intact and obligates him in Torah and *mitzvos*, regardless of his location.

The *Gemara* continues to explain that even though the *dinim* of *yovel* were no longer applicable at the end of the First *Beis HaMikdash* period, following the opinion of the *Chachamim* above, מנו יבילות לקדש שמיטין – "they [continued to] count the *yovel* years [as blank years] in order to sanctify the *shemittah* years [at their proper time]." The *Rambam* (*Hilchos Shemittah VeYovel* 10:3-4) brings the opinion of the *Ge'onim* that even though this was the case at the end of the First *Beis HaMikdash* period, this is not the practice to be followed currently, after the destruction of the Second *Beis HaMikdash* (or during the seventy years of *galus Bavel*). Nowadays, the *yovel* year should be totally ignored and we only recognize a continuous series of

seven-year *shemittah* cycles; we do not count a “blank year” in between.

Although the *Rambam* disagrees with this view in theory and holds that the *yovel* year should continue to be reckoned before commencing the next seven-year *shemittah* cycle, he maintains that in practice, we should act in accordance with the opinion of the *Ge'onim* of Eretz Yisrael, who had continuously observed the *dinim* of *shemittah*, because “tradition and practice are great pillars in the determination of practical law.” The *Ra'avad* interjects that he feels we should follow the *Rambam*'s opinion in this case. Rav Soloveitchik commented that to his recollection, this is the only instance of a *machlokes* between the *Rambam* and *Ra'avad* in which the *Rambam* rules contrary to his own opinion and the *Ra'avad* argues with the *Rambam*, holding that we should rule according to the *Rambam*'s opinion!

The opinion of the *Ge'onim* is seemingly difficult, as it distinguishes between the end of the First *Beis HaMikdash* period and the current post-Second *Beis HaMikdash* period, even though the *dinim* of *yovel* were equally not applicable in both periods. Rav Chaim (*Chiddushei HaGra"ch Al HaRambam*) offered the following straightforward explanation of this view. In order to establish a *shemittah* year, it is unnecessary for the *beis din* to count and declare it as such. The Torah compares *shemittah* to Shabbos (*Vayikra* 25:2), which occurs automatically. In contrast to *shemittah*, the establishment and *kiddush* of *yovel* requires an official counting and declaration by the *beis din*, as indicated in the *passuk*, וספרת לך שבע שבתות שנים - “You shall count **for yourself** seven cycles of Sabbatical years” (*Vayikra* 25:8). The *Gr"a* (*Divrei Eliyahu*, p. 94) teaches the general rule that whenever the Torah uses the plural form, it intends to obligate each and every individual in that *mitzvah*. However, when the Torah uses the singular form, as in וספרת לך, it refers to an obligation upon the *Beis Din HaGadol*, acting as representatives of the **singular unit** of *Klal Yisrael* as a whole.

Based on this, Rav Chaim explained, at the end of the First *Beis HaMikdash* period, when there was still a *Beis Din HaGadol* to declare the fiftieth year as a *yovel* year, it could be counted as a “blank” year, despite the fact that the actual *dinim* of *yovel* did not apply. After the destruction of the *Beis HaMikdash*, however, since there was no longer a *Beis Din HaGadol* to count each year and declare the fiftieth year as *yovel* on behalf of *Klal Yisrael*, there simply was **no** *yovel*-year status on the fiftieth year. Absent such a status, this year could no longer be reckoned in the calculation of the continuous seven-year *shemittah* cycles. [See *Eretz HaTzvi*, p. 12.]

The *Tanna'im* in the *Sifra* (quoted by *Rashi*, *Gittin* 36a) further dispute whether the condition regarding the observance of *yovel*, כל יושביה עליה, affects the *shemittah* year as well. *Rebbi* maintains that *shemittah* and *yovel* are interrelated, such that the observance of *shemittah* can only be *d'oraisa* when it will lead up to a *yovel* year. If we know in advance that *yovel* will not be observed because we lack the condition of כל יושביה עליה, then the observance of *shemittah* can only be on a *derabbanan* level. The *Gemara* alludes to this *machlokes*, indicating in several places that the accepted opinion is in accordance with *Rebbi* (*Mo'ed Katan* 2b, *Gittin* 36a). This is the opinion of the majority of *poskim* – that *shemittah bizman hazeh* is *derabbanan*.

The *Kotzker Rebbe* publicized a *kol korei* regarding the early settlers of *Eretz Yisrael* at the turn of the twentieth century. Although they had implemented a *heter mechirah* to avoid *shemittah* restrictions on agricultural work, he felt that they were still in violation of a *d'oraisa* prohibition. Furthermore, since the *shemittah* is referred to as “*Shabbos*” (*Vayikra* 25:2), they were to be considered as public *mechalelei Shabbos* who, in turn, have the status of non-Jews in certain respects.

At the time, his *mechutan*, Rav Yosef Engel, published an open letter (*Otzros Yosef*, *Shvi'is Bizman Hazeh*) to the *Kotzker Rebbe*, in which he demonstrated that the overwhelming

majority opinion is that *shemittah* nowadays is certainly *derabbanan*. To claim, as has been done in recent times, that the majority of *poskim* believe that *shemittah* nowadays is *d'oraisa* constitutes revisionism and a distortion of the facts.

The *Rama* (*Choshen Mishpat* 67:1) raises the issue of *shemittah bizman hazeh* in the context of *shemittas kesafim*. For centuries, Jews were not careful to prepare a *pruzbul* document, which allows for the collection of loans following a *shemittah* year. They presumably relied on the opinion that *shemittah bizman hazeh* is only a *middas chassidus* (meritorious act), not even a *derabbanan*, because of the lack of a *Sanhedrin* required to declare the year as a *shemittah* year.

Rav Yosef Engel (*os* 36) finds an interesting source for this opinion in the comment of the *Targum Yonasan* on the *passuk*, 'כי קרא שמיטה לד' – “for he has **proclaimed** a *shemittah* for *Hashem*” (*Devarim* 15:2), interpreting that the *beis din* must **declare** the year as a *shemittah* year. [This opinion is an extension of the above explanation of Rav Chaim regarding the *yovel* year, which only takes on its status once the *Sanhedrin* declares it as such.] This is a minority opinion, as we usually assume that *shemittah*, just like *Shabbos*, occurs automatically, even without the declaration of the *Sanhedrin*. The *Rama* therefore recommends that one should not rely on this minority opinion, but should prepare a *pruzbul* document to prevent the cancellation of loans during a *shemittah* year, as *shemittah* nowadays is not considered to be a *middas chassidus*, but rather a *din derabbanan*.

This assumption that *shemittah bizman hazeh* is *derabbanan* forms the basis of the above mentioned *heter mechirah*. In the 1600s, some of the Sephardic *gedolim* proposed a *heter mechirah* for the few struggling farmers in Eretz Yisrael. The issue resurfaced in the late 1800s when a small group of settlers started the *moshav* Mazkeret Batya with the support of Baron Rothschild. Three prominent *rabbanim*, Rav Yehoshua MiKutno, Rav Shmuel Mohilever, and Rav Shmuel Klepfish, met in Vilna

and proposed the use of this *heter*. Rav Yitzchok Elchonon Spektor, after being shown an actual library copy of the *teshuvah* written in the 1600s (*Teshuvos Shemen HaMor, Yoreh De'ah* 4), agreed to sign on to this *heter* as well. Originally, the *Badatz* in Yerushalayim (led by Rav Yehoshua Leib Diskin and Rav Shmuel Salant) opposed the *heter mechirah*, but when, in subsequent *shemittos*, conditions became intolerable, they advised the settlers to have the rav of Yaffo, Rav Naftoli Hertz, prepare a *heter mechirah* for them. This later became the responsibility of his successor as rav of Yaffo. That is how Rav Kook, the subsequent rav of Yaffo, became involved in preparing the *heter mechirah*, although many have the mistaken impression that it was Rav Kook who “invented” the *heter*.

The rationale for the *heter* works as follows. The *Gemara* in *Gittin* (47a) teaches that אין קנין לנכרי להפקיע מיד תרומות ומעשרות – “Non-Jewish ownership [of the Land] does not remove the obligation of *terumah* and *ma'aser*.” Still, in Suria, which carries *kedushas* Eretz Yisrael only on a *derabbanan* level due to its status of כיבוש יחיד (a private conquest of Dovid HaMelech), we hold יש קנין, that non-Jewish ownership of land **does** remove its *kedushah* regarding the separation of *terumos* and *ma'asros*. If so, reasoned these *gedolim*, since *shemittah* nowadays is only *derabbanan*, it should enjoy the same leniency as the land of Suria, and a sale to a non-Jew would thus allow for agricultural work on those fields during the *shemittah* year. [*Bi'ur HaG"ra, Yoreh De'ah* 331:6, from *Sefer HaTerumah*, follows this reasoning. Since, in their (minority) opinion, the entire *kiddush* of Eretz Yisrael by Ezra is not presently in force on a *d'oraisa* level, we would say יש קנין.]

There is room, however, to distinguish between the private conquest of the land of Suria and *shemittah bizman hazeh*. The *Beis HaLevi* argues (*Teshuvos Beis HaLevi, chelek* 3, *siman* 1:7) that in Suria, the entire *kedushas ha'aretz* is only *derabbanan*. In contrast, in the case of Eretz Yisrael proper, the area **has** a

*kedushah* on a *d'oraisa* level; there is just a technical condition that causes the *shemittah* to be *derabbanan*, namely that the *shemittah* will not lead up to a *yovel*. Even though the observance of *shemittah* is not obligatory on a *d'oraisa* level, there would be a **fulfillment** of a *mitzvah d'oraisa* if it was voluntarily observed, as the *ratzon haTorah* is for the land with *kedushah d'oraisa* to rest on the *shemittah*. Therefore, the observance of *shemittah bizman hazeh* is more stringent than the observance of the *dinim* of *terumah* and *ma'aser* in Suria, and sale to a non-Jew will **not** remove the *issurim* associated with *shemittah*.

The *Netziv* (*Meishiv Davar* 2:56, *Kuntres Devar HaShmittah*) raises the argument that by selling land to a non-Jew in order to avoid a rabbinic violation of the *dinim* of *shemittah*, we will be in violation of the more serious Torah violation of **לא תחנם** – “You shall not show them favor” (*Devarim* 7:2), which is expounded to include an *issur* against giving non-Jews a dwelling in Eretz Yisrael (*Avodah Zarah* 20a). In the 1600s, the Sephardic *gedolim* felt that they avoided this *issur* by only **temporarily** selling the land to the non-Jew in their *heter mechirah*, since **לא תחנם** is violated only when permanently selling land to a non-Jew. Rav Yehoshua MiKutno (*Teshuvos Yeshuos Malko, Yoreh De'ah* 55) explains that the reason that this sale does not violate **לא תחנם** is that **לא תחנם** only applies when the sale is being done for the benefit of the non-Jewish buyer, not when the sale is for the **Jew's benefit**, to help preserve the Jewish presence in the land. [In this way, this aspect of **לא תחנם** is similar to the other interpretations of this *passuk*, not to extend gratuitous compliments or give gratuitous gifts to a non-Jew.]

As a way of further improving the *heter*, Rav Kook conducted the sale specifically with a Moslem. He reasoned that since all Moslems are recognized to be monotheistic, they may automatically attain the status of *ger toshav* – a non-Jew

who, after accepting to observe the **שבוע מצוות בני נח**, is permitted to reside in Eretz Yisrael. The *issur* of **לא תחנם** may not apply when selling land to such an individual (*Mishpat Kohen, simanim* 58, 63).

The *heter mechirah*, being a very questionable leniency, may only be followed in a *sha'as hadchak* (pressing circumstance). For this reason, in the 1800s, the *heter* was only given to allow for **non-Jewish** laborers to work the land, on the assumption that having a non-Jew performing the work would lessen the *issur* to be only rabbinic in nature. Similarly, Rav Soloveitchik felt that people visiting Eretz Yisrael, for whom the need to cultivate the land would not be considered a pressing circumstance, as well as American consumers of Israeli produce grown during the *shemittah* year, should not rely on the *heter mechirah*. [See *Divrei HaRav*, p. 241.]

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## PARSHAS BECHUKOSAI

# THE TEMPLE MOUNT

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AS PART OF the *tochechah* found in our *parsha*, we read, **A** והשמותי את מקדשיכם - "I will make your Sanctuaries desolate" (*Vayikra* 26:31). Rebbi Yehudah (*Mishnah Megillah* 3:3) understands from this *passuk* that a *Beis HaKnesses* is still called a *mikdash* and retains its *kedushah* even when it lies in a state of ruin. Rebbi Yehoshua (*Mishnah Eduyos* 8:6) expresses a similar opinion regarding the sanctity of the *Beis HaMikdash*: קדושה ראשונה קידשה לשעתה וקידשה לעתיד לבא - "The original sanctification [of Yerushalayim and the *Beis HaMikdash*] sanctified these areas for that time and sanctified them for all future time." Thus, מקריבין אף על פי שאין בית - "we may offer *korbanos* [at the *Beis HaMikdash* site] even though there is no [Sanctuary] building."

The *Rambam* and the *Ra'avad* (*Beis HaBechirah* 6:14-16) disagree as to whether we rule in accordance with this opinion. According to the *Rambam*, when Shlomo HaMelech built the First *Beis HaMikdash*, he endowed the *makom haMikdash* with **everlasting** *kedushah*. Although we rule that the first sanctification of Eretz Yisrael, established by Yehoshua, was nullified by the conquering Babylonian armies, the *Rambam* maintains, basing himself on the *passuk*, והשמותי את מקדשיכם, that the location of the *Beis HaMikdash* is different. Its *kedushah* is due to the presence of the *Shechinah*, and that can

never be nullified. The *Ra'avad*, however, believes that since we know that the *kedushah* of the Third *Beis HaMikdash* will surpass that of the previous ones, the *kedushah* of the first two *Batei Mikdash* must have been nullified. This way, a new *kiddush* will be required for the Third *Beis HaMikdash*, and that *kiddush* will endow that *Beis HaMikdash* with a greater *kedushah* than was present in the previous *Batei Mikdash*.

The *Mishnah Berurah* (561:5) quotes the *Magen Avraham*, who, following the ruling of the *Rambam*, writes that one who currently enters the *makom haMikdash* violates a *kares* prohibition since we are all *tamei mes*. Interestingly, the *Me'iri* (*Shavuos* 16a) writes of a common practice in his generation, relying upon the view of the *Ra'avad*, to enter the *makom haMikdash*.

Some feel that in such a *machlokes* between the *Rambam* and the *Ra'avad*, only the *Rambam's* opinion should be considered. Since the *Rambam* was the only one to codify halachic rulings on the *dinim* pertaining to the *Beis HaMikdash*, he should be regarded the *Mara D'Asra* of the *makom haMikdash*.

Notably, the specific language of the *Ra'avad* is that one who enters the *makom haMikdash* nowadays is "not subject to the penalty of *kares*," but not that it is permissible. Therefore, a group of *Acharonim* feel that, even according to the *Ra'avad's* view that *לא קידשה לעתיד לבא*, it is still prohibited for a *tamei* to enter this area. This would be understood based on the *Gemara* in *Yevamos* (6b), which tells us that the positive *mitzvah*, *ומקדשי תיראו* - "And My Sanctuary shall you revere" (*Vayikra* 19:30), remains in place even after the destruction of the *Beis HaMikdash*. Even though this location's *kedushas hamakom* has been nullified, it still remains the *makom hanivchar* (the chosen place), as that is the only area on the globe able to house the past and future *Batei Mikdash*. The *bechirah* of this location was never canceled, and so, the

requirement of *mora haMikdash* (reverence of the *Mikdash*) establishes an entrance restriction upon the *tamei*.

Within the opinion that holds *לא קידשה לעתיד לבא*, the *Rishonim* offer two possible explanations to account for the absence of *kedushah* at the Temple Mount. The *Ramban* (*Milchamos Hashem, Avodah Zarah* 52b) argues that the *kedushah* of the *makom haMikdash* was nullified based on the *passuk*, *ובאו בה פריצים וחיללוהו* – “And lawless people came into [the Sanctuary] and profaned it” (*Yechezkel* 7:22). The *Gemara* in *Avodah Zarah* (52b) applies this principle to the stones of the *mizbe'ach*, which were defiled by the Greeks when they seized control of the Second *Beis HaMikdash*. Usually, one is unable to effect an *issur*, such as the status applied to vessels used for *avodah zarah*, upon property owned by others. However, due to the principle of *ובאו בה פריצים וחיללוהו*, when the Greeks invaded the *Beis HaMikdash*, all the *Beis HaMikdash's* vessels were automatically stripped of their *kedushah*. This rendered them mundane and ownerless, no longer *hekdesh* property. Thus, the Greeks gained ownership of the vessels, and when they used the *mizbe'ach* for *avodah zarah*, it received the status of a vessel used for *avodah zarah*.

The *Gemara* further explains that based on this principle, when the Romans invaded the Second *Beis HaMikdash*, the coins of the *Beis HaMikdash* treasury lost their *hekdesh* status and became permitted for mundane use. Similarly, explains the *Ramban*, when the non-Jews used the edifice of the *Beis HaMikdash* for secular, and even idolatrous, purposes, the location became profane. [The *Ba'al HaMa'or* understands the *Gemara's* rule to apply because the *Misyavanim* (Hellenized Jews) misused the *mizbe'ach*.]

The *Ra'avad* feels that the *makom haMikdash* lost its *kedushah* for a different reason. He explains that both Shlomo and Ezra realized that the *Batei Mikdash* they sanctified would later be

destroyed, and each *Beis HaMikdash* was therefore sanctified only **temporarily**. Shlomo's knowledge of this eventuality was based on the *passuk* in the aftermath of the *cheit hameraglim*, *ויבכו העם בלילה ההוא* – “the people wept that night” (*Bamidbar* 14:1), regarding which we learn, “The Holy One, Blessed be He, said to them, ‘You wept a weeping without cause; therefore, I shall establish for you a weeping for generations [on this day of Tish’ah B’Av]’” (*Ta’anis* 29a).

Shlomo HaMelech, realizing that there would be a need for a Second *Beis HaMikdash*, then wrote, with *ruach hakodesh*, *אם חומה היא נבנה עליה טירת כסף ואם דלת היא נצור עליה לוח ארז* – “If she be a wall, let us build on her a silver crown; and if she be a door, let us enclose her with cedar panel” (*Shir HaShirim* 8:9). The *Gemara* in *Yoma* (9b) expounds, “Had you, [*Bnei Yisrael*] made yourself like a wall and gone up all together in the days of Ezra, you would have been comparable to silver [metal], which is not subject to decay.” The Second *Beis HaMikdash* would have been everlasting, never to be destroyed. The *Gemara* continues, “Now that you have ascended only partially, you are comparable to cedar wood, which is subject to decay.”

Since, unfortunately, the reality of the *aliyah* for the Second *Beis HaMikdash* was in line with the latter possibility, Ezra understood from the outset that this *Beis HaMikdash* would also be destroyed. Therefore, when Shlomo and Ezra endowed the *Batei Mikdash* with *kedushah*, they built into the *kiddush* that once the structure of each *Beis HaMikdash* would be destroyed, the location upon which it was built would also lose its *kedushah*. The understanding of the *Ra'avad* is a novel approach, for it is unusual to view the endowment of *kedushah* in this way. *Kiddushin* of a wife, for example, is also considered to contain an aspect of *kedushah*, but it cannot be done *lizman* (for a specified time period) (*Nedarim* 29a).

How did Rebbi Yehudah, according to whom the *Rambam* rules, derive from the *passuk* in our *parsha*, והשמותי את מקדשיכם, that the area of the *Beis HaMikdash* is permanently endowed with *kedushah*? The simple understanding of the exposition is that it is based on the sequence found in the *passuk*. The verb, "I will make desolate," is followed by the direct object, "your *Mikdashos*." This sequence implies that even **after** their destruction, they retain the status of "*Mikdash*."

The difficulty with this explanation is that one could have simply understood the *passuk* as foretelling that *Hashem* will make desolate the structure that had been recognized, up to that point, as the *Beis HaMikdash*, and not that the structure necessarily retains the status of "*Beis HaMikdash*" in its state of destruction. *Meforshim* on the *Mishnah* do not seem to feel that the arrangement of the verb and direct object in the *passuk* is particularly compelling.

The *Netziv* (*Ha'amek Davar*, *Vayikra* 26:31; *Meishiv Davar* 2:56) and the *Binyan Tziyon* (*siman* 1) offer a novel understanding of the exposition in the *Mishnah*. The proof is not from the sequence, but from the second half of the *passuk*, ולא אריח בריח ניחוחכם - "I will not savor your satisfying aromas." The difficulty bothering the *Mishnah* is that the conclusion of the *passuk* is superfluous. If the *Beis HaMikdash* has been destroyed in terms of both its physical structure as well as its metaphysical *kedushah*, it should be obvious that *Hashem* will not accept the aroma of *korbanos*. *Korbanos* cannot be brought in a non-sanctified location (after the period of permissibility to offer on *bamos*).

Rather, the *Mishnah* understands that this *passuk* brings with it a double admonition. First, the *passuk* foretells that the *Beis HaMikdash* will be destroyed. Yet, even after its destruction, the desolate *Beis HaMikdash* **will retain** its *kedushah*, and the *din* ought to be *בית פי שאין בית*. This

is the basis of Rebbi Yehudah's opinion, which the *Rambam* adopts, and is what necessitates the message of the next part of the *passuk*. The second half of the *passuk* informs us that there is no **purpose** to offering such *korbanos*, for *Hashem* will simply not be interested in savoring the *rei'ach nicho'ach* of our *korbanos*.

The *Kaftor VaFerach* (*perek* 6) writes that in 1257, Rabbeinu Yechiel MiParis, one of the *Ba'alei HaTosfos* who moved to Eretz Yisrael, advocated building a *mizbe'ach* on the *makom haMikdash* and offering *korbanos* on it. The *Netziv* interprets his plans, as well as the tradition that the *Korban Pesach* was brought after the destruction of the Second *Beis HaMikdash* until the time of the fall of Betar, in light of his explanation of the *Mishnah*. Even though, in the *Rambam's* view, the location of the *Beis HaMikdash* retained its *kedushah* after the *churban*, we are still unable to offer *korbanos* at this time; *Hashem* told us that He is not interested in the *rei'ach nicho'ach* of our *korbanos*!

It is most striking, continues the *Netziv*, that the *Korban Pesach* is the one and only *korban* never described in the Torah as providing a *rei'ach nicho'ach*. It was only the ***Korban Pesach***, unique in this regard, which was offered in the post-*churban* period and which the *Rishonim* considered offering, not the other *korbanos*, which are brought for the purpose of providing a *rei'ach nicho'ach* to *Hashem*. [See essay for *Parshas Tetzaveh*.]

The *Emek Berachah* (pp. 77-78) makes an interesting comment on the text of the *berachah* of *Asher Ge'alanu*, recited on *Seder* night: אשר גאלנו ... ונאכל שם מן הזבחים ומן הפסחים אשר יגיע על קיר מזבחך לרצון – “Who redeemed us ... and there we shall partake of the sacrifices and *Pesach*-offerings, whose blood will be sprinkled upon the sides of your *mizbe'ach* for gracious acceptance.” The significance of the word לרצון should be understood in light of the observation of the *Netziv* that the

*Korban Pesach* is unique in that there is no requirement for this *korban* to provide a satisfying aroma to *Hashem*. Therefore, technically, we would be able to offer the *Korban Pesach* even nowadays, based on the principle **מקריבין אף על פי שאין בית**, **without** the element of *rei'ach nicho'ach*. We pray to *Hashem* that instead, we should merit the rebuilding of the *Beis HaMikdash*, so that we may then offer the type of *Korban Pesach* which will be brought **לרצון**, providing a *rei'ach nicho'ach* to *Hashem*.

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## PARSHAS BAMIDBAR

### *PIRYAH VERIVYAH*

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**A**LTHOUGH the *passuk* states, ואלה תולדות אהרן ומשה – “These are the offspring of Aharon and Moshe” (*Bamidbar* 3:1), the *parsha* proceeds to describe only the descendants of Aharon, not those of Moshe. *Rashi* explains, “Whomever teaches Torah to the son of his fellow is regarded by Scripture as if he had fathered him” (*Sanhedrin* 19b). The sons of Aharon were considered, in a sense, the children of Moshe, even though they were not his biological sons, since he taught them Torah.

Another example of the existence of a father-son relationship which is not biologically based is the opinion in the *Yerushalmi* in *Bikkurim* (1:4, in disagreement with the *Mishnah*) that a *ger*, upon presenting his *bikkurim* to the *Beis HaMikdash*, may state, ארמי אוֹבֵד אֲבִי – “An Aramean tried to destroy **my father**” (*Devarim* 26:5) – and כִּי בָאתִי אֶל הָאָרֶץ אֲשֶׁר נִשְׁבַּע ד' לְאֲבוֹתֵינוּ לָתֵת לָנוּ – “that I have come to the land that *Hashem* swore to **our forefathers** to give us” (26:3).

The *Shulchan Aruch* (*Orach Chayim* 199:4) rules in accordance with this opinion that a *ger* may, in his *Birchas HaMazon*, use the phrase, עַל שֶׁהִנְחַלְתָּ לְאֲבוֹתֵינוּ – “that You have given to **our forefathers** as a heritage [a desirable, good and spacious land].” From the time that Avram’s name was changed to Avraham, כִּי אֲבִי הָיִיתִי לָנוּ – “for I have made you the father

of a multitude of nations” (*Bereishis* 17:5), Avraham was considered the Founding **Father** of the Jewish Nation, which includes all future *geirim*. [It would seem that before a person converts, it would be improper to use this phrase. Instead, a prospective convert should say, אלקינו ואלקי אבות ישראל – “our G-d and the G-d of the Fathers of *Yisrael*,” in the opening *berachah* of the *Shemoneh Esrei*, instead of “our G-d and the G-d of our Fathers.”]

Along these lines, the *Chochmas Shlomo* (*Even Ha'Ezer* 1:1) comments that a couple unable to physically bear children may partially fulfill the *mitzvah* of *piryah verivayah* if they adopt a boy and a girl and raise them with Torah values. Similarly, commenting on the *passuk*, ומחזיקים בבריתי ... כי נה אמר ד' לסריסים – “For thus said Hashem to the barren ones ... who grasp My covenant tightly” (*Yeshayah* 56:4), the *Chofetz Chaim* (*Shem Olam*, *perek* 15) writes that supporting *yeshivos* is also a secondary form of fulfilling this *mitzvah*. Apparently, the rationale underlying the *mitzvah* of *piryah verivayah* is that every male Jew should participate in the perpetuation of *Klal Yisrael*.

The nature of the command, פרו ורבו – “Be fruitful and multiply” (*Bereishis* 1:28), originally given to Adam and Noach, changed after *Matan Torah*. The original *mitzvah* was to populate the world to ensure the continued existence of mankind, and non-Jews therefore shared an equal obligation to that of the Jews (*Mishnah LeMelech*, *Hilchos Melachim* 10:7; *Teshuvos Avnei Nezer*, *Even HaEzer*, *siman* 79). After *Matan Torah*, the *mitzvah* only applied to *Klal Yisrael*, which implies that the nature of the *mitzvah* now is to preserve the *masorah* of *Yahadus*, **to transmit Torah values to the next generation**. It would seem that the *passuk* in the aftermath of the required separation from one’s spouse prior to *Matan Torah* forms the basis of our obligation in the *mitzvah* today: לך אמור להם שובו לכם לאהליכם – “Go say to them, ‘Return to your tents’” (*Devarim* 5:27). It was with this command that the nature of the *mitzvah* shifted.

If the *mitzvah* of *piryah verivayah* entails the perpetuation of *Yahadus*, we can well understand the necessity of a future father's Torah study prior to the time of his marriage. This is the reason a boy does not marry at age thirteen, at which age he becomes obligated to perform all other *mitzvoos*. He must learn Torah prior to his marriage, and according to the *Mishnah* in *Avos* (5:21), learning of *Gemara* only begins at age fifteen (*Beis Shmuel, Even Ha'Ezer* 1:3).

In this light, the *Rashash* (*Kesubos* 50a) resolves an apparent contradiction between two Tannaitic sources regarding the proper age of marriage. The *Mishnah* in *Avos* (*ibid.*) states, "An eighteen-year-old goes to the *chuppah*," whereas the *Gemara* in *Kiddushin* (29b) teaches, "Until twenty years of age, *Hashem* sits and awaits a man, asking, 'When will he take a wife?' When he reaches twenty and has not yet married, He says, 'Let his bones swell!' " Perhaps, the simple explanation is that one should begin the dating process at age eighteen, so that he will be sure to be married by age twenty.

The *Rashash*, however, suggests that these sources may reflect two different opinions among the *Tanna'im*, corresponding to a *machlokes* in the *Gemara* in *Chullin* (24a). *Rashi* (*Bamidbar* 8:24), commenting on the age of the *Levi'im* at the start of their *avodah*, cites this *Gemara* in *Chullin*, which explains that the *Levi'im* needed five years of study pertaining to their tasks in the *Beis HaMikdash*. This took place from age twenty-five to thirty, after which a *Levi* was considered fit for *avodah*. "From here [we learn] that a student who does not see success in his studies for five years will no longer see it."

The *Gemara* then cites a dissenting view, based on the *passuk* in reference to training as royal courtiers under King Nevuchadnetzar: "To stand [and serve] in the king's palace, and to teach them the script and tongue of the *Kasdim* ... and to nurture them for three years" (*Daniel* 1:4-5). This *passuk* speaks of only a three-year preparation for work in the royal service.

Thus, the *Gemara* presents a *machlokes* as to which time period – three years or five years – is the rule and which is the exception to the rule regarding mastery of a certain field of study. According to one opinion, the discipline of Torah study should bear fruit after a three-year time course; according to the second opinion, it may require five years for the *talmid* to experience success.

Regarding the process of Torah education, the same *Mishnah* in *Avos* provides the following outline: “A five-year-old begins Scripture; a ten-year-old begins *Mishnah*; a fifteen-year-old begins the study of *Gemara*.” The *Rashash* explains that the *Tanna'im* assumed that a married man would not be able to properly develop in Torah learning, due to his responsibility to support his family. Therefore, if, following the fifteen-year-old’s introduction to *Gemara* learning, he gains a *derech halimud* in three years, he would be fit for marriage at age eighteen. If, however, it will take him five years of learning to gain a certain level of expertise, he would only be expected to marry at age twenty.

Rebbi Yochanan rules that a *ger* who had non-Jewish children before converting already fulfilled his *mitzvah* of *piryah verivoyah* (*Yevamos* 62a). Notably, the *Rambam* (*Hilchos Ishus* 15:6) qualifies this statement, ruling that the *ger* fulfills his obligation only if those children convert as well. The *Maggid Mishnah* explains that this requirement is based on the understanding that the *mitzvah* is only accomplished if one has caused a continuation of the Jewish Nation. Interestingly, several *gedolim* have stressed that it is especially important to have larger families in our times, after the decimation of so much of the Jewish Nation during the recent World Wars (*Chelkas Ya'akov* 3:62).

In his discussion of the *mitzvah* of *piryah verivoyah*, the *Rambam* (*Hilchos Ishus* 15:3, based on *Yevamos* 63b) writes that if one

is as involved in Torah study as Ben Azzai, חשקה נפשו בתורה – “his soul craves the Torah,” and he therefore does not marry and have children, אין בידו עון – “he does not have a sin in his hand.” Rav Soloveitchik explained that the reason for this dispensation, which applies only to the *mitzvah* of *piryah verivyah* and not to other *mitzvos*, is that Ben Azzai was involved in **teaching** Torah to others. This afforded him a partial fulfillment of *piryah verivyah*, which would not have been the case if he was merely learning Torah privately. The complete fulfillment of the *mitzvah* is to have one’s own biological children and to transmit Torah to them, but because of his special circumstance, Ben Azzai was unable to accomplish this. [See *Nefesh HaRav*, p. 57.]

The *Gemara* in *Berachos* (10a) relates that Yeshayah HaNavi informed Chizkiyahu HaMelech that he was destined to die prematurely as a punishment for not fulfilling *piryah verivyah*. Chizkiyahu explained that his motivation was his foreknowledge, through *ruach hakodesh*, that his children were destined to be idol worshipers. To this, Yeshayah responded, להי כבשי דרחמנא למה להך – “Why do you concern yourself with these hidden things of the Merciful One? What you are commanded to do, you must do, and what is found to be good before the Holy One, Blessed be He, He will do.”

At first glance, based on our understanding of *piryah verivyah*, Chizkiyahu’s argument seems correct. If Chizkiyahu’s children were not destined to be virtuous, he was truly **unable** to fulfill this *mitzvah*, even if he were to have biological children. Some of the commentators on the *Ein Ya’akov* explain that this aspect of Chizkiyahu’s calculation was indeed correct. The response of Yeshayah was, instead, that Chizkiyahu’s *ruach hakodesh* was incomplete. Divine spirit is unable to “see” the special path that *Hashem* creates for *ba’alei teshuvah*. Yeshayah admonished Chizkiyahu, telling him that his future

son, Menashe, may ultimately repent for his idolatrous ways, as indeed he did, and Chizkiyahu **would** have religious descendants (*Anaf Yosef*, from *Ya'aros Devash*).

Another explanation of Chizkiyahu's mistake is that one is not permitted to use the reason for a *mitzvah* to limit practical *mitzvah* observance (*Nefesh HaChayim* 1:22). Finally, Chizkiyahu may not have been correct in using *ruach hakodesh* to decide a matter of Halachah. [*She'eilos U'Teshuvos Yabi'a Omer, Orach Chayim* 1:41:14 discusses this topic.] In principle, however, Chizkiyahu **was** correct in defining *piryah verivyah* as the obligation to transmit Torah values to the next generation.

[See *Journal of Halachah and Contemporary Society* IV, pp. 7-8.]

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PARSHAS NASSO  
TEN LEVELS OF  
*KEDUSHAS HAMIKDASH*

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THE GEMARA in *Pesachim* (67a) notes that the word מחנה (camp) appears three times in the *pessukim* that list those who may not remain in the camp:

צו את בני ישראל וישלחו מן המחנה כל צרוע וכל זב וכל טמא לנפש מזכר עד  
נקבה תשלחו אל מחוץ למחנה תשלחום ולא יטמאו את מחניהם אשר אני  
שוכן בתוכם.

Command the *Bnei Yisrael* that they shall expel from the camp everyone with *tzara'as*, everyone who has had a *zav*-emission, and everyone contaminated by a human corpse. Male and female alike shall you expel, to the outside of the camp shall you expel them, so that they should not contaminate their camps, among which I dwell. (*Bamidbar* 5:2-3)

The *Gemara* explains that these three *machanos* correspond, in descending order of *kedushah*, to the מחנה שכינה (*azarah* – *Beis HaMikdash* courtyard), מחנה לוייה (*Har HaBayis* – Temple Mount), and מחנה ישראל (*Yerushalayim*). The *passuk* lists three impure individuals – the *tamei mes*, the *zav*, and the *metzora* – in order of increasing *tum'ah*, teaching that these individuals are prohibited, respectively, from entering these three *machanos*. [Rabbinically, the *Har HaBayis* was divided into three sections and the *tamei mes* was not allowed into the inner two sections as well.]

The *Sifrei Zuta*, in its first gloss to *Sefer Bamidbar* (5:2), discusses the *mitzva* to send the *temei'im* outside the various

*machanos*, stating עשר קדושות הן – “There are ten levels of sanctity.” The *Mishnayos* in *Masachas Keilim* (1:6-10) similarly list these ten levels in ascending order of *kedushah*, starting with Eretz Yisrael and concluding with the *Kodesh HaKodashim*. There are slight discrepancies between these two presentations, and Rav Menachem Ziemba *Hy”d* examines them in his *Otzar HaSifrei*.

Rav Soloveitchik was fond of discussing the first level of *kedushah* listed in the *Mishnah* – that of Eretz Yisrael:

Eretz Yisrael is holier than all other lands. And what constitutes its holiness? That we bring from it the [barley used for the] *omer*-offering, the [first fruits offered as] *bikkurim*, and the [wheat used for the] *shetei halechem* [two loaves on Shavuot], which we do not bring from all other lands.

First, it seems strange that of all the *dinim* that make Eretz Yisrael unique – the מצוות התלויות בארץ, agricultural *mitzvos* dependent upon the land (*terumah*, *ma’aser*, *shemittah*, *yovel*, *leket*, *shichechah*, *pe’ah*, *challah*) – specifically these three obscure *dinim* are the ones chosen to express the uniqueness of Eretz Yisrael.

Furthermore, although one of the *Mishnah*’s examples of Eretz Yisrael’s *kedushah* is that the fruits of *bikkurim* may only come from produce of Eretz Yisrael, certain versions of the text of the *Sifrei Zuta* neglect to mention this third example. What accounts for this apparent discrepancy, whether to list the *din* of *bikkurim* amongst the *dinim* that demonstrate Eretz Yisrael’s distinctiveness?

Rav Ziemba and Rav Soloveitchik explained that the *Sifrei Zuta* and *Mishnah* are not merely outlining the special *kedushah* of Eretz Yisrael per se. Of course, there exists a concept of *kedushas Eretz Yisrael*, which gives rise to the long list of מצוות התלויות בארץ. In this context, however, *Chazal* express the notion that there are ten levels of *kedushas haMikdash*. The core of *kedushas Beis HaMikdash*, its most intense degree, is found

in the *Kodesh HaKodashim*. The *kedushah* then spills over to the other areas in descending levels of *kedushah*, until it fills the boundaries of Eretz Yisrael itself, which possesses the tenth level of *kedushas haMikdash*.

*Chazal* seek to prove that Eretz Yisrael, apart from its own *kedushas ha'Aretz*, is endowed with a lower level of *kedushas haMikdash*. This cannot be demonstrated from the group of *מצוות התלויות בארץ*, for they are dependent solely upon *kedushas ha'Aretz*. The two *dinim* that can demonstrate a *kedushah* in the form of *kedushas haMikdash* are those regarding the *omer* and the *shetei halechem*. These *dinim* indicate that there is a requirement for the barley for the *omer* and the wheat for the *shetei halechem* to have grown within the "*Beis HaMikdash*." The *Beis HaMikdash* proper, of course, is not used for agricultural purposes; this requirement is fulfilled by using items grown in Eretz Yisrael, which contains, on some level, an element of *kedushas Beis HaMikdash*.

Shlomo HaMelech, upon the dedication of the First *Beis HaMikdash*, offered the *tefillah*, "And they shall pray to You – *דרך ארצם* – by way of their land that you gave to their forefathers, and [by way of] the city that You have chosen, and [through] the *Beis HaMikdash* that I built for Your Name" (*Melachim I* 8:48). This *tefillah* is related to the description of the *Beis HaMikdash* as a *beis tefillah* in the *passuk*, *כי ביתי בית תפילה יקרא לכל העמים* – "for My House will be called a House of Prayer for all the peoples" (*Yeshayah* 56:7). *Tefillah* is to be directed to the *Beis HaMikdash* where it can be accepted. The requirement to face **Eretz Yisrael** during *tefillah*, which then ascends to *Hashem* *דרך ארצם*, is based on the fact that the entirety of Eretz Yisrael contains an element of *kedushas Beis HaMikdash*. The *Rambam* (*Hilchos Tefillah* 5:3) seems to hold that it is a *d'oraisa* requirement within the *dinim* of *tefillah* for one outside the Land to face Eretz Yisrael.

Similarly, the *Gemara* in *Kesubos* (111a) teaches, based on the *passuk*, *וכפר אדמתו עמו* – “and His land shall atone for His Nation” (*Devarim* 32:43), that whoever is buried in Eretz Yisrael achieves *kapparah* as if he were buried under the *mizbe’ach*. *Kapparah* is achieved specifically through Eretz Yisrael’s relationship with the *Beis HaMikdash*, just as the *Beis HaMikdash* is where one brings *korbanos* for *kapparah*.

[The *kapparah* is achieved on the condition that the sinner does *teshuvah*, just as there is no *kapparah* for one who sins intentionally, relying on the coming Yom Kippur to grant him *kapparah*. Thus, the *Minchas Elazar* (5:12), the primary anti-Zionist Hungarian *Rebbe*, declared that the Zionists who feel that all their *aveiros* will be forgiven in the merit of their living in Eretz Yisrael are mistaken. He quoted his “grandfather,” the *Pnei Yehoshua* (*Kesubos* 111a, s.v. *amar*), who explained that living in Eretz Yisrael only affords *kapparah* **with** *teshuvah* – if the settling in Eretz Yisrael is “for the purpose of the *mitzvah* of *yishuv ha’Aretz*, to gain the merit of the land’s *kedushah* to shield him from sin.”]

Another *din* that reflects the *kedushas haMikdash* aspect of Eretz Yisrael is that *ma’aser beheimah* (animal tithes) and *bechor beheimah tehorah* (firstborn kosher animals) are not offered as *korbanos* if they come from outside Eretz Yisrael (according to *Rebbi Akiva*, *Bechoros* 53a, *Temurah* 21b). Similarly, the *Mechilta* (*Pesichta*, *Parshas Bo*; see *Kli Chemdah*, *Parshas Chukas*, *siman* 4) holds that the allowance, during certain periods in history, to offer a *korban* on a *bamah* (*mizbe’ach* outside of the *Beis HaMikdash*) was likewise only applicable in Eretz Yisrael.

The *Mishnah* added a third *din* to demonstrate that Eretz Yisrael contains an element of *kedushas haMikdash* – that only the fruits of Eretz Yisrael are obligated in *bikkurim*. The *Mishnah* must hold that *bikkurim* is not one of the **מצוות התלויות בארץ**, but is rather part of the *avodah* of the *Beis HaMikdash*, and the fruits must therefore grow on land that possesses *kedushas Beis*

*HaMikdash*. This is the point of dispute between the *Mishnah* and some versions of the *Sifrei Zuta*, which do not include the *din* of *bikkurim* along with the *omer* and *shetei halechem*. The latter maintain that *bikkurim* is one of the מצוות התלויות בארץ. Therefore, while it is true that the fruits of *bikkurim* may only come from produce grown in Eretz Yisrael, this *din* does not prove anything regarding the *kedushas haMikdash* aspect of Eretz Yisrael. This aspect of the *kedushah* of Eretz Yisrael can only be proven through the *dinim* regarding the *omer* and the *shetei halechem*.

[See *Nefesh HaRav*, pp. 77-78; *Eretz HaTzvi*, p. 97.]

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PARSHAS BEHA'ALOSCHA  
*NEVU'AS MOSHE*

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THE CONCLUSION of the *parsha* relates the incident of the *cheit* of *Miryam*. In *Parshas Ki Seitzei* (*Devarim* 24:9), the Torah repeats this incident and commands us to remember it. The *Magen Avraham* (*Orach Chayim* 60:2), in line with the view of the *Ramban*, who included this command in his *minyan hamitzvos* (*Hashmotos LeMinyan HaMitzvos, Mitzvas Aseh* 7), holds that one should mention *cheit Miryam* daily in order to fulfill this *mitzvah*. He explains that *Chazal* did not enact a yearly *krias haTorah* of this *parsha*, as we do for *Parshas Zachor*, out of respect for the righteous *Miryam*, so as not to publicize her *aveirah*. Nevertheless, when *Parshas Beha'aloscha* is read as the *parshas hashovua*, the *ba'al korei* and those listening to the *laining* should have in mind that they wish to fulfill this additional *mitzvah*.

There seem to be two possible intentions behind the requirement to be mindful of *cheit Miryam*. First, we must read this *parsha* in order to remember the severity of the *aveirah* of *lashon hara*. The *Chofetz Chaim* (*Sefer Shemiras HaLashon, chelek 1, sha'ar 2, perek 12; chelek 2, perek 18*) explains that this *parsha* is one of the sources of the *aveirah* of *lashon hara*. The *Sifrei* (*Ki Seitzei* 275) elaborates: If *Miryam*, whose criticism of *Moshe* was not carried out before him and was only intended constructively, was punished so severely with *tzara'as*, how

much more so must we be careful regarding this *issur*, especially when defaming a person publicly!

Rav Soloveitchik felt, however, that in order to qualify as one of the *shesh zechiros*, the theme of the event must be connected to one of the *ikarei ha'emunah*. He therefore favored the explanation of Rav Kook in his *siddur, Olas Re'iyah* (*chelek 1*, p. 334), that the purpose of remembering *cheit Miryam* is to be constantly mindful of the *Rambam's* seventh *ikar* – that Moshe was the *av lenevi'im* who preceded and who followed him. This belief will ensure the everlasting nature of the *Toras Hashem*, for we will always realize that it is impossible for another *navi* to nullify any of Moshe's words.

Rav Soloveitchik (as part of the *hesped* he delivered for his uncle, the Brisker Rav) explained that the source for this *Rambam* is the response of *Hashem* to Miryam in our *parsha*. Miryam, after overhearing Tzipporah lamenting what she thought was a necessary abstinence on the part of the wives of the *nevi'im*, criticized her brother:

הרק אך במשה דבר ד' הלא גם בנו דבר.

Was it only to Moshe that *Hashem* spoke? Did He not speak to us, as well? (*Bamidbar* 12:2)

*Hashem* responded:

שמעו נא דברי אם יהיה נביאכם ד' במראה אליו אתודע בחלום אדבר בו לא כן עבדי משה ... פה אל פה אדבר בו ומראה ולא בחידות ותמונת ד' יביט.

Hear now my words. If there shall be prophets among you, in a vision shall I, *Hashem*, make Myself known to him; in a dream shall I speak with him. Not so is My servant Moshe ... Mouth to mouth do I speak to him, in a clear vision and not in riddles, at the image of *Hashem* does he gaze. (12:6-8)

Commenting on the phrase *פה אל פה*, *Rashi* quotes the statement of *Chazal*, who understand that it was *Hashem* Himself who instructed Moshe to separate from his wife.

Rav Chaim Volozhiner (*Ruach Chayim, Avos* 1:1) explains what would seem to be an obvious difficulty in these *pesukim*.

Although *Hashem* contrasts the *nevu'ah* of Moshe with that of the other *nevi'im*, the same term – מראה – is used to describe both levels of *nevu'ah*! Rav Chaim Volozhiner notes the slight difference in vowelization and, accordingly, in the meaning between the two. A מראה with a *kamatz* under the "א" connotes a mirror, while a מראה with a *segol* under the "א" connotes a looking-glass or telescope.

The other *nevi'im*, whose *nevu'os* were described as a mirror, saw a **reflection** of the word of *Hashem*, as one who perceives the shadow of an object. This was in contrast to the *nevu'ah* of Moshe, who saw the **actual** word of *Hashem*, as one who looks through a telescope. Moshe is further described with the phrase, ותמונת ד' יביט, – “at the image of *Hashem* does he gaze.” This is also a reference to the special degree of Moshe's *nevu'ah*. Moshe was the only *navi* authorized to transmit *mitzvos ledoros*. Those everlasting *dinim* make up the body of Torah, and because, taken together, they form a description of *Elokus*, they are referred to by the *passuk* as תמונת ד'.

*Rashi* (*Shemos* 38:22) explains that the name Betzalel has the connotation, בצל קל היית, – “You were in *Hashem's* shadow.” Betzalel, unlike Moshe, understood the proper order of the *Mishkan's* construction – first the edifice of the *Mishkan*, and then its *keilim*. Apparently, in that instance, Moshe's *nevu'ah* was on the level of the other *nevi'im*. Just as a shadow reflects only a **mirror** image of the actual object, Moshe understood the **opposite** order of construction, first the *keilim* and then the *Mishkan*.

Similarly, the *Kedushas Levi* (to *Shemos* 11:4) points out that Moshe's *nevu'ah* was not always on his level as *adon hanevi'im*, akin to vision through an אספקלריא המאירה (clear glass). He cites the *Sifrei* (cited by *Rashi*, beginning of *Parshas Mattos*) that the other *nevi'im* used the introductory phrase כה אמר ד' – “So said *Hashem*,” while Moshe was the only *navi* to use the phrase זה הדבר – “This is the word [that *Hashem* has commanded].”

'ד אמר ד' has the connotation, "This is **approximately** what Hashem said," for it conveyed the *navi's* interpretation of the vision he saw. זה הדבר, in contrast, means that what follows is an exact, **direct dictation** of the *devar Hashem*, word for word and letter for letter.

The *Kedushas Levi* notes that we do find certain *nevu'os* of Moshe that begin with 'ד אמר ד', such as the one that introduced the announcement of *makkas bechoros*. Apparently, even Moshe used this phrase in those instances in which his *nevu'ah* was a *hora'as sha'ah* (temporary ruling). In that case, the *nevu'ah* had the same status as the prophecies of the other *nevi'im*. It was specifically in the case of prophecies that conveyed a *mitzvah ledoros*, in force for all generations, for which the *nevu'ah* of אספקלריא המאירה with the clarity of זה הדבר was necessary. [See essay for *Parshas Vayishlach*.]

The *Minchas Chinuch* (*mitzvah* 516) poses the following question. If one who violates the words of a *navi* is punished with *misah bidei Shamayim* (death by the hand of Heaven), any violation of Torah law should carry this punishment, since Moshe was a *navi* and he relayed all of the *mitzvos* in the Torah to *Bnei Yisrael*! Rav Soloveitchik answered that the special punishment for transgressing the words of a *navi* applies to words of *nevu'ah* that are *hora'as sha'ah*. If a person transgressed a directive of Moshe regarding a *hora'as sha'ah*, he would have been included in that special punishment. However, a *mitzvah*, by definition, is classified as "**Torah**," not as "*nevu'ah*," and has its own set of guidelines regarding punishments.

Interestingly, the *haftorah* of *Parshas Beha'aloscha* is the *nevu'ah* of Zecharyah's *menorah*. A common theme shared by both the *haftorah* and the *parsha* is found in the opening section of the *parsha* - the kindling of the *menorah* in the *Mishkan*. This serves to connect the *parsha* with the *haftorah*, despite the fact that Zecharyah's *menorah* was not an actual *menorah*, but was a

vision of a *menorah* meant to convey a certain lesson to the Jews of the time. [See essay for *Parshas Shemos*.]

It would seem that a deeper connection between this *parsha* and its *haftorah* stems from the theme of the final section of the *parsha*, which describes the primacy of the *nevu'ah* of Moshe. *Chazal* seek to highlight the difference between the "clear vision" of Moshe's *nevu'ah* and the vision of other *nevi'im*, which had to be interpreted by the *navi*, who would then convey its message. The *Rambam* (*Moreh Nevuchim* 2:35-43) points out that the prime example of the decreased clarity in the *nevu'ah* of other *nevi'im* is this *nevu'ah* of Zecharyah. In this case, the *navi* himself was unable to understand the message of the *nevu'ah*; he required the explanation of the angel who was speaking to him (*Zecharyah* 4:4-5).

Since the majority of *Klal Yisrael* failed to return to Eretz Yisrael in the days of Ezra, *Hashem* was actually not interested in any communication via *nevu'ah* at this time, and this may be why the *nevu'ah* lacked clarity. *Hashem* sent the *nevi'im* Chagai, Zecharyah, and Malachi only to allow for the building of the Second *Beis HaMikdash*, the construction of which had to be carried out with the authorization of a *navi*. [See essay for *Parshas Pekudei*.]

This most obscure section of *nevi'im* may have been chosen as the *haftorah* of *Parshas Beha'aloscha* to accentuate the contrast between the *אספקלריא המאירה* of Moshe's *nevu'ah* and the *אספקלריא שאינה מאירה* of the other *nevi'im*.

[See *Ginas Egoz, Pesichah*, pp. 1-3.]

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## PARSHAS SHELACH

# ARCHAEOLOGICAL EVIDENCE

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ונתנו על ציצית הכנף פתיל תכלת.

And they shall place upon the *tzitzis* of each corner a thread of turquoise wool. (*Bamidbar* 15:38)

**I**N 1887, Rav Gershon Henoch Leiner, the Radziner Rebbe, wrote the *sefer Sefunei Temunei Chol* about his attempt at identifying the *techeiles*. He was interested in preparing for the rebuilding of the *Beis HaMikdash* and reinstating the offering of *korbanos*, and in order to accomplish this, the *Kohanim* would have to wear the *bigdei kehunah*, a number of which require *techeiles*.

Regarding the *mitzvah* of *tzitzis*, there is a *machlokes* among the *Tanna'im* whether the *techeiles* strings are indispensable to the fulfillment of the *mitzvah* (*Menachos* 38a). The *Ba'al HaMa'or* held like the minority opinion that the *techeiles* strings are indispensable. In fact, the *Ramban* (*Milchamos, Shabbos* 12a in *Dapei HaRif*) reports that the *Ba'al HaMa'or* did not wear *tzitzis* at all, following his view that there is no *mitzvah* to wear a *tallis* with only white strings. The accepted opinion, however, is that wearing a *tallis* without *techeiles* is a partial fulfillment of the *mitzvah*, although the complete *mitzvah* requires both the white and the *techeiles* strings.

However, regarding *bigdei kehunah*, all agree that without *techeiles*, the garments are unfit for use in the *avodah* (*Tosefta Menachos* 9:6, quoted by Rav Tzvi Pesach Frank in *Mikdash*

*Melech, perek 8*). The Radziner Rebbe felt that we should do our utmost to prepare for the functioning of the Third *Beis HaMikdash*, and, to that end, he embarked on a mission to re-discover the identity of the *chilazon*, which is used to dye the woolen *techeiles* strings. He opined that the cuttlefish was the *chilazon* and he encouraged his *Chassidim* to use this dye in the preparation of the strings of the *tallis*.

The *Beis HaLevi* disagreed with the Radziner Rebbe, but the exact nature of his disagreement is a matter of debate. In the collection of correspondence between the Rebbe and other *gedolim* regarding the *techeiles* (*Ein HaTecheiles*, p. 13), an anonymous letter written by a close acquaintance of the *Beis HaLevi* explains the latter's position. He writes that if the Rebbe would have proven that the *chilazon* was a sea creature that the earlier generations were unaware of, the *Beis HaLevi* would have been prepared to agree with his conclusion. However, the dye of the cuttlefish had been recognized for centuries, and since the earlier generations did not make use of this sea creature in the preparation of *techeiles*, that is tantamount to a *masorah* that the Rebbe's findings were incorrect and that the cuttlefish is **not** the *chilazon*.

The Soloveitchik family, however, has a different tradition as to what the *Beis HaLevi*'s objection was. We heard from Rav Soloveitchik (*Shiurim LeZecher Abba Mari Z"l I*, 1983 ed., p. 228), as the Soloveitchik cousins heard from the Brisker Rav, that even if the cuttlefish was, in fact, the true *chilazon*, it still would remain unusable. In order to identify the *chilazon*, an unbroken chain of *masorah* is necessary, and the *masorah* cannot be reconstructed based on archaeological evidence.

Rav Elyashiv (in a correspondence to Rav Feivel Cohen) believed that the objection of the *Beis HaLevi* must have been as described in the first version. That is, if a species of sea creature that was not available since the time of the *Ge'onim*, when the

tradition concerning the identity of the *chilazon* was lost, were now to be rediscovered, it **would** be acceptable. Scientific, historical, or archaeological proof can, in fact, be relied upon to reconstruct a forgotten *masorah*.

The *Gemara* in *Bava Basra* (74a) relates that an Arab merchant showed Rabbah bar bar Chanah those who had perished during the forty years of wandering in the *midbar* in the time of Moshe. After he returned, his colleagues said to him, "Every bar bar Chanah is a fool! ... You ought to have counted the threads and counted the wound sections [of their *tzitzis*]" to report whether they had a total of six or eight strings at each corner, so as to know whether the *halachah* is in accordance with Beis Shammai or Beis Hillel who disputed this point (*Menachos* 41b). It seems clear from this *Gemara* that observation of the archaeological evidence would have been admissible.

Similarly, the *Gemara* in *Sukkah* (5a) relates that Rabbi Eliezer saw the actual *tzitz* of the *Kohen Gadol* in Rome and testified that the words **קודש לך** were inscribed on only one line. The *Rambam* (*Hilchos Klei HaMikdash* 9:1) rules that the inscription should preferably be written on two separate lines, **לך** on the upper line and **קודש** on the lower line. The *Rambam* adds, however, that *bedi'eved*, if the inscription was written on one line, it is acceptable. The *Kesef Mishnah* explains that the *Rambam* knew this from the testimony of Rabbi Eliezer, which is considered valid factual verification.

A third discussion of archaeological evidence involves the well-known dispute between *Rashi* and *Rabbeinu Tam* as to the proper order of *parshiyos* in the *tefillin*. The *Bach* (*Orach Chayim*, 34:1) writes of a report from Eretz Yisrael that *Rashi tefillin* were found at the gravesite of Yechezkel HaNavi, implying that these are the *tefillin* with the correct order of *parshiyos*. The *Derishah* counters that it may be that these *tefillin* were archived in *genizah* specifically because they were unfit for use due to their **incorrect**

order of *parshiyos*. Both sides of the argument seem to hold that in principle, archaeological evidence, if properly analyzed, is indeed acceptable. [See *Nefesh HaRaw*, pp. 52-54.]

This understanding paves the way for reliance on the recent evidence identifying the *chilazon* as the *Murex Trunculus* snail to restore the *masorah* of authentic *techeiles*. Even if the evidence proves to be incorrect, the *Gemara* in *Menachos* (40a) states clearly that if an imitation *techeiles*, such as *kla ilan* (indigo), is used in error, *לא יהא אלא לבן* – “Let [the indigo thread] be considered like white thread.” The *mitzvah* of *tzitzis* will still be fulfilled with these “white” strings, albeit in an incomplete fashion. While there is a custom to use white strings as *tzitzis* (*Rama, Orach Chayim* 9:5), as this *Gemara* states, the use of blue-colored strings instead of white ones would not affect the fulfillment of the *mitzvah*. Therefore, since there exists at least a *safek* that we are now using authentic *techeiles*, we should apply the principle of *ספק דאורייתא לחומרא* (a doubt in relation to a *d’oraisa* obligation is decided stringently) and be required to make use of the current *techeiles*.

This principle applies despite the fact that even after one purchases the current *techeiles* strings and uses them in his *tallis*, he still will not know if he did, in fact, succeed in accomplishing the *mitzvah* (see Rav Menachem Ziemba *Hy”d*, in *Gur Aryeh Yehudah, Kuntres She’eilos U’Teshuvos, simanim* 7-8). The argument that one should not engage in activities that are *מחזי כיוהרא* (seem like arrogance) should have no relevance in this case, since that consideration is limited to the fulfillment of a *middas chassidus*, not when fulfilling a halachic requirement like *techeiles* in *tzitzis*.

In fact, it would seem that wearing a *tallis* without the *techeiles* strings would constitute a violation of the *lo sa’aseh* of *bal tigma* (not to detract from the *mitzvos* of the Torah). The *Beis HaLevi* (*Teshuvos* 1:42) elucidates the definition of this *issur*. If one has detracted from a *mitzvah* to such an extent that he

has not fulfilled the *mitzvah* at all, that would not be labeled as *bal tигра*, but as a *bitul hamitzvah* (cancellation of the *mitzvah*). *Bal tигра* refers to a case in which a *mitzvah* is knowingly performed *lechatchilah* in a way in which it is fulfilled only *bedi'aved*, in an incomplete fashion.

Since we hold תכלת אינה מעכבת את הלבן - the absence of *techeiles* strings does not affect the *mitzvah* of wearing the white strings, one fulfills the *mitzvah* with the white strings alone. Nevertheless, if *techeiles* strings are available but are not used, resulting in an incomplete fulfillment of the *mitzvah*, one violates *bal tигра*. Since the obligation of *tzitzis* only applies if and when one dons a four-cornered garment, and our opting to wear the *tallis* in order to obligate ourselves in the *mitzvah* is done only as a *middas chassidus*, it would be better for one not to wear this *tallis* at all!

[See *Ginas Egoz*, pp. 13-16; "Using *Tekhelet* in *Tzitzit*," *Tekhelet: Renaissance of a Mitzvah*, pp. 51-62.]

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## PARSHAS KORACH

# THE REBELLION

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**R**ASHI (*Bamidbar* 16:1) cites the comment of the *Midrash* that Korach ridiculed Moshe's ruling with respect to a garment completely made of *techeiles*-colored wool:

What did [Korach] do? He rose up and gathered together two hundred and fifty heads of courts ... and he clothed them in cloaks that were made entirely of *techeiles*. They came and stood before Moshe. They said to him, "Is a cloak that is entirely of *techeiles* obligated in *tzitzis* or exempt?" He said to them, "It is obligated." They began to jeer at him, "Is this possible? In a cloak of a different type, one thread of *techeiles* exempts it. In this one, which is entirely of *techeiles*, should it not exempt itself?!"

The *Midrash* (*Bamidbar Rabbah* 18) records another argument: "Is a room filled with [Torah] scrolls exempt from a *mezuzah*?" When Moshe replied that it did require a *mezuzah*, Korach argued, "The two hundred and seventy five *parshiyos* [of the Torah] do not satisfy the room's requirement, but one *parsha* in the *mezuzah* does?!"

Rav Soloveitchik delivered a *derashah* (*Reflections of the Rav*, pp. 146-148) in which he portrayed the argument of Korach as the "Common-Sense Rebellion against Torah Authority." Oftentimes, *balabatim* who are not attuned to the halachic process complain that the ruling of the rabbi does not "make sense."

Regarding the *passuk*, ושמאל, לא תסור מן הדבר אשר יגידו לך ימין ושמאל – “You shall not deviate from the word that they will tell you, right or left” (*Devarim* 17:11), *Rashi* comments, based on the *Sifrei*, אפילו אומר לך על ימין שהוא שמאל ועל שמאל שהוא ימין – “Even if he says to you about right that it is left and about left that it is right.” The simple understanding of this comment is that even if the *Beis Din HaGadol* is mistaken, their ruling is binding. In fact, Herman Wouk related to his Literature class in Yeshiva University that the theme of his book *The Caine Mutiny* – that authority is binding even when it is in error – was based on this *Rashi*.

However, the *Ramban* (*Hasagos LeSefer HaMitzvos LeRambam, shoresh* 1) explains that this cannot be the meaning of the *Sifrei*, as the *Mishnah* in *Horayos* (1:1) clearly teaches that a member of the *beis din* or a student worthy of ruling who is convinced that the *beis din* had erred is obliged **not** to follow the *beis din*'s ruling. If he does, he is responsible for his actions and must bring a personal *Korban Chatas* for *kapparah*. The ruling is only binding on the assumption that it is not mistaken. Instead, the *Ramban* (in his commentary on the Torah) explains that the actual text of the *Sifrei* reads, אפילו (מראין) נראין בעיניך על ימין שהוא שמאל – “even if it **appears in your eyes** about right that it is left,” referring to a situation in which the layman **believes** that the rabbi was mistaken in his ruling. This language implies that it is only an appearance – “in your eyes” – that the *Sanhedrin*'s decision is incorrect. The *Ramban* continues:

All the more so should you consider that they are, in fact, saying about the right that it is right and about the left that it is left, for the spirit of *Hashem*, may He be Blessed, is on those who service His Sanctuary, and He will not forsake His devout ones; they will forever be protected from error and from stumbling.

Thus, this *passuk* imposes on the layman an obligation to have *emunas chachamim* and to assume that the rabbis ruled correctly.

Oftentimes, a doctor will prescribe a particular medication for a patient. A layman may disagree with the doctor's choice, since that medication is used for a different condition or set of symptoms. We understand that the layman, who is not familiar with the principles of medicine, is not entitled to render an opinion in this case. Every discipline has a self-contained logic, and only one with expertise in that discipline knows its system of thinking.

As in the case of the specialized fields of chemistry and physics, Halachah also possesses a self-contained logic. Halachah is not simply a compilation of religious laws; it is a specialized discipline, and it has its own methodology and means of analysis. The unlearned layman will ask, as did Korach, about the *techeiles* garment and the *sefarim*-filled room. To us, after studying the sections in the *Shulchan Aruch* dealing with *Hilchos Tzitzis* and *Hilchos Mezuzah*, the question seems ridiculous. Of course the Halachah dictates that the garment requires *tzitzis* and the room requires a *mezuzah*! People must realize that common sense does not necessarily carry the day when it comes to the halachic legal system. Halachah need not make common-sense any more than medicine, physics, or chemistry.

It is said in the name of Rav Chaim that *sevara* (logic) is certainly one of the *מידות שהתורה נדרשת בהן* (exegetical principles through which the Torah is expounded). The *Gemara* says several times, *למה לי קרא סברא הוא* – “Why do I need a *passuk* [for this principle]? It is logical!” (*Bava Kamma* 46b). The *sevara*, however, must be informed by a comprehensive knowledge of the facts of the Halachah and its methodology. The mind of the Torah scholar, which is attuned to thinking in terms of the system of Halachah, is able to formulate a *sevara* that will be binding. “*Sevara*” does not mean a “common-sense *sevara*.”

It is also said that Rav Chaim told his children that they should not venture to say any *sevara* before they complete all of

*Shas* with *Rashi*. A *sevara* offered prematurely and not grounded in the Talmudic system of thought will be a pedestrian *sevara*, not a Torah-based *sevara*.

Korach continued, *ד' כי כל העדה כולם קדושים ובתוכם ד'* – “For the entire assembly – all of them – are holy and *Hashem* is among them” (16:3). *Rashi* comments, “All of them heard the words at *Sinai* from the mouth of the Almighty.” We don’t need Moshe to rule on our questions!

This argument continues to this very day; people claim that Judaism is every man’s religion and we do not need rabbis. We all learned *Yoreh De’ah*; we all have an equal right to decide halachic matters. The proper attitude, in contrast, is the one once expressed by the late Rabbi Israel Miller. He said, “If Rav Elyashiv says something and I disagree, I don’t think that I am entitled to an opinion.” Not everyone who has *semichah* is equally entitled to an opinion!

When Korach brought the case of the *techeiles* garment, it would seem that he was in agreement with Moshe that the white strings do need to be attached to this garment. His only objection was to the placement of the *techeiles* strings. Why was Korach especially antithetical to the *techeiles* strings?

Rav Soloveitchik explained that *Chazal* teach that “the [color of] *techeiles* is similar to that of the sea, and that of the sea is similar to that of the sky, and that of the sky is similar to that of the *kisei hakavod* (Throne of Glory)” (*Menachos* 43b). The “Throne of Glory” is representative of those areas that we cannot comprehend. The white strings, in contrast, represent those areas that are clear to us.

In all areas of life, there are some things that are clear and there are some things that we cannot really fathom. When it comes to the issuing of halachic rulings, everyone should have a bit of humility and realize that there exist realms of “*techeiles*” that remain unclear. Therefore, we all need a *rebbe* who can transmit a *derech halimud* and a style as to how to *pasken sheilos*.

In the *hakdamah* to *Birchas Shmuel* (*chelek* 2), Rav Reuven Grozovsky expands on this point in the name of his father-in-law, Rav Boruch Ber Leibowitz. He writes that one must have a *kabbalah* from his *rabbeim*, איש מפי איש עד משה רבינו, as to how to formulate a *kashya*, how to develop a *sevara*, how to bring a *ra'ayah*, and how to say a *teretz*. Rav Soloveitchik added that even if one's *rebbe* is no longer alive, one should approach a *sheilah* by asking, "What would my *rebbe* have said in this situation?" *Psak* must be issued based on *masorah*. [See *Nefesh HaRav*, pp. 7-8, 307-308.]

When the Reform movement first began in Europe, it was led by Orthodox-trained *rabbonim* who had pure motivations. The *balabatim* in Germany did not understand the *davening* in *lashon hakodesh*, and the *rabbonim* felt that *davening* in the German language would lead to an improvement in *tefillah*. In fact, the *Shulchan Aruch* (*Orach Chayim* 62:2) rules that one does fulfill his obligation if he recites *krias shema* in translation. In addition, in the context of *tefillah betzibbur*, *davening* in the vernacular is permitted (101:4).

The mistake of those *rabbonim* was that they failed to consult with the *gedolei hador*. Rebbi Akiva Eiger, Rav Efraim Zalman Margolios, and the *Chasam Sofer* were alive at the time, and after the enactment to *daven* in the vernacular, they advanced different arguments in opposition of the new practice. Even if it is based on a clear ruling in the *Shulchan Aruch*, a major change in the *nusach* of the *tefillah* requires consultation with greater *rabbonim*, to make sure that the *psak* conforms to tradition.

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## PARSHAS CHUKAS

# HALACHIC FORMULAS

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THE PERIOD of the Second *Beis HaMikdash* was plagued by arguments with the *Tzeddukim* (Sadducees), who denied the validity of the traditions of the *Torah SheBe'al Peh*. The *Tzeddukim* labeled the *chachamim* as *Perushim* (Separatists), a derogatory term employed in our times as well by the non-Orthodox when referring to the Orthodox. In truth, it was the Reform and Conservative movements which separated themselves from *Klal Yisrael*, which had previously been completely Orthodox. During *Bayis Sheini* as well, the *Perushim* were the traditionalists, and it was the *Tzeddukim* who broke away from all the oral traditions of the Jewish People.

One of the disputes centered around the *Kohen* who prepares the *parah adumah*. The *passuk* states, והזה הטהר על הטמא - "And the pure person shall sprinkle upon the impure person" (*Bamidbar* 19:19). This implied to the *Tzeddukim* that the *Kohen* must be in a fully *tahor* state, as is required for contact with *terumah* and *kodshim*. Therefore, the *Kohen* preparing the *parah adumah* would not be able to be a *tevul yom*, one who had been *tamei*, immersed in a *mikvah* that day, and was now awaiting sundown to attain full *taharah*. In contrast, the *Perushim* held that a *tevul yom* would be eligible to participate in the preparation of the *parah adumah*. They had a tradition to expound the word הטהר to imply "that he was [previously] *tamei*. This teaches about a *tevul yom* that he is fit

for the *parah*" (Yoma 43b), since the Torah does consider someone in this state as *tahor* with respect to *ma'aser sheni*.

To demonstrate that we place no credence whatsoever on the opinions of the *Tzeddukim*, whether they are more strict or more lenient than those of the *Perushim*, the *Mishnah in Parah* (3:7) describes, "They would render *tamei* the *Kohen* who was to burn the *parah*, on account of the *Tzeddukim*, so that they should not say that [the *avodas parah adumah*] was performed only by those who had experienced sundown." After immersion in a *mikvah*, the *Kohen* would become a *tevul yom* prior to his undertaking the *avodas parah adumah*. This was done "to remove from the heart of the *Tzeddukim*" (Yoma 2a), to discredit the opinion of the *Tzeddukim* who held that such an individual would be unfit for this *avodah*.

It would seem that the way the *chachamim* knew to elucidate the *passuk* in this way is from the unusual spelling of the word הטהר, in a *chaser* (missing) form, in contrast to the usual full form of the word – טהור. Derivation from *malei* and *chaser* is one of the *מידות שהתורה נדרשת בהן* (exegetical principles through which the Torah is expounded) (*Kesuvos* 44b), and the *chachamim* used this principle to interpret the word הטהר as referring to an individual who has an **incomplete** level of *taharah*.

The *chachamim*, by having the *parah adumah* prepared specifically by *tevulei yom*, were concerned about conveying the impression that they were not careful with *taharah* while preparing the *parah adumah*. *Rashi* (*Sukkah* 21a) explains that to offset that mistaken impression, many other *chumros* were instituted regarding the *dinim* of *parah adumah*. Our use of the *tevul yom* should not be taken as a sign of leniency in the *taharah* necessary for the *parah adumah*; we use the *Kohen tevul yom* **only** in order to publicly repudiate the *Tzedduki* view and to wage a battle against the *Tzeddukim*. Therefore, the only *keilim* used for the procedures of the *parah adumah* were made

of dung, stone, or clay, which do not contract *tum'ah*, and for a period of seven days, the *Kohen* who was to burn the *parah* would be sequestered from his house to the *lishkas beis ha'even* in the *Beis HaMikdash* courtyard (*Yoma* 2a).

More significantly, as poignantly described in the *Mishnah* in *Parah* (3:2):

There were courtyards in Yerushalayim built on bedrock, and beneath them was a hollow, because of [concern for] an underground grave. They would bring pregnant women, and they would give birth there and rear their children there. They would bring oxen with [wooden] doors on their backs [to serve as an *ohel*, blocking any *tum'ah* rising from the ground], and the children would sit on top of them with cups of stone in their hands [to fill with spring water, which was later mixed with ashes of the *parah*]. When they would reach [the spring of] *Shilo'ach*, they would descend and fill [the cups], and they would then ascend and sit on top of [the doors]. Rebbi Yose says: From his place, he would lower the cup [using ropes] and fill it.

The *Acharonim* employ a similar approach in reference to the rules of permitting the marriage of an *agunah*, a woman unable to remarry due to insufficient evidence of her husband's death. The *Tanna'im* felt compelled to rule leniently that a single witness is trustworthy regarding his testimony that the *agunah's* husband has died, in contrast to the usual requirement of the testimony of two witnesses in the area of *davar sheb'ervah* (a matter pertaining to forbidden marital relationships). They felt this way because during the Roman persecutions, when so many men were murdered in dungeons, it was difficult enough to procure a **single** witness who could testify to the husband's death.

However, there was a concern that people might get the mistaken impression that this area of *halachah* is extremely lenient. Thus, other *chumros* were introduced, such as the rule that the wife of a man presumed to have drowned after falling into סוף להם – מים שאין להם סוף – water that has no end [within the sight of an observer] – is forbidden to remarry (*Yevamos* 121a). This

is a *chumrah* “on the books,” but it usually does not impede an *agunah*’s ability to remarry. This situation is rare on a practical level, and even if present, this *chumrah* can usually be obviated, as the *rabbonim* will usually be able to find a second *rov* (probability) pointing in the direction that the husband is dead, so as to be able to rule leniently (*Pischei Teshuvah, Even Ha’Ezer* 17:133). The *chachamim* were interested in introducing leniencies for the *agunah*. The *chumrah* of מים שאין להם סוף was only introduced to balance and offset any mistaken impression that those *kulos* may convey.

The *Gemara* in *Yevamos* (115a) discusses the rationale for accepting the testimony of a single witness who reports that a woman’s husband has died, thus enabling her to remarry. First, regarding a מילתא דעבידא לאיגולוי – a matter that is likely to be exposed (upon the husband’s return), it is presumed that the witness will not lie. Second, we rely on the fact that אשה דייקא ומינסבא – a woman herself investigates carefully and only then marries.

In reference to this allowance of a woman to remarry on the basis of an *eid echad*, the *Gemara* (*Yevamos* 88a) uses the famous phrase, משום עיגונא אקילו בה רבנן – “Out of concern for the *agunah*, the rabbis were lenient with her.” This led some of the *Rishonim* to understand that the acceptance of the *eid echad* in this case is a rabbinic leniency. *Rashi* (*Shabbos* 145b) understands that the power of the rabbis to exercise this leniency is based on the rule אפקעינהו רבנן לקידושין מיניה – since whoever is *mekadesh* a woman does so subject to the will of the rabbis, the rabbis are able to retroactively annul the original *kiddushin* and return her to her premarital state.

*Tosfos* (*Yevamos* 88a, s.v. *mitoch*) understands that this case falls under the category of יש כח ביד חכמים לעקור דבר מן התורה – the *chachamim* are empowered to uproot a *din* of the Torah. Although the *Gemara* (*Yevamos* 90a) concludes that this authority of the *chachamim* to suspend Biblical law is limited to

a *שב ואל תעשה* (passive) violation, *Tosfos* holds that even an active violation (*קום ועשה*) is permitted in this case. This is because the leniency of reliance on an *eid echad* is a *דבר הדומה* – a *din* “similar” to one that is **within** the framework of Halachah, which is therefore, not viewed as contradicting the Halachah.

Other *Rishonim* (*Nimukei Yosef*, *Yevamos* 28a in *Dapei HaRif*, in the name of the *Ritva* and *Ra’ah*, cited in *Pischei Teshuvah*, *Even Ha’Ezer* 17:13), however, understand that the acceptance of the *eid echad* in this case is not a rabbinic leniency. Rather, the above considerations are acceptable on a *d’oraisa* level as well. If that is the case, what did the *Gemara* mean when it said *משום עיגונא אקילו בה רבנן*, implying that a **rabbinic** leniency was employed here?

At the time when Rav Soloveitchik discussed the opinion of the *Ritva* and *Ra’ah*, a book had recently been published by a professor at the Jewish Theological Seminary. The professor argued that during the time of the *Tanna’im*, there must have been a scarcity of wood in Eretz Yisrael. That is why *Maseches Sukkah* is replete with *dinim* aimed at minimizing the requisite dimensions of the walls of the *sukkah*, such as *lavud* – viewing gaps of less than three *tefachim* as actually closed – and *gud asik* – viewing the walls as extending upward to the *sechach* above them.

Rav Soloveitchik said that he did not think that the professor’s arguments necessarily made him an *apikores*. It is possible that there **did** exist a scarcity of wood at that time in Eretz Yisrael. That fact alone, however, does not explain the *halachah*.

He proceeded with a *mashal*. The American government became aware that the Nazis were working on atomic energy in order to create an atom bomb that would enable them to be victorious in World War II. The American government therefore commissioned leading scientists to do the research leading to the creation of the first atom bomb to secure its

victory in the World War. Now, assume one were to ask, “How does the atom bomb work?” If one were to reply, “It is simple. The American government became aware that the Nazis were working on atomic energy...” would that suffice to explain **how** the atom bomb works? Of course not. That explanation simply provides the historical background that led to the creation of the atom bomb. The atom bomb functions based on certain precise formulas. In science, for something to work, there has to be a formula to justify its function.

The Rav explained that Halachah works the same way. It is possible that there was a *sha'as hadchak* (pressing circumstance) that led to the presentation of leniencies in the construction of the walls of the *sukkah*. This consideration, however, can only provide the historical framework to understand why the *Tanna'im* were interested in introducing their *kulos*. As to **how** the *kulos* function, there has to be a **formula**. There was already a recognized rule of *lavud* and of *gud asik* in other areas of *halachah*, such as in *Hilchos Shabbos*, but these principles may not have ever been applied to the *dinim* governing the walls of the *sukkah* until that time. It may have been due to the pressing need of the time that the *rabbonim* convened a “committee” to attempt to come up with a legal mechanism to alleviate the situation.

In our context as well, there was a significant *agunah* issue due to the Roman persecutions, especially in light of the general *davar sheb'eroah* requirement of two witnesses. Thus, *משום עיגונא אקילו בה רבנן* is the historical background explaining that there was a *sha'as hadchak*. Next, after careful consideration, the *rabbonim* applied a known **halachic formula** to allow for the acceptance of only one witness. This bona fide mechanism is either *מילתא דעבידא לאיגויי* or *אשה דייקא ומינסבא*. These halachic principles create a *רובא דליתא קמן* (an assumption following the probability) that the testimony of the *eid echad* is reliable. The *agunah* is thereby allowed to remarry, even on the level of *d'oraisa*.

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## PARSHAS BALAK

# THE COMING OF *MASHIACH*

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THE GEMARA in *Bava Basra* (14b) quotes a *Beraisa* listing all the *sefarim* of *Tanach* and their authors, which states, "Moshe wrote his *Sefer* and *Parshas Bil'am*." "His *Sefer*," of course, refers to the *Chamishah Chumshei Torah*, which is called "*Toras Moshe*" (*Malachi* 3:22). The *Shelah* (*Parshas Balak*, 2) questions what is meant by the statement that Moshe wrote "*Parshas Bil'am*." Isn't it obvious that *Parshas Balak* is included in the *Chamishah Chumshei Torah*?

Rav Yerucham Gorelick related the following interpretation of this *Gemara* in the name of the Brisker Rav. The *passuk* states, ולא קם נביא עוד בישראל כמשה אשר ידעו ד' פנים אל פנים – "Never again has their arisen in *Yisrael* a *navi* like Moshe, whom *Hashem* had known face to face" (*Devarim* 34:10). The *Sifrei* expounds, "Among *Yisrael*, there has not risen, but among the non-Jewish nations, there has risen; and who is this? It is Bil'am." This *Beraisa* teaches us how to view the *nevu'ah* of Bil'am in relation to that of Moshe.

The *Gemara* in *Megillah* (2b), commenting on the *passuk*, אלה המצות אשר צוה ד' את משה אל בני ישראל – "These are the *mitzvos* that *Hashem* commanded Moshe to *Bnei Yisrael*" (*Vayikra* 27:34), brings the *derashah*, אין נביא לחדש דבר מעתה, – "a *navi* is not permitted to introduce anything new from now on." Only those *mitzvos* that were transmitted to us through Moshe's *nevu'ah*, which was a direct dictation of ונקודות אותיות

(letters and vowels), are binding throughout all the future generations. That is the very definition of the technical term **מצוה**, as *Rashi* (*Vayikra* 6:2) explains: “**צו** (command) must express urging on, for the immediate moment and for **all future generations**” (*Kiddushin* 29a).

In *Sefer HaMitzvos* (*shoresh shelishi*), in relation to which commandments are included in the count of *Taryag* and which are not, the *Rambam* states that a command that was only a *hora'as sha'ah* (temporary ruling) is not a *mitzvah* and is therefore excluded from this list. Other *nevi'im* received “*nevu'ah*,” in contrast to “**Torah**,” and this was binding only as a *hora'as sha'ah*. Even Moshe at times conveyed prophecies that were only *hora'as sha'ah*, such as the special directives involved in *makkas bechoros* and the *Korban Pesach* in *Mitzrayim*. Moshe's uniqueness was that he was the only *navi* able to convey “**Torah**,” everlasting *mitzvos* that were not *hora'as sha'ah*, and these were given to him by *Hashem* as word-for-word, letter-for-letter dictations. [See essays on *Parshiyos Vayishlach* and *Beha'aloscha*.]

The *Gemara* learns *halachos* of “**Torah**” from the *nevu'ah* of Bil'am. The *passuk*, **וְדָם חָלְלִים יִשְׁתֶּה** – “and the blood of the slain, it will drink” (*Bamidbar* 23:24), establishes the rule that blood is one of the seven liquids that, after coming into contact with a food item, make it susceptible to contracting *tum'ah* (*Chullin* 35b). When did this *passuk* become part of the **חֲפֵצָא שֶׁל תּוֹרָה** (the “body” of Torah), when Bil'am first said it, or when it was given as a *nevu'ah* to Moshe to record as part of the Torah?

The *Brisker Rav* explained that the intent of the *Beraisa* cited above was to answer this question. Even though, in terms of clarity, Bil'am's *nevu'ah* was on the same level as that of Moshe, his *nevu'ah* did not attain the status of “**Torah**” at the time he delivered it. Despite the fact that Bil'am was given *nevu'ah* on a very high level, there was an essential difference in the way these two *nevi'im* received their *nevu'ah*. While the *passuk* describes Bil'am, **אֲשֶׁר מַחֲזֵה שְׂקֵי יַחֲזֵה נּוֹפֵל וְגֹלֵי עֵינָיִם** – “who sees

the vision of *Shakkai*, while fallen [in an unconscious state] and with uncovered eyes" (*Bamidbar* 24:4), Moshe is described as someone, אשר ידעו ד' פנים אל פנים – "whom *Hashem* had known face to face" (*Devarim* 34:10), since he was fully awake when receiving his *nevu'ah*. Since Bil'am did not share this aspect of *nevu'ah*, he was not able to endow his *nevu'ah* with the status of "Torah." It is only because Moshe was also given this *nevu'ah* to record that "*Parshas Bil'am*" is included in the חפצא של תורה and can serve as the basis of a *halachah* for all generations.

We may suggest a second explanation of the statement of the *Beraisa*, "Moshe wrote his *Sefer* and *Parshas Bil'am*." *Rashi* (*Bereishis* 1:1) cites the *Midrash* that the Torah begins with the narrative of Creation, and not with the first *mitzvah* of *kiddush hachodesh*, in order to teach that "the whole world belongs to *Hashem*; He created it, and He gave it to the one who was proper in His eyes. By His wish He gave [Eretz Yisrael] to [the seven Canaanite nations], and by His wish He took it from them and gave it to us." The *Ramban* differs, explaining that the *ikarei ha'emunah* (principles of faith) must be included in the Torah. That is why the Torah begins with the account of Creation, which is the basis of all faith. Similarly, one who believes in *techiyas hameisim* but does not believe that this *ikar* has a source in the Torah is considered an *apikores* (*Mishnah Sanhedrin* 10:1). We believe that the *ikarei ha'emunah* appear in the **Written Torah**, not just that they were transmitted orally.

The *Beraisa* may be emphasizing this point – that the *ikar* of the coming of *Mashiach* does appear in *Torah SheBichsav*, in *Parshas Bil'am*, when Bil'am prophesies regarding the End of Days. Indeed, the *Rambam* (*Hilchos Melachim* 11:1) writes that one who denies the belief in *bi'as haMashiach* not only denies the *nevu'ah* of other *nevi'im*, but denies the *nevu'ah* of Moshe as well. After all, it is explicitly recorded in the Torah: אראנו ולא עתה אשורנו ולא קרוב דרך כוכב מיעקב וקם שבט מישראל – "I shall see him, but not now; I shall look at him, but it is not near.

A star has issued from Ya'akov and a scepter-bearer has risen from *Yisrael*" (*Bamidbar* 24:17).

What is the significance of this *ikar*? *Chazal* understand that *Hashem* will not perform an open miracle unnecessarily. The *Gemara* in *Shabbos* (21b) relates that the miraculous burning of the cruse of oil in the *menorah* in the times of the *Chashmona'im* lasted for a period of eight days. It was exactly this amount of time that was necessary to complete the round trip of a four-day journey to procure *tahor* olive oil (*Rambam, Hilchos Chanukah* 3:2); a longer-lasting miracle would not be performed unnecessarily.

*Hashem* created the world *yesh mei'ayin* (ex nihilo). Such a miraculous act must have been for a certain Divine purpose. Looking at the world today, we may well wonder why *Hashem* created such a world, filled with so much waywardness and destruction. Was it an unnecessary miracle? The significance of *bi'as haMashiach* is that it resolves this question. *Tanach* teaches us this *ikar ha'emunah* – that Creation **did** have an ultimate purpose and that the day will come when the world will be peaceful and delightful, when everything will come to a proper resolution.

In *Perek Chelek* (*Sanhedrin* 99a), *Rebbi Hillel* states his opinion, "There will be no *Mashiach* for *Yisrael*, because they already enjoyed [the Messianic Era] in the days of *Chizkiyahu*." *Rav Soloveitchik* (in a letter to the editor in *HaDoar*, May 27, 1960) wrote that the term *משיחיות* – "Messianism" – does not exist in his lexicon. He understood this term to be in line with the opinion of *Rebbi Hillel* that there will not be a **human** *Melech HaMashiach*, but that the ultimate redemption of the Jews from *galus* will be carried out by *Hashem* Himself. The *Gemara* rejected his opinion, responding, "May his Master (*Hashem*) forgive *Rebbi Hillel*" for making this unacceptable statement. Today, after *Rebbi Hillel* has been outvoted, we assume that it

would be *apikorsus* to maintain such a view. [At the time of Rabbi Hillel's statement, this ruling had not yet been issued.] We believe that not only will there be a Messianic Era, but that there will be a direct human descendant of *Malchus Beis Dovid* who will be the *Melech HaMashiach*.

Rebbi Akiva thought that Shimon Bar Koziba, who led a rebellion against the Romans around sixty years after the destruction of the Second *Beis HaMikdash*, might turn out to be the *Melech HaMashiach*. He therefore nicknamed him Bar Kochba, invoking the above *passuk*, דרך כוכב מיעקב. The *Yerushalmi* (*Ta'anis* 4:5) reports that the other *Tanna'im* disagreed with Rebbi Akiva's assertion, telling him, "Grass will be growing on your cheeks, and still the descendant of Dovid will not yet have arrived."

Apparently, they had the tradition quoted in the *Gemara* in *Sanhedrin* (97a):

The world is [destined to exist for] six thousand years: [the first] two thousand of nothingness, [the second] two thousand of Torah [commencing with Avraham's preaching of monotheism when he was fifty-two years old, and concluding, approximately, with the time of Rebbi Yehudah HaNasi's death], [the third] two thousand for the Days of *Mashiach*.

Since *Mashiach* cannot come before the year four thousand, the other *Tanna'im* knew that Bar Kochba could not be the *Melech HaMashiach*.

Rav Yissachar Teichtal, in *Eim HaBanim Semeichah* (chapter 2:1), quotes an interesting comment of the *Ohr HaChayim*, who observed an important lesson in relation to the coming of *Mashiach* from the *passuk*, דרך כוכב מיעקב וקם שבט מישראל. If the *ge'ulah* comes due to the merit of *Bnei Yisrael*, *Mashiach* will appear as a wondrous miracle, shining forth from Heaven like a כוכב, a shooting star. If not, the Redeemer will come sluggishly as a שבט, a scepter-bearer – in the form of a government like all others.

This comment echoes the *Gemara* in *Sanhedrin* (98a), which similarly distinguishes between the two ways in which *Mashiach* can arrive. On the *passuk*, *אני ד' בעתה אחישנה* – “I, Hashem, in its time I will hasten it” (*Yeshayah* 60:22), the *Gemara* expounds that if the Jews are deserving, *Hashem* will hasten the redemption; if they are not deserving, it will come in its preordained time. Furthermore, if the Jewish People are worthy of redemption, the arrival of *Mashiach* will be supernatural and swift, *עם ענני שמיא* – “with the clouds of Heaven” (*Daniel* 7:13). If they are not deserving, he will come as *עני ורוכב על חמור* – “a humble man, riding on a donkey” (*Zecharyah* 9:9), in a slow and natural process.

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PARSHAS PINCHAS  
*HALACHAH LEMOSHE MISINAI*

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THE MISHNAH in *Sukkah* (4:9) records that the *Tzeddukim* (Sadducees) did not observe the practice of *nisuch hamayim* in the *Beis HaMikdash* on Sukkos. This was because they subscribed only to the *Torah SheBichsav* and did not accept the traditions of the *Torah SheBe'al Peh*. On one occasion, a certain *Tzedduki Kohen*, refusing to perform the *nisuch hamayim*, poured the water on his feet instead of on the *mizbe'ach*. He was pelted with *esrogim*, thrown at him by the onlookers, with the result that the *mizbe'ach* became damaged and unfit for use.

The source in the *Torah SheBe'al Peh* for the institution of *nisuch hamayim* is a matter of dispute among the *Tanna'im* (*Ta'anis* 2b-3a). One opinion holds that it is a *Halachah LeMoshe MiSinai*, a tradition of the *Torah SheBe'al Peh* that has no source in the *Torah SheBichsav*. It cannot be derived through any of the *הן מידות שהתורה נדרשת בהן* (exegetical principles through which the Torah is expounded). Other *Tanna'im* disagree and do find a source in the *Torah SheBichsav* for *nisuch hamayim*. Rabbi Yehudah ben Beseirah learns that the three letters, "מ", "י", and "ם" in the words, *ונסכייהם*, *ונסכיה*, and *כמשפטם* (*Bamidbar* 29:18,31,33), respectively, are extra and were added for exegetical purposes. The resulting word, *מים*, is an allusion to *nisuch hamayim*. Rabbi Akiva's source is the use of the plural term *ונסכיה* - "and its libations," a reference to a *nisuch hamayim* and a *nisuch hayayin*.

The *Rambam* (*Peirush HaMishnayos, Zevachim 13:6*) interprets another Tannaitic dispute on the basis of this *machlokes*. The *Gemara* in *Zevachim* (110b) discusses which of the *Beis HaMikdash avodos* one would be punished for performing if he did so outside of the *Beis HaMikdash*. According to Rebbi Elazar, not only is one who is *shochet* (slaughters) or *ma'aleh* (offers) a *korban* outside the *Beis HaMikdash* liable to a punishment of *kares*, but also one who performs the *nisuch hamayim* outside during Sukkos. The *Gemara* states, "Rebbi Elazar said [this ruling] according to the opinion of Rebbi Akiva, his teacher, who said that *nisuch hamayim* is of Biblical origin," but the *Gemara* does not explain the interdependence of these two teachings.

The *Rambam* (basing himself on the *Yerushalmi, Sukkah 4:6*) explains that if we were to derive *nisuch hamayim* from the *Torah SheBe'al Peh* exposition of Rebbi Akiva, reading in-between the lines of the *Torah SheBichsav*, the punishment of *kares* would be appropriate if *nisuch* were to be performed outside. The *Rambam* writes that since, instead, *nisuch hamayim* is a *Halachah LeMoshe MiSinai*, we do not accept the opinion of Rebbi Elazar, and one who is *menasech* on Sukkos outside the *Beis HaMikdash* would **not** be liable.

The *Rosh* (*Bava Kamma 2:2*) makes a similar comment regarding the *Halachah LeMoshe MiSinai* of חצי נזק צרורות – half-payment for damages due to pebbles sent flying in the normal course of an animal's activity. *Rava* (*Bava Kamma 17b*) raises the question whether כוחו כגופו, damage caused by the force generated by the animal, is generally treated as if it was caused directly by the body of the animal itself, so that the owner in the case of חצי נזק צרורות should have been obligated in full-damages, or if generally לאו כגופו דמי – one's force is **not** like his body – and the owner should therefore have been totally exempt from payment for damages. *Rava* concludes that the former explanation is the correct one; one's force **is** considered

like his body. The הלכתא גמירי לה – the *Halachah LeMoshe MiSinai* that the rabbis have received as part of the Oral tradition – serves to reduce the owner’s liability to **half**-damages in this case. However, *Rava* does not reveal what led him to this resolution.

The *Rosh* explains that what *Rava* realized is that the nature of *Halachah LeMoshe MiSinai* is always to be **lenient**, to reduce one’s obligation. The *Rosh* writes that the *Gemara* in *Sukkah* (6b) employs a similar logic in discussing how many walls are required in the construction of a *sukkah* – three full walls plus a *tefach* to serve as the fourth wall, or two full walls plus a *tefach* to serve as the third wall. The *Rosh* explains that the thrust of the *Gemara* is that the *Halachah LeMoshe MiSinai* always comes to detract from the requirement of one of the full walls. Thus, the discussion revolves about whether a *sukkah* starts with a four-wall or only a three-wall minimum; the final wall is then **reduced** by the *Halachah LeMoshe MiSinai* to measure only the size of a *tefach*.

The *Mekuballim* provide the rationale for this approach. They explain that the *Torah SheBe’al Peh* was given with the *Middas HaChessed* (Attribute of Mercy), always to take a lenient position on one’s obligations. In contrast, the *Torah SheBichsav* was etched in stone, given with the *Middas HaDin* (Attribute of Judgement). Thus, the Oral Tradition of *hataras nedarim* (annulment of vows), which “hover in the air, and have no [Scriptural] support” (*Mishnah Chagigah* 1:8), serves to **remove** the restrictions of a *neder*. Similarly, while the *Torah SheBichsav* demands “an eye for an eye,” the *Torah SheBe’al Peh* is more tolerant, requiring of the assailant only a monetary penalty.

The *Gemara* in *Shabbos* (96b) labels the prohibition known as מעביר ארבע אמות ברשות הרבים (carrying an object four-amos in the public domain) as a גמרא גמירי לה, a tradition transmitted orally from Sinai. The *Ran* (*Shabbos* 73a, 31b in *Dapei HaRif*) comments, along the lines of the *Rambam* and *Rosh* cited above,

that transgressing the *Halachah LeMoshe MiSinai* on Shabbos should not have led to any punishment. The reason there is a punishment for the violation of מעביר is that this act is subsumed under the heading of מוציא מרשות לרשות (removing an object from one domain to another domain), which is one of the thirty-nine prohibited *melachos* of Shabbos. That is, this *Halachah LeMoshe MiSinai* establishes that the four-*amah* area surrounding an object is considered its halachic *reshus* (domain), so that the act of מעביר ארבע אמות is tantamount to the *melachah* of מוציא מרשות לרשות. On the basis of the *Torah SheBe'al Peh* tradition, מעביר is viewed as an act which is “juxtaposed to the *Torah SheBichsav*,” to which a punishment can be applied.

Rav Chaim (*Chiddushei HaGra"ch*, *Hilchos Ma'acholos Asuros* 10:15) and the Rogachover Gaon (*Tzafnas Pa'anei'ach*, *Hilchos Ma'acholos Asuros* 10:10) offered a famous explanation. [Rav Chaim and the Rogachover learned *becha'orusa* as young children under the *Beis HaLevi*.] They explained that there exist two types of *Halachah LeMoshe MiSinai*, one which is מחדשת – creating a totally **new** *din* – which cannot be derived from the *Torah SheBichsav*, and one which is מפרשת – an Orally-derived **explanation** – which serves to reveal exactly what is included in the *passuk*.

For example, the *issur* of *orlah* (the first three years' fruits of a tree) in *Chutz La'Aretz* may be viewed as a *Halachah LeMoshe MiSinai* which is מפרשת. It explains that the opening phrase of the *passuk*, וכי תבאו אל הארץ ונטעתם כל עץ מאכל וערלתם ערלתו את פריו – “**When you shall come** to the land and you shall plant any food tree, you shall treat its fruit as forbidden” (*Vayikra* 19:23), serves to limit the *issur* only in time, not place. Thus, the *issur* of *orlah* only commenced with *Bnei Yisrael's* entry into Eretz Yisrael, but it includes, after that point, even fruits of *Chutz La'Aretz*.

*Orlas Chutz La'Aretz* is not a new *halachah*; rather, once the *Halachah LeMoshe MiSinai* was stated, it is considered as if this

*orlah* is explicitly mentioned in the *passuk* prohibiting *orlas* Eretz Yisrael. According to this view, continued Rav Chaim, eating this fruit would be punishable with *malkos*, just as in the case of *orlas* Eretz Yisrael. Furthermore, according to this approach, the fruits of those trees in their fourth year would be subject to the special *din* of *neta revai*. [This last point is a matter of dispute between the *Rambam* and the *Ge'onim*.]

If, on the other hand, *orlas Chutz La'Aretz* is a **new** *halachah*, a **המחדשה** למשה מסיני **המחדשה** that is not connected to the *issur* of *orlah* mentioned in the Torah, then eating this fruit would **not** be punishable with *malkos* (*Rambam, Hilchos Ma'acholos Asuros* 10:21).

Given this background, we understand that according to the explanation of the *Ran*, the *Halachah LeMoshe MiSinai* of מעביר would be classified as a **הפרשת** למשה מסיני **המפרשת** - **explaining** that מעביר is really a form of מוציא, the violation of which would carry with it the standard punishment for *chillul Shabbos*.

[See *Eretz HaTzvi*, pp. 7, 249-252.]

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PARSHAS MATTOS

ARGUMENTS WITH THE *KARA'IM*

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THE BEGINNING of the *parsha* discusses the *dinim* of *hafaras nedarim* (revocation of vows), which may, under certain circumstances, be performed by a father for his daughter and by a husband for his wife. The authority of the husband to revoke those *nedarim* is restricted to *nedarim* that might cause his wife personal discomfort or which might affect the relationship between them (*Yoreh De'ah* 234:55). Because it is not clear in exactly which situations the father or husband has the right to revoke the *nedarim*, the custom is to no longer engage in this practice.

Nowadays, when one seeks to nullify a *neder*, as is done on *erev Rosh Hashanah*, he stands before a *beis din*, which performs *hataras nedarim* (annulment of vows) based on *pesach*, his not realizing how problematic observing the *neder* would be, and *charatah*, his regret for ever having undertaken the *neder*. The *beis din* then declares, מותר לך – “[It is] permitted to you” – three times, and the *neder* is annulled (*Yoreh De'ah* 228:3). Why does the *beis din* proclaim מותר לך three times?

The institution of *hataras nedarim* is not mentioned in the *Torah SheBichsav*; it is only known through the *Torah She-Be'al Peh*. The *Mishnah* in *Chagigah* (1:8) states the following: היתר נדרים פורחין באויר ואין להם על מה שיסמכו – “[The laws regarding] annulment of vows hover in the air and have no

[Scriptural] support.” That is, *hataras nedarim* is purely an oral tradition, with no way to use the *מדות שהתורה נדרשת בהן* (exegetical principles through which the Torah is expounded) to have this *din* read “in-between the lines” of the *Torah SheBe’al Peh*. As a result, the *Kara’im* never practiced *hataras nedarim*, only *hafaras nedarim*, since they only followed “*Mikra*” and their own interpretations of the *Tanach*, not the traditions of the *Torah SheBe’al Peh*.

The *Tzeddukim* and *Beitusim*, groups which repudiated the *Torah SheBe’al Peh* and rabbinic expositions of *pessukim*, were the forerunners of the *Kara’im*, and there were many areas of conflict between them and the *Perushim* during the period of the Second *Beis HaMikdash*. The *Beitusim* held that the proper time for the offering of the *omer*, described as *ממחרת השבת* – “on the morrow of the Rest Day” (*Vayikra* 23:15), was literally “the morrow of the Shabbos,” or Sunday.

The *Gemara* in *Menachos* (65a-b) tells of a debate between Rabban Yochanan ben Zakai and the *Beitusim*, who contended, “Moshe our Teacher loved the Jews, and knowing that Shavuos is only one day, arose and fixed it [and the offering of the *omer* seven weeks earlier] to always fall after the Shabbos, so that the Jewish People would enjoy two days [of leisure].” There were many years that the *Beitusim* were in control of the *Beis HaMikdash*, offering the *omer* and *korbanos* of Shavuos in this improper fashion. In fact, *Megillas Ta’anis* records that a minor festival was enacted once the *chachamim* defeated the *Beitusi* challenge and the proper date of Shavuos was reaffirmed.

The *Mishnah* in *Menachos* (10:3) describes that when the *chachamim* were observing this aspect of *halachah* that is known only through the *Torah SheBe’al Peh*, the harvesting of the *omer* on a night other than *motzo’ei Shabbos*, they would make a large convocation. There was a similar public assembly at the *simchas beis hasho’evah*, so prominently celebrated in the *Bayis Sheini*

period, because the *Beis HaMikdash avodah* of *nisuch hamayim* was also known only through the *Torah SheBe'al Peh* and was not embraced by the *Tzeddukim* (*Mishnah Sukkah* 4:9).

The *Mishnah* poignantly details the following interplay at the time of the harvesting of the *omer*:

All the nearby townspeople would assemble there, so that it would be reaped with great fanfare. Once it became dark, [the reaper] would ask them, "Has the sun set?" They would say, "Yes." [He would repeat,] "Has the sun set?" They would say, "Yes." [He would then ask,] "This sickle?" They would say, "Yes." [He would repeat,] "This sickle?" They would say, "Yes." [He would then ask,] "This basket?" They would say, "Yes." [He would repeat,] "This basket?" They would say, "Yes." [He would then ask,] "Shall I reap?" And they would say, "Reap!" [He would repeat,] "Shall I reap?" And they would say, "Reap!" [He would state the question] three times in every case, and they would say, "Yes, Yes, Yes." Why was all this necessary? Because of the *Beitusim*, who said that the reaping for the *omer* should not be done on the night following Yom Tov, [but rather on the first Saturday night after the Yom Tov].

The *Bi'ur HaGr"a* explains that we recite מותר לך three times at *hataras nedarim* for a similar reason to the three-fold repetition at the harvesting of the *omer*. We seek to emphasize the fact that we **do** subscribe to the traditions of the *Torah SheBe'al Peh*. [The text for the *dayanim*'s response during *hataras nedarim* already includes הכל יהיו מותרים לך הכל מחולים לך הכל שרויים לך – "May everything be permitted you, may everything be forgiven you, may everything be allowed you," and it is not necessary to repeat the whole paragraph three times.]

The *Rambam* (*Hilchos Ishus* 3:21) records a related practice with respect to *kiddushin*. Although *kiddushin* can be accomplished with the use of a document, the *Rambam* writes that "All the Jews already have the custom to use *kesef* or its equivalent." The *Rambam* labelled *kiddushei kesef* as דברי סופרים – "words of the Scribes," which connotes a *din* that is not explicit in the *Torah SheBichsav*, but rather requires the *Torah SheBe'al*

*Peh* for its derivation. For this reason, the *Kara'im* did not accept *kiddushei kesef*, and it would seem that the *Rambam* teaches that we specifically use this method of *kiddushin* to demonstrate that Orthodox Jews **do** subscribe to the *Torah SheBe'al Peh*.

The *Rambam* (*Hilchos Milah* 2:1) uses the same expression regarding the instrument to be used for a *bris milah*. Although any metal instrument, including scissors, could be used, the *Rambam* writes, "All the Jews have the custom to use a knife." The *Kara'im* approved only the use of scissors when performing a *bris milah*, because of the description in *Yehoshua* (5:2), עשה לך חרבות צרים ושוב מל את בני ישראל שנית - "Make sharp **knives** for yourself and circumcise the *Bnei Yisrael* again," implying that a "pair of knives" must be used.

A further example of anti-Karaite practice is the insistence of partaking of hot food, such as *cholent*, on Shabbos. The *Ba'al HaMa'or* (*Shabbos* 16b in *Dapei HaRif*) writes that one who does not partake of "*chamin*" on Shabbos needs to be investigated to determine if he is a *min* (heretic). In contrast, one who does delight in the Shabbos by preparing warm food is a *ma'amin* (believer) who will merit the End of Days. This is, of course, in opposition to the well-known teaching of the *Kara'im* on the *passuk*, לא תבערו אש בכל מושבותיכם ביום השבת - "You shall not kindle fire in any of your dwellings on the Shabbos day" (*Shemos* 35:3), which they misinterpreted to refer to **all** use of fire - that one may not leave on any light or fire, thus requiring the eating of only cold food on Shabbos.

This discussion is relevant to *hadlakas neiros* before Shabbos as well. One opinion brought in *Tosfos* (*Shabbos* 25b, s.v. *chovah*) holds that no *berachah* is recited on *hadlakas neiros*, just as in regard to other preparations done in honor of the Shabbos, like vacuuming the rug, setting the table, or taking a shower. We, of course, do recite a *berachah*, following the other opinion in *Tosfos*, brought from the *Seder* of Rav Amram Gaon. Historians

claim that this *berachah* may actually have been introduced in the days of the *Ge'onim* as part of their battle with the *Kara'im*, who forbade such lighting. The *berachah* was enacted to show that not only is it not prohibited to have kindled lights on the Shabbos, it is a *mitzvah*, worthy of a *berachah*, to kindle these lights before the Shabbos. In fact, Rav Ovadiah Yosef (*Yechaveh Da'as* 1:27) cites a custom to recite a *berachah* only prior to *hadlakas neiros* on *erev Shabbos*, not *erev Yom Tov*; this may stem from the fact that there was never a dispute with the *Kara'im* regarding Yom Tov lights.

We have an old custom to recite *Kol Nidrei* on the night of Yom Kippur, which is really a public *hataras nedarim*, annulling the *nedarim* we had taken during the course of the year since the last Yom Kippur. [*Rabbeinu Tam*, quoted in *Ran* (*Nedarim* 23b), emended the text to serve as a declaration in advance, that any future *nedarim* should be null and void.] The standard explanation of this custom is based on the following comparison of the *Zohar*. Just as in the case of *hataras nedarim*, the *beis din* serves to uproot the *neder* retroactively, making it into something that was never binding at all, so too, with powerful *teshuvah*, the *aveiros* will be uprooted from their source, as if they never occurred.

However, some historians suggest an additional reasoning. Apparently, in Alexandria, there was a practice for the Orthodox Jews, in opposition to the many *Kara'im* there, to have a parade on Yom Kippur in support of the *Torah SheBe'al Peh*. Because we seek to emphasize our commitment to *Torah SheBe'al Peh* on Yom Kippur, we begin the day with *hataras nedarim*, which is **pure** *Torah SheBe'al Peh*, not rooted at all in the *Torah SheBichsav*.

We can understand the connection between Yom Kippur and the *Torah SheBe'al Peh* in the following way. The *Gemara* in *Ta'anis* (30b) tells us, "Yisrael had no days as festive as the fifteenth of Av and Yom Kippur ... Yom Kippur [is considered

an especially festive day] because ... it was the day on which the second *luchos* were given." The *Beis HaLevi* (*drush* 18) demonstrates that it was *Hashem's* original plan to have the entire Torah miraculously written on the first *luchos*. The second *luchos*, however, only contained the *Aseres HaDibros*; an Oral Torah would now be necessary to elucidate the *Torah SheBichsav*. Thus, the giving of the second *luchos* on Yom Kippur is synonymous with the giving of the *Torah SheBe'al Peh*, and it is the receiving of this particular aspect of Torah that we celebrate on this day. That is why we celebrate two separate Yomim Tovim commemorating *Matan Torah*, Shavuos and Yom Kippur. Shavuos commemorates the giving of the *Torah SheBichsav*, whereas Yom Kippur celebrates the giving of the *Torah SheBe'al Peh*. [See essay for *Parshas Ki Sisa*.]

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## PARSHAS MASEI

# DIVISION OF THE LAND

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**H**ASHEM SPECIFIED one *nasi* to represent each of the twelve *shevatim* with respect to the apportionment of Eretz Yisrael: וְנָשִׂיא אֶחָד מִמֵּטָה תִּקְחוּ לְנַחֵל אֶת הָאָרֶץ – “And one leader from each *shevet* shall you take to possess the land” (*Bamidbar* 34:18). We read in *Sefer Yehoshua* that it took seven years to conquer all of Eretz Yisrael, and the *Gemara* (*Kesuvos* 25a) had an oral historical tradition that it took an additional seven years to divide the land among the various *shevatim*, families, and individuals. Only after each *shevet* was living in its respective territory (and each person recognized his specific share) was the *kedushas ha’Aretz* complete (*Arachin* 32b). That **כִּיבוּשׁ וְחִילוּק** (conquest followed by division), which served to sanctify Eretz Yisrael, did not require the *nesi’im* and is not referred to in our *parsha*.

The *Rambam* (*Hilchos Terumos* 1:2) explains that the distribution mentioned in our *parsha*, carried out by Yehoshua and his *beis din* preceding the *kibbush*, was done by drawing a map of Eretz Yisrael, in order to organize the planned *kibbush* in such a way that the soldiers from each *shevet* would fight for the specific land that their particular *shevet* would eventually settle. If each *shevet* would have organized **itself** to fight for and conquer only its particular area, the *Rambam* continues, this would have been tantamount to a **כִּיבוּשׁ יחיד** (conquest of an

individual). Such a *kibbush* is not acceptable to sanctify Eretz Yisrael. To create the *kiddush*, **כיבוש רבים** (**communal** conquest) was required, with the entire *Klal Yisrael* involved in the *kibbush* of all the land. This was the role of the distribution of the land discussed in our *parsha*. Since all the *nesi'im*, representing all the members of the twelve *shevatim*, organized, "on paper," the future *kibbush* together, it was considered as if the **entire** army of *Klal Yisrael* would conquer the **entire** Eretz Yisrael on behalf of everyone. This **כיבוש רבים** would be *mekadesh* Eretz Yisrael, subsequent to which each *shevet* could settle the particular land that it fought for.

The following difficulty presents itself. In the days of the *Tanna'im*, there was a great dispute regarding the status of **כיבוש יחיד**. Was such a *kibbush* able to be *mekadesh* or not (*Gittin* 8b)? The *machlokes* centered around the area of Aram Tzovah, also known as Suria. *Rashi* explains that Dovid HaMelech privately conquered this land for only his own purposes, as an individual *kibbush*, not to be divided amongst all of *Klal Yisrael*. [The final ruling is that **כיבוש יחיד** – לא שמייה **כיבוש** – this type of *kibbush* is not deemed a *kibbush*; it is insufficient to be *mekadesh*.] How can there be any *machlokes* on this matter, if the whole premise of this *parsha* in the Torah, according to the *Rambam's* presentation, is that **כיבוש יחיד** is an **insufficient** *mekadesh*?

The answer would seem to be that the *machlokes* of the *Tanna'im* regarding **כיבוש יחיד** does not apply to Eretz Yisrael proper, the borders of which are specified in our *parsha* (*Bamidbar* 34:3-12). The area in question, Suria, was **outside** of the borders of Eretz Yisrael, and it was regarding this type of **כיבוש יחיד** that the *Tanna'im* had a *machlokes* – whether Suria ever attained *kedushas ha'Aretz* on a *d'oraisa* level. Is **כיבוש רבים** required for lands outside the borders of Eretz Yisrael, as it is for Eretz Yisrael proper, or is **כיבוש יחיד** sufficient to endow them with *kedushah*?

However, when we speak of investing Eretz Yisrael **proper** with *kedushas ha'Aretz*, there was never any dispute. All the *Tanna'im* were in agreement that **כיבוש יחיד**, through the individual war efforts of each *shevet's* army, would be **insufficient** to endow that land with *kedushas* Eretz Yisrael. Only a **communal** *kibbush* could accomplish this *kiddush*, and the role of the *nesi'im* in our *parsha* was to prepare for such an eventuality. Thus, the *nesi'im's* actions served as a declaration, to set the stage for the future seven years of battle in the days of Yehoshua bin Nun, guaranteeing that the war would be considered a **כיבוש רבים**.

We can appreciate the rationale for the above distinction between Eretz Yisrael proper and lands outside of its borders if we understand the basis of the concept of **ארצות הנוספות** (additional lands) conquered by the Jewish Army. These lands can be endowed with *kedushas ha'Aretz* based on the *passuk*, **יהיה כל המקום אשר תדרוך כף רגלכם בו לכם יהיה** – “Every place where the sole of your foot will tread shall be yours” (*Devarim* 11:24). Rav Soloveitchik asked rhetorically, “When I bought my house in Boston [as purchase is also a form of conquest], according to the opinion that **כיבוש יחיד שמה כיבוש**, did that property attain *kedushas ha'Aretz*? Of course not!” The concept of **ארצות הנוספות** only applies to lands that **border** Eretz Yisrael.

The Rav explained that this is because the rule governing the *kiddush* of **ארצות הנוספות** operates in the following way. Once Eretz Yisrael proper is fully invested with its *kedushah*, that *kedushah* can **spill over** from Eretz Yisrael onto other adjacent lands, in much the same way as a *havdalah* cup, already filled to the brim, spills over when more wine is poured into it. Since the *kedushas ha'Aretz* is seen as spreading out from Eretz Yisrael proper, it can only extend itself to sanctify **contiguous** lands, after they are conquered by the Jewish Army, not to an isolated area distant from Eretz Yisrael.

Since we view the *kedushah* of the ארצות הנוספות as an extension of the overflowing *kedushah* of Eretz Yisrael onto this adjacent land as well, we can understand why, to one opinion, it is easier to sanctify the ארצות הנוספות than it is to sanctify Eretz Yisrael itself. To **initiate** the source of the *kedushah*, a **communal** *kibbush* is required; to draw that *kedushah* onto adjacent lands, an individual *kibbush* may suffice.

Rav Yehoshua MiKutno (*Yeshuos Malko, Kiryas Arba*, p. 44) employs a similar logic to explain the rule of the *Mishnah* in *Makkos* (2:4) that the three *arei miklat* (cities of refuge) in *Ever HaYarden* did not serve to protect the accidental murderer until the three *arei miklat* in Eretz Yisrael proper were chosen. He assumes that the institution of the *arei miklat* only has relevance in land endowed with *kedushas ha'Aretz*, not in *Chutz La'Aretz*. Next, he understands that the land of *Ever HaYarden* received *kedushah* through the rule of ארצות הנוספות; it was not considered part of Eretz Yisrael proper.

The *Rambam* (*Hilchos Melachim* 5:6) specifies that those ארצות הנוספות can receive *kedushah* only **after** the *kedushah* of Eretz Yisrael proper is in place, a point which is well understood based on Rav Soloveitchik's explanation. If it is the overflowing *kedushah* of Eretz Yisrael that must spread onto these ארצות הנוספות to endow them with *kedushah*, we understand that Eretz Yisrael itself must fully possess **its** *kedushah* before that same *kedushah* could extend further. In fact, the *Rambam* (*Hilchos Terumos* 1:3) holds (unlike the explanation of *Rashi* cited above) that this is the very reason Suria did not attain *kedushas ha'Aretz* on a *d'oraisa* level – it was conquered **before** the complete borders of the land were under Jewish control.

Rav Yehoshua MiKutno concludes that just as in the case of Suria, also *Ever HaYarden* could not attain *kedushas ha'Aretz* until Eretz Yisrael itself was first sanctified. Only after

*Ever HaYarden* was endowed with the *kedushah* of ארצות הנוספות could its *arei miklat* begin to function, and this would take place subsequent to the time the *arei miklat* in Eretz Yisrael proper would become operational.

[See *Nefesh HaRav*, p. 83; *Ginas Egoz*, pp. 172-173.]

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PARSHAS DEVARIM

THE *MASORAH OF SEFER DEVARIM*

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THE GEMARA in *Megillah* (31b) points out that there is a difference between the *tochechah* of *Parshas Bechukosai* and that of *Parshas Ki Savo*. In *Bechukosai*, the *passuk* says, וְאִם לֹא תִשְׁמָעוּ לִי ... אֲנִי אַעֲשֶׂה ... וְהִפְקַדְתִּי – “But if you will not listen to Me ... I will do ... I will assign...” (*Vayikra* 26:14,16). *Hashem* speaks directly to *Bnei Yisrael* in the first person. However, in *Ki Savo*, Moshe speaks about *Hashem* in the third person, telling *Bnei Yisrael* that the consequence of their observance of *Hashem's mitzvos* will be that יִפְתַּח ד' לְךָ אֶת אוֹצְרוֹ הַטוֹב – “*Hashem* shall open for you His storehouse of goodness” (*Devarim* 28:12). וְהָיָה אִם לֹא תִשְׁמָעוּ בְקוֹל ד' ... יִשְׁלַח ד' – “If you do not listen to the voice of *Hashem* ... *Hashem* will send...” (28:15,20).

The *Gemara* explains that the above linguistic difference has a practical *nafka minah*. The rule of the *Mishnah*, “We may not interrupt the *tochechah*, but rather one [person] reads it in its entirety,” only applies to the *tochechah* of *Bechukosai*, not to that of *Ki Savo*. This is because the *tochechah* of *Ki Savo* – in which Moshe, not *Hashem* Himself, delivers the admonition – is not so severe a *tochechah* as to preclude reciting a *berachah* over it. [The *Rambam* (*Hilchos Tefillah* 13:7) writes that we have nevertheless adopted the custom to try to avoid beginning or concluding any *aliyah* with a negative topic, and we therefore avoid interrupting the *tochechah* of *Ki Savo* as well.]

Rav Soloveitchik suggested an explanation for why the *tochechah* of *Ki Savo* is presented in this way. The *Gemara* in *Nedarim* (38a) teaches that originally, only the Written Torah, along with all of its requisite *halachos*, was to be transmitted by Moshe to *Bnei Yisrael*. The פילפולא של תורה, the dialectic of Torah, which is the Oral Torah's methodology and style of exegesis of the *Torah SheBichsav*, was exclusively given to Moshe and his descendants as a private undertaking. It was only because Moshe acted generously, "with a good eye," that he shared this discipline, the ability to "read in-between the lines" of the text of the Torah to derive the details of each *halachah*, with all of *Bnei Yisrael*.

When did this generous act, in which Moshe imparted his full understanding of *Torah SheBe'al Peh* to all of *Bnei Yisrael*, take place? The *Netziv* (*Ha'amek Davar*, *Devarim* 1:3-5) explains that it occurred shortly before his death, in Arvos Mo'av, and is described in our *parsha*: הואיל משה באר את התורה הזאת לאמר – "Moshe began explaining this Torah, saying" (*Devarim* 1:5). The *passuk* in *Va'eschanan*, וזאת התורה אשר שם משה לפני בני ישראל, – "And this is the teaching that Moshe placed before *Bnei Yisrael*" (4:44), is a reference to this process as well. It is with this process in mind that we must view the *tochechah* of *Ki Savo* and, indeed, the entire *Chumash Devarim*.

Each *tochechah* represents a different *kerisas bris* (sealing of the covenant) between two parties. The *passuk* spells this out at the conclusion of the *tochechah* of *Ki Savo*: אלה דברי הברית אשר צוה ד' את – משה לכרות את בני ישראל בארץ מואב מלבד הברית אשר כרת אתם בחורב – "These are the words of the Covenant that *Hashem* commanded Moshe to seal with *Bnei Yisrael* in the Land of Mo'av, **beside the Covenant** that He sealed with them in Chorev (Har Sinai)" (*Devarim* 28:69).

Yet, there is an important difference between the two *tochechos*, reflective of a more general difference between *Chumash Devarim* and the other four *chumashim*. While *Bechukosai* began

as *Torah SheBichsav, Ki Savo*, which is part of Moshe's great speech that spans most of *Sefer Devarim*, began as *Torah SheBe'al Peh*. [Of course, once Hashem dictated the words contained in *Sefer Devarim* to Moshe to be written down, they too were incorporated into the *Chumash* and became part of *Torah SheBichsav*.]

When it comes to the *bris* of *Torah SheBichsav*, Moshe was simply the conduit or intermediary for its transmission to *Bnei Yisrael*. The two parties to the *bris* were Hashem and *Bnei Yisrael*; Moshe did not occupy a special position and was included among the rest of *Bnei Yisrael*. This is what the *Gemara* in *Megillah* means when it states, "Moshe pronounced them in the name of Hashem." Therefore, the language used in this *bris* of Sinai, primarily one regarding *Torah SheBichsav*, is that of Hashem speaking directly to *Bnei Yisrael*.

However, the *bris* of *Arvos Mo'av* was primarily one regarding *Torah SheBe'al Peh*. In the realm of transmission of the Oral Torah, the form in which *Ki Savo* began, it was required that Hashem give the *masorah* to Moshe, and then for him to transmit it to *Bnei Yisrael*. The *kerisas bris* of *Torah SheBe'al Peh* in *Sefer Devarim* is **via the rebbi**, Moshe Rabbeinu, to his *talmidim*, *Bnei Yisrael*. Moshe stood on one side and *Klal Yisrael* stood on the other. This is what the *Gemara* in *Megillah* means in stating, "Moshe uttered them on his own." That is why Moshe related the *tochechah* of *Ki Savo* in the third person, in his own words. It was *Torah SheBe'al Peh* and needed to be channeled **through** Moshe in its transmission from Hashem to *Bnei Yisrael*.

It seems that we underscore the aforementioned duality with the two *passukim* recited during *hagbahas haTorah*. The *passuk*, *וְזאת התורה אשר שם משה לפני בני ישראל* – "And this is the teaching that Moshe placed before *Bnei Yisrael*," is a reference to *Torah SheBichsav*. We then add, *על פי ד' ביד משה* – "according to the word of Hashem through Moshe" (*Bamidbar* 9:23), a reference to

*Torah SheBe'al Peh*, which was first given to Moshe, and then, from him, transmitted to *Bnei Yisrael*. We thus affirm our belief in the Divine origin of both *Torah SheBichsav* and *Torah SheBe'al Peh* at the time of *hagbahas haTorah*.

Rav Soloveitchik added that the above difference forms the basis of the distinction between *Chumash Devarim* and the rest of the Torah with regard to the exegetic principle of *semuchim* (the juxtaposition of *pessukim*), expounding details of one *mitzvah* to another in an adjacent *passuk*. [When two *mitzvos* appear within the same *passuk*, we derive *dinim* based on the comparison of one to the other, a methodology referred to as *hekesht*.]

The *Gemara* in *Yevamos* (4a) teaches that we apply the methodology of *semuchim* only to *Chumash Devarim*, not to the rest of the Torah. Indeed, there are a number of famous principles derived from *Chumash Devarim* using *semuchim*. For example, the *Gemara* in *Makkos* (13b) derives the rule that in order to be subject to *malkos*, the violated *issur* must be similar to the *issur* against muzzling an animal – דומיא דלאו דחסימה, from the *pessukim*, “It will be that if the wicked one is liable to lashes ... You shall not muzzle an ox in its threshing” (*Devarim* 25:2-4). The *Gemara* in *Yevamos* (3b-4a) learns the principle of עשה דוחה לא תעשה (a positive *mitzvah* overrides a prohibition) from the juxtaposition of “You shall not wear *sha'atnez*, combined fibers, wool and linen together” and “You shall make for yourselves twisted threads (*tzitzis*)” (22:11-12). The *Gemara* (*Yevamos* 49a) derives that a *mamzer* is defined as the offspring of a union prohibited under penalty of *kares*, based on the *pessukim*, “He shall not uncover the robe of his father [which refers to a woman awaiting *yibum* by one's father] ... A *mamzer* shall not enter the congregation of *Hashem*” (23:1-3).

Since, as we described, there is an element of *Torah SheBe'al Peh* to *Chumash Devarim*, and one who transmits the Oral Torah arranges his lesson in such a way that the topics discussed are

associated with one another, we are able to derive *dinim* based on that order of association. Topics are not necessarily arranged by association, however, in the rest of *Torah SheBichsav*.

*Parshas Devarim* includes another important theme – that of commanding and urging the forthcoming *kibbush ha’Aretz* (conquest of the land). Thus, the *parsha* concludes, “I commanded Yehoshua at that time, saying, ‘Your eyes have seen everything that *Hashem*, your G-d, has done to these two kings; so will *Hashem* do to all the kings where you cross over. You shall not fear them, for *Hashem*, your G-d, He shall wage war for you’” (3:21-22).

We may suggest a connection between these two themes of transmission of *Torah SheBe’al Peh* and *kibbush ha’Aretz*. Moshe desired that the *kiddush* of the land by Yehoshua be accomplished through the strength of the *Torah SheBe’al Peh*, for it would then not be subject to nullification. That is why he transmitted the *פילפולא של תורה*, the exegetical methodology of the Oral Torah, to *Bnei Yisrael* at this time – so that they could now sanctify Eretz Yisrael through its strength. It was ordained, however, that *Bnei Yisrael* were not worthy of such a *kiddush* at this time, and the land was sanctified through the *kedushah* of *Torah SheBichsav* instead. This type of *kiddush*, is subject to annulment, just as a physical *sefer Torah* is susceptible to destruction. Thus, the first *kiddush* was nullified with the conquest of the Babylonian armies at the time of the destruction of the First *Beis HaMikdash*.

A *kiddush* through the power of *Torah SheBe’al Peh* would have to wait until after *Bnei Yisrael* willingly accepted the Oral Torah, in particular, in the aftermath of the Purim miracle. [See end of essays for *Parshiyos Chayei Sarah* and *Vayeishev*.]

That acceptance paved the way for Ezra’s *kiddush*, completed through the *Torah SheBe’al Peh*. In much the same way as the abstract concepts contained within the Oral Torah are

not subject to any form of destruction, that second *kiddush* is an everlasting one, as ירושה ראשונה ושניה יש להן ושלישית אין להן – “they have a first and second conquest (sanctification of the land), but they do not have [a need for] a third conquest” (*Yevamos* 82b).

[See *Nefesh HaRav*, pp. 54-56; *MiPninei HaRav*, 2001 ed., pp. 338-339.]

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## PARSHAS VA'ESCHANAN

# LOVE OF *HASHEM*

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ואהבת את ד' אלקיך בכל לבבך ובכל נפשך ובכל מאודך.

And you shall love *Hashem*, your G-d, with all your heart and with all your soul and with all your resources. (*Devarim* 6:5)

**W**HAT IS the connotation of “with all your heart and with all your soul”? It means that a Jew’s love for *Hashem* must be primary compared to his love for others. Therefore, if one is married and his wife does not want to observe *taharas hamishpachah*, he cannot view himself as being unable to observe this *mitzvah* of the Torah. He must love *Hashem* **more** than his beloved wife. The institution of *ben sorer umoreh* (the rebellious son) also conveys this idea. If the son is a transgressor of *aveiros*, the parents should not cover this up and protect him, but should bring him to the *beis din* for punishment.

The *Gemara* in *Sanhedrin* (71a), according to one opinion, teaches that *ben sorer umoreh* never actually happened, but it is still written “on the books” to teach its moral lesson. The theoretical possibility of the fulfillment of this *mitzvah* teaches the lesson that parents are obligated to have more love for *Hashem* than for their own son. The incident of the *Akeidah* also teaches this lesson; although we have love for our children, our spouses, and others, we must have more love for *Hashem* than any other being. *Midrashim* say that on the

occasion of the *Akeidah*, Avraham was trembling, conflicted due to his natural paternal human emotions. Yet, he knew he had to do the will of *Hashem*; his intellect dictated to him that he must perform the *Akeidah*.

Though extremely difficult, Jews throughout the generations have followed in the footsteps of Avraham, being willing to demonstrate that their love for *Hashem* is greater than the love they had for their own lives, sacrificing themselves *al kiddush Hashem*. During the period of the *Ba'alei HaTosfos*, the Crusaders traveling through France and Germany pressured many Jews to convert to Christianity on the pain of death. The *Da'as Zekeinim MiBa'alei HaTosfos* (*Bereishis* 9:5) refers to the very common practice of parents slaughtering their own children, first reciting the *berachah*, אשר קדשנו במצותיו וצונו על השחיטה, because of the fear that they might convert to save themselves. [Others argued that although one is certainly obligated to surrender his own life *al kiddush Hashem* under these circumstances, one is not permitted to kill himself or to commit murder out of fear that the victim will not be able to withstand the test of religious persecution.]

The practice of the *Ba'alei HaTosfos* was based on the *Akeidah*, from which we see that we are obligated to make this ultimate sacrifice out of love for *Hashem*. One is obligated to love all his fellow Jews, based on ואהבת לרעך כמוך (*Vayikra* 19:18), but not all to the same extent. One must love his own family more than he loves his neighbor's family. Nevertheless, one's commitment to *Hashem* must take precedence even over his love for his own wife and children, because one must love *Hashem* "with **all** your heart."

The *Gemara* in *Sanhedrin* (78a) discusses a case in which ten people beat someone, one after the other, causing his death. The majority opinion among the *Tanna'im* holds that they are not subject to the death penalty, while Rebbi Yehudah ben

Beseira rules that the last one is liable because he hastened the person's death. The *Gemara* explains that both opinions expounded the same *passuk*, *וַאִישׁ כִּי יִכֶּה כָּל נֶפֶשׁ אָדָם מוֹת יוֹמָת* – “And if a man strikes **all** human life, he shall be put to death” (*Vayikra* 24:17). The disagreement revolves about how to translate the words *כָּל נֶפֶשׁ* – “**all** life.” According to the *Chachamim*, it means “entire life,” so that the assailant is not liable unless he kills someone who otherwise would have lived. According to Rabbi Yehudah, this phrase implies *כָּל דְּהוּא נֶפֶשׁ* – “anything that is life.” Thus, if ten people hit the victim sequentially, it is the **final** assailant who is culpable for shortening his life, even though the victim would have died anyway from the previous assaults.

Rav Chaim Volozhiner (*Nefesh HaChayim*, *sha'ar* 2, *perek* 15) sees a connection between this *Gemara's* understanding of *כָּל נֶפֶשׁ* and the similar phrase in the *passuk*, “to love *Hashem*, your G-d, and to serve Him with all your heart [an allusion to *tefillah*, the *avodah* of the heart] and – *בְּכָל נַפְשְׁכֶם* – with all your soul” (*Devarim* 10:12). One should strive to cleave to *Hashem* with “all his soul,” but at the very least, to see to it that “part of his soul” connects itself to *Hashem* with every word of *tefillah*. According to the view that *כָּל נֶפֶשׁ* means “anything that is life,” when the *passuk* taught, “And you shall love *Hashem*, your G-d, *בְּכָל נַפְשְׁךָ*,” does that not imply that one needs to love *Hashem* only with “a part of his soul”? The explanation is that in the *passuk*, *וַאִישׁ כִּי יִכֶּה כָּל נֶפֶשׁ אָדָם*, the word *כָּל* refers to the **last** “anything that is life,” not the first. Even according to this view, then, it is with this “**last** part of his soul” that one must express his love for *Hashem*.

Given the *mitzvah* to love *Hashem* with literally “all our soul,” or, according to the other opinion, with the “last part of our soul,” where is there room for *לְרַעַךְ כַּמּוֹךְ*, to love our wives, our children, and other Jews? The answer, as the

*Chovos HaLevavos* (*Sh'ar Ahavas Hashem*, perek 2) explains, is that the love we have for them should be viewed as **part of** **אהבת ד'**: "If you love anything else, it should be [love] wherein you find favor before Him, so that [this love] is actually a branch of your love [for Hashem]." Hashem wants us to feel that we are all part of one large family, and so we demonstrate our love for Hashem by showing love to all our fellow Jews.

Does one have to love his children who are non-observant to the same extent as he loves his observant children? Showing love to the non-observant children may lead them to repent, and showing enmity toward them may push them further away, but the parent need not have the feeling of unlimited and unconditional love toward all his children equally. The love is supposed to be **part of** one's love for Hashem, not a separate love. The love of others cannot serve as a contradiction to one's love of Hashem. That is what the *Akeidah* teaches us - that one must love his family as a *chelek* of **אהבת ד'**, so that if Hashem commands one to slaughter his child, that is what he is supposed to do.

The *Ran* (*Peirush Al HaTorah*) presents a fantastic *chiddush* regarding the *Akeidah*. He posits that Hashem never, in fact, **commanded** Avraham to perform the *Akeidah*. The *passuk* says, קח נא - "Please take your son" (*Bereishis* 22:2), and Chazal interpret, "נא is nothing other than an expression of request" (*Sanhedrin* 89b). The *Ran* explains that Hashem showed Avraham that it would **please Him** if Avraham would "forgive" His promise **כי ביצחק יקרא לך זרע** - "since through Yitzchak will offspring be considered yours" (*Bereishis* 21:12), and offer Yitzchak as a *korban*. If Avraham would have responded that he could not perform the *Akeidah* because Yitzchak was his only child and he had already been promised that his progeny would be only through **this** child, it would not have

been considered sinful or worthy of any punishment. Nevertheless, Avraham found it in his heart to go ahead with the *Akeidah*, simply to fulfill the **desire** of *Hashem*.

Thus, continues the Ran, the main point of the *Akeidah* is to show just how far the love of *Hashem* reaches in the hearts of those who love Him. Here, Avraham demonstrated that he had more love towards *Hashem* than the love he had for Yitzchak, described as **את בנך את יחידך אשר אהבת** – “your son, your only one, whom you love.” This is the *mitzvah* of **אהבת ד'**. How does one demonstrate that he loves his spouse or his parents? If he knows that a certain activity would please them, he does not wait until they ask it of him directly, but instead does it **voluntarily**.

The *Gemara* in *Shabbos* (23a) discusses how we are able to say **אשר קדשנו במצותי וצונו** in the *berachah* recited upon lighting the Chanukah *neiros*, since this *mitzvah* was never commanded by *Hashem*, but is rabbinic in origin. The *Rambam* (*Hilchos Berachos* 11:3) brings the first *passuk* cited by the *Gemara* in its explanation: **לא תסור** – “you shall not deviate from the word that [the *chachamim*] will tell you” (*Devarim* 17:11). This implies that every rabbinic command or prohibition is subsumed under this *mitzvah d'oraisa*. The *Ramban* (*Sefer HaMitzvos, Hasagos, shoresh* 1:13), however, adopts the second *passuk* brought by the *Gemara* to provide for a Biblical connection: **שאל אביך ויגדך זקניך ויאמרו לך** – “Ask your father and he will relate it to you, your elders and they will tell you” (*Devarim* 32:7).

We may ask a basic question. How can this *passuk* serve as the source of the binding force of all *mitzvos derabbanan* if this *passuk* is itself not one of the six hundred and thirteen *mitzvos* of the Torah? Why are we obligated to follow the rabbinic laws if there exists no **command** in the Torah to do so? Rav Elchonon Wasserman *Hy”d* (*Kuntres Divrei Sofrim* 1:17)

explains that in the view of the *Ramban*, the real source of the obligation to observe all the *mitzvos derabbanan* is the fact that they represent **רצון ד' - the will of Hashem**, although He did not explicitly state these directives in the Torah.

In other words, it is the *passuk*, **וְאָהַבְתָּ אֶת ד' אֱלֹהֶיךָ**, that obligates us. It demands of us not only an obligation of the heart, but an obligation of the body as well. We must demonstrate through action that we love *Hashem*, and this is done by engaging in activities that we know would please Him, even if He did not instruct us to do them. Thus, the *passuk* **שָׂאֵל אֲבִיךָ וַיְגִדְךָ** teaches us to follow the instruction of the *talmidei chachamim* throughout the generations. Since it is the case that **הַסְכִּימָה דַעְתָּן לַדַּעַת הַמְקוּם** - "their thinking is in accord with the thinking of the Omnipresent" (*Yevamos* 62a), they will know what it is that we should **volunteer** to do in order to demonstrate that we really do love *Hashem*.

When the *Mishnah* in *Avodah Zarah* (2:5) cites the *passuk*, **כִּי טוֹבִים דְּדִיךְ מִיַּיִן** - "for Your love is better than wine" (*Shir HaShirim* 1:2), in relation to the rabbinic prohibition against *gevinas akum* (gentile-made cheese), it expands upon this point. *Chazal* teach us that *Hashem* appreciates our observance of Rabbinic Law **more** than He appreciates observance of Torah Law. The *Gemara* explains that **דְּדִיךְ** - "Your love" - refers to "the words of Your beloved ones," the *chachamim*, which are more pleasant than "the wine of Torah," the Written Torah itself (*Avodah Zarah* 35a). This is because it is specifically through the observance of *mitzvos derabbanan* that we demonstrate that we love *Hashem*, for we are engaging in practices that He has **not** commanded, simply in order to please Him.

There are those who invent new *minhagim*, thinking that adopting these new customs is the way to please *Hashem*. Yet, it is only the *talmidei chachamim*, who are fully knowledgeable

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in “the letter of the Law,” whom we should rely upon. It is they who will have a sense of “the spirit of the Law,” to be able to determine which practices would please *Hashem* and which would not.

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## PARSHAS EIKEV

# THE IMMUTABILITY OF TORAH

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THE TORAH, in prohibiting *bal tosif* and *bal tigra* (*Devarim* 13:1), stresses that we are not permitted to add to or detract from any of the *mitzvos* of the Torah. Nonetheless, occasionally, we come across a *mitzvah* that did change over the generations. One such case is the *mitzvah* of *Birchas HaMazon* described in our *parsha*, ואכלת ושבעת וברכת את ד' אלקיך על הארץ הטובה אשר נתן לך - "You will eat and you will be satisfied, and bless Hashem, your G-d, for the good Land that He gave you" (*Devarim* 8:10), a *d'oraisa* obligation after one ate bread to satiety.

The *Gemara* in *Berachos* (48b) discusses the origin of the text of *Birchas HaMazon*. When the *mann* fell from heaven to sustain the Jewish People in the *midbar*, Moshe composed the first *berachah* of *Birchas HaMazon*. Although there is presently a Biblical obligation to offer thanks to Hashem for giving us Eretz Yisrael as well, this obligation did not begin until Yehoshua conquered the land. The land already belonged to Avraham from the time he fulfilled the directive, "Arise, walk about the land along its length and breadth, for, to you, I will give it" (*Bereishis* 13:17), as this *passuk* is understood not just as a promise to be fulfilled in the distant future, but as an actual legal acquisition through which Avraham acquired the land (*Bava Basra* 100a). Nevertheless, the obligation to thank Hashem for giving us Eretz Yisrael did not begin until the land was

actually delivered to *Bnei Yisrael* at the time of Yehoshua. Therefore, it was Yehoshua who composed the second *berachah* of *Birchas HaMazon*, *birchas ha'Aretz*, and it then became a *d'oraisa* obligation to recite this *berachah* as well.

Similarly, in the days of Dovid and Shlomo, the Biblical obligation expanded to include a third *berachah*. When Dovid HaMelech conquered Yerushalayim and established it as his capital, he composed the first section of the third *berachah*, and after Shlomo HaMelech built the *Beis HaMikdash*, he added the second half of the third *berachah*. Thus, the nature of the *mitzvah* of *Birchas HaMazon* has changed over the course of generations, with the addition of the latter two *berachos* in the days of Yehoshua, Dovid, and Shlomo (see *Ramban*, cited in *Beis Yosef, Orach Chayim* 187:1).

[Now that the *Beis HaMikdash* has been destroyed and, absent the *Malchus Beis Dovid*, Yerushalayim has lost its status as the capital of Eretz Yisrael, the text of the third *berachah* has been modified to contain a *tefillah*. We ask of *Hashem* to have mercy on these two institutions and to return them to us, ועל הבית הגדול והקדוש ... ועל ירושלים עירך ... ועל אלקינו ... ד' אלקינו - "Have mercy *Hashem*, our G-d ... and on Yerushalayim, Your city ... and on the great and holy House" (*Tur, Orach Chayim* 188:1). It would seem, therefore, that the third *berachah* as we have it is only a rabbinic obligation; only when we have the *Beis HaMikdash* in Yerushalayim are we obligated, on a *d'oraisa* level, to thank *Hashem* for these institutions.]

The two halves of this third *berachah* correspond to two aspects of the uniqueness of Yerushalayim. First, Yerushalayim is the **מקדש מלך**, the **Sanctuary** of the King, which is what allows for the consumption of *korbanos* (of *kodshim kallim*) in its environs. In addition, Yerushalayim is **עיר מלוכה**, the **Royal City**, the official capital of Eretz Yisrael. All of Eretz Yisrael is considered the **פלטין של מלך** (royal palace). [This status is

comparable to the description of Eretz Yisrael found in the *Zohar*. There, the *passuk*, אשריך ארץ שמלךך בן חורים - “Fortunate are you, O land, whose king is a free man” (*Koheles* 10:17), is taken to be a reference to Eretz Yisrael, whose official king is *Hashem*, Who provides freedom for *avadim* in the *yovel* year.] Yerushalayim, referred to as קרית מלך רב - “the city of the great King” (*Tehillim* 48:3) - and כסא ד' - “the throne of *Hashem*” (*Yirmiyah* 3:17) - is the Capital City of the kingdom of *Hashem* in Eretz Yisrael.

The distinctiveness of Yerushalayim as the עיר מלוכה enables us to understand why the *Mishnah* in *Kesubos* (13:11) teaches that if one spouse wishes to relocate to Yerushalayim from another location in Eretz Yisrael and the other spouse refuses, the latter is considered to be at fault regarding the dissolution of the marriage. This has relevance to the requirement to pay the *kesubah* upon the couple's divorce. Apparently, there is a greater *mitzvah* of *yishuv* Eretz Yisrael to live in Yerushalayim than in the rest of Eretz Yisrael (*Chasam Sofer, Yoreh De'ah, simanim* 233-234). Since Yerushalayim is the capital of Eretz Yisrael, it is considered a greater *mitzvah* to live there and develop this city than to live in the rest of the country.

The twofold nature of Yerushalayim's uniqueness is why the city was divided between *shevet Binyamin*, in whose section *korbanos* were offered on the *mizbe'ach*, and *shevet Yehudah*, whose section contained the government's official buildings (*Zevachim* 53b). The *Rambam* (*Hilchos Melachim* 1:10) rules that only a king of the *Malchus Beis Dovid* has the right to use Yerushalayim as his capital, because *Hashem* authorizes only such a king, of the *malchus hanivcheres* (chosen kingdom), to serve as the human representative of the kingdom of *Hashem* in His capital. This is in line with the *Gemara's* requirement that mentioning of *Malchus Beis Dovid* is indispensable to the

*berachah* of *Boneh Yerushalayim*, for the re-establishment of this kingdom is necessary for the rebuilding of Yerushalayim to be considered complete.

This understanding of the dual role of Yerushalayim can provide the basis for an answer to a question raised by the *Chasam Sofer* (*Teshuvos, Orach Chayim, siman 29; Yoreh De'ah, simanim 233, 234*). The *Gemara* in *Zevachim* (54b) tells how Dovid HaMelech and Shmuel HaNavi were "residing in Ramah and working on the adornment of the world," attempting to determine, based on *pessukim*, the correct site on which to build the *Beis HaMikdash*. If it was understood that a parcel of land close to Yerushalayim, in *Yehudah*, was worth far more than one distant from Yerushalayim, in the *Galil* (*Bava Basra 122a*), how could there have been any doubt regarding the placement of the *Beis HaMikdash* within Yerushalayim? Additionally, if Yerushalayim was never divided among the *shevatim* in the days of Yehoshua, and so, "one could not charge rent for houses in Yerushalayim" (*Yoma 12a*), the uniqueness of Yerushalayim should have already been well recognized.

We may suggest the following explanation. Indeed, it had been recognized for centuries that Yerushalayim was unique in terms of property value and monetary ownership, but it was thought that these differences were due to Yerushalayim's status as the **capital** of Eretz Yisrael. The עיר מלוכה was not apportioned between the *shevatim*, in the same way that, in the United States, the capital city of Washington is not part of the neighboring states, Maryland or Virginia, but is an entity to itself, the District of Columbia. It may have been that there would be a **different** city which would house the *Beis HaMikdash*, and so, the true location of the מקדש מלך still had to be ascertained through the efforts of Dovid and Shmuel. [See *B'Ikvei HaTzon*, pp. 221-224.]

The *Rambam* lists as the ninth of the *ikarei ha'emunah*, תהא מוחלפת לא תהא התורה לא - "that this Torah will not be exchanged," that the *dinim* of the Torah are immutable. Indeed, it is this *ikar* which differentiates the Orthodox from the non-Orthodox, who believe that the *dinim* of the Torah are subject to revision. Due to this *ikar*, even if a recognized *navi* were to call for a permanent change in a *din* of the Torah, he would be branded a *navi hasheker* and would receive the death penalty. The reason for this obstinate insistence on the immutability of the Torah is that the Torah represents a description of *Elokus*, the **essence** of *Hashem* Himself. [See essay for *Parshas Metzora*.] Thus, this *ikar* is a direct outgrowth of the *passuk*, כִּי אֲנִי ד' לֹא שִׁנִּיתִי - "For I, *Hashem*, have not changed" (*Malachi* 3:6). Change is relevant only to created beings, not to the Creator Himself. Since the Torah is the Wisdom of *Hashem*, and since He and His Wisdom are one, the *dinim* of the Torah are also not subject to modification.

The *Sifrei* (cited by *Rashi*, beginning of *Parshas Mattos*) notes that all of the *nevi'im* use the introductory phrase כֹּה אָמַר ד' - "So said *Hashem*," while Moshe is the only *navi* to use the phrase זֶה הַדְּבָר - "This is the word [that *Hashem* has commanded]." The *Kedushas Levi* (*Shemos* 11:4) explains that the difference between the two phrases is that כֹּה אָמַר ד' has the connotation, "This is approximately what *Hashem* said," for it was the *navi's* interpretation of the vision he saw. זֶה הַדְּבָר, in contrast, means that what follows is an exact, direct dictation of the *devar Hashem*, word-for-word and letter-for-letter. Only Moshe's *nevu'ah*, which conveyed *mitzvos ledoros*, required this אִסְפָּקְלְרִיא המאירה (clear vision) with the precision of זֶה הַדְּבָר. [See essays for *Parshas Vayishlach* and *Parshas Beha'aloscha*.]

Thus, the seventh of the *ikarei ha'emunah*, that Moshe is the "father of the *nevi'im*," is essentially identical to the ninth *ikar* mentioned above. Moshe's status as the "master of the *nevi'im*" means that he is the only *navi* who was given *mitzvos ledoros*;

*mitzvos* are, by definition, everlasting and not subject to change.

The above noted change in the nature of *Birchas HaMazon* is not a violation of these *ikarei ha'emunah*, nor a violation of *bal tosfif* or *bal tигра*, because the Torah **itself** describes this *mitzvah* as being comprised of the three stages described above. The *Gemara* understands that the three different *berachos* are implied by the three-fold phrase in the following *passuk*:

ואכלת ושבעת וברכת את ד' אלקיך על הארץ הטובה אשר נתן לך.

You shall eat and you shall be satisfied, and you shall bless Hashem, your G-d [for your food], for the land [Eretz Yisrael], the good [a reference to Yerushalayim, as in והלבנון הזה וההר הטוב הזה – “This good mountain (the Temple Mount in Yerushalayim) and the Levanon” (Devarim 3:25)] that He gave you.

Thus, the original *nevu'ah* of Moshe in the Torah itself – **על הארץ הטובה** – includes these changes. When we would come to possess Eretz Yisrael, we would become obligated in the second *berachah*, and, when we would merit a *Beis HaMikdash* in Yerushalayim, we would become obligated in the third *berachah*.

We find a number of other *mitzvos* that were modified as well, but in each case, the adjustment was foretold within the original *nevu'ah* of Moshe. The *Gemara* in *Yevamos* (71b) describes that the *passuk*, בעת ההיא אמר ד' אל יהושע עשה לך חרבות – “At that time, Hashem said to Yehoshua, ‘Make sharp knives for yourself and circumcise the *Bnei Yisrael* again, a second time’” (*Yehoshua* 5:2), implies that, from the time of this *nevu'ah* of Yehoshua and on, it would be insufficient to merely perform *milah* (removal of the thick, outer layer of the foreskin); *peri'ah* (removal of the thin, inner membrane) would now also be required to fulfill the *mitzvah*.

*Tosfos* (s.v. *lo*) is troubled; this should be a violation of the principle, אין נביא רשאי לחדש דבר מעתה – a *navi* is not permitted to

introduce anything new from now on (*Megillah* 2b), for Moshe is the only *navi* able to transmit *mitzvos ledoros*. They should have given the death penalty to Yehoshua for being a *navi hasheker*! *Tosfos* answers that the *mitzvah* of *peri'ah*, though not stated explicitly in the Torah, must have been given to Moshe orally as a *Halachah LeMoshe MiSinai*. Moshe must have transmitted to *Bnei Yisrael* that at some future time, a *navi* would be told by *Hashem* to announce when the change in the *mitzvah* would take effect.

Similarly, the *Ritva* (*Megillah* 2b) explains the reason Ezra was able to change the script used for the letters of the *sefer Torah* from the *Ivri* script (similar to that used in the Code of Hammurabi) to the *Ashuri* script (which was brought up from Assyria) used today (*Sanhedrin* 21b-22a). Moshe had already conveyed the *passuk*, **וְכָתַב לוֹ אֶת מִשְׁנֵה הַתּוֹרָה הַזֹּאת** – “And he shall write two copies of this Torah” (*Devarim* 17:18). The word **מִשְׁנֵה** is expounded by the *Gemara* to contain a second meaning, **וְכָתַב לוֹ אֶת מִשְׁנֵה הַתּוֹרָה הַזֹּאת (הַעֲתִיד) לְהַשְׁתַּנּוּת** – “a script which is subject (destined) to being changed [by a future *navi*].” It was because of this Biblical exposition that *Klal Yisrael* followed this directive of Ezra, in contrast to the way in which it rejected the “prophecies” of *Oso Halsh* and Mohammed.

[See *B'Ikvei HaTzon* (pp. 10-14) for a further discussion of the permissibility of, what seem to be two other innovations – adopting the Babylonian names of the months of the year currently in use and the introduction of a *mitzvah* of *re'iyas panim* (visiting the *Beis HaMikdash*) on Roshei Chadashim.]

The *Rambam* (*Hilchos Melachim* 11:2) writes that there remains only one *din* that is yet to change in the future – that of the addition of three *arei miklat* (cities of refuge). That change will be fulfilled once we merit to take control over the full boundaries of Eretz Yisrael, including the lands of the *Keini*, *Kenizi*, and *Kadmoni*. This change as well is clearly spelled out

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in the *passuk*, “When *Hashem* will broaden your boundary ... and He will give you the entire land ... then you shall add three more cities to these three” (*Devarim* 19:8-9).

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PARSHAS RE'EH

YERUSHALAYIM WAS NOT DIVIDED

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THE *PARSHA* speaks about building the *Beis HaMikdash* in a specific location, המקום אשר יבחר ד' אלקיכם מכל שבטיכם – “the place that *Hashem*, your G-d, will choose from among all your tribes” (*Devarim* 12:5). The *Sifrei* understands that the connotation of **מכל שבטיכם** is that the area upon which the *Beis HaMikdash* is built should belong to **all** of the *shevatim*. The *Tanna'im* had a historical *machlokes* as to how this was accomplished. First, the land was given to Avraham, who was commanded, קום – “Arise, walk about the land along its length and breadth, for, to you, I will give it” (*Bereishis* 13:17). The *Gemara* in *Bava Basra* (100a) understands that this act constituted a *kinyan chazakah* (legal acquisition) and Avraham acquired ownership of Eretz Yisrael at that time. The land was then passed as a *yerushah* to Yitzchak, then to Ya'akov, then to the *shevatim*. A *yerushah* belongs to the estate, called *tefusas habayis*, and once the estate is divided into parts, each part becomes the property of one of the individual inheritors.

According to one opinion, Yerushalayim was also divided among the *shevatim* in the same way that all of Eretz Yisrael was, and Yerushalayim was given to the members of the *shevatim* of *Yehudah* and *Binyamin*. It is considered to belong to **all** the *shevatim* because at a later point, Dovid Ha-Melech purchased, with **communal funds**, the area of the

future *Beis HaMikdash* from these *shevatim* (*Zevachim* 116b). However, the accepted opinion is that ירושלים לא נתחלקה לשבטים – Yerushalayim was **not** apportioned among the *shevatim* from the very outset, and the *Beis HaMikdash* is therefore on a site that is מכל שבטיכם.

There are certain detailed *halachos* that do not apply to Yerushalayim because of the fact that it was not divided among the *shevatim*. For example, the institution of *eglah arufah*, “If a corpse will be found on the land that Hashem, your G-d, gives you to **possess** it” (*Devarim* 21:1), does not apply to Yerushalayim, which one cannot possess. Similarly, the *din* of *ir hanidachas*, described as “one of **your** cities” (13:13), does not apply to Yerushalayim, which does not belong to any particular *shevet*. *Tzara'as batim* “upon a house in the land of your **inheritance**” (*Vayikra* 14:34) would also not apply to a house in Yerushalayim (*Bava Kamma* 82b).

In addition to these special *halachos* regarding Yerushalayim based on לא נתחלקה לשבטים, the *Gemara* in *Yoma* (12a) says that when the *olei regalim* came on Yomim Tovim, “one could not charge rent for houses in Yerushalayim.” One could not sell or rent his house in Yerushalayim, because the house really belonged to **all** of *Klal Yisrael*; whoever moved into the house first had a right to continue dwelling in it, but he was not considered its true owner.

The *Gemara* in *Zevachim* (53b) says that the southeast corner of the *mizbe'ach* had no *yesod* (base). This was because there was a strip of land that projected out from *Yehudah's* portion into that of *Binyamin*, as the boundary between the territories of *shevet Yehudah* and *shevet Binyamin* cut across the *azarah* of the *Beis HaMikdash* at that exact spot. No area of the *mizbe'ach* could be in *Yehudah's* portion, only in *Binyamin's* portion.

The *Maharsha* (*Chiddushei Aggados*) explains the reason for this rule. The crown of royalty is connected to *Beis Dovid*, which

descends from *shevet Yehudah*. There must be a separation between the institution of the government, the *kesser malchus*, and the *avodah* in the *Beis HaMikdash*, the *kesser kehunah*, which must function independently, without being under the control of the king. [There is another application of this division of Yerushalayim, the assigning of the eastern half of Yerushalayim to *shevet Yehudah*. The *Gemara* in *Sanhedrin* (11b) teaches that *ibbur hashanah* (intercalation of the year) should be performed within the portion of *Yehudah*, since “any matter that you investigate should be only at *Hashem’s* dwelling place.”]

*Tosfos* (*Yoma* 12a, s.v. *Yerushalayim*) asks a fundamental question. If the accepted opinion is that Yerushalayim was **not** divided among the *shevatim*, then it belonged to **all** of *Klal Yisrael*. If so, the *mizbe’ach*, and all of Yerushalayim for that matter, were not in the portion of *Binyamin* or *Yehudah*, and there should have been no need to make any adjustment in its construction!

The Soloveitchik family related the following answer, which presumably originated with Rav Chaim. Regarding the *chalukah* (division) of Eretz Yisrael amongst the *shevatim*, there are “*tzvei dinim*” (two principles) that must be considered. First, upon division of the land, the area given to each *shevet* was labeled, halachically, as the *chelek* (portion) of that particular *shevet*. This aspect of the *chalukah* was in the realm of *issur veheter* (ritual law, that which is forbidden or permitted), as the seven-year *chalukah* constituted the conclusion of the previous seven-year *kibbush* of the land, which is what was *mekadesh* Eretz Yisrael in the days of Yehoshua bin Nun (*Kesubos* 25a).

However, the *chalukah* of Eretz Yisrael entailed an additional aspect – that each *shevet* was given **ownership** of its particular *chelek*. This was in the realm of *dinei mammonos* (monetary matters), in the same way that a *yerushah* in the state of *tefusas habayis* is divided among the various individual inheritors.

The distinction between these two aspects of the *chalukah* of the land is illustrated by a comment of the *Ra'avad* (found in *Shitah Mekubetzes, Bava Basra* 121b), cited by Rav Chaim (*Chiddushei HaGra''ch, Hilchos Shecheinim* 2:11). The *Ra'avad* holds that the *chalukah* of the land to the *shevatim* was carried out by means of the *urim vetumim*. On the other hand, the subsequent *chalukah* of a *shevet's* portion among the various families within that *shevet* was performed by means of a mere *goral*. The rationale behind this distinction is that the purely monetary division to confer ownership to individual families, as would be carried out between two partners, could be done via a simple *goral*. However, the *chalukah* to the *shevatim*, which completed the *mitzva* of *kibbush ha'Aretz* in the realm of *issur veheter*, thereby sanctifying the land, required the use of the miraculous *urim vetumim*.

The second aspect of the *chalukah*, to confer monetary ownership of the land to the *shevatim*, did not affect the halachic status of these sections. In fact, monetary ownership (aside from *hekdesh* ownership) never creates an intrinsic change in an object; it merely causes an extrinsic change, a relationship between the object and its owner.

The **halachic status** of the land, labelling a section as the *chelek* of a particular *shevet*, was determined solely by the **first** aspect of the *chalukah*. After the *chalukah* to the *shevatim*, the *chelek* of *Yehudah* took on a status of its own for the purpose of *ibbur hashanah*, and the *chelek* of *Binyamin* took on a status of its own for the purpose of building the *mizbe'ach*. Thus, an adjustment to the construction of the *mizbe'ach* was necessary to ensure that it be placed only in the *chelek* of *Binyamin*.

We may now answer the question of *Tosfos*. When we rule **ירושלים לא נתחלקה לשבטים**, we refer to the *dinei mammonos* facet of the *chalukah* – that the *shevatim* of *Binyamin* and *Yehudah* never received **ownership** of *Yerushalayim*. Therefore, when it comes to monetary matters, one who lived in a house in

Yerushalayim was unable to charge rent for the house, because he was not really its owner. However, in reference to the *issur veheter* facet of the *chalukah*, all of Eretz Yisrael, including Yerushalayim, had to be included in the division. After all, this *chalukah* is what completed the *kibbush ha'Aretz*, endowing the land with its *kedushas ha'Aretz*. As such, even though it is true that ירושלים לא נתחלקה לשבטים, it is still accurate to consider the *mizbe'ach* to have been built in the *chelek* of *Binyamin*, since half of Yerushalayim was labeled as the *chelek* of *Binyamin* and the other half was labeled as the *chelek* of *Yehudah*.

[See *Eretz HaTzvi*, pp. 208-210.]

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## PARSHAS SHOFTIM

# THE JUDICIAL SYSTEM

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שופטים ושוטרים תתן לך בכל שעריך אשר ד' אלקיך נתן לך לשבטיך.

Judges and officers shall you appoint in all your cities which Hashem, your G-d, gives you, for your tribes. (*Devarim* 16:18)

THE PARSHA begins with the *mitzvah* to appoint *dayanim*. In *Chutz La'Aretz*, we must set up a *beis din* in every province, and in Eretz Yisrael, where the *mitzvah* applies in a stronger fashion, in every district and in every city (*Makkos* 7a). That does not necessarily mean that the *beis din* will have a frequent need to adjudicate cases in every city in Eretz Yisrael. Rather, the government in Eretz Yisrael should conduct itself in such a way that all of the systems necessary for a well-functioning society, such as a fire department, police department, and a court system, are in place.

Similarly, later in the *parsha* (*Devarim* 19:8-10), we are told that there will be an additional three *arei miklat* (cities of refuge) when Eretz Yisrael expands to its full borders, including the lands of *Keini*, *Kenizi*, and *Kadmoni*. This does not mean that there will be an increase in accidental murders at that time, but rather that by adding these cities, the land would be known for its uprightness and justice.

According to the way the Torah envisions *Medinas Yisrael*, the *Knesset* and the *Rosh HaMemshalah* should be above reproach. In the spirit of being לאור גוים – “for a light unto the

nations" (*Yeshayah* 42:6), Eretz Yisrael should have all the proper institutions to show the whole world how to have a wonderful *medinah*. We hope that there will be no need to use the additional *arei miklat* for accidental murders, but the institutions should be in place in case they need to be used, as this is the proper way to maintain a country.

The *mitzva* of appointing *dayanim*, the *dinim* of which are discussed in the first *siman* in *Shulchan Aruch Choshen Mishpat*, applies when we appoint judges who have *semichah*. *Semichah* can be conferred only in Eretz Yisrael, and only by one who himself has *semichah*, as part of an ongoing chain from Moshe Rabbeinu. Now that the chain of *semichah* has been broken, the *Gemara* in *Gittin* (88b) explains that our *batei din* function based on the principle of אגן שליחותיהו קא עבדינן – "we are carrying out the charge [of the ordained *chachamim* of Eretz Yisrael]." Thus, *dayanim* in Bavel, who were unordained, were still able to coerce husbands to divorce their wives in cases in which the Halachah mandated such coercion. This is not a violation of the principle, לפניהם ולא לפני הדיוטות – "[Judicial proceedings are valid only when conducted] before [ordained judges], but not before unordained judges," because the *dayanim* in Bavel served as the agents of their ordained counterparts in Eretz Yisrael, who gave authorization to act on their behalf.

The *Nesivos* (*Choshen Mishpat* 1:1) observes that there is a *machlokes* between *Tosfos* and the *Rashba* regarding whether שליחותיהו is effective on a *d'oraisa* level, or only on a *derabbanan* level. *Tosfos* (*Yevamos* 47a, s.v. *mishpat*) questions how we are able to accept *geirim* nowadays without a *beis din* consisting of *dayanim* with *semichah*. *Tosfos* answers that this is done based on the principle of שליחותיהו, which empowers the *beis din* to effect the *geirus* on a level of *d'oraisa*.

The *Rashba* disagrees and argues that שליחותיהו, which is only a rabbinic enactment, can only be effective in a court case

involving monetary matters, to which we could apply the principle of הפקר בית דין הפקר – the court is authorized to render owned possessions as ownerless. Even though, in fact, the *beis din* without *semuchim* is not valid to judge the case, the declaration of הפקר בית דין הפקר made centuries ago obligates the monetary restitution decided upon by the current *beis din*. However, argues the *Rashba*, שליחותיהו has no relevance to a situation of a *beis din* authorizing a *geirus*. The *Rashba* therefore offers a different answer to the question of *Tosfos*, suggesting that although *geirus* does require a *beis din* consisting of three *dayanim*, there is no requirement that they be *semuchim*. Thus, we need not invoke the principle of שליחותיהו at all to justify our ability to accept *geirim* nowadays. The *Acharonim* point out that only if שליחותיהו is effective on a *d'oraisa* level would it be possible to accomplish the *mitzvah* of appointment of *dayanim* nowadays.

Apart from their disparate views on the effectiveness of שליחותיהו, these *Rishonim* also seem to differ on the nature of the requirement of *semichah*. According to *Tosfos*, *semichah* is a requirement in the creation of the **status of *beis din***; only if it is comprised of three *dayanim* with *semichah* can the title of “*beis din*” be conferred upon this entity. Therefore, *semichah* is required for the acceptance of *geirim*, just as the *beis din* itself is required. The *Rashba* argues that *semichah* is, instead, a requirement of *hora'ah* – **halachic ruling**. If the *posek* is not a *samuch*, his ruling has no legal validity; it merely takes the place of an index to the *Shulchan Aruch* that aids in ascertaining the correct *psak*. According to the *Rashba's* understanding, if a particular *beis din's* function is not to issue a practical ruling, but to authorize an action of the court (*ma'aseh beis din*), there would be no need for *dayanim semuchim*. This is why *geirus*, which must be performed under the auspices of the *beis din* but does not require *hora'ah*, does not require *semuchim* for its authorization.

A similar *beis din* would be the one necessary for the conferring of *semichah* itself. The *Rambam* (*Hilchos Sanhedrin* 4:3) requires a *beis din* of three for this *ma'aseh beis din*, but only one *dayan* need have *semichah* himself. Here too, the *beis din* is not deciding a halachic question, but is rather ordaining a rabbi, and *semichah* is not needed of its *dayanim*. The reason one of the *dayanim* must be a *samuch* is because of an unrelated concern. *Semichah* represents an uninterrupted chain of *masorah* dating back to Moshe, and one of the *dayanim* must be a *samuch* himself in order to be able to extend this chain onto the newly ordained rabbi. [See *Eretz HaTzvi*, p. 225-227.]

The *parsha* also speaks of the institution of the *Beis Din HaGadol* (Supreme Court), which had to be located in the *Lishkas HaGazis* in the *Beis HaMikdash*, 'ה המקום ההוא אשר יבחר ד' – "that place that Hashem will choose" (*Devarim* 17:10). The *Ramban* (17:11) writes that the *Sanhedrin* had to be close to the *mizbe'ach* and the *Shechinah* in order for it to be endowed with a *siyata deshmaya* (Divine assistance) that it not be led to issue a mistaken ruling. Erroneous rulings of the *Beis Din HaGadol*, or any rabbi for that matter, are **not** binding. However, the *passuk* tells us, סוד ד' ליראיו – "The secret of Hashem is to those who fear Him" (*Tehillim* 25:14); we assume that a *talmid chacham* had Divine assistance when issuing his ruling and that it is a correct *psak*.

The *Gemara* in *Avodah Zarah* (8b) reports that forty years prior to the destruction of the Second *Beis HaMikdash*, when the *Beis Din HaGadol* saw that murder became so rampant that it was not able to maintain law and order, its *dayanim* resigned from their positions and went into a self-imposed exile. Once the *Sanhedrin* was not found in its appropriate location, it lost its status of *Beis Din HaGadol*, at least regarding the judging of capital crimes. As a result, since the entire court system is interdependent, the local twenty three-member *batei din* were then unable to adjudicate capital cases as well.

Although there is no longer a *Beis Din HaGadol*, one of the important aspects of *psak halachah* related to it is still very relevant. The *Gemara* in *Yevamos* (13b-14a) records that the students of *Beis Shammai* acted in accordance with their own opinions, not yielding to the views of *Beis Hillel*, even though they were in the majority. The head of each *yeshivah* was considered *רבו מובהק* (principal teacher), and all the adherents of that *yeshivah* were obligated to conform to his rulings.

Similarly, the *Gemara* in *Shabbos* (130a) describes how the residents of the cities of Rebbi Eliezer and Rebbi Yossi HaGelili continued to follow the *pesakim* of their *רבו מובהק* relating to the preparation of the *milah*-knife on Shabbos and the eating of chicken with milk respectively, despite the fact that their opinions had been outvoted. The rule that one must “yield to the majority” (*Shemos* 23:2) applies with regard to other people, who are **not** the students of that particular *chacham*.

Rav Soloveitchik felt that the definition of *רבו מובהק*, from whom a *talmid* learned “most of his knowledge,” does not mean that he learned fifty-one percent of his Torah knowledge from that *rebbe*. Rather, it refers to the *rebbe* who made him into a “Torah personality.”

It may be that the source of this most vital concept of *psak*, that each individual is bound to follow the rulings of his *רבו מובהק*, is the *parsha's* description of the binding power of the ruling of the *Beis Din HaGadol*:

כי יפלא ממך דבר למשפט ... דברי ריבות בשעריך ... ובאת אל הכהנים הלויים  
ואל השופט אשר יהיה בימים ההם ... ועשית על פי הדבר אשר יגידו לך ... לא  
תסור.

If a matter of judgement is hidden from you ... matters of dispute in your cities ... You shall come to the *Kohanim*, the *Levi'im*, and to the judge who will be in those days ... You shall do according to the word that they will tell you ... you shall not deviate. (*Devarim* 17:8-11)

The ruling must be observed not because it was issued by the *Sanhedrin* per se, but because the *dayanim* who make up

the *Beis Din HaGadol* are the undisputed *gedolei hador* of the generation, who are, in turn, considered the **רב מובהק** of all those of that generation (*Tosfos, Bava Kamma 41b, s.v. lerabos*). *Tosfos (Berachos 31b, s.v. moreh)* echoes this idea in explaining that Eili, by being the *gadol hador*, was considered the **רב מובהק** of Shmuel, who consequently was liable to premature death for rendering a legal decision in the presence of his teacher. Thus, the fundamental rule derived from this *parsha* is that when a *talmid* has a doubt in a halachic matter, he must seek out the *psak* of **his רב מובהק**. Nowadays, when most of our learning is done from *sefarim*, most people have many principal teachers, and one should follow the majority opinion of **רבותיו מובהקים**. [See *Nefesh HaRav*, pp. 31, 61-62.]

As long as the different factions within *Klal Yisrael* resided in different locales, or if the two groups lived in the same town but each group had its own *beis din*, there would not be a violation of **לא תתגודדו** (*Devarim 14:1*) – “you shall not form separate factions” (*Yevamos 14a*). The situation described above, regarding the practices of the students of *Beis Shammai* and *Beis Hillel* following their disparate views, and the cities of *Rebbi Eliezer* and *Rebbi Yossi HaGelili* acting in accordance with the *pesakim* of their local *rabbonim*, would represent the beauty of the principle, **אלו ואלו דברי אלקים חיים** – “These and those are the words of the Living G-d” (*Eiruvin 13b*).

The only time this diversity would pose a problem would be if there were **דברי ריבות בשעריך** – “matters of dispute in your cities.” Usually, the local *beis din* would be able to decide on the matters affecting its city, and the *beis din* of a particular *shevet* would similarly rule on all matters affecting that *shevet*. If these *batei din* could resolve the disputed issue at hand with a uniform policy for its constituents, the *sheilah* would not be brought before the *Beis Din HaGadol*. We do not require all the cities and *shevatim* to conform to the single *psak* of the *Sanhedrin*. Only if there was an unresolvable dispute, causing

friction in the community, would the *Beis Din HaGadol* in Yerushalayim have to be consulted to issue a *psak*, which would then be binding on all of *Klal Yisrael*.

It was quite rare that the *Sanhedrin* would have to assert itself in this way. Rather, the *Rambam* (*Hilchos Mamrim* 1:1) explains that its primary function was to serve as the “international *kollel*” of *Klal Yisrael*, described as עיקר תורה שבעל פה – “the primary [repositors of] the Oral Torah” – and עמודי ההוראה – “the pillars of teaching.” The main purpose of the *Beis Din HaGadol* was to preserve the *masorah* of the *Torah SheBe’al Peh* and transmit it to the next generation.

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PARSHAS KI SEITZEI  
THE PRIVATE ROLE OF WOMEN

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לא יבא עמוני ומואבי בקהל ד' ... על דבר אשר לא קדמו אתכם בלחם ובמים  
בדרך בצאתכם ממצרים.

An Ammonite or Moavite shall not enter the Congregation of  
*Hashem* ... Because of the fact that they did not greet you with  
bread and water on the road when you were leaving Egypt.  
(*Devarim* 23:4-5)

WHEN THE TORAH prohibits marriage to an *Ammoni*  
or *Mo'avi*, it reveals to us the reason for the *issur*. There is  
a Tannaitic dispute between Rebbi Shimon and Rebbi Yehudah  
regarding whether דקרא טעמא דקרא – “we expound the ration-  
ale of Scripture.” Ascertaining the *ta'am hamitzvah* (the reason  
behind a *mitzvah*) certainly does constitute an important aspect  
of Torah study. It allows us to glean the moral, ethical, or  
religious principle that the Torah is trying to teach us through  
any particular *mitzvah*. The *Tanna'im* argue, however, regard-  
ing whether the reason for a *mitzvah* can **regulate** the ap-  
plication of the *mitzvah*, such that the *mitzvah* does not apply if  
the reason does not apply (*Tosfos Gittin* 49b, s.v. *veRebbi*). That  
is, the *machlokes* centers around whether or not *ta'am hamitzvah*  
constitutes one of the מידות שהתורה נדרשת בהן (exegetical rules  
through which the Torah is elucidated).

For example, there is a *machlokes* regarding whether the re-  
striction on taking the garment of a widow as security for her  
debt applies to a wealthy woman. The reason for the *issur*,

posits Rebbi Shimon, is that the creditor would have to return the garment to her each day, thereby giving her a bad reputation among her neighbors. Therefore, according to Rebbi Shimon, one would be able to exact security from a wealthy widow, to whom he need not return the garment, since she does not need it for daily use.

We generally assume **לא דרשינן טעמא דקרא**; the rationale of the *mitzvah* does **not** define the limits of its *dinim*. However, when the Torah itself states the reasoning behind an *issur* explicitly, even Rebbi Yehudah is **דריש טעמא דקרא** (*Sanhedrin* 21a). That is how the *chachamim* in the days of Dovid HaMelech knew to expound the *passuk* above to limit the *Ammoni* and *Mo'avi* restriction to males, **ולא מואבית ולא מואבית** – “*Ammoni*, but not a [female] *Ammonis*; *Mo'avi*, but not a [female] *Mo'avis*,” since it was customary for only men, and not for women, to greet travelers with bread and water (*Yevamos* 76b). Therefore, the women of *Ammon* and *Mo'av* could not be blamed for being negligent in providing food to *Bnei Yisrael*, as this was never expected of them.

It is most noteworthy that the Torah's vision of the private role of women paved the way for the admission of *Rus Ha-Mo'aviyah* into *Klal Yisrael*. This, of course, led to the establishment of the *Malchus Beis Dovid*, which will ultimately lead to the coming of the *Melech HaMashiach* himself!

One of the most important *mitzvos* is **והלכת בדרכיו** – “And you [shall] go in His ways” (*Devarim* 28:9), listed among the very first *mitzvos* in the *Rambam's* count of *mitzvos*. The *mitzvah* to imitate *Hashem* devolves upon us because we were created **בצלם אלקים** – “in the image of G-d” (*Bereishis* 1:27), and we are commanded to preserve the *middos Elokus* (characteristics of G-dliness) that are naturally within us from birth. That is the reason we are presented with a description of the actions of *Hashem* throughout *Tanach* – so that we know what the “ways of *Hashem*” are.

One of the *middos* of *Hashem* is that He is a קל מסתתר – “a G-d Who conceals Himself” (*Yeshayah* 45:15), so much so that many even deny His existence. We too, then, are obligated to preserve this aspect of our *tzelem Elokim* by acting in a manner of *tznius*.

Many make the mistake of thinking that the definition of *tznius* is dressing with long sleeves and skirts. It is true that this comprises one aspect of *tznius*. However, *tznius* is a more overarching principle that applies to men as well as to women, for through this *middah* we are all instructed to lead an **anonymous, private life**.

Some people always sit in the front row, wear loud, colorful clothing, and make the most noise in class or in shul, letting their presence be known. That is a life of בפרהסיא (in public), in contrast to a quiet life, led ביניעה (in private). *Rashi* (*Shemos* 34:3) brings the *Midrash* which teaches that the first *luchos* were destroyed because they were given with great fanfare and sounds, and were therefore affected by the evil eye. In contrast, the second *luchos* were given quietly and privately, and therefore endured. The moral lesson is “there is nothing better than *tznius*.” Clearly, the term “*tznius*” here refers to a private event carried out ביניעה, not to a modest style of dress.

In a *hesped* for his mother, Rav Ahron Soloveitchik spoke of an incident depicting her *tznius*. A *Kohen* had come to present a question before Rav Moshe Soloveitchik regarding his entry into a certain location, which was in close proximity to a corpse. Rav Moshe’s wife, who was well versed in *Mishnah*, walked into the room quietly, placed a *Mishmayos Oholos* open to the relevant case in front of Rav Moshe, and walked out. She was able to assist in the *psak*, although she maintained her *middas hahistatrus*.

Once in a long while, *Hashem* performs a *gilui Shechinah* (Divine Revelation), such as at *makkas bechoros* and *Ma’amad Har Sinai*, but those are unique situations in which He

compromises His *middah* of *tznius*. Similarly, there are times that we, like *Hashem*, must compromise on our *tznius*, for we must appoint a king to govern the nation, a rabbi to teach in public, and a *shaliach tzibbur* and *ba'al korei* to lead the congregation.

Commenting on the *passuk* שׁוֹם תְּשִׁים עֲלֶיךָ מֶלֶךְ - "You shall surely appoint over yourself a king" (*Devarim* 17:15), the *Sifrei* presents a *derashah*: מֶלֶךְ וְלֹא מַלְכָּה - "King, and not a queen." A woman is not able to be appointed as a king, since, as a public figure, she will be forced to compromise her *tznius*. The Torah especially encourages women to lead a private life and does not call upon them to make concessions in their *middas ha-histatrus*.

The *Gemara* teaches that the double expression, שׁוֹם תְּשִׁים, implies that **all** appointments should be "from among your brethren" (*Kiddushin* 76b). Therefore, we cannot appoint a non-Jew or a *ger* as president of a *shul*, or even of a labor union. The *Rambam* (*Hilchos Melachim* 1:5), putting these two *derashos* together, rules that a woman may not be appointed to any position of שׂררה (authority) over men. Rav Moshe Feinstein (*Iggros Moshe, Yoreh De'ah* 2:44,45) permitted the appointment of a woman as a *mashgichah* for kashrus certification, following the majority view (against the *Rambam*) that the *derashah* of מֶלֶךְ וְלֹא מַלְכָּה is limited to the appointment of a king and does not apply to other positions.

When Golda Meir was appointed Prime Minister of the State of Israel, some attacked Rav Moshe for opening the door for the appointment of a woman to this position. He (out of humility) felt compelled to respond that his presentation of the opinions that disagreed with the *Rambam* in no way led to Golda Meir's appointment; the State of Israel did not follow his rulings in making its decisions!

Rav Soloveitchik, in disagreement with Rav Moshe, maintained that we should follow the *Rambam's* opinion on

this matter. When asked whether it was permissible to appoint Golda Meir as Prime Minister, his response was, "And Ben-Gurion was permissible? He was an *apikores!* They are not consulting the *Mizrachi* [of which Rav Soloveitchik was the Honorary President]; both appointments are against the Hala-chah." [See *Nefesh HaRav*, pp. 90-91.]

Today, many women feel unfulfilled due to their inability to serve as the *shaliach tzibbur* or *ba'al korei*. Really, none of us should have a desire to assume these positions, because they represent a violation of *tznius*. Someone has to compromise his *tznius* and perform these duties, but everyone should prefer that someone else get the *aliyah*. It is not right that men have such a desire to assume these positions. The entire desire that a person has to have everyone hear him *daven* out loud is improper, and some women have learned this negative attitude from the men.

The *Gemara* in *Megillah* (23a) teaches that although, strictly speaking, a woman could receive an *aliyah*, "a woman should not read the Torah [for the congregation] out of consideration for *כבוד ציבור* – the dignity of the congregation." The explanation of this statement is as follows. Whoever will receive the *aliyah* will be compromising his *tznius* when he recites the *berachos* and reads the Torah in public. Although this compromise is necessary to fulfill the rabbinic enactment of *krias haTorah*, we would apply the principle *מלך ולא מלכה*, that only men should be called upon to make this concession. We would prefer for the women to preserve their *middas hatznius*, in fulfillment of the *passuk*, *כל כבודה בת מלך פנימה*, – "Every honorable princess dwelling within" (*Tehillim* 45:14). If the only person capable of functioning as the *ba'al korei* is a woman, she would be forced to compromise her *tznius* and she would have to *lein*, but this would be a violation of *כבוד ציבור*, for it would be an indication that none of the men were sufficiently learned to be capable of reading the Torah. [See *Eretz HaTzoi*, pp. 96-99.]

Similarly, people ask, what is wrong with appointing a female rabbi? Serving as a public figure in a position of leadership is a contradiction to what *tznius* entails. Appointing a male rabbi is **also** a violation of *tznius*, but the Torah, in teaching מלך ולא מלכה, prefers that such a violation, when necessary, be carried out by men, rather than women.

Moshe was instructed to appoint judges over *Bnei Yisrael*: – הָבוּ לָכֶם אֲנָשִׁים חֲכָמִים וְנְבוֹנִים וְיָדְעִים לְשִׁבְטֵיכֶם וְאֲשִׁימָם בְּרֹאשֵׁיכֶם – “Provide for yourselves distinguished men, who are wise, understanding, and well known to your tribes, and I shall appoint them as your heads” (*Devarim* 1:13). *Rashi* questions, “Could it enter your mind [that the judges were to be] women? Why does the Torah say אֲנָשִׁים? [To indicate that they must be] righteous men, reliable ones, who are revered.” *Chazal* could not even entertain a *havah amina* to appoint women. Nowadays, what was not a *havah amina* in the eyes of *Chazal* has become the *maskana*!

Some Orthodox rabbis claim that they cannot find anything wrong with such a practice, that they never heard from Rav Soloveitchik that there exists a problem with such an appointment. On the contrary, the Rav did address this issue – in his very first *shiur* on *Yoreh De’ah*. The Rav would discuss the *Rama* (*Yoreh De’ah* 1:1) that the *minhag* is that a woman should not be appointed as a *shochet*, because the *shochet* would serve as the equivalent of the town’s **assistant** rabbi.

It is true that *Tosfos* (*Niddah* 50a, s.v. *kol*) presents two opinions regarding whether women may serve as members of a *beis din* to judge monetary cases, but the accepted opinion is that they may not (*Choshen Mishpat* 7:4). Furthermore, *semichah* today means that the person is qualified to function as a rabbi in the community, not just as a decisor of Halachah, and *Tosfos* never allowed this type of position for women.

Of course, a woman who knows what the *din* is may *pasken* a *sheilah*, but that too is generally not the proper role for a

woman. The recent implementation of *yo'atzot halacha* may be a positive development, however, as some claim that there are many more people now asking *sheilos* to the *yo'atzot* than they did to the rabbis. If this is the case, we may have to violate some measure of *tznius* for the sake of greater observance of *taharas hamishpachah*. [Unfortunately, this innovation has become problematic at times, because the *yo'atzot* have generally studied only a specific area of Halachah. Since Halachah is one interconnected legal system, one cannot isolate any one area from the rest. One can *pasken* a difficult *sheilah* in *hilchos niddah* only by knowing *hilchos niddah* in the context of the rest of the *Shulchan Aruch*. Thus, even in *hilchos niddah*, if it is a complicated *sheilah* requiring a broader range of knowledge, *yo'atzot* must be prepared to seek additional input. *Yo'atzot*, of course, must be careful not to take a stand on issues relating to other areas of Halachah which they do not necessarily have expertise in.]

If the Orthodox would have decided on their own to appoint female rabbis due to a certain *she'as hadchak* consideration, it might have been acceptable. In the present situation, however, it was the Conservative movement, imitating the example of certain Christian denominations, which started allowing women into the clergy. To imitate the way that the זרה עובדי עבודה זרה worship falls under a different *issur*.

The *passuk* warns that when we enter Eretz Yisrael, we should not seek out the gods of the non-Jewish nations, asking, 'איכה יעבדו הגוים האלה את אלהיהם ואעשה כן גם אני לא תעשה כן לד' - "How do these nations worship their gods, and even I will do the same.' You shall not do so to *Hashem*, your G-d, for everything that is an abomination of *Hashem*, that He hates, have they done to their gods" (*Devarim* 12:30-31). The *Ramban* explains that the manner of worship spoken of here is being done *laShamayim*, in service of *Hashem*. According to the simple interpretation of this

*passuk*, it refers to a particular form of the *issur* of *chukas akum* – that we are not permitted to introduce practices into our religion, even *lesheim Shamayim*, if they are adopted from other religions.

This is why Rav Soloveitchik was so opposed to one's entering a Conservative temple with mixed-seating, even for the sole purpose of hearing *teki'as shofar* on Rosh Hashanah. He felt that the mixed-seating policy was an imitation of the Church's position, under the slogan, "A family that prays together stays together." Thus, he felt that it is a violation of the prohibition, *לא תעשה כן לדי' אלקיך*, to worship *Hashem* using forms of worship invented by the *ovdei avodah zara* to serve their false gods, and that it is halachically preferable not to violate this *issur* of *chukas akum*, even at the expense of missing the *mitzvah* of *teki'as shofar*.

The Rav added that there is another *issur* that is relevant in this context as well. If a certain practice became a symbol of *הריסת הדת* – destruction of the religion – that alone makes it forbidden, even if the action per se would be permissible otherwise. This is akin to the *issur* of *ערוקתא דמסאנא*, wherein a Jew who is ordered to change his distinctively Jewish shoelaces to those worn by non-Jews must allow himself to be killed rather than comply (*Sanhedrin* 74b). When the Conservative movement began appointing female rabbis, that breach was taken as a symbol of *הריסת הדת*. The appointment of female rabbis, just like mixed-seating and driving to the synagogue on Shabbos, is **representative** of Conservative Judaism. How can Orthodox rabbis fail to see what is wrong with imitating the Conservatives and by extension the Church? [See *B'Ikvei HaTzon*, pp. 33-35; *Nefesh HaRav*, pp. 231-232.]

There are women who desire an equal share with their husbands and alternate the recitation of *kiddush* and *havdalah* with them. Some Bostonians claim that Rav Soloveitchik approved this. However, Rav Soloveitchik would never have

sanctioned this practice, as it is against the *Shulchan Aruch*. Since there is a dispute among the *Rishonim* as to whether a woman is obligated in *havdalah*, the *Rama* (*Orach Chayim* 296:8) rules that a woman should avoid reciting *havdalah* for herself, and we recommend that she should instead listen to a man's recitation of *havdalah*.

Women are *passul la'eidus* (halachically unable to testify) (*Choshen Mishpat* 35:14), and some take this as an indication that the rabbis discredited women, considering a woman like one who is deaf, deranged, or a minor, who are also unfit for testimony. When this issue was raised before Rav Soloveitchik, he would always respond, "The *Melech HaMashiach* will likewise be unfit for testimony!" A king is also not accepted as an *eid*. The fact that someone is unfit for testimony is not necessarily a function of his being unable to discern the facts of the case.

The Rav continued that it may well be that women are unfit for testimony for the very same reason that the king is unfit. *Rashi* (*Shevuos* 31a) explains that the reason the king is unfit is that we cannot apply to him the *passuk*, אִם לֹא יִגִּיד וְנִשָּׂא עוֹנוֹ – "if he does not testify, he shall bear his iniquity" (*Vayikra* 5:1), because we cannot demand of the king that he appear before the *beis din*. He is not bound by the *issur* against withholding testimony, because it would be considered disrespectful to obligate him to stand before the court. Only one who is subject to this *issur*, and thereby obligated to testify, is fit for testimony; if his testimony is merely optional, it cannot be accepted.

It may be that this is the reason behind the *passul eidus* regarding women as well. It would be considered a diminution of a woman's honor if it could be demanded of her to appear before the court, as, especially years ago, women led very private lives. In fact, the *Shulchan Aruch* (*Choshen Mishpat* 124:1) brings the statement of the *Ri Migash* (*Shevuos* 30a) that a

woman involved in a *din Torah* should not be denigrated and compelled to appear before the *beis din*; instead, a messenger of the court should be sent to her house to enable her to register her claim. We cannot obligate a woman to testify because that would compromise her *tznius*, and whoever is not obligated to testify cannot have his/her testimony accepted, even if he/she volunteers to do so. [See *Nefesh HaRav*, p. 318; *Divrei HaRav*, p. 244.]

The *halachah* is that a woman may not write a *sefer Torah*, *tefillin*, or *mezuzah*. This is based on the exposition of *semuchim* (two adjacent *pessukim*), as וקשרתם - “And you shall bind [tefillin]” - immediately precedes וכתבתם - “And you shall write [mezuzos]” (*Devarim* 6: 8-9). Only one who is obligated in the *mitzvah* of binding the *tefillin* is eligible to engage in the writing of a *sefer Torah*, *tefillin*, and *mezuzos* (*Gittin* 45b). Rabbeinu Tam, who expands this rule to exclude women from the binding of the *lulav* and the tying of *tzitzis* as well, apparently understands the reason for the exclusion of women as follows. Whenever there is a requirement for *lishmah* (that an object be prepared specifically for the purpose of the *mitzvah*), whoever is אינו בתורת (not personally obligated in the performance of that particular *mitzvah*) cannot create the status of *lishmah* in the object used for that *mitzvah*.

There is a requirement that *shemurah matzah* be baked *lishmah*. Since women are obligated in the *mitzvah* of eating *matzah*, they are able to create the status of *lishmah* in the *matzah*. However, a non-Jew or child under the age of *Bar Mitzvah*, who is not obligated to eat the *matzah*, cannot bake *matzah*, because he cannot create the *lishmah* in the *matzah*. Likewise, women, who are not obligated to wear *tefillin*, cannot write the *parshiyos* of the *tefillin*, because they cannot create the required status of *lishmah* (*Koheles Ya'akov, Sukkah* 8b). [See *Ginas Egoz*, pp. 50-51; *B'Ikvei HaTzon*, p. 9.]

Rav Hirsch (*Bereishis* 23:19; *Collected Writings* 8:102-103) writes that there were those who ridiculed the Rabbis of the

Talmud, which derives the legal formula used in *kiddushin* of *kesef* (transfer of money) from a *gezeirah shavah* (similar Scriptural phraseology) comparing the "קִיחָה" written in reference to *kiddushin* to the "קִיחָה" written in reference to Avraham's purchase of Efron's field (*Kiddushin* 2a). They argued that in the view of the rabbis, "the Jew buys his bride" the way the farmer buys his field. Rav Hirsch explains that the rabbis learned the legal basis for Jewish marriages specifically from the *passuk* regarding Avraham's purchase of the *Me'aras Ha-Machpelah*, since this act shows just how much Avraham loved and respected his wife even after her death, as he purchased a special burial plot for her even at an exorbitant price.

The rabbis wanted to teach this message to every Jewish man and woman as they enter marriage – to recall the first Jewish marriage between Avraham and Sarah and endeavor to similarly love and honor one another as they did. Rav Hirsch adds, "Yes, it is true; the Jew 'acquires' his wife. Note, however, that he acquires her not from others but from herself, out of her own free will, and then she remains his own most precious possession, his own most sacred treasure, even beyond death."

[Additionally, it may be argued that the *kinyan kesef* (acquisition through the transfer of money) used to acquire a field does not involve a payment of money equal to the **value** of the field. It is not a monetary payment – כסף פירעון – but rather a symbolic act of monetary transfer – כסף קנין. Similarly, in the case of *kiddushin* of *kesef*, the *kinyan* is a **symbolic** act. We do not consider the husband to have payed the value of his wife (*Taz, Choshen Mishpat* 190:2).]

Each of the *halachos* that have been "accused" of implying that women are considered inferior has a different reasoning. There are those who, by combining together unrelated *dinim*, paint a false picture of the Torah, depicting its *dinim* as being disparaging towards women. There has unfortunately

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been much misunderstanding and misrepresentation, some accidental and some willful. People who have had the benefit of having learned the Torah's perspective of the role of women should be aware of the truth.

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PARSHAS KI SAVO  
THE SECOND BRIS

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THE SIFREI in *Parshas Re'eh* distinguishes between the two *parshiyos* describing *sefiras ha'omer*. שבעה שבועות תספר לך – “Seven weeks you shall count for **yourself**” (*Devarim* 16:9) describes a *mitzvah* on the *Beis Din HaGadol*. A different *passuk*, וספרתם לכם ... שבע שבועות ... תספרו חמשים יום – “You shall count for **yourselves** ... seven weeks ... you shall count fifty days” (*Vayikra* 23:15-16), describes a count performed by each individual (*Menachos* 65b).

The basis of the distinction made by the *Sifrei* is the rule quoted in the name of the Vilna Gaon (*Divrei Eliyahu*, p. 94): Whenever a *mitzvah* is repeated in the Torah, once in the singular and once in the plural, the singular form is addressed to *Klal Yisrael* as a whole while the plural form devolves upon the individual.

The *Beis Din HaGadol*, which represents *Klal Yisrael* in totality, discharges the obligation upon *Klal Yisrael* as a whole when they count the seven weeks from Pesach until Shavuos. The reason this *mitzvah* falls within the purview of the *Sanhedrin* is that this count establishes the correct day of the Yom Tov of Shavuos, which is part of the more general *mitzvah* of *kevias haluach* (establishment of the calendar). The second aspect of the *mitzvah*, reflected in its description in *Parshas Emor* in the plural form, is directed to each and every individual, who should also engage in such a count. [See *Eretz HaTzvi*, pp. 9-11.]

The Vilna Gaon generalizes this rule, and it can thus be applied to the two *parshiyos* of *tochechah* found in the Torah as well. The *tochechah* in *Bechukosai* was proclaimed on the occasion of the *bris* of *Ma'amad Har Sinai*, after the *Aseres HaDibros*: – אלה החוקים והמשפטים והתורות אשר נתן ד' בינו ובין בני ישראל בהר סיני – “These are the decrees, the ordinances, and the teachings that Hashem gave, between Himself and *Bnei Yisrael*, at Har Sinai” (*Vayikra* 26:46). The *tochechah* in *Ki Savo* represents a second *bris*:

אלה דברי הברית אשר צוה ד' את משה לכרות את בני ישראל בארץ מואב מלבד הברית אשר כרת אתם בחורב.

These are the words of the covenant that Hashem commanded Moshe to seal with *Bnei Yisrael* in the Land of Mo'av, **beside the covenant** that He sealed with them at Chorev [Har Sinai]. (*Devarim* 28:69)

There is a noteworthy difference between the two *tochechos*. In *Parshas Bechukosai*, the entire *tochechah* is expressed in the plural form, **אם בחוקותי תלכו** – “If you follow my decrees” (*Vayikra* 26:3), whereas in *Ki Savo*, the blessings and curses appear in the singular, as in, **ד' אלקיך** – “It shall be that if you hearken to the voice of Hashem, your G-d” (*Devarim* 28:1). We therefore understand that the *tochechah* in *Bechukosai* is speaking to the *yachid* (individual), as opposed to that in *Ki Savo*, which addresses the *tzibbur* (congregation).

The *passuk* at the beginning of *Parshas Netzavim* explains why another *kerisas bris* (sealing of the covenant) at Arvos Mo'av was required to obligate *Bnei Yisrael* in *mitzvoos*:

ולא אתכם לבדכם אנכי כורת את הברית הזאת ואת האלה הזאת כי את אשר ישנו פה עמנו עומד היום לפני ד' אלקינו ואת אשר איננו פה עמנו היום.

Not with you alone do I seal this covenant and this imprecation. But with whoever is here, standing with us today before Hashem, our G-d, and with whoever is not here with us today. (29:13-14)

The *Gemara* in *Shavuos* (39a) explains that the original *bris* at Har Sinai was made only with those people alive at that time,

not with the future generations. All the *neshamos* of *Bnei Yisrael* were present at Har Sinai so that they would be affected by the *gilui Shechinah* (Divine Revelation), as the *passuk* teaches, ובעבור תהיה יראתו על פניכם לבלתי תחטאו – “so that awe of Him shall be upon your faces, so that you shall not sin” (*Shemos* 20:17). An impression was made on the *neshamos* of the members of the Jewish Nation at Har Sinai. They could be identified as רחמנים ביישנין גומלי חסדים – “those who are merciful, bashful, and who perform acts of kindness” (*Yevamos* 79a), to the extent that if one is lacking these *middos*, we must check his ancestry, for he must not have been present at Har Sinai (*Shulchan Aruch, Even Ha’ezer* 2:2).

Nevertheless, while it is true that all of the *neshamos* were present, the *bris* of Har Sinai is not legally binding on a *neshamah*, only on a person. We, today, would not be obligated to observe the *mitzvos* were it not for the second *bris* at Arvos Mo’av. It was this *bris* which obligated the future generations.

Why is there such a difference in terms of the binding power of the two different *brisos*? Future generations of Jews can only be bound by an earlier *bris* if there first exists the concept of *Klal Yisrael* as a unit. Until *Bnei Yisrael* entered Eretz Yisrael, they were only *yechidim*, and the original *bris* at Har Sinai was therefore a *bris* with *yechidim*. This is why the first *tochechah* is in the plural, *lechol echad v’echad*. The entity of “*Klal Yisrael*” was born only once the Jewish Nation entered its land, because only after *Bnei Yisrael* had a National Homeland could they attain the status of a **Nation**. Because this second *bris*, proclaimed in the singular, was a *bris* with the Jewish Nation as a whole, it remained binding on all the future generations who are part of the *tzibbur*. When any country makes a treaty, it is understood that the agreement is binding even after a new president is elected and even on citizens born after the treaty was signed, because these people are a continuation of the original nation. The same is true of the *bris* of Arvos Mo’av.

Rav Soloveitchik understood the process of the second *kerisas bris* as follows. *Hashem* wanted the *bris* to be made by Moshe, as he was the *adon hanevi'im*. On the other hand, He wanted it to be sealed in Eretz Yisrael, which is the *metzaref* (coalescer) of *Klal Yisrael*. Moshe, of course, was not able to enter Eretz Yisrael. Thus, the second *bris* was **begun** by Moshe and **completed** by Yehoshua inside Eretz Yisrael, on the occasion of the *berachos* and *kelalos* at Har Gerizim and Har Eival. That way, the *bris* was made with *Bnei Yisrael* as a *tzibbur*, in connection with entry into the land; the *bris* at Arvos Mo'av and the *bris* at Har Gerizim and Har Eival are one and the same.

The principle that כל ישראל ערבים זה בזה – “All Jews are guarantors for one another,” the shared responsibility regarding another Jew’s *mitzvah* observance, began only with entry of *Bnei Yisrael* into the land. This principle is derived from the *passuk* in *Parshas Netzavim*, which is really an addendum to the *parsha* of the *bris* of Arvos Mo'av: הנסתרות לד' אלקינו והנגלות לנו: כל דברי התורה הזאת – “The hidden [sins] are for *Hashem*, our G-d, but the revealed [sins] are for us and our children forever, to carry out all the words of this Torah” (*Devarim* 29:28). The word לעשות has the connotation of “forcing others to observe the *mitzvos*.” There exists communal responsibility for the *aveiros* of each individual. Furthermore, the eleven dots above the words “לנו ולבנינו” and the “ע” of “עד” qualify this teaching; the community became liable for such *aveiros* only once the nation crossed into Eretz Yisrael and accepted the *berachos* and *kelalos* at Har Gerizim and Har Eival (*Sanhedrin* 43b). Before that point, each Jew was an individual Jew. It was with entry into our National Homeland that we became a *tzibbur*, in which every Jew is responsible for the actions of his fellow Jew (*Avnei Nezer, Orach Chayim* 314:4).

Interestingly, Rav Saadyah Gaon counts the episode of Har Gerizim and Har Eival as one of the *taryag mitzvos*. At first

glance, this seems to be very difficult. This was an event that occurred once in the history of the world, similar to *Ma'amad Har Sinai*. The *halachos* associated with *Ma'amad Har Sinai* would be classified as *hora'os sha'ah* (temporary rulings), not as "*mitzvos*," which, by definition, are binding on all future generations; the *berachos* and *kelalos* at Har Gerizim and Har Eival should be no different. Rav Yerucham Perlow (*Sefer HaMitzvos LeRav Saadyah Gaon, chelek 3, parsha 57*) suggests that Rav Saadyah Gaon considers the episode of Har Gerizim and Har Eival to be classified as a *mitzoah* specifically because of the enduring principle of *arvus*, which was instituted and established at that time.

In the *tochechah* of *Parshas Bechukosai*, we find an exposition on the *passuk*, וְכָשַׁל אִישׁ בְּאָחִיו - "Man will stumble over his brother" (*Vayikra* 26:37), that seems to also convey the concept of *arvus*: אִישׁ בְּעוֹן אָחִיו - "Man [will stumble] because of the sins of his brother; this teaches that all [Jews] are guarantors for one another" (*Sanhedrin* 27b). How can this concept appear at this point in time, if the rule of *arvus* did not begin until later?

Rav Soloveitchik explained that this *passuk* is a reference to the future destruction of the First *Beis HaMikdash*, and by that time, *Bnei Yisrael* would already have entered Eretz Yisrael, and the rule of *arvus* would be operative. In the aftermath of the rebellion of *Korach*, Moshe put forth the argument, הַאִישׁ אֶחָד יִחַטָּא וְעַל כָּל הָעֵדָה תִּקְצַוּ - "shall one man sin, and You be angry with the entire assembly" (*Bamidbar* 16:22). This was a valid argument in its time, for *arvus* did not begin at the time of the *tochechah* of *Bechukosai*. Once *arvus* began with the conclusion of the *bris* of *Arvos Mo'av* at Har Gerizim and Har Eival, however, it would not be a valid excuse, for one **would** be liable for the *aveirah* of his neighbor. [See essays for *Parshas Lech Lecha* and *Parshas Bo*; *Divrei HaRav*, pp. 314-315.]

How does the concept of *arvus* apply to a Jew in *Chutz La'Aretz*? The *Avnei Nezer* (*Yoreh De'ah* 126:4) explains that the

Jews in *Chutz La'Aretz* who look toward Eretz Yisrael as their National Homeland and subscribe to that ideal, are also, in a certain sense, part of *Klal Yisrael*. The Reform Jews of Germany, who deleted any mention of Eretz Yisrael from the *siddur* and who severed their ties to our National Homeland, removed themselves from the entity of *Klal Yisrael*. However, those who consider themselves to be out of place in *galus*, outside of Eretz Yisrael, **do** maintain a share in the institution of *Klal Yisrael*, even though the full *tziruf* (combination) of *Klal Yisrael* refers only to those who actually live in Eretz Yisrael.

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PARSHAS NETZAVIM  
THE HINT TO THE GR" A

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THE RAMBAN had a *talmid* named Avner who became a *meshumad* (apostate) and an important government official. One Yom Kippur, he sent for his teacher to appear before him, and then proceeded to slaughter a pig, cook it, and eat it. He then questioned the *Ramban* as to how many prohibitions punishable with *kares* had been violated, and disagreed with his teacher that it was not four, but five violations, debating with him the application of the rule אין איסור חל על איסור – a prohibition cannot take effect upon an existing prohibition. In the end, the *Ramban* asked him what led him to apostasy.

Avner replied that it was actually a *derashah* of his teacher that all *mitzvos* and world events are included in *Parshas Ha'azinu*. [This assertion is presumably based on the *passuk*, וענתה השירה הזאת לפנינו לעד – “then this Song shall speak up before it as a witness” (*Devarim* 31:21).] To Avner, this was something that was not possible, and he “became a different person.” The *Ramban* replied that he still held such a view, whereupon Avner challenged his teacher to show him his name in the *parsha*.

The *Ramban* went to a corner and prayed, and the following *passuk* came to his mouth: אמרתי אפאיהם אשביתה מאנוש זכרם – “I had said, ‘I will scatter them, I will cause their memory to cease from man’ “ (*Devarim* 32:26). The third letter of each word spells out – “ר' אבנר”. When Avner heard this, his face fell, and

he asked his teacher if there was any cure for his wound. The *Ramban* responded, "You have heard the words of the *passuk*," and went on his way. Immediately, Avner took a boat without sailor or oar, and went wherever the wind would bring him. Nothing more is known about him (*Seder HaDoros, Elef Ha-Chamishi*, 954).

In a similar vein, the *sefer Emunah VeHashgachah* by Rav Shmuel Maltzan (end of *Likutei HaGr"a*, p. 43b) cites the statement of the Vilna Gaon that all of world history is hinted to in *Chumash Devarim*, which was dictated to Moshe in such a way that there are hidden meanings contained within the words. When asked by Rav Chaim Volozhiner where the Gaon himself was hinted to in the *Chumash*, the *Gr"a* turned to the *passuk* in *Parshas Ki Seitzei*: אבן שלמה וצדק יהיה לך - "A perfect and honest weight shall you have" (*Devarim* 25:15). The words אבן שלמה represent an allusion to his name, אליהו בן שלמה.

The *Gr"a* explained that his allusion is found in that *parsha* because it corresponds to the century in which he lived. The *Gemara* in *Sanhedrin* (97a) brings a tradition that the world is destined to exist for six thousand years - the first two thousand years of nothingness, the second two thousand years of Torah, and the third two thousand years the days of *Mashiach*. [Avraham was born in the year 1948, counting from Creation, and he began to preach monotheism in public when he was fifty-two years old. That was considered the beginning of the period of "Torah."] If the *sidrahs* of *Netzavim* and *Vayeilech* are combined, there are ten *sidrahs* in *Chumash Devarim*. Combining these two *sidrahs* is apparently the way the *Gr"a* resolved the discrepancy between the statement of the *Zohar* that there are fifty-three *sidrahs* and our total of fifty-four *sidrahs*. Thus, each of the ten *sidrahs* contains references that correspond to events that will occur in each of the respective ten centuries of the sixth millenium.

We usually assume that the calendar year 1240 corresponded to the year 5000, counting from Creation. This is based on the historical tradition of the *Gemara* in *Arachin* (12b) that the Second *Beis HaMikdash* lasted for four hundred and twenty years. [According to the chronology of non-Jewish historians, however, there were many more Persian kings than the four considered by the *Gemara*, thus lengthening the Second *Beis HaMikdash* period by 169 years. The *Ba'al HaMa'or* (*Rosh Hashanah*, 1a in *Dapei HaRif*) similarly writes that the *Gemara's* historical assertion that Koresh, Daryaveish, and Artachshasta refer to the same king (*Rosh Hashanah* 3b) is not correct; rather, these names belonged to three different kings.]

Therefore, the first century, from 1240-1340, corresponds to *Parshas Devarim*, the second century to *Parshas Va'eschanan*, and so on. Based on this calculation, the Vilna Gaon, who lived after 1740, into the **sixth** century of the sixth millenium, looked for his allusion in *Parshas Ki Seitzei*, which is the **sixth** *sidrah* in *Chumash Devarim*.

Rav Shmuel Maltzan, following this line of reasoning, suggests that the severe *tochechah* of *Parshas Ki Savo*, the **seventh** *sidrah*, corresponds to the subsequent century, from 1840-1940. No doubt, this century contained much evil and hardship that befell the Jewish Nation, culminating with the Nazi Holocaust. It is noteworthy that the **next** *sidrah*, *Netzavim-Vayeilech*, discusses the eventual repentance and redemption of the Jewish Nation.

We read in our *parsha* (*Devarim* 30:1-5):

Then you will take it to your heart among all the nations where *Hashem*, your G-d, has dispersed you. And you will return unto *Hashem*, your G-d, and listen to His voice, according to everything that I command you today, you and your children, with all your heart and all your soul. Then, *Hashem*, your G-d, will bring back your captivity and have mercy upon you, and He will return and gather you in from all the peoples to which

*Hashem*, your G-d, has scattered you ... *Hashem*, your G-d, will bring you to the land that your forefathers possessed, and you shall possess it.

The *mitzvah* of writing a *sefer Torah* is subsequently recorded in the *passuk*, "So now, write this Song for yourselves, and teach it to *Bnei Yisrael*" (31:19).

Indeed, we have been witness to an actualization of these *pessukim*, realized through the great *Ba'al Teshuvah* movement, *Shivas Tziyon* (Return to Yerushalayim), *Hakamas HaMedinah*, and the proliferation of the writing of *sifrei Torah*, in the current century, beginning after 1940.

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PARSHAS VAYEILECH  
THE SIX HUNDRED  
AND THIRTEENTH *MITZVAH*

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ועתה כתבו לכם את השירה הזאת ולמדה את בני ישראל שימה בפייהם.

So now, write this Song for yourselves, and teach it to *Bnei Yisrael*, place it in their mouth. (*Devarim* 31:19)

CHAZAL HAD a tradition that aside from the simple explanation of the *passuk*, that Moshe and Yehoshua should write *Shiras Ha'azinu*, the *passuk* also obligates every individual to write a *sefer Torah* (*Sanhedrin* 21b). The *Tur* (*Yoreh De'ah* 270:2) quotes from his father, the *Rosh*, that nowadays the proper way to fulfill this *mitzvah* is not by writing a *sefer Torah*, but by buying *sefarim* to create a full Jewish library for oneself. The basis for this ruling is that the reason for the *mitzvah* to write a *sefer Torah* is so that one can **learn** from it. Since nowadays we learn from *sefarim*, and not from a *sefer Torah*, one fulfills the *mitzvah* through buying printed *sefarim*. The commentaries on the *Tur*, the *Beis Yosef* and the *Perishah*, debate whether the *Rosh* meant that nowadays it is **not sufficient** to write a *sefer Torah* alone, but one would have to purchase additional *sefarim* to fulfill this *mitzvah*, or that the writing of a *sefer Torah* has been **replaced** by the purchase of printed *sefarim*.

The *Chasam Sofer* (*Teshuvos, Yoreh De'ah, siman* 254) questions how, according to the latter explanation of the *Rosh*, a *mitzvah* can change with changing times. There is a well-known

opinion of Rebbi Shimon found many times in the *Gemara* that דרשינן טעמא דקרא - “we expound the rationale of Scripture,” according to which the reason for a *mitzvah* can regulate the application of the *mitzvah*. Therefore, within the view of Rebbi Shimon, it could be that the nature of the *mitzvah* is to provide a person with a Jewish library that he will use to enhance his Torah knowledge. In former times, the *mitzvah* was fulfilled with a *sefer Torah*, later, with the twenty-four *sefarim* of *Tanach*, and nowadays, with printed *sefarim*.

The difficulty with the *Rosh* is that the accepted opinion is לא דרשינן טעמא דקרא, the rationale of the *mitzvah* does **not** define the limits of its *dinim*. The *Minchas Elazar* (2:54, *He'arah* 1) answers, based on the *Gemara* in *Sanhedrin* (21a), that when the Torah provides the reason for the *mitzvah* along with the *mitzvah* itself, all agree that we דורש טעמא דקרא **are**. Here, after the directive, “So now, write this Song for yourselves,” the Torah openly explains, “and teach it to *Bnei Yisrael*.” We may therefore assume that the *mitzvah*'s reason **does** define its parameters.

The *Beis HaLvi* (*Teshuvos* 1:6) advances a similar argument regarding a different aspect of the *mitzvah*. The *Rambam* (*Hilchos Sefer Torah* 7:1) writes that the *mitzvah* of writing a *sefer Torah* is incumbent upon each man, implying that there is no obligation upon women. The *Sha'agas Aryeh* (*siman* 35) disagrees, questioning on what basis women should be exempt from this *mitzvah*. Many *Acharonim* (see *Minchas Chinuch*, *mitzvah* 613:9) assume that the *Rambam*'s exemption is based on the *Gemara* in *Gittin* (45b). The *Gemara* teaches, based on a *derashah* of *semuchim*, the juxtaposition of the *mitzvah* of binding the *tefillin* to that of writing a *mezuzah*, that since a woman is not obligated in the binding of *tefillin*, she may not write a *sefer Torah*. Similarly, these *Acharonim* argue, a woman could not be required to perform a *mitzvah* which she would not be able to fulfill herself, without the help of a male *sofer*.

This is not a conclusive proof, since women **are** obligated in affixing a *mezuzah* to their doorposts, even though they cannot write the actual *mezuzah* themselves. Here too, we may argue that women are obligated in writing a *sefer Torah*, but they have to commission a male *sofer* to write it on their behalf. These *Acharonim* understand that there exists an important difference between the affixing of a *mezuzah*, where the writing is just a *hechsher mitzvah* (preparation for the *mitzvah*), and the writing of a *sefer Torah*, where the writing is the **actual** *mitzvah*. Only in the latter situation would we argue that an individual who cannot perform the actual *mitzvah* himself could not be obligated to fulfill the *mitzvah* through an agent.

[Some suggested a further point regarding one who cannot halachically write a *sefer Torah* – that not only is he not obligated to fulfill the *mitzvah* via a *shali'ach*, but he does not even have the authority to **appoint** a *shali'ach* to write it on his behalf. According to this, a non-observant Jew who does not personally abide by the *mitzvah* of *tefillin*, and who is therefore excluded from writing a *sefer Torah* (*Gittin* 45b), would not be able to even appoint a *sofer* to write a letter of the *sefer Torah* on his behalf. This stringency is very questionable, however, since the *Gemara* in *Nazir* (12b) that would form the basis of this legal limitation of *shelichus* deals specifically with a situation in which the *shelichus* relates to something that has not yet come into existence. Thus, the *Gemara* teaches that a *shali'ach* cannot be empowered to be *mekadesh* a woman who is married at the time of the appointment of the *shali'ach*, even to be *mekadesh* her after her divorce. This is because a person does not have the authority to appoint a *shali'ach* for a matter over which he is not a *ba'alim* (“owner”), which he cannot currently perform himself. We would not necessarily extend this limitation of *shelichus* to one who is merely halachically-excluded from performing the *mitzvah* himself.]

The *Beis HaLevi* provides a different defense of the *Ramban's* opinion, based on his analysis of the obligation of women regarding Torah study. Women are most certainly obligated to study the *dinim* that are relevant to them, and this would include all the sections of the *Shulchan Aruch* that deal with *mitzvos* that they perform. However, this obligation is not a *mitzvah* of its own accord, but is rather in the category of a *hechsher mitzvah*, as it enables their religious observance. Thus, women are exempt from Torah study that has no practical relevance, such as the *dinim* of most of *Seder Taharos* or *Seder Zera'im* in *Chutz La'Aretz*. In regard to the study of this area of Torah, in which the learning would not be a *hechsher mitzvah* of *mitzvah* fulfillment, men alone are obligated.

The *Beis HaLevi* continues to explain, along the lines of the position of the *Rosh* above, that since the Torah states that the rationale for the *mitzvah* to write a *sefer Torah* is in order to study from it, and women are exempt from the obligation to study Torah as a *mitzvah in and of itself*, it follows that women are not obligated to write a *sefer Torah*.

There is an important *machlokes* regarding the purchase of an existing *sefer Torah*. The *Gemara* in *Menachos* (30a) teaches, "One who buys a *sefer Torah* from the market is like one who grabs a *mitzvah* from the market." This could be interpreted to mean that the *mitzvah* is fulfilled, albeit in a less than optimum fashion (*Rashi, Gr"a*), or that the *mitzvah* has not been fulfilled at all (*Rama, Yoreh De'ah* 270:1). Some argue that the *mitzvah* requires the creation of a **new** *sefer Torah*, as we see from the fact that one does not fulfill the *mitzvah* through his inheritance of a *sefer Torah*. Others argue that one cannot fulfill the *mitzvah* through inheritance, because he has been passive, with the transfer of ownership of the *sefer Torah* occurring on its own, but this is not comparable to the active purchase of a *sefer Torah*.

This *machlokes* may also relate to the analysis presented earlier. In line with the understanding of the *Minchas Elazar* and the *Beis HaLevi*, the nature of the requirement is for each Jew to have a *sefer Torah* in his possession and at his disposal to enable his own Torah study. According to this approach, one who purchases an already-existing *sefer Torah* for himself **would** fulfill the *mitzvah*. On the other hand, if he were then to give his *sefer Torah* to a *shul*, such that he would not have access to it any longer, he would forfeit his *mitzvah*. Alternatively, the *mitzvah* may be viewed as a requirement to bring another *sefer Torah* into the world. The purpose would presumably be to ensure the transmission of the correct text of the Torah to the future generations. According to this, the mere purchase of an existing *sefer Torah* would **not** suffice, but once a new *sefer Torah* is written, it **could** be donated to a *shul* without forfeiture of the *mitzvah*.

The *Midrash Rabbah* (*Devarim*, *parsha* 9) teaches that Moshe was very concerned over זיוף התורה – misrepresentation of the Torah – and so, once he knew he was to die on that day, he wrote thirteen *sifrei Torah*, one for each of the twelve *shevatim* and one to be placed in the *aron*. This way, if people would seek to falsify any *din*, they could be disproven, and the authentic text of the Torah would be protected. Moshe even requested to remain alive, in a subservient role, after Yehoshua would take over the rulership, to aid in upholding the integrity of the *masorah* and to protect the Torah from being distorted.

The *mitzvah* of *hakhel*, involving a public *krias haTorah*, and the *mitzvah* that each Jew should write a *sefer Torah* were meant to address Moshe's concern, as these *mitzvos* would serve to maintain and preserve the *masorah*. Furthermore, the *passuk*, כִּי לֹא תִשְׁכַּח מִפִּי זָרְעוֹ – “for [the Torah] shall not be forgotten from the mouth of its offspring” (*Devarim* 31:21), was also meant to placate Moshe's fear. Indeed, the *Gemara* in *Shabbos* (138b), after

citing a *Beraisa* to the contrary, brings the dissenting opinion of Rebbi Shimon bar Yochai, who declares, on the strength of this *passuk*, “*Chas veshalom* that the Torah would be forgotten from *Yisrael!*” Because of his statement, the phrase *כי לא תשכח מפי זרעו* is inscribed at the entrance to the *kever* of Rebbi Shimon bar Yochai, as the last letters of these words are the same as those which comprise the word *יוחאי*.

Unfortunately, we see in our own time, when so many groups of Jews espouse views that represent a falsification of *masorah*, that Moshe was justifiably concerned.

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PARSHAS HA'AZINU  
*HESTER PANIM*

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וירא ד' וינאץ מכעס בניו ובנותיו ויאמר אסתירה פני מהם אראה מה אחריתם.

*Hashem* will see and be provoked by the anger of His sons and daughters, and He will say, "I shall hide My face from them and see what their end will be." (*Devarim* 32:19-20)

THE PASSUK speaks of *Bnei Yisrael* being in a state of *hester panim*. The *Yad HaKetanah* (*sha'ar* 12, *perek* 9) explains that *hester panim* does not mean that *Hashem* is not looking at *Bnei Yisrael* in this state or that *Hashem* will stand by passively and not protect us. Rather, it is to be understood as described in the *passuk*, הנה זה עומד אחר כתלנו משגיח מן החלונות מציץ מן החרכים – "Behold, He is standing behind our wall, observing through the windows, peering through the lattices" (*Shir HaShirim* 2:9). Even when there is a *hester panim*, *Hashem* is observing us through "a crack in the wall."

One who sees his friend through a crack in the wall sees him as clearly as he would through an open doorway. The difference is to the one who is **being seen**. In the former case, he cannot sense that he is being watched, while in the latter, the watchfulness is obvious. Similarly, *Hashem* is hiding "behind the wall" and we cannot see Him. This gives us the impression that He is no longer watching over us. Nevertheless, there most definitely is a *hashgachah pratis* (Divine Providence); if not, the Jewish People would have been devoured in *galus* long ago,

the lone sheep amongst many wolves. *Hashem* does see us and never fails to keep the closest watch over us. The “eye” does see, even in *hester panim*; it is only the “face” which is hidden. The *Yad HaKetannah* notes that throughout the *tochechah*, whenever there is a description of another evil which will befall *Klal Yisrael*, *Hashem's* Name is explicitly mentioned in connection with that punishment. 'יכלה ד' ... יכלה ד' - “*Hashem* will send ... *Hashem* will strike you” (*Devarim* 28:20,22).

The *Gemara* in *Chagigah* (5b) describes how Rebbi Yehoshua ben Chananyah had a debate before the Caesar, in pantomime, with a certain *apikores*. [The original *minim* or *apikorsim* were Jews who had converted to Christianity; some feel that the word *מין* is an abbreviation for *ישוע הנוצרי*.] First, the heretic signaled to Rebbi Yehoshua by turning his face away from him. Rebbi Yehoshua signaled a response by gesturing with his hand. Thereupon, the Caesar asked Rebbi Yehoshua for an explanation of the exchange.

He explained that the heretic had argued that the Jewish Nation is one from which its Master has turned His face away. Because the Jews had rejected *Oso Halsh*, G-d walked away from us. This understanding of *hester panim* has been the position of the Catholic Church for centuries – that the Jews lost their status as the *עם הנבחר*, the Chosen Nation. That is why they were sent into exile and will never again return to Eretz Yisrael, for they no longer have a right to the *ארץ הנבחרת*, the Chosen Land. That is why the Catholic Church was opposed to the establishment of the State of Israel, because its existence is against a basic principle of their religion. Even after the State was established in 1948, the Church refused to officially recognize it. At least, they argued, the “real” land, Jerusalem and the Temple Mount, was not in our hands. Then, in 1967, when we came to possess this area as well, the Vatican pressed to internationalize Jerusalem. [See essay for *Parshas Ki Sisa*.]

Rebbi Yehoshua continued explaining that he had responded by arguing, *ידו נטויה עלינו* – “His hand is yet outstretched over us.” *Hester panim* does not mean that *Hashem* does not look at us. The *navi* says, *ובצל ידי כסיתיך* – “and with the shade of My hand have I covered you” (*Yeshayah* 51:16). *Hashem* is watching us and, at times, is punishing us. *Hester panim* means only that we do not see Him; it is only a matter of **perception**. [When the heretic admitted that he had not understood the Rabbi’s response, he was put to death for his disrespect to the king, engaging in a debate without having the ability to interpret the signaled response of his adversary.]

Reform Judaism also denies the principle that *Klal Yisrael* is the *עם הנבחר*. It holds that there is no Chosen Nation. Thus, the Reform clergy are interested in the “peace process,” predicated upon the return of sections of land in Eretz Yisrael for the sake of peace, claiming that it is the ultra-Orthodox who are always the obstacle to peace. If there is no *עם הנבחר*, for which the *ארץ הנבחרת* is reserved, such an option becomes viable.

Everyone knows that if one asks an irreligious doctor whether he should fast on Yom Kippur, the doctor will advise him not to fast. Fasting on Yom Kippur is not of any value to him; to him, there is no religion and there is no Yom Kippur. In this context as well, if we are discussing whether to return land for the sake of peace, the anti-religious will certainly be willing to give away the whole country.

It is just not so. We **are** the *עם הנבחר* and we retain our right to the *ארץ הנבחרת*.

There is a universal custom to recite the *perek* of *למנוצח* before *teki’as shofar* on Rosh Hashanah. In this *perek*, the *passuk* states, *להבחר לנו את נחלתנו את גאון יעקב אשר אהב סלה* – “He will choose **our heritage** for us, the **pride of Ya’akov** that he loves, Selah” (*Tehillim* 47:5). *Hashem* chose “our heritage,” Eretz Yisrael, as the National Homeland of the Jewish People. One of the many *kavanos* that we have in mind when we blow the *shofar* is that

the *shofar* represents the trumpet that the general sounds as he leads his army in battle. We *daven* that the *shofar* should represent the triumph of the Jewish Army over our enemies. **גאון יקרב** means that Eretz Yisrael is the pride of the Jewish Nation. There is such a thing as a Jew being proud of his National Homeland.

Even Americans, who have no nationality to speak of, have a sense of pride in their nation and in their land. All the more so regarding the bond that *Klal Yisrael* has to Eretz Yisrael! Avraham was attracted like a magnet to the *kedushas ha' Aretz*. Jews who had lived in Europe for centuries were attracted to Eretz Yisrael. It was not a physical attraction, for it was a land filled with sand and disease; it was an attraction of *kedushah*. **אשריך ישראל מי כמוך עם נושע בד' מגן עזרך ואשר חרב גאותך** – “Fortunate are you, *Yisrael*; who is like you! Nation delivered by *Hashem*, the Shield of your help, Who is the Sword of **your grandeur**” (*Devarim* 33:29). This is a reference to the arrogance of the Jewish people, in a positive sense; we take pride in the fact that this is our country.

The *Gemara* in *Chagigah* (5b) relates that there are times that *Hashem* cries, **ואם לא תשמעוהו במסתרים תבכה נפשי מפני גוה** – “And if you do not heed this, My Soul will cry in hidden chambers because of **your pride**” (*Yirmiyah* 13:17). The *Gemara* explains that in the outer chambers, there is only happiness and delight in the presence of *Hashem*, but in the inner, hidden chambers, *Hashem* cries **מפני גאותן של ישראל שניטלה מהם ונתנה לעובדי כוכבים** – “because of the **exaltedness** of *Yisrael* that was taken from them and given to idol worshippers.” *Hashem* weeps over the pride of the Jewish People, to have a country and a *medinah*, which was taken away from them and given to the non-Jews.

It is a positive thing to have national pride. The Jewish Nation should be proud of the fact that they now have a country and they should try to maintain sovereignty over that country. When part of that country is given away, *Hashem* cries. It should

mean something to us to see to it that *Hashem* does not cry. We don't quite understand what it means for *Hashem* to cry, but we understand generally, at least, that it is a negative thing.

Some say that just for the sake of Jewish pride, it is not warranted to risk the loss of lives to maintain an entire country. But Americans would be prepared to give up lives to prevent another country from trespassing onto one inch of their soil. If they are prepared to go to war over a sense of national pride, how much more so should we consider it a *mitzvah* to go to war to maintain our country! [For a discussion of the topic of "land for peace," see *B'Ikvei HaTzon*, pp. 205-211, and *The Journal of Halacha and Contemporary Society* XVI, pp. 72-81.]

The conclusion of the *Shiras Ha'azinu* is, *וכפר אדמתו עמו* – "and He will appease His land and His people" (*Devarim* 32:43). The *shirah* foretells that after the period of *hester panim*, after the entire Holocaust will be brought upon the Jewish People, *Hashem* will take revenge from all those nations that caused their suffering. *Hashem* will appease His land and His people. That is exactly what happened immediately after the Holocaust. *Medinas Yisrael* was established and the Jewish Nation experienced a rejuvenation. The *ארץ הנבחרת עם הנבחר* returned to the *ארץ הנבחרת*.

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## PARSHAS VEZOS HABERACHAH THE LAST EIGHT *PESUKIM*

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THE *GEMARA* in *Bava Basra* (15a) discusses the authorship of the final eight *pessukim* of the Torah which describe events that took place after the death of Moshe, including his burial and the mourning that followed. Rebbi Yehudah (or Rebbi Nechemyah) holds that this section containing Moshe's obituary could not have been written by Moshe himself when he was still alive; rather, it was Yehoshua who wrote it. We generally assume, however, like Rebbi Shimon, that Moshe did write this section. This is implied by the earlier *passuk*, הזה לקוח את ספר התורה הזה - "Take this Torah scroll" (*Devarim* 31:26), which indicates that it was a **complete** *sefer Torah* that was written by Moshe. Yet, there was a major difference: "Up to this point, *Hashem* would dictate and Moshe would be **אומר וכותב** - say and then write. From this point on, *Hashem* would dictate and Moshe would write with tears."

Rav Soloveitchik explained that for the rest of the Torah, *Hashem* dictated a particular *nevu'ah* to Moshe, whereupon Moshe **delivered** that *nevu'ah* to *Bnei Yisrael*. After delivering the *nevu'ah*, Moshe recorded that *nevu'ah* in writing. [The *Netziv* to 31:19, regarding *Shiras Ha'azinu*, seems to understand the phrase **משה אומר וכותב** in this way.] However, when it came to the last eight *pessukim* of the Torah, Moshe could not have possibly delivered that message to *Bnei Yisrael*, because the events described in those *pessukim* had not yet occurred.

Therefore, this section was only dictated and transcribed. These *pessukim* were never **delivered** as *nevu'ah* to *Bnei Yisrael*.

The *Gemara* continues by teaching a halachic ruling concerning the last eight *pessukim* of the Torah. This section has a special status vis-à-vis the *dinim* of *krias haTorah*; here, יחיד קורא אותם – “a single person reads them.” The *Rambam* (*Hilchos Tefillah* 13:6) has a unique interpretation of this phrase – that this *parsha* may be read without a *minyan*, because its reading does not constitute a *davar shebikedushah*. According to the first Tannaitic opinion, we readily understand the reason for this special *halachah*. Yehoshua’s *nevuah* was on a lower level than that of Moshe, which is described by *Chazal* as “the *Shechinah* was speaking from inside his throat.” Therefore, the *nevu'ah* of Yehoshua does not constitute a *davar shebikedushah*, and its reading does not require the presence of a *minyan*.

Yet, even according to *Rebbi Shimon*’s opinion – that these *pessukim* were dictated by *Hashem* to Moshe and written by Moshe, as was the rest of the Torah – the *Gemara* feels that they still would have a special status in terms of *krias haTorah*: “since they were different, they are different.” However, the *Gemara*, does not reveal exactly why the above-mentioned difference regarding the transmission of the *nevu'ah* from *Hashem* to *Bnei Yisrael* should have relevance to the *din* of יחיד קורא אותם.

The *Rambam*, when quoting this *Gemara*, adds a few words of explanation: הואיל ומשמען שהן אחר מיתת משה – “since its simple meaning refers to [the time period] after the death of Moshe.” That is, the simple reading of the text implies that it was written after Moshe’s death, and so, it conveys the mistaken impression that it was **not** written by Moshe. Still, it is unclear why the *parsha*’s superficial impression would serve to remove it from the status of *davar shebikedushah*, if it was indeed written by Moshe, just as the balance of the Torah was.

Rav Soloveitchik preferred to translate the word משמען as “significance.” That is, this *parsha* did not have significance

at the time it was written; it was not yet “true” until after the death of Moshe. That is why, as mentioned, Moshe could not possibly deliver this *nevu’ah*, and it is for the same reason that the *parsha* was **not sanctified** when Moshe recorded it. [Certainly, there are sections in the Torah that refer to future events. These were able to be delivered because they are phrased in the future tense. It is only this *parsha* which could not be delivered, for it refers to future events, but is phrased in the past tense as if those events had already occurred.]

Rav Soloveitchik continued that this may be why Moshe wrote this section “with tears.” After all, was it not a glowing obituary? Moshe knew that it was his time to die; why would the mentioning of his death bring Moshe to tears? Rather, the explanation may be that Moshe was crying because he realized he would not succeed in endowing this final section of the Torah with its *kedushah*. Up until this point, when Moshe wrote the *nevu’ah* he received, he was also *mekadesh* those words of Torah, giving them the status of *davar shebikedushah*. Here, at the time he wrote the words, they were not yet “true,” and Moshe could not be *mekadesh* them. It was only later that they became sanctified, on their own, once they became “true” after the death of Moshe, and are, obviously, included in the *sefer Torah*. Thus, in the *Rambam’s* view, although, historically, this section was written by Moshe, it was not endowed with its *kedushah* through him. It was therefore not endowed with the **fullest** measure of *kedushas sefer Torah*, but retains the designation of **יחיד קורא אותם**. [See *Nefesh HaRav*, pp. 320-322.]

The *Mordechai* (*Halachos Ketanos, siman 955*), cited by the *Rama* (*Orach Chayim 669:1*), suggests a different interpretation of the phrase, **יחיד קורא אותם**. He defines **יחיד** as – a *talmid chacham*, as in **יחיד המיוחד** – the unique individual. This opinion forms the basis for the institution of *Chassan Torah* on Simchas Torah, the final *aliyah* being given to the *rav*. The Torah tells us that *Bnei Yisrael* accepted Yehoshua despite the fact that

Yehoshua was not at all as great as Moshe. “Yehoshua bin Nun was filled with the spirit of wisdom, because Moshe had laid his hands upon him. And *Bnei Yisrael* obeyed him and did as *Hashem* had commanded Moshe” (*Devarim* 34:9). We must listen to the *rabbonim* of the present generation even though they may not be as great as the *rabbonim* of previous generations. Perhaps this is the reason that we give the last *aliyah* to the *rav* – to teach the lesson that we must give heed to the words of the *rav*, just as *Bnei Yisrael* respected Yehoshua and followed his rulings the same way they had followed those of Moshe.

In the special formula, “מרשות,” that the *gabbai* recites to call up the *Chassan Torah* (and *Chassan Bereishis*) on Simchas Torah, we find something unusual. The text includes the unique phrase, עמוד עמוד עמוד חתן התורה – “Arise, arise, arise *Chassan Torah*,” as the *oleh* is called up three separate times, something which we do not do for any other *aliyah*. Rav Soloveitchik gave an explanation for this *minhag*. [This was a common theme in many of his *shiurim* – to show how the *minhagei Yisrael* are not mere ceremonial customs, but are fulfillments of halachic principles; see *Nefesh HaRav*, p. 24-26.]

The *Gemara* in *Berachos* (34a) teaches that one who is asked to serve as a *shaliach tzibbur* should refuse at first. If he does not decline, the *Gemara* compares him to “cooked food without salt.” If, on the other hand, he refuses too much, he resembles “cooked food that has been oversalted.” The *Gemara* continues, “How should he behave? The first time [he is asked], he should refuse; the second time he should stir himself [as if to rise]; the third time he should extend his feet and go down [to lead the *tzibbur*].” Interestingly, we do not find such a consideration when one is called up to the Torah. On the contrary, one should not delay going up to the Torah for his *aliyah* (*Berachos* 55a). The Rav explained that only when one is appointed *shaliach tzibbur*, which is considered a position of *serarah* (authority) is it

permitted, and even appropriate, to delay. Being called for an *aliyah*, in contrast, is not considered an appointment of authority, but is viewed as an opportunity to perform a *mitzvah*, which should always be done with alacrity.

The *Meshech Chochmah* (*Shemos* 6:30) compares Moshe's reluctance to accept the mission to lead *Bnei Yisrael* out of Mitzrayim to the *shaliach tzibbur* who, in his *siruv* (refusal), acts appropriately. He sees a first refusal in the words, "Behold, *Bnei Yisrael* have not listened to me" (6:12), and a second hesitation in the phrase, "Behold, I have sealed lips" (6:30). After declining *Hashem's* first two requests, on the third one, Moshe appropriately acquiesces to his appointment.

This approach of the *Meshech Chochmah* is in line with a comment of the Brisker Rav (*Chiddushei HaGri"z MiPi HaShmuah al HaTorah, siman* 49), who also sees in this directive an appointment of Moshe to a position of *serarah*. He understands this to be the nature of the appointment from the *passuk*, **וַיִּצְוֶה** – אל בני ישראל ואל פרעה מלך מצרים להוציא את בני ישראל מארץ מצרים – "And He **commanded** [Moshe and Aharon] regarding *Bnei Yisrael* and regarding Paroh, king of Mitzrayim, to take the *Bnei Yisrael* out of the Land of Mitzrayim" (*Shemos* 6:13). The Brisker Rav thus explains the necessity of providing the *yichus* (lineage) of Moshe (*Rashi*, 6:14) prior to this appointment. It was a fulfillment of **מִקִּרְבֵי אַחֵיךָ תִּשֶׂה לְךָ מֶלֶךְ** – "from among your brethren shall you appoint a king over yourself" (*Devarim* 17:15), which indicates that the king must be appointed "from the elite of your brothers" (*Yerushalmi Kiddushin* 4:5; *Bava Kamma* 88a).

Based on the Brisker Rav's understanding, Moshe's appointment to a position of *serarah*, similar to that of a *shaliach tzibbur*, took place in *Parshas Va'eira*, not earlier in *Parshas Shemos*, when *Hashem* initially requested that Moshe appear before Paroh. At that earlier stage, Moshe was merely being asked to perform the *mitzvah* of redeeming *Bnei Yisrael*, similar to one who is called up for an *aliyah*.

We may suggest that this accounts for the fact that Moshe's earlier recalcitrance, in *Parshas Shemos*, incites the anger of Hashem (*Shemos* 4:14), and results in a punishment, Moshe's exclusion from receiving the *kehunah* (*Rashi*). At that point, reluctance was inappropriate because Moshe was not being appointed to any leadership position; that is why there was no need to delineate the lineage of Moshe at that point. Only in *Parshas Va'eira*, after **ויצום**, was it necessary to show that Moshe's appointment was "from the elite of your brothers." Regarding this appointment, Moshe's reluctance to assume such a position of leadership was not met with any sense of anger or punishment.

The Rav explained that the *aliyah* of *Chassan Torah* which includes the last eight *pessukim* of the Torah (and, by extension, that of *Chassan Bereishis*) is not considered a standard *aliyah*. The *Mordechai* explained that the enactment, **יחיד קורא אותם**, means that the *aliyah* should be given to the **יחיד המיוחד**. If so, this *aliyah* is tantamount to an appointment of authority, like a *shaliach tzibbur*, in which case the rule of *siruv* **would** apply. This explains the *minhag Yisrael* for the *gabbai* to call up the *Chassan Torah* three separate times, concluding with the phrase **עמוד עמוד עמוד**. It is as if the *gabbai* first requests of the *Chassan Torah* to come up for the *aliyah* and he "refuses." The *gabbai* repeats his request a second time and he "stirs himself." Upon the third request, the *Chassan Torah* "extends his feet" and goes up to the Torah for his *aliyah*. [See *MiPninei HaRav*, 2001 ed., pp. 143-144.]



