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HEMDAT YAMIM

חֵמְדַּת יָמִימִים

PARASHAT HASHAVUA

Bechukotai, 17 Iyar 5774

What Remains?

Harav Shaul Yisraeli – based on Siach Shaul, p. 352-3
(an address from 1944)

Towards the end of the *tocheicha* (section of rebuke), after describing the horrors that will befall the Jewish People if they sin, the Torah writes: “And even with this, when they will be in the land of their enemies, I will not be disgusted by them nor cast them off to destroy them” (Vayikra 26:44). What of significance will be left of Bnei Yisrael at that point in regard to which it will help that Hashem will not reject them? After all, every good thing we received will have been taken by then! The answer is that that which will remain is the *sefer Torah* (Yalkut Shimoni, Bechukotai 675).

What do we have remaining in our times? What point is left in our lives? What value does all our rebuilding of the Land have if all the source of the spirit of our nation has been destroyed cruelly with uncontrolled hatred? Is there value to our hopes and our lives? Are we allowed to enjoy anything? Are we not dancing over graves? The one comfort that was and is – is this Torah.

If all good things have been taken from us and smashed cruelly along with the lives of millions of Jews, there is one thing that not only have the enemies not managed to take, but to a certain extent, they have even returned to us somewhat. Certainly they did not do so in a gentle way, but they returned it to us nonetheless. There was a time when the nations claimed that their culture and values are nicer than our Torah. Now, amidst the violence that is being perpetrated, that which we have known all along is clear to everyone. Our appearance, which suffered in recent times, has been restored. Civilization, which is divided between murderers and those who watch the blood being spilled with cynicism, chutzpah, and coarseness, cannot engender a good world.

No, we do not agree with them. Our souls cannot accept a person who acts like a lion or a bear. We believe in a mankind that has a divinely given soul, which has more than lowly instincts. This belief brings us to the Creator of the world and its Leader. It cannot be any other way.

If so, then matters are different than they appear. We must not allow our spirits to be deflated under the torture we are suffering. If those who go against Hashem can seem to be succeeding, imagine the ultimate reward of those who do His bidding. And if those who follow His ways are afflicted, imagine what will happen to those who fight Hashem (see Bereishit Rabba 65:22). We will have to have patience of steel, grit our teeth, and look forward to brighter days. We have the Torah, and we know the source of the hatred towards us. We know why we are suffering and that the days of redemption will come.

“In the way of My statutes you will go’ – this refers to the rules with which the heavens and the earth were created” (see Vayikra Rabba 35:4). The rules of the Torah are eternal, and the world will be built upon them. And if we do not understand the steps the world is undergoing at this preliminary stage, eventually everything will be clarified and visible.

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Ask the Rabbi

by Rav Daniel Mann

Children in Diapers in Shul During Davening

Question: Is it permitted for young children in diapers (i.e., not capable of bowel control) to be in *shul* during the time of *tefilla*? I have been bothered that in my *shul* not everyone is careful about this.

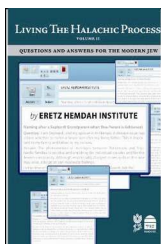
Answer: Your question about diapered children in shul during tefilla involves two issues: 1. Preserving the honor of a *beit kneset* (see Shulchan Aruch, Orach Chayim 151), even not during *tefilla* time. 2. *Davening* in the presence of excrement (see the great detail in Orach Chayim 76-87), which applies even outside a *shul*. (While the main classical sources (see Berachot, 3rd perek) discuss *Kri'at Shema*, the *halachot* apply to *davening*, *berachot*, and speaking *divrei Torah* – Mishna Berura 76:2.) We do not believe that the coincidence of the two is more problematic than the elements separately. Realize that if the first issue is a problem, a toddler sibling of a baby having a *brit* in *shul* could not attend. The second issue would greatly limit involvement in matters of *kedusha* in a house with non-toilet-trained children present. (The excrement of newborns for several months is not an issue – Shulchan Aruch, OC 81:1).

Let us dispatch quickly of the matter of the honor of a *shul*. We found no indication that bringing in a baby in diapers is considered a disgrace to a *beit kneset* and have no reason to question the clear *minhag* to allow babies in. Regarding *davening* near possible or definite excrement, the first major rule is that the excrement must be covered (Berachot 25b). Thus, at first glance, a diaper should be sufficient. However, there are some complications. First of all, there must not be a smell (whose extent is hard to quantify) that escapes the covering (Shulchan Aruch, OC 76:2; Mishna Berura 76:3). A smell affects people up to four *amot* from the furthest point it reaches. However, *poskim* rule that one does not have to constantly check to see if there has been a bowel movement and a spreading smell (Ishei Yisrael 52:18, Ohr L'tzion II:86:14). If one knows that the baby has eliminated (Ohr L'tzion *ibid.*) and perhaps if long enough has passed to assume a baby has eliminated (Ishei Yisrael *ibid.*), he should check.

According to the concept of *graf shel re'i*, a utensil used for collecting excrement is considered soiled, so that one is not allowed to *daven* when it is in his view or, if it is behind him or sufficiently to the side, within four *amot* (Shulchan Aruch, OC 87:1; *ibid.* 79:1). Is a diaper a *graf shel re'i*, given that it is a receptacle of excrement? Rav Moshe Feinstein (see Igrot Moshe OC IV:106) says, regarding cloth diapers, that after being washed, it is not a *graf shel re'i*, implying that while it is soiled it is one. Therefore, there is logic to require that the diaper to be covered (e.g., by the child's clothes) even if it does not smell. On the other hand, modern diapers are made to be thrown out soon after becoming soiled and not reused. Some point out that modern diapers have the advantage of having their own non-absorbent plastic covering (Avnei Yashfeh III:70). Rav S.Z. Auerbach is said to not accept this distinction because the diaper is absorbent and a covering must be something external, not the diaper itself (Halichot Shlomo, Tefilla 20:5). It is not clear what Rav Auerbach's full opinion was on this matter (see Shemirat Shabbat K'hilchata 47:38; Nishmat Avraham, OC 76:9). In any case, his stringency is only when the diaper is soiled, not wet.

There is also an opinion that a covering is insufficient to cover excrement at the anus (see Magen Avraham 81:1). However, the great majority of *poskim* say that the stringency of excrement at the source is only for the soiled individual, not for those *davening* in his presence (see Ishei Yisrael 52:9).

We conclude that the prevalent practice to allowing matters of holiness to be spoken in the presence of a baby in diapers is very well-grounded, with certain steps are laudable. If one who wants to be more *machmir*, he should consider the "price" and certainly should not impose his view on co-congregants.



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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

The Proper Reception of the Bringers of *Bikurim*

(condensed from Ein Ayah, Bikurim 32-3)

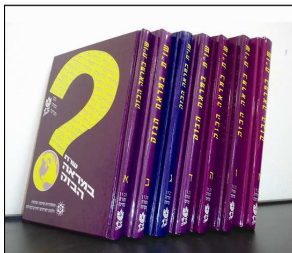
Mishna: When those bringing the *bikurim* (first fruits) drew close to Yerushalayim, they sent word before them and adorned the *bikurim*. The *pachot* (governors), *seганim* (assistants), and the *gizbarim* (those in charge of public funds) went out to greet them. According to the honor of those entering, people would go out [to greet them].

Ein Ayah: The building of the nation in a complete manner comes about when the three main elements of leadership are unified. One is the governmental power, which is in charge of making order in the actions that need to be taken. The second is the spiritual power of Torah wisdom and service of Hashem. The third is the power of money, specifically that which is needed to carry out the goals of the community and the individual.

Those who brought the *bikurim* represent the unity of the individuals of the nation and bringing together that which they produced for the common collection, so that the nation can reach its desired goal, as Hashem wants. The *pachot* represent the government officials. The *seганim*, a term used regarding the assistant to the *kohen gadol*, represent the religious functionaries. The *gizbarim* represent those who were in charge of the money, including all assets and riches in general. When the political powers and the finances will be focused on strengthening the goal that stems from the power of sanctity, the nation will flourish with greatness that is appropriate to its connection to Hashem.

It is true that the bringing of *bikurim* excites us in regard to seeing the unification of the nation's strengths joining together in a central location and that a connection is made between the simple agricultural work and the most elevated and monumental service in the *Beit Hamikdash*. This shows that the pure love of one's counterpart is one that runs through the spine of the nation, from one end to another, from the physical side to the spiritual side.

However, it is important to avoid a mistake that the light-headed might make. That is that one may think that due to this love of all members of the nation, there should be an erasure of all distinctions based on level within the nation. One may conclude that it makes no difference whether one is a great scholar or highly refined person, or whether one is a silly or sinful person. The truth is that such an approach is a highly destructive one that causes simple people to throw off the counsel of the sages and holy people within the nation – whether contemporary or those of previous generations. This in turn causes dissipation in the level of Torah and pure fear of Hashem. Therefore, it is important to be careful not to equate the great and the lowly even at a time in which we stress unity, including the time of bringing *bikurim*. In this way, the simple will listen to the wise and the true freedom, which finds expression in the preservation of the national hierarchy, will come specifically by means of clearly evaluating each person and each subgroup within society. That is why at the time of the bringing of *bikurim* to Yerushalayim, the number of people who went out to greet them depended on the level of the person bringing. This shows that we should know there is a difference between the holy (i.e., every Jew) and the holy of holies (special Jews), and certainly between Jews who serve Hashem and those who do not and between a fool and a wise man.



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Buying Usurped Merchandise

(based around Shut Maharit, Choshen Mishpat 12)

Some Jewish merchants sent clearly identified Judaica to Venice with an exporter, who was killed along the way. An official of the locality seized all the merchandise in the deceased's possession and wanted to sell it for the local government's profit. The local Jewish community placed a ban against buying the Judaica from the official until the owners would be contacted and give instructions. The local [non-Jewish] judge also asked the official to wait. However, some people ignored the ban and bought merchandise at very low prices. The buyers now have to return the property to the Jewish merchants, but they want the owners to reimburse them for that which they paid the official.

The fundamental halacha is that one who retrieves his stolen object from a buyer from the thief (the official, in this case) does not have to reimburse the buyer. In many cases, though, there is a *takanat hashuk* to protect the unsuspecting buyer by making the victim of the theft reimburse the buyer for what he spent on it (the victim then sues the thief). However, the *gemara* (Bava Kama 115a) says that this *takana* was not said when the buyer bought from a known thief, and this is the ruling of the Rambam. The Ri, on the other hand, says that even if the seller is a known thief, the buyer is still to be reimbursed unless he knew that the object he bought was stolen.

The first question is how to rule in the case of a *machloket*, where status quo is critical. Do we say that the owners are not able to take their property without paying? Or do we say that since the property is anyway to be returned and the question is whether they should be reimbursed, we do not extract payment out of doubt? One can prove from Bava Batra 24b that the second approach is correct, and we should give the owners the benefit of the doubt.

In any case, it is clear that here all agree that *takanat hashuk* does not apply. First, it is clear from the identification on the objects themselves from whom they come, and the buyers should have known not to buy the merchandise. This was reinforced by the community's ban on buying the merchandise from the official.

The only question is whether we should say that since the governmental authorities claimed the merchandise for themselves, their decision is binding based on *dina d'malchuta* (the law of the land – see Bava Kama 113b). There are two flaws with this claim. First, the law requires the government to wait three months for clarification before claiming the property found in the possession of someone who died in their area. Therefore, the official was not acting according to the law he ostensibly represented but as a thief, as is confirmed by the fact that the local judge instructed not to sell yet. Second the official's claim that it was prudent to sell the merchandise and then see later what to do with the proceeds is groundless considering he sold items at a mere fraction of their true price.

Therefore, the owners of the Judaica get their merchandise back without having to pay the buyers [who can take up the matter of reimbursement with the official who sold it to them and perhaps lose their money for acting irresponsibly].



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