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HEMDAT YAMIM

PARASHAT HASHAVUA

Ki Tavo, 18 Elul 5774

Declare That You Are Not Ungrateful

Harav Yosef Carmel

Our *parasha* opens with *p'sukim* describing the process of bringing *bikurim* (first fruit) to the *Beit Hamikdash* and making a declaration of thanks to Hashem for the Land, its produce, and the opportunity to give an offering before Hashem in the *Beit Hamikdash* (Devarim 26:1-11). This is followed by the declaration of the giving of *terumot* and *ma'asrot*. In that setting, one proclaims that he has completed to give not only portions due to *levi'im* but other portions due to widows and other needy people within society (ibid. 12-15).

The stress that the Torah puts on "going to the place" and standing "before Hashem, your G-d," emphasizes that the fact that we have such a place to go is part of what we need to thank Hashem for. This in turn reminds us that in order to build such a national religious center it is critical to have a significant public apparatus, even if it is a partial one like the one in place at the time of the Second Temple. Individuals are not capable of or allowed to make a *Beit Hamikdash*. Therefore, the thanks include gratitude for whatever level of independence we have at the time. (Historically the greater the level of political independence the easier it was to serve Hashem in the *Beit Hamikdash*. On the other hand, this did not prevent the *Beit Hamikdash* from turning almost into a center of idol worship, as happened during periods of the First Temple.)

In our days, as well, it is important to remember and remind others that the existence of the State of Israel affords us great opportunities, including in the realm of spirituality and Torah study (which is true even in a time of painful cuts in the budgets of *yeshivot*). The government also puts great resources at the disposal of the weakest members of society from a financial and physical perspective (even at a time of deep cuts in child allowance payments). Certainly we are to remember that the state tends to our security needs, whether from enemies from without or crime from within. It is also responsible for educational and cultural activities, from schools to libraries and recreational centers. The government of our independent state runs a health apparatus that cares for the broadest base of its citizens from the time of their birth to their last day. The state provides social workers who provide a very broad level of functions.

Receiving these services without giving the proper thanks runs the danger of violating that which *Chazal* said on our *p'sukim*: "And you will say to Him – that you are not one who denies the good he has received." One need not worry. Being grateful for that which one receives does not close the door on the ability to give constructive criticism for that which requires improvement. Specifically criticism that comes from one who has demonstrated his ability to say thank you is much more likely to be accepted and have a positive impact.

Let us pray for an improvement throughout society in this very important realm of recognizing the good.

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Ask the Rabbi

by Rav Daniel Mann

Kohen Seeking a Minyan With an Additional Kohen

Question: At one of the *minyanim* I attend, I am often the only *kohen*. Considering that lowers the level of *Birkat Kohanim* (=BK), should I avoid *davening* there?

Answer: The *gemara* (Sota 38a) derives from “say to them” (Bamidbar 6:23) in the context of *BK* that someone calls the *kohanim* to do *BK* only when there are at least two *kohanim*. Since a *kohen* violates his obligation to do *BK* only when he fails to do so after being “called” (Shulchan Aruch, Orach Chayim 128:2), Rabbeinu Peretz (cited by the Tur, Orach Chayim 128) says that one *kohen*, who is not called, cannot violate an obligation. The Tur argues, and the Beit Yosef explains that one *kohen* violates his obligation when he was unnecessarily called. Tosafot (Menachot 44a) raises another possibility – one *kohen* who is not called does not have a Torah obligation, but he still has a Rabbinic one.

You are apparently concerned by the opinions that *BK* is only Rabbinic with one *kohen*. We will start by mitigating your concern. First, not only does the Yerushalmi hold that even one *kohen* is called, but the Taz (128:3) and Pri Chadash (128:10) understand that one *kohen* has a Torah obligation without being called (see variation in Aruch Hashulchan, OC 128:9). One explanation is that calling is needed only when a *kohen* could pass off the obligation to his fellow *kohen*, whereas a lone *kohen* is obviously obligated (see Mishneh Halachot III:197). Admittedly, many (including the Magen Avraham 128:16; Be'ur Halacha 128:25) understand that the obligation is only Rabbinic.

Furthermore, even if the obligation/possibility of violation is Rabbinic, logic indicates that one *kohen* who does *BK* voluntarily fulfills a *mitzva* from the Torah according to all *Rishonim*. After all, he does the same action in essentially the same manner – why should the lack of prompting disqualify it. This is the approach of the Maharam Mintz (12, quoted by the Magen Avraham *ibid.*), who thereby explains why one *kohen* makes a *beracha* on his *BK*, and the Minchat Chinuch (#378). The language of the Beur Halacha (*ibid.*) implies there is no Torah fulfillment.

Should a *kohen* take steps to fulfill the *mitzva* specifically as an obligation? The general rule is that performing *mitzvot* as an obligation is better than voluntarily (Kiddushin 31a), although the extent of the preference is unclear. Arguably, the difference is smaller when one is generally obligated in the *mitzva* and there is also a Rabbinic obligation. (It may depend on the reasons why the reward is greater when obligated – see Tosafot, Ramban, and Ritva *ad loc.* Further discussion is beyond our present scope.)

Finally, we must weigh preferences in context. Even if we assume the *mitzva* is more complete when done with other *kohanim*, consider that avoiding the *minyan* when they do not have another *kohen* leaves the *minyan* without *BK*. The following halacha proves that it is proper to “compromise” other preferences to ensure a *minyan* has *BK* – apparently including greater concerns than having *BK* with two *kohanim*. The Shulchan Aruch (OC 128:20) rules that when a *kohen* is *chazan*, he does not do *BK* unless there are not other *kohanim*. This indicates that while a *kohen* gives up his individual *mitzva* of *BK* to enhance his ability to serve as *chazan*, the need for the *minyan* to have *BK*, even of one *kohen*, is more important. In contrast, the classical *poskim* are silent on making such a sacrifice to jump from *BK* of one *kohen* to two. (Az Nidberu XIII:34 believes that a *kohen* as a *chazan* with another *kohen* would do *BK* according to the Shulchan Aruch to gain the advantage, but he was unable to find a previous *posek* to say so explicitly.)

In the final analysis, all agree that the *BK* of one *kohen* is a *mitzva* (otherwise he would not make a *beracha* before it) and all should agree that its sanctity and value is not substantively different from that of multiple *kohanim*. Considering the above, you should be happy if your presence ensures that the *minyan* has *BK*.



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Ein Ayah

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

Good Individual Instincts Over Bad Societal Habits

(condensed from Ein Ayah, Shabbat 1:21)

Gemara: One should always try to live in a city that was settled recently, as due to its newness it has fewer sins. This is learned from the *pasuk*: “Now this city is close to escape there, and it is small” (Bereishit 19:20). What does it mean that it is close? ... Since it was settled more recently, it has fewer sins.

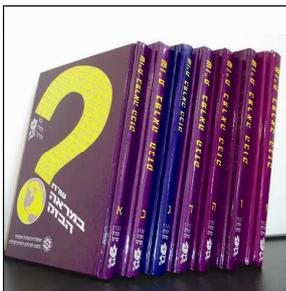
Ein Ayah: Hashem made man straight, and a person’s internal inclinations are always good due to his divinely given soul. However, externally, due to his material side, man tends toward evil. His evil thoughts turn even further toward evil when he is connected to society. Because most people know their counterpart’s external being and not his internal (better) one, society is susceptible to developing habits and practices of sin. This can bring people to sins that would not have happened if man was left to his own personal instincts.

For this reason, a community that is older has more chances of developing a tradition of sinning. In a newer community, the individual is still more likely to behave according to his personal inclinations. The individual can access his own good internal side more easily than an outsider would be able to. However, that same person can be caught up in the stream of jealousy, desire, and honor, which can bring him to evil ways of behavior. So it is better to be in a place where the culture that is based on the individual has not been erased and society is based on human nature along with basic teachings of Torah and ethics. This is better than the excitement of the mass culture, which, because it tends to glorify and accept external life more easily, deteriorates with the shortcomings of society.

It is clear that the above is true until the time when Hashem will “pour” His spirit upon all of the world. At that point, societies, like people, will be elevated to the level for which they were intended. Then the joining together of people will bring only more sanctity and splendor.

The thesis – that social life is more corrupt than individual life as long as material life and ethical failings abound – finds expression in the interrelationships between nations. Even though the average person knows to despise bloodshed in life between individuals, the average nation has not reached the point at which it will assuredly live as a nation without wars and bloodshed against other nations. That will come only at the time about which it was said, “A nation will not wield its sword against another nation” (Yeshaya 2:4), based on the light of knowledge of Hashem that will shine forth from Zion. That is why it is better to live in a city that was settled relatively recently, which has not lost as much of the spiritual sensitivities to justice and proper behavior with which Hashem blessed us.

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Intellectual Property Rights Revisited

(based around Shoel U'Meishiv I:I 44)

[In Parashat Eikev, we saw the analysis of the Beit Yitzchak (Shmelkes) on the question of copyright on books on Torah subjects. Rav Shmelkes was uncertain if halacha forbids reprinting without permission where the law of the land and the bans of great rabbis do not preclude it. We will see that Rav Nathanson, Rav Shmelkes' predecessor as Rabbi of L'vov, had a stronger belief in the innate nature of intellectual property law. One of the fascinating things about the responsum is that the Shoel U'Meishiv cites no outright classical sources on the matter and did not feel a need to give an exact halachic framework of the rights. The responsum is a critique of the ruling of the rabbi who sent him the question, Rav Shmuel Waldberg.]

The question about which you ask for my input refers to a dispute about the publishing of the Yoreh Deah section of Shulchan Aruch with the commentaries of the Pri Megadim, Chavot Da'at, and Pitchei Teshuva. You ruled that the first publisher cannot prevent the second publisher from reprinting old commentaries. Regarding the new Pitchei Teshuva, you said it is forbidden only if the author received authority from the government to publish, in which case *dina d'mlachut* (the law of the land) applies. The first publisher claims to have bought the rights from the author, but you said that the author cannot sell more rights than he has, and the fact that he published the book the first time (1836) without writing that it is forbidden to republish means that the author no longer has authority.

What you wrote does not make sense. An author who publishes a certain amount of books because he does not know how much demand there will be certainly maintains the sole rights to republish. Even regarding technical inventions, for example, Reb Avram Yaakov of Harovshuv received payments throughout his life from the Kaiser in Warsaw for the machine he invented. Could our words of Torah be of lesser value than the machine? [*Ed. note- It is not clear why the concept of teaching Torah for free does not weaken the comparison*]. It is clear that authors have can keep their rights for as long as they want, including for future generations, just that most authors want others to strive to publicize their works after they have succeeded in selling off that which they originally published. The Pitchei Teshuva did an important service that many are in need of – collecting many different opinions – and he can keep his rights or sell them.

The fact that the Pitchei Teshuva did not write a ban on the reprinting of his *sefer* is due to the fact that the Russian government does not allow such bans, and applying for their authorization runs the risk of falling prey to the censor. Even the idea of limiting the rights to within one country is wrong, as that distinction applies only to publishers of classical *seforim*, not those whose authors are alive.

Those who give proper approbations to *seforim* do not need to invoke bans. It is more than enough to remind people of what the Torah says – that one should not be *masig g'vul* (encroach upon others' property). [*He continued to discuss anecdotes about several publications.*]



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