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# HEMDAT YAMIM

## PARASHAT HASHAVUA

Tetzaveh, 9 Adar 5775

### Choshen Without Mishpat?

Harav Yosef Carmel

We have written many times about the chronological connection between the sin of the Golden Calf and the construction of the *Mishkan* and the former's impact on the *Mishkan's* operation. We will take a further look this week, specifically focusing on the *choshen mishpat*, the special breastplate intended for the *kohen gadol* to wear on his heart.

Rashi (Shemot 28:15,30) explains what this element of the *kohen gadol's* clothes has to do with *mishpat* (judgment). The Holy Name of Hashem was inserted into the *choshen mishpat*, and it would help clarify what the proper ruling or punishment was for each case. The *choshen* was present at the time of all the Temples. However, in the second *Beit Hamikdash*, while the *choshen* was present (without it, he would be missing a garment necessary for him to serve), the Name was not in it, and the miraculous feature did not exist.

Rashi identifies but does not fully explain the particulars of the connection between the *choshen* and the apparatus of justice. Let us explore a thesis of the students of the Gra, which distinguishes between what transpired before and after the sin of the Golden Calf and the great spiritual fall that it caused.

While the discussion of a *choshen mishpat* and the Name that enabled miracles is found in the command to prepare the *Mishkan's* provisions, in the description of its actually being made (ibid. 39:8-21), which took place after the Golden Calf, these crucial elements are left out. It is called just a *choshen* (without "*mishpat*"), and it is not described as being on Aharon's heart.

We have written in the past how King Shlomo tried to return the nation to its level before the colossal sin. Therefore, for example, he made four *keruvim* instead of two in the Holy of Holies. Likewise, the *gemara* (Rosh Hashana 21b) says that Shlomo sought to judge people based on his heart, without the need for witnesses or warnings. However, a voice from the heaven warned him not to do so. Based on these introductory points, let us suggest the following.

Before the Golden Calf, Bnei Yisrael were on a level in which they could use the *choshen mishpat* that was to be on Aharon's heart to determine true justice miraculously. Aharon's high level, which would have enabled this feat, stemmed from the high level of the nation, which was similar to that of Adam before his sin. Unfortunately, we slipped again, and "matters of the heart" were once again inadmissible as evidence. The *choshen* had other purposes to serve, but it no longer was valuable for *mishpat*. Only proofs that are based on strict logic or valid testimony can be used. That is the only way to receive justice.

Let us pray that *batei din* throughout the world, including our own Eretz Hemdah-Gazit, will merit in reaching the truth with the tools the Torah puts at our disposal.

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by Rav Daniel Mann

## Women Hearing *Parashat Zachor*

**Question:** It is not always easy for me (a woman) to make it to *shul* to hear *Parashat Zachor*. How much of an effort must I make?

**Answer:** There is a *mitzva* from the Torah to remember the actions of Amalek. It is related scripturally and, as simple logic dictates, innately to the *mitzva* to fight them (see Devarim 25:17-19). According to some *Rishonim*, it is included in the latter *mitzva* – see Mikraei Kodesh, Purim 5.) The question of how and when the Torah prescribes the *mitzva* can influence whether a woman has an obligation.

The basic *mitzva* of remembering can ostensibly be done at any time, which seems to preclude an exemption for women on grounds of being a time-based *mitzvot*. That which we do it on a specific Shabbat is Rabbinic. Yet, for a long time, the *minhag* was that women did not come to *shul* like men to hear *Parashat Zachor*, which prodded *poskim* to look for a reason why.

The connection to the *mitzva* to fight could be significant in this regard. One claim is that battle is usually carried out in the day, making it time-based. One of several questions on this idea is that one can remember the need anytime and act when it is practical. The Chinuch (#603) says that since women as a group are not obligated to wage battle, they are not included in the *mitzva* to remember either. The Minchat Chinuch (ad loc.) argues with the Chinuch by poignantly pointing out that women can and often should take part in other war-related efforts (see Sota 44b). Others argue that *mitzvot* are not dependent on whether the *mitzva's* assumed logic applies to an individual. On the other hand, the Chinuch's logic is reminiscent of the halacha that Moavite women are not included in the prohibition on marrying into our community because they do not usually bring provisions to nations passing through. Due to the Chinuch's stature and the old *minhag*, it is hard to discard the opinions that women are exempt.

It is also possible that women, while obligated, fulfill the *mitzva* in other ways. The *gemara* (Megilla 18a) derives that the remembering of the story of Amalek should be done through a recitation from a *sefer*. The Terumat Hadeshen (I:108) posits that reading *Zachor* from a *sefer Torah* with a *minyan* is required from the Torah. Regarding men, we accept this opinion, thus making us expect men to go to significant lengths to have a *minyan* for *Shabbat Zachor* (Shulchan Aruch, Orach Chayim 685:7). However, not all agree that Torah law requires a *minyan* and perhaps not even a kosher *sefer Torah*. If so, the Rabbinically prescribed way men fulfill the Torah law (*Shabbat Zachor*), which is time-based, may not be binding for women (see Torat Chesed, cited in Yechaveh Daat I:84; Mikraei Kodesh, *ibid.*). If women have an obligation for some type of remembrance but not necessarily like men, it is not surprising that some (including Teshuvot V'hanhagot II:344) say that they should take the opportunity of *Shabbat Zachor* to read those *p'sukim* from a *Chumash*.

There is another possible way for women to fulfill the *mitzva*, which, if correct, does not require an extra action. Some *Rishonim* say that it is possible to fulfill the *mitzva* of *Zachor* by listening to *Megillat Esther*, which women anyway must do and usually even have a *minyan* (see Teshuvot V'hanhagot *ibid.*). It might just be necessary to have in mind for *Zachor* during that time (*ibid.*).

In general, over the last few hundred years, the *minhag* has developed for women to try to make to *shul* for the reading of *Parashat Zachor* (see Binyan Tzion (Chadashot 8) in the name of Rav Natan Adler). When this is doable, it is a good thing. However, if one has difficulty doing this, she should not feel undue pressure, and can rely on the several opinions and the old *minhag* that she does not have to fulfill the *mitzva* the way men do (Yechaveh Da'at, *ibid.*). (Some communities have a second reading. There are different ways of doing this, which raise certain halachic questions (see Minchat Yitzchak IX:68). However, whatever system a community uses should be fine for the individual who wants to hear.)



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# Ein Ayah

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

## Not Washing Away One's Personality

(condensed from Ein Ayah (Rav A.Y. Kook), Shabbat 1:84)

**Gemara:** Abayei said: One who gives his garment to the launderer should give it after measuring it and receive it back after measuring it, for if it is bigger, he damaged it by stretching it out, and if it is smaller, he damaged it by shrinking it.

**Ein Ayah:** [This piece is a continuation of last week's, in which Rav Kook based his thesis on the viewpoint that washing a garment can be a parable for fixing one's personality or actions.]

There is a nice comparison between washing a garment and striving to act in a proper way. When one launders, he should be careful not to harm the essence of the garment. One should understand the same when dealing with his emotional/spiritual side: one should not try to change the essence of his personal tendencies. He will not see success, because his good deeds will come when his spirit is healthy, according to the nature with which his Maker provided him.

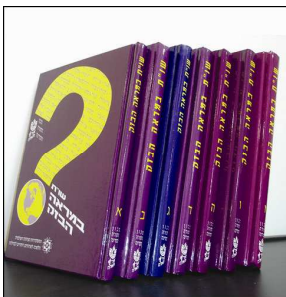
There are people with a personality that tends toward power. It is wrong to try to totally change that. Indeed just as there is use for pleasantness, so there is good use for vengeance and hatred, etc. – in the right circumstances. Traits such as anger and impatience are described as being short (e.g., short-tempered). Such people should clean the blemishes from their personalities, so that they do not use these tendencies to their fullest when not called for. It is good for the world, though, if they can use their tendency to not forgive that which should not be forgiven and to stand up brazenly to the evil who try to harm that which is good. A man with a temper should thus not try to eradicate any trace of anger or other natural personality trait. He should learn how to use the Torah and his intellect in deciding when to allow his anger to be employed.

Returning to the parable, the launderer hints at the feeling within a person to purify himself. One should not give himself over to that good activity without supervision. The measuring one does is the Torah, which tells a person the proper measure of everything that must be decided according to its circumstances. Before starting the cleansing process, he should size up what he should look like at the end of the process. At the end of the process, he should see if there were any undesirable outcomes. For example, if his personality lost too much of its firmness, that is not good.

On the other hand, if he was shortened, that is also not good. If a person tended toward compassion and softness, which is a problem if he allowed the evil to have their way with the righteous, he may want to fix it. However, he should not "let the garment shrivel up," i.e., he should not become an angry, vengeful person. After all, he was created to be compassionate. If he tries to become a different person, he will become an unhappy one. He should just work to remedy the negative ramifications of his personality.

In short, everyone should remain the same "size" as he was originally. "For the spirit will be donned from before Me, and the souls I [Hashem] made" (Yeshaya 57:16). Who is going to go out and change that which Hashem created, as what He does is not to be changed (see Kohelet 3:14). "They are all correct to those who understand and straight to those who find wisdom" (Mishlei 8:9).

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# P'ninat Mishpat

## Agreeing to Not Receive Inheritance from One's Children

(based on Shut Rabbi Akiva Eiger I:138)

[This case is not a *din Torah* of two sides arguing, but of people planning to arrange a system to obviate a halachic situation, which for apparently emotional reasons, they wanted to avoid.]

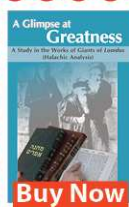
**Case:** A couple got divorced after having children (Reuven, Shimon). The ex-wife (Sarah) [who is apparently a woman of means] has property, which if she dies, would be inherited by her children. Subsequently, if Reuven or Shimon die before their father (Yaakov), the father/ex-husband would gain control over his ex-wife's property for himself. Alternatively, if Reuven or Shimon die without children, Yaakov or their half-brothers from Yaakov and a different mother (Yosef, Binyamin) would inherit Sarah's property that her sons had inherited from her. The husband/father has agreed to take steps to prevent this, but what can be done?

**Ruling:** It is not possible for Yaakov to relinquish inheritance rights, as this does not work for Torah-level inheritance, which occurs automatically.

The only system that will work is, as is done in a *shtar chatzi zachar* (a device which makes brothers share inheritance with sisters), for Yaakov to obligate himself in a large sum of money to someone from Sarah's side of the family. This is to be done with a stipulation that the loan is payable when Yaakov or his family (other than from Sarah's children) receives inheritance of Sarah's property. That would cause Yaakov and his family to have to forgo inheritance from Reuven or Shimon in order to avoid paying the large debt.

Does this system work if Yaakov dies and then Reuven dies? Then Yaakov's brother (Eisav) would inherit Reuven, and even though Yaakov would turn out to be a debtor, Eisav does not have to pay Yaakov's debts from the property he inherits from Yaakov. This is apparent from the halacha (Shulchan Aruch, Choshen Mishpat 104:16, as explained by the Shach (104:21), that a grandson who inherits from his grandfather, when the middle generation died, does not have to use the inheritance to pay the middle generation's debt. This is because the grandson is deemed to be a direct inheritor of the grandfather. So too here, Eisav will inherit Reuven directly, without paying the large debt Yaakov accepted to prevent that situation.

It is true that the Baal Haterumot (48:3) says that only a grandson can claim to inherit while skipping the linking generation and his debts, but when it goes through brothers, the inheriting brother has to use the property to pay the deceased's debt. Even according to this opinion that Eisav would have to pay, if Yaakov remarried and Yosef and Binyamin were born to him, they can inherit their half brother Reuven directly and not pay Yaakov's debt. (This is if we hold like the Beit Yosef (CM 253) that brothers are natural inheritors of each other, without going through their joint father as an intermediary (*mishmush*). The Darchei Moshe does say that brothers inherit only through *mishmush* (ad loc.). However, we have never heard the practice of brothers' inheritance being subject to paying their joint father's debts. Therefore, the suggestion I have made only solves some of the problems, but does not preclude the possibility of Sarah's property going to Yaakov's family in stages.



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