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# HEMDAT YAMIM

## PARASHAT HASHAVUA

Ki Tisa, 17 Adar 5775

### Censuses and *Mikdash* Throughout History

Harav Yosef Carmel

The *parasha* opens with the commandment of how to count Bnei Yisrael, for doing so improperly can cause a plague (Shemot 30:12). This *parasha* opening concludes the command on the construction of the *Mishkan* (Tabernacle).

It also parallels the powerful story of King David's census, after which a deadly plague broke out, when David did not take the prescribed precautions. David built an altar and brought sacrifices, and Hashem heeded his pleas to stop the plague (see Shmuel II, 24). This tragic episode concluded in a historically momentous manner. The prophet instructed David to build an altar at the site of the silo of Aravna in Yerushalayim, which David purchased from him, which became the permanent site of the altar of the *Beit Hamikdash*.

The *midrash* (Midrash Shmuel, ad loc. 31) provides another link between the plague from counting and the building of the *Mikdash*. It says that those who died in the plague in David's times were people who were guilty of not requesting a *Beit Hamikdash* to be built.

What influence did the decision to acquire the silo of Aravna have on future generations? Divrei Hayamim (I, 23) adds insight that is missing in the more cryptic narrative at the end of Shmuel. David offered sacrifices and called out to Hashem, who answered David with fire from the heavens. Hashem instructed the angel, who had a sword in his hand, to return it to its sheath. After the great success in Aravna's field, David wanted to go to the main altar in his time, in Givon, to thank Hashem, but he was afraid to move due to the sword in the hand of the angel.

The fire that came down from heaven connects David to the inauguration of the *Mishkan* in the desert, which also had fire descending to show Hashem's approval. David did not originally understand the message that this place had been chosen as THE new place of service of Hashem, to the exclusion of other places, including Givon. Therefore, the sword had to keep him in his place. David concluded: "This is the House of Hashem, and this is the altar for burnt offerings for Israel" (ibid. 22:1). The period of multiple permitted altars (*bamot*) had ended.

Ezra HaSofer, author of Divrei Hayamim, expounds that the choice of this ostensibly new venue of service of Hashem was actually not new. This location, upon which Shlomo would later build the *Beit Hamikdash*, was Mt. Moriah (Divrei Hayamim II, 3:1), where Avraham had bound Yitzchak, in preparation to sacrificing him.

Actually, this location goes back all the way to Adam. He was banished from the Garden of Eden, the place where he was created. He was prevented from returning by a special sword of angels, which is a precursor for David being similarly prevented from returning to his old form of service of Hashem.

The Rambam (Beit Habechira 1:3) seems to pick up on this, explaining that once Yerushalayim and its Mt. Moriah were chosen in the time of David, sacrifices elsewhere became forbidden. He continues (ibid. 2:1-2) that this altar that David declared was the eternal one was in the place where Yitzchak was bound and that Adam offered a sacrifice when he was created, as one receives atonement in the place where he was created.

We pray to merit returning to the level of revelation of the Divine Presence at the foundation place of our national lives – at the location of the past and future *Batei Hamikdash*.

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by Rav Daniel Mann

## Ranking *Mishloach Manot* Stringencies

**Question:** I have heard so many opinions about *mishloach manot* requirements (enough for a meal, different *berachot*, cooked food, etc.). Which are necessary?

**Answer:** We will refer to the practices you mention and a few others (not exhaustive), categorizing them according to our appraisal of the *chumrot*.

**Proper to Be Careful** (strong opinions require them)

**Respectable quality/quantity** – The *gemara* (Megilla 7b) tells of Amoraim sending simple foods and sharp spices, respectively, and a colleague implying this was inappropriate. Many explain that *mishloach manot* are supposed to foster warm relations and/or that they are for *seudat Purim* use (see Shut Chatam Sofer, Orach Chayim 196). Therefore, it can be expected that *poskim* say the *manot* should have some importance (Aruch Hashulchan, OC 695:15) and perhaps that this is magnified by the giver and/or the recipient's affluence (Ritva, Megilla 7a; Chayei Adam 155:31; Be'ur Halacha 695:4). The opinions (see citations in Yalkut Yosef, Moadim, p. 329, Mikraei Kodesh (Harari) 12:4) that one person's *mishloach manot* should suffice for some level of an independent meal (as opposed to an enhancement) are fewer and weaker.

**Ready to be eaten** – The Magen Avraham (695:11) requires that meat that is given be cooked. The logic is that raw food misses the mark, as the recipient cannot enjoy it without effort. The Mishna Berura (695:19) cites this as the main ruling, while noting there are distinguished lenient opinions. (Some mistakenly understand that one must give cooked food. Actually, the issue exists only for food that is inedible raw.) While important *poskim* are lenient (Yalkut Yosef, *ibid.* p. 318), it would be strange not to follow such an easily-followed logical stringency.

**One May Want to be Careful** (minority strict opinions with a measure of weight)

**Drinks do not count** – Some claim that *manot* refer to solid food, not drinks. However, the *gemara* (*ibid.*) that tells of a rabbi who sent a nice portion of meat and a barrel of wine indicates drinks are fine (Terumat Hadeshen I:111), as the Magen Avraham (*ibid.*) and Mishna Berura (*ibid.*) rule. According to a minority opinion's reading of the Yerushalmi's version of the aforementioned story, those *manot* were insufficient because drinks do not count.

**Kedushat shvi'it** – The Ben Ish Chai (Torah Lishma 193) includes *mishloach manot* in the prohibition on using *Shemitta* produce for paying various debts (Rambam, Shemitta 6:10). He applies this not just to fulfilling the basic *mitzva* of *mishloach manot* but even to giving to those who have already given you. Many are lenient (see Minchat Yitzchak X:57), apparently including our mentor, Rav Shaul Yisraeli (see Mikraei Kodesh 12:(31)). Some are *machmir* only to the extent that without the *shvi'it* produce, he has not fulfilled the *mitzva* (Mishnat Yosef, cited in Minchat Yitzchak *ibid.*).

**Separate utensils** – the Ben Ish Chai (I, Purim 16) says that whatever is in one utensil counts as one *mana*. This is difficult concerning foods that are, by their nature, unrelated (as opposed to something like assorted candies in a container – see Hitorerut Teshuva I:126). However, probably partially in deference to the Ben Ish Chai's stature, several Sephardic *poskim* endorse this stringency *l'chatchila* (Yalkut Yosef, *ibid.* p. 330).

**Unwarranted Stringency**

**Foods of different *berachot*** – The *manot* must be unique. Most *poskim* say not to suffice with one food separate into two portions (even if each is big). However, the idea that foods' *berachot* are an indicator of being separate is contradicted by many prominent sources and is illogical (meat and juice share a *beracha*; different types of potato chips do not).

The stringencies are meant to ensure one fulfills the formal *mitzva* and are not always indicative of the *mitzva*'s goals. Therefore, if you give "halachically *mehuda*" *mishloach manot* to one person, the idea of giving to many people to cultivate friendship (Shulchan Aruch, OC 695:4) can be done in any way that enhances the Purim spirit. Do not let *chumrot* stifle your energy or creativity.



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# Ein Ayah

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

## The Limits and Significance of Human Ingenuity

(condensed from Ein Ayah, Shabbat 1:87)

**Gemara:** “You shall not burn fire in all your inhabitations [on the day of Shabbat]” (Shemot 35:3). In all your inhabitations you shall not burn fire, but you may burn fire in [some context within the Temple]. Rav Chisda said: The *pasuk* was needed to permit the burning on the altar of the appropriate parts of the animals from sacrifices.

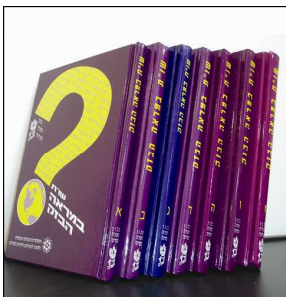
**Ein Ayah:** The burning of fire is a new activity that man initiated for his needs, employing great ingenuity with which Hashem blessed us. The Torah forbids burning on Shabbat, so that when we are refrain from it, we demonstrate that all of existence is the making of the hands of Hashem. The Torah chose to mention this *melacha* explicitly, as opposed to almost all *melachot*, which are referred to generically. This inculcates us with the realization that it is not enough to credit Hashem with natural phenomena, but we should attribute to him even that which man invents from nature with the wisdom He provided us. Hashem leads us so that things are used for great purposes for mankind’s advancement through the conduit of man’s intellect. That is why burning is singled out.

On the other hand, not only should man recognize Hashem in his achievements, but he must realize that Hashem wants man to continue being creative, through which he is capable of making great and valuable changes. He should just make sure that these innovations are consistent with a tradition of justice and with divine propriety. That is why the classic setting in which the positive elements of creativity are raised is in the Temple. That is the place where it is proper to teach all of mankind their responsibilities as individuals and as a collective. In the face of the needs of service of Hashem, there is no refraining in the *Mikdash* from actions that would otherwise be a desecration of Shabbat. In other words, it is necessary to impress on man that service of Hashem is his realm. Man should work to serve, glorify, and elevate until he creates new realities in the world, based on a new heart and a new spirit of improvement.

It is with regard to the discovery of fire, which was the classic human innovation, that it is taught that man is capable of inventing things that interplay with divine creations. This should be a constant reminder of how far man can go when he follows the path that his Creator set for him. He should not deny his ability to create new things. The righteous are prepared to give the world a “new face” with good improvements, for they are servants of Hashem who are dedicated to serving Him.

When mankind will be fully developed, righteousness will be the source of all actions and innovations will need to be drawn from the wellspring of the morality of the *Beit Hamikdash*. Instead of stressing that everything is from Hashem, so that he not stray from the path of the truth, the focus will be different when man is on a higher level. Man will realize his great role in the world and that he can make striking changes in creation through his service of Hashem. The use of fire will be a sign of the beginning of man’s creativity. It will arouse him to follow the path of improving human society and all life that is related to it. That is why it was permitted to use fire to consume parts of sacrifices. This shows that just as it is necessary, at man’s own high point, to recognize Hashem’s power, so must he realize also at the time of relative lowliness how great he, as a human being, is.

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# P'ninat Mishpat

## Rules of Bar Metzra (Neighbor's Precedence)

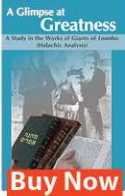
(based on Shut Rabbi Akiva Eiger I:140)

**Case:** Reuven and Shimon share a house, with each one having his own section; they both have equal rights to traverse the house's courtyard. Reuven has a cellar in his side of the house, with a baker's oven. Reuven has rented the oven to Levi for several years. Now that the rental period is over, Shimon has asked to rent the cellar from Reuven instead of Levi, who wants to continue renting. The question is whether there is a rule of precedence based on *bar metzra* rights (precedence of a neighbor or one with another unique connection to acquire an adjacent property), which would dictate that Reuven should allow Shimon or Levi to rent the cellar.

**Ruling:** Shimon cannot claim that he has *bar metzra* rights based on his being Reuven's partner (i.e., allowing a partner to acquire full ownership when his partner wants to divest). This is because there is no part of the property in which they are joint owners. Even though Reuven and Shimon share rights to traverse the courtyard jointly, this does not make them partners. We see this from the following ruling of the Rama (Choshen Mishpat 175:51). The Rama says that if one person owns a house and another owns its attic, and the owner of the house sells it to a *matzran* (a neighbor), the owner of the attic cannot nullify the sale with the claim that he has precedence (a partner is better than a neighbor), because he is not considered a partner. This is despite the fact that the owner of the attic has rights to traverse joint areas. The important thing is that he does not have rights in the land itself. Although the S'ma (175:95) questions the Rama's ruling, this is because he considers the ground of the house "responsible" for the needs of the attic, which does not apply in this case.

Since we have determined that Shimon is only a neighbor of Reuven and not a partner, we revert to the rule that one who rents property has precedence regarding acquiring it over a neighbor of the property. This is true to the extent that even if the neighbor already bought the property, the renter can extract it from him (S'ma 175:116). Although the Taz (ad loc.) takes issue with the S'ma, that is concerning a field next to the one he rents or to buying the property he currently rents. However, in regard to continuing to rent the property, he certainly has precedence over a neighbor.

The Maharshah (Shut 43) rules that regarding the rights to rent from a neighbor a *matzran* does not have extra rights. In contrast, according to the S'ma and the Taz, a renter is even better positioned to continue renting than a permanent neighbor is to begin renting. Therefore, as far as who the proper person is to give the right to the first chance to rent, it is clearly Levi, the current renter.



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