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HEMDAT YAMIM

Parashat HaShavua

Pinchas, 17 Tamuz 5776

Analysis or Tradition

Harav Yosef Carmel

We have discussed in the past *Chazal's* identification of Eliyahu HaNavi as Pinchas. Now, we shall discuss the general, fundamental question as to the methodology used in making such determinations. Do *Chazal* base the statement that Ploni is the same person as Almoni on tradition, or are their conclusions based on tools of analysis of *Tanach* that are parallel to the 13 principles of learning halacha from the *p'sukim*? In our new book, *Tzofnat Yeshayahu* (on *Sefer Yeshayahu* – see pg. 17) we call the phenomenon of the same words appearing in the two contexts whose characters are to be equated, “footnotes.”

Let us ask the question in regard to Pinchas the son of Elazar, a junior leader in the period of Moshe and Yehoshua. Pinchas is mentioned by name at the time of the Judges (20:28). Eliyahu arises hundreds of years later, as a prophet at the time of King Achav. Was there a tradition that he was the same person or is there some scriptural hint to connect the two? According to the second approach, the hint might not necessarily indicate that they are literally the same person but that there are spiritual connections between two distinct people. (While it is surprising that Pinchas would live hundreds of years, there is no reason to dismiss it as a possibility.)

Let us take a look at the book of Ruth (by chance, the *sefer* where we learn of Ploni Almoni). When, within the period of the Judges, did this story happen? One opinion in the *gemara* (Bava Batra 91a) is that Boaz was the judge Ivtzan. This puts the chronology close to the end of the era of Judges. In contrast, Rabbi Yossi ben Chalafta in *Seder Olam Rabba* (12) puts the story and its characters in the time of Ehud (before his rebellion against Eglon), which is toward the beginning of the period of the Judges. As support, *Seder Olam* cites the *pasuk* “in everything in which they went out, Hashem’s hand was against them” (*Shoftim* 2:15).

What does *Seder Olam* learn from that *pasuk*? Naomi, speaking to her daughters-in-law, says how hard things were for her and that “the Hand of Hashem has been against me” (*Ruth* 1:13). *Seder Olam* sees this coincidence of terminology as a means of linking the two stories to each other. There is actually a linguistic hint to the *gemara's* identification as well. Ruth’s story is based around the town of Beit Lechem, where Boaz lived and operated. Ivtzan is also identified as hailing from and being buried in Beit Lechem (*Shoftim* 12:8-10).

What we have not yet solved is whether in the case of Pinchas and Eliyahu, the connection is based on tradition or exegesis. In any case, we bless all that we will be careful in our observance of tradition and that we will also be proficient in Torah study, with a style of analysis which we have learned from our rabbinic predecessors.

Refuah Sheleymah to Orit bat Miriam

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Ask the Rabbi

by Rav Daniel Mann

Tefillin in Pre-Dawn Hours

Question: I work at a hospital and, some days, I am unable to wear *tefillin* during the day, but only pre-dawn. May I then put on *tefillin* before its regular time? [*Our staff knows the querier.*]

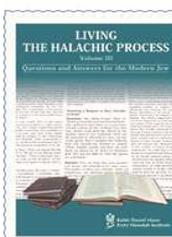
Answer: There are varied opinions among the *Tannaim* if, fundamentally, the *mitzva* of *tefillin* exists at night (Menachot 36b). According to most *Rishonim* (see Beit Yosef, Orach Chayim 30; the Rambam, Tefillin 4:10 is a notable exception), *tefillin* does apply at night, fundamentally. However, we are not allowed to put on *tefillin* at night because of the concern that we may fall asleep and then release gas with the *tefillin* on (Rashi, Menachot 36b). (Certain circumstances, e.g. – the *tefillin* are still on from daytime, one needs the *tefillin* on to protect them – complicate the matter.) Although a halachic day starts at *alot hashachar* (72-90 minutes before sunrise), we are not supposed to put on *tefillin* until “*misheyakir*,” approximately 50 minutes before sunrise.

A *baraita* (Menachot 36a) says that if one will be on the road from before the time of *tefillin* and is concerned that if he does not wear them they are more likely to get lost, he can don them but make the *beracha*(ot) when the proper time comes. The Rambam does not cite this *gemara*, apparently because he reasoned it followed the opinion, which he did not accept, that *tefillin* fundamentally applies at night (see Beit Yosef *ibid.*). However, the Shulchan Aruch (OC 30:3) does *pasken* this *baraita*, and the Mishna Berura (30:11) assumes that this traveler can put on the *tefillin* even before *alot hashachar*.

One crucial question is about the nature of the above permission to put on the *tefillin*. Is it a sign that one is performing the *mitzva* before its normal time, or is he just wearing the *tefillin* to protect them without doing the *mitzva* at that time? The idea of waiting with the *beracha* seems to indicate that he does not fulfill a *mitzva*. In fact, Rabbeinu Peretz (cited by the Tur, OC 30) says that the *baraita* follows the opinion that *tefillin* does not apply at night, but that according to our ruling that it does, the traveler should make the *beracha* right away. The Shulchan Aruch (following the Rosh and others) rules not to recite the *beracha* then. The Shaagat Aryeh (45) posits that one fulfills the Torah-level *mitzva* of *tefillin* at that time, just that given that the Rabbis generally required to wait until *misheyakir*, the *berachot* were not instituted for unusual circumstances when it is permitted earlier. Eliya Rabba (30:3) says that if one mistakenly makes the *beracha* before daytime, he does not repeat it at the right time because the *beracha* was valid due to the Torah-level fulfillment. Rabbi Akiva Eiger (to OC 30:3) agrees not to repeat the *beracha* in that case, but it is due to the possibility that Rabbeinu Peretz is correct and the *beracha* was the right thing *l'chatchila*.

So while some disagree (see Divrei Mordechai (Friedberg) 4), we assume there is benefit to putting the *tefillin* on even before *alot hashachar* if the alternative is not putting them on at all. This is the recommendation of Rav Moshe Feinstein (Igrot Moshe, OC I:10) and Rav Moshe Shternbach (Teshuvot V'hanhagot I:49). Rav Feinstein adds that if the person will not take the opportunity seriously if he is told not to make a *beracha* (this does not apply to you), one can rely on Rabbeinu Peretz and make the *beracha*. Rav Shternbach believes it is rare for a person to have no opportunity to put on *tefillin* for a few seconds and suspects that the issue is more often embarrassment to put them on at the workplace (we do not suspect this applies to you, either), which he does not consider justified in our times.

Permission for the traveler to put on *tefillin* at night is based on the assumption that he will not fall asleep in those circumstances. Therefore, if one is not walking or riding but is being drawn in a carriage, he may not wear them (see Magen Avraham 30:5; Taz 30:5). If a doctor is on a long shift in which he is able/expected to catch power naps, the leniency does not apply.



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Connecting the Seasons and the Deeds

(condensed from Ein Ayah, Shabbat 2:225)

Gemara: Due to the sin of not giving *terumot* and *ma'asrot* (tithes to *kohanim* and *levi'im*, respectively), the skies are prevented from giving rain and dew, prices rise, people lose their profits, and people pursue their livelihood and do not achieve it. This is as the *pasuk* says: "Desolation and also heat will steal the water of snow; they have sinned to the depths" (Iyov 24:19). What is the implication? Because of things about which I commanded in the summer and you did not do, you will have the waters of snow withheld in the rainy season.

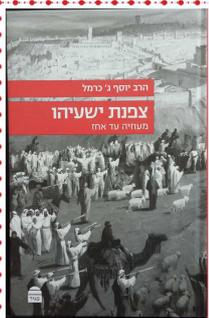
Ein Ayah: The concept of a broad blessing that stems from the joining together of powers that appear distant from one another can be seen in all elements of creation.

A prominent example, which is testimony to the great broadness of the concept, is the seasons of the year, which have very different characteristics, yet join together. The summer and the winter [the rainy season in Israel], despite their greatly different characteristics, are unified in providing the basis for the survival and the welfare of life, based on the influence of their interconnection. It is specifically the heat of the summer that causes that the cold of the winter is able to bring rain. [Presumably this is referring to the phenomenon that the sun hastens the evaporation of water, which provides the water for rain.] The impact of the heat on the cold when they join together is called "the water of snow."

Just as this phenomenon is found regarding seasons, so it is found regarding actions and regarding different categories of people. There are people who are set aside for matters of sanctity that are used for the service of Hashem and spiritual matters. They are connected with "people of actions" involved in the fleeting times and improving the physical world for their own benefit and that of others. When they interact properly, with each one benefiting from and helping the other act properly, human society and especially the Jewish national entity will be set and will maximize its full spiritual potential.

When those elements designed by Hashem to be linked together fail to be so, the fabric of society develops visible ruptures. One major example relates to the covenant between those of the Jewish people who were given a portion in *Eretz Yisrael* and the *kohanim* and *levi'im* who were not, so that the former should support the latter. Tithes are not given when people do not fully understand the situation and are not emotionally sensitive to the needs of the national functionaries. Different parts of society appear distant from each other, in contradiction to Hashem's desire to link them through the arrangement of multi-faceted mutual assistance.

Those who do not do their duties in the summer, when produce is in the field, show that they separate themselves, as if all parts of the nation do not form one entity. Just as when the heat of summer does not provide water for winter precipitation, there are severe climatic consequences, so too, nationally, when the people do not support *kohanim*, there can be physical consequences such as withheld rain, which causes people to contemplate the situation. "Let us hear what Hashem will say, when He speaks of peace for His nation and the righteous therein, and they will not return to unwise behavior. Hashem's salvation is close to those who fear Him so honor will dwell in our Land. Kindness and truth will meet; justice and peace will kiss. Truth will grow from the Land, and justice will gaze from heaven. Hashem will also give goodness, and the Land will give its produce" (Tehillim 85:9-13).



Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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A Loan or a Gift? – part I

(ruling 74052 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: A few years ago, Shimon wanted to buy a home and asked his brother, Levi, for help. Levi gave 60,000 shekels and then later another 100,000. Levi has put Shimon on notice that he wants Shimon to repay him the 100,000 shekels, which was a loan, when he has the ability. Shimon asked *beit din* to make a declaratory ruling that the money had been a gift. This is evidenced by the fact that there was no loan contract and is in line with the many gifts Levi had given Shimon over the years. Something had just caused Levi to “change his tune.” Levi says that originally Shimon had asked him for a loan for the entire cost of the home, but that he had agreed only to a more modest gift plus a loan. Levi described a discussion before the loan in which he had said that he was unable to give the 100,000 as a gift. Shimon says that occurred well after the money was given, and that, in any case, Levi had previously pledged the money as a present, without which Shimon would not have bought the home.

Ruling: Even if Levi originally pledged a gift, he is not legally required to fulfill the pledge (Shulchan Aruch, Choshen Mishpat 204:8), and therefore Shimon cannot rely on it as a determinant that the payment was a gift.

The Shulchan Aruch (CM 75:7) rules that not only can one deny receiving a loan or a *pikadon* or say he returned it, but he can also say that the money he received was as a present or that the giver was *mochel* the need to return it. He needs only a simple oath (*heset*) to be exempt. However, the Shach (75:22) and others say that the latter two claims are weak ones, which one is believed about only if he has a *migo* (the ability to be believed with another claim). The Sha’ar Mishpat (ad loc.) disagrees with the Shach. The Shulchan Aruch (CM 58:2) says that if Reuven owed money to Yehuda with a document and Reuven was seen giving money to Yehuda in a context that is not clear, Yehuda can say that it was payment for another loan (without a contract) *migo* of the claim that it was a present. On the other hand, the Rama (ad loc.) rules like the *Rishonim* that in such a case, Yehuda would not be believed that the money transfer was either a present or for another loan. *Acharonim* says that, in this regard, the situation of there being a document affects matters.

In this case, Shimon does not have a *migo*, as regarding such a large sum of money, which is almost never given without involvement of banks (checks or bank transfers) it is not feasible to claim that he did not receive the money or that he returned it. Therefore, whether Shimon is believed that he received it as a present or not depends on the above opinions, and, in any case, he would have to make a *shevu’at heset*.

Beit din rejects Shimon’s proof that the money was a gift from the fact that there was no document. It is not unusual to trust a close relative with payment without a document.

Next week we will explore the possibility that the assumptions of whether one is likely to give a gift are different when the people involved are close relatives.

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