

HEMDAT YAMIM

PARASHAT **Yitro**

19 Shevet 5768

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This edition of Hemdat Yamim is dedicated in loving memory of **R' Meir ben Yechezkel Shraga Brachfeld**

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Max and Mary Sutker and **Louis and Lillian Klein, z"l**.
May their memory be a blessing.

“Do Not Go Up With Steps”

Harav Yosef Carmel

Twice in our *parasha* we find the warning to be careful how to go upward. The first time is the one-time commandment to Moshe to make *Har Sinai* off limits to most of Bnei Yisrael during the giving of the Torah. This was necessary lest someone go up on the mountain or see what he should not, which could cause the falling of “*rav*” (which can mean many people or a great person) (Shemot 19: 12-22). Toward the end of the *parasha* the Torah instructs to build a ramp for the *mizbe'ach* (altar), for if one were to go up with steps, his private parts might be seen (ibid. 20:22).

If one takes the *p'sukim* at face value, there does not seem to be a connection between the two topics. One rule has to do with avoiding an overwhelmingly holy place that happens to have been a mountain. The other seems to deal with a technical concern to avoid something unseemly when one properly ascends the *mizbe'ach*. However, let us explore a homiletic idea that will add a further aspect to our appreciation of these topics.

The Meshech Chochma (Shemot 19:22) raises the idea that those closest to Hashem are liable to receive severe punishment for their sins. As Hashem knew that shortly after the giving of the Torah, Bnei Yisrael would sin with the Golden Calf, He was concerned about the severity of the punishment that would be needed. Had Bnei Yisrael been allowed to go up the mountain and be exposed to Divine Revelation in an even more profound manner than they actually were, their level of culpability would have been so great as to mandate full destruction. Therefore, Hashem prevented them from attaining a dangerously high spiritual level. Indeed, unchecked rapid spiritual growth can cause a precipitous spiritual fall if proper spiritual protections are missing. As mentioned above, going up the mountain could have caused the fall of many and/or the great.

The Divine Presence that rested on Sinai later departed and appeared on the *mizbe'ach* of the *Mishkan* and the *Beit Hamikdash*. Following the Meshech Chochma's lead, we can conclude that there too it is important to check how we go up to the altar. To understand how that might apply, let us look at the Kli Yakar on the concept of uncovering oneself when walking on steps. He says that this alludes to haughtiness, as *Chazal* say that one who is haughty is like one who carries out sins of incest or promiscuity. In *Mishpatim*, we learn that the Sanhedrin was placed near the altar to teach us that the same need of humility is required regarding judgment as well.

If one is elevated too fast he may stumble in his self-image and suffer from over-confidence as if that is his natural position. This can lead even or especially a person of stature to a situation that is comparable to promiscuity and in some cases to promiscuity itself.

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Ask the Rabbi

Question: On Friday night, I took the *chulent* off the fire, took some out while holding it, and returned it to the fire. While tasting the sampling, I found that it was not fully cooked (but was edible). How bad was what I did, and was it permitted to eat the *chulent* the next morning?

Answer: According to your description, the food was *k'ma'achal ben d'rosai* (=kmbd; nominally edible) when you took it out but not *mevushal kol tzorko* (fully cooked). According to the most accepted opinion, returning such food until it cooks fully is a Torah-level violation of cooking on Shabbat (Shulchan Aruch, Orach Chayim 318:4, based on the Rambam). (See lenient opinion below.) You also previously violated a less severe prohibition of *meigis* (stirring), which regarding not fully cooked food exists even when one just removes food with a spoon even off the fire (ibid.:18). In general, we urge *chulent* preparers to make a decision to do one of the following. Either cook it long and/or hard enough to ensure that it is fully cooked before Shabbat or refrain from handling it (including its lid) until the morning.

Is the food forbidden *b'dieved* (after the fact)? There are differences in this matter between the two issues involved in returning food to the flame on Shabbat. One issue is actual cooking, which may include a Torah prohibition when the food was not fully cooked or it contains liquid that cooled and is forbidden to be reheated according to many. The other is the rabbinic prohibition of improperly putting even cooked foods on a heat source (*chazara*) in a manner where there is a concern that one will tamper with the fire or it may look like cooking (see Orach Chayim 253).

Regarding cooking, the Shulchan Aruch (OC 318:1) rules that even if something was cooked unintentionally (=b'shogeg), it may not be eaten on Shabbat. The Mishna Berura (318:7) says that in a case of need one can rely on the opinion that when Shabbat was violated *b'shogeg*, the result is permitted *b'dieved*. There is another reason to be lenient *b'dieved*. The Rashba and several others (see Biur Halacha to 318:4) say that there is no prohibition (from the Torah and, perhaps, at all) to cook food after it is *kmbd*. The logic is that since the Torah forbids cooking raw food to the point of *kmbd*, *kmbd* must be halachically cooked after which there is no prohibition. When we accept a stringent position and one acted according to significant authorities who rule leniently, the Rabbis did not prohibit the result *b'dieved* (Mishna Berura 318:2). This applies to our case. Even if the Rashba prohibits cooking *kmbd* food rabbinically, if one violates Shabbat rabbinically *b'shogeg*, the result product is permitted (Gra, accepted by Mishna Berura 318:3).

Paradoxically, the result of the rabbinic prohibition of *chazara* is more stringent *b'dieved* because of the concern that someone will purposely violate these rules which he views lightly and claim that he did so *b'shogeg* (Shabbat 38a). Therefore, one may not benefit on Shabbat from the fact that he left (or returned) food on the flame even *b'shogeg*. Thus, if it became fully cooked during that improper time it is forbidden to eat (Shulchan Aruch, OC 253:1).

However, the five basic various requirements of *chazara* differ in this regard. They are: 1) a covered flame; 2) one kept it in his hand; 3) he intended to return it; 4) the food was fully cooked; 5) the food is slightly warm (Shemirat Shabbat K'hilchata 1:18). The first three are related to *chazara* per se and are governed by its strict rules regarding *b'dieved*. However, the fact that it must be fully cooked beforehand is only to avoid cooking, not *chazara* (Biur Halacha to 318:4; Orchot Shabbat 2:40). In fact, according to the lenient opinions regarding *kmbd*, *chazara* was permitted in our case and, in the final analysis, the *chulent* in question was permitted.

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

The Approaches of Chasidut, Hitnagdut, and the Mussar Movement**Part VIII (end of series) – (from Perakim B'Machshevet Yisrael, pp. 515-531)****Mussar – part III**

There are two approaches to learning *mussar*. One is to rile up the soul and purify one's conception by impassioned speech or a sad tune that lowers his self-confidence. He can shake up his inner personality until the excitement in his heart makes his limbs carry out good actions whether of will or of self-coercion. A second approach is to devise techniques to lower the trials that arise before a person, by using natural characteristics to counteract problematic tendencies, and make it easier to contain one's inclinations.

One technique is to repeat sharp *mussar* sayings that influence him. Repetition transfers influence from the upper levels of consciousness to the sub-conscious, so that one can do certain things automatically without deliberation. Since one's inclinations work on the sub-conscious level, they should also be combated there.

Along with the idea of improving one's conception of serving Hashem and seeing himself only as fulfilling the will of the Creator, *mussar* returns the simple palpable element of fear of punishment. Fear is not the goal itself, as it can depress a person or cause him to rebel. Rather it serves as a healing remedy. It is unpleasant to hear about punishment (although it is much less pleasant to receive it, Heaven forbid), but one should realize that it can help him tremendously.

Mussar can teach a person his weaknesses, his desires, and the forces that push him to act that are often hidden from him. It teaches him to search for the microscopic point from which great divergences start that could send him in the direction of sin rather than righteousness. It also shows one how to overcome weaknesses and proceed toward true completeness.

The sources of *mussar* teachings are from *Tanach* and Rabbinic writings. *Tanach* includes several positive role models, and *Chazal* say that one should ask himself when his actions will reach those of his fathers. There are also negative models whose actions we must avoid. Through *Chazal's* eyes, we discern the nuances of the respective positive and negative lessons and their application.

Through *mussar* one learns to train his wills, to set for himself high standards, and to be vigilant to carry them out in a reliable manner. He learns to judge himself and others objectively, striving for the point of truth and not being intimidated by difficulties. The man of *mussar*, through his uninterrupted training, develops a skill to see things through to fruition, even when they seem impossible for such a person.

The teachings of *mussar* are teachings of the individual. They do not give any special standing to the community as a community, which it sees as a conglomeration of individuals. They do not discuss the concept that the whole of the nation is greater than the sum of its parts. On one hand, this is against its thesis, but on the other hand it indirectly causes the elevation of the communal worth. While *mussar* does not negate the importance of one striving for his own welfare, it does fight against the negative elements that may accompany one's concern for himself. By developing an ethical frame of mind, *mussar* teaches its student that another's welfare does not threaten him. To the contrary, the more he is concerned about his friend the greater his own benefit will be (R. Simcha Zisel of Kelm). It is specifically a person's concern for his own welfare that gets him to seemingly sacrifice himself for the benefit of others around him. The community is also enhanced by the improvement of the individual since individuals make up the whole. This being said it is still the individual who is the focus of the building that *mussar* sets out to accomplish, according to the thesis that an individual has the value of a whole community.

Mishpatey Shaul– A new edition containing unpublished rulings by our late mentor, Maran Hagaon HaRav Shaul Yisraeli zt"l, in his capacity as dayan at the Supreme Rabbinical Court in Jerusalem. The book includes halachic discourse with some of the greatest poskim of our generation. The special price in honor of the new publication is \$15 (instead of the regular \$20).

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P'ninat Mishpat

The Responsibility of a Landlord for Water Damage to the Tenant

(based on Halacha Psuka, vol. 38 – condensation of an unpublished *p'sak* of the Beit Din Mishpat V'Halacha B'Yisrael)

Case: The plaintiffs (=pl) rented an apartment from the defendant (=def). Soon before the end of the rental, they traveled abroad for a few weeks and, when they returned, found the apartment flooded by a seriously leaking hot water tank, with the content of several boxes of their belongings damaged. They claim that since the tank belongs to def, he must pay for the damage and add that def accepted upon himself to pay for the damages and only afterward withdrew his commitment. Def claims that he is not responsible for damages that occurred to the apartment while it was rented to pl and that, in any case, the damage occurred because of pl's extended stay abroad.

Ruling: The damage was done by the water from the tank. While def is the owner of the tank, pl would seem to be the owner of the water, for which he pays, from the time it passes through the water meter.

Even if the water did belong to def or we would consider his tank to be the object that effectively caused the damage, we should still exempt def for the following reason. The *mishna* (Bava Kama 44a) says that if an animal was given over to any type of watchman, the watchman takes the owner's place regarding to the responsibility to pay. Therefore, although the apartment belongs to def, it is pl who is responsible for damages that are caused by the property during the time it is under his control. It is true that *Rishonim* dispute whether the giving of an object to a watchman fully undoes the owner's responsibility (see Rambam, P'er Hador 39 and Ra'avad, Nizkei Mamone 4:4). However, that is in reference to third parties; there is no room to say that the owner would have to pay the watchman for damage to the latter under his watch (see Sha'arei Shaul, Bava Kama 1:7).

In general, only regarding damages that a person does himself (as opposed to damage done by his property) is it possible to make one pay regardless of negligence on his part (Shulchan Aruch, Choshen Mishpat 396:2). Since def had no reason to expect that his (relatively new) tank would spring a leak and, to the contrary, it was pl's prerogative to have closed the pipes before leaving, put his belongings in a place they would not have been damaged, or ask someone to check in on the apartment, it is not possible to obligate def.

Regarding the alleged self-obligation of def to pay for the damages (which def denies) one can obligate himself in a binding manner after the damage already occurred only by making a *kinyan*. One could consider whether there is a moral obligation to keep his word, as we find for one who asserts that he will give his friend a present (see *ibid.* 204:8). However, that is only when the present is a small one (*ibid.*) and, in our case, pl is claiming a relatively large sum of money.

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