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# HEMDAT YAMIM

## Parashat HaShavua

Vayeishev, 23 Kislev 5780

### Kingdom, Independence, and Chanuka

Harav Yosef Carmel

Yosef was the first to present a vision centered around a king to whom all bow down. The question of monarchy is also one of the major themes that are dealt with during Chanuka, which always falls during or right after the reading of *Parashat Vayeishev*. The Rambam makes a strong point about the place of the Jewish kingdom after the Maccabean victory. At the end of his description of the historical events (Megilla V'Chanuka 3:5), he declares: "... and kingdom returned to Israel for more than 200 years until the destruction of the Second Temple." Let us look at other spiritual significances that independent Jewish leadership in Israel has.

The Torah describes in *Sefer Devarim* how we are to determine when it is time to build the *Beit Hamikdash*. "For you have not come to this point to the *menucha* (rest) and the *nachala* (inheritance) that Hashem your G-d is giving you. You shall cross the Jordan and live in the Land that Hashem your G-d is giving to you as an inheritance, and He will give you respite from all of your surrounding enemies, and you will live in security. And to the place that Hashem your G-d will choose to have His Name dwell, you will bring everything that I am commanding you – your burnt offerings, ... (Devarim 12:9-12).

When were these conditions realized? The first *pasuk* speaks of *menucha* and *nachala*. *Nachala* certainly relates to *Eretz Yisrael*. It is indeed impossible to build the *Beit Hamikdash* outside of *Eretz Yisrael*. But what does coming to *menucha* mean? From the continuation of the *p'sukim*, it seems that it is Hashem giving respite from all their enemies. When did this occur?

It is said about David: "And it was when the king sat in his home and Hashem gave him respite in his surrounding from all of his enemies, the king said to the prophet Natan: 'See that I am living in a house made of cedar wood, and the ark of Hashem is located within sheets.'" (Shmuel II, 7:1-2). Apparently, at this time David thought that the conditions set out in Devarim were fulfilled. But if *menucha* meant that there were no wars to wage, it is difficult, as the next *perek* in Shmuel refers to several more battles waged.

The *Rishonim* deal with this and offer several possibilities, which will be discussed in our *sefer*, *Tzofnat Shmuel*. Let us offer an old-new idea.

After David set the Jews free from the dominance of the Plishtim (see Shmuel II, 5), David declared the existence of an independent Jewish state, with Yerushalayim as its political capital. In the next *perek*, David declared Yerushalayim as the spiritual capital of the Jewish people for all generations. For this reason, he brought the ark to the City of David. While there were still enemies around, with whom David fought later on, David already wanted to build the *Beit Hamikdash*.

We can learn from here that *menucha* means independence, not the absence of war, even if with imperfect security. That is already called giving respite from enemies. As Chanuka draws close, let us add to our prayers and thanks the prayer of *Al Hanisim*, while keeping in mind the great miracles that our generation has witnessed.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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# Ask the Rabbi

by Rav Daniel Mann

## Switching Chazanim at Ashrei

**Question:** In my small, Ashkenazi *Shacharit minyan* (without a *rav*), we now have two *aveilim*. They have been switching being *chazan* at *Ashrei*, but recently some people (mainly Sephardim) raised objections. I thought it was a standard practice. Is there a problem with it?

**Answer:** There is a consensus that *Kaddish Titkabel* (after *U'va L'tziyon*), including the line that Hashem accept our prayers, relates to *chazarat hashatz*. For example, the Shulchan Aruch (Orach Chayim 123:5) says that a *chazan* does not take three steps back after *chazarat hashatz*, as one does after the silent *amida*, because he will do so at *Kaddish Titkabel* (Mishna Berura 123:18). (For this reason, the *chazan* should not talk between the end of *chazarat hashatz* and *Kaddish Titkabel* (ibid.).) The Rama (OC 55:3) says, regarding the rule that when the *minyan* quorum is lost in the middle of a unit we finish up the unit, that this rule allows saying *Kaddish Titkabel* if *chazarat hashatz* began with a *minyan*. Therefore, your *shul's* dissenters have logic to posit that one who did *chazarat hashatz* should finish the *Kaddish* that completes it. On the other hand, it is possible to split units among people. If needed, the *chazan* can be switched even in the middle of *chazarat hashatz* without returning to the beginning (Shulchan Aruch, OC 126:2).

The question is whether a *shul* should ever choose to do this. An early source providing a scenario when this is called for is the Rama in the laws of *aveilut* (Yoreh Deah 364:4). In promoting the idea that an *avel* being *chazan* provides better virtue for the deceased than his reciting *Kaddish*, the Rama says that if an *avel* is not a fluent *davener*, he should be *chazan* for "*Lamenatzei'ach* and *U'va L'tziyon*." *Poskim* assume that he means that the new *chazan* will recite *Kaddish Titkabel*. The *Bi'ur Halacha* (siman 132 in *Kuntras Ma'amar Kaddishin*, which deals with questions of preference in being *chazan*/saying *Kaddish*) says that with two mourners with the same level of precedence, one *davens* until *Ashrei*, at which point a second mourner takes over. Thus, the central decisors of Ashkenazi tradition uphold the practice of switching *chazanim* when there are multiple mourners. While I have heard Ashkenazi *poskim* (including in the name of the Aderet) not being pleased with this practice, it is a long-held, broad Ashkenazi *minhag* as found in sources and as I have seen in many places. (As the percentage of mourners at *minyanim* decreases, mourners often find a *minyan* to be the exclusive *chazan*, and this accepted *minhag* is used more sparingly.)

The issue in your *shul* arose because of the knowledge and experience of the Sephardi members. The broad Sephardi *minhag* is to not switch *chazanim* and have the second one recite *Kaddish Titkabel* (see Yalkut Yosef, OC 123:9; Yaskil Avdi VIII:20). Yaskil Avdi posits that the Ashkenazi *minhag* is simply wrong and should be stopped. He is most concerned with the line of "*Titkabel ...*," which relates to the *chazan's chazarat hashatz*. Yalkut Yosef, while confirming the Sephardi *minhag*, says the Ashkenazi *minhag* is justifiable. First of all, the *chazarat hashatz* applies to the new *chazan*, as part of the *tzibbur* (and especially if he was attentive). The Ashkenazi version of *Titkabel* is also more general than the Sephardi one. There are also opinions and indications that *Titkabel* applies to the silent *Shemoneh Esrei*, as it does at *Ma'ariv*, which has no *chazarat hashatz*.

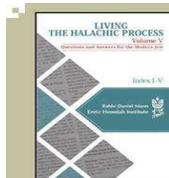
Interestingly, Sephardim are consistent in their *minhag* in the following way. To them, an *avel's* main obligation is to recite *Kaddish*, whereas many do not serve as *chazan*. Therefore, the need to "share the *amud*" is smaller. Note that the now almost universal *minhag* that all mourners recite *Kaddish* together started with Sephardim, who, again, stress *Kaddish*.

Several *poskim* rule that if a *chazan* will be replaced at *Ashrei*, he should take the three steps back at the end of *chazarat hashatz* (see sources in *Ishei Yisrael* 24:(158)). The same is true of reciting *Yiheyu L'ratzon* at the end of *chazarat hashatz* (*Dirshu* 123:25).

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# Ein Ayah

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

## Fitness of the Inconsistent Ones

(condensed from Ein Ayah, Shabbat 9:98-99)

**Gemara:** [We continue with the dispute between Moshe and the angels as to who should receive the Torah. We are now up to Moshe's answer to their claim.] Moshe asked: "Master of the Universe, what is written in the Torah You are giving me? He said to them: "I am Hashem your G-d who took you out of the Land of Egypt." [Moshe] said to [the angels]: "Did you go down to Egypt? Were you enslaved by Paroh? So why should you have the Torah?" Moshe continued: "What else does [the Torah] say?" "You will not have other gods." "Do you live among the idol worshippers, who worship other gods?"

**Ein Ayah:** Eternity is within the view of the beings of the Heaven (angels). Being all-encompassing and beyond change is their lot. The holy divine light has a wondrous effect on all, as it makes the vision of eternity so clear. At the same time, there are creations that change as time goes on.

The great divine penetration reaches from the highest level of completeness of the all-encompassing and unchanging until the most detailed of the individual and the changing beings. Therefore, it is not right for the Torah to be concentrated in a place that is only for those who are of the highest quality. Part of the Torah's design is to take people who are on a low level and to elevate them to a pure, holy level and in that way to unify existence in the world. It cannot remain in the domain of the already elevated and unchanging angels.

The eternal divine revelation, highlighted by the first of the Ten Commandments, made an imprint on the changing nature of mankind, who are affected by important historical events. It is not only because the Jewish People went down to Egypt and therefore were particularly in need of being drawn up. It was also because due to the connection to Egypt, great miracles were needed to extricate Bnei Yisrael from the clutches of the evil kingdom of Paroh. Paroh became the correct utensil to receive the plagues, which were a display of the justice of Hashem in the world.

That is why Moshe had a good claim against the angels in that they did not go down to Egypt and were not slaves to Paroh. They are too all-encompassing and are not individuals or those who change nor could their status turn into such types by means of events that impact people. Since they cannot unite the status of the individual with the all-encompassing, Torah is not of full value for them.

The positive divine light reaches its full intensity when it comes in contact with an abundance of dark and negative influences. The negative and darkness need to have a relationship of being around the base of light, as the *pasuk* says, "They shall go around the evildoers" (Tehillim 12:9). They should not, though, penetrate into the light. The appearance of the light thus shows its dominion in fighting against darkness. The light of the true G-d is good and beautiful and adorns the world with grandeur.

The angels, as holy Heavenly beings, dwell among the positive light, and neither negative darkness nor powers of moral decay have a place among them. Therefore, they cannot be the sources of the emergence of light to purify the world. That is what Moshe meant by saying that they do not live among idol worshippers. They cannot imagine the dangers of darkness and therefore they cannot overcome them. For that, they would need real contact with idol worshippers.



### 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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# P'ninat Mishpat

## Delays of a Contractor – part I

(based on ruling 76045 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The defendant (=def), a company that bought a property, hired the plaintiff (=pl), a metal worker, to build there a light-material warehouse, which they rented out to a business (=re), which would start paying when the warehouse was ready. The work contract, for 260,000 shekels, was signed on July 8, and states that pl is to finish within a month and a half. Def gave pl a down payment check of 100,000 shekels, but it bounced and was replaced two weeks later. The work could not start until someone else built cement foundations, which occurred on Sept. 9. Pl finished the work only on Dec. 14. Pl demands that def finish the payments (76,361 shekels) and pay for improvements requested after the contract was made (4,000 shekels). Def is countersuing because pl finished the job late, which cost them lost rent (30,000 shekels). Also, pl refused to work when def had subcontractors with Arab workers at the site. This threat forced def to spend more money on workers. Pl says that this was necessary because of a spate of terrorist attacks at the time.

**Ruling:** Def claimed that he did not have to pay for improvements because they were mandated by the fire code inspectors and pl is thus required to use such standards. Beit din rejects def's claim, as the agreement between the parties on building materials is binding. While pl is required to comply with fire standards, def is required to pay the difference between the cost of the agreed standards and the now required ones.

Regarding boycotting the Arab workers, while pl claimed that it had to with a specific security situation, there is strong evidence that this was his standard approach. Since he never claimed that he warned def in advance and since the standard in the field is not to make ultimatums on such a matter, pl had no right to cause def extra expenses.

How do we estimate the cost of hiring more expensive workers, considering that def had different options of how to deal with the threat? On the one hand, if a worker threatens to stop working in a manner that would cause a loss to the employer, the employer can hire others and put the cost on the worker (Shulchan Aruch, Choshen Mishpat 333:5). On the other hand, since the nature of the payment is for damages, the rule regarding damages is that we are to use the system of estimation that minimizes the damages (Bava Kama 58b). It is very difficult to calculate the difference in price between Jewish workers and non-Jewish workers. Based on compromise, we will estimate the damage based on the possibility that likely made most sense for def to have done – to delay pl's work until after the Arab workers were finished. Our calculation is that this would have delayed the final product by another fifteen days, for which time the loss in rent would have been 9,000 shekels.

[Next time, we will focus on apportioning blame and cost for pl's delay in finishing the work.]

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