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# HEMDAT YAMIM

## חיים תורה

### PARASHAT HASHAVUAH

***Lech Lecha* 13 Cheshvan 5770**

#### The Choice of Avraham

This week's *parasha* starts with Hashem speaking with Avra(ha)m and telling him to leave his home and move ... somewhere. There is no introduction as to why Hashem was telling him to do this or speaking to him at all. Our introduction to Avraham at the end of last week's *parasha* tells only of his family relationships, not anything he did that would warrant the prominent role in world history he was slated for. In general, not more than a sliver of the greatness of the forefathers can be seen through the narrative, but there are some basic features that explain their roles. Yitzchak is the righteous son of his two righteous parents, who was predestined to continue the chain. Yaakov was the pure tent dweller, about whom his mother prophesied that he would be the father of the chosen nation. Even Noach is introduced as a pure *tzaddik* who found favor in Hashem's eyes before being spoken to. How does Avraham just "explode onto the screen" of world history?

The Maharal (Netzach Yisrael 11) gives the following answer. Avraham was not chosen as an individual just as some sort of reward for what he did. Rather Hashem chose the nation which would descend from Avraham as His nation. Granted, this is in no small part to the credit of Avraham, and we are to this day dependent on the merit of the patriarchs' and matriarchs' good deeds. However, the Torah's silence on Avraham's pre-choice accomplishments is to stress the fact that this was not the main reason for his selection.

The Kuzari (95) discusses the preoccupation with the lineage from Adam to Avraham, through the *tzaddikim* Noach and Shem. Avraham, he posits, had the correct pedigree to succeed in his spiritual task. The link on the chain directly before Avraham was his father, Terach. Most of what we know about him is from *Chazal*, who present him as an idol worshipper who apparently partially improved his spiritual performance. Avraham was willing to have his holy son marry only a member of his father's house, even if her nuclear family consisted of idol worshippers. Apparently, Terach had elements of greatness in him or at least pass through him, although they did not find full expression until Avraham.

Going back to the Torah, we see that Avraham's great sojourn to the Land of Canaan was started by Terach (Bereishit 11:31), who is described as taking Avraham and others with him. Terach was unable to complete the mission, but he blazed the trail, to a certain degree, of his illustrious son. Perhaps part of the reason that Avraham was chosen is that he was able to connect to his father and take the kernel of greatness within his father and perfect it.

Our generation has seen many *ba'alei teshuva* who rejected the secular lifestyles of their parents and returned to their roots. However, as descendants of Avraham, it is likely in many cases that they did not start from scratch, but tapped into the positive of their direct mothers and fathers as well as their forefathers. They have been able to actualize spiritual journeys that their parents began, and finish them in the Holy Land, whether literally or figuratively.

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# Ask the Rabbi

**Question:** I want to put cold but cooked soup on a hot plate right before Shabbat. I have heard that putting things up at that time is particularly stringent. Considering that it is forbidden to reheat cooked liquids on Shabbat, is it also forbidden right before Shabbat?

**Answer:** We will first introduce the stringency of “right before Shabbat” that you refer to and then apply it to your case.

There are two categories of cases regarding having foods on a flame (irrespective of the *melacha* of actually cooking): *shehiya* and *hachazara*.

*Shehiya* means leaving a pot/food on the flame, after putting it there to cook or to heat up before Shabbat. In certain cases (about which there is a major *machloket* for thousands of years), one must do something to the system to reduce the chance that he will “stoke the coals” or its equivalent. The bottom line is that *blechs* and non-adjustable hot plates fulfill the halachic requirement, when necessary.

*Hachazara* means returning a food/pot to a heat source after it had previously been removed. The classic case is when one does so on Shabbat. *Hachzara* is a more severe case than *shehiya* (for reasons beyond our present scope) and in order for it to be permitted in the classic case, five basic requirements must be met: 1) The food must be fully cooked before returning it. 2) The heat source must be covered. 3) The pot should remain in one’s hand since being removed. 4) The remover should have had in mind to return it. 5) The food should still be warm. Only condition #2 applies to *shehiya*.

The general assumption, that the difference between *shehiya* and *hachzara* is that the former is when the food is left from before Shabbat and the latter is on Shabbat, is challenged by the following *gemara* (Shabbat 38b). “According to the one who says people may do *hachzara* (as we *pasken*), he may do *hachzara even on Shabbat*.” This implies that there is a case of *hachzara* that is not on Shabbat (and is easier to permit). Tosafot (Shabbat 36b) say that this refers to putting the food back on the flame so close to Shabbat that if the food were cold, it would not have a chance to become hot before Shabbat. Although several *Rishonim* disagree with Tosafot, the Rama (Orach Chayim 253:2) says that it is good to follow Tosafot’s opinion.

If putting food on the flame at that time is *hachzara*, does that mean that all of the aforementioned five conditions of *hachzara* are needed? Your question raises the possibility that the food needs to be warm at the time of this *Erev Shabbat hachzara* or at least that the food has to be fully cooked. (While the soup is fully cooked, reheating liquid is forbidden like cooking uncooked solid foods.)

This is actually not the case. The five conditions of classic *hachzara* can be broken up into a few categories of the problems they solve. One is that putting the food on the flame should not violate *bishul*. This applies to condition #1 and #5. However, one will not violate *bishul* when he puts food on before Shabbat, and we have no source to extend this rabbinically to *Erev Shabbat*. Within the remaining three conditions, the covered flame (#2) is a matter of standard concern, whereas keeping the food in the hand and having intention to return it are special stringencies regarding *hachazara*. The Rosh (Shabbat 3:2) says that the stringency of *hachazara* soon before Shabbat applies to #2 no matter what state the food is in, which is not the case regarding *shehiya* (see Shabbat 36b and Shulchan Aruch, OC 253:1)) However, the other requirements do not apply before Shabbat (Mishna Berura 253:72). Since a non-adjustable hot plate is no worse than a *blech* (which solves #2), you do not have a problem.

Let us point out that regarding non-adjustable hot plates, important *poskim* allow returning fully cooked food (dry, or, if liquid, when it is still warm) even on Shabbat. Also, exactly what time one has to put up the food in order to avoid Tosafot’s stringency is a topic that deserves discussion. However, in the case you described, you can ignore this stringency.

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# Ein Ayah

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

## Gaining Wisdom Without Losing Belief

(based on Berachot 2:63)

**Gemara:** The following was a favorite statement of Rava: "The purpose of *chochma* (wisdom) is *teshuva* (repentance) and good deeds." Thus, one should not learn seriously and then "kick" (rebel against or disrespect) his father, his mother, his teacher, or someone greater than him in wisdom or years. This is supported by the *pasuk*, "The beginning of wisdom is fear of G-d, it is good insight for all who do them; his praise will stand forever" (Tehillim 111:10). It does not say, "for those who study" but "for those who do." This is referring to those who act *lishma* (for the correct reasons) and not for those who act not *lishma*. All those who do act not *lishma* would have been better off not being created.

**Ein Ayah:** Wisdom is able to elevate a person above where he could have reached with belief without wisdom. In any area of expertise, there is a natural, lower level of skill. Until the higher level is achieved, the lower level is strengthened. When the higher level develops, the lower level is weakened and one has to be careful that the higher level will also fill in that which was lost from the lower's diminishing. For example, a young child has a nature, like that of an animal, that prevents him from eating too much. When he gets older and his intellectual powers are increased, he is less protected by nature and needs intellectual protection. Thus, as the natural in a person is weakened, if his intellect will not take the role of nature, he can deteriorate to a point lower than animals, which are controlled by nature.

This idea appears regarding *emuna* (belief) as well. Through Hashem's mercy on His creations, He leads them in the path of life that is always good for them to fix their moral status in the light of life. When one is young and cannot reach a different *shleimut* than one of simple belief, this belief is strong in him. He trusts his parents, teachers, and elders without internal confrontation. As he grows older, his developed *sechel* (intellect) provides a more important shield. He can direct his *sechel* to recognize truth and the value of true belief. Hopefully, whatever truths his simple belief had naturally brought him to will continue as a more intellectually based belief. With this belief, he should continue to follow and respect his parents, teachers and elders. The goal of wisdom is *teshuva* and good deeds, and therefore he should use his wisdom to reach greater spiritual heights than he had with juvenile belief without wisdom. Yet, he must hold on to the good things that he had as a child, guarding them with his *sechel*.

This is what the *gemara* warns that he should not use his *sechel* to distance himself from deferring to and respecting his parents (metaphorically, not "kicking" them). If one loses the good that *emuna* provided him, he has missed the goal. Had knowledge alone been sufficient, Hashem would not have provided us with natural tools. Rather, knowledge must be connected to good deeds, which are brought about by the abilities of his body and natural attributes. Therefore, *sechel* must carefully protect all of the good education that comes with a good nature.

This is why the *gemara* stresses acting for the right reason, not learning. Learning must be done for the purpose of carrying out good deeds. Only in that way does one respect the natural path that brought him to good and can now be strengthened by *sechel*. Those who do not act *lishma* want to use only the *sechel* and leave behind the path of straightness of good natural education. These people belong to the group who ruin the pillar of ethics and undo fear of Hashem, and it would have been better had they not been created. These are not the people about whom it is said that one should learn Torah or keep *mitzvot* not *lishma* for it will turn into *lishma*. That refers to people who follow the path of the simple without appreciating the greatness of Torah *lishma*. In contrast, here we are talking about "destroyers," who value *sechel* to the extent that they want to get rid of anything other than *sechel*. In truth, a healthy *sechel* realizes that the natural elements [including belief] are important pillars in reaching *shleimut* and wants to attach them to the *sechel*, with righteousness, truth, and subservience to parents, teachers, and those who are greater than they. They will turn to their predecessors to connect to the great sages of previous generations, the pillars of the pure Torah, enabling them to follow the path of life and goodness.

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# P'ninat Mishpat

## How to Elect Public Officials - part I

*(based on Eit Ladun – Rav Nir Vargon - Halacha Psuka, vol. 30)*

Our mentor, Harav Shaul Yisraeli deals with the topic of electing public officials in an article that is published in his hallmark *sefer*, *Amud Hay'mini*. He struggles with the following ruling of the Rambam (Melachim 1:3): "A king is initially appointed only based on the decision of the Rabbinical Court of 71 and based on a prophet, like Yehoshua, who was appointed by Moshe and his court, and like Shaul and David, who were appointed by Shmuel of Ramah and his court."

This implies that there was no need for the approval of the nation to these appointments. However, Rav Yisraeli says that this is not the only way to appoint a leader. Rather, the aforementioned is so when the nation does not choose a leader, for if they do, there is no need for the court of 71 or a prophet. That special system is required only when one is trying to appoint someone to power over the nation through outside authority.

Rav Yisraeli's main proof for the existence of such a distinction is from Tosafot in *Sanhedrin* (20b). According to most of the possibilities raised there, the wicked king, Achav, had the halachic status of a king, despite the fact that he was not appointed by a prophet and that it is hard to imagine that a court of 71 would support the candidacy of such a wicked man.

Along similar lines of this distinction, the Meiri (beginning of *Sanhedrin*) says that that which *Sanhedrin* was necessary to authorize war was if the leadership wanted to force the people into war. In contrast, if the nation was interested, there was no such need. The Radvaz (Melachim 3:8) also says that there are two types of kings who are allowed to execute those who rebel against them: those chosen by a prophet and those accepted by the people.

Rav Yisraeli discussed the *nasi* and the king. Regarding other public officials, the *gemara* (Berachot 55a) discusses the matter more explicitly: "A person of authority over a community is appointed only after the community has been consulted." That still leaves open how one is to determine whether the community has sufficiently accepted the candidate.

The Rama (CM 163:1) cites the Maharam who deals with the case of a public official about whom there was no consensus among the community. He says that we take all of the dues-paying members of the community, exhort them to decide based on idealistic factors, and follow the majority. If the minority is unwilling to accept the decision of the majority, then the latter can enforce the matter even with the help of non-Jewish authorities. They can even be forced to pay for the official whom they were not interested in hiring. If someone refuses to express his opinion, his "vote" is disregarded and the majority of those remaining who actually took part in the vote decide the matter.

*[Next week we will focus on some of the details.]*

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# Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Cheshvan 7-13, Baba Batra 65-71

## Claiming for Orphans (70b)

Rav Ofer Livnat

There are situations in which the defendant is not able to respond to the claims of the plaintiff. One of the more common cases is where a person dies, and someone sues his heirs claiming that the person who died owed him money, and he wants to collect the debt from the inheritance. If the person was still alive, it is possible that he would have denied the claims of the plaintiff, but the heirs have no knowledge of the matter and cannot defend themselves. The Gemara states that, in such a case, the Beit Din claims for the heirs what the deceased could have claimed if he was alive.

This week in the Daf Hayomi (70b), the Gemara deals with such a case. The case is of a person who was watching a certain amount of money for someone, and then he passed away. The depositor sues the heirs for the money, and he brings proof of having deposited the money. The Gemara states that, since the deceased could have claimed that he returned the money to the depositor (in which case the burden of proof falls on the depositor), the Beit Din claims for the heirs that the money was returned.

The Rishonim deal with the question of what happens if the depositor has proof that the money was not returned. In this case, the deceased could still have claimed that he lost the money in circumstances beyond his control, and he would be exempt from paying. Does the Beit Din here too claim for the heirs that the money was lost in circumstances beyond one's control?

According to the Tosafot (d"h M"d), the Beit Din will not claim for the heirs that the money was lost in circumstances beyond one's control. Their reasoning is that Beit Din only claims reasonable and likely claims. It is unlikely that money is lost under such conditions that the guard would be exempt. However, that the money has been returned is likely and, therefore, the Beit Din is willing to make such a claim.

The Ramban (Milchamot 37a in the pages of the Rif) disagrees. He says that Beit Din will make any claim that the deceased could have claimed, even if it is an unlikely one. Therefore, even if the depositor has proof that the money was not returned, the Beit Din will still claim that the money was lost in circumstance beyond one's control.

### **Ruling and Summary:**

The Shulchan Aruch (Choshen Mishpat 108, 4) quotes both opinions, the opinion of the Tosafot that Beit Din does not claim for the heirs unlikely claims, and the opinion of the Ramban that Beit Din claims all possible claims. The Shach (ibid, 8) rules like the Ramban. However, in a number of places (for instance 62, 15) the Shach rules that regarding totally unlikely claims, even the Ramban will agree that Beit Din will not claim for the heirs.

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