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PARASHAT HASHAVUAH

Vayeishev 25 Kislev 5770

What Was He Thinking?!

"He [Yaakov] said to him [Yosef]: Go now and observe the welfare of your brothers and the welfare of the flock, and return me *davar* (a report), and he sent him from the valley of Chevron, and he came to Shechem" (Bereishit 37:14). Yaakov's use of Yosef as a messenger service was strange considering not only the hatred Yosef's brothers had for him but also the hatred for the family in the Shechem area, where Shimon and Levi had carried out a slaughter. This, says the Malbim, is what *Chazal* meant when they sent that Yaakov sent him not geographically from the valley of Chevron but from the deep idea related to Avraham, who was buried in Chevron, to whom it was decreed that his descendants would have to go into exile. He reasons that Yaakov's judgment was so poor that it could only have been a miracle that he sent Yosef.

While accepting fully the Divine Providence involved in Yaakov's decision, perhaps we could find at least a *hava amina* - some answer to the question: what was he thinking?! As modern yet traditional students of *Tanach* like to do, let us look for a word or root that repeats itself in our story and identify a recurring theme that teaches us about the episode. The word that sticks out is *davar*, which usually means "a thing" or "matter" but also means "the thing he said." The brothers hated Yosef "for his dreams and (*devarav*) his sayings" (ibid.:8), in other words, the content of the dreams and the way he related the dreams to them. After involving his father in the telling of his offensive dreams, we are told that Yaakov scolded him and characterized the dreams, including the allusion to Yosef's father and mother bowing down to him, as bizarre. Then it says that "Yosef's brothers were jealous of him, and his father watched over the matter (*davar*)" (ibid.:11). Finally, Yaakov asks Yosef to return a report (*davar*) (ibid.:14). The different uses of the word must be more than a coincidence.

Let us suggest the following. The brothers blamed Yosef for the dreams themselves, which they attributed to Yosef's aspirations, not a Divine revelation. That's why they call him the "*ba'al hachalomo*" (lit., owner of the dreams), not their recipient (ibid. 19). On the other hand, Yaakov was upset with Yosef for sharing them as he had (*davar*), which was insensitive to his brothers. Yaakov wanted Yosef to act in a caring manner toward his brothers, to change the way each side looked at the other. Let him see their welfare (*sh'lom*, which can also mean, peace). He was willing for Yosef to do something somewhat dangerous to show them that he cared and was willing to do his part for the family. In this way, he would "return" the *davar* that had gone wrong. This was a risky but an understandable plan. He was unaware that, due to the intervention of the G-d of Avraham, the brothers were headed toward escalated conflict, while the outcome of unity would arrive 22 years and "two *parshiyot*" later.

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Ask the Rabbi

Question: I always forget whether on *Motzaei Shabbat* of Chanuka, we are supposed to light the Chanuka candles before or after *Havdala*.

Answer: We will see that it is not the end of the world that you forget. Let us first understand the issues, which revolve around the question of which halachic rules of precedence take precedence when they compete with each other.

The Terumat Hadeshen (I, 60) says that on *Motzaei Shabbat* of Chanuka, we light the Chanuka candles before we do *Havdala* (after doing a basic *Havdala* in *Shemoneh Esrei*). The reason is that we are interested in delaying *Havdala*, since it ends Shabbat and it is good to have an excuse to push off Shabbat's end. This concept is found in a few contexts. One is in the *gemara* in Pesachim (105b), which says that at the end of Shabbat, if one has only one cup of wine to be used for either *bentching* or for *Havdala*, he waits until after *bentching* on it to then use it for *Havdala*. The *gemara* explains that we anyway want to delay *Havdala* so that Shabbat does not look like a burden to us. This also explains why, when *Yom Tov* falls on *Motzaei Shabbat*, we recite the *beracha* on *Kiddush* before the one for *Havdala* (see Rashbam, Pesachim 103b). The Beit Yosef (Orach Chayim 681) cites the Terumat Hadeshen and also an Avudraham who argues. In the Shulchan Aruch (OC 681:2) he seems to *pasken* like the Terumat Hadeshen, saying that in *shul* we light the Chanuka candles first.

However, not everyone agrees. The Taz (681:1) says that the above concept of precedence is overcome by a more weighty consideration: *tadir v'she'eino tadir, tadir kodem* (the more regular practice comes first). A famous application of that rule is that Beit Hillel cites it as one of the reasons that during *Kiddush*, we recite the *beracha* on the wine, which is made any time one drinks wine, before the *beracha* for *Kiddush* of Shabbat (Berachot 51b). We even find this rule regarding Chanuka, as we *lain* the reading for Rosh Chodesh before that of Chanuka (Tosafot, Shabbat 23b- see there a few possible explanations).

An interesting question of precedence arises in Zevachim (90b). Is the more common *korban* brought before the more holy one? The Rambam (Temidin 9:2) understands that the *gemara* never resolved the issue, and therefore one can do whatever he wants on the matter.

Regarding *Motzaei Shabbat*, the Terumat Hadeshen brings another example of pushing off *Havdala*: we do *sefirat ha'omer* before *Havdala*. However, the Taz says that there is a difference. If we do *sefira* first, we will be pushing off the ending of Shabbat. In contrast, since it is forbidden to light candles on Shabbat, lighting Chanuka candles is anyway a way of ushering out Shabbat.

The Taz concedes that regarding *Havdala* and lighting in *shul*, the *minhag* is to do the Chanuka candles first. However, he felt that regarding the house, one should practice what he considered more halachically sound - that (the *tadir*) *Havdala* should precede. There may even be reasons to distinguish between the two venues. The Pri Megadim (ad loc.) says that after already having partaken in *Havdala* in *shul*, the idea of delaying Shabbat's exit has less weight. Others say that specifically in *shul*, where many people are found, the *pirsumei nisa* (publicizing the miracle) element pushes us to hasten the lighting. (There is logic in the opposite direction, which we will not get into.)

It is hard to determine which opinion is correct, so what should one do *halacha l'ma'aseh*? In *shul* all agree that we light the candles before *Havdala*. At home, the prevalent Sephardic *minhag* is to switch the order and do *Havdala* first (Kaf Hachayim 681:4; Yalkut Yosef, Moadim p. 236). For Ashkenazim, there is no clear ruling, and the consensus is that one can rule either way (Biur Halacha to 618:2). The *minhag* may lean in the direction of doing *Havdala* first. It seems that a whole lot of people have your *minhag*: they don't remember what their father did or what they did in years past, and do first whichever one is ready first. That ends up being quite reasonable.

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Ein Ayah

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

Perceptions of Life after Death for the Righteous and Others

(based on Berachot 3:5)

Gemara: “For the living know that they will die” (Kohelet 9:5) – this is referring to *tzaddikim* (righteous people), who, in their death, are called living.

Ein Ayah: For one to picture his own absence is indeed very difficult, for how can one accurately picture his absence, when the picture needs to have in it the existence of the subject of the picture. One can picture the absence of his counterpart or even the absence of something that relates to him, as long as his own existence continues.

Tzaddikim put all of their power with all their feelings and desires into things that are not built specifically on the body and its desires. They apply their spirits to love of Hashem, His Torah, His great ways, His nation, Israel, and in general the love of justice, truth, kindness, and straightness. These feelings are the foundation of their lives and the center of the goals that they desire. Therefore, *tzaddikim* feel the main part of their existence in regard to eternal things. That which happens to their bodies, which cease to exist after death, they consider as something external, albeit connected to them.

Therefore, *tzaddikim* can accurately picture their deaths, and it does not scare them too much. It does not confuse their happiness at the prospect of reaching *shleimut* (completeness) and goodness, and they do not lose the feeling that they still exist when they picture their physical death.

In contrast, the whole center of the lives of *resha'im* (wicked people) is powered by material desires and is dedicated only to acquiring things that the physical senses pick up on. They view spiritual acquisitions as something secondary and foreign to them. Therefore, they are unable to properly picture their death, for that would force them to picture the negation of their essence and the absence of their existence, and then who is supposed to do the picturing. Therefore, they cannot accurately picture their death, except for the natural sense of being startled, which must come when they picture a situation where all they worked toward ceases and blows away like a cloud. That is why the *pasuk* says that the dead (referring to *resha'im*) do not know anything.

The Legacy of the Righteous that Continues Thorough Their Children

(based on Berachot 3:6)

Gemara: “The son of a living man” [said about Benyahu ben Yehoyada – Shmuel II, 23:20) refers to one who is called alive even when he is dead.

Ein Ayah: The main connection of the *tzaddik's* life is to things that are loftier than that which is connected to the body and that which occurs to it, and these lofty things are the mainstay of his life while he is alive. Since these things do not cease with death but add luster, the *tzaddik* is considered alive even after he has physically died.

This praise of the *tzaddik* finds the clearest expression in the *tzaddik's* child. This is because the truly complete person does not part from his true perceptions, which accompany him to every corner, to the point that the natural connection to the world by means of begetting children becomes the internal goal of justice and goodness, which lasts eternally.

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Precedence in the Payment of Multiple Debts – part I

(based on Eit Ladun – Rav Nir Vargon - Halacha Psuka, vol. 32)

There are distressing scenes from time to time, when a company is in great debt and its few remaining assets will not suffice to pay all of the creditors, people who entrusted the company with hard-earned money, which can be lost forever. We saw such a case regarding many hundreds of people who paid the Heftziba building company for homes whose construction may never be completed. Some of them decided to take unilateral steps and squat in company-owned apartments, in lieu of the home they were to receive. Does such an action work or in any way improve the legal status of the creditor in relation to other creditors who did not take active physical steps?

The following is the Shulchan Aruch's (Choshen Mishpat 104:1) rule for precedence among creditors when there is not enough property to go around for all. Whoever has the earlier date on his contract with the debtor is first to receive payment, whether it be to be paid from the real estate or from movable objects. This is true even if the payment date for the later creditor comes before that of the earlier creditor. He continues that if one who came later went and received payment from real estate before his turn, the property is taken away from him. Only when the rights of the two creditors started on the same day would we say that taking control of the property gives precedence to the one who did so (Shulchan Aruch ibid.:8).

One should point out that even in a case where taking control of the real estate has an impact, that is only when it was done with the involvement of *beit din*. This is because taking control without *beit din* estimating the value of the property is not valid. The way to have taken control improperly but in a somewhat valid manner is if the creditor can convince *beit din* that there are no creditors that have precedence over him and later on it will emerge that someone else did. In any case, squatters will gain nothing and may even be obligated to pay rent to the owner, and they are perhaps in the meantime in violation of theft.

The above applies to real estate, but the picture is different regarding movable objects (S'ma 104:1), for the following reason. One's real estate becomes *meshubad* (subject to a lien) to the creditor from the time of the loan, as is recorded in a contract. The result of the lien is that payment can be executed from the property even if it was subsequently sold to another. Whoever holds the earlier contract has the earlier lien, which enables him to take it even from the other creditor who received the loan as payment (which makes it no more his than had he bought it). Regarding movable objects, there are no liens and therefore it makes no difference when the loan took place, in their regard. Actual possession of the objects, even if done outside the framework of *beit din*, is effective for movables, and the earlier creditor cannot remove the object from the "seizer's" possession.

What happens if one does not actually seize movable objects but asks *beit din* to seize the objects on his behalf. The Shach (104:6) says that *beit din* would split the property equally among the creditors, regardless of who demanded the action. According to the S'ma (104:1), this is so regarding movable objects even if one with the earlier contract comes before *beit din*.

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Kislev 19- 25, Baba Batra 107-113

Judging Monetary Cases at Night (113b)

Rav Ofer Livnat

This week in the Daf Yomi we begin the chapter Yesh Nochlin, which deals with the laws of inheritance. The Gemara states that the distribution of an inheritance is considered to be an act of judgment, and the procedures of judging monetary cases apply. The Gemara mentions two ramifications to this. One is that three judges are required, and the second is that it must be done during daylight.

The law that monetary cases must be judged during daylight is found in Sanhedrin (32a, 34b). There it is stated that, if the judges started judging during daylight, then they can complete the case at night. This is in opposition to capital punishment cases that must also be completed during daylight.

However, due to difficulties that arose while trying to maintain an organized court system in the exile, the need to judge at night arose. The Poskim searched for ways to permit judging court cases at night. The S'ma (Choshen Mishpat 5, 7) offered two ways by which it would be permitted to judge monetary cases at night. The first option is if the two sides agree that the case be tried at night. The S'ma's second suggestion is to light candles, and if the room will be well lit, it will be possible to judge at night. This idea is based on the understanding that the problem with judging at night is the darkness. The advantage of this method is that it can be used even if one of the sides does not agree.

The Shach (5, 4) rejects the S'ma's second solution. He claims that one cannot judge monetary cases at night, regardless of the quality of the lighting. However, he agrees to the first solution, that the assent of both sides will permit judging at night.

From the wording of the S'ma it appears that if the sides were invited to come at night, and they came of their own free will, it is considered that they agreed to be judged at night. However, the Sha'ar Mishpat disagrees and claims that they must explicitly agree to be judged at night.

Summary and Ruling:

Monetary cases cannot be tried at night. However, if the judges started judging during daylight they can complete the case at night (Shulchan Aruch 5, 2). If both sides agree, they can judge at night (S'ma 7 and Shach 4). According to the Sha'ar Mishpat (2), the agreement must be explicit.

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