



HEMDAT YAMIM

Parashat Hashavua Beha'alotcha, 12 Sivan 5782

Harav Shaul Israeli zt"l
Founder and President

Choosing Seventy Leaders

Harav Yosef Carmel

The nation's complaints toward Moshe prompted him to ask Hashem for help in putting additional leaders at his disposal to handle public needs. As Moshe said: "I will not be able by myself to carry this entire nation, for it is too heavy for me" (Bamidbar 11:14). Hashem responded that Moshe should gather 70 men whom he knew to be among the leaders of the people, and that Hashem would place upon them some of the spirit that Moshe had received to enable them to succeed in their new task (ibid. 16-17).

The *pasuk* does not explicitly detail the criteria for these appointees. Rashi picks up on the words "that you know that they are the elders of the nation and their officers" and identifies them as the taskmasters who were responsible in Egypt to ensure that their brethren, the slaves, kept up with the Egyptians' expectations of them (see overlapping title in Shemot 5:14). They were rewarded for sparing their brothers from the Egyptians' whippings and absorbing them themselves by receiving the distinction of leadership and Divine Spirit.

According to Rashi, selfless dedication to the nation is the top factor in the future leader's resume. Only one who can put his own self-interests aside and put up with great difficulties is worthy of such a high post and spiritual level.

The Ramban paves a new path in the matter, whose elements we will now summarize: 1. The number 70 represents leadership. For that reason, there are 70 "officers" (angels) over the nations of the world. There are also 70 special angels in Hashem's "government" (Pirkei D'Rabbi Eliezer 24). Likewise, there are also 70 members of the Sanhedrin. 2. The number 70 represents all of the opinions and all of the points of strength. After hearing all of the possible points of view, the decision-making body can arrive at a proper decision. This approach highlights the importance of humility, in that all must get used to hearing other opinions, as unity comes from a proper approach to diversity, not from uniformity. 3. When leadership is chosen in such a way, the number 70 provides the right backdrop for having the Divine Presence dwell among the assembly. Such Divine Presence is the greatest goal, and it comes about when people are able to combine their strengths for a common goal.

The Ramban also takes this idea into the realm of the judiciary. The Sanhedrin are not only the "eyes of the congregation" but also the members of the highest court of justice. Therefore, this court, sitting in the Temple complex has to include 70 members to be valid. In his time, it had to have Moshe presiding over them. This is hinted at by the *pasuk* (Tehillim 82:1): "Hashem is present among the congregation of G-d, in the midst of the judges shall He judge." It is His Divine Presence that gives the court its spiritual ability.

May our general leadership and our judicial system be blessed with the Divine Assistance to act in a manner that promotes the needs of the people.

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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

Mistake in *Beracha* on Delayed Laying of *Tefillin* – part II

Question: I was at home with a weak stomach and decided it would be halachically prudent to put on my *tefillin* for a shortened period (from after *Yishtabach* through *Shemoneh Esrei*). After I fastened the *tefillin shel yad*, I realized that the *beracha* I had recited was not the one for *tefillin* but that I had instinctively said *Yotzer Ohr*. I continued *davening* with just the *shel yad* until the next semi-break, *Yotzer Hame'orot*, at which point I put on the *shel rosh*. Was that correct?

Answer: [Last time we saw that in the midst of *Birkat Yotzer Ohr*, there were two reasonable ways to time putting on the *shel rosh* and making the *berachot*.]

Had you switched the *beracha* to *L'hani'ach Tefillin* within *toch k'dei dibur* (app. two seconds), you probably could have combined the *beracha* opening with the intended, preferable wording and ignored *Yotzer Ohr* (see Shulchan Aruch, Orach Chayim 209:2). Having not done so, were you truly in the midst of the *beracha* of *Yotzer Ohr* and were correct in continuing with it or was the unintended *beracha* of *Yotzer Ohr* worthless?

It might seem to depend on the question (see *Berachot* 13a; *Megilla* 17a) of *mitzvot tzrichot kavana* (are *mitzvot* valid *b'di'eved* if the right action was done without intention to fulfill the *mitzva*?). While the ruling is not fully clear, especially concerning a Rabbinic *mitzva*, including almost all *berachot*, the main current is that one does not fulfill the *mitzva* (Shulchan Aruch, OC 60:4 and Mishna Berura 60:10). Also, it is possible that a *beracha* made with a different *beracha* in mind is worse (see *Tosafot*, *Berachot* 12a). Furthermore, arguably a “slip of the tongue” (you apparently went from *Yishtabach* to *Yotzer Ohr* on “auto pilot”) might be considered *mitasek*, which is worse than lack of intent (see *Rosh Hashana* 32b). On the other hand, this case might be better than classic *mitasek*, as you intended to praise Hashem with a *beracha*, albeit a different one.

Whether your *Yotzer Ohr* was valid might depend on how one learns a *Magen Avraham* (209:5). Writing about one who recites *Malbish Arumim* with *Poke'ach Ivrim* in mind and then immediately inserts *Pokeiach Ivrim*, the *Magen Avraham* is unsure which *beracha* he fulfills. If he had intended for *Malbish Arumim* and then tried to “erase” it in favor of *Pokeiach Ivrim*, he fulfilled *Malbish Arumim*. The *Panim Meiros* (1:58) changes the text in the *Magen Avraham* because one can correct a mistaken recitation immediately (Shulchan Aruch, OC 209:2 about one who recited *Borei Pri Hagefen* on water), and the *Magen Avraham* says that one who mistakenly recited, at *Havdala*, *Borei Me'orei Ha'eish* before *Borei Minei Besamim* can correct to *Borei Minei Besamim*. The *Dagul Meirevava* keeps our text and distinguishes as follows. In the case of water and of *besamim*, the object he held during the *beracha* proved he made a mistake, which enables him to switch to the correct *beracha*. In contrast, regarding *Pokeiach Ivrim/Malbish Arumim*, there is no physical indication the *beracha* was mistaken and therefore, it is unclear if he can change it. The *Yad Ephrayim* (ad loc.) makes a different distinction. Because *Borei Pri Hagefen* on water is nonsensical, moving on from *Borei Pri Hagefen* is natural, whereas regarding *Malbish Arumim* and *Pokeiach Ivrim*, which are both appropriate *berachot*, it might not be possible to switch, as the originally recitation takes effect. Our case contains a split between the distinctions. On the one hand, *Yotzer Ohr* and *L'hani'ach Tefillin* were both appropriate at that point, but being about to fasten the *tefillin* made it clear you did not intend then for *Yotzer Ohr*.

The above, though, is moot. Since *Yotzer Ohr* is a long *beracha*, even if lack of intention invalidates its beginning, the continuation of the *beracha* validated it. If you would have stopped for *L'hani'ach Tefillin*, you would have given up on the *beracha* you began, making it *l'vatala*, so it was good you continued. It might have been better to repeat “*yotzer ohr...*” (without “*Baruch ata...*”), with *kavana*, but the *beracha*, as you did it, was valid *b'di'eved*.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.



Igrot HaRe'aya - Letters of Rav Kook

Connecting Disciplines in Torah Study - #103 – part II

Date and Place: 21 Tevet 5668 (1908), Yafo

Recipient: Rav Yitzchak Aizik Halevi, the author of a monumental history of rabbinic scholarship, Dorot Harishonim. See Rav Kook's letter to him (#99).

Body: [In the first installment, we saw Rav Kook's warm words of thanks and excitement over receiving the Dorot Harishonim and his beginning of the topic of the connection between aggada (the moral and philosophical elements of Torah) and Halacha, including that they stem from prophecy and wisdom, respectively.]

There is a major difference of opinion as to how absolute the rule that Halacha is "not in the Heaven" (i.e., is not determined by miraculous signs but by human intellect based on textual sources and logic) is. Whereas the Rambam (Yesodei Hatorah ch. 9) posits that there is no place for prophecy in the realm of Halacha, Tosafot (Yevamot 14) does not view it as a strong rule, as there are clear exceptions. Prophecy always had its impact on the way the Oral Law was applied. This is implied by the *mishna* in Avot (1:1) that the elders passed on the chain of Torah to the prophets. It is difficult to say that it was only by chance that the oral tradition was passed on to prophets and that their prophecy played no role in their expert status.

This is also the implication of the *gemara* (Zevachim 62a) that three prophets who came to *Eretz Yisrael* at the beginning of the Second Commonwealth provided information about the details of the operation of the Second Temple. There were certainly also scholars who moved to *Eretz Yisrael* at that time, but apparently certain matters required specifically the power of prophecy. Even if we accept that the final decision in a halachic matter is not determined by means of prophecy, it still has an impact on the process of the studies.

Certainly, in *Eretz Yisrael*, which is the place of prophecy, the flow of prophecy makes an impression on the study of Halacha. The matter is understood based on the internal look at the matter, without the need for great investigation. The Rabbis tell us that "the air of *Eretz Yisrael* makes people wiser" (Bava Batra 158b) and that study in Bavel could confuse what otherwise could be accomplished in *Eretz Yisrael* (see Bava Metzia 85a). The wisdom of prophecy, which is the foundation of the wisdom of *aggada*, the internal element of the root of the Torah, was much more active in *Eretz Yisrael* than in the Diaspora, which is not a suitable place for prophecy (see Moed Katan 25a).

Those people who are influenced by the roots of the wisdom of prophecy consider brevity a desired value. For them, the analysis of the *halachot* and the manner in which one matter is arrived at through another is done with a very broad survey of the topic. It is enough for them to have a small hint, and they already arrive at a ruling. That is the way the Jerusalem Talmud was studied, as those who merited to benefit from its divine light were able to suffice with short derivations before arriving at the practical *halacha*. Those who took part in the Babylonian Talmud, who were not likewise privy to the roots of prophecy, required much more long-winded discussion before arriving at a conclusion.

We continue next time.

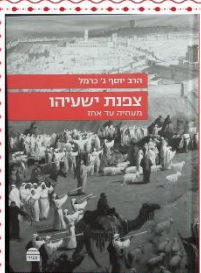
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Tzofnat Yeshayahu- Rabbi Yosef Carmel

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

Limits of Interest Rate for Loan with Heter Iska – part I

(based on ruling 80033 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) is a lender who lent 500,000 NIS to a contractor (=def) to carry out a *Tama 38* project (a special plan to strengthen and improve a building in return for the right to add stories to it). They used the *heter iska* used by Bank Mizrahi, and the rate of interest was 18% annually plus punitive interest of \$200 a day for late payment. Def gave three checks and three promissory deeds, and put certain properties in a lien to pl. Def paid 527,000 NIS but late, so that some interest was outstanding. Pl made a claim of 390,360 NIS with *Hotza'ah Lapo'al*, which def opposed, and the courts transferred the case to *beit din*. Pl claims that since def owed 135,000 NIS and it has been over three years, def owes 61% interest plus around a quarter million dollars for the punitive interest. Def claims that since he already paid more than the principal he took, he cannot be subject to punitive interest, and that it is enough to pay 18,000 NIS for outstanding interest.

Ruling: We will start with a look at the halachic workings of a *heter iska*. The ostensible lender (the *noten*) gives money to the ostensible borrower (the *mitasek*) in a manner that half of the money is a loan and half is given for the *mitasek* to invest on behalf of the *noten* and thereby make profits for the *noten*, to justify his receiving what would have been interest. Thus, the envisioned interest rate comes from only half of the money. If the *mitasek* claims that the investment actually lost money, he must provide witnesses, and if he claims lower than expected profit, he must swear that this is the case. If he fails to do either, he must pay the *d'mei hitpashrut*, i.e., the expected interest.

In this case, it is doubtful that the *heter iska* can justify the rates put forward in this document. First, due to the high rate of interest, it is doubtful that the agreement was made with serious intent to be based on the mechanism of a *heter iska* (Chut Hashani, Ribbit 18:2). Second, for a *heter iska* to work, there must be a possibility that the investment half of the money can realize the level of profit of the *d'mei hitpashrut* (Minchat Shlomo I:27; Igrot Moshe, Yoreh Deah III:41). In previous rulings in our *beit din* network, we cited the *minhag* of several *batei din* to disallow *d'mei hitpashrut* of more than 15% annually. According to Israeli law, as well, it is forbidden for an individual to lend money at 15% higher than the level of interest of the Bank of Israel, and the courts can adjust the rate downward. We have ruled that we accept this law according to Halacha. Finally, there is logic to claim that since the loan document states that the loan was taken to finance a *Tama 38* project, if that project was known to not have borne profits, then it is possible that the interest is not due (interest might be possible because of a clause that the *mitasek* can use the funds for any profitable investment he chooses).

In this case, the 18% annual interest was valid based on the law and Halacha, but with the additional punitive interest, it becomes forbidden according to the law and Halacha.

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