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חיים תורה

PARASHAT HASHAVUAH

Emor 17 Iyar 5770

The Necessary Boundaries of Seeking Leadership

Harav Yosef Carmel

In the past, we have discussed the *midrash* (Vayikra Rabba 26) that links the first *pasuk* of Emor to the story of the massacre of Nov, the city of *kohanim*. Hashem showed Moshe the leaders of each and every generation, and Moshe was disturbed that Shaul, the first king of Israel, would be stabbed to death. Hashem's answer was "*emor el hakohanim*" (say: for the *kohanim*): in other words, it was a result of Shaul's command to kill out the city due to his understanding that they supported David in what Shaul saw as a budding revolt against his dynasty.

Naturally involved in that horrible event due to his role as responsible for internal security in Shaul's regime was Avner ben Ner. What his specific role was is less clear. We are told that the servants of Shaul did not agree to carry out the assassination order (Shmuel I, 22:17). The Yerushalmi (Sanhedrin 10:2) says that the one who refused was Avner, and for this he is to be praised. Yet, we do find that Avner was himself killed a few years later by Yoav ben Tzruyah, David's chief of staff, after David had come to an agreement with him that would end the civil war between Shaul's son, whom Avner had supported, in return for a prominent post in David's administration. For what sin was he punished?

One answer is provided by the *gemara* in Sanhedrin (20a). It says that he should have protested against Shaul's decree. Apparently, it is not enough to refuse to carry out an unethical command of a king, but one must try to undo the command, which Avner failed to do. A second opinion in that *gemara* claims that he did try to stop Shaul but that he was punished for holding back David's ascent to a unified throne for over two years. His efforts to end the civil war were too little or at least too late in this regard.

A third opinion is found in the Yerushalmi (Peah 1:1) regarding a different element of the tension between Shaul and David. David twice came close to Shaul in a manner that he could have killed him but did not, to prove to Shaul that he had no intentions to cause him harm. Once David cut off the corner of Shaul's garment, and once he took his water pitcher and his sword. These events almost overcame Shaul's paranoia in regard to David but were a great source of embarrassment to Avner, who was responsible for Shaul's safety. According to this approach, Avner convinced Shaul that David had just chanced upon Shaul's property and did not in fact get close enough to kill him, thus keeping the feud going and causing much unnecessary hatred and bloodshed.

Whichever approach we may accept, they all have one common denominator that is worthwhile to remember this time of year, during *sefira*. While different people are expected to have different viewpoints and interests, it is of utmost importance that these not spill over into animosity which all too often has tragic circumstances.

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Question: I have seen books that describe the process of *hagala* (putting a *treif* utensil into boiling water to remove the absorbed material) but have not seen a discussion as to how long one has to leave the utensil in. This seems strange especially in regard to *treif* material that was absorbed over a long period of time.

Answer: The *poskim* do not give an exact amount of time for *hagala*; it seems to be a matter of several seconds (see Mishna Berura 452:4). Actually, the Shulchan Aruch (Orach Chayim 452:1) even alludes to the opinion that one should preferably not leave the utensil in for too long (to avoid the situation where the expelled particles return to the utensil). It is hard to argue with the scientific intuition behind your assumption that the more something absorbs, the longer it takes to remove everything that is inside. The Taz (OC 251:23) seems to agree with this idea.

The explanation of the halachic phenomenon appears to be along the following lines, which we will be able to develop only slightly in this forum. Some of the laws of the Torah are purely ritual in nature, and we should not expect them to be based on scientific distinctions or depend too much on specific circumstances. For example, even if there is a correlation between a species of birds being predators and their being not kosher, we would not say that a violent chicken would be *treif* or a kind vulture would be kosher (Chulin 59a). However, regarding something like kashering a utensil to remove the absorbed *tarfut*, we might expect that we should be interested in whether we are confident that we were able to remove the requisite amount of absorption.

It can be demonstrated that when the Torah gives instructions as to how to perform kashering (Bamidbar 31:23), its intention was that if the rules are followed, one does not have to be concerned with the possibility that not everything was removed. Halacha says one may assume it, and that suffices. This is the flip-side of a stringent non-scientific assumption regarding absorption. When a utensil was exposed to a food that fit into a category of heat where there is liable to be absorption, we halachically treat the utensil as if it became totally saturated with the substance that it touched. This stringent assumption applies even if the contact was for but a matter of a few seconds. (There is a *machloket* whether there is some minimum time beneath which there is not absorption- see Pitchei Teshuva, Yoreh Deah 105:8).

It is true that there are sub-rules that are specific to the circumstances. For example, if something absorbed while on the fire, it must be removed while on the fire. If absorbed with a lesser type of heat, the requirements of kashering are easier. However, the requirement for boiling water does not mean one has to reach the same level of heat as he had during absorption (i.e., even though boiling points vary according to altitudes and depend on what type of liquid is involved, kashering does not differ as a result.)

When we do make distinctions, it is often based on categories of distinctions that the Torah alludes to. For example, we distinguish between the absorption and the ability to kasher utensils made of different materials. Metals are assumed to absorb and release particles normally. On the other hand, pottery is assumed to absorb a lot in a manner that normal *hagala* will not remove all that it needs to (see Pesachim 30b). The commentaries find the source for the distinction in the Torah itself (see Rashi, ad loc.). Subsequently, authorities discussed other materials such as glass to see which category to attribute it to according to various characteristics (see Shulchan Aruch and Rama, OC 451:26).

Regarding the matter of time, once the requisite conditions for *hagala* are reached, it does not matter how many times or for how long *tarfut* or *chametz* was previously used or for how long we performed *hagala* regardless of scientific indications.

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Awe and Fear of the King

(condensed from Berachot 4:36)

Gemara: When Rabbi Yochanan ben Zakai became seriously ill, his students came to visit him. When he saw them, he began to cry. They asked him why he was crying, and he answered: "If they would take me before a human king who - today is alive and tomorrow will be in the grave, if he gets angry at me, his anger is not eternal and if he incarcerates me, the incarceration is not eternal, if he kills me, the death is not eternal, and I can appease him with words and bribe him with money - still I would be afraid. Now that they are bringing me before the King of kings, the Holy One Blessed Be He, who - if He gets angry at me, His anger is eternal, and if He incarcerates me, the incarceration is eternal, and if He kills me, the death is eternal, and I cannot appease Him with words or bribe Him with money, and furthermore, there are two paths before me, one to Hell and one to the Garden of Eden, and I do not know in which path they will take me - should I not cry?"

Ein Ayah: Crying is linked to the spirit and the emotion. When one realizes that he will have to stand before someone far greater than he in ability and level, even if he has no logical reason to be afraid, it is still fitting for him to be overcome with emotion and awe while contemplating the encounter. If one did not feel that way before going before Hashem, it would be a sign that he did not recognize Hashem's greatness. Certainly, just as truth can emerge from logic and intellect, so can it emerge from actions and emotions. When an emotion is missing, something cognitive is also missing. Only when moved by the upcoming encounter with the Divine can a person approach the truth of Hashem's greatness. Even before a human king, one should be awed by his ability to mete out punishment, even if one is logically confident that he has done nothing to expect punishment. If one's logical confidence cannot overcome his emotion of awe and fear regarding a human king, all the more so before the King of kings, whose capabilities are limitless.

Regarding the areas of completeness (*shleimut*), one can identify three relevant areas: *shleimut* in actuality, in freedom, and in love. *Shleimut* in love is the highest level, as it engenders full happiness and brings with it the goodness of wisdom.

Corresponding to these areas, Rabbi Yochanan mentioned three things about the king's potential treatment of him. The matter of anger corresponds to the opposite of love, which, in such a central relationship as with the king, is an important matter. Incarceration relates to the loss of the *shleimut* of freedom, and death relates to the loss of the *shleimut* of existence. None of these matters needs to be so terrifying if the power to cause the loss can be neutralized. One can fix things in different ways. Appeasing relates to removing the reason for the anger, as it can put the king's anger, which is the danger, to rest. Externally, one can give a bribe and remove a harsh decree, despite the king's intrinsic desire to carry it out. However, if it is Hashem who has made a decree because of reasons of justice so that an area of human *shleimut* is at risk, there is no intrinsic or external way to overcome it [without one doing something to give him new merit]. Facing such a potential danger, one should be awe-struck, even if he logically realizes that his situation should be safe.

However, there is also a logical reason for concern. That which we consider righteousness or evil has a lot to do with our subjective nature, including our physical side. It is possible that one thinks he has sufficiently fulfilled his obligations because he did not succeed in elevating himself sufficiently. If one opens his eyes, he might see that which is wrong about him. Thus, Rabbi Yochanan had both an emotional and a logical fear of what could await him from his encounter with Hashem after death.

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Loss of Principal on an Investment

(condensed from a p'sak by Beit Din Eretz Hemdah - Gazit)

Case: The plaintiff (=p) had the defendant (=def) handle an investment sum of \$5,000 at his discretion, with p maintaining the ability to follow the investment's progress and withdraw the money at any time. They signed a contract that stipulated the conditions for distributing profits, which were said to be potentially up to 50% annually. It also stated that there was significant risk in such an investment, and def told p that it was unwise to invest all of his money in this manner. After achieving a 10% profit in the first few days, the investment plummeted to a mere \$36. P does not claim that there was negligence in the way the investment was handled but said that he was not sufficiently warned about how dangerous the investment could be (def disputes this claim). Rather, p says that he was misinformed about the transaction, and therefore, he should be reimbursed.

Ruling: Although there is discussion among the poskim on the degree to which a shomer (watchman, which is what def was, considering that the money remained in p's possession, with def having power of attorney) is obligated for indirect damage he causes (see Pitchei Teshuva, CM 55). However, here there cannot be such an obligation. Beit din's research revealed that def acted in a normal manner for high potential gain, high-risk investments. In fact, p did not claim that there was negligence. Furthermore, the contract stated that the investor waived the right to make claims of bad handling of the investment fund.

Regarding the claim that there was misrepresentation, there is no evidence that this is the case. Although def admits to having projected a potential of 50% profit, there is no evidence that such a profit was not possible. In fact, in a matter of a few days, there was a 10% gain, and the eventual great losses do not prove that there was no potential for continued gains. Contrary to p's claims, def operated against his directions, as all indications are that p gave def free reign to invest as he saw fit.

The contract spelled out that the potential of loss was great, like the potential of gain, and suggested not to invest more than 40% of one's portfolio in such an investment. Def did not stress orally that there was a chance of a total loss of the principal (which, in effect, happened), something which p never considered but it is clear from the contract that this was a possibility. The Shulchan Aruch (Choshen Mishpat 61:13) rules that a husband who agreed to a ketuba with certain conditions cannot say afterward that he was not aware of what was written in it. The Rama continues that he is even responsible for implications one can draw from the contract's language. One cannot claim that it is illogical for one to have agreed to the possibility of losing all his capital, as Tosafot (Ketubot 47a) says that it is normal for one to put himself in a situation of great loss if it also gives him the possibility of great gain.

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Iyar 11-17, Sanhedrin 72-78

Be Killed and do not Transgress (74a)

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara deals with the question of what one should do when he is forced to choose between transgressing a prohibition and losing one's life. The Gemara (74a) states that for all prohibitions one should transgress and not be killed, with the exception of three prohibitions, which require him to be killed and not transgress. The three prohibitions are idolatry, forbidden sexual relationships (arayot), and murder.

The Gemara states that the source that teaches that one must give up his life and not murder is learnt from logic: "who says that your blood is redder, perhaps his blood is redder." In other words, one may not save one's life at the expense of someone else's life, since one can't assume that his life is more precious than someone else's.

The Tosafot (74b d"h veba) state that, since the source for murder is logic, there is a case where this logic works in the opposite direction. The case is where a person is being forced to kill someone else passively. For example, when they want to throw him on a baby, and if he wants to prevent this he must act. In this case, say the Tosafot, we say that who's to say that the other person's blood is redder and that I must prevent his death at the expense of my life. Thus, in such a case, even though there is a prohibition of murder, one should transgress and not be killed.

However, Rabbeinu Chaim Halevi (on the Rambam Hilchot Yesodei Hatorah 5, 1) infers from the Rambam that he disagrees with the Tosafot. He explains that, according to the Rambam, the Gemara does not mean that each case should be examined according to the logic that one life cannot take precedence over another. Rather, the Gemara means that, since one life is no more valuable than another, the prohibition of murder cannot be overridden by a threat to one's life. Therefore, in any case where a person is presented with a choice between murder or danger to his life, he must forfeit his life and not transgress the prohibition of murder.

This disagreement has a ramification regarding forbidden relationships, since the Gemara explains that the source that teaches that one must be killed and not transgress a forbidden relationship is learnt from the fact that the Torah (Devarim 22, 26) compares forbidden relationships to murder. Therefore, according to the Tosafot, for forbidden relationships as well, if a person is forced to take part passively and not actively, he is not required to be killed. However, according to the Rambam, in any case he must be killed and not transgress.

Summary and Ruling:

The Rishonim disagree as to whether the obligation to be killed and not transgress for murder and forbidden relationships is only where a person is required to take action, or even when passive participation is required. The Remma (Yoreh De'ah 157, 1) rules that only when a person is required to take action must he be killed and not transgress.

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