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HEMDAT YAMIM

PARASHAT HASHAVUAH

Ki Tisa 15 Adar 5771

"And Hashem Shall Cleanse, Not Cleanse"

Harav Yosef Carmel

After the sin of the Golden Calf, Hashem taught Moshe the Thirteen Attributes of Mercy (Shemot 34: 6-7). Although the *pasuk* ends with Hashem remembering the sins of the fathers for four generations, our custom is, when reading these *p'sukim* on fast days, to have the congregation read the attributes out loud but stop between the words "v'nakeh" (He will cleanse) and "lo yenakeh" (He will not cleanse). This implies that the last attribute of mercy is *v'nakeh*. We will try to investigate this week what the opinions of *Chazal* and the early commentators are on this matter.

The *gemara* (Shvuot 39a) seems to be in line with our practice. Rabbi Elazar is troubled by the apparent contradiction on whether Hashem does or does not cleanse, and says that He does cleanse those who repent and does not cleanse those who do not repent. In the Ten Commandments (Shemot 20:6) we are told that specifically if one sinned by saying Hashem's Name in vain, he is not cleansed even if he repents. Rabbi Akiva (Sifrei Zuta 6) also says that the cleansing is possible only at certain times, saying that He cleanses in matters between man and Hashem but not in matters between man and his fellow man.

However, in *aggadic midrash* (Vayikra Rabba, Emor 29), we see that even *lo yenakeh* can be seen as a matter of mercy. The *midrash* says that *lo anakecha* (as found in Yirmiyah 30:11) refers to not having Bnei Yisrael cease, as Hashem will suffice with *yisurin* (afflictions) in this world so that they can prosper in the world to come. The Meiri (Rosh Hashana 17a) cites the explanation that *nakeh lo yenakeh* is one idea, that Hashem will not wipe the people out. He is bothered by the fact that we do not have the congregation read the whole *pasuk*, as according to this explanation it is all a matter of mercy. Rashi (1st explanation) says that it is a little of both, in that Hashem will not totally wipe the slate clean but on the other hand will give punishment only in small installments.

The Abarbanel sees it as two different but related attributes. If one has many virtues but also some sins, Hashem will look at the majority and cleanse the sins. On the other hand, if one has mainly sins, Hashem will not use the sins as a reason to destroy the person. In other words, the same root word is being used with two different meanings even though the two appearances are found in direct succession. Once it means cleansing and once it means [not] uprooting.

The Tzitz Eliezer (XII, 33) cites a beautiful idea from the Ari in regard to our *pasuk*, linking it to a famous *mishna* and besides that נְקַדֵּת both have the letters נְקַדֵּת and נְקָדָה but at what is in it." The words נְקַדִּין Avot: "Do not look at the but at Hashem's Name of נְקָדָה have the letters that spell out Hashem's Name of Mercy. Thus we say not to look at the Mercy that accompanies it.

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Ask the Rabbi

Question: When you don't have your *tefillin* and someone will lend his to you during *chazarat hashatz*, what *davening* should you be doing while you wait?

Answer: The *gemara* (Berachot 14b) says that one who says *Kri'at Shema* without *tefillin* is like one who says false testimony about himself. Rabbeinu Yona (8a of Rif to Berachot) explains that since he reads in *Kri'at Shema* the commandment to lay *tefillin*, it looks bad to read it and not put on *tefillin*. There are several sources that say that, for positive and/or to avoid negative issues, it is important to have *tefillin* on during *Shemoneh Esrei* also (Shulchan Aruch, Orach Chayim 25:4; Tosafot, Berachot 14b; see China D'chayei 30). Therefore, people do not give up their *tefillin* until at least after *Shemoneh Esrei* and indeed usually not until after *Kedusha*. So, as you ask, the person waiting will have to choose between *davening* without *tefillin* and *davening Shemoneh Esrei* without a *minyan*. (*Davening* at a later *minyan* that makes the crucial times of *tefila* is, of course, best.)

There is close to a contradiction on the matter between critical sources on your question and the standard practice concerning a related one. Many people who go to a late *minyan* "solve" the problem of missing *sof z'man Kri'at Shema* by reciting it before *shul*. Yet, several *poskim* are bothered by the fact that these people usually do so without *tefillin* (during the week), which, as we have seen, is a problem. Rav Ovadya Yosef (I, OC 4) justifies the practice by citing those who say that it is not false testimony if one will be putting on *tefillin* later in the day. (Rav Shlomo Kluger (Ha'elef Lecha Shlomo 47) says that it is legitimate to rely on putting on *tefillin* later only if that will be during the recitation of *Kri'at Shema* at the right time.) One can add to the picture the opinion of the Meiri that *Kri'at Shema* without *tefillin* is a problem only when it is done in a manner that shows disregard for *tefillin* and the fact that the whole issue is only rabbinic. Standard practice, thus, is to not be overly concerned about the false testimony when *tefillin* will be put on later.

In apparent contradiction, the Magen Avraham (66:12) says that if one has to choose between *davening Shemoneh Esrei* with a *minyan* and *Kri'at Shema* and *Shemoneh Esrei* with *tefillin*, we choose the *tefillin*. His main source is reminiscent of the transitive property of inequality. If one comes into *Shacharit* when the congregation is about to start *Shemoneh Esrei*, he does not skip straight to *Shemoneh Esrei* because the importance of *tefila* following the mention of *geula* (redemption) is greater than that of *Shemoneh Esrei* with a *minyan* (Shulchan Aruch, OC 111:3). Yet, if one's *tefillin* arrive right between *geula* and *tefila* he stops to put them on despite the break (Shulchan Aruch, OC 66:8). Thus, *tefillin* must certainly be more important than *Shemoneh Esrei* with a *minyan*. This proof is suspect because putting on *tefillin* between *geula* and *tefila* is not necessarily a full break (Maharsham III, 359). We can actually use similar logic in the opposite direction. One can say *Kri'at Shema* without *tefillin* in order to do so like *vatikin* even though many hold that *tefila* with a *minyan* is greater than *vatikin* (see discussion in Yabia Omer, op. cit.). Thus, there is significant halachic logic to say that one should *daven* normally and put on the *tefillin* during *chazarat hashatz* (see Minchat Yitzchak II, 107, who connects the matter of *Kri'at Shema* before *davening* and our question). Yet, it is hard to rule against the Magen Avraham, who is accepted by the Mishna Berura (66:40).

Assuming that one is going to follow the Magen Avraham, some suggest that he should wait until after *Yishtabach*, which is reasonable since the Rama (OC 54:3) says that one may put on *tefillin* at that time. However the *poskim* do not see this as an optimum time and considering that this person is anyway not reciting the critical passages of *Kri'at Shema* and *Shemoneh Esrei* with a *minyan*, it is preferable to wait before starting *Baruch She'amar*.

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Ein Ayah

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

Qualitative vs. Quantitative Shleimut

(condensed from Ein Ayah, Berachot 6:25)

Gemara: When Rav Ami and Rav Asi would have bread from an *eiruv*, they would make the *beracha* of “*hamotzi lechem min ha’aretz*” on it. They would explain: “Since one *mitzva* was done with it, it is proper to do another *mitzva* with it.”

Ein Ayah: This gemara includes a moral lesson, as we will explain. There are two ways for a person to increase the *shleimut* (completeness) of the things with which he comes in contact as he serves Hashem: quantitatively and qualitatively.

The quantitative approach is to increase the number of items that he injects with sanctity, even if each one will be improved only to a small degree. The qualitative approach is to try to advance, to the fullest extent possible, that which is most fitting for advancement. The rationale for this approach is that from the advancement of one item there will trickle down a gain for the masses.

Based on the qualitative approach, *Chazal* instructed us to have many students (Avot 1:1) and otherwise expand Torah study among those groups who are most capable of absorbing it. This is considered preferable to spreading out our energies between the various *shuls* of the relatively ignorant [an interesting comment, which is interesting to check in a historical perspective in Rav Kook’s life. Certainly, he does not mean that no one should be teaching the uninitiated but that those who have the ability to impact significantly on the higher echelons should give that priority over teaching the masses on a lower level.]

On a national level, this is true as well. Israel is to raise its level in Torah and fear of Hashem instead of wandering to light up the various nations of the world with the light of Hashem to the small degree that they are prepared to accept. The idea behind this, both in the individual and the national context, is that when there is a great light that shines upon the more fully complete people, a light will also shine on those who are much less complete. In contrast, if one focuses his efforts on the masses and thereby uses up his energies, there will not be anyone who reaches the desired level of *shleimut*, and the proper goal would be missing.

In this light, the Rabbis instructed that an object that was involved in a *mitzva* should be involved in additional ones to advance it, instead of using other objects that were not involved in any *mitzvot* and thereby sanctifying them partially. This is because more complete *shleimut* of the few is preferable to beginning to advance that which, until this point, totally lacks *shleimut*. This idea is true regarding a variety of areas of wisdom and craftsmanship. The world will be more advanced by producing great experts in limited fields than by having one absorb superficial expertise in many fields.

We also learn that a *mitzva* impacts on all of existence. An object that was involved in a *mitzva* receives a part of this element to the extent that it has an advantage over other objects. This can be understood philosophically, that service of Hashem elevates a person and indeed the entire world. It elevates living things from lowness through the power of wisdom and righteousness that it receives from the light of Hashem. Every creation should serve for the purpose for which it was created. This realization should encourage man to look onto creation in a positive light and make him want to improve every object according to its value. After all, Hashem created them for a high purpose, and we should not take away their “honor.” Upon getting used to the approach of respect for objects, a person should internally reason that it is certainly morally unacceptable to withhold respect from a human being, who is created in Hashem’s image. It should also help internalize that good actions leave a long-lasting positive impact of blessing and good fortune. That is why we show respect for the *mitzva* done by reusing the object for another *mitzva* and contemplating the moral lessons.

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A Claim for Severance Pay After Many Years

(condensed from Shurat Hadin, vol. VI, pp. 176-182)

Case: A former teacher (=pl) for a private, government-supported school system (=def) is suing def for severance pay some twenty years after stopping to work, claiming that he was fired. Def counters that they are required to pay and points out that the statute of limitation for such a claim according to the law of the land is seven years.

Ruling: [As we have discussed several times in the past,] the practice of severance pay is not a Torah law but is based on the precedent of the parting presents a Jewish servant received upon being set free. It is considered binding based on local practice in many parts of the Jewish world, including by the Israeli law, in the case of reaching retirement age and upon one being fired. It seems to be an example of forcing one to pay money *lifnim mishurat hadin* (above the letter of the law), but according to many poskim one cannot force such a payment (see Rama, Choshen Mishpat 12:2). Therefore it must be based on custom, which is binding in many areas of monetary law, certainly including the laws of workers.

One major outcome of the fact that this practice is based on custom is that it should follow to the end the guidelines of the custom, as the Rivash (477) posited, on a general basis, regarding monetary customs. Although the Rivash says that the idea of being linked fully to the custom does not apply to customs that are based on natural morality, *Acharonim* assume that it applies to all customs. Therefore, the statute of limitation should apply here. We should also point out that statute of limitation has a logical basis that is similar to a Talmudic concept. The issue is that one is required to keep financial records for up to seven years and no more. Thus, it is possible that def, or others in parallel cases, had proof of payment that are no longer available. This is similar to the halacha that since one preserves his purchase contracts for up to three years, one who has occupied a field for longer than that can say that he had proof of purchase that is no longer available (Bava Batra 29a).

Def also claims that pl quit and was not fired, and thus does not deserve severance pay. If there were a full obligation, we would not say that the fact that he did not make the claim is a clear sign that the debt no longer exists, as it is possible that, for example, there was a contract that was lost and later found (Rosh, cited by S'ma 69:19). However, regarding a case like this, where there never was a contract, there are grounds for suspecting that the fact that pl made the claim so many years late, even though the practice of severance is a known one and pl is the type of person who is aware of his rights, shows that he was never owed. Therefore, there are also grounds to suspect that he indeed quit and does not deserve severance pay, which is thus another reason to deny his claim.

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