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Pesach and Milah

It seems easy to find a connection between the *parasha* and the special “*Hachodesh*” *maftir*. The *parasha* mentions the *mitzva* of *brit milah*, which is closely related to the *Korban Pesach* (Pascal lamb), highlighted in the *maftir*. However, the *maftir* (Shemot 12: 1-20) does not mention the halacha that an *aref* (one who did not have a *brit*) cannot bring the *korban*, which is found in a later portion, two dozen *p’sukim* later (ibid. 12: 43-50). It is not only several *p’sukim* that separate them. Rashi points out that while our *maftir* occurred on the first day of Nisan, the need for *brit milah* before partaking in the *Korban Pesach* was taught on the 14th of Nisan. It doesn't seem logical to wait to tell people to do a *brit milah* until they are busy with the final stages of pre-redemption, imminently followed by exodus. Using the two weeks' time to have the *milah* and recuperate seems more sensible.

The way the *midrash* (Shemot Rabba 19:5) connects *Korban Pesach* and *milah* may clarify somewhat. The people were reluctant to perform *milah* but, according to the *midrash's* first version, when they found out it was a prerequisite for taking part in the *Korban Pesach*, they became willing to do it. According to the second version, it was not until the preparations for the *Korban Pesach* began and the smell enticed them to beg to take part that Moshe was able to get them to perform *milah*.

That still does not explain why the connection between the two was not revealed earlier. The *midrash* mentions the significance of the intermingling of the blood of the *milah* and that of the *Pesach*. Thus, the fact that the *milah* was done at the last moment might have had some positive value.

However, it is likely that Hashem would have preferred for the people to fulfill their sacred obligation of *milah* well in advance without prodding. Indeed, the *midrash* praises the Tribe of Levi for having been careful about the matter throughout the years of servitude. Bnei Yisrael, in their downtrodden state, were not in the practice of performing any *mitzvot*. They had enough trouble following the commandments that Pharaoh imposed upon them. Why should they follow the practices their fathers related from a G-d who had allowed them to be in a wretched situation? Only when the final steps of redemption were palpable, represented by the *Korban Pesach*, were they willing to put in their bodies a sign of servitude to Hashem instead of to Pharaoh. According to the *midrash's* second version, it was not even enough to know that this was to happen. Rather, they had to “smell in the air,” literally and figuratively, the festivity of freedom in order to do so.

Since ancient times, we have never forgotten the status of free men and the related obligation of *milah* that encourages us to give ourselves over to Hashem. May the stages of redemption and the “smell” of hopefully imminent further redemption encourage more of us to intensify our service of Hashem.

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Ask the Rabbi

Question: Someone showed me a *gemara* that says that one has to own his *matza* on *sefer* night. Yet I have never seen people being careful to acquire ownership when they have the *sefer* in someone else's home. Can we reconcile the practice with the sources?

Answer: The *gemara* (Pesachim 38a) does appear to say that one must own his *matza*. In discussing *matza* that is made from *ma'aser sheni* (produce that can be eaten only in Yerushalayim when it possesses a status of *kedusha*), it says that according to the opinion that *ma'aser sheni* is considered Hashem's property, one cannot use it to fulfill the *mitzva* of eating *matza*. This is derived from the textual comparison between *matza* and *challa* taken from dough, which applies to one's own dough. We accept the opinion that *ma'aser sheni* is owned by its human owner, and thus the question is moot in that regard. However, the concept finds expression in the halacha that one does not fulfill the *mitzva* with stolen *matza*, which, according to the Mishna Berura (454:15), is due to a lack of ownership over stolen *matza*. Therefore, even if one "steals" *matza* unintentionally and no one cares (e.g., two people mix up their *matzot*), there is a problem to rectify (*ibid.*).

Why then do we not find people being careful to make a halachic acquisition (*kinyan*) on the *matza*? In regard to general approach to halacha, it is crucial not only that standard practice ignores the issue but also that the classical *poskim* are silent on the subject. This phenomenon, called *setimat haposkim*, is also a major halachic factor. Therefore, we do not suggest going out of one's way to be stringent and make a *kinyan* because creating a *chumra* that is clearly a new one on a common matter is not warranted. (Regarding unusual occurrences, it is more reasonable to say that the lack of a source or a *minhag* of stringency is due to a dearth of discussion about rare cases ... but that cannot be said here). Let us, then, explore why there is no problem.

The Sefat Emet (Sukka 35a) suggests that we can apply the Rosh's position that when a groom borrows a ring to effectuate a marriage, we assume it was given to him to halachically acquire it, for if not, the marriage cannot take effect. This explanation is somewhat difficult, as many people are not aware that they need to own *matza* and so the assumption of intention may be unreasonable.

Another idea is that one acquires *matza* when he makes a change to it by chewing it. He fulfills the *mitzva* later when swallowing. This does not help for stolen *matza* (Shulchan Aruch, Orach Chayim 454:4) because there, the chewing, which begins the *mitzva*, is forbidden. Since the chewing is necessary to acquire the *matza*, the entire *mitzva* is disqualified (see Mishna Berura 649:3). This explanation is difficult because changes to an object alter ownership only in cases like that of a thief, who already did an action of bringing the object into his control; this is missing here.

Some *poskim* (Imrei Bina, Pesach 23; Tzitz Eliezer II, 37) argue with the premise that one needs to own *matza*. They argue, based on the comparison to *challa*, that one needs only full permission to freely eat the food, not ownership. Guests and family members certainly have this.

The Mishna Berura (454:15) hints at a strong answer. Intention for acquisition is pertinent when one could either be acquiring or borrowing. If the object will return to its original owner, it is borrowing unless something makes it an acquisition. When one receives *matza* with permission to eat it, the piece will not return; thus there is effective intention to acquire it. Putting food into or onto one's body is a *kinyan* (see Gittin 77a). Thus one acquires *matza* before he swallows it.

So as long as you're not stealing someone's *matza*, eat it without worries on this account.

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Religion and Science- part VI

(from Perakim B'Machshevet Yisrael, ch. 30)

Rav Yisraeli gathered classical and more contemporary rabbinic views on the interaction between religion/belief and science. We present his sources in an abridged, free translation form.

7. On the Matter of Contradictions Between Torah and Science (continued)**Moriah pp. 167-172 (Dr. Yitzchak Breuer)**

[We saw last time how the intellect is not capable of dealing with everything in the world. We saw the pasuk, "For He commanded and they were created and had them stand for all time; He placed a rule that will not be violated." This relates to creation as Hashem accomplished it and, in contrast, as it is seen by human intellect after that point.]

The wisdom of nature (science) is correct that according to its means of recognition, the world is millions of years old because its intellectual means are based on cause and effect. Science's investigations into the depths of nature do not bring clear proofs precluding creation *ex nihilo*. *Sechel* (intellect), which enables science, rejects *ex nihilo* just as the ear rejects a flower's smell. Hashem's ten statements created our world before he set "the rule that will not be violated," a rule that was not used in creation. Science can find the rules of nature only after Hashem presented it to the world, after creation. The Torah is not a text book to teach creation *ex nihilo*, an event that was not given to *sechel* to understand in depth. Rather, within the realm of man's desires, he is to know that the Creator created the world with a purpose. The Torah and its account of creation teach man that Hashem who is free gave of His freedom to man as well as of His wisdom. He made creation fit human comprehension through "intellectual clothing" so that man can have dominion over it and complete the plan of creation as partners with their Father and King.

Science denies the possibility of miracles. Is there a contradiction? "And if a creation, Hashem will create, and the earth shall open its mouth." The true miracle is creation, and the rule of *sechel* stands still. Science has no part in miracles. Human intellect cannot hear the sound of Hashem that "said and it was so." Only if Hashem gives man a new instrument to capture the sound will man "see it." Creation and miracles are Divine revelations in which science has no part. Science's job is to give man dominion over that which Hashem made, not to provide a methodological outlook on the world and life.

8. The Realm of Science and the Realm of Belief**Techumin p. 35, 13 (S.Z. Shragay)**

Science answers the question of what, penetrating the secrets of perceived existence. Judaism asks about the world's paths, demanding an answer about that which precedes and succeeds them: who created us?

There is a never-ending call to man to recognize himself, through which he will come to recognize his Maker. Man's desire for self-recognition is engrained in his nature. He wants to know the origin of his life - his G-dly element. A Heavenly voice calls out to him: "Raise up your eyes to the heavens," awakening him to contemplate and recognize Who created these.

"The superiority of man over animal" – is to know the "null," in other words, the infinite. An animal knows only what its eyes see, that which is beneath it. Man not only sees that which exists but recognizes its essence. With his wisdom, he can grasp even that which is above him, but he cannot grasp the reason behind the "what," behind existence. He cannot answer why existence is the way it is and not different or who was and is the cause in the past, present and future for the rules of nature, and why nature is as it is.... He can arrive at one answer: "The heavens speak Hashem's honor"... This is the only answer; all others are smashed at the stone by the question of "the beginning," the first moment of the secret of "null" that preceded "existence."

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P'ninat Mishpat

Suing a Lawyer Who Extracted Interest Payments

(based on Halacha Psuka, vol. 41, condensation of Piskei Din Rabbaniim XVI, pp. 252-259)

Case: The city charged the plaintiff (=pl) for work done in front of his home, but pl refused to pay. The city hired a lawyer (=def), who succeeded to extract payment, including interest for overdue payments. Pl is suing def, holding him personally responsible for extracting improper payments, including forbidden *ribbit* (usury), based on the rule that one is not considered an agent when he is sent to do an *aveira*.

Ruling: The Shulchan Aruch (Choshen Mishpat 2:1) says that the leaders of a city can administer punishments, including the confiscation of money at their discretion. Those who differ refer to the confiscation of money; all agree that a city's leadership can levy taxes to finance the needs of the city (S'ma 2:11). Therefore, the city had the right to demand pl to pay for the work they did. So too the need to consult a great man before obligating someone does not apply to standard taxes.

Was it permitted, though, to charge interest on the overdue payment? Rav Daichovsky said that they can do so for two reasons: 1) Since "the city" is not a private legal unit, it may borrow and lend with *ribbit*. 2) Interest required of one who is late in paying his debt to a government entity is not *ribbit* but a penalty payment they can levy. Rav Eliezerov argued on both points, claiming: 1) Those who treat governments differently only allow them to borrow money with *ribbit*, not to obligate citizens to pay them *ribbit*. 2) The city should have defined the late payments as a penalty; once they referred to them as interest, it became forbidden to charge that money. Still, he did not feel one could extract damage payments from def. Rav Elchadad said that linkage to the CPI was permitted, but the interest payments were not. However, since it was not done in the form of a loan, the prohibition was only rabbinic.

According to Rav Daichovsky def was permitted to serve as an agent and thus is not a party to a suit about something he did properly for another. Rav Eliezerov said that the agency (his acting as an agent) was valid because def acted without realization that it was forbidden (*b'shogeg*) to extract the interest payment, as the prohibition in this case was not a clear cut one. In the case of *shogeg*, we cannot blame the agent for accepting the agency and therefore he does not share legal responsibility (see Tosafot, Bava Metzia 79a). Rav Elchadad pointed out that regarding a rabbinic violation some say that the agency is valid after the fact. Furthermore, the Rama (Yoreh Deah 160:16) posits that the prohibition of taking interest applies only when the money changes hands between the borrower and the lender, and not when an agent is the middle man. Although many dispute this Rama, the Nekudot Hakesef (ad loc.) supports it and, therefore, def can cling to the Rama's position and pl cannot extract payment from him.

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