



HaRav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

## Parashat HaShavua

Chukat, 10 Tamuz 5775

### A Sign of the Era of Speech

Harav Yosef Carmel

Moshe, the Torah tells us, did not merit entering *Eretz Yisrael* because he hit the rock instead of speaking to it (Bamidbar 20:7-13). The famous question is: what was the problem with hitting the rock, especially considering that it had been done before and was considered fine (Shemot 17:6)? The simple, correct, yet incomplete answer is that in the earlier instance, Hashem had instructed to hit the rock, whereas in the present instant, Hashem had said to speak. The reason the answer is incomplete is that we should inquire why Hashem was no longer interested in hitting the rock.

In Parashat Shemot, the Torah describes the staff with which Moshe would later hit the rock as follows: "This staff you shall take in your hand, and with it you shall do the signs (*ottot*)" (Shemot 4:17). Let us take a look at various places where the word *ott* is used.

There are a small number of *mitzvot* that are known as *ottot*. One of them is *brit mila*, which is a sign of the covenant between Hashem and the offspring of Avraham (Bereishit 17:11). Hashem said to Moshe after showing him the burning bush: "...I will be with you, and this will be for you the *ott*" (Shemot 3:3,12). *Tefillin* are also called an *ott* on one's arms, as well as a remembrance on one's head (Shemot 13:9). We find regarding Shabbat: "Just, you shall observe my Shabbat, for it is an *ott* between Me and you for your generations to know that I am Hashem who sanctifies you" (Shemot 31:13 – this *pasuk* appears after the giving of the Torah, but the *mitzva* was given already at Marah and likely, at least on some level, in Egypt). Finally, we note that the blood that was put on the houses of the Jews to keep the "destroyer" away when the firstborn Egyptians were being killed was called an *ott* (Shemot 12:13).

That which the entire list shares is that they all relate to the time that precedes the giving of the Torah. *Chazal* classify this period as "before the *dibbur* (speech)" (see Chagiga 6a with Rashi). This is, of course, referring to the hearing of Hashem speaking to the people at the revelation at Sinai.

We now have enough background to present an answer to our question about the change in policy toward hitting the rock. The first time, in Parashat Beshalach, was before *matan Torah* – in the period of *ottot* (physical signs) rather than *dibbur* (speech). At that time, using the staff to hit the rock was perfectly fine. After *matan Torah*, Bnei Yisrael's leaders were not supposed to use the staff in that way. Only speech was permitted for the miracle at hand.

Let us pray that we will merit listening to divine speech and always knowing how to properly fulfill the word of Hashem.

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by Rav Daniel Mann

## Sharing Surprising Grounds for Leniency

**Question:** A couple of times recently, I have been troubled by your columns, in which you entertain leniencies that I view as dangerous or against the spirit of halacha. Although you acknowledge that such leniency is only for great need, since those cases are rare, isn't it wrong to share this with a broad readership, which includes people who might misunderstand or abuse the grounds for leniency? In one such column, you discussed the possibility of serving food in a non-kosher establishment, which is at least *pas nisht* (inappropriate).

**Answer:** The good point you make is one we do take into account. You have prompted us to highlight for our readership the background and goals of this column.

The OU Ask the Rabbi service, in which Eretz Hemdah plays a major role, provides an address to a wide variety of people throughout the world to ask questions that, for whatever reason, they are not asking to a local rabbi. Some questions are "cookie-cutter" questions, with one answer that fits all, irrespective of venue, circumstances, level of need, or halachic orientation. Other questions have different legitimate answers and are apt to be affected by circumstances.


We have several goals in sharing some of our answers with the public. One is to inform the masses how to act when they encounter the same circumstances addressed. However, there are other important goals. We treasure teaching Torah *lishma*, including regarding issues and cases that few are likely to encounter.

We also strive to expose our readership to a multi-faceted and, we pray, balanced approach to rendering halachic decisions. We aim for an approach that is traditional on one hand, but with an openness for innovative problem solving. We aim for high halachic standards, but with a realization that an objective or even a subjective need often plays an important role even according to these high standards. We view implementation of this balance as one of the most exciting and important elements of *p'sak halacha*.

One case-in-point is a set of *teshuvot* (Igrot Moshe, Yoreh Deah II: 4, 5), in which Rav Moshe, in the course of a week, wrote ostensibly "contradictory" rulings on the same rabbi on the same case (a *shochet* who publicly did something that was *chillul Shabbat* according to almost all rabbanim). The rulings are not contradictory because Rav Moshe begins the second responsum: "if we will forbid him ... it will negate all that you have fixed with toil in the *kashrut* and the peace in the city." He follows with a novel leniency to allow the *shochet* to continue with certain provisions. It is fascinating that Rav Moshe was willing to publish (in 1973) the two responsa back-to-back without hiding his change of mind due to the circumstances. The first responsum remains the basic one. The second one demonstrates how he could "stretch" to be lenient when needed. It also teaches that when Rav Moshe ruled stringently even in the face of great need, it is not out of lack of effort.

We estimate that a clear majority of this column's readers are solidly Orthodox English-speaking *olim*. As a rule, we would not consider (or allow our child) to be a waiter in an Israeli non-kosher restaurant. But Rav Ovadia allowed someone in great financial distress to be a cook in a non-kosher restaurant, until he could find another job, and published it (Yabia Omer, YD 6). Rav Moshe (ibid. YD I:51) allowed a delivery man in Europe (1929) to deliver pork. The Tzitz Eliezer (XVII:33) allowed a hospital nurse to freely serve/feed non-Jewish patients. Parallel circumstances that require analysis of the same issues/sources arise all around us.

We want our readership to enjoy the Torah's richness and hone their halachic sophistication to know what to ask and how. We want them to know that while *pas nisht* should often preclude things, we subscribe to the approach of the many rabbis, from a variety of traditions, who search for solutions to "non-cookie cutter" cases. Sometimes such rulings should be kept quiet; sometimes they should be publicized. May Hashem protect us from mistakes.



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# Ein Ayah

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

## The Essentially Greatest Must Come First

(condensed from Ein Ayah, Shabbat 2:38)

**Gemara:** If a human king makes a decree, it is questionable whether people will adhere to it, and even if they do, it is only in his lifetime. In contrast, Moshe Rabbeinu made several decrees and enactments, and they are intact for all time. Is it not correct that which Shlomo said: "I praise the dead, who already died" (Kohelet 4:2)?!

**Ein Ayah:** It is a big question whether the essence of human beings is on the rise or the decline. Careful consideration shows that there is a difference between that which transpires to mankind and people's essence.

People's essence has not improved at all over time, even though many external things have occurred that have advanced mankind by providing us with much intelligence based on experience and accumulated knowledge. Any wise person will realize that essence is the more important matter. Since regarding essence, the great people of the later generations are on a lower level to that of earlier generations, we conclude that earlier generations are overall on a higher level.

It is the Divine Providence that creates a distinction between leadership in regard to essence and in regard to matters of occurrences. Occurrences change, and therefore the rules of divine leadership that affect them change as well. Therefore, one cannot relate to the overarching rules as definite matters but rather doubtful ones that rely upon external things.

Matters of essence do not change. This applies to the seven *mitzvot* given to gentiles according to their spiritual needs. Similarly, when Bnei Yisrael received a special essence along with their separation from the nations when they received the Torah, those laws of the Torah also do not change.

Kingdom relates to the elements of human existence that are related to changing occurrences. This leadership is expected to be fleeting along with the changing times to which it relates. That is why the *gemara* says that a king's decrees are doubtfully fulfilled, and that since it relies upon external factors, it ends with his death.

The Torah of Moshe, which is built on the essence of Israel, has an independent eternal nature, like their essence itself. To facilitate this, Hashem chose to put in the earlier generations spiritual giants unparalleled in future generations who could pass on His unchanging word in the way necessary for eternal decrees. In that way, later generations are impacted by earlier generations, which makes the earlier generations greater. Hashem wanted for the Torah to be given in the first generation that the nation was granted its special essence and through the good agency of Moshe Rabbeinu. This would impact on all innate elements of our lives. This teaches us that matters of essence are greater than matters that rely upon occurrences.

Therefore, one should not be overly impressed with external matters for which the later generations have become proud. Rather, later generations should realize that they need to learn from the earlier ones. This is why Hashem had to make sure that the early generations had giants, starting with Moshe Rabbeinu and continuing with other prophets, who were so perfect in essence that they have not been replicated.

That is why the *pasuk* says that we are to praise the dead who have already died, because later generations indeed must look up to those who come from the past, especially Moshe Rabbeinu, the trustworthy shepherd, whose name will last for eternity. The Torah is called "the Torah of My servant Moshe" (Malachi 3:22), and this is what the *gemara* means by Moshe's decrees and enactments. This teaches that the greatest level can come from early history, before all the great volume of occurrences and acquired experience began. This is different from what some people view as the elevation of the later generations who have, in external ways, grown from experience.

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# P'ninat Mishpat

## Securing a Rabbinical Position Improperly

(based on Shut Chatam Sofer, Choshen Mishpat 19)

*The following responsum is fascinating on many grounds, including historical ones.*

**Case:** A rabbi was appointed to his rabbinical position by a (non-Jewish) authority without communal agreement. Is it permitted for him to continue at his post?

**Ruling:** Even if he is a great rabbi, he has done the wrong thing, as the *gemara* (Berachot 55a) states that Hashem made His appointment of Betzalel to lead the effort of building the *Mishkan* dependent on the people's agreement. If Hashem's own appointment of such a great man needed public approval, there must be a rule that one cannot be appointed to an important public position without some sort of democratic process.

If [a competent] *dayan* was appointed improperly by the authorities, the appointment stands because the law of the land is the law. However, the appointee would be obligated to inform the authorities that he does not want to accept the role without public approval. If the authorities force him to accept the role anyway, he could function validly. But if he did not protest and certainly if he made efforts to obtain the position in that way, he may not function in the rabbinical role. Others should tell this to the noblemen, most of whom are humane people who want the best for the Jewish community [it is unclear to this editor whether the Chatam Sofer believed this or that it is written out of concern that it might reach the wrong hands.]

Even concerning a *chazan* who most but not all of the community wanted, the Mordechai (see Beit Yosef, Orach Chayim 53) cites the Maharam that the non-Jewish authorities must have no part in religious appointments. That idea is even clearer regarding a position of real authority.

One could claim that for a rabbi, much of whose position relates to monetary adjudication, the authority's jurisdiction in monetary matters should grant them the right to select [a rabbi who is halachically valid]. However, the Rashba (cited without censorship in the Rivash 271) says that it is only valid to receive the approval of the authorities after the community has selected him. When a *dayan* has acted with judicial impropriety (including having himself appointed in a manner to which a community has the right to object), he is unable to be a valid *dayan* (see Bava Batra 58a).

It is also clear that the nobleman's appointment was based on a false assumption, for would that man, who is known for his kindness, have known the community's opposition, he never would have appointed the rabbi. Therefore, the rabbi has nothing to rely upon. About such cases, there was even a formal ban made by the Maharam MiRutteneburg and colleagues. I suggest that you appeal to the Count, for he is famous for his help for the Jewish community. He will leave this matter up to the Jewish courts and will be blessed with a long reign for him and his family.

After writing this halachic ruling, I thought to suggest that you seek peace. Arrange that the community will not totally remove the rabbi from his position but let him remain at the head of the *beit din*, without being called the rabbi. If, in that role, he will earn the trust of the people, it will be possible to reappoint him as rabbi, and hopefully the kind Count will agree with the procedure.

The matter is even clearer in our times when the rabbi is supported from community funds. Whatever he receives without permission from public funds is considered stealing.



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