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Parashat HaShavua

Pinchas, 24 Tamuz 5778

Ephrayim and Menashe – Who is Really First?

Harav Yosef Carmel

In the first census of Bnei Yisrael, in *Parashat Bamidbar*, Ephrayim is presented as the first and foremost among the sons of Rachel, with their banner being in Ephrayim's name and Menashe and Binyamin joining in (Bamidbar 2:18-24). While the encampment order remains in our *parasha*, when the sons of Yosef are counted, Menashe comes before Ephrayim.

The Chizkuni presents two possible explanations. 1. At the time of the earlier census (year 2) there were more families in the Tribe of Ephrayim, whereas in the later one (year 40), there were more from Menashe. In other words, the difference is a matter of numbers. 2. The second counting was on the verge of entering the Land, and therefore the one who received a portion of land first (Menashe) was mentioned first. In other words, the difference is the count's purpose.

The Netziv (introduction to Bamidbar) deepened the idea along the thesis of the Chizkuni's second answer. The reason that *Chazal* highlighted the censuses in Bamidbar is that there is great significance to the change in focus between the book's beginning (in the desert) and end (preparing to enter the Land). In the desert, they were in a mode of grandeur with an abnormal life filled with miracles. In *Eretz Yisrael*, they followed natural paths, with Hashem leading them in a concealed manner. In the desert, it was like traveling in the day, and in *Eretz Yisrael*, it was like traveling at night. Divine Providence only showed flashes, like lightning at night. That is why in the first census, things were done according to the order of the banners, on four sides, like the "chariots" of the Divine Throne. That is the reason that Ephrayim is found there before Menashe. This was different in the 40th year counting in Pinchas. What the Netziv does not explain is what impact the nature of the census has on the choice of which son of Yosef to lead.

We will continue by melding together the Chizkuni's two answers. Fundamentally, Ephrayim received the leadership of Yosef's family from both Yaakov and Moshe. Yaakov put his right hand on Ephrayim's head and said that people would bless their children by saying: "Hashem should make you like Ephrayim and Menashe" (Bereishit 48:20). Moshe also mentioned Ephrayim first in his closing *beracha* (Devarim 33:17). Not always did Menashe accept the second-place finish, as we see in Yiftach's harsh reaction to the criticism of his brethren from Ephrayim (Shoftim 12).

On the eve of the entry into *Eretz Yisrael*, Bnei Yisrael came to the Gilad, which the tribe of Menashe viewed as home, especially the children of Menashe who came from an Aramite concubine, including Machir (see Divrei Hayamim I, 7:14). Our census puts great stress on this part of the family, as Machir and his descendants make up eight of the families mentioned (Machir, his son Gilad, and six of Gilad's children). Since this part of the family seized an important leadership role, we understand why they were mentioned in a prominent location. In this context, we will look next week at the special status of the daughters of Tzofchad in this matter.

Indeed we learn that every person has his unique contribution to make and role to fill. Leadership competition that hurts unity does not promote our interests.

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Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich
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Ask the Rabbi

by Rav Daniel Mann

Vigilante Neighbor

Question: Teenagers have been congregating in front of my apartment building, making noise, dropping cups and cigarette butts in our garden, etc. Many of them sit on the wall between our property and the sidewalk. One of my neighbors has begun to smear machine oil, to damage the clothes of the wall-sitters and thus discourage their activity. Most of the building's residents think this is too harsh. Is our neighbor permitted to act this way? May we demand that he stop?

Answer: [What follows are some halachic thoughts, **not a formal ruling or legal advice.**]

It seems that the use of the wall is more a symptom of the problem, which is the congregating in front of the house, than the problem itself. People of any age and style may congregate on the sidewalk in front of anyone's house. On the other hand, they do not have a right to make noise that is inappropriate for the time and place in question or leave litter. One may call the police if norms are ignored; it is their job to find the balance between the interests of the various parties.

Your neighbor is performing what *Chazal* called "*avid inish dina l'nafshei*" (taking the law into his own hands), which is permitted rather than suing in *beit din* in certain cases (see Bava Kama 28a; Shulchan Aruch, Choshen Mishpat 4:1). While it is normally forbidden to hit someone (Devarim 25:3; see Sefer Hachinuch 595) or damage his property (Tur, CM 378), it can be permitted in the context of *avid inish dina l'nafshei* (Bava Kama *ibid.*). Is your neighbor acting within halachic limits?

A victim is allowed to take physical actions against a trespasser, even when the latter is not causing specific acute damage (Bava Kama *ibid.*). However, this is only when he cannot succeed in stopping the infraction without damaging the perpetrator (*ibid.*). Your neighbor should not just put on the grease without first warning trespassers (a clear sign is possible) to stop before having steps taken against them. Also, the rationale and consequently the limitations for this extraordinary permission are important. The Yam Shel Shlomo (Bava Kama 3:9) explains that it is predicated on the fact that the perpetrator is in the midst of violating a clear *aveira* and ignores the victim's protest, so that the victim can do *afrushei me'issura* (preventing another from sinning). If the violators are not made aware that they are actually sinning, these steps are inappropriate (see also Imrei Bina, Dayanim 9).

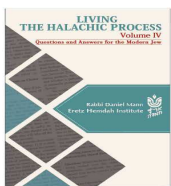
Your neighbor appears to be wrong on other grounds. By putting not easily seen grease on the wall, "innocent people" can be affected. This can include passersby who get too close to the wall and become dirty. It also impacts the people of the building. It apparently stains the wall, neighbors can be dirtied themselves, or they just don't want a reputation of being "from the mean building." In general, in matters of joint property, the rules of engagement are usually that the majority decides (sometimes there are nationwide or municipal rules or accepted practices).

Regarding another factor, we lack sufficient information. When a wall separates between private property and public domain, it is not always clear on whose property it sits. It is then possible that the wall-sitters are not trespassing. The contractor who built the building ostensibly built the wall on behalf of the homeowners. However, it is quite accepted for people who want to do so, to lean and even sit on such a low wall, and permission is assumed. There are even precedents in Halacha to make such things a right that the public can demand (see Bava Batra 12a; Bava Kama 81b) except when it is hurting the owners (e.g., the wall is getting weak). Considering that it is the assembling of noisemakers/litterers that it is the real problem, it is not clear that the building, if they agree, could legally make sitting on the wall forbidden *per se*.

Although we tend to disapprove of your neighbor's actions, we cannot tell you anything conclusive without hearing his side and knowing the parties. Of course, act with wisdom and sensitivity.

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





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Ein Ayah

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

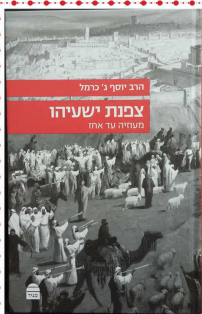
Combining the Two Inclinations

(condensed from Ein Ayah, Shabbat 6:70)

Gemara: That which it says in the *pasuk* (Kohélet 11:9), “Be happy, young man, in your childhood and let your heart make you feel good while you are single, and follow the paths of your heart and that which your eyes see...– until this point the *pasuk* is referring to the words of the *yetzer hara* (evil inclination). “... and know that Hashem will bring you to justice for all of these” From this point on are the words of the *yetzer hatov* (inclination toward good).

Ein Ayah: The vigor of physical life and the happiness of the spirit with the effervescent spirit that revels when it approaches that which the heart desires, in matters of the spirit and in materialism, must exist in mankind in order to make his nature complete.

The natural inclinations, when they are intact and complete, do not distinguish between good and bad, honest and corrupt, and between permitted and forbidden. That is why they need moral restraints through intellect and through the Torah, which calculate limitations for the boundaries of the inclinations. Therefore, it is not a good situation for a person’s spirit if his natural inclinations, with all their force, are taken from him, for then his essence is lacking and blemished. Rather a person should be built based on his inclinations. Those elements of morality which are missing from his inclinations should be made up by the guidance of wisdom, holy influences, and the morality of the intellect. The claims of the *yetzer hara* must be in the midst of the heart, and the words of the *yetzer hatov*, which are the foundation of the power of being a judge, who has many proper calculations, must always accompany them. Within the complete spirit there must always be an illumination of the *yetzer hara* with its basis in nature, along with the *yetzer hatov* lighting up the path upon which a person must embark. Specifically when the two join together, a person will be able to live and function properly. In fact, his actions will be for the good, as even his enemy (i.e., the *yetzer hara*) will make him more complete than he could have been without it (see Mishlei 16:7).



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.

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P'ninat Mishpat

Compensation for the Flaws of a Used Car – part I

(based on ruling 70061 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl), a used car salesman, sold the defendant (=def) a car for 10,000 shekels in installments with a standard contract. An expert test-drove and inspected the car and recommended it for def over other cars. Pl told def that there had been an electrical problem that was professionally fixed. Def is experiencing several problems, the most important being that during the first 24 hours after rain, he is often unable to get the car to start. Due to this, def is refusing to replace the last 700-shekel check (the original had a mistake). Pl demands that def pay the final payment and points out that the contract states that pl checked the car and relinquishes the right to complain about flaws. Pl also says that the problem that needed fixing was the car's shaking due to it not working on all cylinders; the present problem is a new one for which he is not responsible. Def claims that pl told him that the problem was an electrical one having to do with wetness, i.e., the present problem. Def does not want to nullify the sale but to reduce the price. In addition to the outstanding 700 shekels that he does not want to pay, he demands the return of another 700 shekels. Beit din spoke both to the person who sold the car to pl and to an expert on cars. According to their "testimony," it is difficult to know whether the present problem was pre-existing.

Ruling: Is it possible for a buyer to uphold his sale but ask for a partial refund due to flaws? The Shulchan Aruch (Choshen Mishpat 232:4) says that a seller can say to a buyer that if he demands a significant reduction due to a flaw, the seller can nullify the sale. On the other hand, the Shulchan Aruch (ibid. 5) discusses the case of temporary flaws that can be fixed and says that the seller can say he wants to reduce the price enough to use the money to fix them instead of returning the item. There, it is the seller who initiates the reduction, instead of nullifying the sale, not the buyer. However, since here both sides want to uphold the sale, it should be possible for the buyer to receive a reduction according to the lower level of value.

Can we figure out when this problem began? Generally, if a blemish is found only after the sale, we say that it developed in the domain of its present owner and he cannot make demands (Ketubot 75b). However, in this case, based on the testimony of the seller and an expert, there are reasonable grounds to see the present problems as a continuation of a pre-existing situation. Actually, pl himself claimed that problems very related to the present problems existed before, just that he claimed to have fixed them responsibly. Therefore, there seem to be grounds for def's counter claim demanding a price reduction.

Next time we will investigate the significance of the contract's clause and whether to factor in pl's "admission."

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