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# HEMDAT YAMIM

## Parashat HaShavua

Eikev, 23 Av 5778

Kingdom = King Son of King

Harav Yosef Carmel

Last week we saw that Moshe set the standard for the structure of prayer (praise, supplication, thanks) and that David used it in Shmuel II, 7. In that context, the prophet informed him that he had merited a unique gift – that his son would rule after him. By setting up a dynasty, it became possible for David's son to build the *Beit Hamikdash*. This week we will learn from Gidon that true kingdom requires a succession of kingdom.

Gidon was the only one of all the leaders of the era of the *Shoftim* who was requested by others and took steps himself to become king and actually begin a dynasty. We see the term *melech* (king) explicitly in the famous Parable of Yotam (Shoftim 9:8), in reference to Gidon's son Avimelech, whose name we will focus on later. Also, when the people approached Gidon with the request that he rule over them, after his stunning defeat of the enemy, they said: "Rule over us, both you and your son and your son's son" (ibid. 8:22). This unique formula strengthens the thesis that kingdom requires the possibility of passing on the rule to one's son.

Although Gidon initially refused the offer to rule over the nation, there are strong indications that he eventually acceded to it. Consider the following *p'sukim*: "Yeruba'al (Gidon's nickname) the son of Yoash went and lived in his house. Gidon had seventy sons, for he had many wives. His concubine from Shechem gave birth to a son for him and he made his name Avimelech" (ibid. 29-31).

These *p'sukim* contain several hints at kingship: the taking of many wives is a practice that is related to kings, who are also warned not to go too far in this regard (Devarim 17:17). Taking a concubine was also more common for kings. We see this concerning: Reuven's "interaction" with his father's concubine, the dispute between Avner and Ish Boshet over the latter's father's concubines, and Avshalom's actions with David's concubines (development of all of these is beyond our present scope). Gidon also collected a large sum of gold, which he used in an improper manner (see Shoftim 8:24-26). As we learn from the Torah's *mitzvot* for a king, this is a common problem that kings are likely to have.

Perhaps the most interesting sign of a kingdom is hinted at in the name of Gidon's son Avimelech. First, the unusual language of "*vayasem*" (he made his name) implies that it was more than just any name but that it represented a status, and this root is used for appointing a king (Devarim 17:15). In other words, Gidon made Avimelech his heir apparent. The name can be understood two ways: my father is the king; the father of the king. Another words, he was supposed to be the second link in a developing dynasty.

David was informed by a prophet that he was to be the founder of a dynasty, and David succeeded. Gidon did not receive such a divine message or blessing, which indeed had been bestowed on the Tribe of Yehuda (see Bereishit 49:10), of which he was not a part. May we merit seeing the fulfillment of the second part of that *pasuk*, the coming of Shilo (*Mashiach*), who will gather the nations in service of Hashem.

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# Ask the Rabbi

by Rav Daniel Mann

## Lateral Position of Tefillin Shel Rosh – part I

**Question:** Must the *tefillin shel rosh* be exactly in the middle of the head, to the extent that some people spend several seconds adjusting it in front of a mirror?

**Answer:** We have written several times that the main issue with the position of *tefillin shel rosh* is their likelihood to be too far down. But the lateral position also deserves a look. [This week we will focus on classical sources and basic possibilities; next week, we will get into details and practicality.]

The Rambam (Tefillin 4:1) says that the *bayit* of the *shel rosh* is in the middle of the front of the head. The Shulchan Aruch (Orach Chayim 27:10, mixing between the language of the Rambam and Tur) describes it more starkly: “The *bayit* should be lined up to the middle, so that it is opposite ‘between the eyes,’ and the knot should also be in the middle of the *oref* (posterior neck), and *lo yiteh* (should not be over (? difficult to translate)), not to this side or to that side.”

The requirement of the middle of the head is actually not obvious. While the Torah writes of *tefillin* “between the eyes,” the *gemara* (Menachot 37b) derives that this refers to the top of the head, based on a *gezeira shava* from the prohibition of a mourner pulling out hair. Tosafot (Kiddushin 36a) asks that accordingly we would expect that *tefillin shel rosh* would be in the same area – the entire part of the head in which hair grows (Shulchan Aruch, Yoreh Deah 180:9). Yet, they and the Rambam (ibid.) posit that a vestige of the literal idea of “between the eyes” limits the area, with the Rambam reasoning that the middle is above the area of “between the eyes.”

The *gemara* describes the location of the *shel yad* and the front-back location of the *shel rosh*, not its lateral position, so what is the Rambam’s source? The Beit Yosef (OC 27) cites the *gemara* (Menachot 35b), which says that the back knot “faces the face.” Rashi explains: “opposite the *oref* (posterior neck) and not the side of the head.” The Beit Yosef surmises that this is the Rambam’s source: just as the knot is in the middle of the back of the head, so too the *bayit* should be in the middle. He adds in that this is anyway apparent from “between the eyes,” which the Rambam mentions (although he does not usually independently derive *halachot* from *p’sukim*).

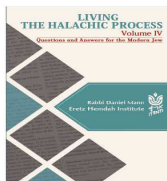
What does in the middle mean? First, the middle of the head can refer to a **line precisely** in the middle, but the entire *tefillin*, which has width, cannot fit on a line! One logical possibility is that it suffices that any part of the *bayit* is on the line, giving us significant leeway, especially if we have big *tefillin*. Or it can mean that the middle of the *tefillin* must be in the middle of the head. But does that mean that the **precise** middle has to be on the **precise** middle?! As the Satmar Rebbe points out (Divrei Yoel I:4), we accept the opinion that man is incapable of being precise (see Gittin 78a), even with mirrors, not to mention that *tefillin* move slightly when we move our head. One possibility is raised by the Shulchan Aruch Harav (addendums to Hilchot Tefillin) based on an inference of a different *gemara*: two of the four *parshiyot* must be right of center and two left of center. This requires near perfection (in addition to the fact that the chambers for the *parshiyot* are not necessarily equidistant – see Mishna Berura 32:182), and it is shocking that earlier sources would not warn us!!

Another approach, which seems to be posited by most of the *poskim*, is that the middle is an **area** of the head (similar to the front-back and arm areas) within which the entire *tefillin* must be resting. It follows that if the *tefillin*’s edges are within this area, it makes no difference, other than *zeh keili v’anveihu* (doing *mitzvot* aesthetically) whether it is centered. The question then begs – how wide is this area? What are its borders? If we know the answer, each person will have to compare that area to the width of his *tefillin* and determine his leeway (accordingly, the smaller the *tefillin*, the better).

[Save this page to continue next week.]

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# Ein Ayah

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

## Moral Strength in Unity

(condensed from part of Ein Ayah, Shabbat 6:76)

**Gemara:** “Moshe was angry at the officers of the soldiers [who took revenge against the Midianites who caused Bnei Yisrael to sin]” (Bamidbar 31:14). Rav Nachman said in the name of Rabba bar Avuha: [This is the content of what] Moshe was saying to Israel: Perhaps you have returned to your previous sin [i.e., the promiscuity with the Moavite and Midianite women, which would explain why they brought the women with them]. They answered: “Not one person is missing from us” (ibid. 49) [Rashi – We have not lost the Jewish characteristic].”

**Ein Ayah:** When one comes to “wage war” against something bad, he naturally already recognizes that the bad thing is at hand and needs to be fought. However, sometimes the internal inclinations are not yet fully refined, so that the battle against the evil matter can actually strengthen the bad inclination to which the person is secretly susceptible. The way to protect oneself is to connect himself to an event in which the community recognized that the evil is indeed evil. The individual’s standing will be fortified by connecting to a strong communal stance. This is particularly effective when the bad and lowly matters come about because one has separated himself as an individual from others.

These sensitivities came to the fore when Bnei Yisrael fought the Midianites after the moral downfall the foreign women brought to them. It was apparent that an element of licentiousness was still connected to them. Moshe was angry at the officers, for it was their responsibility to combine the people as a community, which is more resistant to such inclinations, and protects even the individuals. Indeed Moshe had reason for concern that the people reverted to their previous moral lapse stemming from their bad inclination.

The answer, though, was clear. They declared that they had remained connected to the force of the community, and the joint act of war against those who had caused sin was morally successful. “There was no man who was missing.” This was the assurance that no individuals had been negatively affected by that which the war brought to the fore because they remained as one holy unit.

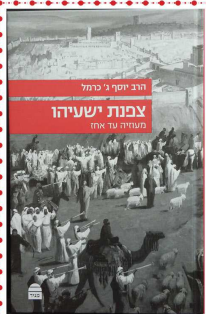
## Thought of Sin Even for those Fortified against Actions of Sin

(condensed from Ein Ayah, Shabbat 6:77)

**Gemara:** [The *gemara* continues:] Moshe said: If so, why do you need atonement? They answered: Although we escaped without sin, we did not escape without thoughts of sin. Right away, they said: “We shall bring a sacrifice to Hashem.”

**Ein Ayah:** The community embraces within its midst the individual, whenever there is a direct connection between the individual and the community. The communal elements are more related to the actions that are taken. Actions are included in the life of the community, and individuals are set within this.

Thought, on the other hand, always goes along with one’s internal life, in which the individual is neither set within nor swept along by the community. Therefore, while the strength of the connection between people can protect every single person from actually sinning, even though his heart is not pure, it cannot prevent him from having sinful thoughts. Because these thoughts came about through waging war against evil, they can be fixed, and things connected to it can come to the Heaven as a sacrifice, which connects an emotion of sanctity to the negative matter.



### 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.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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# P'ninat Mishpat

## Claims of Various Levels on Payment of Finder's Fee – Part I

(based on ruling 69068 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) introduced investors in real estate to the defendant (=def), who deals in such investments. The agreement between pl and def is that pl gets a finder's fee of 1.5% of every amount invested based on his introduction. All agree that \$240,000 was invested in this manner. Pl claims that he received a finder's fee on only the first \$50,000, and therefore is owed 1.5% \* 190,000 = \$2,850. Def claimed and proved that the first investment was \$100,000, and therefore he certainly paid the fee on that. He remembers clearly paying the fee for the next \$100,000 (\$1,500). He does not remember paying for the last \$40,000 (\$600) but assumes that he did so as well. Def promised documentation on almost all of the payments, but did not follow through.

**Ruling:** [This is a case in which the rules of determining payment based on claims (*toein v'nitan*) play a dominant role. These rules make significant use of *sh'vuot* (oaths), which we no longer administer, which are replaced by partial payment whose extent is governed by basic guidelines and impacted by *beit din's* weighing of factors such as partial evidence.]

On the \$600 fee from the last \$40,000 invested, we apply the rule (Shulchan Aruch, Choshen Mishpat 75:9) that when a defendant replies to a claim on a sum of money by admitting having owed the sum and being unsure whether he repaid, he must pay the amount in question.

Regarding the \$1,500, the general rule is that if one owes money but there is no written document for it and he claims that he paid the debt, he is exempt from paying. He is only obligated to make a Rabbinic-level oath that he paid (ibid. 13). If he admits that he owes part of the sum claimed, he is obligated in a Torah-level oath to exempt himself from the rest (ibid. 2). The *gemara* (Bava Metzia 3a) reasons that a Torah-level oath is all the more appropriate if the defendant has to pay part of the claim due to testimony (see Shulchan Aruch ibid. 4). The Shulchan Aruch (ibid. 5) says that if he ostensibly denies owing money, based on an arithmetic mistake but proper arithmetic shows that his story is actually a partial admission, then he is obligated to make a Torah-level oath on the rest. The Rama (ad loc.), based on the Rashba, says that if the defendant did not admit at all, just that his claim was a losing claim in regard to part of the money, so that *beit din* makes him pay it, he still does not have a Torah-level oath on the rest. The Rambam (Gezeila 4:16) is also of that opinion.

In fact, the Shulchan Aruch (87:5) also takes the latter approach, in apparent contradiction to the above. The S'ma (75:19) answers the contradiction as follows. In *siman* 75, since the obligation comes from the defendant's own words, it is considered like a partial admission, which creates the oath obligation, despite the fact that he did not intend to admit anything. In contrast, in *siman* 87, if we were to believe what the defendant said, he would not have been obligated at all, and therefore he is not treated like one who admits.

*Next time, we will see other explanations and distinctions and apply them to our case in which def has to pay at least \$600 despite the lack of a full admission or full testimony.*

.....  
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