

HEMDAT YAMIM

PARASHAT VAYEILECH

5 TISHRI 5769

This week.....

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“My Light (on Rosh Hashana), my Salvation (on Yom Kippur)”

Harav Yosef Carmel

The statement of *Chazal* that is featured in our title is one sign of the appropriateness of reciting *Tehillim 27 (L’David)*, from which those words are taken, during the High Holiday season. In this article, we want to present textual signs of connections between the season and the *mizmor* (psalm).

A special element of our service of Hashem in this period is the saying of *Selichot*, which revolve around the recitation of the *Yud Gimmel Middot*, the thirteen attributes of Hashem, which serves to bring us success in our prayers. These attributes begin with the repetition of Hashem’s main Name. Note that the first (after the name of the author, David) and last words of *L’David* are Hashem’s Name. This Name is the classic expression of Hashem’s attribute of mercy. The *gemara* (Rosh Hashana 17b) says that the doubling of the Name indicates that Hashem relates to us in this merciful way both before and after possible sin. To strengthen the connection between *L’David* and the *Yud Gimmel Middot* we mention that Hashem’s Name appears in the *mizmor* exactly thirteen times.

The *pasuk* from *L’David*, “For He shall hide me in His booth (*sukko*) on a bad day, He will conceal me in His tent, in a rock (*tzur*) He will raise me up” contains two hints to a lofty event. Hashem taught Moshe the secret of reciting the thirteen attributes and its great power at the time that He placed Moshe in a *tzur* and covered him (*sakkoti*) with “His Hand”(Shemot 33:22). David, in his time of troubles, also turned to Hashem with the request of mercy. He was aware that the small crevice in the rock was the only opening to attain life in an unconstrained manner.

The thirteen attributes are Hashem’s answer to Moshe Rabbeinu’s request to show him His Glory. Hashem told Moshe that it is impossible to see His face but that He would call out His Name and would have mercy for whom it is possible to have mercy. What is it that Moshe wanted to receive and was unable to? In our *mizmor*, David says: “To You my heart said: ‘Seek out My face.’ Your face, Hashem, I shall seek” (ibid.:8). Although Hashem said that we are not able to see His face, still it is permitted and necessary to seek it. David has an answer to the problem. “...I believed that I could see Hashem’s goodness in the land of life” (ibid.:13). Here and now, we cannot see Hashem, but in the true land of life, in the world to come, it indeed is possible.

For forty days and nights Moshe Rabbeinu held “negotiations” with Hashem on matters of seeking His mercy and an intimate relationship with Him. These days were from Rosh Chodesh Elul to Yom Kippur, at which time Hashem pronounced “I have forgiven.” We pray that we too will receive these good tidings.

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Question: If it will be difficult to get to *Birkat Kohanim* (*duchening*) of *Neilah* on time, is it better to rush the *davening* or should we just not do it under these circumstances?

Answer: The practice of doing *Birkat Kohanim* (=BK) at *Neilah* is found in a *mishna* (Ta'anit 26a) and accepted by the Shulchan Aruch (Orach Chayim 623:5). The Rama (ad loc.), though, says that the *minhag* is not to do so. The Bach (OC 623) and Mishna Berura (623:8) say that this is because BK ends up being at night too often. The Gra (ad loc.; see Sha'ar Hatziyun 14) explains that since the *mishna* says to do BK also at *Shacharit*, just as our *minhag* is not to do it then, we do not do it at *Neilah* either. Ashkenazim outside Israel do not, for the most part, do BK at *Neilah*; in Israel, the *minhag* is to do so. This makes sense according to the Gra, who shaped many Israeli *minhagim*. Since BK is done every day, including at *Shacharit* of Yom Kippur, it is done at *Neilah*.

Is there a clear need, in light of the *minhag* in Israel, for BK to be done during the day, as you (and the Bach) assumed? The Yerushalmi (Ta'anit 4:1, cited by the Rosh, Yoma 8:20) brings a *machloket* as to whether *Neilah* is prayed after nightfall following Yom Kippur (Rav) or only during the day (Rav Yochanan). It asks on Rav from the fact that BK is said at *Neilah*, positing that BK cannot be done at night because it is compared to the service in the *Beit Hamikdash*, which is done in the daytime only. The Rambam (Tefilla 1:7) and Shulchan Aruch (OC 623:2) rule that *Neilah* must be done before the setting of the sun. According to the Yerushalmi's linkage, then, BK would also have to be during the day. The Maharil, though, says that BK can be done at night. He explains that parts of the service in the *Beit Hamikdash* could continue into the night. The Sheilat Yaavetz (51) supports the Maharil's position by pointing out that there are *Rishonim* who rule like Rav and thus do not accept the linkage between BK and the *avoda*. These opinions notwithstanding, a clear majority of *poskim* rule that BK may not be done at night (see Yechaveh Da'at VI, 40). The Magen Avraham (623:3) suggests skipping the *piyutim* said during *Neilah* in order to get to BK on time and going back to them after the *Amida*.

Yet, the cutoff point is not as simple as many assume, because is not clear cut, in general and in this regard, that the day finishes at what we call sunset. The Shulchan Aruch Harav (623:8) says that daytime in this regard is until halachic night, *tzeit hakochavim*, which is at the very least thirteen and a half minutes after sunset. In general when the Shulchan Aruch talks about *sheki'a* he refers not to the "disappearance" of the sun under the horizon but around an hour later. It is difficult to rely on this latter opinion since most of us regularly do work on *Motzaei Shabbat* and eat at the end of Yom Kippur before this. However, during the time of *bein hashemashot*, which we usually assume starts at sunset and extends for approximately 20 minutes, there is more room for leniency. Yechaveh Da'at (ibid.) says that while BK should be skipped at *Neilah* rather than said after nightfall, it should be done during *bein hashemashot* if the congregation did not succeed to get it in by sunset. This is because of a *sefeik sefeika* (double doubt). Maybe BK can be done at night. Even if it cannot be done at night, *bein hashemashot* is viewed only as a *safek* of night. This is all the more logical considering that the source of not doing BK is probably only rabbinic.

While in theory, a congregation (in Israel) should consider steps, such as rushing and skipping *piyutim*, the psychological effect and the impact on the quality of *tefilla* may preclude going too far. If, then, the congregation gets up to BK modestly after sunset and has to choose between passing up BK or doing it at that time, we would suggest doing it – unless the matter would cause a fight.

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Ein Ayah

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

Excerpts from the Introduction to Ein Ayah – part III

[We learned that it is necessary in certain historical periods to expand the regulations and otherwise protect the Torah.]

The section of the Torah that discusses seeking answers for unknown questions (Devarim 17:8) mentions two Torah authorities: “You shall come to the *Kohanim-Leviim* and to the judge who will be at that time.” There are two ways to come to answers about specific issues. One way is to derive matters by comparing issues to other individual cases. However, a much more difficult method is to arrive at answers on specific questions by understanding the deep reasons behind the general spirit of the Torah. That is why two authorities are mentioned. The *Kohen* is one who is steeped in spirituality; he alone is able to derive matters from their general roots, whereas the judge is able only to derive matters on an individual basis.

We are required to listen to both the *Kohen* and the judge, but each is appropriate at a certain time. At the time that Israel is set in its land, it is preferable to decide matters according to the profound insight of the *Kohanim*. When there is a strong Torah center, such as the Sanhedrin, which spreads Torah throughout the world, there is less concern about mistakes that the more ambitious system may be vulnerable to. However, when a time of exile and dispersion develops, the quality and quantity of great authorities decrease, and it is necessary to rule through the more external system of the judge. That is why from the time of Moshe until that of Ezra, the expansive approach of *bi'ur* was employed, where people would arrive at ideas based on certain fundamental principles that leaders could master and apply elsewhere. Ezra was afraid that building onto the covered Torah would be too difficult when the “hearts of the generations” would decrease in prominence and so he used more of an approach of *peirush*, where one based himself more on explicit statements and rulings.

This is how things remain in regard to the practical, halachic elements of the Torah. However, regarding *aggada* (homiletics and philosophy), which are more connected to one’s heart than to his intellect, the natural internal rules are more accessible through the individual texts, and we are still able to learn them expansively as a *bi'ur*. In that way, one can learn through the system of “the open letter,” applying general principles to the related specific matter, understanding a rabbinic statement as something Divinely inspired that contains a planted seed of light.

The roots of the *aggadot* of *Chazal* relate to the moral side of the Torah, of beliefs, ideas and a variety of spiritual concepts. This realm of learning required strengthening in every generation more than the practical area of halacha. The giants of all generations urged their generation’s scholars to pay attention to the spiritual part of the Torah, to ethics, and the obligations of the heart, which are found in the storehouses of the *aggadot* of *Chazal*. It takes much effort to release their pure ideas through the approaches of *peirush* and especially *bi'ur*. One can hit the target in expounding on these sources only with the type of intensive work scholars use on halacha with Divine Assistance. These matters cannot be reserved for the light-witted among the nation. Rather, the great leaders of the nation must get together and expand and glorify the Torah, especially in the realm of ethics and ideas, by deeply and logically contemplating the verses of *Tanach* and *Chazal's aggadot*. First one must absorb material and then apply logic, just as one grows into a scholar in the area of halacha. We cannot expect good new books of *aggada* to be produced as long as the classical books on ethics, philosophy, and obligations of the heart are left unstudied.

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P'ninat Mishpat

Replacing a Dayan When the Matter Will Cause a Delay

(based on Halacha Psuka, vol. 46 - a condensation of a p'sak by the Regional Beit Din of Yerushalayim)

Case: A case was heard over a long period of time. As the hearings were coming to a close, *beit din* instructed the sides to present a written summary of their claims. Unexpectedly, one of the litigants presented a request to disqualify the *av beit din* from dealing on the matter of wills because in the past, the *dayan* had served as a guest of honor at the dinner of the other litigant (a charity organization) and donated to them.

Ruling: The *mishna* (Sanhedrin 27b) cites a *machloket* between R. Yehuda and the *Chachamim* if a witness can testify when a litigant is a friend or an enemy of his. The *gemara* (ibid. 29a) says that even according to *Chachamim* who permit it, such a person cannot serve as a *dayan*. Another *gemara* (Ketubot 105b) says: "One should not judge one whom he loves or one whom he hates: the one he loves, because he will not see his fallacy, and the one he hates because he will not see his virtue."

Tosafot (ad loc.) is bothered by the fact that the former *gemara* is based on a *pasuk*, whereas the latter one does not seem to be. They posit that there are actually two levels of friends and enemies. A close friend or serious enemy is so unfit that if he did take part in the case, his ruling would be invalid even after the fact. Mild friends or enemies should not hear the case, but if they ruled, the ruling is valid after the fact. According to the Beit Yosef's (Choshen Mishpat 7) understanding, the Rambam (Sanhedrin 23:6) does not distinguish between different levels of friends and enemies; rather, the ruling of anyone who should not serve for this reason is invalid even after the fact. This is also the view of the Ohr Zarua (see Haghosht Ashri, Sanhedrin 1:6). The Shulchan Aruch (CM 7:7) rules like the Rambam, whereas the Rama (ad loc.) rules like Tosafot. The Maharik has a third opinion. The relatively weak level of relationships that are described in Ketubot do not strictly invalidate a *dayan* but just create a *midat chasidut* (preferable course of action) to avoid. In a case where by following the higher level of carefulness one of the litigants will lose out, he says that one should not disqualify himself.

It is impossible to say that, in our case, there is a high level of friendship. *Beit din* did not even feel that there was even a level of friendship that could disqualify the *av beit din* at all (according to Tosafot). It is possible that it would have been better for the *dayan* not to have taken the case as a *midat chasidut*. However, considering that it is a case that is toward the end of its deliberations and a change will cause a damaging delay, the *dayan* has no right to remove himself from the case, along the lines that the Maharik stated.

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