

This week.....

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The Power of the Three Legs (=Holidays)

Harav Moshe Ehrenreich

Hashem opened the mouth of the donkey, who asked Bilam: "What did I do to you that you hit me three times (*regalim*- literally, legs)?" (Bamidbar 22:28). Rashi says that the *regalim* hint to the travesty of harming Bnei Yisrael, who celebrate three holidays a year. Why is this out of all *mitzvot* connected to Bilam's desire to destroy them? The Siftei Chachamim says that since Hashem wants to "see us" when we visit Yerushalayim on the holidays, it is wrong for Bilam to want us to be destroyed.

We will suggest an additional approach. Balak twice (ibid.: 5, 11) explained to Bilam that he was disturbed that Bnei Yisrael have "covered the eye of the land." The simple explanation is that they were a large nation. However, the S'fat Emet explains that he was afraid that Bnei Yisrael would usurp the concept of connection to the land and physicality in general. This was a departure from the existence in the desert, where Bnei Yisrael dealt only with spirituality, and all physical things (food, water, security, etc.) were a present from heaven. When they would enter the Land of Israel, they would fulfill the *pasuk* "When you enter the Land and plant fruit trees" (Vayikra 19:23). It would be a country with agriculture, an army, and an economy, as Hashem wanted, under the Divine ideal, which Rav Kook calls "saving everything." The nations of the world are willing to leave us spirituality; it is difficult for them to let us "trespass" their territory, physicality, and sanctify it. That is why Balak asked that Bnei Yisrael be "expelled from the land" (Bamidbar 22:6).

The *mitzva* of going up to Yerushalayim on holidays stresses this element of sanctifying the physical. What happens in Yerushalayim? "For there tribes go up, the tribes of Hashem (using the two letter name), a witness to Israel, to give thanks to Hashem's Name" (Tehillim 122:2). Rashi explains that the testimony in Hashem's Name relates to the verification with His Name that the children born in Egypt had Jewish fathers and were not from the Egyptian oppressors. The letters in His Name were attached to the names mentioned in the Torah from that time (see Bamidbar 26). The *midrash* says that Hashem created this world with the letter "*yud*" and the next world with "*heh*." Thus, this name relates to the connection between the physical and the spiritual.

On the holidays, the main sacrifices are *shelamim*, which combine benefit for the one who brings it, the altar, and the *kohanim*. A non-Jew may bring a sacrifice but only an *olah*, which is entirely consumed by the altar. Bilam and Balak wanted to prevent us from combining the two worlds in the manner of the holidays and their *shelamim* sacrifices, but Hashem wanted us to connect them.

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Question: May one serve as a *chazan* in *shul* if he hates one of the congregants for no good reason, especially if the congregant has great difficulty concentrating when he does so? Is it different regarding this person being the *ba'al tokeiah* (*shofar* blower) on Rosh Hashana?

Answer: The Beit Yosef (Orach Chayim 53) cites the Maharik that since the prayers correspond to the *temidin* (daily public sacrifices), which must be brought from community funds, a *chazan* has to be acceptable to all individuals in the community. In this way, one does not have a *shaliach* (agent) against his will. Based on this, the Shulchan Aruch (OC 53:19) says that an individual's protest against a potential *chazan* prior to his appointment is accepted. The Rama (ad loc.) adds that this is talking about a case where the protestor can convince the communal leadership that he has sufficient cause and that, generally, hatred between people qualifies. Thus, your inclination to prevent the person in question has basis.

However, *Acharonim* distinguish between the aforementioned sources and our most common modern applications. The Magen Avraham (53:20) and Mishna Berura (53:53) say that the Maharik's logic applies when one needs to rely on the *chazan* to fulfill his prayer obligation, e.g., when people would listen to the *chazan's* repetition of *Shemoneh Esrei* instead of reciting their own. However, nowadays the *chazan* only leads the people and provides cantillation for parts of *tefilla*, whereas each person fully *davens* himself. Under such circumstances, we revert to the regular rule that the majority makes appointments to various tasks within the community without giving individuals veto power.

Realize also that many of a *chazan's* qualifications (see Orach Chayim 53) refer to the position of the *shul's* permanent *chazan*. Then the most appropriate person should be chosen, which may exclude one with any serious blemish. The Aruch Hashulchan (OC 53: 19-21) posits that animosity is reason to invalidate only such a *chazan*, but not one who will be serving only sporadically. As he mentions, we cannot have disqualifications which have the potential of "having no end."

While not everyone needs to have the special privilege of being the *chazan*, it is not a simple matter to embarrass and deprive one of the honor of occasionally being the *chazan* in *shul*, as almost all who are capable of leading services have. While he may be a flawed individual (which we cannot judge from here), many flawed people lead services. The matter of being unable to concentrate is not a significant factor. For any number of reasons an individual may be bothered by another's davening, and it is not feasible to have endless possibilities of objection.

Regarding blowing *shofar* on Rosh Hashana, the matter is less clear. In all elements that our case differs from the classic one, *shofar* resembles the classic one. The *ba'al tokeiah* enables others to fulfill their *mitzva*; not everyone receives the honor of being the *ba'al tokeiah*; one can also claim that each year is a new appointment (see Haelef Lecha Shlomo, OC 356). Therefore, if there are viable options to replace him with someone who is similarly capable but who gets along with all, it is possible to bring the matter before the local rabbi/leadership (ibid.). However, we cannot stress enough that it is much more appropriate to strive to reduce tension and defuse the issue than to try to remove the person and undoubtedly raise the conflict to new, more regrettable levels.

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Concern for National and Global Success

(based on Berachot 1:174)

Gemara: Avram is Avraham. In the beginning, he became the father of Aram, and at the end, of the whole world. Saray is Sarah. In the beginning, she became the noblewoman of her nation, and at the end, of the whole world.

Ein Ayah: The feeling of nationalism is a straight and natural emotion. It is close to the level of the love of the family and exceeds it in its morality. Therefore, Avraham and Sarah, as people who were straight from their very essence, were concerned with the survival and success of their nation. We have found the same thing regarding other wise people with good personal attributes from all of the nations. However, Avraham and Sarah were elevated by the spirit of prophecy that told them that this is not the final desired result. Rather, the complete person does not suffice with the happiness of his nation alone but will try to bring general salvation to every person on the face of the earth. Therefore, Avraham became the father of many nations, and Sarah became a noblewoman of the whole world, which is a more exalted matter than to limit oneself to the national agenda.

Avraham and Sarah

(based on Berachot 1:176)

Gemara: [I would think that just as it is forbidden to call Avraham by the name Avram,] it should be forbidden to call Sarah by the name Saray. Yet, when switching the names, Hashem said "Saray, your wife, you shall not call her Saray, but Sarah is her name" (Beresihit 17:15).

Ein Ayah: The *pasuk* says: "Listen, my son, to the rebuke of your father and do not abandon the Torah of your mother" (Mishlei 1:8). The true beliefs are called the rebuke of the father; the good actions and pleasant customs are called the Torah of the mother.

Nationalism is very necessary for Israel, and its essence is included in the actions of the various *mitzvot*, which increase and strengthen the powers of nationalism in Israel. However, the ultimate purpose is for the universal needs. That is why the beliefs are global in nature and the actions are specific and nationally based. Avraham is the root of beliefs in Israel, as he shone the light from the east (see Yeshaya 41:2 and Bava Batra 15a). Therefore, we are absolutely obligated to call him based on the concept of his being the father of many nations, so that the truth, which could be lost due to our national isolationism, not be forgotten. On the other hand, we inherited from Sarah the holiness of the actions along the lines of the Torah of the mother. It is true that at the time of the patriarchs it was not yet possible to start on the building of national structures and the foundation of the actions also had to be for the purpose of global improvement, which is also their ultimate goal. However, for the generations of our nation, the intention of the actions is to beautify Israel's special national sanctity in a manner that in the future will be helpful for the universal improvements.

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Damage Payment for One Who Hit Another

(based on Halacha Psuka, vol. 59- a condensation of a *p'sak* by Beit Din Mishpat V'halacha B'Yisrael)

Case: The defendant (=def), an educator in the community, hit the plaintiff (=pl), a youngster who hit def's son. Pl was injured, causing medical expenses and some long term damage. Def says that he acted in an accepted educational manner within his community, which feels that only strong action deters aggression among their youngsters.

Ruling: There is a question of jurisdiction, as *batei din* in our times (without *semicha* that goes back to Moshe) cannot rule on damages that man inflicts on man (Bava Kama 84a). The Rambam (Sanhedrin 5:10) says that they can rule on the elements of medical expenses and missed work, whereas the Rosh says that no payments are made in man to man damages. The Shulchan Aruch (CM 1:2) rules like the Rambam; the Rama says that we force the damager to monetarily appease the injured. Some *Acharonim* say that if the two sides agree willfully to take part in proceedings, then modern *batei din* may rule on these damages. Since the sides signed an arbitration agreement that allows for rulings based on the strict law or compromise and since compromise takes moral obligations into account, *beit din* can levy a monetary obligation instead of forcing def to appease pl.

Def claims that his violence in response to violence was justified. The Shulchan Aruch (CM 421:13) says that if Reuven attacked Shimon and Shimon hurt him in self-defense, he is exempt, if he was unable to protect himself with less damage. The Rosh implies that this is only if Shimon hit Reuven at the exact time of the conflagration, but the S'ma and Gra (ad loc.) say that it can come right afterward as well. The *poskim* indicate that it is not permitted to hit an attacker hard to deter him from attacking in the future. Such long term measures are to be taken by law enforcement officials; the individual is to be concerned with immediate self-defense. The Rosh says that one can hit his relative's attacker, but this is within the framework of preventing the attacker from sinning. In our case, this does not apply because the sin was finished and there is no way to know that he would attack again in the future.

A community can decide that it is appropriate to hit youngsters if it is needed for their education or because they are causing consistent damage (see Shulchan Aruch, CM 349:5). However, it is *beit din* who may carry this out. Even if one wants to claim that *beit din* can give over authority to others, since there was no formal decision in this community but just an atmosphere that this is a good approach, def certainly was not authorized formally. Furthermore, the case was not one that would fall under a community need, especially because pl is not a member of the community.

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Baba Metzia 64-70

The Obligation of a Judge to Explain his Ruling

This week in the Daf Hayomi (69a), the Gemara tells of two business partners who came to Rav Papa twice, to resolve a dispute between them. In both cases, Rav Papa ruled against the same partner. The partner felt that the rulings of Rav Papa were contradictory and that Rav Papa was discriminating against him. Rav Papa, in order to remove this suspicion, explained to the partner the reasoning behind the two rulings. From the wording of the Gemara it appears that only because of the suspicion did Rav Papa explain his reasoning, but in other cases the judge is not required to do so.¹

The Rishonim question this from the Gemara in Sanhedrin (31b) from which it appears that a person can always request from the judges to write the reasoning for the ruling, so that he will be able to appeal before a court of higher authority. There are a few resolutions to this seeming contradiction.

According to Rabbeinu Tam (Tosafot Baba Metzia 69b d"h Ki), the judge is usually not required to explain his ruling. Only in two cases is he required to do so. The first is where there is suspicion against him, such as in the case of the partners in Baba Metzia. The second is when one of the litigants wanted to go to a court of higher authority, but was forced to come before the local court. In this case, as well, he can request that the judges write the reasoning behind the ruling, and this is the intent of the Gemara in Sanhedrin.

The Ramban (ibid d"h Kegen) agrees with Rabbeinu Tam but goes even further and claims that even when the judges write their ruling so that the litigant can appeal before a court of higher authority, they need not write the reasoning, but rather it is sufficient that they write the claims, proofs, and their ruling, and the other court will be able to see for themselves if they ruled properly.

The Tosafot (Sanhedrin 31b d"h Ve'im) offer a different approach. They explain that, if one of the litigants requests, the judges are always required to explain their ruling, and this is the intent of the Gemara in Sanhedrin. However, if there is suspicion against the judge, then, even without a request from the litigants, the judge must explain his ruling. Nowadays, the Chief Rabbinate of Israel instituted that the judges of the Batei Din of the Chief Rabbinate must always explain the reasoning of their rulings in writing. In the Rabbinical Courts of Eretz Hemdah- Gazit, as well, the judges are required to write their ruling with a full explanation.

Summary:

The Rishonim disagree whether a judge usually has to explain the reasoning behind his rulings, or only in special circumstances such as when there is suspicion against him or when one of the litigants has the right to appeal before a different court. Nowadays, the common practice is to always explain the reasoning behind the ruling.

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¹ However, see Tosafot (69b d"h Ki) who suggests another possible explanation to the Gemara, and according to that explanation, there is no proof that Rav Papa explained his ruling only because of the suspicion.