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HEMDAT YAMIM

PARASHAT HASHAVUAH

Vayechi 16 Tevet 5770

Who is the Leader and When?

Harav Yosef Carmel

Perhaps the central theme of our *parasha* is the *berachot* Yaakov gave his sons. Yehuda received an important one, being promised that leadership will not stray from his descendants (*Bereishit* 49:8-10). Yosef (and his full brother Binyamin whom, we have explained elsewhere, share one destiny to a great degree) must wait until the end of the blessing receivers (*ibid.* 22:26). The blessing describes how Yosef had to withstand the challenges from his brothers, but received blessings that exceeded those Yaakov received from his parents. It also refers to the “head of Yosef and the *kodkod* (head) of the crown of his brothers,” which represents the leadership of the nation.

If one looks at the story line at the end of *Bereishit*, it is clear that Yosef is the leader of his brothers, and Yehuda is subservient to him. He is the one Yaakov entrusts with burying his remains in *Eretz Yisrael*. He and his sons receive special blessings before the other brothers are even called for blessings. Within those blessings, Yaakov not only sets the leadership as being from Yosef's family but slates Ephrayim to assume the mantle of leadership within the family.

Rashi explains that there is no contradiction regarding the balance of power between Yosef and Yehuda. In the short term, it will belong to Yosef, to be replaced at a later date by Yehuda's descendants.

When Moshe leaves his final blessings and instructions to the tribes that descended from the brothers, he does not change the balance of power. He uses the same language regarding Yosef of “the head of Yosef and the *kodkod* of the crown of his brothers” and throws in the word *bechor* (firstborn) for good measure. Moshe also reaffirms Ephrayim's precedence over Menashe, saying: “These are the tens of thousands of Ephrayim and these are the thousands of Menashe” (*Devarim* 33:16-17).

When and how did the leadership change? The pronouncement actually came from the grass roots. When David, of the tribe of Yehuda, showed success in his battles against the Plishtim, the women showered him with praises that are particularly telling in this context: “Shaul smote by the thousands, and David by the tens of thousands” (*Shmuel I*, 18:7). This reference to David was not a fleeting one, as the non-Jews of Achish referred to him as the one who was hailed as smiting by the tens of thousands (*ibid.* 21:12). The officers of Plishtim used the same accolades regarding David (*ibid.* 29:5). The use of the tens of thousands was the code for assuming leadership that had been attributed to Yosef's son, Ephrayim.

Yehuda's ascension is not the intrinsic goal. As we discussed last week, true success is reached when Yehuda and Yosef join hands and live harmoniously together. Let us hope that modern-day Israel will be able to turn the nation's sporadic show of unity into a consistent uniting of the staffs that represent our different factions in an effective and proper manner.

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Ask the Rabbi

Question: I saw in a recent Ask the Rabbi column of yours a discussion of the issue of leaning while receiving an *aliya*. I think you overlooked a very important problem, as there is a definite prohibition to receive benefit from the *shulchan* (the table the *sefer Torah* sits on), which is a *tashmish kedusha* (an object used to serve something holy).

Answer: You raise a good point (at least in regard to a serious type of leaning), albeit one we did not overlook but chose not to address. If the matter was as clear cut as you perceive, it would present problems in most *shuls* not just for a person getting an *aliya*. *Gabbaim* often lean on the *shulchan*, and other objects, including *tzedaka* boxes and other things are often placed on it. Let us see if all of these practices are really forbidden.

It is not clear that the *shulchan* has a status of *tashmish kedusha*. The *gemara* (Megilla 26b) cites Rava as saying that he did not think that a *shulchan* has a status of *tashmish kedusha*. Since it is covered with a *mitpachat* (cloth or decorative covering), which is what comes in contact with the *sefer Torah*, the *shulchan* is only a *tashmish d'tashmish*, i.e., it supports the *mitpachat* upon which the *sefer Torah* sits. Such an object has only the *kedusha* on the level of the *shul* as a whole. Rava concludes that since the *mitpachat* is sometimes removed and the *Torah* then sits directly on the *shulchan* it is a *tashmish kedusha*. The status thus depends on whether or not the *shulchan* is consistently covered. However, this does not really answer your question, as it should still be forbidden to lean or place other things on the *mitpachat*.

The *Beit Yosef* (Orach Chayim 154) cites the *Mordechai* who says that it is worthwhile to make a condition that the *mitpachat* not receive the type of *kedusha* that would make it forbidden to lean on. He proves that if this is not done, it would even be forbidden to put *sefarim* on top of it since they have a lower level of *kedusha* than the *sefer Torah*. The ability to do so is confirmed clearly by the *Yerushalmi*, cited by the *Rosh* (Megilla 4:11). The *Rama* (OC 154:8, based on the *Terumat Hadeshen* 273) goes a step further, saying that (at least in *shul*- see *Mishna Berura* 154:8) it is not necessary to make a condition. Because the situation is so clear that people will have trouble from refraining from leaning or putting things on the *shulchan* and/or its *mitpachat*, there is an assumed public condition (*lev beit din matneh*) to save people from possible sin. *Lev beit din matneh* is found in the *gemara* (including *Shevuot* 11b) regarding things that were given for the *Beit Hamikdash* and has been applied to many cases of holy objects (see for example *Yabia Omer*, VII, OC 26, regarding the *minhag* to use the *parochet* of the *aron kodesh* for a wedding canopy). This condition does not allow people to use these objects in an unseemly manner (*Mishna Berura* 154:34), but that does not seem to be a common occurrence.

Admittedly, the *Bi'ur Halacha* (ad loc.) raises the possibility that only regarding those things that are hard to avoid do we say that *lev beit din matneh* applies. However, given people's habits, it is hard to imagine that you could expect everyone in *shul*, whether having an *aliya* or not, to make sure not to lean on the *shulchan* when standing near it during a variety of different activities. However, if one can easily avoid the issues, it is proper for him to do so. It is apparently for this reason, that several *Acharonim* (see *Sha'arei Ephrayim* 3:11; *Mishna Berura* 141:4) suggest that if one is so fat or weak that he needs to lean seriously on the *shulchan*, he should pull back the *mitpachat* and lean on the wood of the *shulchan*. Since it is rare for someone to actively decide to lean on the *shulchan* and it is often not feasible to pull back the *mitpachat*, we purposely left out this added information, which is apparently not fully required (as above) and is rarely practiced in our experience.

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Ein Ayah

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

To Not Know Evil or To Ignore It

(based on Berachot 3:22)

Gemara: Rav Yitzchak said: Whoever speaks negatively about the deceased is like one who speaks about a rock. Some say that this is because they do not know [what he said]; some say that they know but do not care.

Ein Ayah: Although it was decided that the powers that grasp physical matters remain after death, this is only in regard to powers that are positive for the spirit that grasps them. However, those powers that detract should not continue to exist.

Since a person's *shleimut* (completeness) dictates that he should pay no attention to that which people speak about him, the ability to discern such an activity is lost to the deceased. It is an open question whether the negation of evil is of a higher level of *shleimut* than if the evil did not exist at all. Alternatively, it is possible that evil must exist because of the existence of the material world, as the philosophers say. While Divine wisdom advises how to negate evil, its negation does not make things better than if one knew no evil.

According to those who say that negating evil is not a higher level, we should posit that the deceased does not even recognize when people speak negatively about him, for why should the spirit retain that negative power? According to the approach that negating the evil is a higher level, it is better for the spirit to maintain the ability to know what is said about it. In that case, the *shleimut* of tolerance, which elevates the spirit, remains to negate the bad tendency to be upset by what someone else speaks about it. This explains the *gemara*'s opinion that the spirit knows but does not care.

Restraining Disrespectful Thoughts

(based on Berachot 3:23)

Gemara: There was a certain person who spoke negatively about Shmuel after his death; a rafter fell down and pierced the lining of his brain.

Ein Ayah: The brain is the place of the intellect, and its lining restrains and surrounds it. This teaches us that a person's *shleimut* limits his thoughts, not allowing them to roam free. This is important so that a person acquires the attribute of respecting his Master and not philosophizing about that which is beyond him.

The honor of Hashem is increased in the world only by those who show respect to the Torah and those who study it. Therefore, one who disgraces a *talmid chacham* is considered an *apikorus*, like one who ruins his intellect by sending it free to philosophize about that which is beyond him and that which was not permitted for the normal human to contemplate at all. From the decreasing of the honor of a *talmid chacham* will come the decreasing of the honor of Hashem. This is referred to by the *pasuk* "They placed their mouths in the heavens" (Tehillim 73:9) due to "their tongues would walk through the land" (*ibid.*).

Therefore, regarding the person discussed in the *gemara*, when he spoke against the honor of a *talmid chacham*, a rafter fell to show that there had been a diminishing of the honor of the heaven (the rafter symbolizing the seat of Hashem's glory). We find such a comparison when Rava, as a child, was asked where Hashem was and pointed to the ceiling. (Berachot 48a). This showed that the intellect of the one who criticized Shmuel was like that of a child in comparison to Shmuel's mature intellect, and it took terrible gall to criticize Shmuel. They showed him that due to the decreasing of the honor of the heavens, he would lose the use of the lining of his brain, which was supposed to restrain him from letting his mind roam unimpeded. This punishment came because Hashem stood up for the honor of *talmidei chachamim*, the pillars of morality and justice. The complete service of Hashem in the world depends on the honor of the Torah and those who study it.

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P'ninat Mishpat

Interrogation of Witnesses – part II

(based on Sha'ar Ladin – Halacha Psuka, vol. 33)

[Last time, we introduced the concept of interrogation of witnesses, which included two different types: chakirot and bedikot, and some of the possible reasons for them.]

The Rambam (Sanhedrin 1:4) gives a different reason for interrogating the witnesses. He says that it is a *mitzva* to do so because by making things difficult for the witnesses, they might remain silent or retract their testimony if there are problems with it. In other words, this is a way of weeding out bad testimony. The Rambam does not mention the possibility of finding the witnesses to be *zomemin*, which has to do with being able to prove that they were not where they claimed to be at the time about which they testified. This may also explain why the Rambam calls questions that relate not to time but to how the event took place *derishot*, not the more classic *chakirot*, yet still says that if he answered “I don’t know” to one of the *derishot*, the testimony is inadmissible. Previously we had posited that this was true only of *chakirot*. While according to the approach that focuses on the ability to make *zomemin*, questions related to time and place are special, the Rambam expands the matter to other crucial questions. Only regarding peripheral questions, which are classified as *bedikot*, does the Rambam agree that a witness need not answer.

A third approach to the basis for *chakirot* can be found in the Noda B’Yehuda (I, Even Ha’ezer 72). He understands that the *p’sukim* that deal with interrogations only teach us that it is proper to ask a variety of questions, but do not necessarily indicate that if he answers that he does not know that we would disqualify the testimony. Only when the lack of a response prevents us from identifying an *eid zomem* do we say that this disqualifies. He therefore says that the obligation to interrogate is distinct from the ability to identify *eidim zomemin*.

It appears that the Noda B’Yehuda does not understand like the Rambam that *chakirot* are designed to clarify if the witnesses have been exact in their testimony. That is because he says that the obligation to require questioning does not itself disqualify testimony of those who do not answer. Rather, it seems that he posits that the questions are asked in order to try to find contradictions between the various testimonies.

In practice, the Torah’s requirement of interrogating witnesses was annulled by the Rabbis in regard to monetary cases, a decision which alleviates the difficulties of a plaintiff. The rationale is to not “lock doors before lenders.” In other words, one who is asked to lend money should not be overly concerned that it will be too difficult to recover his money in *beit din*. Thus, the witness is not even required to remember when and where the alleged loan took place. This being said, if it appears to *beit din* that a witness is lying or there is a particular lack of clarity, *beit din* may choose to interrogate witnesses as it sees fit.

Mishpetei Shaul

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Hemdat HaDaf HaYomi

Studies in Choshen Mishpat Related to the Daily Daf

Tevet 3-9, Baba Batra 128-134

Transferring Inheritance (133b)

Rav Ofer Livnat

This week in the Daf Yomi the Mishna (133b) states that although one can give all of his assets to others and thus leave nothing for his sons, the Sages are not pleased with such conduct. According to Rashbag, if the sons do not behave properly, it is proper not to leave them anything. However, the Gemara states that the Chachamim disagree with Rashbag and claim that even among one's sons it is not proper to give the portion of an evil son to a righteous one. The Gemara (Ketuvot 53a) explains that the reason is that one does not know how the descendants of one's children will turn out. Therefore, even if one son is not behaving properly, it is possible that his descendants will be righteous and one should therefore not take from him his portion in the inheritance.

The Chatam Sofer (Choshen Mishpat 151) was asked about a wealthy individual who had no children and wanted to establish a charity fund from most of his wealth, leaving only a small portion to his inheritors. The Chatam Sofer states that there are three points which need to be clarified:

1. Does the instruction of the Sages not to transfer inheritance regard only one's children, or even more distant inheritors?
2. Is it also relevant when one wants to donate the money to charity?
3. Does it pertain even when one only transfers part of his assets, or only when one leaves nothing to his inheritors?

The Chatam Sofer proves that this instruction of the Sages is valid in all of these circumstances. From the wording of the Rambam (Nachalot 6, 11) he proves that the instruction regards not only one's children but all other inheritors, as well. Our Gemara deals with cases of people who donated and sanctified their wealth to the Beit Hamikdash so that it would not be left for their inheritors; from this we see that the instruction is relevant even when one wishes to use the money for the purpose of a Mitzvah. And from the Gemara in Ketuvot (ibid) he proves that it is not proper even to give over only a portion of one's wealth.

Nevertheless, the Chatam Sofer concludes that a person who does not have children and wants to establish a charity foundation so that he will have more good deeds to his credit when he appears before the heavenly court, may do so since his intention is proper and he is not doing so for the sake of excluding inheritors from his wealth.

The Pitchei Teshuvah (Choshen Mishpat 182, 1) disagrees with the Chatam Sofer. The Chatam Sofer proved from the Gemara that the instruction applies even when one gives money to charity, and even when one is giving only a portion of his assets.

The Pitchei Teshuvah says- each of these conditions is relevant only on its own. However, if one fulfills both conditions, giving only a portion of his wealth, and giving that portion to charity, it is permitted. Therefore, according to his opinion, even if one has children, he may still give a portion of his wealth to charity.

Summary and Halachic Ruling:

The Shulchan Aruch (182, 1) rules that the Sages are not pleased with one who gives his assets to others and does not leave them for his inheritors. According to the Chatam Sofer, this applies even in regards to distant inheritors, even when one is giving only part of his wealth, and even if it is being given to charity. Only if one does not have children and he wants to give to charity to increase his good deeds, is it permitted. According to the Pitchei Teshuvah, even if one has children he may give a portion of his wealth to charity.

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