

RAV SCHACHTER

ON THE PARSHA II

Insights and Commentary
Based on the Shiurim of
Rav Hershel Schachter

Adapted by
Dr. Allan Weissman

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הרה"צ'י שטר
ראש ישיבה וראש כולל
ישיבת רבינו יצחק אלחנן

מכתב קרבה

אסור-גלגלה אני לפני יקורו האבנך
הנחמד ל אברהם אויסמאני, יא לא הספרינו
שהוציא, אפי' ארזת הפסח הנכחו המדע
שאל הפרשיות, שאלה משימות הנאמרים
קטנה של המידע, ארזת שנים לפני חזרה
ארהמונים. ינעם ה' פאלו אהיו מטליתו
שלמה מן השמש, אכהחמת הפסוק -
זכור אלך יקני אפי' לאמר לא העץ
אמן!

זלזל חזקה
זלזל זרקה,
רדי שפטר

חניכה ג' שפ"א



In Memory of our Beloved Parents
לזכר ולעילוי נשמות

ר' יחזקאל בן ר' מאיר זוייסמאן ז"ל
ורעיתו מרת חיה בת ר' שמואל הלוי ע"ה

ר' שמחה בן ר' יהודה לייביש דערעס ז"ל
ורעיתו מרת מרים טויבא בת ר' אברהם משה ע"ה

Joseph and Sonia Weissman

In Memory of our Beloved Grandparents
לזכר ולעילוי נשמות

ר' שמעון בן ר' אברהם משה מאשקאוויטש ז"ל
ורעיתו מרת חיה בת ר' בנימין ע"ה

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ורעיתו מרת שרה פייגע בת ר' יהודה הכהן ע"ה

Allan and Susan Weissman

In Memory of

נחמן יונה בן שמעון ז"ל
Norman Moskowitz z"l

נפטר י"ג אב תשע"ט

Man of Integrity and Drive ☞ Generous Giver ☞ Faithful to Hashem ☞ Lover of his Fellow Man ☞ Gifted Businessman ☞ Great Kibbitzer ☞ Devoted Husband ☞ Treasured Father ☞ Beloved Grandfather and Great-Grandfather ☞ Soulmate to his Brother ☞ Loyal Friend and Congregant ☞ Passionate about Life ☞ Radiated Joy ☞ Leaves a Vibrant Legacy to All

And in Memory of

דינה בת דוד אריה ע"ה
Agnes Dina Moskowitz a"h

נפטרה כ"ה שבט תשע"ז

Woman of Grace and Dignity ☞ Generous of Heart and Steadfast in Faith ☞ Treasured Wife ☞ Devoted Daughter ☞ Mother of Unparalleled Love ☞ Grandmother of Boundless Giving ☞ Soulmate to her Sister ☞ Friend to So Many ☞ An Inspiration to All

May their memory be a blessing forever

*May the Torah learning from this sefer
be an everlasting zechus for their neshamos*

Allan and Susan Weissman

*In Memory of
our Beloved Mothers*

לזכר ולעילוי נשמת

מרת שושנה רייזעל בוכען

ב"ר חיים מרדכי ע"ה

Shoshana Buchen a"h

נפטרה י"ח חשוון תשע"ט

She will be sorely missed by all

לזכר ולעילוי נשמת

מרת נחמה קלצל

בת הרב צבי הירש ע"ה

Nechama (Norma) Kletzel a"h

נפטרה כ"ט תשרי תשמ"ט

May her memory be a blessing forever

*May the Torah learning from this sefer
be an everlasting zechus for their neshamos*

Yitzzy and Yaffy Buchen

Passaic, N.J.

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I would like to wish Rebbi, together with his Rebbetzin, many more years filled with *berachah* and *hatzlachah*, good health and happiness, and much deserved *nachas* from their beautiful children and grandchildren, as well as from the scores of *talmidim* and *talmidei talmidim* whose lives they have so enriched.

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a young adult. I am extremely honored that my parents have graciously sponsored the production of this *sefer* in the memory of their parents *z"l*. May my parents be blessed with many more years together filled with good health, happiness, and continued *nachas* from their children and grandchildren.

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May the Torah that is learned and taught from this *sefer* be an everlasting *zechus* for the *neshamos* so memorialized.

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We are filled with added joy over the continued growth and maturity of our children, Bracha; Simcha and Omrit, and their children, Mordechai Gavriel, Eitan Gershon, Adir Zev, Nachman Yonah Akiva, and Dina Liba; Shimon; Daniel and Hindi, and their children, Chaim Aharon and Dina; Maor and Sara; Sammy and Rachel; Miri, Dovid, and Chezky.

We offer a *tefillah* to the *Ribbono Shel Olam* that we share in their future accomplishments, as they grow in *yiras shamayim* and *ahavas haTorah*. May they enjoy much *berachah* and *hatzlachah* in all that they do for many happy and healthy years, and may we merit to derive much *nachas* from them.

INTRODUCTION

WE ARE EXTREMELY GRATIFIED that the first four *sefarim* in this series – *Rav Schachter on the Parsha*, *Rav Schachter on the Moadim*, *Rav Schachter on the Haggadah*, and *Rav Schachter on Tefillah* – have been so warmly received by the *olam haTorah*. In particular, many people have expressed that they study the *parsha sefer* on a weekly basis and that they find the *limmud* a thoroughly enjoyable experience. It is therefore with a great sense of enthusiasm that we present *Rav Schachter on the Parsha, Volume II*.

This *sefer* is largely based on Rav Schachter *shlit"á*'s Thursday morning *Chumash shiurim* in Yeshiva. It seems to me that this weekly act of *mesiras haTorah* might be better appreciated through the following discussion.

The *Gemara* in *Avodah Zarah* (18a) relates that when Rebbi Chanina ben Tradyon was found teaching Torah in public from a *sefer Torah*, in open violation of the Roman edicts, the Romans wrapped him in the Torah scroll, encircled him with bundles of vine shoots, and set them on fire. As the fire raged, Rebbi Chanina's *talmidim* asked him what he was seeing. Rebbi Chanina answered that the blank parchment was burning, but the letters were taking flight and soaring to Heaven. Apparently, when non-Jews burned the *sefer Torah*, only the *klaf* was consumed in the fire, not the letters. Yet, Rav Soloveitchik pointed out that the *Gemara* in *Mo'ed Kattan* (26a) teaches that one who witnesses the burning of a *sefer Torah* is obligated to tear two *kri'ahs* – one for the *klaf* and one for the script. This clearly

implies that both components of a *sefer Torah* are susceptible to destruction.

Rav Schachter reconciled this by drawing a distinction. The context of the *Gemara* in *Mo'ed Kattan* is the burning of a *sefer Torah* or one of the *sefarim* of *Torah SheBichsav*. Since these physical *sefarim* consist of two elements, the *klaf* and the *ksav*, when the *klaf* is burned, the letters are burned along with it.

However, in the incident involving Rabbi Chanina ben Tradyon, although the *Gemara* recounts that a *sefer Torah* was resting on his lap, Rabbi Chanina was most certainly teaching *derashos* of *Torah SheBe'al Peh* to his *talmidim*, by expounding *pessukim* from the *sefer Torah*. In contrast to the physical nature of *Torah SheBichsav*, *Torah SheBe'al Peh* belongs to the world of ideas, and this abstract component of Torah is not susceptible to destruction. Perhaps this is what the *Gemara* refers to when it states that that the letters were taking flight – the letters of *Torah SheBe'al Peh*.

Rav Schachter explained that this difference between *Torah SheBichsav* and *Torah SheBe'al Peh* may be relevant to *kedushas Eretz Yisrael* as well. In the context of a discussion on that topic, Rav Soloveitchik asked (*Shiurim LeZecher Abba Mari Z"l I*, 1983 ed., pp. 169-178): If the source of all *kedushah* is words of Torah, how did the Land attain its *kedushah*? Were there words of Torah written on the trees and mountains of Eretz Yisrael? The Rav explained that when the first *kiddush* (sanctification) was effected in the days of Yehoshua bin Nun through *kibbush* (conquest), it was not the conquest of the Jewish army per se that enabled the sanctification. Rather, it was the *aron habris* containing the words of Torah engraved upon the *luchos* that served to conquer, and thus to sanctify, the land.

Given that the first *kiddush* of the land by Yehoshua was nullified upon the first *galus* (*Rambam, Hilchos Beis HaBechirah* 6:16), what led to the second *kiddush* of the land in the days of Ezra? It seems that while the first *mekadesh* of Eretz Yisrael was

the Torah *SheBichsav*, as represented by the *luchos* inside the *aron*, the second *mekadesh* was the Torah *SheBe'al Peh*.

This is based on the rabbinic tradition that the Purim miracle occurred shortly before the rebuilding of the Second *Beis HaMikdash*. The *Gemara* in *Shabbos* (88a) tells us that upon the occasion of that miracle, there was a communal rededication to the Torah, and the *Midrash Tanchuma* (*Parshas Noach* 3) teaches that this refers specifically to an acceptance of Torah *SheBe'al Peh*. That acceptance paved the way for Ezra's *kiddush*, completed through the Torah *SheBe'al Peh*.

Just as the abstract concepts contained within the Oral Torah are not subject to any form of destruction, that second *kiddush* is an everlasting one: ירושה ראשונה ושניה יש להן ושלישית אין להן – “they have a first and second conquest [i.e., sanctification of the land], but they do not have [a need for] a third conquest” (*Yevamos* 82b). [See *MiPninei HaRav*, 2001 ed., pp. 335-339; *Rav Schachter on the Parsha I*, end of essays for *Parshiyos Chayei Sarah* and *Devarim*; *Rav Schachter on the Moadim, Purim*, section VII.]

Much like his predecessor Rebbi Chanina, on Thursday mornings, Rebbi sits with a *Chumash* before him, flipping through the pages of the *parshas hashavu'a*. With his tremendous depth of Torah knowledge and insight, Rebbi begins with the *parsha's pessukim* and proceeds to open for his *talmidim* the vistas of the *yam haTalmud* through his engaging *shiur*. He brings with him to every *shiur* a rich and weighty *masorah*, based especially on the Torah he personally learned from his great *Rebbi Muvhak*, HaGaon HaAdir Maran Rav Yosef Dov HaLevi Soloveitchik *zt"l*. Of course, the principles that the Rav taught Rav Schachter in his earlier years have been supplemented, over time, by the commentaries and interpretations of the great *Acharonim* of the last several centuries. Rebbi faithfully conveys to his *talmidim* the world of eternal ideas that is Torah *SheBe'al Peh*, as they flow seamlessly from the *pessukim* of the Torah *SheBichsav* that is open before him.

Part of the intent of the current endeavor is to spread the influence of Rav Schachter's sweet words to those who have not yet tasted them. Of course, all are encouraged to personally attend any of Rav Schachter's countless public *shiurim* or to listen to the thousands available online. Although the written word cannot completely convey the experiential aspect of the oral delivery, this work, along with the four earlier *sefarim*, can serve to introduce the Torah of our Rebbi to those who have not yet experienced it. In this way, it is our hope that the *sefer* will provide new opportunities to enrich and inspire the *limmud haTorah* of as many people as possible.

Despite the fact that this *sefer* represents but a small fraction of the Torah that Rebbi transmits over the course of even one year, it is our hope that by means of learning this *sefer*, one will come away with an accurate representation of the *hashkafah* and the *lomdus* for which Rebbi is so well-known. Whenever possible, bracketed cross-references are provided to selections in Rebbi's six *sefarim* (*Eretz HaTzvi*, *B'Ikvei HaTzon*, *Ginas Egoz*, *Nefesh HaRav*, *MiPninei HaRav*, and *Divrei HaRav*), as well as *Rav Schachter on the Parsha I*, *Rav Schachter on the Moadim*, *Rav Schachter on the Haggadah*, *Rav Schachter on Tefillah*, and other articles, to afford the reader an opportunity for a fuller analysis of a given topic.

It goes without saying that any lack of accuracy or clarity in any of these pages is the sole responsibility of the one who adapted the oral *shiurim* to the written form.

Allan Weissman
Shevat 5781

PARSHAS BEREISHIS

SHAMAYIM

בראשית ברא אלקים את השמים ואת הארץ.

In the beginning of G-d's creating the heavens and the earth.
(*Bereishis* 1:1)

THE *RAMBAN* (*Bereishis* 1:8) comments that although the Torah introduces the creation of **את השמים ואת הארץ**, the ensuing description of Creation only discusses the realm of **ואת הארץ**. The *Ramban* explains that the term **שמים** does not refer to the sky, but rather to the upper heavens that are above the *Merkavah* (Divine chariot), as described in *Yechezkel* (1:22). In other words, **שמים** is the world of *ruchniyus*, which includes the *malachim* and the *olamos ha'elyonim*. The Torah did not relate anything about the creation of these upper heavens, just as it did not mention anything about the creation of the *malachim*, the *chayos* of the *Merkavah*, or any other non-physical entity. Aside from a passing reference to the creation of these heavens on the first day of Creation, the Torah does not discuss this aspect of the *bri'ah* at all.

By contrast, the Torah does include the creation of the celestial spheres - which contain the sun, the moon, and the planets and stars - in its account of the second day of Creation. The Torah calls these celestial spheres **רקיע השמים** - "the firmament of the heavens," to differentiate them from

the שמים mentioned in the first *passuk*. The רקיע השמים – that is, the sky – is thus included in the term ארץ.

When Man first landed on the moon in 1969, some people were very troubled. They did not want to believe that such a thing was possible, as it seems to contradict the *passuk*, אדם והארץ נתן לבני אדם – השמים שמים לד' – “As for the heavens, the heavens are Hashem’s; but the earth He has given to mankind” (*Tehillim* 115:16), which implies that human beings are barred from accessing the שמים (see *Sukkah* 5a). [Following that event, Rav Goren changed the *nusach* we recite in *Kiddush Levanah* from כשם שאני רוקד כנגדך ואיני יכול לנגוע בך – “Just as I dance toward you [the moon] but I **cannot** touch you,” to ואיני נוגע בך – “but I do not touch you.” Rav Soloveitchik, however, felt that there was no need to change the *nusach*, since at the time one recites *Kiddush Levanah*, he cannot, in fact, touch the moon.]

At that time, the Rav explained that there was no cause for confusion. Based on the *Ramban*, the Rav clarified the meaning of the term שמים in the *passuk*, השמים שמים לד'. Like שמים in the first *passuk* of the Torah, it refers not to the sky, but to the *olam haruchni*. The sun, the moon, and the stars are all part of ארץ, and Man was granted full reign over that realm: אדם והארץ נתן לבני אדם. Thus, rather than being an act of rebellion against *ratzon Hashem*, landing on the moon is a fulfillment of the *passuk*, ומלאו את הארץ וכבשוה – “fill the earth and conquer it” (*Bereishis* 1:28). This explanation quieted all the concerns. [See *Divrei HaRav*, 2010 ed., p. 243.]



NISSIM GELUYIM V'NISTARIM

כי בו שבת מכל מלאכתו אשר ברא אלקים לעשות.

Because on it [the seventh day] He abstained from all His work which G-d created and had made. (*Bereishis* 2:3)

THE SIMPLE translation of the *passuk* takes the word לעשות to mean ועשה – “and had made.” We find a similar grammatical structure in the *passuk*, לטהר אתכם – “For on this day [Yom Kippur] He shall provide atonement for you and purify you” (*Vayikra* 16:30), where לטהר אתכם means ויטהר אתכם.

The *Beis HaLevi* (*Bereishis*, s.v. *vayechal*) suggests a more nuanced explanation of the word לעשות along the lines of a comment of the *Rambam* (*Shemoneh Perakim*, *perek* 8; *Peirush HaMishnayos*, *Avos* 5:6).

The *Mishnah* in *Avos* (5:6) enumerates ten things that were created on *erev Shabbos* at *bein hashmoshos* (twilight), including the mouth of the earth that engulfed Korach and his fellow conspirators, the mouth of the well that provided water in the *Midbar*, the mouth of the donkey that spoke to Bil'am, the *mahn*, and the staff with which Moshe performed the signs in *Mitzrayim*.

All of *teva* (nature) had been created on the previous six days, but these future miracles, exceptions to *Hashem's* natural order, were provided for on *erev Shabbos* at *bein hashmoshos*. Thus, the *Rambam* explains, it is not the case, as it may appear to an onlooker, that *Hashem* altered the *chukei hateva* (laws of nature) at the time those miracles occurred. Instead, the *ratzon Hashem* that these innovations occur in the future was present at the time of Creation itself.

The *Midrash* (*Shemos Rabbah* 21:6) expounds on a *passuk* describing *kri'as Yam Suf* along the same lines. The *passuk* describes, וישב הים לפנות בוקר לאיתנו – “and the water went back to

its power toward morning" (*Shemos* 14:27), and the *Midrash* relates the word לאיתנו to לתנאו (to its stipulation). This indicates that the original creation of the Yam Suf was **conditional**, dependent upon its splitting for the Jewish People when they left Mitzrayim. Thus, *Hashem* implanted the Yam Suf's future transformation into its very nature. This was the case with the *bri'ah* of all of the *nissim geluyim* (revealed miracles) that would occur throughout history as well (*Bereishis Rabbah* 5:5).

The *Beis HaLevi* interprets the phrase אשר ברא אלקים לעשות by analyzing the nature of these conditional creations. A *tenai* (stipulation) may be introduced into a legal agreement, such as *Kiddushin*, through one of two syntaxes – *mei'achshav* (as of now) and *im* (if and when). If a man stipulates that he is *mekadeish* (betroths) a woman *mei'achshav* if it will rain on the following day, the *Kiddushin* takes effect retroactively from the time he made this statement, provided that it indeed rains on the following day. However, in the case of a *tenai* of *im*, such as when a man stipulates that he is *mekadeish* a woman **if** it will rain on the following day, the *Kiddushin* only takes effect as of the time it rains.

The *Beis HaLevi* explains that the addition of the word לעשות connotes this type of future-oriented *bri'ah*. In other words, *Hashem* created the Yam Suf with a *tenai* of *im* – **if** it would split at the time of *yetzi'as Mitzrayim* – and He placed similar *tena'im* into the *bri'ah* of all of the *nissim geluyim*. Although *Hashem* created these entities at *bein hashmoshos* of *erev Shabbos*, their *bri'ah* was completed only in the future, when their respective *nissim* came to fruition.

Nissim nistarim (hidden miracles), however, are of a completely different nature. The *Rambam* (*Moreh Nevuchim* 3:17) explains that although *Hashem* does not adjust the *chukei hateva* that He established during Creation, He does, at times, exercise *hashgachah pratis* to suspend Man's *bechirah*. In other words,

bechirah chofshis (free will) is the only aspect of world events that is not governed by *chukei hateva*.

The *Rambam* presents a *mashal* of a ship that capsizes at sea. *Hashem* desires that this accident should occur, and He therefore may suspend the ship manufacturer's free will, so that the construction of the ship is less sturdy than usual. Furthermore, *Hashem* may see to it that a *rasha* decides to travel on the ship, even though he is unaccustomed to doing so, and that a *tzaddik* avoids traveling on the ship. *Hashem* similarly adjusts the choices that people make in order to arrange for *nissim nistarim*.

It emerges from this explanation that a *nes nigleh*, though it appears to the observer that it has been created presently, is not a new miracle. It is, in fact, the *nes* of Creation, and it occurs only because it was so stipulated well in advance. On the other hand, a *nes nistar* is not the *nes* of Creation. It is a present day *nes* that *Hashem* orchestrates through *hashgachah pratis*, by suspending *bechirah* to achieve a given result.

Some explain (see Rav Shlomo Yosef Zevin, *L'Torah Ul'Moadim, Purim* 1) that this is why we drink wine on Purim to a greater extent than on other Yomim Tovim, to the point of *עד דלא ידע* – “until one does not know [the difference between cursed is Haman and blessed is Mordechai]” (*Megillah* 7b). On every other Yom Tov, when we celebrate *nissim geluyim*, we recite *Kiddush* over a limited *shiur* of a *revi'is* of wine, whereas Purim's celebration of a *nes nistar* consists of wine with no boundary. Contrary to the common impression that a *nes nigleh* is of a higher caliber, a *nes nistar* such as the *nes Purim* deserves greater celebration. After all, it was a *nes* that *Hashem* performed at the time of Mordechai and Esther, not an ancient *nes* that is really part of the *nes* of the *bri'ah* itself.



EIZER K'NEGDO

ויבא אל האדם ... ולאדם לא מצא עזר כנגדו.

And He brought them [every beast and bird] to the man ...
as for man, he did not find a helper corresponding to him.
(*Bereishis* 2:19-20)

WAS IT REALLY a possibility that Adam would mate with a member of the animal kingdom? The *Ra'avad* in *sefer Ba'alei HaNefesh (Hakdamah)* explains that this was never part of *Hashem's* plan. *Hashem's* intent was to show Adam that He had greatly benefitted him by not creating a female human being in the way He created a female animal to match every male animal. Had He done so, the relationship between male and female humans would have been similar to that found in the animal kingdom, wherein each animal remains largely independent and does not join with his mate to form a lasting union. In that arrangement, man would not be able to “find” an עזר כנגדו.

The body has a natural tendency to reject all foreign matter. Indeed, modern medicine has discovered that patients who undergo organ transplantation must be treated in order to counteract this natural process, to prevent the host from rejecting the grafted organ. The *Ra'avad* understands that a form of “rejection” occurs between animals because the male and the female were created separately, as individual entities.

For humans, however, *Hashem* desired the institution of marriage. In order to solve the problem of rejection, *Hashem* had to create Chavah **from** Adam, ... עצם מעצמי ובשר מבשרי ... כי מאיש לקחה זאת - “bone of my bones and flesh of my flesh ... for from man was she taken” (*Bereishis* 2:23). Only in this way, would it be possible for a man and woman to live together faithfully, with devotion and commitment. *Hashem* created Chavah in such a way that she could fill the role of עזר כנגדו.



PARSHAS NOACH

FOLLOWING HASHEM

את האלקים התהלך נח.

With G-d, Noach walked. (*Bereishis* 6:9)

RAV SOLOVEITCHIK was fond of relating a *Midrash* (*Bereishis Rabbah* 30:10) that *Rashi* quotes partially. Noach was a *tzaddik*, as the *passuk* testifies: את האלקים התהלך נח – “with G-d, Noach walked” (*Bereishis* 6:9). However, he was not on the level of Avraham Avinu, whom *Hashem* expected to be a pioneer: התהלך לפני והיה תמים – “walk before Me and be perfect” (*Bereishis* 17:1).

Following the distinction made by the *Midrash*, the Rav described that when he walked to *shul* with his grandchildren of different ages, the oldest ones ran ahead of their grandfather, some walked with him holding his hand, and the youngest ones straggled behind him. Of these three levels, the Rav questioned, which does *Hashem* expect of us?

The Rav suggested that *Hashem* does not ask of us to be like Avraham, התהלך לפני. In fact, He does not even ask of us to be like Noach, את האלקים. Instead, *Hashem* requires of *Bnei Yisrael*, אחרי ד' אלקיכם תלכו – “*Hashem*, your G-d, shall you follow” (*Devarim* 13:5). It is enough for us to walk behind *Hashem*. But, the Rav concluded, we must be careful to do so faithfully and with steadfast dedication.



CHAMAS

כי מלאה הארץ חמס מפניהם.

For the earth is filled with robbery through them. (*Bereishis* 6:13)

THE BARTENURA POINTS OUT a discrepancy between two *mishnayos* in *Avos*. One *Mishnah* teaches (*Avos* 1:2), – על שלשה דברים העולם עומד, על התורה ועל העבודה ועל גמילות חסדים – “The world depends on three things: on Torah study, on the service [of *Hashem*], and on kind deeds.” A subsequent *Mishnah* (1:18), however, seems to list other considerations that are necessary for the existence of the world: על שלשה דברים העולם קיים, – על הדין ועל האמת ועל השלום – “The world endures on three things: justice, truth, and peace.”

The difference between the two *Mishnayos* is that in the former, *Chazal* wish to identify what the **purpose** of the *bri'ah* was. Torah, *avodah*, and *gemilus chasadim* are the reasons that the world was created and that it continues to exist. The latter *Mishnah*, in contrast, focuses on the things that are necessary for society to **function**. From a pragmatic, technical point of view, civilization cannot sustain itself unless there is justice, truth, and peace.

That is why, as *Rashi* quotes regarding the generation of the *mabul*, לא נחתם גזר דינם אלא על הגזל – “Their sentence was not sealed except on account of robbery.” The severity of dishonesty should be kept in mind when we consider our personal conduct.

The *Rambam* (*Hilchos Dei'os* 1:3-4) formulates his famous principle known as the *shvil hazahav*, the “Golden Mean,” writing that proper conduct demands that one follow the “*midah beinonis*,” a middle path between two extremes. There is, however, an exception to this rule. The *Gemara* in *Sotah* (2a) explains that כל הרואה סוטה בקלקולה יזיר עצמו מן היין – “Whoever

sees a *sotah* in her state of disgrace should separate himself from wine.” Since wine may well have brought the *sotah* to this state, the witness should be moved to limit its consumption in order to prevent the mood of levity that might lead him to immorality. [See essay for *Parshas Naso*.]

We see from this *Gemara* that if one lives in a generation in which a particular area of Halachah is commonly violated, he should lean to the extreme in that area, at least until the situation reaches equilibrium. One who witnesses a *sotah* must be concerned that he too may follow the path of *pritzus* associated with the *sotah*'s behavior. Under such circumstances, the Torah recommends that he take extreme measures to offset the improper influence of society.

We are surrounded by so many people who cheat in business or who are dishonest with regard to paying income tax or sales tax. We should therefore be overly cautious in matters of adherence to the laws of honesty. Unfortunately, we also find ourselves in a culture in which *pritzus* is commonplace. It thus seems reasonable that in issues pertaining to *arayos*, our behavior should reflect the opposite extreme, to make sure that we do not follow the corrupt practices of our society.

In fact, the *Ralbag* (*To'aliyot HaRalbag*, *Bereishis* 5:32) writes that this is one of the moral lessons we are meant to glean from the story of Noach. The *Ralbag* attributes Noach's decision to begin to have children only at the age of five hundred to the fact that he lived in a society that was steeped in depravity. Indeed, the *passuk* states, *כי השחית כל בשר את דרכו על הארץ* – “for **all flesh** had corrupted its way upon the earth” (*Bereishis* 6:12), implying that even the animals corrupted their way by mating with animals of other species (*Rashi*). Because of the decadence of his generation, Noach adopted an extreme position, and distanced himself from marital relations until much later in life.



VAYIVEN NOACH

ויבן נח מזבח ל'.¹

And Noach built an altar to *Hashem*. (*Bereishis* 8:20)

AFTER THE *MABUL*, Noach built a *mizbei'ach* and offered *korbanos*. The *Rambam* writes (*Hilchos Beis HaBechirah* 2:1-2) that המזבח מקומו מכון ביותר – “the location of the *mizbei'ach* is extremely precise.” In fact, we have a tradition that the *mizbei'ach* in the *Beis HaMikdash* was situated in the very same place where Adam HaRishon, Kayin and Hevel, and Noach brought their *korbanos* and where the *Akeidah* took place.

How did Noach know that he should offer *korbanos*? The *Midrash* (*Bereishis Rabbah* 34:9) interprets the words ויבן נח as indicating הבנה (understanding). In other words, Noach **surmised** that *Hashem* wanted him to bring *korbanos*. Otherwise, why would *Hashem* have instructed him to bring seven pairs of every kosher animal into the *teivah*, in contrast to the single pair of other species? Noach realized that *Hashem* desired that he offer these animals as *korbanos* to express his gratitude for surviving the *mabul*.

There is a very important lesson here. When a person succeeds in business and becomes wealthy, he should understand **on his own** that he should give whatever extra money he has to *tzedakah*, even if it amounts to more than ten percent of his income. If a person was given exceptional intelligence, it should be **self-evident** that he must use that gift to teach Torah, write *chiddushei Torah*, or discover medical cures. If a person was given a certain talent in art or music, he should use it to create beautiful masterpieces or compose symphonies. Whoever was given some skill beyond that of other people is responsible to utilize that *berachah* and make a meaningful contribution with that gift. [See *Rav Schachter on the Parsha, Parshas Vayechi*.]



ETHICS AND ETIQUETTE

ויקח שם ויפת את השמלה ... ויכסו את ערות אביהם.

And Shem and Yefes took a garment ... and covered their father's nakedness. (*Bereishis* 9:23)

RASHI QUOTES the *Midrash*, which comments on the use of the singular ויקח in this *passuk*. This implies that Shem alone took the initiative in this meritorious deed of covering Noach's nakedness. Yefes then followed Shem's example and joined Shem in protecting the honor of their father.

Rav Soloveitchik analyzed the respective motivations of Shem and Yefes, explaining that they represent the difference between ethics and etiquette. One's ethical requirement obligates a person to act in a proper way even when he is alone, when no one will observe him and praise him. Quite the contrary – even if others demean him because of his actions and ridicule him, he is ethically bound to do what is right. Etiquette, on the other hand, is based on the notion of *k'vod hab'riyos* (human dignity), and it directs a person to conform to contemporary rules of conduct, which may vary in different societies and time periods. The obligation applies only when one is in the presence of people who would be dishonored by one's non-adherence to the customary protocol.

This, the Rav suggested, was the principal difference between Shem and Yefes. Shem protected his father's dignity without any pressure from others, because he understood that it was ethically correct to save his father from embarrassment.

That is why, as *Rashi* writes, the Jewish People, who descend from Shem, merited the *mitzvah* of placing *tzitzis* on one's *tallis*, a reward that is commensurate with what motivated Shem to act. The *Magen Avraham* (*Orach Chaim* 8:13) writes in the name of the *Ari z"l* that it is proper to wear one's *tallis kattan*

specifically **underneath** his clothing and that only the strings of the *tzitzis* should be on the outside. In other words, the Jewish People warranted performing *mitzvos* with clothing that is not visible to others, just as Shem recognized the ethical mandate to do what is appropriate even when no one is watching and even if it is not the currently accepted standard of practice.

In contrast, Yefes did not perform the *mitzvah* because he appreciated its inherent value. Rather, after he saw Shem's conduct, Yefes acted accordingly; he knew that Shem would look upon him favorably if he joined in the *mitzvah*. He assisted Shem out of a sense of civility and courtesy – because it was the accepted behavior. Accordingly, Yefes earned burial for his descendants (in Eretz Yisrael, in the wake of the future battle of Gog and Magog), since, like etiquette, burial is an expression of *k'vod hab'riyos*.

The *Gemara* in *Megillah* (9b) interprets the respective *berachos* that Noach gave his sons in a similar vein. The *berachah* to Yefes was **יפת אלקים ליפת** – “May G-d beautify Yefes,” a reference to the beautiful Greek language. However, with regard to Shem, Noach continued, **וישכון באהלי שם** – “and the *Shechinah* will dwell in the tents of Shem” (*Bereishis* 9:27). To be worthy of *hashra'as haShechinah* (Divine presence), it is insufficient to adhere to rules of etiquette. It is necessary to act in an objectively just and proper fashion. [See *Nefesh HaRav*, 1994 ed., pp. 272-273.]



PARSHAS LECH LECHA

TWO ASPECTS OF MILAH

המול ימול יליד ביתך ומקנת כסף.

He that is born in your household or purchased with your money shall surely be circumcised. (*Bereishis* 17:13)

THE GEMARA in *Shabbos* (135b) describes two different categories of *avadim* whom an *adon* (master) has a *mitzvah* to circumcise - *miknas kesef* (an *eved* purchased by the *adon* with money) and *yelid bayis* (an *eved* born in the *adon's* "house" to his *shifchah Cana'ani*s).

When one purchases an *eved Cana'ani*, the *adon* must perform a *bris milah* on the *eved*, after which the *eved* undergoes *tevilah* (immersion in a *mikveh*) and *kabbalas ol mitzvos* (acceptance of *mitzvah* observance). This process is considered a *semi-geirus*; the *eved* now becomes obligated in *mitzvos*, with the exception of *mitzvos asei shehazman grama* (time-bound positive *mitzvos*). After the *eved* is freed by the *adon*, he requires a second *tevilah* in order to attain a full *kedushas Yisrael*, at which point he becomes obligated in all of the *mitzvos* (*Yoreh De'ah* 267:1-5). [Rav Chaim Soloveitchik (*Hilchos Issurei Bi'ah* 13:12) noted that there is a *machlokes* between *Tosfos* and the *Rambam* as to whether this second *tevilah* is a *d'oraisa*, or merely a *de-rabbanan* requirement.]

In contrast, a *yelid bayis* already has a *kedushas eved Cana'ani* prior to *milah*, much as a baby born to a Jewish mother already

has a *kedushas Yisrael* before *milah* (*Chullin* 4b). [Although there is a Yiddish expression said at a *bris milah*, “*mi geit yiddishin dos kind* – We are going to make the child Jewish,” it is not halachically accurate.]

The *Gemara* teaches that we perform the *milah* of a *yelid bayis* on the eighth day, whereas we perform that of a *miknas kesef*, such as when a non-Jew sells his child as an *eved Cana’ani* (*Rambam, Hilchos Avadim* 9:2), immediately, on the day of purchase.

It emerges from the *Gemara’s* distinction that the respective *milos* of these two types of *avadim Cana’anim* represent two different forms of *milah*. The *milah* of a *yelid bayis*, who possesses *kedushas eved Cana’ani* from birth, is a *mitzvas milah*. This is similar to the *bris milah* on a Jewish child, and we perform this form of *milah* at the age of eight days. On the other hand, a *miknas kesef* does not possess any *kedushas eved Cana’ani* before *milah*. Thus, the *milah* is performed for the sake of *geirus*, and this kind of *milah* may be done earlier than the eighth day. The same applies when a non-Jewish child is adopted and *milah* is performed as part of the *geirus* process that converts the child into a *Yisrael*.

The *Rambam* (*Hilchos Milah* 1:10) makes a further distinction between the *milah* of a *yelid bayis* and that of a *miknas kesef* based on the above *Gemara*. Since the *milah* of a *yelid bayis* should be performed specifically on the eighth day, the *milah* is *docheh Shabbos* (overrides the *Shabbos melachah* restrictions). The *milah* of a *miknas kesef* for the sake of *geirus*, however, has no particular time frame within which it must be performed. Since this *milah* is considered a *milah shelo bizmanah* (a *milah* performed not in its specified time), it may not be done on *Shabbos*. However, *Rabbeinu Yerucham* (cited by the *Shach, Yoreh De’ah* 267:6) disagrees and maintains that the *milah* of *avadim*, even the *milah* of a *yelid bayis*, is never *docheh Shabbos*.

Rav Yerucham Perlow (*Sefer HaMitzvos L’Rav Saadyah Gaon*, 5733 ed., vol. 1, pp. 361-362) points out that the *Gemara* in

Shabbos (131a-131b) seems to support Rabbeinu Yerucham's view. The opinion of Rebbi Eliezer is that *machshirei milah* (preliminaries to the *mitzvah* of *milah*), as well as the *machshirin* to other *mitzvos*, are *docheh Shabbos*. The *Gemara* identifies two exceptions – the *mitzvos* of having *tzitzis* on one's garment and of affixing a *mezuzah* to one's doorway. The *machshirin* of tying the *tzitzis* and of writing the *mezuzah* are prohibited on *Shabbos* because one can be *mafkir* (renounce ownership of) his garment and his house, in which case these obligations would no longer be incumbent upon him. Since such a potential exists, the Torah does not permit any *chilul Shabbos* for the *machshirin* of these *mitzvos*.

Presumably, the obligation to circumcise a *yelid bayis* is also not absolute, since the *adon* could be *mafkir* the *eved* and then not be obligated in his *milah*. Accordingly, *machshirei milah* of one's *eved* should not be *docheh Shabbos*. If so, why does the *Gemara* not cite *milas avadim* as an additional exception to Rebbi Eliezer's rule, since only the *mitzvah*, but not its *machshirin*, is *docheh Shabbos*? Evidently, *milas avadim* is **not** an exception to the rule, since in this case, even the *mitzvah* itself – the *milah* – is not *docheh Shabbos*! Thus, this *Gemara* supports Rabbeinu Yerucham and seems to contradict the *Rambam's* view.

The *Rambam* might respond that even after an *adon* is *mafkir* his *yelid bayis*, he does, in fact, remain obligated in his *milah*. The *Rambam* (*Hilchos Milah* 1:1) is *mechadeish*, against the other *Rishonim*, that if an *adon* neglects to circumcise his *eved*, the obligation is transferred to *beis din* to see to it that the *eved* receives his *milah*. It may be that this obligation actually binds all Jews, including the *adon* who freed him. Since the obligation on the *adon* to circumcise his *yelid bayis* is absolute, the *machshirin*, just like the *milah* itself, are *docheh Shabbos*.

The above distinction between the two forms of *milah* may be utilized to answer a question of the *Acharonim*.

Rebbi Yehoshua derives from the *passuk*, וכל עבד איש מקנת כסף, ומלתה אותו אז יאכל בו – “And every slave of a man, who was purchased with money, you shall circumcise him; then he may eat of it” (*Shemos* 12:44; see *Rashi*), that failure to perform *milah* on one’s *eved* prevents the *adon* from eating of the *Korban Pesach* (*Yevamos* 70b). The *Gemara* in *Yevamos* (48a) further analyzes the beginning of the *passuk*, וכל עבד איש, asking why the *passuk* here specifies an *eved* owned by a **man**. The *Gemara* assumes that this *halachah* regarding the non-circumcision of one’s *eved* should apply to both a male and a female *adon*.

The *Acharonim* (see *Minchas Chinuch* 2:6; *Sha’agas Aryeh* 53) question the assumption of the *Gemara* in light of the *Gemara* in *Kiddushin* (29a) that differentiates between a father and a mother in regard to the *milah* of their son. The *passuk*, כאשר צוה – “[And Avraham circumcised Yitzchak his son...] as G-d had commanded him” (*Bereishis* 21:4), teaches that the *mitzvah* of *milah* was addressed to a father, and not to a mother. Since women are apparently exempt from the *mitzvah* of *milah*, there are indeed grounds for differentiating between a male and a female *adon* regarding the *milah* of an *eved*. A male *adon* has a *chiyuv* to circumcise his *eved*, just as he has a *chiyuv* to circumcise his own son, and he therefore may not partake of the *Korban Pesach* if he has not fulfilled that *chiyuv*. However, just as a woman has no *chiyuv* to circumcise her son, she should have no *chiyuv* to circumcise her *eved*. Thus, a female *adon* **should** be allowed to eat from the *Korban Pesach*, even if she fails to have her *eved* circumcised.

The fact that the *Gemara* does not make this distinction, but rather understands the implication of the phrase וכל עבד איש in a different way, indicates that although a woman is exempt from the *milah* of her son, she may be **obligated** in the *milah* of her *eved*. That is why a female *adon* may not partake of the *Korban Pesach* if her *eved* is an *arel*.

The reason to distinguish between the *milah* of a woman's son and that of her *eved* is the distinction we drew above between the two kinds of *eved Cana'ani*. A woman is exempt from the *mitzvos milah* of her son, and this exemption extends to the *milah* of a *yelid bayis* as well. However, as mentioned, the *milah* of a *miknas kesef* is of a different nature entirely. A *miknas kesef* has no *kedushas eved Cana'ani* prior to *milah*. His *chiyuv b'mitzvos (k'ishah)* begins with *milah* (and subsequent *tevilah*), which is therefore classified as a *milah l'sheim geirus*, and a woman is obligated in this type of *milah* the same way a man is.

This analysis outlining the different forms of *bris milah* of *avadim* is relevant to the *milah* of a Jewish child as well.

The *Tosfos Rid* (*Shabbos* 137b, s.v. *hamevareich*) is bothered by the question of why we recite two *berachos* over the single *mitzvah* of *milah*. The *Gemara* in *Shabbos* (137b) teaches that the *mohel* recites the *berachah* of על המילה, and the father of the baby recites, להכניסו בבריתו של אברהם אבינו – “to bring him into the covenant of Avraham, our forefather.”

Rav Soloveitchik explained the peculiar institution of a second *berachah* over the *mitzvah* of *milah* based on the *Tosfos* in *Pesachim* (7a, s.v. *b'leva'eir*; see also *Shabbos* 137b, s.v. *avi haben*) which cites the opinion of Rabbeinu Tam, that the *berachah* of להכניסו is recited **after** the *bris milah* is performed. To help explain this unusual phenomenon, as most other *birchos hamitzvos* are recited *over la'asiyasan* (immediately prior to doing the *mitzvah*), the Rav coined an expression to describe a new category of *birchas hamitzvah* that was instituted in certain cases – **a *berachah* on a *chalos*** (change in status).

Usually, when a person performs a *ma'aseh hamitzvah*, he discharges his obligation, but there is no perceptible change in the individual himself. The *birchas hamitzvah* that accompanies the *mitzvah* was instituted over the *ma'aseh hamitzvah*. However, there are certain *mitzvos* in which, in addition to the performance of the *ma'aseh hamitzvah*, there is a change in

status that is created in the individual who performs them. This change remains with him long after the *ma'aseh hamitzvah* has been completed, and a *birchas hamitzvah* was instituted over this *chalos*.

Rav Soloveitchik explained that the opinion of Rabbeinu Tam that we recite להכניסו after performing the *mitzvah* of *milah* is based on the idea that this *berachah* pertains to the *chalos hamilah*. In addition to one's accomplishing a *mitzvah* through the act of *milah*, the *ma'aseh* produces a *chalos*, a change of status. *Milah* removes the *shem arel* from the child, who is no longer prohibited from eating *terumah*, *korbanos*, or doing *avodah* in the *Beis HaMikdash*.

According to Rabbeinu Tam, the *berachah* of על המילה was instituted over the *ma'aseh hamitzvah* of *milah*, and this *berachah* is recited over *la'asiyasan*. However, להכניסו was instituted over the *chalos shem ben bris* that has been produced, and therefore we recite it specifically **after** the *milah*, once the *milah* has created this change of status in the child. Furthermore, since the *ma'aseh hamitzvah* of *milah* is performed only by the *mohel*, he alone may recite על המילה. However, the *chalos shem ben bris* is relevant to all of *Klal Yisrael*, and **anyone** present may therefore recite the *berachah* of להכניסו. [See *Eretz HaTzvi*, pp. 28-32; *Rav Schachter on Tefillah, Mitzvas Tefillin*, sections I-IV.]

The *Aruch HaShulchan* (*Yoreh De'ah* 265:8) similarly describes the duality in the *mitzvah* of *milah*. On the one hand, the *mitzvah* of *milah* constitutes a surgical procedure, and we recite על המילה over this act. At the same time, *milah* serves as a *hachnasah l'bris*, since it serves as the initial *chinuch* that we give a child to introduce him to a life of Torah and *mitzvos*. The additional *berachah* of להכניסו highlights this aspect of the *mitzvah*.

A comment of the *Midrash* (*Shemos Rabbah* 30:12) describing a discussion between Akilus HaGer and his uncle, Hadrian, the Emperor of Rome, supports the notion of this second component of the *mitzvah*. Akilus once told his uncle that he

wished to convert and become a Jew. He explained that he desired the knowledge that the Torah offers, such as the Torah's detailed account of Creation. Hadrian asked him why he felt he had to undergo *geirus* and *milah*, and not simply study the Torah, to which Akilus replied that even the wisest person in his kingdom is unable to comprehend the wisdom of the Torah if he is uncircumcised. Apparently, *bris milah* is essential to *chinuch* in Torah and *mitzvos*.

Avraham circumcised Yishmael and the *bnei Keturah* even though they were not Jewish. In fact, the *Rambam* (*Hilchos Melachim* 10:8), against the view of *Rashi* (*Sanhedrin* 59b, s.v. *lerabos*), maintains that every Arab to this day is obligated in *bris milah*, due to the possibility that he is a descendant of Keturah, as the descendants of Yishmael have intermingled with those of Keturah. In terms of the *Aruch HaShulchan's* classification, the instruction given to Avraham was to perform only the surgical *mitzvah* of *milah* on Yishmael and the *bnei Keturah*, as *hachnasah l'bris* is not relevant to these non-Jews.

On the other hand, it seems that the aspect of the *mitzvah* that allows *bris milah* to be *docheh Shabbos* is specifically its role in effectuating a *hachnasah l'bris*. The *Gemara* (*Yevamos* 5b) teaches that *milah's* capacity to override the Shabbos restrictions is a *chiddush* (something that does not conform to the general principle), since we usually would not apply the rule of עשה דוחה לא תעשה – a positive commandment overrides a prohibition – when the prohibition carries the penalty of *kares*, like *chillul Shabbos*. The *Gemara* explains that the expression “*bris*” appears thirteen times in the *parsha* in which Avraham received the *mitzvah* of *milah* (*Bereishis* 17:1-22), which indicates that *Hashem* sealed thirteen *brisos* (covenants) with Avraham and his descendants over the fulfillment of this *mitzvah*. Thus, due to its special importance, *milah* is an exception to the rule, and it is *docheh Shabbos*.

If a completely non-observant couple desires to perform a *bris* on their child, and it does not seem that he will be given any sort of Jewish education and grow up to be an observant Jew, we cannot view this *milah* as the beginning of the religious life of the child. Accordingly, the *Shach* (*Yoreh De'ah* 266:16) writes that such a *milah* should **not** be performed on Shabbos. Unfortunately, this *bris* contains only the *ma'aseh mitzvah* of *milah*, not the *hachnasah l'bris* element that is necessary to supersede the Shabbos prohibitions.



PARSHAS VAYEIRA

LABORATORY-GROWN MEAT

ויקח חמאה וחלב ובן הבקר אשר עשה ויתן לפניהם.

He took cream and milk and the calf which he had prepared and placed these before them. (*Bereishis* 18:8)

RAV SHLOMO HAKOHEN (*Cheishek Shlomo, Yoreh De'ah* 98), *Av Beis Din* in Vilna in the late 1800s and *magi'ah* of the *Vilna Shas*, quotes a fascinating comment of the *Malbim* (*HaTorah V'HaMitzvah*) on this *passuk* that is relevant nowadays on a practical level. According to the *passuk*, Avraham Avinu served the *malachim* meat and milk in the same meal, which is a violation of *basar b'chalav*. A simple explanation could have been offered: Eating meat and milk in the same meal does not constitute an *issur* of *basar b'chalav* that the Torah forbade, which is when meat and milk are cooked together. Eating meat and milk in the same meal was prohibited much later, in the days of the *Tanna'im*. *Chazal*, however, teach that Avraham Avinu observed even the *dinim derabbanan* (*Yoma* 28b), which raises the difficulty of how he served meat and milk to the *malachim*.

The *Malbim* suggests that the words **אשר עשה** should not be translated "which he had prepared," but literally, "which he had **made**." In other words, Avraham created the animal using *Sefer Yetzirah*, the Book of Creation. In the days of the

Gemara, through their study of *Sefer Yetzirah*, certain *Amora'im* learned how to create animals by using various arrangements of the letters of *Hashem's* Name with which He created the world (*Sanhedrin* 65b).

The *Cheishek Shlomo* extends this idea to the cream and milk that Avraham served his guests as well, thereby answering a question of the *Pleisi*. The *Gemara* in *Bechoros* (6b) questions how we know that milk is permissible. Since a live animal is forbidden based on the *issur* of *eiver min hachai* (eating the limb of a live animal), milk should be considered the product of that which is forbidden! The *Gemara* answers by citing the *passuk* describing Eretz Yisrael, ארץ זבת חלב ודבש – “a land flowing with milk and honey” (*Shemos* 3:8). Had it been forbidden to consume milk, the Torah would not have praised Eretz Yisrael in this way.

The *Pleisi* (81:7) asks why the *Gemara* does not derive the permissibility of milk from the simple fact that Avraham served milk, as *eiver min hachai* is prohibited even to *bnei Noach*? The *Cheishek Shlomo* explains that if the milk that Avraham served was produced from an animal created through *Sefer Yetzirah*, the *issur* of *eiver min hachai* would not apply to that milk. Therefore, we cannot prove that milk is permissible in general.

The modern-day equivalent of using *Sefer Yetzirah* is the production of laboratory-grown meat, which is synthetically cultured from harvested animal cells. According to the *Malbim*, a synthetically-created animal is *parve* (*min haTorah*). In other words, meat has the status of “*basar*” only if it develops in an animal naturally. If a cell is separated from an animal and then grows to the same end result through an artificial process, it is *parve*, at least on a level of *d'oraisa*.

Along these lines, there is a surprising *teshuva* in the *Chacham Tzvi* (93), cited by the *Ba'er Heitev* (*Orach Chaim* 55:2), regarding the inclusion of a *golem* towards a *minyan*. [Apparently, the

Chacham Tzvi's grandfather was known as a *ba'al Shem* who had the ability to create a *golem*.] The *Chacham Tzvi* quotes the *Gemara* in *Sanhedrin* (19b) that states, כּל המגדל יתום בתוך ביתו מעלה עליו הכתוב - כאילו ילדו - "Whoever raises an orphan in his home is regarded by Scripture as if he had fathered him," arguing that creating a *golem* should be no different than raising a child. If creating a *golem* is considered to be כאילו ילדו, then we may also regard the *golem* as being Jewish.

The *Chazon Ish* (*Yoreh De'ah* 116:1) rejects the *Chacham Tzvi's* argument based on the *Gemara* in *Sanhedrin* (65b), which records that רבא ברא גברא - "Rava created a 'person'" and that Rav Zeira had the *golem* "return to dust" upon seeing that it lacked the ability to speak. If a *golem* is considered a human being, killing the *golem* should be a violation of *retzichah* (murder)! Evidently, a *golem* is not considered to be a human being. Thus, the *Chazon Ish* reasons, it is obvious that a *golem* cannot be included as part of a *minyan*, since a pre-requisite for being Jewish and counting towards a *minyan* is that one first be a human being.

In other words, the status of "human being" is conferred only on an organism that develops from the union of a man and woman, not through synthetic means. Just as the בן הבקר אשר עשה created through *Sefer Yetzirah* had the status of *parve*, if an embryo were to develop in an incubator, it would produce an "imitation human being," who would have the status of a *golem*. [In our generation, we assume that artificial insemination and in-vitro fertilization also lead to the creation of a "human being," since after the union of the male and female reproductive cells, the embryo develops inside a woman's body.]

Apart from its halachic implications, the formulation of the *Chazon Ish* provides a valuable model of the *chinuch* that parents must provide for their children. A person must first be trained in preserving his *tzelem Elokim*, making sure that he

is a *mentch*. Only after a person has succeeded in becoming a *mentch* can he begin *chinuch* as a Jew regarding *mitzvos*.



AVRAHAM AVRAHAM

ויקרא אליו מלאך ד' מן השמים ויאמר אברהם אברהם ויאמר הנני.

And an angel of *Hashem* called to him from heaven, and said, "Avraham! Avraham!" And he said, "Here I am." (*Bereishis* 22:11)

WE HAVE A TRADITION that when *leining* this *parsha*, one should pause between the two times Avraham's name is mentioned, and that is why a *pesik*, a vertical line, appears in that location in our printed *Chumashim*. By contrast, in the *passuk*, ויאמר משה משה ויאמר הנני - "and [G-d] said, 'Moshe, Moshe,' and he replied, 'Here I am'" (*Shemos* 3:4), there is no *pesik* between Moshe's names.

Rav Chaim Volozhiner (*Nefesh Hachaim* 3:13, *Likutei Ma'amarim* 14) quotes the *Zohar* (*Parshas Naso*, 138a; *Parshas Balak* 187b; see also *Midrash Rabbah*, *Shemos* 2:6), which distinguishes between the pauses between the double mentions of Avraham's and Yaakov's names (*Bereishis* 46:2) and that of Moshe Rabbeinu. Rav Chaim Volozhiner explains that in *shamayim*, there exists an image of each person according to the potential he possesses, one that corresponds to the essence of his *neshamah*. Whenever a name is repeated, the first time the name appears refers to the abstract potential that exists for that individual in *shamayim*, whereas the second mention of the name corresponds to the actual person. The *pesik* between the two names of Avraham reflects the idea that Avraham, as great a *tzaddik* as he was, did not completely fulfill his potential; there remained a gap between

the two forms of Avraham's persona. Moshe Rabbeinu, on the other hand, is the only person who reached a level that matched his absolute potential.

Along the same lines, the *Radak* comments on the *passuk*, משה עבד ד' – "Moshe, servant of Hashem" (*Yehoshua* 1:1), that the term "*eved Hashem*" should be understood to indicate the same relationship as a servant to his human master. In regard to the acquisitions of an *eved*, *Chazal* teach, מה שקנה עבד קנה רבו – "Whatever a slave acquires, his master automatically acquires" (*Pesachim* 88b). Moshe is described as an *eved* because his entire life was dedicated to the service of Hashem. He led his life for the sole purpose of the performance of *mitzvos*. He gave himself over to Hashem and belonged fully to Him. This is similar to *Rashi's* comment on the *passuk*, וירד משה מן ההר אל העם – "Moshe descended from the mountain to the people" (*Shemos* 19:14). Moshe did not attend to his own business, but rather went directly from the mountain to the people.

This attitude is not only reserved for *tzaddikim*. Hashem desires that all of us be *avadim*, כי לי בני ישראל עבדים – "For *Bnei Yisrael* are servants to Me" (*Vayikra* 25:55). Hashem desires that we all realize our full potential.

The Torah describes the dream of Yaakov Avinu in which a ladder stretched from the earth to the heaven, והנה מלאכי אלקים – "and behold, angels of G-d were ascending and descending on it" (*Bereishis* 28:12). *Chazal* were troubled by this vision. If the *malachim* live in *shamayim* above, they should have first descended and only afterward ascended the ladder to return to *shamayim*. Why does the Torah describe the opposite – that the *malachim* first ascended and only then descended?

One of the answers of the *Midrash* (*Bereishis Rabbah* 68:12, recorded in *Chullin* 91b) suggests that the *malachim* ascended to *shamayim* and gazed at מעלה של דיוקנו של – the image of Yaakov above. *Yechezkel HaNavi* (1:4-11) relates in his vision of the

Merkavah (the Heavenly Chariot) that he saw four *chayos* who bore the *Merkavah*. Each of the *chayos* had four faces – a human face, a lion’s face, an ox’s face, and an eagle’s face – and according to Talmudic tradition, the face of the human was in the image of Yaakov Avinu (*Rashi*).

Thus, the *Gemara* explains that the *malachim* first ascended and then descended and gazed at **מטה של מטה** – the image of Yaakov **below**. They were so disappointed to see that Yaakov was sleeping that **בעו לסכנויה** – “they wished to harm him.” The Yaakov they saw on earth did not compare to the image above; Yaakov was not fulfilling his potential! A man with such exceptional talent, with such promise, was wasting his time sleeping? He should be learning; he should be doing something productive! [Perhaps the *malachim* were not aware that he had just been learning for fourteen years in the *yeshivah* of *Shem v’Ever*.] According to this explanation, the next *passuk*, **והנה ד’ נצב עליו** (*Bereishis* 28:13), does not mean that *Hashem* was standing “over it” – meaning, over the ladder – but rather “over him,” to protect Yaakov from the *malachim*.

Some people fulfill their maximum potential by learning only five minutes a day; they cannot do more than that. However, if a person has greater capability, he has an obligation to live up to his **דמות דיוקנו**. One who fails to realize his potential is required to do *teshuvah*, not so much for a particular *aveirah* he committed, but rather, for the wasting of his talents and *kishronos*.



PARSHAS CHAYEI SARAH

K'VOD HAMEIS

THE TORAH requires burial on the day of death based on the *passuk*, לא תלין נבלתו על העץ כי קבור תקברנו ביום ההוא – “You shall not leave his body overnight on the gallows; rather, you shall surely bury him on that day” (*Devarim* 21:23). The reason for this requirement is the Torah’s concern for *k’vod ha-b’riyos* (human dignity). However, for the purpose of honoring the deceased, so that a greater number of people can attend the funeral, the burial may be delayed (*Sanhedrin* 46b-47a).

Some people have the mistaken attitude that *Yahadus* places an exaggerated emphasis on the dead, due to the many practices related to death and dying, such as *yartzheit*, *Kaddish*, *shivah*, and *Yizkor*. This attitude is simply the result of a limited perspective of *Yahadus*. In fact, the *Gemara* in *Kesubos* (17a) teaches that if a *kallah* and her entourage on the way to her wedding meet a group of people bringing a *meis* to *kevurah* at a crossroads, those escorting the *meis* must yield to the *kallah*’s procession.

The *Shitah Mekubetzes* (s.v. *v’kasav*) cites the *Ramban* (*Toras Ha’Adam*, *inyan hahotza’ah*, s.v. *b’Perek*), who writes that this *Gemara* indicates a general principle. All of a *kallah*’s needs are given priority over those of a *meis*, since *k’vod hachaim* takes precedence over *k’vod hameisim*. Thus, in the eyes of Halachah, the *mitzvah* of *k’vod hachai* is **more** important than that of

k'vod hameis. Not only is there an obligation of *k'vod hab'riyos* to the living, there is also an obligation of *k'vod hab'riyos* to the dead.

This perspective is in line with the comment of the *Bartenura* (*Bikkurim* 3:3) regarding the practice of standing when the *aron* with the *meis* is brought into the room. He explains that we are not standing out of *k'vod hameis*; if we did not stand out of respect for the *meis* when he was alive, we would not do so now that he is dead! Rather, we stand out of respect for the *chevra kadisha* who carry the *meis*, as they are involved in the performance of a *mitzvah*.

This is patterned after the *halachah* taught in the *Mishnah* that all the craftsmen of Yerushalayim would rise to honor the farmers bearing their *Bikkurim* on their way toward the *Beis HaMikdash*. Even if one's personal status would not demand standing in his presence, if he is engaged in performing a *mitzvah*, he is due respect. This is also why we stand when an infant is carried toward his *bris milah* – to honor the *kvater*, who is assisting in the performance of a *mitzvah*. This was Rav Soloveitchik's explanation for why we stand before a *chosson* (and *kallah*) as they walk down the aisle to their *chuppah*. He felt that this was not a function of comparing a *chosson* to a *melech*, as that applies only **after** the *chuppah* has taken place, but rather, a function of their performing a *mitzvah*. [See *MiPinei HaRav*, 2001 ed., pp. 217-218.]



KEVER YISRAEL

ויקם אברהם מעל פני מתו וידבר אל בני חת לאמר.

Avraham rose up from the presence of his dead and spoke to the children of Ches, saying. (*Bereishis* 23:3)

AVRAHAM WAS OBVIOUSLY not able to converse with *bnei Ches* while he was engaged in eulogizing Sarah and weeping over her death. What, then, is the Torah teaching us by stating that Avraham turned from his grief to speak to *bnei Ches*?

Rav Soloveitchik suggested that the word ויקם should be understood in the same manner as it is used later in the *parsha*: ויקם שדה עפרון אשר במכפלה ... לאברהם למקנה לעיני בני חת – “And Efron’s field, which was in Machpelah, was confirmed ... as Avraham’s, as a purchase in the view of the children of Ches (*Bereishis* 23:17-18). *Chazal* interpret ויקם in its literal sense, “And it rose”; the property became elevated because it passed from the possession of a commoner, Efron, to that of a king, Avraham. In our context as well, ויקם means that Avraham girded himself with strength as he prepared to make an atypical request of *bnei Ches*, one that they would likely find objectionable.

Until that point, anyone who immigrated to their land would integrate with the local populace to become a full member of society, and he would then be buried in the local cemetery with the other citizens. Avraham, however, introduced himself to *bnei Ches* with the words, גר ותושב אנכי עמכם – “I am a stranger and a resident among you” (23:4). *Rashi* points out the tension between these two terms, as they are, in fact, mutually exclusive.

Rav Soloveitchik (*Reflections of the Rav I*, ch. 16; *Confrontation* 2:4) explained that Avraham here claimed that he and his descendants after him must maintain dual identities. On the one hand, we are תושבים and must work along with our fellow

citizens to advance the common welfare, joining with them to solve the universal problems of poverty, sickness, crime, etc. Yet, at the same time, we have another identity that we do not share with the rest of mankind. We remain גרים, as our lives consist of a totally different mission statement that is focused on *avodas Hashem*.

The Rav (*Chameish Derashos*, pp. 67-69) expanded on this theme, in discussing the apparent redundancy found in two *berachos* that we recite daily, עוזר ישראל בגבורה - "Who girds Israel with strength" and הנותן ליעף כח - "Who gives strength to the weary." He explained that the difference between them is that *ko'ach* refers to the physical strength that one must thank *Hashem* for upon arising each morning. *Gevurah*, on the other hand, connotes heroism, which includes the ability to be unyielding to the powerful force of societal pressure. This is something that the Jewish People have exhibited throughout the ages, following in the ways of אברם העברי (*Bereishis* 14:13), a name that indicates the idea that כל העולם כולו מעבר אחד - "the entire world is on one side and he is on the other side" (*Bereishis Rabbah* 42:8).

In this context, Rabbi Norman Lamm quoted the *Yalkut Ha-Re'uveini* (from *Midrash HaNe'elam*), that attributes great significance to the inverted *nunim* found before and after the section of יהי בנסוע הארון in *Parshas Behd'aloscha* (*Bamidbar* 10:35-36), teaching that the non-Jews have been excluded from these *nunim* and that it is through these *nunim* that *Hashem* is destined to redeem *Bnei Yisrael* in the times of *Mashiach*. The word "nun" in Aramaic means fish, and the *Gemara* in *Avodah Zarah* (39a) tells us that a sign of a kosher fish is that it possesses a spine, enabling it to survive in a river in which the waters flow forcefully. The inverted form of these *nunim*, then, represents the idea that the Jewish People must be like the kosher fish, which has the ability to swim **upstream**, to travel against the tide.

Bechiras Yisrael as Hashem's Chosen Nation implies an emphasis on our distinctiveness in the religious sphere. As we state in *Havdalah*, המבדיל בין קודש לחול בין אור לחושך בין ישראל לעמים – “Who separates between the sacred and the secular, between light and darkness, between Israel and the nations,” and as Moshe Rabbeinu blessed us, וישכן ישראל בטח בדד – “Israel shall dwell secure, solitary” (*Devarim* 33:28). [See *Rav Schachter on Tefillah, He'aros B'Nusach HaSiddur*, section XXIII.]

In this spirit of separateness, Avraham sought to establish, for the first time, the institution of *kever Yisrael*, which is one of the ways the distinction of *Klal Yisrael* is clearly manifest. This required him to strengthen himself to be able to challenge the prevailing societal norm and to erect this “*mechitzah*” between them. Because *bnei Ches* considered Avraham a נשיא אלקים – “a prince of G-d,” they were gracious in offering Avraham מבחר קברינו – “the choicest of **our** burial places,” and to show his appreciation, Avraham bowed down to the children of Ches. But Avraham had to decline their offer; he responded that he was forbidden to bury Sarah in a non-Jewish cemetery. Avraham's message was that Jews live differently, die differently, and are buried differently than non-Jews. [See *MiPninei HaRav*, 2001 ed., pp. 276-277.]

It is true that we share a great deal in common with the nations of the world, as all human beings were created *b'tzelem Elokim* (in the image of G-d). But *Bnei Yisrael* were created as *banim laMakom* (children of the Omnipresent), which is a deeper degree of *tzelem Elokim*. Therefore, the Halachah requires a separate *beis hakevaros* for Jewish people, since burying a Jew in close proximity to a non-Jew would be a violation of the *k'vod hab'riyos* that the Jew deserves.

We require a space of eight *amos* between a *kever Yisrael* and a *kever nochri*, since the four *amos* that surround a *meis* have a *din* of *tefisas hakever* (occupied area of the grave), and we do not permit interlocking *tefisos* (*Igros Moshe, Yoreh De'ah* 1:160;

S'ridei Eish 3:100; *Minchas Elazar* 2:41). Some *poskim* (Rav Shlomo Kluger, *Tuv Ta'am V'Da'as* 3:2:253) required a *mechitzah* separating the cemeteries as well. [See *Eretz HaTzvi*, p. 126; *Divrei HaRav*, 2010 ed., p. 226.]

The *issur* to bury a Jew in a non-Jewish cemetery does not apply only *lechatchilah*. Even *bedi'eved*, if a Jew was mistakenly buried among non-Jews, we are obligated to remove the *meis* and bury it in a *kever Yisrael*. Rav Soloveitchik related that there was a question whether, in this situation, it would be permissible for a *Kohen* to exhume the body and re-bury it in a *kever Yisrael*, if he were the only person available to do so. Unlike the view of most of the *rabbonim* of the generation, his grandfather, Rav Chaim, was of the opinion that since it is such a great *bizayon hameis* to remain buried among non-Jews, such a *meis* has the status of *meis mitzva* (a dead body in need of *kevurah*), and a *Kohen* is permitted to be *metamei* himself for this purpose to save the *meis* from this disgrace. [See *Nefesh HaRav*, 1994 ed., pp. 279-280.]

Rav Chaim commented that there are long bridges and there are short bridges. But there is not a bridge long enough to bridge the gap between a Jew and a non-Jew; the difference is so great. A Jew has *kedushas Yisrael*, whereas a non-Jew, though he has *mitzvos*, does not possess *kedushah*. Only the Jewish body is considered *tashmischei kedushah*, and therefore after a Jew dies, his body must be buried like a pair of *tefillin* that has become *pasul*. [See *Eretz HaTzvi*, p. 90; *Rav Schachter on the Parsha, Parshas Chayei Sarah*.]



KEVER AVOS

ויקם שדה עפרון אשר במכפלה ... לאברהם למקנה לעיני בני חת ... ואחרי כן קבר אברהם את שרה אשתו ... ויקם השדה והמערה אשר בו לאברהם לאחוזת קבר מאת בני חת.

And Efron's field, which was in Machpelah, was confirmed ... as Avraham's, as a purchase in the view of the children of Ches ... And afterwards Avraham buried Sarah his wife ... Thus, the field with its cave was confirmed as Avraham's as an estate for a burial site, from the children of Ches. (*Bereishis* 23:17-20)

RAV SOLOVEITCHIK questioned the repetition in these *pessukim*. Why do we need to be told two times that the land was confirmed as being owned by Avraham?

The Rav noted an apparent shift in the status of Avraham's possession of the field of Efron, from that of a שדה מקנה - a purchased field - to that of a שדה אחוזה - an ancestral field. Accordingly, he explained the sequence of *pessukim* as follows: At first, Avraham bought the field merely as a purchase of real estate. However, after he buried Sarah there, his relationship with the land was transformed; it was now an ancestral heritage for him, and he understood that he would never leave that land. Indeed, one is not permitted to sell his ancestral field unless he becomes impoverished, and even then, he should try not to sell all of it (*Rashi, Vayikra* 25:25).

That is why the phrase מאת בני חת is used in relation to the קבר אחוזת, in contrast to לעיני בני חת. This denotes the complete removal of the land from the control of *bnei Ches* into the possession of Avraham, for whom it became a "land of destiny" - the National Homeland of his descendants.

The *Ramban* (*Bereishis* 23:19), commenting on the many acts of kindness that *Hashem* did for Avraham, highlights this point. First, despite the fact that he was a stranger, Avraham was accorded great honor, thereby fulfilling in his lifetime the promise

of ואגדלה שמך – “I will make your name great” (12:2). Furthermore, when his wife died, he merited that she was buried in “*nachalas Hashem*” – the heritage-land of *Hashem*. The *Ramban* thus implies that the acquisition of *Me’aras HaMachpelah*, specifically as a שדה אחוזה, represented the beginning of the fulfillment of *Hashem’s* promise to Avraham that Eretz Yisrael would be his *nachalah*.

Rav Soloveitchik (*Divrei Hashkafah*, 1994 ed., pp. 37-38) recounted an incident that he heard from Alain de Rothschild of Paris. In 1949, after the War of Independence, the family of the “*Nadiv HaYadu’a*” (“The Famous Benefactor”), Baron Edmond de Rothschild, began to make plans to reinter his remains and those of his wife in Eretz Yisrael. When General Charles de Gaulle heard of the plans, he summoned James de Rothschild, the baron’s son, and remarked to him, “I always thought that the Rothschild family was completely loyal to France. Now, I want to ask you, what is true loyalty?” De Gaulle answered his own question: “A true Frenchman is one who was educated in French schools, who fights for France in times of war, who contributes to French society. And a good Frenchman is also one who lives, dies, and is buried in France. I cannot understand how a good Frenchman can be buried in another land!”

Although he was not that observant of *mitzvos*, Baron Rothschild felt that he should be buried in Eretz Yisrael, recognizing it as our National Homeland. Yaakov told his children and his grandchildren, as did Yosef, that he wanted to be buried in Eretz Yisrael, since he wanted everyone to keep in mind our strong connection to Eretz Yisrael. Nechemyah, upon being questioned by King Artachshasta over his downcast appearance, responded in a similar vein: מדוע לא ירעו פני אשר – “Why should my face not be downcast, when the city of my ancestors’ graves is in ruin?” (*Nechemyah* 2:3).

People have a deep attachment to the place of *kever avos*, and Jews are similarly drawn to Eretz Yisrael, where our *Avos* and *Imahos* are buried. This relationship began in our *parsha* through the burial of Sarah Imeinu. [See *MiPninei HaRav*, 2001 ed., pp. 274-275.]



PARSHAS TOLDOS

MA'ASER KESAFIM

ויזרע יצחק בארץ ההיא וימצא בשנה ההיא מאה שערים ויברכהו ד'.

Yitzchak sowed in that land, and in that year he reaped a hundredfold; thus had *Hashem* blessed him. (*Bereishis* 26:12)

WHEN THERE WAS a famine in the land, Yitzchak traveled to Gerar, intending to dwell in Mitzrayim, just as his father had done before him. *Rashi* (26:2) cites the *Midrash* that *Hashem* said to Yitzchak, "Do not descend to Mitzrayim, for you are a blemish-free offering, and [territory] outside the Land [of Israel] is not worthy of you." Following the incident of the *Akeidah*, Yitzchak had attained the *kedushah* of a *Korban Olah* (burnt-offering) and was not permitted to leave Eretz Yisrael.

At that time, *Hashem* gave Chevel Azah (the Gaza Strip) to Yitzchak: גור בארץ הזאת ... כי לך ולזרעך אתן את כל הארצות האל – "Sojourn in this land ... for to you and your offspring will I give all these lands" (26:3). This made that territory part of Eretz Yisrael, and Yitzchak was therefore allowed to remain there. *Rashi* (26:12) comments that Yitzchak met with great success there, despite the fact that the land was not usually fruitful, since Chevel Azah was not the Eretz Yisrael proper that was given to Avraham (the land of the seven Canaanite nations) and it was a year of famine. Nevertheless, Yitzchak's land produced a bounty that was one hundred times greater

than expected. *Rashi* quotes *Chazal* that *Yitzchak* had assessed how much the land was fit to produce for the purpose of determining the amount of *ma'aser* to set aside.

The *Rambam* (*Hilchos Melachim* 9:1) quotes the *Midrash* (*Shemos Rabbah* 30:9; see *Chiddushei HaRan*, *Sanhedrin* 56b, s.v. *achol*), which outlines a historical sequence of commandments. Initially, *Hashem* commanded *Adam* to observe six of the *mitzvos Bnei Noach*. Since mankind was prohibited from eating meat until after the *mabul*, the seventh of the *mitzvos Bnei Noach*, the *issur* of *eiver min hachai* (consuming a limb of a living animal), took effect only after the *mabul*. The count of *mitzvos* remained at seven until *Avraham* was commanded the additional *mitzvah* of *bris milah*. Later, *Yitzchak* separated *ma'aser*, and then *Yaakov* received the prohibition of *gid hanasheh*. *Yitzchak* was not formally commanded to separate *ma'aser*, but he was given the ability to do so, such that the separation would be effective and the produce would have the status of *ma'aser*. *Amram* received additional *mitzvos* in *Mitzrayim*, and the Torah's *taryag mitzvos* were completed through *Moshe Rabbeinu*.

In explaining the significance of the fact that each one of the *Avos* was given an additional *mitzvah*, *Rav Soloveitchik* referred to the *machlokes* between the *Ramban* and the *Ba'alei HaTosfos* (see *Ramban*, *Vayikra* 24:10) regarding whether Jewish lineage was determined by the male or female parent before *Mattan Torah*. The *Mishneh LaMelech* (*Parashas Derachim*, *drush* 1) explains that the *machlokes* revolves around the question of the halachic status of the *Avos* before *Mattan Torah*: Was it that of a *ben Noach* or that of a *Yisrael*? [See *Eretz HaTzoi*, p. 120.]

The *Rav* thought that the resolution of this question involves a compromise position (see *Maharsha*, *Chiddushei Aggados*, *Yoma* 28b, s.v. *mitzvoosai*; *Chasam Sofer*, *Yoreh De'ah* 300). The *Avos* did indeed leave the status of *bnei Noach*, but they did not enter into the ranks of complete *kedushas Yisrael*. It is evident from the *nusach* of *birchos hamitzvos*, אשר קדשנו במצותיו וצונו -

“Who has sanctified us with His commandments and has commanded us,” that the notion of *kedushas Yisrael* is related to *mitzvah* obligation. To the extent that one has *chiyuvei mitzvos*, he has a corresponding *kedushas Yisrael*. Since the *Avos* were not commanded to observe all of the *taryag mitzvos*, it seems that they possessed only partial *kedushas Yisrael*. After *ma’amad Har Sinai*, when all of *Bnei Yisrael* received the full complement of *taryag mitzvos*, all Jews have the same level of complete *kedushas Yisrael*.

[The ruling of the *Rama* (*Orach Chaim* 17:2), based on the opinion of *Rabbeinu Tam*, is that women are permitted to recite a *berachah* over time-bound positive *mitzvos*. Although the text of the *berachah* reads **אשר קדשנו במצותיו וצונו**, and women are exempt from performing these *mitzvos*, they may still recite this text. Since the *kedushas Yisrael* of women is equal to that of men, and, as mentioned, the definition of *kedushah* entails *mitzvah* obligation, the term **וצונו** is appropriate. *Rav Soloveitchik* explained that women were **commanded** in principle to perform time-bound positive *mitzvos*, and then were **exempted** in practice from their obligation.] [See *Rav Schachter on the Parsha, Parshas Vayakhel*.]

The *Rav* elaborated on the lesson of the *Midrash Hashem* made a separate *bris* with each one of the *Avos* individually, as the *passuk* describes, **וזכרתי את בריתי יעקוב ואף את בריתי יצחק ואף את בריתי אברהם** - “I will remember My covenant with Yaakov, and also My covenant with Yitzchak, and also My covenant with Avraham will I remember, and I will remember the land” (*Vayikra* 26:42). A *bris* represents a reciprocal obligation between two parties. Thus, the *bris* that *Hashem* sealed with each of the *Avos* must have consisted of an additional *mitzvah* that He gave each of them, over and above the *sheva mitzvos bnei Noach* incumbent upon all of mankind. Absent additional *mitzvos*, a *kerisas bris* has no meaning.

Each new *bris* created a *tosefes kedushas Yisrael*, as *kedushas Yisrael* is always contingent on *chiyuv b'mitzvos*. Thus, when

Avraham first sealed a *bris* with *Hashem* and received the *mitzvah* of *milah*, he gained a partial *kedushas Yisrael*, and as each of the subsequent *Avos* sealed a new *bris* with *Hashem* and received additional *mitzvos*, they gained a deeper degree of *kedushas Yisrael*. In much the same way, the national *kerisas bris* (sealing of the covenant) at Har Sinai created full *kedushas Yisrael* for the entire Jewish Nation.

The *Ra'avad* raises an objection to the *Rambam's* statement cited above, that *Yitzchak* was the first to separate *ma'aser*. After Avraham was victorious in his battle with the four kings, he acquired their possessions based on the principle of *kibbush milchamah*, conquest through war (*Gittin* 38a). He thus became obligated to give *ma'aser kesafim* (tithe of one's assets), like anyone who gains great wealth. *Rashi* (*Sotah* 17a, s.v. *bischar*) explains that Avraham wanted to distance himself from *gezel*, since the *kinyan* of *kibbush milchamah* is, in the end, an acquisition produced through an act of *gezel*. Yet, he was not permitted to forgo the portion due to *tzedakah*. Thus, although Avraham refused to benefit from any of Sodom's possessions that he had rescued in war, he still separated the portion to be consecrated as *hekdesh* (*Ramban, Bereishis* 14:22): ויתן לו מעשר מכל - "and he gave him a tenth of everything" (*Bereishis* 14:20). Avraham donated a tenth of the spoils of war to Malki-Tzedek, also known as Shem ben Noach, in support of *Yeshivas Shem V'Ever*.

Indeed, *Chazal* expound the directive, עשר תעשר את כל תבואת זרעך - "You shall tithe the entire crop of your planting" (*Devarim* 14:22), to include *ma'aser kesafim* (tithe of one's profits) that should be contributed to support those who toil in *limmud haTorah* (*Yalkut Shimoni, Re'eh* 893; *Tanchuma, Re'eh* 18). Thus, it was **Avraham** who was the first to separate *ma'aser*, not *Yitzchak*.

The *Radvaz* defends the *Rambam* by distinguishing between two forms of *ma'aser*. According to the *Rambam*, while it is true

that Avraham gave *ma'aser kesafim*, this form of *ma'aser* is in essence a *mitzvah* of *tzedakah*, not a *mitzvah* of *ma'aser ani*, the tithe of produce that is distributed to the poor (during the third and sixth years of the *shemita* cycle). As such, Avraham's ability to give *ma'aser kesafim* does not indicate additional *kedushas Yisrael*, since a non-Jew should also give *tzedakah* (see *Chiddushei HaRan, Sanhedrin 56b, s.v. vayetza*, based on *Yechezkel 16:49*).

The *hafrashas ma'aser* (separation of a tithe) performed by Yitzchak, in contrast, was not from his general assets, but from produce grown in Eretz Yisrael. This was a fulfillment of the *mitzvah* of *ma'aser ani*, and thus the *Midrash* records that it was Yitzchak who was the first to be given the ability to separate *ma'aser*.

The *Ra'avad*, however, must be of the opinion that giving *ma'aser kesafim* is a fulfillment of the *mitzvah* of *ma'aser ani*. Accordingly, it was not Yitzchak who first separated *ma'aser*, but rather Avraham, and this is the basis of the *Ra'avad's* objection.

There are a number of practical ramifications that emerge from the two ways in which *ma'aser kesafim* may be viewed. The *Rama* (*Yoreh De'ah 249:1*) rules, in the name of the *Maharil*, that since *ma'aser kesafim* is a form of *ma'aser ani*, it should not be used to enable one to perform *mitzvos*, but should be given specifically to the poor. The *Shach* (249:3), however, quoting the *Maharam MiRotenburg*, permits using *ma'aser kesafim* to purchase *mitzvah* objects. Apparently, this opinion views *ma'aser kesafim* as part of one's *tzedakah* obligation, which one may donate to any type of charitable institution or even use for *mitzvah* observance.

A further difference relates to the permissibility of testing *Hashem* when donating *ma'aser kesafim*. The *Gemara* in *Ta'anis* (9a) explains that it is improper for one to demand a *berachah* for the sake of fulfilling *mitzvos*, as this is included in the

general prohibition of 'לא תנסו את ד' – "You shall not test Hashem" (Devarim 6:16). Separating *ma'aser* from one's produce is the only exception to the *issur*. This is based on the *passuk*:

הביאו את כל המעשר אל בית האוצר ... ובחנוני נא בזאת אמר ד' צבקות אם לא אפתח לכם את ארובות השמים והריקותי לכם ברכה עד בלי די.

Bring all the tithes into the storage house ... Test me, if you will, with this, says Hashem, Master of Legions, [see] if I do not open up for you the windows of the heavens and pour out upon you blessing without end. (*Malachi* 3:10)

Nevertheless, the *Rama* (247:4) cites an opinion that although one may not test Hashem when one merely distributes *tzedakah*, it is permitted when one gives *ma'aser kesafim*. This statement of the *Rama* is *l'shitaso* (in line with his own opinion), that *ma'aser kesafim* is a form of *ma'aser ani* and must be distributed only to the poor. Accordingly, it is permitted to use the merit of giving *ma'aser kesafim* to test Hashem.

The *Pischei Teshuvah* (247:2) quotes a number of *Acharonim* who take issue with the *Rama's* leniency. They maintain that *ma'aser kesafim* falls under the category of the *mitzvah* of *tzedakah*, and, being unrelated to *ma'aser* from produce, it is forbidden to use its merit to demand a *berachah* from Hashem. [See *Eretz HaTzvi*, pp. 140-141.]



PARSHAS VAYEITZEI

MARRYING TWO SISTERS

THE GEMARA records a tradition that Avraham Avinu observed all of the *mitzvos*, even though the Torah had not yet been given (*Yoma* 28b). We likewise assume that the same was true for Yitzchak and Yaakov (see *Bereishis Rabbah* 79:6), and this leads to the obvious question of how Yaakov could violate the Torah prohibition of marrying two sisters.

The *Ramban* (*Bereishis* 26:5; *Vayikra* 18:25) famously comments that the primary location for *mitzvah* observance is Eretz Yisrael. [Indeed, this is very noticeable over Sukkos, when rain is very uncommon in Eretz Yisrael and one can fulfill the *mitzvah* of *sukkah*, whereas it regularly rains over Sukkos in *chutz la'Aretz*.] The *Ramban* cites the comment of the *Sifrei* that the *passuk* stated in reference to *galus*, *ואבדתם מהרה מעל הארץ הטובה* – “And you will be swiftly banished from the goodly Land” (*Devarim* 11:17), teaches that even in *galus*, we must continue to observe the *mitzvos* of *tefillin* and *mezuzah* that are described in the subsequent *pessukim*. We are instructed to distinguish ourselves through these *mitzvos* in *chutz la'Aretz*, so that when we return to Eretz Yisrael, they will not seem new and unfamiliar to us.

The *Ramban* explains that this was true only after *Mattan Torah*, when we became obligated in *mitzvos*. However, before *Mattan Torah*, when *mitzvos* were voluntarily accepted, the *Avos* observed the *mitzvos* only in Eretz Yisrael. That is why

Yaakov could marry two sisters, since at that time, he resided in *chutz la'Aretz*. In fact, *Hashem* arranged that Rachel died on the road at the start of Yaakov's entry into Eretz Yisrael, so that he would not reside in the Land with two sisters as wives.

Rav Yaakov Kamenetsky *zt"l* (*Emes LeYa'akov*, p. 199) presents an interesting suggestion that explains how Yaakov could have married two sisters. As mentioned, our forefathers' fulfillment of the *dinim* of the Torah was discretionary, observing them as an *אינו מצווה ועושה* (one who performs a *mitzvah* voluntarily). Thus, the custom that the *Avos* had taken upon themselves not to marry more than one sister was regarded as a *middas chassidus* (pious trait). Yaakov had already proposed to Rachel, and they had planned for seven years to get married. Now that Yaakov inadvertently married Leah, he found himself in a conflict between a *middas chassidus* and a strict *din*. He wished to observe his *middas chassidus* to refrain from marrying two sisters. However, he was unable to act in accordance with this *chumra* because it was at the expense of leaving Rachel in a forlorn state and severely disappointing her. There is a time and place for *middas chassidus*, but not if its observance will hurt another's feelings. [See Rav Schachter on the Parsha, Parshas Mikeitz.]

The Maharal MiPrague (*Gur Aryeh*, Bereishis 46:10, s.v. *zu Dinah*) proposed a different explanation of Yaakov's actions - a distinction between *mitzvos asei* and *mitzvos lo sa'aseh*. We readily understand why it is sensible to observe a *mitzvas asei* that one is not yet obligated to perform, since one thereby gains a *kiyum hamitzvah* (fulfillment of a *mitzvah*). However, in the case of a *lo sa'aseh*, there is no purpose in voluntarily abstaining from something that is currently permissible. It is tantamount to a non-Kohen taking upon himself not to enter a cemetery and become *tamei meis*; nothing is accomplished by such a practice. Thus, the *Avos* performed only the *mitzvos* without being commanded; they did not refrain from violating *issurim*, such as marrying two sisters.

The Maharal employs this distinction to answer a question of *Tosfos*. The *Mishnah* in *Kilayim* (9:4) teaches that *tachrichim* (shrouds for the dead) are not subject to the prohibition of *kilayim* (wearing a garment made of wool and linen). The *Gemara* in *Niddah* (61b) explains that this is based on the *passuk*, במתים חפשי – “among the dead who are free” (*Tehillim* 88:6), from which we derive that once a person dies, he becomes exempt from the observance of *mitzvos*.

Tosfos (s.v. *aval*) asks that this *halachah* seems to be contradicted by the *Gemara* in *Berachos* (18a), which teaches that one who walks in a cemetery with his *tzitzis* exposed transgresses the *passuk*, לועג לרש חרף עושהו – “One who mocks a pauper blasphemes his Maker” (*Mishlei* 17:5). Likewise, the *Gemara* in *Menachos* (41a) teaches, based on this *passuk*, that we should be careful to affix *tzitzis* to the *tachrichim* of a *meis*. Since they can no longer perform *mitzvos*, it is a mockery of the dead to perform *mitzvos* in front of them or to demonstrate that they do not require *tzitzis* on their clothing. Why, then, is it permissible to wrap a *meis* in *tachrichim* of *kilayim*? It should be a violation of לועג לרש!

The Maharal answers by distinguishing between the *aveirah* of *kilayim* and the *mitzvah* of *tzitzis*. It is permissible to place shrouds of *kilayim* on a *meis*, because after death, he is simply not prohibited from wearing *kilayim*. In the case of a *mitzvah*, however, even if one is exempt from performing a *mitzvah*, he does gain a *kiyum hamitzvah* if he volunteers and performs the *mitzvah*. Walking in a cemetery with one’s *tzitzis* exposed, or clothing a *meis* in *tachrichim* that are missing *tzitzis*, demonstrates that the *meis* lacks the possibility of such a *kiyum*, and this constitutes a *bizayon* (disgrace) of the *meis*.

The Brisker Rav (*Chiddushei Rabbeinu HaGri”z mipi HaSh’-mu’ah al HaTorah, Parshas Lech Lecha*) suggests an answer that assumes, unlike the Maharal, that it is, in fact, generally of benefit to volunteer to abstain from *issurim*. He suggests that the *issur* of marrying two sisters is exceptional in this regard.

The *Mishnah* (*Yevamos* 97a) teaches that this *issur* applies only if one is actually married to one of the sisters, not if he merely cohabited with her outside of marriage. Furthermore, adds the Brisker Rav, even when *ishus* (the marital relationship) exists with one sister, the *issur* applies only if it is an *ishus Yisrael*, not if it is merely an *ishus ben Noach*. This is because *ishus ben Noach* is, in its essence, a different form of *ishus* than *ishus Yisrael*. For example, the creation of *ishus ben Noach* does not occur through the three methods that a Jew may effect *Kiddushin* – *keseif* (transfer of money), *shtar* (a document), and *bi'ah* (marital relations); it does not consist of the two-step process of *eirusin* (betrothal) followed by *nisu'in* (marriage), nor does it recognize the act of entering the *chuppah* as creating *nisu'in*. For *bnei Noach*, a woman is defined as “married” only after cohabitation (*Sanhedrin* 57b).

For this reason, certain *arayos* (forbidden relationships) that are based on *ishus* do not apply to non-Jews, such as *achos ishto* (one’s wife’s sister), *kalaso* (one’s daughter-in-law), and *chamoso* (one’s mother-in-law). Thus, even though Yaakov voluntarily abstained from violating other *issurim*, the *issur* of marrying two sisters did not apply in his case. His marriage to Rachel was merely an *ishus ben Noach*, and the *issur* of *achos ishto* does not exist within the framework of this *ishus* (see *Chiddushei HaRamban*, *Yevamos* 98a).

Given this background, the Brisker Rav explains the unusual *nusach* of the *berachah* over *eirusin*: וצונו על העריות ואסר לנו – את הארוסות – “Who commanded us regarding forbidden unions and Who forbade betrothed women to us.” The *Rosh* (*Kesubos* 1:12) wonders why, in this context, we recite a *berachah* over that which is *assur*. The *Chachamim* never enacted a *birchas hamitzvah* when one engages in a permitted activity and thereby avoids violation of an *aveirah*! This question leads the *Rosh* to his position that *birchas eirusin* is, in fact, not a *birchas hamitzvah* at all, but rather a *birchas shevach v'hodayah* over the institution

of Jewish marriage. Accordingly, the wording of *וצונו על העריות ואסר לנו את הארוסות* is utilized to highlight the special nature of this type of *ishus*.

The Rambam's opinion (*Hilchos Ishus* 1:1-2; *Sefer HaMitzvos, mitzvas ase* 213), however, is that *birchas eirusin* is a *birchas hamitzvah*. This is consistent with his view that there is an independent *mitzvah* to get married, aside from the *mitzvah* of *piryah v'riyayah* (procreation). In his view, the unusual *nusach* of *birchas eirusin* may be explained differently, based on a principle that the Rambam mentions in *Hilchos Berachos* (11:2, see *Kesef Mishneh*) that we only recite a *birchas hamitzvah* over a *mitzvah* that is *bein adam laMakom* (between man and Hashem), not over a *mitzvah* that is *bein adam lachaveiro* (between man and man). The reason for this distinction is that we state in the *berachah*, *אשר קדשנו במצותיו וצונו* – “Who has sanctified us with His commandments.” The *berachah* was established over a *mitzvah* that we were commanded to perform due to our *kedushas Yisrael* (see *Sefer HaRokei'ach*, 366). A *mitzvah bein adam lachaveiro* that non-Jews participate in as well does not demonstrate the uniqueness of *kedushas Yisrael* and does not warrant a *berachah*.

Why, then, do we recite *birchas eirusin* over the *mitzvah* of marriage, given that non-Jews also get married? The answer, explains the Brisker Rav, is that *ishus Yisrael* is totally different than *ishus ben Noach*. To emphasize this distinction, we make reference in the *berachah* to the unique *issurei arayos* that are generated by and dependent on *ishus Yisrael* in particular.

Notwithstanding the above explanations, we usually understand that Yaakov married two sisters based on the concept of *חטא בשביל שתזכה* – “Sin, in order that you may gain” (*Menachos* 48a), also referred to as *עבירה לשמה* – “A transgression committed for the sake [of Heaven]” (*Nazir* 23b). Every legal system subscribes to the idea that in rare instances, the ends justify the means. The only question is which ends and which

means. For example, everyone would agree that one who is rushing his wife to the hospital in active labor in the middle of the night may drive through a red light. The police would even assist him in doing so. It is recognized that those ends justify those means. Naturally, of course, each case must be judged individually to determine the significance of what is expected to be accomplished through the sinful act to see whether the rule should be applied. [See essay for *Parshas Pinchas*.]

Rav Chaim Volozhiner (*Nefesh HaChaim* 1:21; *Perakim* 7) explains that Yaakov Avinu, as well as Rachel and Leah, knew through *ruach hakodesh* that there were going to be twelve *shevatim* (see *Rashi*, *Bereishis* 29:34). Likewise, Yaakov understood that he was expected to marry two sisters. Therefore, although it would perhaps have been proper to observe the *issur* of *achos ishto* even prior to *Mattan Torah*, Yaakov's violation of the *issur* was necessary in order to achieve the end result – to give rise to the *shevatim* and ultimately the building of *Klal Yisrael*.

The *sefer Kesser Rosh* (132), by one of Rav Chaim Volozhiner's *talmidim*, notes that his *rebbe* was opposed to the Chassidic movement of his time, since he viewed their lack of adherence to the *zemanim* of *kiyum hamitzvos* as an incorrect application of *חטא בשביל שתזכה*. In fact, Rav Chaim Volozhiner writes that this principle applied exclusively before *Mattan Torah* and is no longer relevant. This comment of Rav Chaim was an exaggeration, made in the context of his criticism of Chassidism; the principle is relevant nowadays, albeit in a more restricted fashion and only in exceptional situations.



PARSHAS VAYISHLACH

ZERA AVRAHAM

וישבו המלאכים אל יעקב לאמר באנו אל אחיך אל עשו.

The angels returned to Yaakov, saying, "We came to your brother, to Eisav." (*Bereishis* 32:7)

THE *MALACHIM* refer to Eisav as the brother of Yaakov. We find a similar reference later in the Torah: אתם עוברים בגבול אחיכם בני עשו – "You are passing through the boundary of your brothers, the children of Eisav" (*Devarim* 2:4). This appellation seems strange; while Yaakov possessed *kedushas Yisrael*, Eisav did not. Yaakov Avinu was the first to have *mitaso sheleimah*; all of his children were Jewish (*Vayikra Rabbah* 36:5). This was not the case before him, as of Avraham's two children, only Yitzchak was Jewish, and of Yitzchak's two children, only Yaakov was Jewish. [See essay for *Parshas Toldos*.]

This condition was told to Avraham when *Hashem* comforted him regarding the need to banish Yishmael from his home: כי ביצחק יקרא לך זרע – "for through Yitzchak will offspring be called yours" (*Bereishis* 21:12). Only the descendants of Yitzchak are considered *zera Avraham*, and not the descendants of Yishmael. Furthermore, the *derashah* of the *Torah SheBe'al Peh* expounds the *passuk* to teach, ביצחק ולא כל יצחק – "in Yitzchak, but not all [of the descendants] of Yitzchak" (*Sanhedrin* 59b). Only some of Yitzchak's children, Yaakov and his descendants, are considered *zera Avraham* – not Eisav and his descendants.

The Brisker Rav (*Chiddushei Rabbeinu HaGri"z mipi HaSh'mu'ah al HaTorah, Parshas Toldos, siman 25*), explains in the name of his father, Rav Chaim, that at the time that the message of **וּיְצַחַק וְלֹא כָל יִצְחָק** was conveyed, which of the descendants of Yitzchak would have the status of *zera Avraham* – Yaakov or Eisav, or both – was unknown. The choice was disclosed only when Yitzchak gave the *berachos* to his children. After Yitzchak bestowed the initial *berachos* on Yaakov and Eisav, we read, **וַיִּקְרָא יִצְחָק אֶל יַעֲקֹב וַיְבָרֶךְ אוֹתוֹ ... וַיִּתֵּן לֶךְ אֶת בְּרַכְתּוֹ אַבְרָהָם לֶךְ וְלִזְרַעְךָ אִתָּךְ** – “Yitzchak summoned Yaakov and blessed him ... ‘May He grant you the blessing of Avraham to you and to your offspring with you’” (*Bereishis 28:1-4*). At that time, it was revealed that **only** Yaakov was considered *zera Avraham*, by virtue of which he merited the *birkas Avraham*, and not Eisav.

There is great significance to the designation of *zera Avraham*. *Tosfos* in *Yevamos* (22b, s.v. *ben*) points out the difference between two similar terms in Biblical Hebrew – *ben* and *zera*. The word *ben* refers to a biological child, but it does not specify whether or not he follows in the footsteps of his parents. Moreover, *ben* does not necessarily include grandchildren or future generations. The word *zera* is in one sense more restricted, as it applies only to *zera kasher* and not *zera passul*. This term is more expansive, however, in a different sense; *zera* includes all descendants, even those who live generations later. These differences are a reflection of the literal meaning of the word *zera*, “seed,” as planting the seed of a particular tree always results in the growth of a tree of the same species, which will continue well into the future.

Thus, suggests the Brisker Rav, Eisav and Yishmael were not in the same category. Yishmael from the very outset was not going to have *kedushas Yisrael*. Eisav, on the other hand, as the twin brother of Yaakov, should have had the status of a Jew. The matter of assigning the title of *zera Avraham* to Yaakov or Eisav was held in abeyance, and only later, at the time of the

will serve them and they will oppress them – four hundred years” (*Bereishis* 15:13). The promise of the *bris* was in reference to the *zera Avraham*, which is why only Yaakov and his sons went down to Mitzrayim.

The *passuk* in the aftermath of the *Bris Bein HaBesarim* specifies as well that Eretz Yisrael was given to *zera Avraham*: – ביום ההוא כרת ד' את אברם ברית לאמר לזרעך נתתי את הארץ הזאת – “On that day *Hashem* made a covenant with Avram, saying, “To your descendants have I given this Land”” (*Bereishis* 15:18). In other words, Eretz Yisrael belongs to the Jewish People, who observe the Torah.

Ayatollah Khomeini once said that Jewish people who eat pork are not Jews, and they are not entitled to Eretz Yisrael. While the first part of his statement is not accurate, as those Jews who eat pork certainly do retain their *kedushas Yisrael*, the second part is true. Eretz Yisrael does **not** belong to secular Jews, despite the fact that they are *bnei Avraham*, if they do not act like *zera Avraham*. That is why the *Gemara* in *Berachos* (48b) teaches that we must mention Torah in the second *berachah* of *Birchas HaMazon*, in which we recite, ועל תורתך שלמדתנו – “for Your Torah which You taught us.” In this *berachah*, we are obligated to thank *Hashem* for giving us Eretz Yisrael, and the Land was given on the condition that we remain *zera Avraham* and adhere to Torah and *mitzvos*.



A SINGLE MITZVAH

ויירא יעקב מאד.

And Yaakov became very frightened. (*Bereishis* 32:8)

RASHI QUOTES the statement of *Chazal* that although Yaakov had been promised, והנה אנכי עמך ושמרתך בכל אשר תלך – “Behold, I am with you and will guard you wherever you go” (*Bereishis* 28:15), when he was told that Eisav was marching toward him with an army of four hundred men, he became frightened. Yaakov was concerned and said, שמא יגרום החטא – “lest a sin cause [me to lose Hashem’s protection]” (*Berachos* 4a). This was coupled with an attitude of קטנתי מכל החסדים ומכל האמת – “I have been diminished by all the kindnesses and by all the truth [that You have done Your servant]” (32:11). Since he received so many kindnesses from Hashem, Yaakov felt that his *zechusim* (merits) had been reduced and that the earlier promise might no longer apply.

The *Midrash* (*Bereishis Rabbah* 76:2) mentions additional considerations to explain Yaakov’s reaction. Yaakov was concerned about the fact that his brother had fulfilled the *mitzvah* of *yishuv Eretz Yisrael*, whereas he had been living in *chutz la’Aretz* for many years. Furthermore, while Yaakov was away from his parents for twenty-two years, Eisav performed *kibbud av va’eim* in an outstanding fashion.

This is rather astonishing. After all, Eisav was a *rasha*. What kind of merit could he have accrued through his *mitzvos*? It is true that he served his parents, but he caused great aggravation to his parents as well. *Rashi* quotes the *Midrash* (*Tanchuma, Toldos* 8) on the *passuk*, ותכהין עיניו מראות – “and [Yitzchak’s] eyes dimmed from seeing” (*Bereishis* 27:1), which teaches that Yitzchak lost his eyesight from the smoke of the *ketores* that Eisav’s wives offered to *avodah zarah*. Another explanation of the *Midrash* is that *min haShamayim*, Yitzchak went

blind so he would be forced to stay at home. *Hashem* protected him from going out in public, where people would identify him as the father of the wicked Eisav (*Bereishis Rabbah* 65:10). Is *kibbud av va'eim* of such an individual deserving of reward?!

Furthermore, the *Zohar* (*Zohar Chadash, Parshas Acharei*, 60b; see *Rama, Yoreh De'ah* 376:4) teaches that when a son recites *Kaddish* for a deceased parent, it is a form of *kibbud av va'eim* because it redeems his parents from *Gehinnom*. Yaakov was learning Torah and leading a life filled with *mitzvos*. Thus, Yaakov fulfilled the greatest form of *kibbud av va'eim*, bringing honor to his parents by being a religious Jew.

The lesson we may glean from this is that as great a *rasha* as Eisav was, the *yishuv Eretz Yisrael* that he did fulfill was nevertheless considered a great *mitzvah*. Although Eisav disappointed his parents, at the same time, he did fulfill *kibbud av va'eim*, and *Hashem* gives reward even to irreligious Jews for the *mitzvos* they perform. This is what Yaakov Avinu was concerned about.

When the name of Eliezer Ben-Yehuda was mentioned disparagingly in front of Rav Yosef Chaim Sonnenfeld, he responded that notwithstanding the fact that Ben-Yehuda was a totally irreligious Jew, he had a big *zechus* for introducing *lashon hakodesh* into the Israeli school system. He felt that it was perhaps a mistake for the religious community not to have adopted the Hebrew language immediately upon arriving in Eretz Yisrael (*Al Chomosayich Yerushalayim*, p. 115). In a similar vein, the secular Zionists have a great *zechus* for building Eretz Yisrael, even though they did not keep other *mitzvos*.

Rav Mallen Galinsky, formerly of Yeshivat Sha'alvim, once recounted that he was shown a manuscript by a descendant of a Chassidic *rebbe* who lived two-hundred years ago. The *rebbe* described that when the *dor haMidbar* went to *shamayim*, they were going to be punished because *וימאסו בארץ חמדה* – “they despised the desirable Land [of Israel]” (*Tehillim* 106:24). They

pleaded with *Hashem* to be sent back to this world in the form of *gilgulim* (reincarnations) to correct their *aveirah*. Finally, *Hashem* acquiesced with the stipulation that they could return to this world on the condition that they would perform only **one mitzvah** – building the *Medinah* in Eretz Yisrael.

It is difficult to imagine how anyone living two-hundred years ago could have envisioned such a scenario. Who would believe that there could be such a Jew who would be interesting in fulfilling only one *mitzvah*, the *mitzvah* of *yishuv Eretz Yisrael*? Yet, historically, that is exactly what we experienced with *apikorsim* such as Ben-Gurion and the other secular Zionists, who were so far from religious observance. They wanted to establish the *Medinah* to replace the religion. It is unbelievable how very far they were from *emunah*, but they accomplished that single *mitzvah*!



PARSHAS VAYEISHEV

THE BRIS AVOS

וישב יעקב בארץ מגורי אביו בארץ כנען.

Yaakov settled in the land of his father's sojournings, in the land of Canaan. (*Bereishis* 37:1)

THE SIMPLE translation of **בארץ מגורי אביו** is that this was the land in which Yaakov's ancestors had lived. However, the *Midrash* (*Bereishis Rabbah* 84:4) interprets the word **מגורי** as having the connotation of **גירות**: The *Avos* were proactive in preaching monotheism to the entire world and converting many non-Jews to *Yahadus*. *Chazal* understand the *passuk*, **ואת הנפש אשר עשו בחרן** – “and the souls that they made in Charan” (*Bereishis* 12:5), in this way as well: **אברהם מגייר את האנשים ושרה מגיירת הנשים** – “Avraham would convert the men, and Sarah converted the women” (*Rashi*).

In fact, the *Rambam* (*Hilchos Avodah Zarah* 1:3) writes that Avraham Avinu amassed followers that numbered **אלפים ורבבות** – tens of thousands, whom he converted to *Yahadus*. The above *Midrash* suggests that Avraham's aggressive involvement in *geirus* continued during the days of Yitzchak, as well as in the first part of Yaakov's life.

Hashem made a *bris* (covenant) with Avraham, Yitzchak, and Yaakov based on the acceptance of certain principles – the *mitzvos* that had been given at that time. These principles, over and above the *sheva mitzvos bnei Noach*, were the conditions

necessary to enable a *ger* to be included in the Jewish Nation. Although the subsequent *bris* at Har Sinai consists of the full complement of *taryag mitzvos*, at that time, *Yahadus* was more limited in the scope of its requirements. What are the conditions critical for entry into the *bris Avos*?

The approach of the *Sfas Emes* in reference to the *mitzvah* of *aravah* may shed light on the nature of the principles that were necessary for *geirus* in the days of the *Avos*. The *Sfas Emes* (*Sukkos*, 5637, s.v. *l'Hoshana Rabba*; 5739, s.v. *chachameinu*; 5654 and 5656, s.v. *aravah*) questions the choice of the *aravah* over the other *minim* as the species taken for the *mitzvah* on Hoshana Rabba, especially given that the *aravah*, which lacks both taste and fragrant odor, corresponds to the type of Jew who lacks both Torah and good deeds (*Vayikra Rabbah* 30:12). The *Sfas Emes* answers that specifically because this Jew is deficient in Torah and good deeds, the focus of his *avodah* is *tefillah*. He beseeches *Hashem* in *tefillah*, reminiscent of the lip-shaped *aravah* leaf taken on Hoshana Rabba, a day reserved for *tefillah*. *Hashem* appreciates the attitude of submission of this Jew, who is compared to the *aravah*, and how he is drawn to Him with the steadfast sense of *emunah* necessary for intense *tefillah*. The sense of *emunah* that the *aravah* represents allows it to be taken together with the other *minim*, since a Jew with *emunah* is able to unite with the other members of the Jewish Nation.

Indeed, when the *Rambam* (*Peirush HaMishnayos, Sanhedrin, Hakdamah to Perek Chelek*) postulates the thirteen *ikarei ha'emunah* (Principles of Faith), he writes that anyone who denies any of those principles is not a member of *Klal Yisrael*, even if he did not go so far as to convert to a different religion. This individual retains his *kedushas Yisrael* according to the principle of *ואף על פי שחטא ישראל הוא* – “Even though he sinned, he is a *Yisrael*” (*Sanhedrin* 44a), such that if he is *mekadesh* a woman, it is a bona fide *Kiddushin*. However, due to his status as an *apikores*, he does not join with the rest of *Bnei Yisrael* in the entity of *Klal Yisrael*. He is no longer a member of the Jewish Nation.

Thus, acceptance of the *ikarei ha'emunah* – which were transmitted to Avraham, Yitzchak, and Yaakov – was crucial in order to be granted membership in the Jewish Nation and inclusion in the *bris Avos*.

In addition to subscribing to the *ikarei ha'emunah*, there were further specifications that needed to be fulfilled. At a *bris milah*, in the *berachah* אשר קידש ידך מבתן, we include an unusual request: צוה להציל ידיות שארינו משחת – “Give the command to rescue the beloved of our flesh from destruction.” *Rashi* (*Shabbos* 137b, s.v. *tzavei*) cites the *passuk*, גם את בדם בריתך שלחתי אסירך, – “Also you, through the blood of your covenant I have released your prisoners from the pit in which there is no water” (*Zechariah* 9:11), as the source of the concept referred to in the *berachah*. All Jews who undergo a *bris milah* are spared from *Gehinnom*.

Similarly, the *Gemara* in *Eiruvin* (19a) teaches regarding those condemned to *Gehinnom*:

Avraham our forefather comes, brings them up and receives them, with the exception of a Jew who cohabited with the daughter of an idolator, because she draws his foreskin [hiding his *milah*], and he [Avraham] does not recognize him [as a Jew (*Rashi*)].

This *Gemara* should be understood in light of the *passuk*, להיות לך לאלקים ולזרעך אחריך – “to be a G-d to you and to your offspring after you” (*Bereishis* 17:7). The *Gemara* in *Yevamos* (100b) interprets this *passuk* to mean that *Hashem* instructed Avraham not to marry a non-Jew or slavewoman, so that his offspring would not follow her genealogical status. Instead, by marrying a Jewish woman, זרעו מיוחס אחריו – his offspring would follow his lineage.

The very next *passuk* speaks of granting Eretz Yisrael to the Jewish People: ונתתי לך ולזרעך אחריך את ארץ מגורך את כל ארץ כנען – “And I will give to you and to your offspring

after you the land of your sojourns – the whole of the land of Cana’an – as an everlasting possession” (*Bereishis* 17:8). Rav Soloveitchik explained that Yishmael and Eisav, who did marry non-Jewish women, were not included in this *bris*, and therefore were not given rights to Eretz Yisrael.

We see that the *Gemara* understands that adherence to three additional conditions is essential to be included in the *bris Avos* and to be considered a member of the Jewish Nation. In addition to belief in all of the *ikarei ha’emunah*, the terms of the *bris* included fulfillment of the *mitzvah* of *milah*, restriction against marrying a non-Jew, and the conviction that Eretz Yisrael is the National Homeland of the Jewish People.

The Rav pointed out that we find many *pessukim* in the Torah that demonstrate that the *bris Avos* was never replaced or superseded by the *bris Sinai*. For example, the Torah states: וזכרתי את בריתי יעקוב ואף את בריתי יצחק ואף את בריתי אברהם אזכור והארץ אזכור – “I will remember My covenant with Yaakov, and also My covenant with Yitzchak, and also My covenant with Avraham will I remember, and I will remember the Land” (*Vayikra* 26:42). *Hashem* alludes to the earlier *bris* even after the larger *bris Sinai*, apparently because even after the *bris Sinai*, the *bris Avos* remains in effect. [See *Eretz HaTzvi*, pp. 121-124; *Rav Schachter on the Moadim, Kapparos Yom HaKippurim*, sections III-IV.]

Despite the initial focus of the *Avos* on the *geirus* of non-Jews, a change of attitude occurred subsequently, such that the active pursuit of proselytizing non-Jews is no longer practiced. The *Meshech Chochmah* (*Bereishis* 33:18) comments that this shift took place once Yaakov reached the state of *mitaso sheleimah*, that all of his children were Jewish. This was not the case before him, when of Avraham’s two children, only Yitzchak was Jewish, and of Yitzchak’s two children, only Yaakov was Jewish.

After that point, Yaakov needed to make certain that his children would remain separate from the other nations. Thus,

the *passuk* states that when Yaakov reached the city of Shechem on *erev Shabbos*, ויחן את פני העיר – “he encamped before the city” (*Bereishis* 33:18), which is interpreted to mean that Yaakov established the boundaries of *techum Shabbos* (*Bereishis Rabbah* 79:6). The idea of *techum Shabbos* is alluded to in the *passuk*, שבו איש תחתיו אל יצא איש ממקומו ביום השביעי – “Let every man remain in his place; no man may leave his place on the seventh day” (*Shemos* 16:29). Thus, *techum Shabbos* connotes that one must stay within his immediate area of influence, just as Yaakov put all of his efforts into maintaining the religious status of the twelve *shevatim* and no longer engaged in efforts to proselytize non-Jews.

The *Meshech Chochmah* further notes that *Chazal* highlight the difference between the *Avos* by using *eiruvei tavshilin* as the example of a *din derabbanan* that Avraham observed (*Bereishis Rabbah* 95:3) and the *issur* of *techum Shabbos* as one that Yaakov observed.

There is a *gezeirah derabbanan* prohibiting cooking on Yom Tov for the sake of Shabbos, but this was permitted provided that one has established an *eiruvei tavshilin*. The reason that preparation on Yom Tov for the Shabbos is **Biblically** permitted (according to *Rabbah*) is based on the principle of *ho'il* – since guests might arrive and eat the cooked food on Yom Tov, the act of cooking can be regarded as preparation for Yom Tov itself (*Pesachim* 46b). Thus, use of the device of *eiruvei tavshilin* on a *derabbanan* level is predicated on the possible arrival of guests. This is in line with the attitude of Avraham, who actively sought out potential *geirim* by welcoming guests into his home. In contrast, Yaakov set limits in order to restrict the interaction between Jews and other people, and his perspective is represented by the *techum* boundary that he established.

Nowadays, rather than taking an active role in converting the members of the general society to *Yahadus*, the Jewish People are supposed to play a passive role in influencing them positively.

In terms of *kiruv* of fellow unaffiliated Jews, of course, we have an obligation to actively try to bring them closer to *Yahadus*. However, when it comes to the non-Jewish world, we have an obligation to serve by example, as an אור לגויים – “a light unto the nations” (see *Yeshayah* 49:6).

This does not refer to the areas of Shabbos, *kashrus*, and *taharas hamishpachah*; these are uniquely for the Jewish People, not for the rest of the world. Instead, it refers to the areas of integrity and decency. We should raise our children to be honest, kind people, who demonstrate a proper work ethic. We should have a magnificent *medinah* with upstanding politicians who lead a trustworthy government. Our country should contain all of the elements of an ideal society, including scientific research, medical advances, social programs, water purification, and waste disposal.

Just as a firstborn child is expected to aid his parents in the raising of his siblings, *Bnei Yisrael*, referred to as בני בכורי ישראל – “My firstborn son, *Yisrael*” (*Shemos* 4:22), are called upon to serve as role models for the nations of the world. This is what being the *Am HaNivchar* (Chosen Nation) means – we have the responsibility to influence the other nations by impressing upon them the values by which we live. Therefore, we should conduct ourselves in such a way that inspires non-Jews to learn from us.

The *Gemara* has a tradition that there is no idea that appears in the *Navi* that is not alluded to in the *Chumash* (see *Megillah* 7a). It seems that the concept of אור לגויים is found in the *Chumash* in the context of the *mitzvah* of והלכת בדרכיו – “And you shall go in His ways” (*Devarim* 28:9). With this *mitzvah*, we are commanded to preserve the *tzelem Elokim* (image of G-d) in which we were created, to see to it that we do not tarnish those *middos Elokus* (characteristics of G-dliness). The very next *passuk* explains the natural consequence of successfully going in the ways of *Hashem*: וראו כל עמי הארץ כי שם ד' נקרא עליך – “Then

all the peoples of the earth will see that the Name of *Hashem* is proclaimed over you." Once we will demonstrate by example that we have succeeded in maintaining the "ways of *Hashem*" that we were born with, the result, as described in the end of the *passuk*, will be ויראו ממך - "and they will fear [*Hashem* because of] you" (*Devarim* 28:10). The nations of the world will learn from us how to act with *yir'as Shamayim* (*Gr"a, Divrei Eliyahu*).

The non-Jews were also created *b'tzelem Elokim* - albeit not to the degree of *banim laMakom* (children of the Omnipresent), which is a designation that only Jews have - and they will be able to learn this lesson from *Bnei Yisrael* and preserve that *tzelem Elokim*. Unfortunately, the Jewish People have not yet accomplished this task. [See *Rav Chesed: Essays in Honor of Rabbi Dr. Haskel Lookstein*, vol. 2, p. 203.]



PARSHAS MIKEITZ

DANGER IN TRAVEL

ואת בנימין אחי יוסף לא שלח יעקב את אחיו כי אמר פן יקראנו אסון.

But Binyamin, Yosef's brother, Yaakov did not send along with his brothers [to Mitzrayim], for he said, "Lest disaster befall him." (*Bereishis* 42:4)

RASHI QUOTES the *Midrash* (*Bereishis Rabbah* 91:9) that Yaakov Avinu was worried since השטן מקטרג בשעת הסכנה – "the Accuser prosecutes at a time of peril." This is a particular concern during a journey, since כל הדרכים בחזקת סכנה – "all [travel on] roads is considered a perilous situation" (*Yerushalmi, Berachos* 4:4).

Rav Soloveitchik explained that the danger inherent in inter-city travel led the *Chachamim* to introduce the recitation of *tefillas haderech* when one travels on a highway. He felt that this *tefillah* is an example of the *d'oraisa* obligation to offer a *tefillah b'eis tzarah* (in a difficult time), and it therefore should be said when the traveler senses an element of danger on his journey.

The *Gemara* in *Kesubos* (15b) teaches that we do not follow the *rov* (majority) in situations in which *piku'ach nefesh* (saving of a life) is concerned. Thus, even if there is only a small possibility of *sakanah*, the matter is still regarded as a *safek* (doubt), and we follow the rule that cases of *safek sakanah* are *docheh* (override) Shabbos. However, this is only if people are concerned about the minor risk. If it is something that has become common practice

and is not perceived as being dangerous, it is no longer considered a *safek sakanah*. We then apply the *passuk*, "שומר פתאים ד" – "Hashem protects the simple" (*Tehillim* 116:6), and rely upon Heavenly mercy to ensure that no mishap occurs (*Yevamos* 12b; *Shabbos* 129b; see *Achi'ezer* 1:23:2). [See *B'Ikvei HaTzon*, pp. 228-229.]

Following this line of reasoning, the Rav changed his practice with regard to reciting *tefillas haderech* during his weekly commute from Boston to New York. At first, he recited the *tefillah* when he traveled, since he considered the relatively minor risk to be a *safek sakanah*. After many years, however, he stopped saying the *tefillah*. Since he no longer felt anxious about the plane ride, the risk involved fell under the category of "שומר פתאים ד", and a *tefillah b'eis tzarah* became unnecessary. [See *Nefesh HaRav*, 1994 ed., p. 149.]

The *Netziv* (*Ha'amek She'eilah* 31:2; *Ha'amek Davar* 42:37, s.v. *t'nah*, and 43:9, s.v. *anochi*) offers an interesting interpretation of the *passuk* that describes Yaakov's concern for Binyamin's welfare, based on the *Gemara* in *Kesubos* (30a), which discusses the principle of *קם ליה בדרבה מיניה* – one is subject only to the greater penalty. According to this rule, when one incurs a financial penalty simultaneously with *misas beis din* (a court-imposed death penalty), he is subject only to the greater penalty of *misah*; he is not subject to the lesser penalty, the monetary payment. For example, one who burns someone's stack of grain on Shabbos is exempt from paying for the damage since he is liable for violating Shabbos.

This rule is derived from the *passuk*, *ולא יהיה אסון ענוש יענש* – "but there will be no fatality, he shall surely be punished [monetarily]" (*Shemos* 21:22). The *passuk* discusses two men who are fighting with intent to kill one another, when one of them inadvertently strikes a pregnant woman, causing her to miscarry. The Torah specifies that the perpetrator pays the value of the offspring only if the woman does not die. The Torah continues, *ואם אסון יהיה ונתתה נפש תחת נפש* – "But if there shall be a fatality,

then you shall award a life for a life" (*Shemos* 21:23). Accordingly, if the woman dies as a result of her injuries, so that the crime becomes a capital offense, the assailant is exempt from paying compensation for the fetus, since he incurs *misas beis din* for murder (according to one opinion in *Sanhedrin* 79a).

The *Gemara* cites the opinion of Rebbi Nechunya ben HaKanah (which is not accepted *l'halachah*) that we treat Yom Kippur like Shabbos in regard to this principle, despite the fact that one who desecrates Yom Kippur is not liable to *misas beis din*, but rather to the Divinely-imposed premature death of *kares*, considered a lesser penalty. Abaye expands the *din* of Rebbi Nechunya ben HaKanah to include even *misah bidei Shamayim* (death at the hand of Heaven), considered a lesser form of Divinely-imposed death than *kares*. He offers a *gezeirah shavah*, which involves the *passuk* in our *parsha*, as the source for Rebbi Nechunya ben HaKanah's view:

The word אסון [in *Shemos* 21:23] is stated with regard to death [of the assailant] at the hand of man [*misas beis din*], and the word אסון [in reference to Binyamin] is stated with regard to death at the hand of Heaven. Just as אסון stated [with regard to death] at the hand of man exempts one from monetary payment, so too, אסון stated [with regard to death] at the hand of Heaven exempts from monetary payment.

In other words, when Yaakov told his sons that he refused to allow Binyamin to travel to Mitzrayim lest an אסון befall him on the way, he did not mean merely an "accident," as accidents can occur at home as well. Instead, Yaakov was referring to *misah bidei Shamayim* – that the *satan* might prosecute Binyamin as punishment for an *aveirah* that Binyamin had committed.

The *Netziv* continues that this understanding of the אסון that concerned Yaakov also helps us understand the *arvus* (guarantorship) that Yehudah accepted regarding Binyamin when he pledged, אנכי אעריבנו מידי תבקשנו – "I will personally guarantee him; of my own hand you can demand him" (*Bereishis* 43:9).

The *Gemara* in *Bava Basra* (173b) seeks a source in *Tanach* for the monetary obligation of an *arev* (cosigner) on a loan, attempting to derive from Yehudah's statement that such a commitment is binding. The fact that Yehudah said *אנכי אערבנו* presumes that there is an institution of *arvus*.

The *Gemara* proceeds to reject this source, however, since Yehudah's arrangement was not as an *arev stam*, but rather as an *arev kablán*. In ordinary *arvus*, a lender may not seek payment from the *arev* without first attempting to collect from the borrower; an *arev kablán*, however, commits himself to a higher degree of responsibility, such that the lender may collect from him first if he so desires. The *Gemara* understands that Yehudah's offer was predicated on Reuvein's earlier statement, *תנה אותו על ידי ואני אשיבנו אלך* - "Put him in my care and I will return him to you" (*Bereishis* 42:37), and this represented the commitment of an *arev kablán*. Thus, although these *pesukim* can serve as a source for the obligation of an *arev kablán*, they do not prove that an *arev stam* is obligated to repay a loan.

The *Netziv* asks why Yehudah should be considered an *arev* of any kind. He would seem to be in the position of a borrower (which is in line with the *She'iltos' girsa* of the above *Gemara*), as he was asking Yaakov to give him permission to take Binyamin to Mitzrayim, but not of an *arev*!

Apparently, explains the *Netziv*, *Chazal* understood that aside from "borrowing" Binyamin, Yehudah also offered to be an *arev* for certain "debts" that Binyamin may have incurred. In other words, Yehudah guaranteed that if the *satan* were to come to take the life of Binyamin, to "collect" a punishment of *misah bidei Shamayim* for an *aveirah* that he had done, he would accept the punishment on himself and volunteer his life instead. That is why the *Gemara* considers Yehudah's *arvus* to be of the *arev kablán* variety, since he would pay the "debt" **before** Binyamin.

This is, in fact, exactly what Yehudah did. When Yosef wished to enslave Binyamin for stealing his goblet, he offered

himself as Binyamin's substitute: ... כי עבדך ערב את הנער מעם אבי - "For your servant took responsibility for the youth from my father ... Now, therefore, please let your servant remain instead of the youth as a servant to my lord" (*Bereishis* 44:32-33).

This explanation of the *arvus* of Yehudah in relation to the prosecution of the *satan* is quite a *chiddush*. If one person is liable to a certain punishment, is another person able to serve as his substitute and receive the punishment instead?

Perhaps there is precedent for such a notion. The *Gemara* in *Kiddushin* (31b) teaches that if one is citing a Torah statement that he heard from his father within twelve months of his father's death, he should say, as an expression of *kibbud av va'eim*, כך אמר אבא מרי הריני כפרת משכבו - "So said my father, my master; may I be an atonement for his soul." *Rashi* writes that with this declaration, a son accepts upon himself any evil that would befall his father's soul as a punishment for his *aveiros*. As in the *arvus* of Yehudah, one person may substitute for another and receive the former's punishment, even though he is not deserving of such punishment.



PARSHAS VAYIGASH

GALUS HASHECHINAH

אל תירא מרדה מצרימה ... אנכי ארד עמך מצרימה ואנכי אעלך גם עלה.

Have no fear of descending to Mitzrayim ... I shall descend with you to Mitzrayim, and I shall also surely bring you up. (Bereishis 46:3-4)

THE TANNA'IM (*Megillah 29a; Mechilta, Masechta D'Pischa, Parshas Bo 14*) place much emphasis on this *passuk*, finding in it the source of the principle of *Shechinta b'galusa*, the exile of the Divine Presence (see *Ramban, Rabbeinu Bechayei*). The *Gemara* and the *mekubalim* present two different meanings of the term *Shechinta b'galusa*.

The simple explanation of this concept is that *Hashem* accompanies *Bnei Yisrael* when they are forced to descend to *galus*. Some understand the notion of *galus haShechinah* as analogous to the *halachah* that when a student flees to an *ir miklat* (city of refuge) after committing an unintentional murder, his *rebbe* accompanies him there to provide for a pleasant life for his student (*Makkos 10a*). This is based on the *passuk*, ונס אל אחת - "he shall flee to one of these cities and **live**" (*Devarim 4:42*). *Galus* is not meant to be a place of utter despair and privation; the exile of the *rebbe* provides for a pleasant life for his *talmid*, albeit in *galus*. On the whole, Jews have been successful wherever they have settled, and this is because

throughout the *galus*, the *Shechinah* has always accompanied us.

Given the significance of *Hashem's* following His "students" into *galus*, the following observation bears mention. When the *Kohen Gadol* dies and the *talmid* is permitted to return home, it would seem that his *rebbe* is no longer under any obligation to remain in the *ir miklat* with him, even if the *talmid* wishes to remain there. The same should be true with regard to *galus haShechinah*. If, after 1948, the Jewish People are able to return to Eretz Yisrael, yet choose to tarry in *galus*, *Hashem* should be free to return to His land! The prospect of continuing to live in *galus* without the Divine protection of the *Shechinah* is indeed a frightening proposition. [*The Journal of Halacha and Contemporary Society*, vol. 8, pp. 29-30.]

Chazal further expand the idea of *galus haShechinah* to include the actual "pain" that *Hashem* experiences when *Bnei Yisrael* are in *galus*. *Rashi* (*Shemos* 3:2) quotes the *Midrash* that explains that *Hashem* first revealed Himself to Moshe in the burning thornbush in order to reflect the idea conveyed in the *passuk*, עמו אנכי בצרה - "I am with him in distress" (*Tehillim* 91:15). *Hashem* showed that He shared *Bnei Yisrael's* distress; the *Shechinah* was also in pain, as it were.

The *Gemara* in *Chagigah* (5b) notes a contradiction between two *passukim* that relates to this point. On the one hand, the *passuk* states, הוד והדר לפניו עז וחדוה במקומו - "Glory and majesty are before Him, might and joy are in His place" (*Divrei HaYamim I* 16:27), implying that only a display of happiness can exist in the presence of *Hashem*. Yet, the *passuk* in *Yirmiyahu* (13:17) speaks of *Hashem* crying: במסתרים תבכה נפשי - "My spirit will cry in hidden chambers."

The *Gemara* resolves the difficulty (according to *Rashi's girsa*) by making a distinction between the outer chambers, where only happiness exists, and the inner chambers, the subject of the latter *passuk*. When we are confronted with situations

that appear to be terrible injustices, such as persecutions and disasters, circumstances in which צדיק ורע לו – the righteous one suffers – and רשע וטוב לו – the wicked one prospers, we may get the feeling that *Hashem* does not care. It seems as if He is continually joyous, regardless of how much His creations may be suffering. This perspective, however, is only a superficial impression that is displayed publicly, in the outer chambers. In His innermost chambers, *Hashem* is crying. In truth, He is very troubled about the condition of רשע וטוב לו צדיק, but He does not want to intercede and alter the natural order.

This, then, is the notion of *galus haShechinah*. We should not think that when the Jewish People suffer in *galus*, *Hashem* is unaffected. Instead, He cares deeply. The *Shechinah* places itself in the lowly thornbush to demonstrate that He joins in their suffering.

The *Mishnah* in *Sanhedrin* (46a) describes in the context of the meting out of *misas beis din* that at the time that a person suffers for his *aveiros*, the *Shechinah* expresses its anguish with the phrase, קלני מראשי קלני מזרועי – “I am burdened by My head; I am burdened by My arm.” The *Mishnah* concludes: “If the Omnipresent is pained so for the spilled blood of the wicked, how much more so [is He pained] for the blood of the righteous!”

Interestingly, the *mekubalim* use the term *Shechinta b'galusa* in a completely different sense. The *Mishnah* in *Bechoros* (5b) teaches that היוצא מן הטהור טהור – “the product of that which is *kasher* is *kasher*.” That is why the milk or egg of a kosher animal is likewise *kasher*. Since everything in the world emanated from *Hashem*, the *mekubalim* argue, there should be a similar principle of היוצא מן הקודש קודש. Thus, the *mekubalim* describe that ניצוצות הקדושה (sparks of holiness) must be present inherently in every object.

Rav Soloveitchik noted that *Chazal* differentiated between levels of *kedushah* in many different contexts. For example, a *sefer Torah* has more *kedushah* than *tefillin*, and *tefillin* have

greater *kedushah* than a *mezuzah*. Furthermore, although both *tefillin shel rosh* and *tefillin shel yad* have *kedushah*, *tefillin shel rosh* have a slightly higher level of *kedushah*. Similarly, in describing *kedushas hamakom*, the *Mishnayos* in *Keilim* (1:6-10) describe that עשר קדושות הן – “There are ten levels of sanctity,” listing ten levels in ascending order of *kedushah*, starting with Eretz Yisrael and concluding with the *Kodesh HaKodashim*. We recognize such a hierarchy in the realm of *kedushas hazman* as well, beginning with the days of *chol hamo'ed*, progressing to those of Yom Tov, then Yom Kippur, and climaxing with the day of Shabbos.

How did *Chazal* know that there is a concept of different gradations of *kedushah*? Why is it not the case that there exist simply two categories – *kodesh* and *chol*?

The Rav explained that it is untenable to assume that something that is purely *chol* can exist. Since *HaKadosh Baruch Hu* is *kodesh*, *Chazal* understood that by definition, everything that He created in the world must be *kodesh* to some extent, but that there exist different *madreigos* of *kedushah*. Thus, when we say that certain objects such as *tefillin* are *kodesh*, we do not mean that other more mundane items are **purely** *chol*. Rather, those other items are *kodesh kal* (lighter *kedushah*), in contrast to *tefillin*, which are *kodesh chamur* (stricter *kedushah*). Since those things that we view as mundane items really are *kodesh kal*, *Chazal* understood that even within the category of *kodesh chamur*, it is possible to differentiate between objects that contain different levels of *kedushah*.

There is a related interpretation of the *Ari z"l* (*Sefer HaLikutim* and *Likutei Torah, Parshas Eikev*) on the *passuk*, – כי לא על הלחם לבדו יחיה האדם כי על כל מוצא פי ד' יחיה האדם – “For not by bread alone does man live, but rather by everything that emanates from the mouth of *Hashem* does man live” (*Devarim* 8:3). Just as the world was originally created through ten Divine utterances (עשרה מאמרות), so too the true *chiyus* (life force) within each and every object or being is

due to the *devar Hashem* (word of Hashem) contained within it. Thus, the *passuk* means, “For not through the physical component of the bread alone is Man nourished, but rather through its *chelek ruchni* (spiritual dimension) – a result of its attendant *devar Hashem* – is Man nourished.”

This innate *devar Hashem* is what gives rise to *ניצוצות הקדושה* that are present within every object and which cause every object to yearn to be involved in the service of Hashem. When an object is elevated through use for *mitzvah* observance, its purpose in creation is realized. This is why, the *mekubalim* explain, *Klal Yisrael* travels throughout the world during *galus* – in order to gather and “fix” these sparks of holiness throughout their travels. [See *Rav Schachter on the Parsha, Parshas Bereishis.*]

Thus, the *mekubalim* (see *Tanya, Likutei Amarim, perek 45; Iggeres HaTeshuvah, perek 7*) liken these *ניצוצות הקדושה* to a *מלך אסור ברהטים* – “a king bound in tresses” (*Shir HaShirim 7:6*). In everything in the world, there is some aspect of *Shechinah*, and the “King” is imprisoned. This is the meaning of the idea quoted in the name of the Ba’al Shem Tov that even inanimate objects such as rocks have a “*neshamah*.” These sparks are considered to be trapped within their host objects, waiting to be released. Thus, *Shechinta b’galusa* connotes the idea that there are latent properties of *kedushah* in every object and that we must use the objects for *mitzvos* so that they too participate in *avodas Hashem* and fulfill their purpose of existence.



PARSHAS VAYECHI

CHESED SHEL EMES

ועשית עמדי חסד ואמת ... ושכבתי עם אבותי ... וקברתני בקבורתם.

And do kindness and truth with me ... For I will lie down with my fathers ... and bury me in their tomb. (*Bereishis* 47:29-30)

RASHI, BASED on the *Midrash (Bereishis Rabbah 96:5)*, makes an interesting comment on this *passuk*: “*Chessed* that people do for the dead is *cheded shel emes* – kindness of truth – because one does not anticipate reciprocation, שאינו מצפה לתשלום גמול.” When one performs an act of kindness for a living person, in contrast, he expects that the beneficiary will repay the favor at some point.

Why is the possibility of reciprocation for the *cheded* one performs of such significance? Furthermore, why is the altruistic *cheded* one does for the dead associated with the *middah* of *emes* in particular?

We are accustomed to differentiating between two categories of *mitzvos* – *bein adam laMakom* (between man and *Hashem*) and *bein adam lachaveiro* (between man and his fellow). However, the Vilna Gaon (*Mishlei* 2:9; *Yeshayah* 1:2) comments that there is, in fact, a third category of *mitzvos* – *bein adam l’atzmo* (between man and himself) – which encompasses the realm of *middos* and *mussar*.

The *Gr”a* sees this tripartite categorization implicit in the *Gemara* in *Bava Kamma* (30a) that teaches that one who wishes

to be a *chassid* should observe the laws of *nezikin* (damages), the teachings of *Avos*, and the laws of *berachos*. A *chassid* must be particularly mindful of the monetary matters of *hilchos nezikin* in order to perfect his deeds that relate to his fellow man. Furthermore, he must heed the ethical conduct set forth in *Avos*, which serves to develop his own character traits. Finally, he must adhere to the teachings in *hilchos berachos*, which govern the relationship between man and *Hashem*.

The foundation of the third category of *mitzvos*, *bein adam l'atzmo*, is the fact that *Hashem* created every person **בצלם אלקים** – “in the image of G-d” (*Bereishis* 1:27), and by doing so, He implanted within him all of the *middos Elokus* (characteristics of G-dliness). The *mitzvah* of **והלכת בדרכיו** – “And you [shall] go in His ways” (*Devarim* 28:9), listed among the very first *mitzvos* in the *Rambam's* count of *mitzvos*, instructs us to preserve the **צלם אלקים** that we were born with and to see to it that we do not tarnish the *middos* that the **צלם אלקים** embodies. That is the reason we are presented with a description of the characteristics and actions of *Hashem* throughout *Tanach* – so that we know what the “ways of *Hashem*” are, in order that we imitate them (*Rambam, Hilchos Dei'os* 1:6; *Moreh Nevuchim* 1:54).

Rav Soloveitchik added that the *halachah* that every Jew possesses a level of trustworthiness in reference to *eidus* (testimony) is based on our being created **בצלם אלקים**, which includes being instilled with the *middah* of *emes*. Only once a person sins and ruins his **צלם אלקים** does he become disqualified from *eidus*. The obligation derived from **והלכת בדרכיו**, then, is an obligation a person has to **himself**, *bein adam l'atzmo*, to maintain his **צלם אלקים** by exhibiting proper *middos*. [See *MiPinei HaRav*, 2001 ed., pp. 54-55.]

The *Rambam* (*Hilchos Melachim* 10:12) implies that there is an obligation to give *tzedakah* to both Jews and non-Jews alike based on **והלכת בדרכיו**. As mentioned, we are required to imitate the “ways of *Hashem*,” and one of the *middos Elokus* is depicted

by the *passuk* in *Tehillim* (145:9), ורחמיו על כל מעשיו – “[Hashem’s] mercies are on all His works” (see *Rambam, Hilchos Avadim* 9:8). [One who worships *avodah zarah* has forfeited this privilege. Since he corrupted his deeds, by right, he deserves to be deprived of the sustenance that even animals are provided (see *Kiddushin* 82a). There is, however, a *din derabbanan*, for the purpose of *darchei shalom* (fostering harmony), to provide financial support to the non-Jewish poor, even if they worship *avodah zarah*, along with the Jewish poor (*Gittin* 61a).]

With regard to *aniyei Yisrael*, it seems that there is an additional component to the *chiyuv tzedakah*. *Tosfos (Bava Basra* 8b, s.v. *achfei*) questions why the *Gemara* applies the *din* of המצוות על הכפייה – coercion for the sake of *mitzvah* observance (*Kesubos* 86a) – to the *mitzvah* of *tzedakah*. *Beis din* is not authorized to use physical coercion to enforce a *mitzvas asei*, such as giving *tzedakah*, whose reward for observance is recorded in the Torah (*Chullin* 110b).

The *Radvaz (Hilchos Matnos Aniyim* 7:10) proposes an answer that also helps to classify the *mitzvah* of *tzedakah*. He suggests that *tzedakah* is unique in that it is viewed as a *chov*, a debt that a wealthy individual has towards *aniyim*. One may therefore be forced to pay this *chov*, just as *beis din* forces a person who refuses to repay a loan to his creditor or damages to a party he injured. In other words, if והלכת בדרכיו were the full extent of the obligation to give *tzedakah*, there would not be a *din* of כפייה. Coercion to give *tzedakah* is a *din* of גביית שעבודים – collection of a financial obligation.

Rav Soloveitchik expanded on this idea in the context of explaining the *passuk*, כי לא יחדל אביון מקרב הארץ על כן אנכי מצוך – “For destitute people will not cease to exist within the land; therefore I command you, saying, ‘You shall surely open your hand to your brother, to your poor, and to your destitute in your land’” (*Devarim* 15:11). Why is the reality that there will always be poor people related to the *mitzvah* of giving *tzedakah*? On the

contrary, sociologists argue that giving charity is a futile effort, since it will never solve the problem of poverty. The continued presence of poor people should be a reason **not** to obligate people to give *tzedakah*!

The Rav, adopting the explanation of the *Abarbanel*, explained that these *pessukim* reveal the nature of the obligation to engage in all of the *mitzvos bein adam lachaveiro*: One is obligated to do for others, in exchange for which they are obligated to do for him when he will be in need. In other words, the Torah placed the status of *po'el* (hired worker) on each person involuntarily. These *mitzvos* are similar to an agreement that a worker enters into with his employer, that by means of the *po'el's* labor, the employer becomes obligated to compensate him for his work.

The *Gemara* in *Shabbos* (151b) interprets the preceding *passuk*, *כי בגלל הדבר הזה* – “[You shall surely give the poor person] for in return for this matter [*Hashem*, your G-d, will bless you],” as alluding to the fact that poverty is a *גלגל שחוזר בעולם* – “a wheel that revolves in the world.” In other words, poverty is a cyclical phenomenon that, sooner or later, befalls every family. Even if a person remains wealthy, ultimately, a descendant of his may be in need in the future. Thus, one must give *tzedakah*, since the *tzedakah* that he dispenses today may well be returned to him or his descendants in the future if fortunes are reversed. Accordingly, *chessed* is based on the notion that every person must reciprocate his fellow.

The *Gemara* in *Ta'anis* (23a) relates an incident that highlights this type of relationship. The *Tanna Choni HaMe'agel* once saw a man planting a carob tree. Upon questioning him, the man revealed that it would take seventy years for the tree to bear fruit. Choni asked him if he was certain that he would live another seventy years, to which the man replied: “I found a world containing full-grown carob trees. Just as my ancestors planted those trees for me, so too, I plant them for my children.” Since he was born into a world that contained these trees, he

felt an obligation to prepare the trees for future generations. We are obligated to do for others because they are obligated to do for us. Everyone is obligated to do things for each other.

This concept of reciprocity is the foundation of all of the *mitzvos bein adam lachaveiro*, wherein the benefactor expects to be compensated as a *po'el*. For example, one must comfort an *avel* since the *avel* will become obligated to do the same in return; one must participate in another person's wedding since that person will participate in his wedding. In fact, the *Gemara* in *Bava Basra* (145a) teaches that *shushvinus* (a groomsman's gift) is enforceable by *beis din*; a *chosson* who receives wedding gifts is under obligation to reciprocate them to the groomsman when he gets married.

Thus, there seem to be two distinct elements driving the *chi-yuvim* of *tzedakah* and *gemilus chassadim*. First, these are *mitzvos bein adam l'atzmo*, part of the *mitzvah* of והלכת בדרכיו. One must imitate the *middos* of *HaKadosh Baruch Hu*, and He has mercy on all His works, Jew and non-Jew alike. In addition, these are examples of *shibudim* (obligations) *bein adam lachaveiro*, which posit a mutual obligation on every person to help his fellow. This latter aspect of *tzedakah* and *gemilus chassadim* does not exist in relation to non-Jews. There can be no such obligation towards non-Jews, since they do not share a reciprocal obligation to repay the *chessed*.

This discussion is also relevant to the performance of *chessed* with the dead. One can only speak of a personal *shibud*, such as an obligation to compensate another monetarily or to work for him as a *po'el*, towards the living. *Shibudim* exist only *bein adam lachaveiro*, not to the dead, who are not labeled "*chaveiro*." If a lender dies, the borrower is no longer obligated to him. Instead, the *shibud* passes as a *yerushah* (inheritance) to his heir, and the borrower is now obligated to pay the debt to him.

Furthermore, one cannot be bound by a *shibud bein adam lachaveiro* to a dead person, since, as we noted with regard to the

tzedakah obligation towards non-Jews, a *shibud* to someone is possible only when there will be a counter-*shibud* on the recipient (see *Avnei Nezer, Choshen Mishpat* 49:1:5). Therefore, *chessed* towards the dead can **only** be rooted in the *mitzvah* of *והלכת בדרכיו*, to imitate the *middos* of *Hashem*.

This is the basis of *Rashi's* distinction between *chessed* towards the living and *chessed* towards the dead. *Rashi* wishes to highlight the basis of the obligation to perform *chessed* towards the living – reciprocation. In contrast, *chessed* towards the dead is of a different nature, *שאינו מצפה לתשלום גמול*, and it is therefore termed *chessed shel emes*.

What is the connection between this type of *chessed* and the *middah* of *emes* in particular? We may suggest that although *Hashem* is described throughout *Tanach* as displaying many different *middos*, since *Hashem* is *Echad*, He must possess one particular characteristic that describes the essence of *Elokus* (see *Chazon Ish, Emunah U'Bitachon, perek* 4). The *Gemara* in *Yoma* (69b) recounts that on one occasion, a note was sent down from Heaven on which was written, “אמת – Truth.” The *Chachamim* inferred that it was signed by *Hashem*, and that the seal of *HaKadosh Baruch Hu* is *emes*.

This implies that among all the various *middos* of *Hashem*, the defining quality of *Elokus* is *emes*. The same is true with regard to a human being who is created *בצלם אלקים*; his core *middah* is that of *emes*. Therefore, when one does *chessed* with the dead, thereby fulfilling the *mitzvah* of *והלכת בדרכיו*, he especially imitates the primary characteristic of *Hashem*. His act of kindness is thus classified a *chessed shel emes*. [See *Rav Schachter on Tefillah, He'aros B'Nusach HaSiddur*, section XI.]

The above analysis helps us understand the *Gemara* in *Kesubos* (17a) that teaches that if a *kallah* and her entourage on the way to her wedding meet a group of people carrying a *meis* to *kevurah* at a crossroads, the people carrying the *meis* must yield to the *kallah's* procession. The *Shitah Mekubetzes*

(s.v. *v'kasav*) cites the Ramban (*Toras Ha'Adam, inyan hahotza'ah*, s.v. *b'Perek*), who writes that this Gemara indicates a general principle. All of a *kallah's* needs are given priority over those of a *meis*, since *k'vod hachaim* takes precedence over *k'vod hameisim*. [See essay for *Parshas Chayei Sarah*.]

The explanation is that *k'vod hachaim*, just like all *chessed bein adam lachaveiro*, is a form of monetary *shibud*. On the other hand, as we have seen, the requirement of *k'vod hameisim* is rooted in the need to display *middos tovos*. Whenever there is a conflict between one's financial responsibilities and ethical conduct, priority must be given to the monetary commitment. This principle may be gleaned from the *halachah* that it is a *mitzvah* to deviate from the truth for the sake of peace (*Yevamos* 65b; see *Rif, Bava Metziah*, 13a). Fostering harmony is part of one's *bein adam lachaveiro* responsibilities, and this consideration takes precedence over one's obligation in the area of *middos* to be an honest, truthful person.

The Gemara in *Beitzah* (6a) teaches that the *mitzvah* of burying a corpse does not supersede *Yom Tov*, and it is therefore prohibited for a Jew to perform the burial on *Yom Tov Rishon*. However, burial does override the *issur derabbanan* of *amirah l'nochri* (telling a non-Jew to perform a *melachah*), and therefore on *Yom Tov Rishon*, we have non-Jews perform the burial. However, if the burial occurs on *Yom Tov Sheini*, the observance of which is only Rabbinic in nature, even Jews may involve themselves with the burial, since, as the Gemara explains, the *Chachamim* treated the second day of *Yom Tov* as a weekday for matters that pertain to a *meis*.

There is a *machlokes Rishonim* if other *issurei derabbanan*, aside from *amirah l'nochri*, are permitted on *Yom Tov Rishon*. The Meiri (*Magen Avos, inyan hashishi; Chiddushei HaMeiri, Beitzah* 6a), in the name of the *Chachmei Provence*, maintains that the Gemara's two leniencies – waiving the *issurim* of *amirah l'nochri* on *Yom Tov Rishon* and *melachah* on *Yom Tov Sheini* – are

based on the general rule that *dinim derabbanan* may be waived for the sake of human dignity. The *Gemara* in *Berachos* (19b) teaches that *k'vod hab'riyos* is *docheh* (overrides) the *lo sa'aseh* of לא תסור – “You shall not deviate [from the matter that they will tell you]” (*Devarim* 17:11), which is the binding force of all *dinim derabbanan*. According to this view, a Jew may violate **any** *issur derabbanan*, such as *tiltul muktzeh*, on *Yom Tov Rishon*, while performing the *taharah* on a *meis*. This was the practice followed in Provence.

However, the *Meiri* cites the opposing opinion of the *Ramban* (*Toras Ha'Adam, inyan hahotza'ah, s.v. b'Beitzah*), who argues that these leniencies are not based on the principle that *k'vod hab'riyos* is *docheh* all *dinim derabbanan*. The *Meiri* explains that according to the *Ramban* (and the *Ra'avad*, cited by the *Maggid Mishneh, Hilchos Shabbos* 26:23), that principle is relevant only to *k'vod hachaim*, and not to *k'vod hameisim*. Thus, the leniency of waiving *amirah l'nochri* on *Yom Tov Rishon* may **not** be extended to other *issurei derabbanan*.

The reason for the distinction made by these *Rishonim* is clear from the nature of these respective obligations. As we explained above, *k'vod hachaim* is a *shibud bein adam lachaveiro*, and the *Chachamim* had no right to cause a person to suffer a monetary loss because of an extraneous halachic consideration. Therefore, they did not enforce their *issur derabbanan* when it comes into conflict with *k'vod hachaim*.

K'vod hameisim, however, is a fulfillment of והלכת בדרכיו. Since abiding by the *issur derabbanan* and not engaging in the *k'vod hameis* does not entail any financial loss, the *Chachamim* insisted that we observe the *issur*. The nature of the obligations of *kavod* are completely different, and the leniency afforded to *k'vod hachaim* therefore cannot necessarily be extended to *k'vod hameisim*. [See *B'Ikvei HaTzon*, pp. 85-89.]



PARSHAS SHEMOS

MAKKAS BECHOROS

ואמרת אל פרעה כה אמר ד' בני בכורי ישראל. ואומר אליך שלח את בני יעבדני ותמאן לשלחו הנה אנכי הורג את בנך בכורך.

You shall say to Pharaoh, "So said *Hashem*: My firstborn son is Israel. So I say to you, Send out My son that he may serve Me. But if you refuse to send him out, behold, I shall kill your firstborn son." (*Shemos* 4:22-23)

HASHEM ASKED MOSHE to deliver this message to Pharaoh at the very outset of His communication to him. Why was it necessary to warn Pharaoh about the final *makkah* at this early juncture, before mentioning any of the other *makkos*?

The centrality of *makkas bechoros* is apparent in a halachic context as well. Although the twice-daily *mitzvah* of *zechiras yetzi'as Mitzrayim* requires only a brief mention of *yeti'as Mitzrayim*, fulfilled by merely reciting the last *passuk* in *kri'as Shema* (in contrast to the *mitzvah* of *sippur yetzi'as Mitzrayim*, which we fulfill on Pesach night), the *Yerushalmi* (*Berachos* 1:6) adds an additional dimension. *Lechatchilah* (optimally), one should supplement the *zechirah* by mentioning two other events - *makkas bechoros* and *kri'as Yam Suf*. That is why we make note of these *nissim* in the *berachah* of *Ga'al Yisrael* that we recite immediately after *kri'as Shema* in both *Shacharis* and *Ma'ariv*.

[This is the practice that should be followed when *kri'as Shema* is not recited in the context of *birchos kri'as Shema* as well. When one davens *Ma'ariv* early and repeats *kri'as Shema* after *tzeis hakochavim*, aside from repeating the three *parshiyos* of *Shema*, one should also make reference to *makkas bechoros* and *kri'as Yam Suf*.]

Apparently, the complete experience of *yetzi'as Mitzrayim* includes the elements of *makkas bechoros* and *kri'as Yam Suf*. Why was *makkas bechoros* singled out from among the other *makkos*, such that a twice-daily mentioning of this *makkah* is necessary for the optimal fulfillment of *zechiras yetzi'as Mitzrayim*?

A further distinction between *makkas bechoros* and the other *makkos* is noteworthy. While there are several *mitzvos* that serve as a *zecher* to *makkas bechoros* – such as *pidyon haben*, *pidyon peter chamor*, and *bechor beheimah tehorah* – we do not have any *mitzvos* that relate to the other *makkos* (see *Kedushas Levi, Shemos*, s.v. *lecha v'eshlachachah*).

The Brisker Rav (*Haggadah Shel Pesach MiBeis Levi*, 5743 ed., s.v. *ilu asah bahem shefatim*; *Chiddushei Rabbeinu HaGri"z mipi Hashemu'ah al HaTorah, Parshas Va'eira, siman 48*) points out that the primary function of *makkas bechoros* was distinct from that of the other *makkos*.

In general, the *makkos* served as a punishment to Pharaoh and the Mitzri'im for the *aveiros* they committed. The *makkos* were thus a fulfillment of the promise *Hashem* made in the *Bris Bein HaBesarim*, *וגם את הגוי אשר יעבדו דן אנכי* – “But also the nation that they will serve, I shall judge” (*Bereishis* 15:14), to which *Rashi* adds, “through the *eser makkos*.” This is in line with the *passuk* that describes Moshe's role, *ראה נתתיך לפרעה* – “See, I have made you a master over Pharaoh” (*Shemos* 7:1), whereby Moshe was appointed as a judge and ruler, to rule over Pharaoh with *makkos* and afflictions (*Rashi*).

Indeed, *Rashi* (*Shemos* 7:28) comments that the punishments in *Mitzrayim* were meted out according to each one's degree

of guilt in the enslavement of the Jewish People. Thus, the punishment began with Pharaoh; then the *makkah* affected his advisors, and then the general populace. Likewise, the *Mishnah* in *Eduyos* (2:10) lists the period of the *eser makkos*, along with the destruction of the generation of the *mabul* and the suffering of *resha'im* in *Gehinnom*, among various judgments that spanned twelve months. The *makkos* were classified as a punishment – not as an instrument through which to accomplish the exodus of the Jewish People.

There was a second key purpose of the *makkos*, highlighted by the *passuk*, *כי וידעתם כי ... למען שיתי אותותי אלה בקרבך ... בא אל פרעה* – “Come to Pharaoh ... so that I can put these signs of Mine in his midst ... that you may know that I am *Hashem*” (*Shemos* 10:1-2). On the occasion of *yeti'as Mitzrayim*, *HaKadosh Baruch Hu* demonstrated the truth of all of the *ikarei ha'emunah* to the Jewish People. He showed that He exists as an invisible power, that He is aware of worldly events, and that He has the ability to intervene by meting out *s'char va'onesh*, punishing the *resha'im* and rewarding the *tzaddikim*. Furthermore, *Hashem* confirmed that He alone possesses the ability to change the laws of nature. *Hashem* thereby verified that He is the Creator; otherwise, He would not have dominion over nature.

At this time, *Hashem* taught *Bnei Yisrael* the *ikar* of *ge'ulah* as well. The *yesod* of *bi'as haMashiach* is that *HaKadosh Baruch Hu* not only created the world, but that He has an ongoing involvement in it. He wants to see mankind ultimately fulfill its purpose in bringing the world to a proper resolution. At the time of *yeti'as Mitzrayim*, *HaKadosh Baruch Hu* stepped in to punish Pharaoh and to redeem the Jewish People, and He will similarly lead the world to an ultimate *ge'ulah* in the times of *Mashiach*.

Through *Hashem's* direct intervention, we also learned the *ikarim* of *לשראף אין מזל לישראל*, the idea that *Klal Yisrael* is not subservient to the dominion of the stars and constellations,

as well as the fact that *Klal Yisrael* is the *Am HaNivchar* (Chosen Nation). Finally, the *ikarim* of the truth of *nevu'ah*, the primacy of *nevu'as Moshe*, and *Torah min haShamayim* are predicated on *yeti'as Mitzrayim* and *Ma'amad Har Sinai*. [See *Rav Schachter on the Haggadah*, pp. 92-94.]

However, as seen from Moshe's first message to Pharaoh cited earlier, ותמאן לשלחו הנה אנכי הורג את בנך בכורך, aside from retribution of the *Mitzri'im* and instruction of *Bnei Yisrael* in *ikarei ha'emunah*, there was an additional element in *makkas bechoros*. This *makkah* was intended as a means to force Pharaoh to free *Bnei Yisrael*. In other words, *Hashem* wanted *makkas bechoros* to be the *ma'aseh shichrur* (act of emancipation) of the Jewish People.

The need for such a measure may be evidenced by the three components of the *gezeirah* of the *Bris Bein HaBesarim - geirus* (exile), *avdus* (servitude), and *inuy* (oppression): ידע תדע כי גר יהיה זרעך בארץ לא להם ועבדום וענו אותם ארבע מאות שנה - "Know with certainty that your offspring shall be **strangers** in a land not their own, and they will **serve** them and they will **oppress** them for four hundred years" (*Bereishis* 15:13). Once the *makkos* began, the period of *inuy* already came to an end, and when *Bnei Yisrael* would leave *Mitzrayim*, the *galus* would automatically conclude. Nevertheless, *Bnei Yisrael* would still continue to have the legal status of *avadim* - slaves of the government. This would require an official declaration of freedom. An *eved* who escapes, or even one who was declared *hefker* (ownerless) by his master (according to *Rav, Gittin* 38b), still requires a formal, legal mechanism - receipt of a *shtar shichrur* (document of emancipation) - to terminate his status of *avdus*.

This was accomplished when Moshe's *nevu'ah* of *makkas bechoros* came to fruition at *chatzos*, at which point Pharaoh, himself a *bechor* and afraid for his life, freed the Jewish People. The *Midrash* (*Yalkut Shimoni, Tehillim* 872) says that Pharaoh announced, as an official governmental proclamation, that

Bnei Yisrael were no longer *avadim* to him, but rather *avadim* to *HaKadosh Baruch Hu*. At that time, *Bnei Yisrael* proclaimed, 'הללוקה הללו עבדי ד', which implied their release from the condition of *avdus*. This was a consequence of Pharaoh's formal authorization.

Rashi (*Shemos* 21:6, citing *Kiddushin* 22b) alludes to this *Midrash* in his comment regarding the *retzi'ah* (piercing) of the ear of an *eved Ivri* next to the door or doorpost:

What makes the door and the doorpost unique among all other utensils in the house [that they should be utilized in the *retzi'ah* process]? *HaKadosh Baruch Hu* said: The door and the doorpost were witnesses in *Mitzrayim* when I passed over the lintel and the two doorposts [of Jewish homes], and declared, 'כי לי בני ישראל עבדים' – "For unto Me *Bnei Yisrael* are servants" (*Vayikra* 25:55); [they are My servants,] and not the servants of servants. Yet, this person has gone and acquired a master for himself. Let it [his ear] be pierced in their presence.

The difficulty is that the statement 'כי לי בני ישראל עבדים' appears in *Sefer Vayikra*; there is no indication that this announcement was made at the time of *makkas bechoros*. According to the *Yalkut Shimoni*, however, we may suggest that the declaration that *Rashi* refers to is the statement that **Pharaoh** made, as an expression of *dina d'malchusa*, that he thereby freed *Bnei Yisrael* from slavery.

What emerges from this discussion is that when Moshe delivered his initial message to Pharaoh about *makkas bechoros*, it was not meant as a threat regarding the **punishment** that *Hashem* would visit upon the *Mitzri'im*. As mentioned, Moshe served as a *shofet* to render judgement against the *Mitzri'im* throughout all of the *makkos*, not only *makkas bechoros*. Instead, with *הנה אנכי הורג את בן בכורך*, *Hashem* announced to Pharaoh that if he refused to free *Bnei Yisrael*, He would send *makkas bechoros* as a *ma'aseh shichrur*. That is why Moshe mentioned *makkas bechoros* before the other *makkos*, even though it was to occur last. Since *makkas bechoros* was to be the cause of the

ultimate *yeti'ah*, which would occur even against Pharaoh's will, Moshe warned Pharaoh about this *makkah* in his very first request for that *yeti'ah*.

For this reason, we observe several *mitzvos* as a *zecher* to *makkas bechoros*, and when we perform the *mitzvah* of *zechiras yetzi'as Mitzrayim*, we make specific mention of *makkas bechoros*. This *makkah* was integral to the *yeti'ah* in a legal sense, as it released *Bnei Yisrael* from their status as *avadim*. In contrast, we do not recount the other *makkos*, which punished the *Mitzri'im* but did not play a direct role in *yeti'as Mitzrayim*.

The *Nesivos* (*Ma'aseh Nissim*, s.v. *l'fichach*) notes the importance of our official freedom from slavery in his comments on the *nusach* we recite in the daily *Ma'ariv*, המכה בעברתו – “Who struck with His anger all the firstborn of *Mitzrayim* and removed His nation *Yisrael* from their midst to eternal freedom.” As mentioned, the *Bris Bein HaBesarim* contained a triple decree – *geirus*, *avdus* and *inuy* – all of which were realized in *galus Mitzrayim*. However, in later generations, although there were many unfortunate points in our history when a *gezeirah* of *geirus* and *inuy* was put into effect, at no time was another *gezeiras avdus* ever decreed against *Bnei Yisrael*. After the *ge'ulah* from *Mitzrayim*, the *Nesivos* explains, the Jewish People would never again be labeled as *avadim*, and consequently would never require a further *ma'aseh shichrur* to remove this legal status. In this sense, the redemption brought about through *makkas bechoros* was a **חרות עולם**.



PARSHAS VA'EIRA

ERETZ YISRAEL AS A MORASHAH

והבאתי אתכם אל הארץ אשר נשאתי את ידי לתת אותה לאברהם ליצחק וליעקב ונתתי אותה לכם מורשה אני ד'.

I shall bring you to the land about which I raised My hand to give it to Avraham, Yitzchak, and Yaakov, and I shall give it to you as a heritage; I am Hashem. (*Shemos* 6:8)

THE *PASSUK* states that Hashem “raised His hand” to give the Land to Avraham, Yitzchak, and Yaakov as a מורשה. This act is symbolic of a *shevuah* (oath), which is tantamount to the *bris* mentioned a few *pessukim* earlier: גם הקמתי את בריתי אתם – “Moreover, I established My covenant with them [Avraham, Yitzchak, and Yaakov] to give them the Land of Canaan” (*Shemos* 6:4). The *Ramban* (*Bereishis* 6:18, 15:7; see *Nachlas Ya'akov*, *Bereishis* 9:13) explains that the *bris* that Hashem made with our *Avos* served to establish that *Bnei Yisrael's* possession of Eretz Yisrael is על כל פנים – **in any event**, under all circumstances.

The *Chazon Ish* (*Shevi'is* 21:5) adds that ordinarily, when one owns property, he is able to relinquish that ownership by selling it. In addition, there is an international principle of *kibbush milchamah* (conquest in war), whereby the victorious nation acquires all of the property and land of the losing nation (*Gittin* 38a). Eretz Yisrael is the single exception to the rule; it cannot be sold or relinquished to another nation in battle.

As a function of the *bris*, Eretz Yisrael belongs to the Jewish Nation as an eternal possession, throughout the history of the world. [See *Eretz HaTzvi*, pp. 212-213.]

The *Gemara* in *Bava Basra* (119a-119b) analyzes the meaning of the term מורשה in the context of the request of the Bnos Tzelofchad. Rabbi Shimon HaShikmoni, a *talmid* of Rabbi Akiva, taught that Moshe Rabbeinu knew full well that the Bnos Tzelofchad were entitled to inherit a portion of land in Eretz Yisrael. What Moshe did not know was whether they were entitled to their father's **extra** share in the estate of their grandfather, Chefer, since Tzelofchad was a *bechor*, who usually takes two portions. That is why he did not immediately reply to their petition, but instead "brought their claim before Hashem" (*Bamidbar* 27:5). Moshe needed to inquire whether the women were entitled to take their father's extra portion of *bechor* or not.

The *Gemara* explains that this question revolves around whether Chefer's portion in the Land was considered *muchzak* (possessed assets) or merely *ra'uy* (prospective assets). The *halachah* is that a *bechor* receives a double portion only in assets that are actually in his father's possession at the time of death; he does not take a double portion in his father's prospective assets, such as monies owed to the father that are paid to his estate after his death.

The basis of Moshe's uncertainty, continues the *Gemara*, involved the *passuk* cited above, ונתתי אותה לכם מורשה אני ד'. Moshe was in doubt as to the proper interpretation of the term מורשה: Does מורשה merely represent a promise that those who left Mitzrayim would ultimately bequeath (מורישין) the Land to their descendants, that Eretz Yisrael would be given to the Jewish People at some later point in time? Or does מורשה mean that the Land is a ירושה, such that Eretz Yisrael was passed down as an inheritance from Avraham to Yitzchak, then to Yaakov and the *shevatim*, and then to the Jewish People who left Mitzrayim? If Eretz Yisrael is considered to have already

been in the possession of those who left Mitzrayim, shares in the Land were certainly subject to the *bechor's* double portion. Because of this uncertainty, when the Bnos Tzelofchad made their request to Moshe, he was unsure how to rule.

The *Gemara* concludes that *Hashem* resolved Moshe's uncertainty by telling him that the Bnos Tzelofchad **should** be given the *bechor's* double portion. He taught Moshe that **יְרוּשָׁה** היא לכם מאבותיכם – “[the Land] is an **inheritance** to you from your forefathers.” In other words, *Hashem* had already given the Land to Avraham when he walked around its borders, thereby acquiring it: קום התהלך בארץ לארכה ולרחבה כי לך אתננה – “Arise, walk about the Land through its length and breadth, for to you will I give it” (*Bereishis* 13:17). Avraham's walking in the land was a *kinyan chazakah*, a legal acquisition (*Bava Basra* 100a), and *Bnei Yisrael* thus legally possessed Eretz Yisrael from the time of the *Avos*. In the words of the *Gemara*, ארץ ישראל מוחזקת היא – “The Land of Israel is considered to have been **in the possession** [of those who left Mitzrayim].” The Bnos Tzelofchad received a double portion in Chefer's land because Eretz Yisrael was considered to have been *muchzak*, not merely *ra'uy*.

While it is true that Eretz Yisrael is a **יְרוּשָׁה**, an inheritance passed down from Avraham Avinu, the term **מורשה** – heritage – was used because it reflects an additional facet regarding the uniqueness of *Klal Yisrael's* possession of Eretz Yisrael. Rav Mordechai Gifter *zt"l* explained that an inheritance is under the sole control of the heir, who is able to sell it at will. A **heritage**, however, is the heir's **responsibility**; he must transmit it in an intact fashion to the next generation, for it is the property of generations before and after.

That is why the term **מורשה** appears in the Torah in only two contexts: here in reference to Eretz Yisrael, as well as in *V'zos HaBerachah* in reference to the Torah itself: תורה צוה לנו משה – **מורשה** קהילת יעקב – “The Torah that Moshe commanded us is the **heritage** of the Congregation of Yaakov” (*Devarim* 33:4).

The Torah must be transmitted from generation to generation, and we have no right to delete or amend parts of the Torah. We similarly have no right or ability to transfer Eretz Yisrael to others.

The explanation of the *Gemara* in *Bava Basra*, that the Bnos Tzelofchad's claim to a portion in Eretz Yisrael was dependent on the meaning of the term *מורשה*, is quite understandable. However, the assertion that when Moshe delivered the *nevu'ah* of 'ד *לכם מורשה אני ד'* forty years earlier in Mitzrayim, he himself was unsure as to the true meaning of *מורשה* is surprising, especially given the nature of Moshe Rabbeinu's *nevu'ah*.

The *Sifrei* (cited by *Rashi* in the beginning of *Parshas Matos*, *Bamidbar* 30:2) teaches that there is a fundamental difference between the *nevu'ah* of Moshe and that of the other *Nevi'im*. Other *Nevi'im* prophesied with the phrase 'ד *כה אמר ד'* – “So said Hashem,” but Moshe, uniquely, prophesied using the phrase *זה הדבר* – “This is the word that Hashem has commanded.”

The *Kedushas Levi* (*Shemos* 11:4) explains that the other *Nevi'im* perceived a vision in a dream, which they then interpreted using the *ruach hakodesh* that rested upon them, in their own language and from their own perspective. They introduced their *nevu'ah* with 'ד *כה אמר ד'* because their *nevu'ah* reflected the general message that Hashem showed them, but was not transmitted in the actual words of Hashem. In contrast, Moshe's *nevu'ah*, introduced with *זה הדבר*, consisted of an exact dictation given to him by Hashem. *Chazal* call this *המאירה האספקלריא* – a “clear glass” vision. Since his *nevu'ah* contained *אותיות ונקודות* (precise letters and vowels), there was no need for his personal commentary and explanation. *זה הדבר* means that what follows is a **direct dictation** of the *devar Hashem*, word for word and letter for letter.

The *Kedushas Levi* notes that we do find certain *nevu'os* of Moshe that begin with 'ד *כה אמר ד'*, such as the one that introduced the announcement of *makkas bechoros*. Apparently, even Moshe used this phrase in those instances when his *nevu'ah*

was a *hora'as sha'ah* (temporary ruling). In that case, the *nevu'ah* had the same status as the prophecies of the other *Nevi'im*. It was specifically when prophecies conveyed a *mitzvah l'doros*, in force for all generations, that a *nevu'ah* of *אספקלריא המאירה* with the clarity of *זה הדבר* was necessary. [See *B'Ikvei HaTzon*, p. 132; *Rav Schachter on the Parsha, Parshas Vayishlach*.]

It is noteworthy that the *nevu'ah* that includes the *passuk*, *'ד ונתתי אותה לכם מורשה אני ד'*, does not contain a *mitzvah l'doros*; it was in the category of *hora'as sha'ah*. Accordingly, it did not consist of a direct dictation, but rather Moshe's own interpretation of the vision he was shown. Therefore, it was **Moshe's** choice to use the word *מורשה*. How, then, can the *Gemara* contend that Moshe himself was uncertain as to the true meaning of *מורשה*?

The explanation seems to be that Moshe saw a vision in which *Hashem* swore that Eretz Yisrael is the possession of the Jewish People. There was one aspect within the *nevu'ah*, however, that was unclear to Moshe – whether possession of the Land was an inheritance from the days of Avraham or a promise to be fulfilled in the distant future. Moshe himself selected the ambiguous term *מורשה*, specifically because it could correspond to either interpretation. Years later, when the Bnos Tzelofchad petitioned Moshe for the *bechor* portion of their father, *Hashem* clarified the meaning of *מורשה* to Moshe. Since Eretz Yisrael was an inheritance from the days of Avraham, it was considered *muchzak* to Chefer, and they were rightfully entitled to the extra portion they requested.

The *Me'iri* (cited in *Shitah Mekubetzes, Bava Kamma 2a*, s.v. *v'ayein l'kaman*) takes a similar approach with regard to the expression *mav'eh*, the third of four *avos nezikin* (principal categories of damages). Rav and Shmuel dispute the meaning of this word, which refers either to *shein* (damage caused by an ox's eating) or to *adam* (damage caused by a human). Each *Amora* cites a *passuk* in *Navi* that supports his opinion. The *Me'iri* discusses

why Rebbi Yehudah HaNasi chose such an enigmatic expression that can have multiple meanings. Moreover, how did he define *mav'eh* when he taught the *Mishnah* to his students – like the explanation of Rav or like that of Shmuel? How could there be a *machlokes* in this situation?

The *Me'iri* presents an interesting suggestion. He explains that there must have been an old tradition that there are four principal categories of damages, and there were two versions as to which damages were included in the list. According to one version, *shein* was included, while the other version replaced *shein* with *adam*. Rebbi Yehudah HaNasi transmitted both traditions to his students, and he picked the vague expression *mav'eh* in order to encapsulate both traditions. The *machlokes* between Rav and Shmuel did not begin in their generation; Rav merely proposed that, in his view, *mav'eh zeh adam* was the more logical choice, while Shmuel advanced *mav'eh zeh hashein* as the correct opinion. [See *Rav Schachter on the Haggadah*, p. 123.]



PARSHAS BO

THE NAMES OF THE MONTHS

החודש הזה לכם ראש חדשים ראשון הוא לכם לחדשי השנה.

This month shall be for you the beginning of the months; it shall be for you the first of the months of the year. (*Shemos* 12:2)

THE RAMBAN on this *passuk* quotes the comment of the *Yerushalmi* (*Rosh Hashanah* 1:2): שמות חדשים עלו עמנו מבבל – “The names of the months came up with us from Bavel.” Although the original system of the *lu’ach*, as it appears in the *Chumash*, refers to the months by number, we subsequently changed over to the current system that denotes months by names, which are of Babylonian origin.

At first glance, one might have understood the naming of months as a way to introduce a *zecher* (remembrance) to the *ge’ulah* from *galus Bavel* into the Jewish calendar, an idea that the *Ramban* discusses. One might argue that the addition of the months’ names has no halachic significance; the *lu’ach* continues to follow the system whereby the arrangement of months is dependent on their respective number, and not on their name.

However, the *Gemara* in *Megillah* (6b) seems to refute such an approach. The *Gemara* presents a *machlokes Tanna’im* as to which one of a leap year’s two Adars should be chosen during which to celebrate the *mitzvos* of Purim. According to one opinion, the consideration of המצוות על המצוות – “we do not pass over the opportunity to perform *mitzvos*” – is of primary

importance, and Purim should thus be celebrated in the earlier month, the first Adar, rather than waiting until the second Adar. The other view favors the argument that *מיסמך גאולה לגאולה עדיף* – “the juxtaposition of the redemption [of Purim] to the redemption [of Pesach] is preferable.” Accordingly, Purim should be celebrated in the second Adar, as that is the month closest to Nissan, when we commemorate the *ge’ulah* of Pesach.

Several novel points emerge from this *Gemara*. First, the Yom Tov of Purim was apparently not established to be observed on the fourteenth day of the **twelfth month** of the year, but rather on the fourteenth day of **Adar**. If it had been established in the twelfth month, there would be no question that it should be observed in Adar Rishon, since that is the twelfth month of the year. Furthermore, we see that **both** Adar Rishon and Adar Sheini are designated as Adar. That is why there are really two justifiable opinions; the *machlokes* is simply which of the two competing principles should be favored.

The conclusion that follows from these positions is that **both** the fourteenth of Adar Rishon as well as the fourteenth of Adar Sheini have the status of the Yom Tov of Purim. Whether we observe Purim in Adar Rishon or in Adar Sheini depends on the extraneous considerations the *Gemara* advanced, since, in theory, Purim could have been observed in either month.

[There is a *machlokes Tanna'im* cited in *Nedarim* (63a) regarding one who refers to “the month of Adar” in a *neder* without specifying either the first or the second Adar. The *machlokes* about which Adar he means does not shed light on when to observe Purim, since language used in *nedarim* is defined according to popular usage, which is not necessarily the same as a term’s halachic definition. If people commonly refer to one Adar as the main one, the intent of the one who took the *neder* must be understood accordingly.]

Furthermore, the *Gemara* in *Megillah* (5b) teaches that regardless of whether one lives in an unwallled city and observes

Purim on the fourteenth or lives in a walled city and observes Purim on the fifteenth, the day's restrictions of *hesped* (eulogizing) and *ta'anis* (fasting) apply on both days. In other words, the distinction between residents of walled and of unwalled cities relates only to the fulfillment of the *mitzvos* of the day (*kri'as haMegillah, se'udah, mishlo'ach manos, matanos l'evyonim*).

Rav Soloveitchik argued that from the fact that *hesped* and *ta'anis* are prohibited on both days, we see that the status of Purim essentially extends to both days. That is why some *Acharonim* hold that it is proper to recite *Al HaNissim* on both the fourteenth and the fifteenth (see *Nimukei Orach Chaim* 693:1). The disparity between a walled and unwalled city with regard to the *mitzvos* of the day is explained by the fact that the *mitzvos* of a Yom Tov do not necessarily apply throughout the entire Yom Tov. For example, the *mitzvah* of *achilas matzah* on Pesach is obligatory only on the first night of the Yom Tov (*mid'oraisa*), and taking the *lulav* on Sukkos applies only on the first day (*mid'oraisa*).

It turns out, then, that during a leap year, when both Adar Rishon and Adar Sheini are designated as Adar, there are in fact **four** days of Purim – the fourteenth and fifteenth of Adar Rishon, and the fourteenth and fifteenth of Adar Sheini. Each of these days includes an *issur* of *hesped* and *ta'anis* (and, possibly, the obligation to recite *Al HaNissim*). The *machlokes Tanna'im* mentioned earlier relates only to the *mitzvos hayom* – whether it is preferable to observe them in Adar Rishon or in Adar Sheini.

What emerges from this discussion is that the naming of the months by the *olei Bavel* **did** have halachic significance. The current *lu'ach* follows the new system based on the names of the months, and thus designates **two** months of Adar in a leap year. The question that remains is whether the new system is merely superimposed upon the original system of numbers of the months or actually replaces that system.

According to the former approach, there exist two concurrent systems – one for *dinim derabbanan* and one for *dinim d'oraisa*. Thus, as the *Gemara* implies, in the case of Purim, we follow the new system. Nevertheless, the original system remains in place, and therefore Pesach still falls in the **first** month of the year, and Sukkos still falls in the **seventh** month of the year, as per the original *lu'ach*. On the other hand, it may be that with the advent of the names of the months, the organization of the *lu'ach* underwent a change that totally supplanted the initial system, even concerning *dinim d'oraisa*. According to this approach, we no longer regard Pesach as occurring in the first month and Sukkos in the seventh month; we now characterize Pesach as occurring in Nissan and Sukkos in Tishrei.

There is a significant practical difference between these approaches in relation to the concept of *gadlus*, when a *kattan* becomes a *gadol* who is obligated in *mitzvos*.

In the days of Moshe Rabbeinu, when the months were not associated with names, it is clear that a child born on the seventh of Adar in a regular year who then became *bar-mitzvah* in a leap year would become a *gadol* on the seventh of Adar Rishon, not Adar Sheini. The child was born on the seventh day of the **twelfth** month, and therefore he became a *gadol* on the seventh day of the **twelfth** month, thirteen years later.

In the opposite situation – a child born in a leap year on the seventh of Adar Sheini, who then became *bar-mitzvah* in a regular year – the boy would not become a *gadol* until Rosh Chodesh Nissan. *Gadlus* occurs when a boy reaches **י"ג שנים ויום אחד** – “thirteen years and a day” (*Kiddushin* 63b). This does not mean that a child born on the seventh of Adar becomes a *gadol* on the eighth of Adar thirteen years later. Rather, the sixth of Adar is the completion of **י"ג שנים**, and the **יום אחד** is the seventh of Adar – **the first day of his fourteenth year**.

Therefore, someone born in a leap year on the seventh day of the **thirteenth** month could not become a *gadol* in a regular year in the **twelfth** month. Since there was no thirteenth month in the year of his *bar-mitzvah*, he would become a *gadol* only on Rosh Chodesh Nissan, which is the beginning of the fourteenth year of his life.

If the new system affects only *dinim derabbanan*, *gadlus* should still be determined according to these guidelines. This is indeed the view of the *Rash HaLevi*, cited by the *Pri Chadash* (*Orach Chaim* 55:10) – a child born in Adar in a regular year becomes a *bar-mitzvah* on Adar Rishon in a leap year.

However, the Vilna Gaon does not understand the introduction of the *shemos hachodashim* in this way. The *Rama* (*Orach Chaim* 568:7) writes that if one's relative died in Adar in a regular year, some are stringent to observe the *yahrzeit* in a leap year in **both** Adar Rishon and Adar Sheini. The *Gr"a*, citing the above-mentioned *Gemara* in *Megillah*, comments that the *halachah* is in accordance with this view. Rav Soloveitchik pointed out that according to the *Gr"a's* understanding of the *Rama*, the observance of both days as the *yahrzeit* is not merely a *chumrah* (stringency), intended to satisfy disparate opinions out of doubt. Rather, both Adar Rishon and Adar Sheini have the status of Adar *al pi din*, and one should observe the *yahrzeit* in both.

The *Gr"a's* comment includes two points. First, the *Gr"a* contends that the institution of *yahrzeit* is not merely a matter of *minhag* (custom), that is binding rabbinically as a *neder* (*Nedarim* 15a), such that one who has the practice of fasting on the day of *yahrzeit* is considered as having taken a *neder* to do so. If it were, since *nedarim* are determined by *lashon bnei adam* (common usage), and there is a *machlokes Tanna'im* with regard to which Adar is the one used in *lashon bnei adam* (*Nedarim* 63a), the *Rama's* stringency would merely reflect the *safeik* as to which of these opinions to *pasken* like.

Instead, the *Gr"a* assumes, like the opinion cited in *Chaim U'Vrachah L'Mishmeres Shalom* (*Hilchos Aveilus, Erech Yahrzeit* 15), that the day of *yahrzeit* represents a *yom hadin* on which the family of the *niftar*, or at least the *niftar* himself, was judged. It is possible, therefore, that the *niftar* or his family will be judged again on this day, and for this reason, the family treats the day like an *eis tzarah* (difficult time) and fasts on it. Accordingly, we must establish, *al pi halachah*, the precise timing of the *yom hadin*. Thus, based on the *Gemara* in *Megillah*, the *Rama* rules, as a **definitive** *psak halachah*, that one should observe the *yahrzeit* in both Adar Rishon and Adar Sheini.

The *Gr"a's* remark also includes a second argument, that the change from counting months by number to counting them by name has relevance on a level of *d'oraisa* as well. Therefore, in order to determine the correct day of judgement in *beis din shel ma'alah* (the Heavenly Court), we view **both** Adar's in a leap year as having the halachic status of Adar, with the result that one should observe the *yahrzeit* in both months.

Accordingly, the determination of *gadlus* also changed with the introduction of *shemos hachodashim*. A child born on the seventh of Adar in a regular year who becomes *bar-mitzvah* in a leap year would have to abide by **both** Adar Rishon and Adar Sheini. Since both months are deemed to be Adar, the correct date of *gadlus* represents a *tarti d'sasri* (an internal contradiction).

In this sense, the situation is comparable to *bein hashmashos* (the twilight period between sunset and the emergence of three stars). The *Ritva* (*Yoma* 47b, s.v. *amar*) argues that it is not that *bein hashmashos* is a *safek* in practical terms, because we are unable to identify the exact cutoff between *yom* and *laylah*. Rather, every minute of *bein hashmashos* possesses aspects of *yom* and aspects of *laylah*, and since such a state represents a *tarti d'sasri*, the Halachah treats this time period **as if** it were a *safek*. [See *Rav Schachter on the Haggadah*, pp. 103-105.]

Therefore, the date of *gadlus* of this *bar-mitzvah* should be treated as a *safek*. He should begin wearing *tefillin* on the seventh of Adar Rishon, but he should not be counted towards a *minyan* until the seventh of Adar Sheini (see *Rama, Orach Chaim* 55:10). In fact, it is possible that this is the basis of the common *minhag* for all boys to begin wearing *tefillin* one month prior to becoming *bar-mitzvah*. We wish to ensure that a *bar-mitzvah* born in Adar in a regular year who becomes a *gadol* in a leap year begins wearing *tefillin* in Adar Rishon. [See *B'Ikvei HaTzon*, pp. 11-13.]



PARSHAS BESHALACH

ZECHER L'MAN

ויהי ביום הששי לקטו לחם משנה ... ויאמר משה אכלוהו היום כי שבת היום
לד' היום לא תמצאוהו בשדה.

It happened on the sixth day that they gathered a double portion of food ... Moshe said, "Eat it today, for today is a Shabbos for Hashem; today you shall not find it in the field. (*Shemos* 16:22-25)

THE CHACHAMIM instituted two *mitzvos* to commemorate the miracle of the *man*. On Shabbos, one is obligated to recite *hamotzi* over two loaves, *lechem mishneh*, since a double portion of *man* fell on *erev Shabbos* in honor of Shabbos. Furthermore, one is obligated to eat *shalosh se'udos* on Shabbos as a *zecher l'man*. *Chazal* derive this from the three mentions of the word היום in the *passuk*, each of which alludes to a separate meal (*Shabbos* 117b).

Tosfos (*Pesachim* 100b, s.v. *she'ain*) explains that we spread a cloth over the *challos* before reciting *Kiddush* based on the idea that the *lechem mishneh* is reminiscent of the double portion of *man*. Just as the *man* was enveloped with dew from above and below, we position the *challos* between a cover above and a tablecloth below. This reason would apply only to the *challos*, which serve as a remembrance of the *man*, not to any other food placed on the table. [*Acharonim* write that the *minhag* is not to be stringent to cover the *challos* at *se'udah shelishis*.]

[*Tosfos* (s.v. *v'haya*) shows that according to the *Gemara* in *Beitzah* (2b), *man* did not fall on Yom Tov. Since a double portion fell on *erev Yom Tov*, we recite *hamotzi* over *lechem mishneh* on Yom Tov, just as we do on Shabbos. Although the opinion of the *Rambam* (*Hilchos Shabbos* 30:9) seems to be that we should eat *shalosh se'udos* on Yom Tov as well, the accepted opinion is that this is not required (*Orach Chaim* 529:1).]

The source of these *mitzvos* is relevant to the obligation of women to recite *hamotzi* over *lechem mishneh* and to eat *shalosh seudos* on Shabbos.

The *Gemara* teaches that despite the fact that women are generally exempt from *mitzvos aseï shehazman grama* (positive time-bound *mitzvos*), they are obligated in three specific *mitzvos* – *ner Chanukah* (*Shabbos* 23a), *mikra Megillah* (*Megillah* 4a), and *arba kosos* (*Pesachim* 108b). The reason for these exceptions is *הנס שאף הן היו באותו הנס* – “for they [women] too were involved in that miracle.” *Rabbeinu Tam* (cited in *Ran, Shabbos*, 44a in *dapei haRif*, s.v. *v'kasav*) maintains that we should apply this principle to obligate women in *lechem mishneh* and *shalosh seudos* as well, since they commemorate the *nes* of the *man*.

The *Ran* argues that *Rabbeinu Tam's* reasoning is unnecessary. Women are obligated in *lechem mishneh* and *shalosh seudos* for the same reason that they are obligated in *Kiddush*.

The *Gemara* in *Berachos* (20b) teaches that with regard to Shabbos, *כל שיטנו בשמירה ישנו בזכירה* – “whoever is included in the commandment of guarding [the Shabbos] is likewise included in the commandment of mentioning it [in *Kiddush*].” The basis for this *hekesh* (an exegetical principle that compares two juxtaposed *mitzvos*) is the tradition that at the time of *Ma'amad Har Sinai*, when *Hashem* proclaimed the *Aseres HaDibros*, *זכור ושמור בדיבור* – “[The commandments to] ‘Mention’ [the Shabbos] and ‘Safeguard’ [the Shabbos] were expressed [by *Hashem*] in a single utterance, something the mouth cannot utter and something the ear cannot hear” (*Shevuos* 20b).

In *Shemos* (20:8), the Torah states: זָכוֹר אֶת יוֹם הַשַּׁבָּת לְקַדְּשׁוֹ – “Mention the Shabbos day to sanctify it,” which serves as the source of the *mitzvah* to recite *Kiddush* (see *Pesachim* 106a). This *passuk*’s counterpart in *Devarim* (5:12) states: שָׁמֹר אֶת יוֹם הַשַּׁבָּת לְקַדְּשׁוֹ – “Safeguard the Shabbos day to sanctify it,” a reference to the negative commandment to refrain from *melachah* on Shabbos (see *Eiruvin* 96a). The simultaneous pronouncement of זָכוֹר and שָׁמֹר is considered a *hekesheh*, which creates a connection between the two versions in which the *mitzvah* to observe Shabbos was recorded. Since women are bound by all of the same **prohibitions** as men, they are also included in the positive commandments of Shabbos, such as *Kiddush*, and this encompasses the obligations of *lechem mishneh* and *shalosh seudos* as well.

In many Chassidic communities, women were generally not careful to eat *shalosh seudos* on Shabbos. Rav Shlomo Kluger (*Ha’Elef Lecha Shlomo, Orach Chaim* 114) attempts to justify their practice with the argument that both the *Ran* and *Rabbeinu Tam* disagreed with the other’s reasoning. Therefore, women may rely on the fact that each of the sources that potentially could have obligated women in *shalosh seudos* has been refuted. Rav Ovadia Yosef (*Yabi’a Omer, Orach Chaim* 6:28:4) counters that both the *Ran* and *Rabbeinu Tam* held that in practice, women are obligated in *shalosh seudos*! Their disagreement merely relates to the source of the obligation; it does not have practical ramifications.

Perhaps the *Ran* was not satisfied with *Rabbeinu Tam*’s source because of the following contention. The *Chasam Sofer* (*Orach Chaim* 185) asks why the rabbinic obligation of הנֶס הָיוּ בְּאוֹתוֹ הַנֶּס אִם הָיוּ הֵן הָיוּ בְּאוֹתוֹ הַנֶּס was not extended to other *mitzvos*, such as *tefillin*, about which the *passuk* says, מִמִּצְרַיִם ד’ בְּפִיךָ כִּי בִיד חֲזָקָה הוּצִיאֲךָ ד’ מִמִּצְרַיִם – “so that Hashem’s Torah may be in your mouth, for with a strong hand Hashem removed you from Mitzrayim” (*Shemos* 13:9). Since the *mitzvah* of *tefillin* is meant to recall the *nes* of *yeti’as Mitzrayim*,

which obviously affected women as it did men, the principle of *אף הן היו באותו הנס* should obligate women in *tefillin*.

Rav Moshe Soloveitchik suggests an answer to this question based on a distinction between a *mitzvah* that serves as a *zecher l'nes* (remembrance of a miracle) and one that is a *pirsum hanes* (publicizing a miracle). He argues that the principle of *אף הן היו באותו הנס* only obligates women in a *mitzvah* that accomplishes *pirsum hanes* through its fulfillment. If a *mitzvah* merely reminds us of a *nes* but does not publicize it, women are not obligated in that *mitzvah*.

Although the reason for the *mitzvah* of *tefillin* is to remember *yeti'as Mitzrayim*, *tefillin* is merely a *zecher l'nes*, not a *pirsum hanes*; the miracles of *yeti'as Mitzrayim* are not readily apparent when one sees a person wearing *tefillin*. That is why *אף הן היו באותו הנס* does not obligate women in *tefillin*, even though they experienced the *nissim* in *Mitzrayim* the same way men did.

Rav Moshe explains that we may determine if any given *mitzvah* is a *zecher* or a *pirsum* based on whether it is associated with the *berachah* of *She'asah Nissim*, as this *berachah* was instituted specifically in connection with *mitzvos* of *pirsum*. We recite *She'asah Nissim* over *neiros Chanukah* and *mikra Megillah*; in the case of *arba kosos*, it seems that the *berachah* in the *Haggadah* of *Asher Ge'alanu* takes the place of the *She'asah Nissim* that should have been recited over this *mitzvah*. [The *Ma'aseh Nissim Haggadah* (s.v. *b'chol dor vodor*) makes a similar point.] [See *Rav Schachter on the Haggadah*, pp. 40-45.]

According to Rav Moshe Soloveitchik's approach that *אף הן היו באותו הנס* does not obligate women in a *mitzvah* that serves merely as a *zecher l'nes*, we can understand why the *Ran* disagreed with *Rabbeinu Tam's* source. *Lechem mishneh* and *shalosh seudos* do not publicize the *nes* of the *man*; they serve only as a *zecher l'man*, and as such, *אף הן היו באותו הנס* ought not obligate women in their observance.

We can likewise explain why *Rabbeinu Tam* did not accept the reasoning of the *Ran* through an analysis of the *hekesh* of כל שישנו בשמירה ישנו בזכירה.

On *erev Shabbos*, one may daven *Ma'ariv* and fulfill the *mitzvah* of *Kiddush* before sunset (*Berachos* 27b). Since *Kiddush* may only be recited in close proximity to the *se'udah*, one may obviously begin eating the *se'udah* during the daytime as well. There are two opinions in *Tosfos* (*Pesachim* 99b, s.v. *ad shetechshach*) as to whether one fulfills the *mitzvah* of the *se'udah* during the *zman tosefes Shabbos* (time added onto *Shabbos*). This, in turn, determines whether one may also conclude the *se'udah* during the day or must eat at least a *kezayis* (or perhaps, more than a *k'beitzah*) of bread after nightfall before *Birchas HaMazon*.

The stringent opinion, that one may not fulfill the *mitzvah* of *se'udas Shabbos* during the *zman tosefes*, maintains that *tosefes Shabbos* is only relevant to two specific *dinim* – *issur melachah* and *Kiddush*. This is because *Kiddush* is linked with *issur melachah* by means of the *hekesh* of כל שישנו בשמירה ישנו בזכירה.

The *Rambam's* explanation of the *issur* of *muktzeh* may shed light on how *Kiddush* and *issur melachah* are related. The *Rambam* (*Hilchos Shabbos* 24:13), in discussing why the *Chachamim* enacted the prohibition of *muktzeh*, writes that there are some people who are at leisure and refrain from doing *melachah* during the entire week. The *issur* of *muktzeh* ensures that they too have a שבייתה הניכרת, an abstention from *melachah* that is recognizably due to *Shabbos* observance. Reciting *Kiddush* may play a similar role, in that it serves to convert ordinary שבייתה from *melachah* into a שבייתה הניכרת. In a sense, *Kiddush* may be viewed as a “*birchas hamitzvah*” over one's שבייתה from *melachah*. We may suggest that according to this opinion in *Tosfos*, כל שישנו בשמירה ישנו בזכירה is a restricted *hekesh* that compares **only** *Kiddush* to *issur melachah*. That is why *tosefes Shabbos* affects only these two *dinim*, and not the *mitzvah* of *se'udas Shabbos*.

In a similar vein, *Rabbeinu Tam* may disagree with the *Ran's* application of the *hekeshe* to *lechem mishneh* and *shalosh seudos*. The *hekeshe* is not a general principle that teaches that all of the *halachos* of Shabbos are bundled together, such that if some of the *halachos* apply to women, they must all apply. Thus, although the *hekeshe* is the source of women's *Kiddush* obligation, it ought not obligate them in *lechem mishneh* and *shalosh seudos*, if not for the reason of אף הן היו באותו הנס.



PARSHAS YISRO

MESIRAS HATORAH

THE MISHNAH in *Avos* (1:1) records that in addition to the *ikar ha'emunah* (Principle of Faith) known as *Torah min haShamayim*, that the entire Torah is G-d-given, we have a tradition that משה קיבל תורה מסיני – “Moshe received the Torah from Sinai.”

One should not make the error of thinking that *Torah mi-Sinai* means that the text of the Torah as we have it is the same as the text that was dictated to Moshe at Har Sinai. The Torah states explicitly that the text of the Torah is, in fact, a composite of **three** different texts. Some *parshiyos* in the Torah are introduced with the words, וידבר ד' אל משה בהר סיני לאמר, while others begin, וידבר ד' אליו מאוהל מועד לאמר, and yet others start, וידבר ד' אל משה בערבות מואב.

The *Gemara* in *Chagigah* (6a-6b) explains that according to the accepted opinion, the principles and all the details of all of the *mitzvos* were told to Moshe at Har Sinai, then repeated in the *Ohel Mo'ed*, and reiterated a third time in *Arvos Mo'av* (*Rashi, Vayikra* 25:1). In other words, Moshe received three different texts of the *mitzvos*, and, at the conclusion of the forty years in the *Midbar*, *Hashem* instructed Moshe as to whether to use the first version, the second version, or the third version when he recorded a particular *parsha* in the Torah (see *Chazon Ish, Orach Chaim* 125:2-3).

Some believe that the significance of *Torah miSinai* is that we are presently obligated to observe all of the *mitzvoos haTorah* because of the experience of *Ma'amad Har Sinai*. *Chazal* do not share this view, however, as can be seen from their understanding of the two *tochechos* found in the Torah.

The *tochechah* in *Bechukosai* was proclaimed on the occasion of the *bris* of *Ma'amad Har Sinai*, after the *Aseres HaDibros* were given, as is apparent from the conclusion of the *tochechah*:

אלה החוקים והמשפטים והתורות אשר נתן ד' בינו ובין בני ישראל בהר סיני.
These are the decrees, the ordinances, and the teachings that Hashem gave, between Himself and *Bnei Yisrael*, at Har Sinai. (*Vayikra* 26:46)

The conclusion of the *tochechah* in *Ki Savo* indicates that this *tochechah* constitutes a second *bris*:

אלה דברי הברית אשר צוה ד' את משה לכרות את בני ישראל בארץ מואב מלבד הברית אשר כרת אתם בחורב.
These are the words of the covenant that Hashem commanded Moshe to seal with *Bnei Yisrael* in the land of Mo'av, **besides the covenant** that He sealed with them in Chorev [Har Sinai]. (*Devarim* 28:69)

The *passuk* at the beginning of *Parshas Netzavim* explains why another *kerisas bris* (sealing of the covenant) at Arvos Mo'av was required to obligate *Bnei Yisrael* in *mitzvoos*:

ולא אתכם לבדכם אנכי כורת את הברית הזאת ואת האלה הזאת כי את אשר ישנו פה עמנו עומד היום לפני ד' אלקינו ואת אשר איננו פה עמנו היום.
Not with you alone do I seal this covenant and this imprecation. But with whoever is here, standing with us today before Hashem, our G-d, and with whoever is not here with us today. (*Devarim* 29:13-14)

All the *neshamos* of *Bnei Yisrael* were present at Har Sinai so that they would be affected by the *giluy Shechinah* (Divine Revelation), as the *passuk* teaches, **ובעבור תהיה יראתו על פניכם לבלתי תחטאו** – “so that awe of Him shall be upon your faces, so that you shall not sin” (*Shemos* 20:17). An impression was made on the *neshamos*

of the members of the Jewish Nation at Har Sinai; they could henceforth be identified as רחמנים ביישנין גומלי חסדים – “those who are merciful, bashful, and who perform acts of kindness” (*Yevamos* 79a), to the extent that if one is lacking these *middos*, we must check his ancestry, for he must not have been present at Har Sinai (*Shulchan Aruch, Even Ha’Ezer* 2:2).

Nevertheless, while it is true that all of the *neshamos* were present, the *bris* of Har Sinai is not legally binding on a *neshamah*, only on a person. *Rashi* quotes the *Gemara* in *Shevuos* (39a), which explains that the original *bris* at Har Sinai was made only with those people alive at that time, not with the future generations. We, today, would not be obligated to observe the *mitzvos* were it not for the second *bris* at Arvos Mo’av. It was this *bris* that obligated the future generations. [See *Rav Schachter on the Parshah, Parshas Ki Savo*.]

Given the limited binding power of the *bris Sinai*, there must have been a different objective of *Ma’amad Har Sinai*. We may analyze the function of the declaration of the *Aseres HaDibros* in light of the *machlokes* between *Rashi* and the *Ramban* regarding the sequence of events surrounding *Ma’amad Har Sinai*.

The *Ramban* (see *Shemos* 24:1) understands that the *pessukim* in *Parshas Yisro* and *Parshas Mishpatim* follow the chronological order. Accordingly, the declaration of the *Aseres HaDibros* in *Yisro* represented a step in the process of the *geirus* of the Jewish People. The *Gemara* in *Kereisos* (9a) derives the *dinim* of *geirus* from the experience of *Bnei Yisrael* at *Ma’amad Har Sinai*. Just as *Bnei Yisrael* undertook *milah*, *tevilah*, and *harta’as dam* (*korbanos*) leading up to their acceptance of the Torah, so too must future converts receive a *bris milah* (for males), immerse in a *mikveh*, and bring a *korban*.

The *Rishonim* (see *Tosfos, Yevamos* 45b, s.v. *mi*; *Tosfos, Kiddushin* 62b, s.v. *ger*) point out that another requisite component of *geirus* is *kabbalas ol mitzvos* (acceptance of *mitzvoah* observance).

Just as *Bnei Yisrael* declared *נעשה ונשמע* – “We will do and we will obey” (*Shemos* 24:7), a *ger* must have a *kabbalas ol mitzvos* as well. Without this, the *geirus* is invalid. Thus, the *geirus* process was not completed until the end of *Mishpatim*, which describes the *kabbalas ol mitzvos* (*נעשה ונשמע*) and the *korban geirus*.

The *Gemara* in *Yevamos* (47a-47b) teaches that aside from an initial *kabbalas ol mitzvos* by a prospective *ger*, just before he completely immerses himself in a *mikveh*, there is usually an additional ceremonial acceptance of *mitzvos* before the *beis din*. *Talmidei chachamim* stand over him, ומודיעין אותו מקצת מצוות קלות, ומקצת מצוות חמורות – “and inform him of some minor, easy *mitzvos* and some major, difficult *mitzvos*.” According to the *Ramban* (*Hakdamah, Parshas Terumah*), the declaration of the *Aseres HaDibros* represented this dramatic sampling of the *mitzvos haTorah* that is part of the *geirus* process.

Rashi (*Shemos* 19:11), however, writes that the *parshiyos* regarding *Ma'amad Har Sinai* follow the principle of אין מוקדם ומאוחר – “[*parshiyos*] in the Torah do not always appear in chronological sequence.” First, the Jewish People underwent the *geirus* described at the end of *Mishpatim*, which included *kabbalas ol mitzvos* (*נעשה ונשמע*) and the *korban geirus*. Thus, the event of *Ma'amad Har Sinai* that is described in *Yisro* took place **after** the national *geirus*. According to *Rashi*, therefore, the declaration of the *Aseres HaDibros* is to be understood as a national act of *limmud haTorah*.

As Rav Soloveitchik expressed it, the *machlokes Ramban* and *Rashi* revolves around the question of whether the event of *Ma'amad Har Sinai* was presented before non-Jews or before Jews, before those who did not yet have a complete *kedushas Yisrael* or before those who already had a complete *kedushas Yisrael*. [See *Nefesh HaRav*, 1994 ed., pp. 288-289.]

Rashi's comment regarding the *Azharos - piyutim* written by the *Ge'onim* and *Rishonim* that were recited on Shavuot – is in line with his opinion regarding the purpose of the declaration

of the *Aseres HaDibros*. *Rashi* (*Shemos* 24:12) explains that in the *Azharos* that Rav Sa'adyah Gaon composed, each one of the *taryag mitzvos* was listed under the heading of one of the *dibros*. The *Aseres HaDibros* comprise the ten most fundamental categories of *mitzvos*, under which all of the rest of the *mitzvos haTorah* are subsumed, and that is why it was chosen for the *limmud haTorah* that transpired at *Ma'amad Har Sinai*.

Accordingly, the experience of *Ma'amad Har Sinai* serves as the paradigm of the process of transmitting Torah. In other words, throughout all future generations, Torah should be taught from *rebbe* to *talmid* in the same way in which *Hashem* taught Torah to the Jewish People on that occasion.

One example of the way in which *mesiras haTorah* should be performed is represented by the *takanah* of Ezra that a *ba'al ker* must immerse in a *mikveh* before studying words of Torah. His source is the *passuk*, והודעתם לבניך ולבני בניך יום אשר עמדת לפני - "You shall make them known to your children and your children's children, the day you stood before *Hashem*, your G-d, at Chorev" (*Devarim* 4:9-10). In addition to the simple meaning of the *passuk* - the obligation to recount the episode of *Ma'amad Har Sinai* to one's children - the *Gemara* in *Berachos* (22a) presents an additional level of interpretation: We must study or teach Torah to our children in the **same fashion** in which we received the Torah at Har Sinai. Just as the Torah was received, due to the associated *giluy Shechinah* (Divine Revelation), באימה וביראה וברתת וביזע - "amidst dread and awe, with trembling and with fear," so too must these elements be present whenever Torah is taught.

Prior to *Ma'amad Har Sinai*, Moshe instructed *Bnei Yisrael*, היו נכנים לשלושת ימים אל תגשו אל אשה - "Be prepared after a three-day period; do not draw near a woman" (*Shemos* 19:15), teaching that a *ba'al ker* and a *poletes shichvas zera* (both of whom are *tamei*) were not permitted to participate. Since the impurity associated with *ba'al ker* is typically brought about through levity, such an

individual does not possess the reverential attitude necessary for Torah study. The *Gemara* in *Shabbos* (30b) describes the mood of awe and deference required when learning Torah: “Any *talmid chacham* who sits before his *rebbe* and his lips do not drip with bitter dread will be singled.”

Along the same lines, the *Rif* (*Megillah*, 14a in *dapei haRif*) quotes the *Yerushalmi* (*Megillah* 4:1) that relates an incident in which an *Amora* saw a *meturgaman* standing and interpreting the *kri'as haTorah* for the *tzibbur* while leaning on a pillar. He told him that this was forbidden, since *kri'as haTorah* requires an atmosphere of trepidation and awe, just as when the Torah was given. The *Yerushalmi* continues that it is likewise forbidden for the *ba'al korei* to both *lein* and interpret the Torah for the public. *Kri'as haTorah* must resemble *Ma'amad Har Sinai*, when the Torah was given by means of an intermediary. Just as Moshe heard the Torah from *Hashem* and relayed it to the Jewish People, the *meturgaman*, who represents Moshe, must impart the Torah from the *ba'al korei*, who represents *Hashem*, to the *tzibbur*. [See *Rav Schachter on Tefillah, Kri'as HaTorah and Ma'amad Har Sinai*, sections I,VI.]

Another *halachah* related to *mesiras haTorah* is expressed by the *Gemara* in *Nedarim* (37a), which expounds the *passuk*, ראה לך חוקים ומשפטים כאשר צונו ד' אלקיך – “Behold, I have taught you decrees and statutes, as *Hashem* my G-d commanded me” (*Devarim* 4:5). The *Gemara* derives that just as *Hashem* taught Moshe the Torah at Har Sinai without demanding payment, that is the way the Torah should continue to be transmitted. Torah education for all generations is meant to replicate the *limmud haTorah* at Har Sinai. [See essay for *Parshas Va'eschanan*.]

A further way in which *Ma'amad Har Sinai* serves as a prototype for future *limmud haTorah* relates to the difference between the transmission of *Torah SheBichsav* and *Torah SheBe'al Peh*. The *Gemara* in *Gittin* (60b) teaches that *Hashem* revealed to Moshe that just as He had initially given a portion of Torah, the *Aseres HaDibros*, in a written form and other portions in an oral form,

that would also be the proper method of *mesiras haTorah* in future generations. Thus, we derive that דברים שבכתב אי אתה רשאי לאומרן על פה – “Teachings that were given in writing, you are not permitted to transmit orally” and that דברים שבעל פה אי אתה רשאי לאומרן בכתב – “Teachings that were given orally, you are not permitted to transmit in writing.”

These *halachos* are derived from *Ma'amad Har Sinai*, when Torah was transmitted to the Jewish People. Thus, they represent the way to fulfill *mesiras haTorah* in the most complete fashion. Whenever Torah is taught to others, *Torah SheBichsav* should be read from a *sefer kasher*, and *Torah SheBe'al Peh* should be taught orally (see Rav Chaim Zimmerman, *Binyan Halachah, Hakdamos HaRambam*). [See essay for *Parshas Devarim*.]



PARSHAS MISHPATIM

SIYATA DISH'MAYA IN PSAK HALACHAH

ואלה המשפטים אשר תשים לפניהם.

And these are the ordinances that you shall place before them.
(*Shemos* 21:1)

RASHI, CITING THE *MECHILTA*, notes that the *parsha* that deals with judicial cases is juxtaposed with the preceding *parsha* that discusses the construction of the *mizbei'ach*. The *Tanna'im* explain (*Sanhedrin* 14b) that this teaches us the correct location in which the *Sanhedrin* should be situated – adjacent to the *mizbei'ach*. As the *passuk* specifies, the *Beis Din HaGadol* (Supreme Court) had to be located inside the *Beis HaMikdash*, 'ד המקום ההוא אשר יבחר ד' – “that place that *Hashem* will choose” (*Devarim* 17:10).

For this reason, during the period of the *Bayis Sheini*, the *Sanhedrin* met in the *Lishkas HaGazis* (Chamber of Hewn Stone), which was divided into two parts. One half was sanctified with the *kedushah* of the *Azarah* (Temple Courtyard), while the other half had only the *kedushah* of the *Har HaBayis* (Temple Mount). Only a king who is a descendant of *malchus Beis David* is permitted to sit in the *Azarah*; thus, even the seventy-one members of the *Sanhedrin* had to be careful to sit only in the half of the room that did not have *kedushas ha'Azarah* (*Yoma* 25a).

The basis for this requirement of placing the court next to the *mizbei'ach* is the realization that human beings are fallible.

Even Moshe Rabbeinu, who had the most profound knowledge of Torah of any man who ever lived, made a mistake in *halachah*, and he admitted his error when Aharon corrected him (*Vayikra* 10:19-20). As is apparent from the institution of the פר העלם דבר של ציבור (bull for the communal error), the *Beis Din HaGadol* might issue a *psak* in error as well. The *Gemara* in *Horayos* (3a) describes that this special *korban* is brought on behalf of the *tzibbur* as a whole, when a majority violates a serious *din* based on a unanimous mistaken ruling of the *Sanhedrin*. Although we have no record as to whether this *korban* was actually ever offered in practice, the Halachah does provide for such a theoretical possibility.

The notion in some camps of Orthodox Jewry that *gedolei hador* are somehow flawless is something borrowed from Catholicism, which believes in papal infallibility. We believe, in contrast, that only *Hashem* is infallible; all human beings can make mistakes.

With regard to the *psak* of the *Sanhedrin*, the *passuk* states, לא תסור מן הדבר אשר יגידו לך ימין ושמאל – “You shall not deviate from the word that they will tell you, right or left” (*Devarim* 17:11). *Rashi* comments, based on the *Sifrei*, אפילו אומר לך על ימין שהוא שמאל ועל שמאל שהוא ימין – “Even if he says to you about right that it is left and about left that it is right.” The simple understanding of this comment is that even if the *Beis Din HaGadol* is mistaken, their ruling is binding.

However, the *Ramban* (*Hasagos* on *Sefer HaMitzvos*, *shoresh rishon*) proves that this cannot be the meaning of the *Sifrei*, as the *Mishnah* in *Horayos* (1:1) clearly teaches that a member of the *beis din* or a student worthy of ruling who is convinced that the *beis din* had erred is obliged **not** to follow the *beis din*'s ruling. If he does, he is responsible for his actions and must bring a personal *Korban Chatas* for *kapparah*. Erroneous rulings of the *Beis Din HaGadol*, or any rabbi for that matter, are **not** binding. A halachic ruling is only binding on the assumption

that it is not mistaken. [The only case in which the *psak* is binding even if it is in error is with regard to the *mitzvah* of *kevi'as halu'ach* (establishment of the calendar), which includes *kiddush hachodesh* (the sanctification of the month) and *ibbur hashanah* (the intercalation of the year).]

Instead of the above text of the *Sifrei*, the *Ramban* (*Devarim* 17:11) explains that the actual text reads, **נראין בעיניך** (מראין) **אפילו** – “even if it **appears in your eyes** about right that it is left,” referring to a situation in which the layman **believes** that the rabbi was mistaken in his ruling. This language implies that it is only an appearance – “in your eyes” – that the *Sanhedrin's* decision is incorrect. Thus, this *passuk* imposes on the layman an obligation to have *emunas Chachamim* and to assume that the rabbis ruled correctly.

Given the reality of possible fallibility in *psak halachah*, there was a need for the *Sanhedrin* to meet in the special location of the *Lishkas HaGazis*. This way, the *Sanhedrin* would have *hashra'as ru'ach hakodesh* from the *aron hakodesh* and the *luchos*. The proximity to the *Shechinah* would endow the *Sanhedrin* with a *siyata diSh'maya* (Divine assistance) that it not be led to issue a mistaken ruling. As the *passuk* states: **אלקים נצב בעדת קל** – “G-d stands in the Divine assembly” (*Tehillim* 82:1). In the words of the *Ramban*:

כי רוח השם יתברך על משרתי מקדשו ולא יעזוב את חסידיו לעולם נשמרו מן הטעות ומן המכשול.

For the spirit of *Hashem*, may He be Blessed, is on those who service His Sanctuary, and He will not forsake His devout ones; they will forever be protected from error and from stumbling.

In fact, the *Gemara* in *Avodah Zarah* (8b) records that forty years prior to the destruction of the Second *Beis HaMikdash*, when the members of the *Beis Din HaGadol* saw that murder became so rampant that they were not able to maintain law and order, they resigned from their positions and went into a self-imposed exile. Once the *Sanhedrin* was not found in its

appropriate location, it lost its status of *Beis Din HaGadol*, at least regarding the judging of capital crimes. Since the entire court system is interdependent, the local twenty-three-member *batei din* were then unable to adjudicate capital cases as well.

It seems that there was somewhat of a shift in the *Sanhedrin's* methodology of adjudicating *sheilos*, particularly in reference to the above-mentioned *siyata diSh'maya*. The *Gemara* in *Yoma* (52b) comments on the *passuk* in *Divrei HaYamim* II (35:3):

ויאמר ללוים המבינים לכל ישראל הקדושים לד' תנו את ארון הקדש בבית אשר בנה שלמה בן דויד מלך ישראל אין לכם משא בכתף עתה עבדו את ד' אלקיכם ואת עמו ישראל.

He [Yoshiyahu] then said to the *Levi'im*, who taught all of Israel, who were consecrated to *Hashem*, "Place the *aron hakodesh* in the Temple that Shlomo, son of Dovid, the King of Israel, built. You will no longer have any carrying on your shoulder; so now serve *Hashem*, your G-d, and His people Israel."

The *Gemara* explains that towards the end of the period of the First *Beis HaMikdash*, Yoshiyahu HaMelech concealed the *aron hakodesh* with the *luchos* in an underground chamber beneath *Har HaBayis*, specially constructed for this purpose by Shlomo HaMelech.

The *Netziv* (*Kidmas Ha'Emek* 1:8) elaborates on this incident, questioning the meaning of the phrase *עתה עבדו את ד' אלקיכם ואת עמו ישראל*. The nature of the *avodah* that Yoshiyahu here instructed the *Levi'im* to engage in, as well as his reason for concealing the *aron hakodesh*, are very unclear. Notably, the *passuk* does not say that he was concerned that the *aron hakodesh* might be seized by the Babylonian army and taken into captivity when they destroyed the *Beis HaMikdash*.

The *Netziv* suggests what may have motivated Yoshiyahu to hide the *aron*. Until the time of Yoshiyahu, the *rabbonim* relied on the illumination provided by the *aron hakodesh* to arrive at the correct conclusion. As noted above, there was no guarantee that a mistake would never be made, but given the *siyata diSh'maya* (Divine assistance) that resulted from proximity to the

Shechinah, coupled with the stature of the members of the *Sanhedrin*, they could be confident that they would almost always issue a correct *psak*.

Yoshiyahu realized that with the impending *galus*, the *Sanhedrin* would no longer be near to the *aron*, and thus would no longer benefit from the special *siyata diSh'maya* to *pasken* properly that they had enjoyed in earlier times. To arrive at a proper conclusion, they would now have to employ *פילפולה של תורה*, the dialectic of Torah. This methodology is known as *מלחמתה של תורה*, which consists of the rigorous analysis and debate of Torah *She-Be'al Peh* found throughout the *Gemara*, the *Rishonim*, and the *Acharonim*.

Yoshiyahu HaMelech wanted the *Chachamim* (the *Levi'im*) to prepare for this *avodah*, the new *derech halimmud* that would be required after the *churban haBayis*. In order to aid in the transition, he removed the *aron* so that the *Chachamim* would not benefit from its associated special Divine assistance. They became accustomed to the new technique of arriving at an accurate *psak halachah*, and the *psak* of the *Sanhedrin* was therefore binding on all of *Klal Yisrael* throughout the entire period of the *Bayis Sheini* as well.

In much the same way as the *pesakim* of the *Sanhedrin*, when one asks a *sheilah* to a *rav* and receives a *psak*, that *psak* is binding because we assume that the *rav* was correct in his ruling. The *Gemara* (*Sotah* 4b, *Sanhedrin* 48b, *Chagigah* 3b, *Niddah* 20b) teaches that this assumption is based on the *passuk*, ליראיו 'סוד ד' – "The secret of *Hashem* is [revealed] to those who fear Him" (*Tehillim* 25:14), which indicates that *Hashem* reveals the correct solution to a halachic question to those who fear Him.

The clear implication of the *Gemara* is that we must ask our *sheilos* to a *rav* who not only is an *ish emes*, to ensure that he does not yield to ulterior motives that may affect the *psak*, but who also possesses a high degree of *yir'as Shamayim*, as the promise of the *passuk* only applies to those who are described as "יראיו."

Furthermore, if the *rav* to whom one addresses his *sheilos* is humble, there is a greater likelihood that the *psak* will be correct. In the vast majority of disputes between Beis Shammai and Beis Hillel, the *psak* is in accordance with Beis Hillel, and the *Gemara* in *Eiruvin* (13b) attributes this to the fact that Beis Hillel were deferential to Beis Shammai and exceedingly humble. *Hashem* rests His *Shechinah* on humble people (*Yeshayah* 57:15), and not on the arrogant (*Sotah* 5a).

Of course, aside from these requirements, the *rav* must be knowledgeable. If he is not sufficiently familiar with the relevant sources that pertain to the *sheilah* at hand, we cannot expect that *Hashem* will perform a miracle to enable an unlearned *rav* to figure out the correct *din*.

If we are careful to follow these guidelines in choosing a *posek*, we can confidently rely upon his *psak* based on the principle of *סוד ד' ליראיו*. Just as was the case with the *Beis Din HaGadol*, each *talmid chacham* is granted a measure of *siyata diSh'maya* to enable him to issue the correct *psak*.

The story is told that when Rav Yechezkel Landau, author of *Noda B'Yehudah*, was chosen to be the *rav* of Prague, those who opposed his appointment wished to test him with a *sheilah* about a questionable *treifah*. Much to the surprise of the questioners, after pondering the *sheilah*, the *Noda B'Yehudah* concluded that the *sheilah* was fabricated and that the organ of the animal which they had brought before him must have been tampered with after its *shechitah*. After the guilty party admitted to the charge, Rav Landau explained how he knew. For many years, whenever he would *pasken* a *sheilah*, he would have a very confident feeling that *min haShamayim* he had been assisted in *paskening* correctly. This time, however, he did not feel comfortable issuing the *psak*, as if he had not received *siyata diSh'maya*. He concluded that there must not have been any need for Divine assistance not to err in this instance, since the *sheilah* was contrived.

There is a related incident found in *Chut HaMeshulash* (5760 ed., pp. 106-109; see also *Rabbeinu Moshe Sofer*, p. 147), the official

biography of Rebbi Akiva Eiger, his son-in-law the *Chasam Sofer*, and the latter's son, the *Kesav Sofer*. It was the *Chasam Sofer's* practice to respond hastily, usually on the same day, even to very serious *sheilos*. On one occasion, when the *rav* who posed the *sheilah* was a great *talmid chacham*, the *Kesav Sofer* delayed in mailing his father's *teshuva* so that the *Chasam Sofer* would review it more carefully, since the *Kesav Sofer* felt that the proof with which his father substantiated his *psak* was inadequate.

The *Chasam Sofer* told him that it was unnecessary to emend the *teshuva*. He explained that *Hashem* gives the key to *psak halachah* to one individual in each generation; in his time, the fact that he was asked to *pasken* so many *sheilos* indicates that he is the *posek hador*. He explained that the primary ability to *pasken* is not contingent on bringing proofs, but is based on one's intuition (see *Rashi, Shemos 28:4*). The *posek's* first impression with regard to a *sheilah* is the true *din*, and *Hashem* would never let a mishap occur due to the *posek's* error. Therefore, in the case at hand, the *psak* that the *Chasam Sofer* had given instinctively was correct, even absent precise corroboration. [Of course, extreme caution must be used in applying this notion; one may not rely on his intuition unless he knows *kol haTorah kulah*.]

Rav Soloveitchik (*Divrei Hagus V'Ha'arachah*, p. 71) made this point as well, in connection with the *passuk*, תורה צוה לנו משה – מורשה קהילת יעקב – “The Torah that Moshe commanded us is the heritage of the Congregation of Yaakov” (*Devarim 33:4*), which is expounded: מורשה אלא מאורשה – “Do not read מורשה (an inheritance), but rather [as if it were spelled] מאורשה (a betrothed one)” (*Berachos 57a*). In the context of his *hesped* for his uncle, Rav Velvele, the Rav explained that all Jews are joined to the Torah as if through a bond of *eirusin* (engagement). Unusual *talmidei chachamim* however, have a deeper relationship with *chochmas haTorah* that can be characterized as *nisu'in*.

During the stage of *eirusin*, the couple is married, but they do not yet know each other well enough that they have become

one unit. However, once a state of *nisu'in* has been reached, we say *ba'al k'ishto* (a husband is like his wife) and *ishah k'ba'alalah* (a wife is like her husband) (*Sanhedrin* 28b). Thus, the *Ra'avad* (cited by the *Rosh*, *Makkos* 1:13-14) comments that the reason a husband and wife are not fit to testify on behalf of each other is not merely because they are *kerovim* (relatives), but because each is considered a *ba'al davar* (principal party) with regard to the other. When a couple has been living together for years, each spouse knows in advance how the other would react to any given situation, how the other thinks about a certain matter even without asking. A *talmid chacham* who has achieved *nisu'in* with the Torah enjoys a similar level of familiarity with the Torah, and has an intuitive feeling as to the correct *psak halachah* even before examining the relevant sources.

This is along the lines of an explanation that Rav Gershon Zaks offered in reference to *Rashi's* comment (*Shemos* 28:4) regarding the *eiphod* of the *Kohen Gadol*. *Rashi* writes that he has not found a description of the *eiphod's* design in a *Beraisa*. Nevertheless, *לי אומר לי* – “my heart tells me” that it resembles the apron with which noblewomen gird themselves when they ride horses. One, like *Rashi*, who has fulfilled the dictum, **כתבם** **לבך** **על לוח לבך** – “inscribe [the words of Torah] on the tablet of your heart” (*Mishlei* 7:3), who has become attached to the Torah through a state of *nisu'in*, transforming his heart into “a heart of Torah,” is rightfully authorized to rely on his own judgment in interpreting the words of the Torah. [See *Nefesh Harav*, 1994 ed., pp. 41-43.]

The principle of **ד' ליראיו סוד** is also relevant to the development of the Halachah throughout the generations. In the eighth of the *ikarei ha'emunah* (Principles of Faith), the *Rambam* writes that not only do we believe that *Hashem* revealed Himself at the time of *Ma'amad Har Sinai* and gave us His Torah through *Moshe Rabbeinu*, but also that the Torah as we observe it **today** is *min haShamayim*. To err is human, and a

Shulchan Aruch that is full of mistakes would be a **man-made** Torah, as opposed to the Divine one we believe in.

In other words, we not only believe that there existed – at one time – a *Torah SheBe'al Peh* that was Divinely ordained. We further believe that *Hashem* continues to assist qualified *rabbonim* so that they *pasken* properly. *Hashem* guides the *rabbonim* so that they do not distort His Torah; He protects His Torah from errors. Rav Chaim Volozhiner was fond of concluding many of his *teshuvos* with a similar phrase: “*Hashem*, the G-d of truth, leads us on a path of truth, in the Torah in which truth is written” (see *Chut HaMeshulash*, *teshuvos* 1, 6, 8, and 11).

An instance of presumed Rabbinical error may even be attributed to *HaKadosh Baruch Hu*, such as when the *rabbonim* of a later generation determine that a position adopted in an earlier generation was due to a miscalculation. In such a context, the *Gemara* in *Gittin* (56b) quotes the *passuk*, משיב חכמים אחר ודעתם יסכל – “He [*Hashem*] turns wise men backwards and makes their thinking foolish” (*Yeshayah* 44:25). For His own reasons, *Hashem* wanted the earlier *rabbonim* to take an incorrect position. Behind the scenes, *Hashem* sees to it that any mistakes that *poskim* may have made over the years are ultimately corrected.

The notion of *Hashem's* continuous involvement in the development of *Torah SheBe'al Peh* does not contradict the principle of לא בשמים היא – “It [The Torah] is not in Heaven” (*Devarim* 30:12). The *Gemara* in *Bava Metzia* (59b) invokes this rule to explain why we may not rely on a *bas kol* (a Heavenly echo) to determine the *psak halachah*. Nevertheless, we recognize that since human beings are fallible, Divine intervention is necessary at times to assist the *rabbonim*. In a similar way, the *psak* of a *rav* is binding and may be relied upon, because we have the right to assume that the *rav*, if he is a *yerei Shamayim*, must have had *siyata diSh'maya* to *pasken* correctly.



PARSHAS TERUMAH

THE LUCHOS AS KESEF KIDDUSHIN

ועשו לי מקדש ושכנתי בתוכם.

They shall make a Sanctuary for Me so that I may dwell among them. (*Shemos* 25:8)

THERE APPEARS TO BE a *machlokes* between the *Rambam* and *Ramban* as to the main purpose of the *mitzvah* of building the *Beis HaMikdash*.

The *Rambam* (*Hilchos Beis HaBechirah* 1:1) writes that the *mitzvah* is in order to have an established location in which to offer *korbanos* and perform *aliyah l'regel*. This understanding of *asiyas haMikdash* presents a difficulty with regard to counting the *taryag mitzvos*. Whenever the Torah lists two *mitzvos*, and one *mitzvah* is designed to lead up to the performance of the other, the *Rambam* enumerates only the first *mitzvah*; listing the second *mitzvah* separately would be considered repetitive (see *Avnei Nezer*, *Yoreh De'ah* 454:6, citing *Ma'ayan HaChachmah*, p. 24, with regard to counting the *mitzvah* of *yishuv Eretz Yisrael*). Thus, if the *mitzvah* of *asiyas haMikdash* was intended for the purpose of offering *korbanos* and performing *aliyah l'regel*, these *mitzvos* should not have been counted separately among the *taryag mitzvos*.

Rav Soloveitchik noted that the *Ramban* seems to suggest a different reason for *asiyas haMikdash*. The *Ramban* (*Hakdamah to Parshas Terumah*) writes that *Hashem* desired that there should be a continuation of the *hashra'as haShechinah* (Divine Presence) that

was revealed at *Ma'amad Har Sinai* in the *Mishkan*. This is the simple explanation of the *passuk*, **ועשו לי מקדש ושכנתי בתוכם**. The *Ramban* points out that the particular location in which the *Shechinah* rested in the *Mishkan* was upon the *aron*, and that is why the *Kodesh HaKodashim* is considered the core of *kedushas ha-Mishkan*, since that is where the *aron* with the *luchos* was located.

According to the *Ramban*, then, the primary function of the *Mishkan* is to serve as a Sanctuary in which to house the *luchos*. Since the *luchos* are referred to as *luchos ha'edus*, the *Mishkan* is referred to as *Mishkan Ha'Edus*.

The difficulty with the *Ramban's* explanation is the fact that the *luchos* were not present in the *Kodesh HaKodashim* in the Second *Beis HaMikdash*. In that period, when the *Kohen Gadol* entered the *Kodesh HaKodashim* on Yom Kippur, he performed the *avodah* of the *ketores* and the *zerikas hadam* in front of the *even shesiyah* (Foundation Stone), which is where the *aron ha-kodesh* had been in the First *Beis HaMikdash*. How could the *aron* with the *luchos* not have been present at this time, if the main purpose of the *Beis HaMikdash* is to house the *luchos*?

The answer is found in the *Gemara* in *Yoma* (52b), which describes that towards the end of the period of the First *Beis HaMikdash*, *Yoshiyahu HaMelech* hid the *aron ha-kodesh* with the *luchos* in an underground chamber beneath the *Har HaBayis*. *Shlomo HaMelech*, apparently realizing that there would be such a need in the future, constructed a special chamber for this purpose when he built the *Beis HaMikdash*. The *Gemara* (53b-54a) brings a dispute among the *Tanna'im* as to whether the *luchos* remained in this location during the period of the Second *Beis HaMikdash* or whether they were removed and taken to Bavel.

Interestingly, the *Rambam* (*Hilchos Beis HaBechirah* 4:1) must have partially adopted the *Ramban's* view, since he takes a stand on this *machlokes*, ruling in accordance with the first opinion. Rav Soloveitchik noted that the very fact that the *Rambam* renders a ruling regarding this dispute in *Mishneh Torah*, which

is a *sefer halachah*, indicates that he viewed it not merely as a historical issue, but as one with halachic significance. The *machlokes* revolves around the question of whether it is possible to have a *Beis HaMikdash* without the presence of the *luchos*, and the accepted opinion maintains that in order for the *Beis HaMikdash* to be invested with *kedushah*, it must function as a *Mishkan Ha'Edus*, housing the *luchos*. As such, the Second *Beis HaMikdash*, by definition, must have contained the *luchos*, albeit in an underground vault. [See *Eretz HaTzvi*, p. 91; *Rav Schachter on the Parsha, Parshas Terumah*.]

What is the significance of designating a distinct place in which to house the *luchos*?

Commenting on the *passuk*, *ויהי ביום כלת משה להקים את המשכן*—"It was on the day that Moshe finished erecting the *Mishkan*" (*Bamidbar* 7:1), *Rashi* notes that the word *כלת* is written in the *chaser* (incomplete) form (in *Rashi's* version of the text). He explains that this alludes to the fact that on the day of the erecting of the *Mishkan*, *Bnei Yisrael* were like a *kallah* who enters beneath the *chuppah*. Indeed, in *Shir HaShirim*, the relationship between *HaKadosh Baruch Hu* and *Klal Yisrael* is likened to a marriage, as if *HaKadosh Baruch Hu* is the *chassan* and *Klal Yisrael* is the *kallah*. This idea is further reflected in a famous line based on the *Zohar* (see *Parshas Acharei* 73a; *Parshas Emor* 93b): *קודשא בריך הוא אורייתא וישראל חד הוא* - "*HaKadosh Baruch Hu*, the Torah, and the Jewish People are one."

The *Gemara* in *Sanhedrin* (28b) teaches that *ba'al k'ishto* (a husband is like his wife) and *ishah k'ba'alah* (a wife is like her husband). The principle that a husband and wife form a single unit with regard to kinship is the reason that a man is disqualified from testifying about his stepson's wife. The stepfather is considered like his wife, who is the daughter-in-law's actual mother-in-law, and he therefore may not testify concerning her.

In a similar vein, the *Ra'avad* (cited by the *Rosh*, *Makkos* 1:13-14) comments that the reason a husband and wife are not fit to

testify on behalf of each other is not merely because they are *kerovim* (relatives). Rather, it is because each is considered a *ba'al davar* (principal party) with regard to the other, and such a person cannot be classified as a witness at all.

Hashem singled out *Klal Yisrael* not only as the *Am HaNivchar* (Chosen Nation), but also to be His "wife." That is why the *Zohar* teaches that *HaKadosh Baruch Hu* and *Klal Yisrael* are one unit, just as a husband and wife constitute one entity. [See *Rav Schachter on the Haggadah*, p. 62.]

According to one view among the *Tanna'im* (*Shabbos* 87a), Moshe Rabbeinu actively smashed the *luchos* as a result of the *chet ha'eigel*. *Rashi* (*Shemos* 34:1), quoting the *Tanchuma* (30), suggests that we can understand this act through a *mashal* of a king who went overseas and left his *arusah* (betrothed) with maidservants. As a result of the scandalous conduct of the maidservants, she unjustly gained a bad reputation, whereupon her friend tore up her *kesubah* in order to annul the marriage and protect her. This way, if the king were to accuse her of committing adultery, she would claim that she was not yet his wife. When the king returned and investigated the matter and found that only the maidservants had acted scandalously, he reconciled with the queen.

The *Midrash* explains that in the *mashal*, the king represents *HaKadosh Baruch Hu*, the maidservants are the *eirev rav* who sinned with the *eigel*, the friend of the queen is Moshe who broke the *luchos*, and *Bnei Yisrael* is the wife of *HaKadosh Baruch Hu*. According to the *Midrash*, the *luchos* represent the *kesubah* that *Hashem*, the *chassan*, presented to *Klal Yisrael*, the *kallah*, at the time of *Ma'amad Har Sinai*. When Moshe smashed the *luchos*, he thereby spared *Klal Yisrael* from punishment as a result of the infidelity associated with the *chet ha'eigel*, since he could claim that *Klal Yisrael* was not yet the wife of *Hashem*. Although all people, even non-Jews, are prohibited from *avodah zarah*, the *aveirah* is more severe for *Klal Yisrael* due to the bond of *ishus* (the marital relationship) that exists between them and *Hashem*.

With this idea, the *Midrash* describes a difference between the first and second *luchos*. The first time Moshe ascended to receive the *luchos*, he did not take any material with him. However, regarding the second *luchos*, *Hashem* said to Moshe, פסל לך שני לוחות אבנים כראשונים וכתבתי על הלוחות את הדברים אשר היו על הלוחות הראשונים אשר שברת – “Carve for yourself two stone tablets like the first ones, and I shall inscribe on the tablets the words that were on the first tablets, which you shattered” (*Shemos* 34:1). Moshe was to ascend with stone *luchos* to serve as the substance upon which *Hashem* would engrave the *Aseres HaDibros*. The *Midrash* explains that after the friend of the queen tore up her *kesubah*, the king instructed him to purchase other paper on which to write a second *kesubah*. Similarly, *Hashem* told Moshe that since he was the one who broke the first *luchos*, he should carve the second ones himself.

Rav Soloveitchik explained that we may account for the contrast between the first and second *luchos* in a somewhat different way, based on the notion that the *luchos* served as *kesef kiddushin*, the money used to effect the *kiddushin* between *Hashem* and *Klal Yisrael* at *Ma'amad Har Sinai*. *Rashi's* comment (*Shemos* 26:9) regarding the placement of the additional, upper curtain atop the *Mishkan* follows along these lines. After explaining that this curtain was folded and hung over the entrance to the *Mishkan*, *Rashi* observes, “This is likened to a modest *kallah*, who is covered with a veil over her face.” The *Midrash* seems to compare the *Mishkan* to a *kallah* because it contained the *luchos*. In this sense, the *Mishkan*, together with the *luchos*, corresponds to a *kallah* who keeps hold of the ring that was used as her *kesef kiddushin*.

The Rav further noted that the words פסל לך imply a halachic change in the nature of the *shelichus* (agency) of Moshe Rabbeinu. With regard to the first *luchos*, Moshe acted in the capacity of *shli'ach l'holachah*, an agent of the *chassan* who delivers the *kesef kiddushin* to the wife. Therefore, the *kiddushin*

did not take effect before he delivered the *luchos* to *Klal Yisrael*, the *kallah*, and that is why Moshe was able to spare *Klal Yisrael* from punishment by smashing the *luchos*.

In the case of the second *luchos*, however, *Hashem* told Moshe to act as a *shli'ach l'kabbalah* on behalf of *Klal Yisrael*. This way, once he would accept the *luchos* with *Hashem's* engraving, the *kiddushin* would take effect immediately; there was no need to wait until the *kesef kiddushin* was delivered to the *kallah*. This is represented by פסל לך; Moshe provided the material for the *luchos*, and *Hashem* then engraved the *Aseres HaDibros* onto the stone that Moshe brought. It was as if the *shli'ach* came to the *chassan* with a receptacle into which the *chassan* placed the *kesef kiddushin*, the engraving on the stone.

The *Mishnah* in *Ta'anis* (26b) interprets the dual description in the *passuk*, ביום חתונתו וביום שמחת לבו – “on His wedding day and on the day His heart was gladdened” (*Shir HaShirim* 3:11), as a reference to *Mattan Torah* and the building of the *Beis HaMikdash* respectively. We can explain the connection between the giving of the *luchos* and the dedication of the *Mishkan* in terms of the bond of *ishus* between *Hashem* and *Klal Yisrael* (see *Imrei Yosher*, *Tzror HaMor* on *Shir HaShirim*, by the author of the *Nesivos*).

After *Hashem* gave *Klal Yisrael* the *luchos*, which produced the *kiddushin* between them, He instructed them to build a *Mishkan*. The *mitzvah* of *asiyas haMishkan* was in order to create a *Beis Hashem* in which the *Shechinah* could dwell, and this established the *nisu'in* between *Hashem* and *Klal Yisrael*. *Nisu'in* occurs when an *arusah* leaves her father's house and enters into the house of her husband. A *nesu'ah* is an אשת איש בבית הבעל, and *Klal Yisrael*, the *kallah*, achieved this status after the construction of the *Beis Hashem*, which facilitated her entrance into the domain of her Husband. [See *Eretz HaTzvi*, pp. 202-203.]

The *Gemara* in *Yoma* (54a) elaborates on the nature of the *ishus* between *Hashem* and *Klal Yisrael* throughout different phases of

Jewish history. To demonstrate the love between *Hashem* and *Bnei Yisrael*, when the *olei regel* would appear in the *Beis HaMikdash* on *Yomim Tovim*, the *Kohanim* would roll up the *paroches* and show them the *keruvim* joined in a loving embrace.

The *Gemara* proceeds to question how the people could have been shown the *keruvim*. After all, the *passuk* teaches that the *Levi'im* were not permitted to gaze upon the *klei haMishkan* in their uncovered state, before the *Kohanim* placed them into their coverings, ולא יבאו לראות כבלע את הקודש ומתו – “They shall not come and look as the holy is concealed, lest they die” (*Bamidbar* 4:20).

Comparing the matter to the relationship between a *chassan* and *kallah*, the *Gemara* answers that this prohibition did not apply during the period of the *Beis HaMikdash*. As long as the *kallah* is an *arusah*, in her father’s house, she is modest before her husband; there is an *issur* for him to be intimate with her. Similarly, in the *Midbar*, the Jewish People were not yet “familiar” with the *Shechinah*, and at that point, viewing the *aron* was forbidden. Later on, however, in the *Beis HaMikdash*, when the relationship was more familiar and the Jewish People were considered fully married to *Hashem*, as a *nesu’ah*, the *aron* and *keruvim* could be shown to them.

The *Gemara* continues by challenging this distinction from an incident that occurred in the *Beis HaMikdash* itself. A certain *Kohen* noticed that one of the stones of the floor in the *lishkas dir ha'eitzim* (Chamber of the Wood) was slightly higher than the rest, and he surmised that this stone had once been removed to hide the *aron* in the days of *Yoshiyahu HaMelech* and then replaced. He wished to reveal the secret to his friend, but he died before being able to do so. *Hashem* did not want the location of the hidden *aron* to be revealed, even during the time of the *Beis HaMikdash*!

The *Gemara* answers that this incident took place during the **Second** *Beis HaMikdash* era, following the period of *galus Bavel*.

After *galus*, the Jewish People were, in a sense, analogous to a wife who has been divorced and then taken back by her former husband. Though she is technically a *nesu'ah*, the relationship returns only to the initial state of endearment of *eirusin*. The *chassan* and *kallah* are not as comfortable with each other as they once were, and she once again must act modestly before her husband. That is why the *aron* and *luchos* were not in their proper place in the Second *Beis HaMikdash* – to demonstrate that the relationship was only on a level of *eirusin*. Thus, the presentation of the *keruvim*, indicating the very intimate relationship of *nisu'in*, took place only during the First *Beis HaMikdash* era.

However, the *Gemara* in *Kesubos* (71b) tells us that *le'asid lavo*, despite the fact that it will follow a lengthy period of *galus*, we will ultimately return to the close connection of *nisu'in* with *Hashem*. The *Mishneh LaMelech* (*Parashas Derachim*, end of *drush* 26) explains that this is the innovation of the *passuk* in *Hoshe'a* (2:18), והיה ביום ההוא נאום ד' תקראי אישי ולא תקראי לי עוד בעלי – “It shall be on that day, says *Hashem*, that you [Israel] will call Me ‘My Husband’ and you will no longer call Me ‘My Master.’” *Klal Yisrael* will then be like a *nesu'ah* and no longer like an *arusah*.

The rationale behind the construction of the *Mishkan*, and later the *Beis HaMikdash*, as the place to house the *luchos* thus becomes clear. It is common to construct edifices around items of great significance. We cherish the *luchos* as representative of the *keseif kiddushin* between *Hashem* and *Klal Yisrael*, just as a *kallah* values the ring her *chassan* presented to her. The *luchos* characterize the intimate relationship that *Klal Yisrael* enjoys with *HaKadosh Baruch Hu*, and it is for this reason that the *luchos* remain the centerpiece of the *Mishkan Ha'Edus*.



PARSHAS TETZAVEH

KILAYIM IN THE BIGDEI KEHUNAH

A NUMBER of the *bigdei Kehunah* (priestly vestments) contained *shatnez*, including the *choshen* and *ephod* of the *Kohen Gadol* and the *avnet* of the *Kohen Hedyot* (ordinary *Kohen*). The *Rambam* (*Hilchos Kilayim* 10:32; *Hilchos Klei HaMikdash* 8:11-12) rules that the allowance for a *Kohen Hedyot* to wear the *avnet* applies only at the time he performs the *avodah*. He must remove the *avnet* the moment he concludes the *avodah* in order to avoid violating the *shatnez* prohibition. The *Ra'avad* disagrees and maintains that it is permitted for a *Kohen* to wear the *begadim* even after he completes the *avodah*.

Tosfos (*Menachos* 41a, s.v. *techeiles*; see *Sha'agas Aryeh* 29-30) explains that the question revolves around whether, in the *bigdei Kehunah*, the *issur* of *kilayim* has been rendered by the Torah as *hutrah* (permitted) or merely as *dechuyah* (overridden). In the case of an *issur* that is *hutrah*, the Torah commands, without any reluctance, that the *issur* be disregarded. In the case of an *issur* that is *dechuyah*, the Torah reluctantly allows the *issur* to be pushed aside. According to *Tosfos*, if *kilayim* in *bigdei Kehunah* is *hutrah*, the *heter* extends even to when it is not the time of *avodah*, but if it is only *dechuyah*, the allowance is only at the time of *avodah*.

The *Peirush HaMeyuchas L'HaRa'avad* (*Tamid* 27a, printed on 31b-32a) questions the premise of *Tosfos*. The allowance to

violate the *issur* of *kilayim* is certainly a result of the *mitzvah* involved in wearing the *bigdei Kehunah*. Accordingly, when the *avodah* is finished, there is no *mitzvah* being performed that can permit the violation of the *issur*. A *Kohen* cannot smoke a cigar on Shabbos at the same time he is engaged in offering the *Korban Tamid* or *Korban Mussaf* of Shabbos, even though the offering of these *korbanos* on Shabbos is *hutrah* (*Yoma* 46b); the allowance obviously does not extend to other *chillul Shabbos* that is unrelated to the offering of the *korbanos*. How, then, could there be an opinion that a *Kohen* may continue to violate the *issur* of *kilayim* even after he completes the *avodah*? [Of note, the *Peirush HaMeyuchas L'HaRa'avad* on *Tamid* is not assumed to have been authored by the *Ra'avad*, and thus the two may have dissimilar opinions.]

Rav Soloveitchik, in a *yahrzeit drashah* (*Shiurim L'Zecher Abba Mari Z"l I*, 1983 ed., pp. 211-216), developed a definition of *dechuyah* and *hutrah* to address this question. This definition of *hutrah* allows for the possibility of wearing *bigdei Kehunah* even not at the time of *avodah*.

The Rav explained that *dechuyah* means that in a situation of conflict between a *mitzvah* and an *aveirah*, the *mitzvah* is *docheh* (overrides) the *aveirah*. Accordingly, in the view of the *Rambam*, since the *Kohen* must wear *shatnez* in order to fulfill the *mitzvah* of *avodah*, and since the *kiyum* (fulfillment) of the *mitzvah* of *avodas hakorbanos* is *docheh* the *issur* of *shatnez*, he may wear the *begadim* during the *avodah*. When the *avodah* is complete, however, and there is no longer any *mitzvah* to accomplish, he must abstain from violating the *issur*.

Hutrah is a fundamentally different way of viewing the conflict between a *mitzvah* and an *aveirah*. Here, it is not the *kiyum* of the *mitzvah* that takes precedence over the *issur*. Instead, the permissibility of violating the *issur* is due to the fact that the actual *cheftza* of the *mitzvah* was exempted from the *issur*. In other words, when the *issur* of *shatnez* was formulated by the

Torah, *bigdei Kehunah* were simply not included in the *issur*. For this reason, the *Ra'avad* maintains that a *Kohen* may continue to wear the *bigdei Kehunah* containing *shatnez*, even when he is not performing the *avodah*. Since the *issur* of *shatnez* is *hutrah* in the *bigdei Kehunah*, the *issur* does not apply to these *begadim* at all.

It is interesting that while the *Rambam* requires a *Kohen Hedyot* to remove his *avnet* the moment he completes the *avodah*, he does not mention such a requirement with regard to the *Kohen Gadol*. The *Ra'avad* (*Hilchos Kilayim* 10:32) notes this discrepancy and questions why the *Rambam* would neglect to mention this *halachah*. The *Radvaz* comments that it would seem that the *Rambam*, in fact, distinguishes between a *Kohen Gadol* and a *Kohen Hedyot* with regard to wearing the *begadim* that contain *shatnez* after the completion of *avodah*. What could be the reason for this distinction? The *Beis HaLevi* (*chelek* 1, 3:2) suggests an original answer to this question.

The *tzitz* is one of the *Kohen Gadol's* *begadim*, and its purpose is to effect acceptance of a *korban* that was offered in a state of *tum'ah*. There is a *machlokes Tanna'im* (*Yoma* 7b) regarding whether *ritzuy tzitz* is operative even when the *Kohen Gadol* is not wearing the *tzitz* or, as the *Rambam* rules (*Hilchos Bi'as Mikdash* 4:8), only when it is present on the forehead of the *Kohen Gadol*.

A further question with regard to *ritzuy tzitz* is whether wearing the *tzitz* is effective only when it is accompanied by the other *begadim* or even if it is worn alone. *Rabbeinu Tam* (*Tosfos*, *Yoma* 69a, s.v. *bigdei*; *Kiddushin* 66a, s.v. *hakeim*) seems to imply that the *Kohen Gadol* may wear the *tzitz* alone for the purpose of being *meratzeh* a *korban* that became *tamei*. The *Beis HaLevi* argues, however, that when a *Kohen* is not wearing all of his requisite *begadim*, he is not considered to possess his special *Kehunah* status with regard to *avodas hakorbanos* (*Sanhedrin* 83b). Thus, the *Kohen Gadol's* wearing of the *tzitz* unaccompanied by his other *begadim* should be tantamount

to a non-Kohen wearing the *tzitz*, which would certainly be ineffective.

It follows from the *psak* of the *Rambam* and the additional assertion of the *Beis HaLevi* that the *Kohen Gadol* must wear the *tzitz* together with his other *begadim* all day long, since this enables the *tzitz* to effect acceptance of a *korban* that is *tamei*. In this sense, the *Beis HaLevi* contends, the *Kohen Gadol* is considered to be performing *avodah* **at all times** – namely, the *avodah* of *ritzuy tzitz* – and this *kiyum hamitzvah* overrides the *issur* of *shatnez* with regard to his *begadim*. This argument obviously does not apply to a *Kohen Hedyot*, who must therefore remove his *begadim* when he completes the *avodah*.

Rav Soloveitchik offered a different explanation of the *Rambam* that bears some similarity to the approach of his great-grandfather. The *Rambam* (*Hilchos Bi'as Mikdash* 2:5-6; *Sefer Hamitzvos*, *lo sa'aseh* 165) writes that any *Kohen* who leaves the *Beis HaMikdash* in the midst of performing an *avodah* violates the capital offense of *ומפתח אוהל מועד לא תצאו פן תמותו* – “Do not leave the entrance of the *Ohel Mo'ed*, lest you die” (*Vayikra* 10:7). This violation was expanded in relation to a *Kohen Gadol* by the *passuk*, *ומן המקדש לא יצא* – “He shall not leave the Sanctuary” (*Vayikra* 21:12). Thus, a *Kohen Gadol* who is an *onen* (one who has lost a close relative, prior to the *kevurah*) may not follow the funeral procession. Instead, he remains in the *Beis HaMikdash* and continues to perform *avodah*, even as an *onen*.

In explaining the additional restriction placed on the *Kohen Gadol*, the Rav pointed out the *Rambam's* description (*Hilchos Klei HaMikdash* 5:7) of the *Kohen Gadol's* essential function: *ותפארתו וכבודו שיהיה יושב במקדש כל היום* – “It is the splendor and glory [of the *Kohen Gadol*] to remain in the *Mikdash* all day.” The *Kohen Gadol's* role is to serve as a constant presence in the *Beis HaMikdash*, overseeing the *avodah* therein. The *Kohen Gadol* should exit only in the evening or for a brief time during the day. Although we do not require the *Kohen Gadol* himself to

perform any of the *avodah* (except on Yom Kippur), it is his responsibility to supervise the *avodah* of all of the *korbanos* that are brought in the *Beis HaMikdash*. [See Rav Schachter on the *Moadim, Sukkos: Recitation of Hallel*, section III.]

This forms the basis for the difference between a *Kohen Gadol* and a *Kohen Hedyot* with regard to exiting the *Beis HaMikdash*. When a *Kohen* begins an *avodah* in the *Beis HaMikdash*, he is responsible to see it through to its completion. A *Kohen Hedyot* is considered to be in the midst of an *avodah* only when he actually performs a particular *avodah*, and only at that time is he prohibited from leaving the *Azarah*. However, the *Kohen Gadol*, because of his supervisory role, is considered to be in the midst of *avodah* at all times, even if he is not personally engaged in offering a *korban*.

It emerges from this discussion, the Rav continued, that the *Kohen Gadol* is charged with being present inside the *Beis HaMikdash* for the entire day, adorned with the *bigdei Kehunah* לתפארת ולכבוד – “for glory and splendor” (*Shemos* 28:2). As such, he has an independent *mitzvah* to wear these *begadim* as one of the permanent fixtures of the *Beis HaMikdash*, irrespective of the need for *ritzuy tzitz* or *avodah* that he personally performs.

According to the *Rambam*, only a *Kohen Hedyot* must remove his *begadim* upon completing the *avodah*, since for him, wearing *bigdei Kehunah* is merely a *hechsher mitzvah* that enables *hakravas hakorbanos*. When he is not performing *avodah*, he has no independent *mitzvah* to wear *bigdei Kehunah* that could override the *issur shatnez*. However, for the *Kohen Gadol*, although the *issur* of *shatnez* is merely *dechuyah*, the continuous *mitzvah* to wear *bigdei Kehunah* inside the *Beis HaMikdash* overrides the *issur* all day long. [See *Ginas Egoz*, pp. 97-98.]



PARSHAS KI SISA

KAPPARAS HATZIBBUR

IT IS VERY DIFFICULT to fathom how *Bnei Yisrael* – after having experienced the *esser makos*, with the *giluy Shechinah* at *kri'as Yam Suf* and *Ma'amad Har Sinai* – could proceed to worship the *eigel hazahav*. To make this more comprehensible, the *Gemara* in *Avodah Zarah* (4b-5a) teaches:

לא ישראל ראויין לאותו מעשה ... אלא למה עשו לומר לך ... שאם חטאו ציבור
אומרים להו לכו אצל ציבור.

Bnei Yisrael were not suited to perform that deed [with the *eigel*] ... If so, why did they act in this manner? To teach you ... that if a *tzibbur* sins, we tell them: “Go to another *tzibbur* [the ones who worshipped the *eigel*, and then did *teshuvah*, and their *teshuvah* was accepted].”

In other words, *Hashem* suspended the people's *bechirah chofshis* (free will) on this occasion and forced them to sin. It was a Divine decree arranged in order to teach a most important lesson – that even if an entire *tzibbur* violates a most serious *aveirah*, it is still possible for everyone to be *chozer b'teshuvah*.

The *Gemara* in *Rosh Hashanah* (17b) elaborates on the idea that *Hashem* wanted the *teshuvah* of *Bnei Yisrael* after *chet ha'eigel* to serve as an example to future sinners. *Chazal* relate the *passuk*, *ויעבור ד' על פניו ויקרא* – “*Hashem* passed before [Moshe] and proclaimed” (*Shemos* 34:6), to the Mishnaic expression *עובר לפני התיבה* – “he passes before the *aron*.” Based

on this, *Chazal* teach that after *chet ha'eigel*, *HaKadosh Baruch Hu* appeared in a *nevu'ah* to Moshe wrapped in a *tallis* like a *shli'ach tzibbur* and demonstrated how to recite the *yud gimmel middos* (Thirteen Attributes of Mercy). At that time, He taught Moshe that "any time that *Bnei Yisrael* sin, let them perform this order of *tefillah* before Me and I shall forgive them." This is the source of our *minhag* to have the *shli'ach tzibbur* wear a *tallis* during *Selichos*, even when it is recited at night.

The *Gemara* continues by quoting the *passuk*, הנה אנכי כורת ברית – "Behold, I am sealing a covenant" (*Shemos* 34:10), to emphasize the efficacy of the *yud gimmel middos*. Although the *passuk* does not clarify the nature of the *bris*, *Chazal* interpret that "a covenant has been made regarding the *yud gimmel middos* that they never return empty-handed."

Rashi comments that up to this point, as implied by the *passuk*, וחנותי את אשר אהון – "I shall show favor when I choose to show favor" (*Shemos* 33:19), *Hashem* promised Moshe only that He may possibly accept a person's *teshuvah*. However, at the time of the revelation of the *yud gimmel middos* and the sealing of their *bris*, *Hashem* guaranteed *Bnei Yisrael* that their recitation will assuredly cause acceptance of sincere *teshuvah*. That is why we repeatedly refer to the ברית של עשרה in the *Keil Melech tefillah* recited during *Selichos*.

It is noteworthy that it was on Yom Kippur that *Hashem* declared, סלחתי כדברך – "I have forgiven because of your word" (*Bamidbar* 14:20), granting *Bnei Yisrael* forgiveness for the *chet ha'eigel* (*Rashi*, *Devarim* 9:18; *Tosfos*, *Bava Kamma* 82a, s.v. *kedei*). Thus, it stands to reason that the historical background of the *kapparah* granted on this day sheds light on the character of the *kapparah* of Yom Kippur itself.

The *Rambam* states (*Hilchos Teshuvah* 2:7): יום הכיפורים הוא זמן – "Yom Ha-Kippurim is the time of *teshuvah* for all, for the individual and for the many, and it is the time for forgiveness and pardoning

for *Yisrael*." Rav Soloveitchik (*Al HaTeshuvah*, pp. 78-79) pointed out that the text of the *Rambam* implies two distinct elements. The last word of the first phrase, "the time of *teshuvah* for all, for the individual and for the **many**," refers to many individuals. The second phrase, "the time for forgiveness and pardoning for *Yisrael*," connotes something different. There is an aspect of Yom Kippur that addresses not the individual, nor many individuals, but rather *Klal Yisrael* as a single entity. Thus, there are two categories of *kapparah* on Yom Kippur. One *kapparah* is individual, specific to each and every Jew. Additionally, *Klal Yisrael* as a whole, as an independent entity, achieves forgiveness through a collective *kapparah*.

It seems that we derive the communal nature of the *kapparah* that the *Rambam* highlights from the fact that *Bnei Yisrael* attained *kapparah* for the *chet ha'eigel* on Yom Kippur.

Avodah zarah is a unique *aveirah* in that a group of individual violations can be considered a communal *aveirah*. The residents of an *ir hanidachas*, in which the majority of the inhabitants of a city in Eretz Yisrael worship *avodah zarah*, receive a different punishment than individuals who worship *avodah zarah*. The city with all its property must be destroyed, the city may never be rebuilt, and the guilty are executed by the sword.

The *Ohr Same'ach* (*Hilchos Avodas Kochavim* 4:1) explains that the nature of these *dinim* is that the guilty are not treated as *yechidim*. When the majority of the residents of a city worship *avodah zarah*, the *aveirah* becomes an *aveirah* of the *tzibbur*. Since the original *kapparah* of Yom Kippur addressed an *aveirah* of the *tzibbur*, the *Rambam* understood that Yom Kippur is an auspicious time not only for a *yachid* to do *teshuvah* for his *aveiros*, but for the *tzibbur* to do *teshuvah* for its *aveiros* as well.

This perspective helps clarify the common *minhag* to pledge *tzedakah* in memory of the deceased on Yom Kippur. That is why we recite *Yizkor*, in which we mention the deceased, on Yom Kippur; Yom Kippur can even secure *kapparah* for the

dead (*Rama, Orach Chaim* 621:6). Likewise, the day is referred to as *Yom HaKippurim* – the Day of **Atonements**, in plural, because of the double *kapparah*, for the living and for the dead (*Mishnah Berurah* 621:18, citing *Mahari Vayil*).

Similarly, as part of the *eglah arufah* procedure, the *Kohanim* recite, “כפר לעמך ישראל אשר פדית ד’ – Atone for Your nation Israel that You have redeemed, Hashem” (*Devarim* 21:8). The *Gemara* in *Horayos* (6a) comments, “This atonement is fit to atone even for the generation that left Mitzrayim, for it is written, ‘that You have redeemed’ [meaning, from Mitzrayim].” We hereby accomplish *kapparah* on behalf of those who are dead, not only for those alive at the time.

The difficulty with these practices is that there is a rule, אין כפרה למתים – “there is no atonement for the dead” (*Zevachim* 9b). For example, if a person set aside an animal as a *Korban Chatas* for an unintentional transgression and then passed away, the *korban* may not be offered posthumously on his behalf (*Me’ilah* 10b). If there is no atonement for the dead, how are we to understand the plural form in the term *Yom HaKippurim* or the fact that the *eglah arufah* achieves *kapparah* for the sins of earlier generations?

The *Maharsham* (*Mishpat Shalom, siman* 212) explains the operative principle in the case of *eglah arufah* by distinguishing between a *kapparas hayachid* and a *kapparas hatzibbur*. An individual who offers a *Korban Chatas* attains only a *kapparah* for himself, and such an individual *kapparah* cannot help the dead. However, when it comes to a *kapparas hatzibbur*, as in the case of *eglah arufah*, once *kapparah* is secured for the people who are alive, the *kapparah* extends to those who are deceased as well.

With this principle, we can explain a *Beraisa* in *Makkos* (11b). If a *rotzei’ach beshogeg* (accidental murderer) exiled to an *ir miklat* (City of Refuge) dies, he must be buried in the *ir miklat*. Once the *Kohen Gadol* dies and the *rotzei’ach* attains his *kapparah*,

his remains may be exhumed and reburied in his ancestral burial grounds outside the *ir miklat*. Here too, since the death of the *Kohen Gadol* accomplishes a *kapparah* for the entire group of accidental murderers, we hold **יש כפרה למתים**, that even the deceased *rotzei'ach* attains *kapparah*. This is because we are dealing with a *kapparas harabbim*, regarding which *kapparah* may be granted even to the dead by way of the *kapparah* that is achieved by the living. [See *B'Ikvei HaTzon*, p. 32.]

From its very inception in the aftermath of *chet ha'eigel*, Yom Kippur has served as a *kapparas hatzibbur* on the collective unit of *Klal Yisrael*. This is how we can speak of *kapparah* afforded to the deceased as well as to the living – the complete *tzibbur* of *Klal Yisrael* – on a day referred to as *Yom HaKippurim*. Through the pledging of *tzedakah* and the recitation of *Yizkor*, we include in the *kapparah* of Yom Kippur all the generations that were and that will be, the timeless entity of *Klal Yisrael*, from Avraham Avinu until the *Melech HaMashiach*. [See *Rav Schachter on the Moadim, Kapparas Yom HaKippurim*, section I.]



PARSHAS VAYAKHEL

MOTION SENSORS

THE GEMARA in *Bava Kamma* (2a) discusses how the *Torah SheBe'al Peh* establishes the thirty-nine *melachos* of Shabbos. The Torah juxtaposes the *parsha* that commands us to build the *Mishkan* and the *parsha* that speaks of observing the Shabbos, thereby forbidding us from constructing the *Mishkan* on Shabbos. Therefore, any activity that was considered significant for *asiyas haMishkan* is classified as an *av* (primary) *melachah*. An activity that was not actually performed in the *Mishkan* but which is sufficiently similar to an act that was performed in the *Mishkan* is considered a *toldah* (subcategory).

Using electricity to operate a machine that performs one of the thirty-nine *melachos*, like plowing, is certainly prohibited *mid'oraisa*, since one who harnesses the natural force of electricity to perform *melachah* is considered as though he had performed the *melachah* himself. This is derived from the *Gemara* in *Bava Kamma* (60a) that teaches that זורה ורוח מסייעתו – “one who winnows and the wind assists him [by blowing away the chaff]” is liable for *chillul Shabbos*.

The *Gemara* explains that this is based on the concept of מלאכת מחשבת אסרה תורה – “the Torah prohibited purposeful labor.” We infer this idea from the phrase מלאכת מחשבת (*Shemos* 35:33), stated in regard to the construction of the *Mishkan*, from which the Shabbos laws are derived. Thus, the Torah forbids

a person from performing even a partial activity if it accomplishes the intended purpose via a natural force. [The concept of *מחשבת מלאכת* usually creates leniencies in the realm of *Hilchos Shabbos*, such as to exclude *davar she'eino miskavein* (a *melachah* not performed for its defined purpose) or *mekalkeil* (a *melachah* that causes damage) from the category of *melachah d'oraisa*, but here the *Gemara* applies the term to denote a stringency.]

Furthermore, turning on an electrical appliance is also forbidden, even if a *melachah* is not performed with the appliance. The *Chazon Ish* (*Orach Chaim* 50:9) was of the opinion that completing an electrical circuit is a *melachah d'oraisa* of *boneh* (building) or *makeh b'patish* (completing an item). His view has not been generally accepted, however. We assume, instead, that it is prohibited *miderabbanan* to complete an electric circuit on Shabbos because by doing so, one sets a system in motion that is then able to function.

Completing a circuit is similar to the case in the *Gemara* in *Kesubos* (60a) of clearing debris inside a clogged gutter. The *Gemara* states that doing so is considered *tikkun mana miderabbanan*, as one enables the gutter to function properly, even though the gutter is not actually broken. One may press the debris down with his foot on Shabbos, an act of repairing in an unusual manner, since the *Chachamim* did not apply this *issur* in a situation of *hefsed* – financial loss (see *Ran, Shabbos*, 61a in *dapei haRif*, s.v. *u'v'makom*; *Mishbetzos Zahav, Orach Chaim* 336:9). Similarly, rewinding a watch that stopped on Shabbos would be characterized (according to some) as *tikkun mana miderabbanan*, since the watch remains a utensil, though temporarily nonfunctional. [Reportedly, Rav Moshe Feinstein felt that this is permissible according to the *ikar hadin*.]

It has becoming increasingly common, especially in large cities, to encounter motion-activated electronic sensors, which, when triggered, cause lights to go on automatically. A similar

situation exists with regard to surveillance cameras that record the passersby. Causing one's image to appear on a digital screen is a violation of *koseiv* (writing), at least *miderabbanan*.

In some situations, even though a *melachah* may occur as a result of one's walking in the street, since his intention is not to cause the prohibited act, his walking is classified as a *davar she'eino miskavein* (an unintentional act), which is permitted. In many cases, however, one knows that his walking will definitely cause the *melachah* to occur. In such a situation, the *melachah* is classified as a *פסיק רישיה* (an inevitable consequence) and is prohibited (*Shabbos* 133a). Oftentimes, there is enough natural light for the walker's purposes without the additional electric light, and he therefore is not interested in the light and does not benefit from it. When the prohibited inevitable consequence is non-beneficial, termed a *פסיק רישיה דלא ניחא ליה*, the view of the *Aruch*, cited in *Tosfos* (*Shabbos* 103a, s.v. *lo tzricha*), is that such *melachah* is permitted on *Shabbos*. *Tosfos* disagrees, however, and maintains that *פסיק רישיה דלא ניחא ליה* is forbidden *miderabbanan*.

Nevertheless, it would seem that an argument for leniency can be made along the following lines (see *Yabi'a Omer* 9:35:6). The *Mishmah* in *Shabbos* (106b) teaches that if one person sat in the doorway of a house, thereby preventing a deer that was inside from escaping, he is liable for violating the *melachah* of *tzeidah* (trapping). If a second person then came and sat down alongside him, he is exempt. He is not liable for sitting down in the doorway, because when he did so, the deer had already been trapped. In fact, even if the first person subsequently gets up and leaves, the second person is not in violation of *tzeidah* and is permitted to continue to sit there.

Rav Soloveitchik explained that the principle governing this *halachah* is that only active performance of *melachah* on *Shabbos* is forbidden. One cannot violate a *melachah d'oraisa* on *Shabbos* *בשב ואל תעשה*, by being merely a passive participant. Since at

the moment the second person sat down he did not perform an act of *tzeidah*, as the deer had already been trapped, the subsequent exit of the first person cannot cause that act to be viewed as an act of *tzeidah* retroactively. Furthermore, even when the second person remains in the doorway, he is not engaging in any positive act of *tzeidah* for which to be liable. [See *Eretz HaTzvi*, pp. 54-55.]

The *Mishnah* concludes by stating that the case of the passive participant is analogous to one who locks his house to safeguard it, who is not liable for *tzeidah* even if a deer is found to be trapped therein. Both of these actions are completely permissible. However, the *Rishonim* debate the circumstances of the latter case.

The *Ran* (*Shabbos*, 38a-38b in *dapei haRif*, s.v. *Masnisin*) quotes the explanation of the *Rashba* (107a, s.v. *Tosefta*), based on the *Yerushalmi* (*Shabbos* 13:6), that in the case in question, the person is both aware that by locking the door to his house he will trap the deer inside and is also interested in trapping the deer. Nevertheless, it is permissible to lock his house to safeguard it; he is not liable for the automatic trapping of the deer, since this is merely a secondary intention. It is forbidden to lock the door only if trapping the deer inside is one's primary intention.

Although the object of the *melachah* is obviously the trapped animal, the *Yerushalmi*, according to the *Rashba's* understanding, apparently distinguishes between two forms of *tzeidah* that differ in terms of the object that the **person** interacts with. One type of *tzeidah* is accomplished by handling the animal itself, such as by throwing a net over an animal. A second form of *tzeidah* is when one traps the animal indirectly, such as by locking a door to a house, thereby trapping an animal inside.

In the latter case, posits the *Yerushalmi*, it is considered as though one performs a *melachah* on the animal only if that is his primary intention. If the main purpose of locking the door is to secure the house and trapping the animal is only secondary,

the action performed on the door does not relate to the animal. In other words, locking the door is considered *tzeidah* בִּשְׁבַב וְאֵל תַּעֲשֶׂה, and, like in the *Mishnah's* first case, this type of *melachah* is not liable.

The *Ran* vehemently disagrees, arguing that having two intentions – one for a permitted activity and a second for a prohibited one – cannot absolve someone from violating a *melachah*. Since the person locks the door in order to trap the deer, he violates the *melachah* of *tzeidah*, regardless of whether he also locks the door to secure his house. According to the *Ran*, one is permitted to lock the door only if his **sole** intention is to secure his house. Furthermore, even if his sole intention is to secure his house and he does not intend to trap the deer, it is still forbidden to lock the door if trapping the deer is a פְּסִיק רִישִׁיָּה. The *Ran* thus interprets the *Yerushalmi* as referring to a case in which the person is unaware that a deer will be trapped by his locking the door. The leniency of the *Yerushalmi* is merely in not requiring him to now open the door and free the deer.

The *Shiltei Giborim* (os 3) suggests a compromise *psak* between the *Ran's* stringent view and the *Rashba's* leniency. If one locks the door to protect his house, but he also intends to trap the animal, following the view of the *Ran*, we consider his action a *davar hamiskavein*, an intentional act. However, if his **sole** interest is in protecting his house, we follow the *Rashba's* leniency. He may lock the door, even if he knows that by doing so the animal will be trapped.

A number of *Acharonim* (*Yeshu'os Ya'akov*, *Orach Chaim* 316:5; *Aznei Nezer*, *Orach Chaim* 194) favor this compromise. They explain that locking the door is not a typical case of פְּסִיק רִישִׁיָּה. Here, the person's physical activity is performed on the **door**, whereas the resulting *melachah* occurs indirectly with regard to the **animal**. If the resulting *melachah* is physically connected to the action that one performs, פְּסִיק רִישִׁיָּה is forbidden, but not if the *melachah* takes effect in a detached, distant location. Thus,

locking a door that traps an animal inside is only considered *tzeidah* if one desires and intends to trap the animal. Absent such interest, the act of locking the door does not relate to the animal, and the act is not considered a פסיק רישיה at all. [See *Ginas Egoz*, p. 197.]

The same should be true with regard to walking in front of electronic sensors and surveillance cameras. Since the person walking down the street does not require extra light, he has no interest in the electric lights, just as he has no interest in being caught on camera. Even though he knows that it is inevitable that the *melachah* will take place, we accept the lenient opinion of the *Rashba* – the Halachah does not view his act as relating to the lights or the camera if he does not directly handle these items. Here, the inevitable *melachah* will be produced in an object in a separate location, detached from his physical act. Therefore, as long as he does not intend to perform the given *melachah*, this type of פסיק רישיה is considered irrelevant to him (see essay by Rav Yaakov Shlomo Mozeson, *Kovetz Beis Aharon V'Yisrael*, Av-Elul 5757, pp. 63-68).

If possible, it would be preferable for one to avoid triggering an electronic sensor, since the *Ran* prohibits locking the door knowing the deer will be trapped and considers this to be a פסיק רישיה. Nevertheless, if unavoidable, walking in front of sensors and cameras would be considered a *sha'as hadchak* (pressing circumstance), and as such, we may be lenient and follow the *ikar hadin* (basic *halachah*) in accordance with the *Rashba*.



PARSHAS PEKUDEI

MISHKAN AS A MASHKON

אלה פקודי המשכן משכן העדות.

These are the accountings of the *Mishkan*, the *Mishkan* of the Testimony. (*Shemos* 38:21)

RASHI, QUOTING the *Tanchuma* (5), notes the repetition of the word משכן. Understanding משכן as being related to the word משכון (a security on a loan), the *Tanna'im* comment that the implication of the *passuk* is that *Hashem* took the two *Batei Mikdash* as “collateral” for the *aveiros* of *Bnei Yisrael*. It follows from this interpretation that once *Bnei Yisrael* repent and *Hashem* accepts their *teshuvah* and forgives them for their *aveiros*, He will be **obligated** to restore the *Beis HaMikdash*, much as a lender returns a security once a loan is repaid.

This forms the basis of the Vilna Gaon’s practice regarding the proper *nusach* of the third *berachah* in *Birchas HaMazon*, the subject of a *machlokes* between the *Mechaber* and the *Rama* (*Orach Chaim* 188:4). The *Mechaber* writes that one should conclude the *berachah* with the phrase בונה ירושלים, whereas the *Rama* adds the word ברחמי, thus reciting בונה ברחמי ירושלים. Although the Vilna Gaon generally *davened Nusach Ashkenaz*, he felt that in this instance the *nusach* of the *Mechaber* was more correct (*Ma’aseh Rav* 87).

The *Beis Yosef* quotes *Rishonim* who explain the *nusach* of בונה ירושלים based on the *passuk*, ושביה בצדקה, -

“Tziyon will be redeemed through justice, and those who return to her through righteousness” (*Yeshayah* 1:27). Given the comment of the *Midrash*, *Chazal* understand the *passuk* as follows. The phrase **בצדקה ושביה** means that *Hashem* will accept the *teshuvah* of *Bnei Yisrael* as an act of **kindness** on His part. However, once *Hashem* forgives the *aveiros*, He will then be **obligated** to return the **משכון**. After all, if a creditor kindly volunteers to forgive a loan, the borrower may then demand that he return his **משכון** to him. Thus, *Hashem* will rebuild Yerushalayim, representing the *Beis HaMikdash*, not out of a sense of **mercy**, but rather through **strict justice**, **ציון במשפט תפדה**. The word **ברחמי** should therefore be deleted from the *berachah* of **בונה ירושלים**.

The *Chofetz Chaim* writes in the introduction to the *Mishnah Berurah* that when there is a *machlokes Acharonim*, he will quote the *Gr"e* in particular in order to arrive at the *psak halachah*. In fact, the *Chofetz Chaim* considered himself a *talmid* of the *beis medrash* of the Vilna Gaon by virtue of the fact that his *rebbe* was a *talmid* of Rav Chaim Voloziner, and he therefore followed all of the *minhagim* of the *Gr"e*, albeit privately.

A close *talmid* writes that when the *Chofetz Chaim* led *Birchas HaMazon* and recited the *bentching* out loud, he did not want to disclose that he followed the *nusach haGr"e* of **בונה ירושלים**. Instead, he had another person, usually his son-in-law, recite the conclusion of this *berachah* out loud (*HaTzaddik Rabbi Shlomo, siman 68*).



ANAN HASHEM

כי ענן ד' על המשכן יומם ואש תהיה לילה בו לעיני כל בית ישראל בכל מסעיהם.

For the cloud of *Hashem* was upon the *Mishkan* by day, and there was fire therein by night, before the eyes of all of the House of Israel throughout their journeys. (*Shemos* 40:38)

THE *SFORNO* (40:36) has a fascinating comment on this final *passuk* of the *parsha*. He explains that the *anan Hashem* represented a special *giluy Shechinah* (Divine revelation) that was so firmly established in the *Mishkan* that it did not depart at all from there until *Bnei Yisrael* had to journey. This degree of *hashra'as haShechinah* (Divine presence) was not present in Shiloh, in the First *Beis HaMikdash*, or in the Second *Beis HaMikdash*. [When Shlomo HaMelech built the *Bayis Rishon*, an *anan* appeared for a brief time, but it later disappeared (*Melachim I* 8:10-11).] However, continues the *Sforno*, an even greater measure of *hashra'as haShechinah* will be manifest in the Third *Beis HaMikdash*, as the *passuk* describes, 'ואני אהיה לה נאום ד' – חומת אש סביב ולכבוד אהיה בתוכה – “For I will be to her, says *Hashem*, a wall of fire all around, and will be the glory in the midst of her” (*Zechariah* 2:9).

Elsewhere, in reference to *hadlakas hamenorah*, the *Sforno* elaborates on the significance of the presence of the *anan Hashem* in the *Midbar*. He notes that the Torah specifies Aharon, the *Kohen Gadol*, as being the one to kindle the *menorah*: מחוץ לפרוכת העדות – באוהל מועד יערוך אותו אהרן מערב עד בוקר לפני ד' תמיד – “Outside the Curtain of the Testimony, in the *Ohel Mo'ed*, **Aharon** shall arrange it, from evening to morning, before *Hashem*, continually” (*Vayikra* 24:3). This is striking, as a *Kohen Hedyot* (ordinary *Kohen*) is generally qualified to perform all *avodos* in the *Beis HaMikdash*, with the exception of *avodas Yom HaKippurim*. [*Rashi's* opinion (*Horiyos* 11b, s.v. *ein*), against that of *Tosfos* (*Megillah* 9b, s.v. *ein*), is that there is one additional

exception – the *avodah* of the פר העלם דבר של ציבור (bull for the communal error).]

The *Ramban* is bothered by the same question with regard to the offering of the *ketores*, where again Aharon is specifically mentioned: והקטיר עליו אהרן קטורת סמים בבוקר בבוקר – “Upon it, **Aharon** shall bring the spice incense up in smoke, every morning” (*Shemos* 30:7). The *Ramban* suggests that Aharon was required only to initiate the *avodah* of the *ketores* and of the *neiros*, since that *avodah* achieved the *chinuch* (inauguration) of the *mizbach hazahav* and the *menorah* respectively, thereby completing their *kedushah*.

The *Meshech Chochmah* (*Bamidbar* 8:2) makes a similar suggestion to defend the *Ramban*'s opinion (*Hilchos Bi'as HaMikdash* 9:7) that even a non-Kohen is permitted to kindle the *menorah*. Even though the *passuk* specifies Aharon as the one who lit the *menorah*, a Kohen was required only for the very first *hadlakah* to be *mechaneich* the *menorah*, but not for subsequent *hadlakos*.

This answer is somewhat difficult, since the *Gemara* in *Shevuos* (15a) teaches that the *kli shares* (service utensils) that Moshe made for the *Mishkan* were sanctified through their anointment with *shemen hamishchah*. From then on, however, new *keilim* achieved their *chinuch* when they were utilized for the performance of *avodah* in the *Beis HaMikdash*. If so, it does not seem that *avodah* performed with a *kli shares* played a role in its *chinuch* in the time of Moshe. Apparently, the *Ramban*'s understanding is that even in the time of Moshe, the initial *avodah* served to consecrate a *kli shares*, together with anointment with *shemen hamishchah*, and that is why a *Kohen Gadol* was required to perform that *avodah*.

The *Sforno*, however, offers a resolution to these difficulties based on the constant existence of the *anan Hashem* in the *Midbar*. He suggests that due to the *anan*, the daily status of *avodas haMishkan* was equal to its status on Yom Kippur in future generations, described by the phrase, כי בעון אראה על הכפורת – “for

in the cloud I appear upon the *kapores*" (Vayikra 16:2). The *anan* on Yom Kippur in the *Heichal* represented a deeper dimension of *hashra'as haShechinah*, and whenever this was manifest, the highest degree of *kedushas Kehunah* was necessary for the *avodah*. The *Sforno* reasons that just as the *halachah* requires a *Kohen Gadol* for *avodah* on Yom Kippur, this requirement extended to *hadlakas hamenorah* and the offering of the *ketores*, which took place in the *Heichal*, during the entire forty years in the *Midbar*.

It should follow, therefore, that in *Bayis HaShlishi* as well, a *Kohen Gadol* will be required for *avodah* in the *Heichal*. Interestingly, in describing the special *korbanos* that will be brought during the greater than six-month period of celebration over the dedication of the Third *Beis HaMikdash*, the *passuk* states, ועשה הנשיא ביום ההוא בעדו ובעד כל עם הארץ פר חטאת, – "On that day, the *Nasi* shall bring a bull chatas-offering for himself and for the entire people of the land" (*Yechezkel* 45:22). *Rashi* (45:17) quotes two opinions as to whether הנשיא refers to the *Kohen Gadol* or to the *Melech*.

We may suggest that the first opinion in *Rashi* is in line with the *chiddush* of the *Sforno*. As mentioned, there will be a **אש סביב חומת** around the Third *Beis HaMikdash*, and this represents an even greater *giluy Shechinah* than was present in the *Mishkan*. Just as *avodas Yom HaKippurim* requires a *Kohen Gadol*, and, according to the *Sforno*, a *Kohen Gadol* was necessary for *avodas haMishkan*, we well understand why the *avodah* at the inauguration of *Bayis HaShlishi* will require a *Kohen Gadol*. [See *Mitokh Ha-Ohel, The Haftarat*, pp. 639-641.]



PARSHAS VAYIKRA

YEDI'AS HACHEIT

או הודע אליו חטאתו אשר חטא בה והביא את קרבנו.

If his sin that he committed becomes known to him, he shall bring his offering. (*Vayikra* 4:23)

THIS *PASSUK* teaches that *yedi'as hacheit* (definite knowledge of the sin) is a necessary prerequisite to bringing a *Korban Chatas*. *Tosfos* (*Shavuos* 4b, s.v. *v'ne'elam*) questions why the Torah had to specify this point, as it should have been understood from the fact that a *Korban Chatas* may not be offered voluntarily. Since this *korban* may be offered only after one commits a *cheit*, it is obvious that the sinner must be aware that he sinned before bringing the *korban*.

Tosfos explains that the *passuk* comes to exclude a case in which the individual merely suspects that he may have sinned accidentally and is therefore *mafrish* (sets aside) an animal to be used as a potential *korban* if he ascertains that he did, in fact, commit an *aveirah*. The *passuk* teaches that even if he subsequently comes to the realization that he did sin, he is not able to use that animal (unless he sanctifies it again after the *yedi'ah*), because it was sanctified as a *korban* prior to definite knowledge that he sinned. The obligation to offer a *Korban Chatas* simply does not exist prior to *yedi'as hacheit*.

Rav Elchonon Wasserman *Hy"d* (*Kovetz He'aros, siman* 63) elaborates on the nature of the requirement of *yedi'as hacheit*

prior to offering a *Korban Chatas*. The *Gemara* in *Kereisos* (11b) derives that a sinner is not liable to a *Chatas* if an *eid echad* (single witness) reports his *aveirah* to him (and the accused pleads ignorance; *Tosfos*, s.v. *amru*): או הודע אליו חטאתו ולא שיודיעוהו אחרים – “If his sin becomes known to him’ [implying that the sinner himself must know that he sinned], and not that others tell him.” Although there is a well-known principle that עד אחד נאמן – a single witness is believed with regard to *issurim*, this form of testimony is insufficient to obligate someone to bring a *Korban Chatas*. Even though an *eid echad* is trusted, his report does not produce *yedi’ah*. When the Halachah requires *yedi’ah*, as in the case of a *Korban Chatas*, only the testimony of two *eidim* is sufficient.

Rav Elchonon uses this approach to explain another anomaly. The *Rosh* (*Mo’ed Katan* 3:32), quoting the *Ramban*, writes that one should begin to observe *aveilus* when an *eid echad* informs him that his relative died. Surprisingly, however, the *Ramban* does not present the principle of עד אחד נאמן באיסורים as the reason for this *halachah*. Instead, he writes that the *eid echad* is believed because when it comes to a מילתא דעבידא לאיגלויי – a matter that is likely to be exposed, such as the death of a relative, it is presumed that the witness will not lie.

This is striking, as the *Gemara* employs this rationale only when an *eid echad* is otherwise insufficient, such as when the *eid echad* is a non-Jew (*Yoreh De’ah* 86:1; *Shach* 3), or in the realm of *davar sheb’ervah* (a matter pertaining to forbidden marital relationships), when we usually require the testimony of two witnesses (*Yevamos* 115a). Why, then, with regard to *aveilus*, does the *Ramban* base the trustworthiness of the *eid echad* on the fact that his report is a מילתא דעבידא לאיגלויי?

Rav Elchonon explains that the *chiyuv aveilus*, like the *chiyuv* of *Korban Chatas*, begins only after one has *yedi’ah* that his relative died. Before he receives the information about the death, the *aveilus* does not begin at all, since awareness of the death is a condition in the *nihug aveilus*. For this reason, the *Shulchan*

Aruch (*Yoreh De'ah* 402:12) rules that if the death is unbeknownst to the potential *avel*, his friend may invite him to a wedding celebration without violating *lifnei iver* (causing someone to sin). Likewise, one may opt to withhold information about a death from an elderly relative until after the period of *shloshim* concludes, in order to avoid the necessity of his sitting *shiv'ah*.

Accordingly, **two** *eidim* should be required to report the death of a relative in order to meet the requirement of *yedi'ah*. Thus, the *Ramban* must justify why an *avel* begins observing *aveilus* based on the testimony of only a single *eid*. He does so based on the principle of כל מילתא דעבידא לאיגלויי לא משקרי בה אינשי. This is a *ruba d'lesa kaman* (strong likelihood), which satisfies the requirement of *yedi'ah* on the part of the *avel* for the *chiyuv aveilus* to set in.

Rav Soloveitchik pointed out that *yedi'as hacheit* is necessary not only to bring a *Korban Chatas*, but also for one to have a *chiyuv teshuvah*. Thus, *hakaras hacheit* (recognition of the sin) is the first step in the *teshuvah* process. The natural state of the Jewish *neshamah* is that it seeks to be close to *HaKadosh Baruch Hu*. It is considered an aberration for a person to desire to sin. Thus, *hakaras hacheit* stems from the sinner's feeling that he is distant from *HaKadosh Baruch Hu*. He wants to return because of the sense of loneliness that he experiences.

Rabbeinu Yonah (*Sha'arei Teshuvah* 4:17) writes that there is a special *mitzvah* of *teshuvah* on Yom Kippur, beyond the general obligation to repent every day. He bases this view on the *passuk*, לפני ד' תטהרו - "before Hashem shall you be cleansed" (*Vayikra* 16:30), which he understands as a directive to cleanse ourselves on this day. The Rav pointed out a similar statement of the *Rambam* (*Hilchos Teshuvah* 2:7):

יום הכיפורים הוא ... קץ מחילה וסליחה לישראל. לפיכך חייבים הכל לעשות תשובה ולהתוודות ביום הכיפורים.

Yom Kippur is ... a specific time of pardoning and forgiveness; therefore, all people are obligated to do *teshuvah* and to confess their *aveiros* on Yom Kippur.

Rav Soloveitchik suggested that the nature of the obligation may be different on Yom Kippur than during the rest of the year, specifically in regard to the requirement of *yedi'as hacheit*. In general, if a person becomes aware of an *aveirah* he committed and thus has *yedi'as hacheit*, he has an obligation to do *teshuvah*. The unique obligation that exists on Yom Kippur is for one to search through and review all of his actions. In actively reflecting on his actions, including those that he believed to be permissible in the past, he may well come to the realization that he had been committing an *aveirah* all along that he did not recognize. He may find a *yedi'as hacheit* that he was unaware of until this point, for which he is now able to do *teshuvah*.

The Rav suggested a parallel *halachah* that illustrates this additional requirement. In discussing the destruction of *avodah zarah* specifically in Eretz Yisrael, the Torah commands:

אבד תאבדון את כל המקומות אשר עבדו שם הגוים ... את אלהיהם ...
ואבדתם את שמם מן המקום ההוא.

You shall utterly destroy all the places where the nations worshipped ... their gods ... and you shall obliterate their names from that place. (*Devarim* 12:2-3)

Based on this, the *Rambam* (*Hilchos Avodas Kochavim* 7:1) rules, בארץ ישראל מצוה לרדוף אחריה עד שנאבד אותה מכל ארצנו – “In Eretz Yisrael, there is a *mitzvah* to chase after [*avodah zarah*] until we destroy it from our entire land.” In *chutz la’Aretz*, no such requirement exists; there, the *chiyuv* only applies to *avodah zarah* that we know about that is located in an area that we occupy. Indeed, these *pessukim*, which describe the settling of Eretz Yisrael after the *mitzvah* of destroying the *avodah zarah* therein, imply that as long as we have failed to achieve *bi’ur avodah zarah* in Eretz Yisrael, the *mitzvah* of *yishuv ha’Aretz* is incomplete. An essential component of *yishuv Eretz Yisrael* is cleansing the land from the *tum’ah* of *avodah zarah*.

In parallel, the *chiyuv teshuvah* that exists year-round only begins once there is *hakaras hacheit*, in the same way that the

obligation to bring a *Korban Chatas* requires *yedi'as hacheit*. However, the additional *teshuvah* obligation on Yom Kippur is similar to the increased obligation in Eretz Yisrael to chase after *avodah zarah* until we destroy it from our entire land. [See *MiPninei HaRav*, 2001 ed., pp. 320-321.]



PARSHAS TZAV

HECHSHER KEILIM

וכלי חרש אשר תבושל בו ישבר ואם בכלי נחושת בשלה ומורק ושוטף במים.
An earthenware vessel in which it [the *korban*] was cooked shall be broken; but if it was cooked in a copper vessel, that should be purged and rinsed with water. (*Vayikra* 6:21)

THE *SHULCHAN ARUCH* (*Orach Chaim* 428:4) notes that in a non-leap year, we always *lein Parshas Tzav* on *Shabbos Ha-Gadol*. This is appropriate because the *parsha* discusses *hagalas keilim*, the *kashering* (purging) of vessels in which *korbanos* were cooked. We derive the process of *kashering chametz keilim* before Pesach, which was widely practiced until recent times, from these *halachos* in *Parshas Tzav* (*Bei'ur Halachah*, s.v. *Tzav*).

Kashering is necessary for *keilim* used for cooking the meat of *kodshim* because these *keilim* absorb flavor, which is subject to the laws of *nosar* (a *korban* that was left over). Even though the *korban* was permissible at the time it was cooked, the *bli'ah* (absorbed flavor) inside the *kli* becomes forbidden as *nosar* when the time for eating the *korban* expires (*alos hashachar* for *kodshei kodshim*, or the second day's *shki'ah* for a *Korban Shelamim*). That *bli'ah* must be removed from the *kli* before its next use, so that it is not transferred to other food cooked in the *kli*.

This is also why we must *kasher* a *chametz kli* before Pesach in order to use it on Pesach. While it is true that one does not transgress the prohibition against possessing *chametz* for owning

a *kli* which previously absorbed *chametz*, nevertheless, these *bli'os* may be released into any food subsequently cooked in the *kli* and may cause the food to become prohibited on Pesach.

The *Gemara* in *Avodah Zarah* (76a) is troubled by a discrepancy between the methods of *kashering* described in our *parsha* and those in *Parshas Matos*. After the battle with Midyan, the Torah specifies two ways in which the *keilim* taken in the war could be *kashered*. If a *kli* had been used for broiling – such as a spit or grill, in which the food was heated on the fire without using a liquid medium – it must undergo *libun*, purging with fire. However, if it had been used with hot liquids to cook non-kosher food – such as a pot, kettle, or urn – it may be *kashered* through *hagalah*, purging in boiling water. The *Gemara* asks why the Torah mentions only the method of *hagalah* in our *parsha*, and not that of *libun*.

Abaye answers with the phrase, *גייד עליו ריעו* – “one sheds light on the other” (*Iyov* 36:33). Rather than being contradictory, the *kashering* described in *Matos* sheds light on our *parsha* and teaches that when a *korban* is broiled, *libun* is required to remove the absorbed flavor.

The *psak halachah*, however, is in accordance with Rava's answer, that there is a fundamental difference between the two *parshiyos*. In the case of *klei Midyan*, the *kli* absorbed **prohibited** flavor – *איסורא בלע*. Therefore, if the *kli* had come into direct contact with the heated food (without intervening liquid), *libun* is required to remove the non-kosher *bli'ah*. However, in *keilim* used for *korbanos*, the *kli* originally absorbed **permitted** flavor – *היתירא בלע*. Since the purpose of *kashering* is only to prevent a permissible *bli'ah* from turning into a forbidden *bli'ah* of *nosar* at a later time, *hagalah* is sufficient, even if the *kli* was used for broiling.

This explanation is the subject of a *machlokes* between the *Rambam* and the *Ra'avad* (*Hilchos Ma'aseh HaKorbanos* 8:14; see *Tosfos, Zevachim* 97a, s.v. *mamtin*).

The *Rambam* writes that all *keilim* used for cooking *kodshim* require *merikah* and *shtifah* (purging and rinsing) עקב אכילה – immediately after eating the *korban*. At that point, of course, the *bli'ah* of the *korban* in the walls of the *kli* is still permissible, **before** it becomes *nosar*. It seems that according to the *Rambam*, if the *bli'ah* were allowed to become *nosar* before *kashering* the *kli*, *libun* would be required if the *kli* was used for broiling. This is in line with the distinction that Rava made between איתורא בלע and היתירא בלע.

The *Ra'avad*, however, argues that since *merikah* and *shtifah* is a *mitzvah*, it is only logical that the Torah instruct us to perform this *mitzvah* on a *kli* that is already prohibited, not on a *kli* which is still kosher. Thus, in his view, the process of *merikah* and *shtifah* must apply **after** the *bli'ah* in the *kli* becomes *nosar*. [See essay for *Parshas Matos* for an explanation of the *Ra'avad's* opinion.]

The leniency of relying on *hagalah* in a case of היתירא בלע is based on a well-known explanation of the *Ran* (*Chullin*, 41a in *dapei haRif*, s.v. *dagim*). Even if *hagalah* is performed on a *kli* that was used for broiling, which would ordinarily have required *libun* to be *kashered*, the fact is that most of the *bli'ah* is extracted from the *kli*. The *bli'ah* of *issur* that remains in the walls of the *kli* is merely a *ta'am kalush* (a weak taste).

If the *ta'am* is already forbidden at the time of its absorption, a case of איתורא בלע, or if we are dealing with the *bli'ah* of a *korban* where the *ta'am* has been allowed to become *nosar*, even though *hagalah* converts the *ta'am* into a *ta'am kalush*, that weak *ta'am* is sufficient to **retain** an *issur*. The *ta'am kalush* continues to prohibit the use of the *kli*. On the other hand, if, as the *Rambam* maintains, the *kashering* is performed when the *ta'am* is still permissible, the weak *ta'am* that remains after *hagalah* cannot serve as the vehicle upon which an *issur* of *nosar* is initiated. The *issur nosar* cannot be **created** on a *ta'am kalush*.

[Presumably, we should consider *kashering* a *fleishig* or *milchig kli* a case of **בלע**, **היתירא**, and *hagalah* should be sufficient even if the *bli'ah* occurred through broiling. Nevertheless, the *Shach* (*Yoreh De'ah* 121:8) quotes earlier *Acharonim* who require *libun*. We may justify the *Shach's* position, which deems *basar b'chalav* as **בלע** **איסורא** (see *Rashash*, *Zevachim* 93b), based on the *issur* of *basar b'chalav derabbanan*. *Mid'oraisa*, *basar b'chalav* is only prohibited when milk and meat were absorbed together through an act of *bishul*; *miderabbanan*, however, we may never consume meat and milk together, even if one has not been absorbed into the other. In this sense, *basar* alone is *assur* after one has eaten *chalav*, and *chalav* alone is *assur* after one has eaten *basar*. Perhaps this is why *basar b'chalav* is considered **בלע** **איסורא**. The accepted *psak*, though, is in accordance with Rebbi Akiva Eiger (*Chiddushei Rebbi Akiva Eiger*), who does not require *libun* for *basar b'chalav*, since it is **בלע** **היתירא**.]

The *Ran* applies the above distinction between **בלע** **היתירא** and **בלע** **איסורא** to another case. The *Gemara* in *Chullin* (111b) cites the opinion of Shmuel, that if a hot piece of fish was placed on a cold *fleishig* plate, it is permitted to eat the fish with *kutach*, a dip that contains sour milk. This is because the fish did not acquire a taste directly from meat, but rather from the plate, which contained only an imparted flavor of meat, not meat itself. As such, the meat taste that has been imparted to the fish is merely a **טעם בר נותן טעם** – a taste of a taste (**נ"ט בר נ"ט**). In other words, the original meat flavor has been twice weakened – once when it was transmitted from the meat to the plate and a second time when it was transmitted from the plate to the fish.

The *Ran* writes that the leniency of **נ"ט בר נ"ט** is unique to flavors that are presently permitted, such as meat and milk, a situation of **בלע** **היתירא**. This is because the **נ"ט בר נ"ט** flavor is merely a *ta'am kalush*, and such a twice-weakened meat *ta'am* cannot bring an *issur* of *basar b'chalav* into being when it

combines with milk. As we saw with regard to a spit or grill *kashered* through *hagalah*, an *issur* cannot be **created** with a *ta'am kalush*.

However, if the original *bli'ah* was already *assur*, a *ta'am kalush* may **maintain** the *issur* that was already present. In fact, the *issur* remains in effect no matter how many times the *ta'am* is subsequently weakened.

[The *Rama* (*Yoreh De'ah* 95:2) cites the stringent opinion of the *Rivan* – in the name of *Rashi*, his father-in-law – regarding a case of *נ"ט בר נ"ט* that involves an act of cooking, not merely a *bli'ah*. Accordingly, if a *pareve* food was not merely placed on a meat plate, but was actually cooked in a *fleishig* pot, we are *machmir* not to eat that food with milk.] [See *B'Ikvei HaTzon*, pp. 144-145.]

In the first phrase of the *passuk* cited above, the Torah requires that a *kli cheres* that absorbed a *bli'ah* of *issur* must be broken, *וכלי חרש אשר תבושל בו ישבר*. As the *Gemara* in *Pesachim* (30b) explains, *hagalah* is ineffective in removing the *bli'ah* in this case, since *התורה העידה על כלי חרש שאינו יוצא מידי דופיו לעולם* – “the Torah has testified regarding an earthenware vessel that what it has absorbed never leaves its walls.” Accordingly, a *bli'ah* of a *korban* that becomes *nosar* in a *kli cheres* can never be removed.

Surprisingly, the *Rambam* (*Hilchos Ma'aseh HaKorbanos* 8:14) limits the *halachah* of *shevirah* (shattering) of a *kli cheres* to the *bli'ah* of a *Korban Chatas*. In other words, according to the *Rambam*, *merikah* and *shtifah* is effective for any *korban* other than a *Chatas* – even in a *kli cheres*. This requires explanation in light of the Torah's explicit statement regarding a *kli cheres*.

Rav Chaim Soloveitchik (*MiGinzei HaGra"ch*, *siman* 59; see also *Aruch HaShulchan*, *Yoreh De'ah* 93:4-8) understands the *Rambam's* position as being based on the fact that the purpose of the *kashering* is not to actually remove the *bli'ah*, but to prevent a permissible *bli'ah* from turning into a forbidden *bli'ah*

of *nosar* at a later time. If the *ta'am* were already *assur*, *hagalalah* would **not** suffice to *kasher* the *kli*, since there would be some residual *ta'am* of *issur* after *hagalalah*. However, this is a case of *היתירא בלע*, since, as mentioned, the *Rambam* maintains that *merikah* and *shtifah* are performed **before** the *korban* becomes *nosar*. Therefore, even though *hagalalah* will not succeed in removing the *bli'ah* in a *kli cheres* entirely, *hagalalah* is sufficient to convert the *bli'ah* into a *ta'am kalush*, and this weakened *ta'am* will not be transformed into an *issur* upon becoming *nosar*.

[The notion that *hagalalah* may be effective even for a *kli cheres* finds support in a comment of the *Yerushalmi* (*Terumos* 11:4), cited by the *Tur* (*Yoreh De'ah* 121), that to remove the *bli'ah* of *stam yeinam b'zman hazeh* (which is only prohibited rabbinically), it is effective to perform *hagalalah* three separate times. Based on this, Rav Moshe Feinstein (*Igros Moshe*, *Yoreh De'ah* 2:46) permitted *ba'alei teshuvah* to rely on three-time *hagalalah* to *kasher* porcelain dishes that had not been used in more than twelve months, in a situation of significant monetary loss.]

According to the *Rambam*, the only exception to the rule is a *kli cheres* used for a *Korban Chatas*, where there is a unique *mitzvah* of *shevirah*. Even though the absorption of the *kli* was *היתירא בלע*, the *gezeiras hakasuv* is that *hagalalah* is insufficient. Since, after all, a *ta'am kalush* of *Korban Chatas* would remain in the *kli* after *hagalalah*, here, the Torah requires *shevirah*. [See *Mesorah*, vol. 3, pp. 17-18.]



There is an important *machlokes* between *Rabbeinu Tam* (*Tosfos*, *Chullin* 8a, s.v. *shelivnah*; *Pesachim* 30b, s.v. *v'hilchesa*) and the *Ramban* (cited by the *Ran*, *Pesachim*, 8a-8b in *dapei haRif*, s.v. *aval*) as to whether *chametz* year-round is considered *בלע היתירא* or *איסורא בלע*.

According to *Rabbeinu Tam*, since the *kli* absorbed the *chametz* while *chametz* was still permitted, *hagalah* suffices. One never has to do *libun* on a *chametz kli* to permit its use on Pesach, even when the *chametz* entered the *kli* directly through fire, as with a tin used to bake bread or cookies. As we have seen, after *hagalah*, only a *ta'am kalush* remains in the *kli*, and since *chametz* is היתירא בלע, when the *zeman issur chametz* begins, an *issur* cannot be initiated on such a *ta'am*.

The *Ramban* disagrees and argues that whereas the absorption of taste from a *korban* or *basar b'chalav* is considered היתירא בלע, *chametz* is deemed איסורא בלע. If a *korban* is cooked in a *kli*, the *ta'am* is not designated as *nosar* until after it has been absorbed and the time for eating the *korban* expires. Similarly, in a *fleishig* or *milchig kli*, no *basar b'chalav* exists until the *basar* combines with the *chalav*. In the case of *chametz* before Pesach, however, the *ta'am* is labeled as *chametz* even before it is absorbed; it is only that *chametz* is not yet *assur*. In the words of the *Ramban*, חמץ שמו עליו. Therefore, a *bli'ah* of *chametz* is considered איסורא בלע, and a *kli* used for baking *chametz* requires *libun*, not merely *hagalah*.

In this regard, the *Acharonim* (*Bei'ur HaGr"a* 452:1, s.v. *yesh lizaher*; *Pri Chadash* 452:1, s.v. *kedei shelo*) discuss what seems to be a contradiction in the *Shulchan Aruch*. On the one hand, the *Mechaber* (*Orach Chaim* 452:1) rules that we may apply the leniency of נ"ט בר נ"ט regarding *chametz*, implying, like *Rabbeinu Tam*, that *chametz* is categorized as היתירא בלע. Yet, the *Mechaber* (*Orach Chaim* 451:4) maintains that *chametz keilim* that were used with fire with no liquid medium, such as baking tins, require *libun*, not merely *hagalah*, like the *Ramban* rules.

It has traditionally been assumed that the *ikar hadin* (basic *halachah*) is in accordance with *Rabbeinu Tam's* view and that our practice to perform *libun* on *chametz keilim* is merely a *chumrah* in the area of *hagalas keilim*. That is why the *Mechaber* (*Yoreh De'ah* 121:4) relies on the opinion of *Rabbeinu Tam* in

the context of *kashering* a frying pan. In that case, there is an additional consideration for leniency, since frying may be considered like cooking, as opposed to broiling or baking, due to the presence of intervening oil (*Mishnah Berurah* 451:63). In combination with this opinion, the *Mechaber* allows a *chametz* frying pan to be *kashered* for use over Pesach through *hagalalah* alone.

The *Mishnah Berurah* (*Bei'ur Halachah* 452:1, s.v. *she'ein tzrichin*) takes a different approach, ruling that just as the *Mechaber* requires *libun* for a *kli* used for baking *chametz*, we should similarly be stringent to consider a *bli'ah* of *chametz* as איסורא בלע with regard to נ"ט בר נ"ט. This position, in turn, presents a limitation regarding *kashering chametz keilim* when they are *bnei yoman*, having been used that day for *chametz*.

Tosfos (*Avodah Zarah* 76a, s.v. *mikan*; *Chullin* 108b, s.v. *shenafal*) raises an additional concern in reference to *hagalalah*. When a non-kosher *kli* is immersed in boiling hot water to accomplish *hagalalah*, there is nothing preventing the non-kosher *bli'ah*, which exited from the *kli* into the water, from returning back to the *kli*. *Tosfos* resolves this problem by restricting *hagalalah* to *keilim* that are **not** *bnei yoman*. If the *kli* has not been used that day for non-kosher food, its *bli'ah* is permitted *mid'oraisa*, since it is *nosen ta'am lifgam* (imparts unfavorable flavor). Although the *Chachamim* enacted a decree prohibiting the use of a pot that is *eino ben yomo*, the *gezeirah* was only instituted if the original *bli'ah* was *lishvach* (favorable) and then turned *lifgam* (unfavorable), not when the *bli'ah* that first enters the *kli* was *lifgam*, such as during *hagalalah*. [Alternatively, one could be careful to immerse the non-kosher *kli* in enough boiling hot water to effect *bitul b'shishim* against the *bli'ah*.]

Tosfos writes that when *kashering keilim* before Pesach, we need not restrict *hagalalah* in this way. Even if the *kli* is *ben yomo*, there is no concern that its *bli'ah* will return to it from the *kashering* water, since *chametz* is a case of היתירא בלע, and, as

mentioned earlier, נ"ט בר נ"ט is permissible in such a situation. [Even according to the *Rivan* mentioned above, who is stringent when נ"ט בר נ"ט involves cooking, this case would be a נ"ט בר נ"ט בר נ"ט (*chametz* to the *kli*, *kli* to the water, water back to the *kli*), which is certainly permissible.]

Despite the practice observed for centuries based on *Tosfos*, however, the *Mishnah Berurah's* approach has recently become popular. Accordingly, *chametz keilim* are usually not *kashered* if they are *bnei yoman*.



PARSHAS SHEMINI

SIMANEI TAHARAH

THE GEMARA in *Bechoros* (6a-6b) records a *Beraisa* that discusses the case of an animal of one species that, as a result of a mutation, bears an offspring resembling another species. We follow the opinion of the *Chachamim* that “a camel that was born from a cow” – that is, an offspring resembling a non-kosher animal born from a kosher animal – is kosher, even though it is missing the *simanei taharah* (the characteristics of a kosher animal) of *mafreses parsah* (split hooves) and *ma’alas geirah* (chewing its cud).

Apparently, we view the *simanim* as necessary only to be *kovei’a* the *min* (species) as a *min kasher*. In other words, the recognition of *simanim* is critical in a particular animal only if we were to be presented with a species that is not yet identified as a kosher species. In a situation in which the animal is definitely the product of a recognized *min tahor*, it is kosher even without those *simanim*.

The requirement of fins and scales for kosher fish is similar. As the *Gemara* in *Avodah Zarah* (39a) teaches, a fish that does not presently have fins and scales, but is destined to grow them when it develops to maturity, is kosher even before the *simanim* develop. Clearly, it is not the checking for the presence of *simanim* that is *matir* (permits) the consumption of the fish;

rather, the *simanim* are used to be *kovei'a* a certain species of fish as being kosher.

The *Darchei Teshuvah* (*Yoreh De'ah* 79:1, 83:1) elaborates on this idea in reference to the *Sefer HaChinuch's* contention (*mitzvah* 153; see *Minchas Chinuch*) that there is an obligatory *mitzvas aseh* of *bedikas simanim*.

The *Chinuch* writes that if one consumed an animal based on only one of the two *simanei taharah*, he has failed to fulfill the *mitzvah* of *bedikas simanim*, even if the animal did, in fact, possess the second *siman*. The *Darchei Teshuvah* explains that the *mitzvah* that the *Chinuch* describes only applies to a fish that is not recognized as belonging to a *min tahor*. Before one partakes of a fish of an **unidentified** species, there is a *mitzvah* to check for its *simanim*, but this does not apply to a fish known to belong to a kosher species. Similarly, a *shochet* may perform *shechitah* on an animal without first checking its *simanei taharah*, as long as he recognizes the animal as belonging to a kosher species.

Some authorities disputed the permissibility of canned tuna fish based on the requirement of *bedikas simanim*. They argued that since in the factory in Puerto Rico, only non-Jewish workers check each fish, we lack the *matir* of *bedikah*. However, this argument is incorrect. As we have seen, *bedikas simanim* is necessary only to establish a particular species as a *min tahor*. Once a species is recognized to be a *min tahor*, a fish from that species is permissible, even without examination of its *simanim*. [See *Ginas Egoz*, p. 61.]

The *Beraisa* in *Bechoros* also discusses the opposite case – that of an offspring resembling a kosher animal that was born from a non-kosher animal. We derive that this animal is forbidden for consumption from the *passuk*, אַךְ אֵת זֶה לֹא תֹאכְלוּ, – “But this you shall not eat from among those that chew their cud and that have split hooves” (*Vayikra* 11:4). Applying an additional level of interpretation

to this *passuk*, Chazal understand that there may exist an animal that chews its cud and that has split hooves, but which is forbidden nonetheless.

It is unclear, however, whether such an animal, which possesses *simanei taharah* but which was born from a non-kosher animal, is treated like its mother in all areas of Halachah. The *Pischei Teshuvah* (Yoreh De'ah 79:2) quotes the *Yad Eliyahu* (*siman* 2), who deliberates the question of whether the animal is considered a *beheimah tamei'ah*, like its mother, or that the *gezeiras hakasuv* merely forbids it for *achilah*, but that it is treated as a *beheimah tehorah* in other contexts by virtue of its *simanei taharah*.

On the one hand, as we have seen, the purpose of checking for *simanei taharah* is merely to be *kovei'a* whether a *min* is kosher or not. Thus, in this case, it may be argued that the presence of *simanei taharah* in the animal is inconsequential, since we know based on its mother that it certainly belongs to a *min tamei*.

Alternatively, the *Yad Eliyahu* suggests, perhaps there are **two** ways in which an animal can attain kosher status – either by belonging to a *min beheimah tehorah* or by possessing *simanei taharah*. In other words, *simanim* may **confer** the status of *beheimah tehorah* on an animal, even if the animal is not a member of a kosher species. Such an animal is certainly *assur b'achilah*, as the *Beraisai* teaches, but this may be due to an extraneous consideration – the fact that the animal was produced by a non-kosher animal. The *Gemara* in *Chullin* (64b) derives from the phrase, ואת בת היענה – “and the ‘daughter’ of the ostrich” (*Vayikra* 11:16), that the egg of a non-kosher bird is prohibited. This serves as the source for the general principle that היוצא מן האסור אסור – the product of that which is forbidden is forbidden. Accordingly, just as milk or eggs that are produced by a *min tamei* are forbidden, the offspring of a non-kosher animal is no different.

There are a number of practical ramifications that result from labeling an animal with *simanei taharah* born from a non-kosher animal as essentially a *min tahor* that is *assur b'achilah* due to **היוצא מן האסור אסור**.

First, *shechitah* of an animal prevents it from conveying the *tum'ah* associated with a *neveilah* only if the animal is a *min tahor*; *shechitah* has no relevance to an animal that is deemed a *beheimah teme'ah*. Furthermore, the Rambam maintains (*Hilchos Ma'achalos Assuros* 3:6), against the view of Tosfos (*Chullin*, 64a, s.v. *she'im*), that consuming a **יוצא מן האסור** is not prohibited as a *lo sa'aseh*, but only as an *issur aseh*, and therefore does not carry the penalty of *malkos*.

In addition, the status of *cheilev* (forbidden fats) applies only to a *beheimah tehovah*, not to a *beheimah teme'ah* (*Chullin* 117a). Thus, the permissibility of conducting business with *cheilev* would be extended to the *cheilev* of this animal only if it is considered a *min tahor* (*Shach*, *Yoreh De'ah* 64:2). Similarly, the *issur* of *eiver min hachai* (consuming the limb of a living animal), which is forbidden to a non-Jew as well, applies only to a *min tahor* (see *Shach*, *Yoreh De'ah* 62:3).

Although the *Yad Eliyahu* feels that we should be *machmir* on this question, since it remains a *sfeika d'oraisa*, he concludes that it is more compelling to argue that this animal is **not** classified as a full-fledged *beheimah teme'ah*.

In *Hilchos Sefer Torah* (*Yoreh De'ah* 271:2), the *Pischei Teshuvah* again quotes the *Yad Eliyahu*, this time in reference to whether one may use the hide of a "tahor" animal born from a *tamei* animal for the *klaf* of a *sefer Torah*, *tefillin*, or *mezuzos*.

The *Gemara* in *Shabbos* (28b) cites the *passuk* regarding *tefillin*, **למען תהיה תורת ד' בפיך** – "so that the Torah of Hashem will be in your mouth" (*Shemos* 13:9), which is interpreted as teaching that the material on which *tefillin* are written must be **מן המותר בפיך** – "from a species of animal that may be eaten." [This is an additional level of interpretation of the *passuk*,

certainly not intended to represent the *pshuto shel mikra*.] Likewise, with regard to the *retzu'os*, the *Gemara* teaches that לא הוכשרו למלאכת שמים אלא עור בהמה טהורה בלבד – “The only hide fit for the service of *Shamayim* is the hide of a kosher animal alone,” excluding the hide of a *beheimah tamei'ah*.

In fact, the *Noda B'Yehudah* (*Mahadura Kamma, Orach Chaim 1*, quoted by *Sha'arei Teshuvah 32:27*) writes that one should be stringent not to use black paint that contains *etzem hapil* (ground elephant tusk) for *tefillin*, since the requirement of מן המותר בפיק may apply even to something used to color *tefillin* (see *Mahadura Tinyana, Orach Chaim 3*, by the son of the *Noda B'Yehudah*).

The *Gemara* in *Shabbos* (108a) teaches that one may write *tefillin* on the hides of *neveilos* or *tereifos* of kosher animals. Clearly, then, מן המותר בפיק refers not to specific animals that may be eaten, but to the entire *min* that may be eaten. Likewise, the reason that the hide of a non-kosher animal may not be used for *tefillin* is that it is from a *min tamei*, not because it is *assur b'achilah*. In fact, the hide itself, because it is inedible, is not prohibited (*mid'oraisa*); the *issur achilah* only pertains to the meat of an animal (*Rambam, Hilchos Ma'achalos Asuros 4:18*).

Since the principle of מן המותר בפיק requires only that the hide be taken from a *min tahor*, it should follow that the hide of a “*tahor*” animal born from a *tamei* animal is not excluded from use for *tefillin*. It may be argued that this animal is a *min tahor* by virtue of its *simanei taharah*; using its hide therefore would not constitute a violation of מן המותר בפיק, despite the fact that it remains prohibited to eat as a מן האסור.



PARSHAS TAZRIA

CLASSES OF TUM'AH

THE MISHNAH in *Kereisos* (8b) teaches that a *yoledes* (a woman who has given birth) is one of four *mechusrei kapparah* (literally, those lacking atonement), along with a *zav*, *zavah*, and *metzora*. Despite their immersing in a *mikveh* and waiting until *shki'ah* (or in the case of a *yoledes*, the end of her forty or eighty-day *melos*, that consists of some days of *tum'ah* and some days of *taharah*), these individuals remain *tamei* with respect to eating *kodshim* and entering the *Beis HaMikdash* until they bring specific purification *korbanos*.

The *Mishnah* (8a) teaches that if a woman gave birth several times, and is therefore obligated to bring several sets of *korbanos*, once she brings one set, she may partake of *kodshim* and enter the *Beis HaMikdash*. This is because bringing the *korbanos mechusrei kapparah* is considered the completion of the *taharah* process. The *Gemara* therefore compares the *korbanos* to *tevilah* in a *mikveh*. One who contacted five instances of *tum'ah* is *tahor* as soon as he is *tovel* one time, since he had a single state of *tum'ah* that *tevilah* removes. Similarly, one set of *korbanos* is *metaher* a *yoledes* from a number of births, even though she remains obligated to bring the rest of the sets of her *korbanos*.

The *Gemara* in *Nedarim* (35b) also relates to the idea that the *korban yoledes* is a *metaher*. Whenever one brings a *korban*

to the *Beis HaMikdash*, *da'as* (consent) of the person on whose behalf it is offered is required, both when the *korban* is consecrated and when it is offered. The *Gemara* explains that the *korbanos* of *mechusrei kapparah* are exceptions to this rule. A man may bring this type of *korban* for his young children who have *tum'as zav* or for his wife who is a *shotah* after she has given birth, despite their lack of ability to give consent. Again, this type of *korban* is similar to the *taharah* of immersing in a *mikvah*. One does not require intent for *tevilah* (*mid'oraisa*; see *Chullin* 31a-31b), and the same is true for the *korbanos* of *mechusrei kapparah*.

The need for a *korban* in order for these *temei'im* to complete their *taharah* process highlights the stringency of the class of *tum'ah* that affects the *mechusrei kapparah*. *Tum'as sheretz* and *tum'as meis* are examples of *tum'as magga* – *tum'ah* that results from contact with something external that is *tamei*. This type of *tum'ah* is transmitted through touching a *sheretz* or by being under the same roof as a *meis*. In contrast to *tum'as magga*, the *mechusrei kapparah* possess a *טומאה היוצאה עליו מגופו*, where the *tum'ah* originates within one's own body, and this is considered a more severe form of *tum'ah*.

For example, some *Rishonim* maintain that the leniency of *טהור הרבים טהור* – “a *tum'ah* uncertainty that occurs in a public domain is deemed *tahor*” (*Taharos* 4:11) is limited to cases of *tum'as magga* (see *Tosfos*, *Niddah* 2a, s.v. *mei'eis*, and *Shitah Mekubetzes*, *Bava Kamma* 11a, s.v. *d'ein*, against the view of *Tosfos*, *Bava Kamma* 11a, s.v. *d'ein*).

Likewise, the *Mishnah* in *Pesachim* (95b) teaches that in the event a majority of the *tzibbur* is *tamei meis* on the fourteenth of Nissan and the *Korban Pesach* is offered in a state of *tum'ah*, *zavim*, *zavos*, *niddos*, and *yoldos* may not eat from it. The dispensation allowing the *Pesach* to be offered and eaten *b'tum'ah* applies only to forms of *tum'as magga*, not to those individuals who contracted a *טומאה היוצאה עליו מגופו*. Similarly, a *tzibbur*

that is *tamei* with such a self-issuing *tum'ah* may not offer the *Korban Pesach* in this state. [The *Rambam* (*Hilchos Bi'as Mikdash* 4:12; *Hilchos Korban Pesach* 7:1), against the view of *Tosfos* (*Zevachim* 17b, s.v. *kasavar*; *Zevachim* 22b, s.v. *iy hachi*), maintains that the prohibition to offer a *korban b'tum'ah* is only overridden for *tum'as meis*, and not even for other forms of *tum'as magga*.]

Another difference between *tum'as magga* and טומאה היוצאה עליו מגופו on a level of *d'oraisa* relates to entry into *Har HaBayis*. The *Gemara* in *Pesachim* (67a) notes that the word מחנה (camp) appears three times in the *pessukim* that discusses the *mitzvah* to send the *temei'im* outside the various *machanos*:

צו את בני ישראל וישלחו מן המחנה כל צרוע וכל זב וכל טמא לנפש. מזכר עד נקבה תשלחו אל מחוץ למחנה תשלחום ולא יטמאו את מחניהם אשר אני שוכן בתוכם.

Command *Bnei Yisrael* that they shall expel from the camp everyone with *tzara'as*, everyone who has had a *zav*-emission, and everyone contaminated by a human corpse. Male and female alike shall you expel, to the outside of the camp shall you expel them, so that they should not contaminate their camps, among which I dwell. (*Bamidbar* 5:2-3)

The *Gemara* explains that these three *machanos* correspond, in descending order of *kedushah*, to the מחנה שכינה (*Azarah* – *Beis HaMikdash* courtyard), מחנה לוייה (*Har HaBayis* – Temple Mount), and מחנה ישראל (*Yerushalayim*). The *passuk* lists three impure individuals – the *metzora*, the *zav*, and the *tamei meis* – in order of decreasing *tum'ah*, teaching that these individuals may not enter these three *machanos*, respectively.

A *metzora* has the highest level of *tum'ah*, and he is forbidden to enter all three camps, even מחנה ישראל. The next *tamei* individual in the *passuk*, the *zav*, represents the category of טומאה היוצאה עליו מגופו. All *temei'im* in this category are excluded from both the מחנה שכינה and the מחנה לוייה. Finally, a *tamei meis*, whose *tum'ah* is less severe, since it is merely a *tum'as magga*, is only excluded from מחנה שכינה. Of note,

rabbinically, the *Har HaBayis* was divided into three sections, and a *tamei meis* was not allowed into the inner two sections (*Mishnah Keilim* 1:8).

[The nature of *tum'as ba'al ker* is the subject of a *machlokes Tanna'im* (*Sifrei, Devarim* 23:11) regarding his permissibility to enter *Har HaBayis*. The *machlokes* seems to depend on whether *tum'as ba'al ker* is classified as a *טומאה היוצאה עליו מגופו* like *tum'as zav*, or whether a *ba'al ker* becomes *tamei* through **contact** with the *tamei* emission itself as it leaves his body, thus labeling his *tum'ah* as a *tum'as magga* (*Rash, Keilim* 1:1). The *Rambam* (*Hilchos Bi'as Mikdash* 3:3) implies that a *ba'al ker* may indeed enter the *Har HaBayis* (see *Mei Nafto'ach, Parpar* 17:1-3; *Chazon Yechezkel, Niddah* 5:6).]

Acharonim raise the question of why the practice of religious Jews for centuries has been to abstain from entering the first section of the *Har HaBayis*, where a *tamei meis* is permitted. In most cases, at least for men, the limitations imposed by various other *tumos* should be resolvable. A male is obviously not *tamei* as a *yoledes*, *zavah*, or *niddah*, and most people do not suffer from the conditions that cause *tum'as zav* or *metzora*. Moreover, one cannot contract *tum'as tzara'as* unless he is declared as such by a *Kohen*. Finally, a *ba'al ker* can easily immerse in a *mikveh* and be *metaher* himself.

Rav Eliezer Nachum (*Chazon Nachum, Keilim* 1:6, p. 20; see *Minchas Yitzchak* 5:1:6 and *Mikdash Melech, Harerei BaSadeh*, pp. 153-154), who served as *Rishon L'Tziyon* in the 1700s, writes that the *takanah* enacted during the Second *Beis HaMikdash* period regarding *amei ha'arets* is relevant to the permissibility of entering *Har HaBayis* in our times. The *Chachamim* instituted *tum'as am ha'arets*, according to which an individual who was not careful about observing the *dinim* of *tum'ah* and *taharah* was treated as if he were a *zav* (*Tosfos, Shabbos* 15b, s.v. *v'al bigdei*). Nowadays, we may all possess *am ha'arets* status, since we are

not vigilant in avoiding *tum'ah*. The consequent *tum'as zav miderabbanan* would then preclude entry onto the *Har HaBayis*.

Furthermore, some argue that although *taharah* from *tum'as zav* can be accomplished by immersion in a *ma'ayan* (natural spring) after counting *shivah nekiyim* (seven clean days), this may not be effective for an *am ha'aretz*. One's *am ha'aretz* status and resultant *tum'as zav* would automatically return after his *tevilah*, since he is still classified as a person who is not observant of the *dinim* of *tum'ah* and *taharah*.

Rav Nachum's suggestion is very questionable, however, since one may argue that one attains *am ha'aretz* status only through **violating** the *dinim* of *tum'ah*, such as by eating *terumah* in a state of *tum'ah*, not by merely allowing oneself to be in a state of *tum'ah*. Nowadays, our state of *tum'ah* does not lead to the violation of any of the *issurim* associated with *tum'ah*.

More fundamentally, the *tum'as zav* of an *am ha'aretz* does not necessarily forbid entry onto *Har HaBayis*. The *takanah* was only that an *am ha'aretz* has *tum'as zav* vis-à-vis coming into contact with a *chaver* (literally, a colleague), who commits himself to extra scrupulousness with respect to laws of *tum'ah* and *taharah*, but not that his *tum'ah* engenders personal restrictions. Indeed, even though the *Chachamim* enacted *tum'as zav* for a non-Jew (*Niddah* 34a), a separate *takanah* was required to forbid his entry into certain sections of *Har HaBayis*.

Notwithstanding these arguments, it is important to abide by the *Rabbanut's* position forbidding people from entering *Har HaBayis*. We must exercise caution in this matter, since if male entry after *tevilah* in a *mikveh* were to become widespread, it would almost certainly lead to entry by others who would violate the entry restrictions. [See Rav Schachter on the Parsha, *Parshas Bechukosai*.]

There is a *din derabbanan* in which we distinguish between *tum'as magga* and טומאה היוצאה עליו מגופו. The *Gemara* in

Bechoros (27a) teaches that although Biblical *terumah* (from produce grown in Eretz Yisrael) may not be consumed when either the *terumah* or the *Kohen* has contracted any *tum'ah*, rabbinic *terumah* (from produce grown in lands close to Eretz Yisrael) – which includes *challah* in *chutz la'Aretz*, whose *dinim* are similar to *terumah* – is prohibited only to a *Kohen* with a *טומאה היוצאה עליו מגופו*, not a *tum'as magga*. Thus, a *niddah* may in principle separate *challah* in *chutz la'Aretz* and then give the *challah* to a *Kohen* under the age of nine, who is incapable of becoming a *ba'al keri*, or to an adult *Kohen* who immersed in a *mikveh* who may then consume it (see *Rama, Orach Chaim* 457:2).

Nevertheless, the *Shach* (*Yoreh De'ah* 322:9), quoting the *Maharshal* and *Maharil*, records the Ashkenazic *minhag* for all *Kohanim* to refrain from eating *challah* nowadays. The reason given is that we no longer have *Kohanim meyuchasim* whose lineage can be proven.

According to Torah law, if one presents himself as a *Kohen*, we may give him *terumah* to eat. We apply the general principle of *עד אחד נאמן באיסורים*, whereby we believe a single witness regarding matters of prohibition, even when he testifies on his own behalf. However, the *Gemara* in *Kesubos* (23b-24a) explains that *miderabbanan*, the *Chachamim* set a higher standard, since such identification affects matters of *yuchsin* (genealogical purity), and they therefore required an independent witness to the *Kohen's* status in order to allow him to eat *terumah*.

The necessity of having an independent witness to identify a husband and wife for the purpose of writing a *get* is likewise only *miderabbanan*. That is why in a *sha'as hadchak* (pressing circumstances), we revert to the *din d'oraisa* that one is believed with regard to his own identity. The *Mishnah* in *Gittin* (66a) teaches that if someone was thrown into a pit and calls out that whoever hears his voice should write a *get* for his wife, those

who hear him may write the *get* and give it to his wife. In a time of mortal danger, we effectuate a *get* even if we cannot positively identify the husband by an outside, independent witness; we are not concerned about the possibility that it is not the husband who is issuing the instructions (*K'tzos HaChoshen* 49:2).

Similarly, the *halachah* is that we do not require two *eidim* to attest that a supposed *yavam* is, in fact, the paternal brother of the deceased husband. The testimony of even one relative or one woman – although they are not ordinarily qualified to offer testimony – is acceptable in this case (*Yevamos* 39b). In a pressing circumstance, such as to prevent a woman from becoming an *agunah*, we would perform *chalitzah* without any independent identification, based solely on self-identification (*Beis Hillel*, cited in *Pischei Teshuvah, Even Ha'Ezer* 169:11). [See *Eretz HaTzoi, Kuntress Tziyun L'Nefesh Chayah*, by Rav Melech Schachter z"l, p. 275.]

With regard to the identification of *Kohanim* as well, due to *sha'as hadchak* considerations, we have been forced to accept *Kohanim* without independent testimony as to their identity. In fact, given the many pogroms and expulsions that the Jewish People have endured over the centuries, the status of virtually every *Kohen* today, or of one of his ancestors, is based only on a *hakaras haKehunah* by the *Kohen* in question himself. Since we have violated the *takanah derabbanan* regarding outside, independent identification of *Kohanim*, Ashkenazic practice is for current-day *Kohanim* to abstain from eating *challah* until such time that their lineage can be verified.



PARSHAS METZORA

MIKTZAS HAYOM K'KULO

ואם טהרה מזובה וספרה לה שבעת ימים ואחר תטהר.

If she ceases her flow, she must count seven days for herself, and afterwards she may be purified. (*Vayikra* 15:28)

THE SHELAH HAKADOSH (Oz V'Hadar ed., 5753, *Sha'ar Ha'Osiyos, Kedushas HaZivug, os 57*) writes that the phrase לה וספרה implies that there is a *mitzvah* for a *zavah gedolah* to count the days of *shivah nekiyim* (seven clean days) verbally, just as one counts *sefiras ha'omer*.

On account of this novel idea, the *Noda B'Yehudah* (*Mahadura Tinyana, Yoreh De'ah* 123) applied to the *Shelah* the phrase, אוהב – מצוות לא ישבע מצוות – a lover of *mitzvos* will never be satisfied with *mitzvos*, an adaptation of the *passuk*, אוהב כסף לא ישבע כסף – “A lover of money will never be satisfied with money” (*Koheles* 5:9). The *Noda B'Yehudah* argues that, in fact, there is no *mitzvah* for the *zavah* to count verbally, but rather to be meticulous about the cleanliness of the days of the *shiv'ah nekiyim* (see *Ramban, Vayikra* 23:15). The pious *Shelah HaKadosh*, out of his love for *mitzvos*, was eager to create additional *mitzvos*, and thus included the verbal counting of the *shivah nekiyim*.

Some might argue, however, that *Tosfos* concurs with the *Shelah's* approach. *Tosfos* (*Kesubos* 72a, s.v. *v'safrah*) questions why a *zavah* does not recite a *berachah* when she counts her *shivah nekiyim* in the same way that we recite a *berachah* before

counting each day of the *omer*. *Tosfos* answers that a *zavah* may not count with a *berachah* since she cannot control the fulfillment of the *mitzvah*, as one can in the case of *sefiras ha'omer*. She may experience a flow that will nullify her *shivah nekiyim*, and the *berachah* she had recited on the previous days will then retroactively be a *berachah l'vatalah*.

Although the simple reading of the question might imply that *Tosfos* subscribes to the *Shelah's* position that a *zavah* should count each day of her *shivah nekiyim* verbally, Rav Soloveitchik dismissed this notion. He explained that according to *Tosfos*, the way the woman fulfills לה וספרה is by performing *bedikos* on each of the *shivah nekiyim* to ascertain that she has no further flow of *dam zivah*. Thus, *Tosfos* means that perhaps the *zavah* should recite a *berachah* before she performs a *bedikah* on each of the *shivah nekiyim*. [See *Eretz HaTzvi*, p. 10.]

The *Gemara* in *Niddah* (67b) understands the concluding phrase of the *passuk*, ואחר תטהר, to mean that אחר מעשה תטהר – “after the act [of *sefirah-bedikah*] she may purify herself.” Thus, the *passuk* teaches that after sunrise of the seventh day, once she counts even a part of the seventh day, she may be *toveles* immediately. This is permitted due to the principle of מקצת היום ככולו – part of the day is equivalent to the whole day. [The *Chachamim* prohibited doing this, lest she come to engage in a possible *aveirah*; should she experience a flow before nightfall, her *shivah nekiyim* and her *tevilah* would be nullified retroactively (*Yoreh De'ah* 197:3).]

It is noteworthy that a *niddah* differs from a *zavah* in this respect. A *niddah* must wait until the entire seventh day has passed and may be *toveles* only after nightfall, at the beginning of the eighth day (*Pesachim* 90b). In other words, we do not say מקצת היום ככולו with regard to a *niddah*, as we do for a *zavah*.

We may suggest that the reason for this difference is that, unlike a *zavah*, a *niddah* is not commanded *mid'oraisa* to count *shivah nekiyim*. [Jewish women have accepted upon themselves

the stringency of counting *shivah nekiyim* after seeing any flow, even if it is not *dam zivah* (*Niddah* 66a).] A *niddah* simply is *toveles* seven full days after the onset of her flow, provided that her flow has ceased. Therefore, we cannot declare אחר מעשה תטהר, as there is no specific action that a *niddah* performs during her seven days of *tum'ah*. In contrast, אחר מעשה תטהר teaches that after a *zavah* performs a *bedikah* on the morning of the seventh day of her *shivah nekiyim*, she may be *toveles* immediately.

Rav Soloveitchik explained that the condition of אחר מעשה תטהר forms the basis of the *halachah* that a *zavah* may not be *toveles* on the night prior to the seventh day of her *shivah nekiyim* (according to the *Chachamim*; see *Tosfos*, *Niddah* 71b, s.v. *haro'eh*). The only *ma'aseh* a *zavah* performs during the *shivah nekiyim* is daily *bedikos*, and she must perform those *bedikos* during the daytime (*Igros Moshe*, *Yoreh De'ah* 3:59). In order to say מקצת היום ככולו, one must perform a *ma'aseh* on the final day of a given time period, and then we assume that the *nihug* of part of the final day is sufficient. Since there is no *ma'aseh* for a *zavah* to perform at night, מקצת היום ככולו cannot be applied to permit a *zavah* to be *toveles* on the night of the seventh day.

We apply the rule of מקצת היום ככולו in the context of *Hilchos Aveilus* as well. Accordingly, an *avel's* observance of the beginning of the last day of both *shivah* and *sheloshim* counts as a full day and brings that period of *aveilus* to a close (*Mo'ed Katan* 19b). An *avel* is obligated to act in accordance with a state of *nivul* during *shivah* (such as abstaining from bathing or laundered clothing) and of partial *nivul* during *sheloshim* (such as abstaining from haircutting). As in the case of a *zavah*, the *nihugei aveilus* are considered actions, such that אחר מעשה, the principle of מקצת היום ככולו can be applied to conclude the *aveilus*.

It is interesting that we do not apply מקצת היום ככולו to the morning of the last day of *yud-beis chodesh*, the twelve months of mourning for a parent (*Yoreh De'ah* 395:3). The *Taz* and *Shach* cite the explanation of the *Terumas HaDeshen* (292), who argues

that the principle of *מקצת היום ככולו* is operative only when an observance is stated in units of days, like *shivah* and *sheloshim*. The observance of *yud-beis chodesh*, which depends on units of months, is not modified by *מקצת היום ככולו*.

Rav Soloveitchik offered an additional reason that *מקצת היום ככולו* cannot be applied in the context of *yud-beis chodesh*. Just as a *niddah* has no *ma'aseh bedikah*, an *avel* during *yud-beis chodesh* similarly has no action to perform. His observance merely consists of limiting pleasurable activities, and *מקצת היום ככולו* does not pertain to this type of passive fulfillment of *aveilus*. [See *B'Ikvei HaTzon*, pp. 262-265.]

The *Geonim* (*Otzar HaGeonim*, *Ta'anis* 30b) raised the question of why the principle of *מקצת היום ככולו* is not applied to Tishah B'Av, given that it shares similar *dinim* to the *avel's* observance of *shivah*. This cannot be a result of the fact that Tishah B'Av is observed for only a single day, since we find that *מקצת היום ככולו* pertains to the single-day *aveilus* associated with *shmu'ah rechokah*, a delayed report of the death of a relative (*Mo'ed Katan* 20b). Therefore, *מקצת היום ככולו* should shorten the *aveilus* of Tishah B'Av just as it shortens the last day of *shiv'ah*. Why is it that the only aspect of *aveilus* that does not continue throughout the entire day is the practice of sitting on the ground, since that is merely a *minhag* (*Orach Chaim* 559:3)?

Rav Soloveitchik suggested the following distinction. He explained that the principle of *מקצת היום ככולו* is said only in relation to a *melos*, defined as a unit of time that is superimposed onto the calendar. Each of the periods we discussed above, *zivah* and *aveilus*, is an example of a *melos*. The time period of *nezirus* is also not something that is set on the calendar, but rather is relevant to the *nazir* specifically. Therefore, *מקצת היום ככולו* renders the observance of part of the last day of the *nezirus* period as the observance of the full day (*Nazir* 5b).

In contrast to these examples of a *melos*, Tishah B'Av is a purely calendaric day. The *Gemara* in *Ta'anis* (29a), in reference

to the day of Tishah B'Av, expresses the idea that bad things are brought to pass on an ominous day. The *Gemara* teaches further that *Hashem* established a "weeping for generations" on Tishah B'Av as a result of *Bnei Yisrael's* weeping without cause at the time of the *meraglim*, which occurred on that date. The *Gemara* (29b) continues that a Jew who has a lawsuit with a gentile should avoid appearing in court during the month of Av, when his *mazal* is unfavorable.

Thus, it is clear that Tishah B'Av was instituted as a calendaric day of *aveilus*. In this sense, *aveilus* on Tishah B'Av differs from *shivah* and *sheloshim*; it was happenstance that caused those days to be identified as days of *aveilus* – namely, the death of one's relative at that particular time. The rule of *מקצת היום ככולו* can only be applied to a *melos*, not to a distinctive day on the *lu'ach*, such as Tishah B'Av. It is for the same reason that *מקצת היום ככולו* does not apply to Shabbos or Yom Tov, since the end of the day is still Shabbos or Yom Tov according to the *lu'ach*; the entire day is endowed with its special status (see *Gilyonei HaShas, Nazir 5b*, quoting *Rama MiFanu*).

In this regard, we may distinguish between the observance of *aveilus* on Tishah B'Av and on thirty-three of the days between Pesach and Shavuos. It may be argued that the institution of the *minhag* was to observe *aveilus* when the *talmidei* Rabbi Akiva perished, not in relation to these specific calendaric days. If we view this period of *aveilus* as a *melos*, as opposed to fixed days on the calendar, we well understand why both the *Mechaber* and the *Rama* (*Orach Chaim 493:2*) apply *מקצת היום ככולו* to the final day of the observed *aveilus*. They differ only as to whether the final day is the thirty-fourth day or the thirty-third day of the *omer*. [See *B'Ikvei HaTzon*, pp. 89-93.]



PARSHAS ACHAREI MOS

AVODAH BAHEICHAL

וכל אדם לא יהיה באוהל מועד בבואו לכפר בקודש עד צאתו.

And no person shall be in the Tent of Meeting when he comes to provide atonement in the Sanctuary until his departure.
(*Vayikra* 16:17)

ALTHOUGH the subject of this *passuk* is the *avodas haketores* performed in the *Kodesh HaKodashim* on Yom Kippur, the *Gemara* in *Yoma* (44a) expounds the *passuk* to include *avodah* performed in the *Heichal* throughout the year as well. Accordingly, no one is permitted to remain in the *Heichal* during the *avodas haketores* or the *avodas hadam* of the *chata'os hapenimiyos* (the “inner” *korbanos Chatas*) – the *par Kohen Mashiach*, *par he'elam davar shel tzibbur*, and *sa'ir avodah zarah*. The blood of each of these *korbanos* is sprinkled seven times towards the *paroches* and is applied to the four corners of the inner *mizbei'ach*.

The Rogatchover Gaon (*Tzafnas Panei'ach, Vayikra* 16:17) pointed out the precise language of the *Rambam* (*Hilchos Temidin U'Mussafin* 3:3) in recording this *halachah*:

בעת שמקטירין הקטורת בהיכל בכל יום פורשין כל העם מן ההיכל ... וכן בשעה שיכנס בדם חטאות הנעשות בפנים פורשים הכל.

At the time [the *Kohen*] **burns** the *ketores* in the *Heichal* daily, everyone vacates the *Heichal* ... and similarly, everyone vacates when [the *Kohen*] **enters** with the blood of the inner *chata'os*.

The *Rambam* seems to distinguish between the *avodas haketores* and the *avodas hadam* of the *chata'os hapenimiyos*. Whereas everyone is restricted from the *Heichal* during the actual *haktarah* of the *ketores*, with regard to the *chata'os hapenimiyos*, the prohibition is extended to include the time from the *Kohen's* entry to sprinkle the blood until his exit.

This distinction is likely a result of the *avodah* of *holachah*, the transporting of the blood from the place of *shechitah* and *kabbalah* to the place of *zerikah* (sprinkling). By virtue of performing *holachah*, the *Kohen* is, in fact, engaged in the process of *avodah* from the time he enters the *Heichal* until he sprinkles the blood, and that is why no one was allowed in the *Heichal* at that time. In the case of *ketores*, in contrast, the *avodah* consists only of the *haktarah*, and that is why others may be present during the *Kohen's* entry and exit.

The explanation for why the prohibition of remaining in the *Heichal* applies even **after** the *zerikah*, before the *Kohen* exits the *Heichal*, is less clear. Perhaps it is based on the subsequent *avodah* of *shefichas shirayim* (pouring the remaining blood) onto the outer *mizbei'ach* in the *Azarah*. Even though this *avodah* is not indispensable, it may be sufficient to label the *Kohen's* exiting the *Heichal*, on his way to perform this *avodah*, as part of *holachah*. As such, no one could be present during this segment of *holachah*, just as during the *holachah* of entering the *Heichal*.

Rav Soloveitchik offered an explanation related to the movement of the *Kohen Gadol* on Yom Kippur that accounts for a similar discrepancy between the daily *avodas haketores* and that performed on Yom Kippur.

One who studies *Mishnayos Tamid* (*perakim* 6-7) will observe the repetition of a refrain that is mentioned after the completion of the *avodah* of each *Kohen* who participates in the offering of the *Korban Tamid*: והשתחוה ויצא – “and he prostrated himself and exited.” It is cited in the name of the Vilna Gaon (*Aderes Eliyahu*,

Parshas Ki Savo) that the source of this practice is the *passuk* referring to the bringing of *Bikkurim*, והשתחית לפני ד' אלקיך – “and you shall prostrate yourself before Hashem, your G-d” (*Devarim* 26:10). This is not a *mitzvah* specifically related to the bringing of *Bikkurim*, but is actually a general rule. Just as a farmer who enters the *Azarah* to offer his *Bikkurim* performs *hishtachava'ah* before he exits, so too, any *Kohen* who enters the *Azarah* to engage in any *avodah* must do so.

Rav Soloveitchik pointed out that it is quite astounding that throughout the entire *seder avodah* of Yom Kippur, as well as throughout *Maseches Yoma*, which include all of the details of the *Kohen Gadol's* service, there is no mention of *hishtachava'ah*. [In fact, this is one of the differences between the *nusach Ashkenaz* and the *nusach Sefard* renditions of the *avodah*; in the latter *nusach*, there is a mention of *hishtachava'ah*.] [See *Divrei Harav*, 2010 ed., pp. 311-312.]

Working with the assumption that the *Kohen Gadol* did not engage in any *hishtachava'ah* on Yom Kippur, Rav Soloveitchik suggested (*Kovetz Chiddushei Torah*, pp. 145-147; *Kuntres B'Inyan Avodas Yom HaKippurim*, pp. 46-47, 51) that the general requirement of *hishtachava'ah* upon anyone who enters the *Azarah* does not apply to the *Kohen Gadol* on this day.

On every other day of the year, the Halachah dictates how particular *avodos* must be performed in the *Beis HaMikdash*, but does not mandate the mode of transport of the *Kohen* to get to the location in which the *avodah* is performed. It is completely acceptable for the *Kohen* to descend from the ceiling, climb in through a trap door in the floor, or enter through a window, as long as he performs the *avodah* in the proper location.

The Rav explained that in contrast to *avodah* during the rest of the year, on Yom Kippur, literally every step of the way is prescribed by the Halachah. The *pessukim* in *Parshas Acharei Mos* delineate the entering, the exiting, as well as the walking from one *avodah* to the next: ויצא אל המזבח אשר לפני ד' – “He shall go out

to the altar that is before *Hashem*" (*Vayikra* 16:18); וּבֹא אֶהְרֵן אֵל – "Aharon shall come to the Tent of Meeting" (16:23); וַיֵּצֵא וַיַּעֲשֶׂה אֶת עֹלֹתוֹ וְאֶת עֹלֹת הָעָם – "He shall go out and perform his own *Olah*-offering and the *Olah*-offering of the people" (16:24). Each step is described in the *Chumash*, making it part of the *seder hayom* and the *ma'aseh Yom HaKippurim*.

The Rav brought support for this notion from the *Gemara* in *Chullin* (10b), which discusses whether the *Kohen's* walking backwards out of a house with *tzara'as* is a halachically acceptable fulfillment of the *passuk*, וַיֵּצֵא הַכֹּהֵן מִן הַבַּיִת – "And the *Kohen* shall exit from the house" (*Vayikra* 14:38). The *Gemara* concludes that the *Kohen* may exit the house in this manner, which enables him to be in constant view of the *nega* (lesion), such that he will not have to rely on a *chazakah* that the *nega* remained in its state after it disappeared from his view.

The *Gemara* proves that walking backwards is acceptable from the way that the *Kohen Gadol* exited the *Kodesh HaKodashim* on Yom Kippur, leaving backwards out of respect. Apparently, this form of exiting meets the requirement of וַיֵּצֵא (16:24). Rav Soloveitchik argued that if the *Kohen's* exiting the *Kodesh HaKodashim* were merely a practical necessity, we could not derive any *halachah* from his mode of exit. This *Gemara* seems to imply that the *Kohen Gadol* needed to fulfill the requirement of וַיֵּצֵא and that the **exiting itself** was also part of the *seder hayom*.

Another proof that the movement of the *Kohen Gadol* is part of the *seder hayom* may be brought from the *Gemara* in *Yoma* mentioned above, which states that no one is permitted to be in the *Heichal* at the time the *Kohen* is engaged in the offering of the *ketores*. The *Malbushei Yom Tov* (*Yoreh De'ah* 25:1) notes that this *halachah* seems to contradict the *Mishnah* in *Tamid* (6:3), which describes that a friend or relative of the *Kohen* who won the privilege of the *ketores*-service would accompany him into the *Heichal* and assist him until he was ready to offer the *ketores*. [The *Malbushei Yom Tov* was one of the few *Acharonim*

whom the Rav would quote, perhaps because he had served as a *rav* in Khaslavitch, the town where the Rav was raised.]

The resolution seems to be that the *halachah* that applied throughout the year was only in reference to the period of time that the actual *avodas haketores* was performed. Based on the *passuk*, **בבואו לכפר בקודש עד צאתו**, the *Gemara* derives that there is an added requirement that applies exclusively on Yom Kippur – no one was allowed in the *Heichal* from the time of the *Kohen Gadol's* entry until the time of his exit, and not only during the period of the actual *avodah* of the offering of the *ketores*.

The reason that the restriction is expanded on Yom Kippur is a function of the principle presented above. Only on Yom Kippur is the *kenisah* (entry), the *yetzi'ah* (exit), and literally every step of the *Kohen Gadol* a part of the *seder hayom*. During the rest of the year, there could not be an expanded restriction forbidding another's presence from the *Kohen's* entry until his exit, because the entry and exit of the *Kohen* who performs the *avodah* is not at all part of the *seder hayom*. Only the *avodah* itself is mandated, and it is therefore only during the time of the actual burning of the *ketores* that a restriction could apply forbidding the presence of another *Kohen* in the *Heichal*.

This is how the Rav explained the absence of *hishtachava'ah* from the *nusach* of the *seder avodah* of Yom Kippur. Since each step of the *avodah* on Yom Kippur is charted out in *Parshas Acharei Mos*, nothing at all may be added. Introducing a *hishtachava'ah* that does not appear in the *parsha* at the conclusion of the *avodah* would be considered a deviation from the exact *seder hayom*. Therefore, the *Kohen Gadol* **could not** perform the usual *mitzva* of *hishtachava'ah* that applied year-round. [This explanation was part of the *chiddushei Torah* that Rav Soloveitchik sent to his father from Berlin, which Rav Moshe printed in the name of the Rav (*HaPardes*, 1931, 4:10, pp. 12-13).]

Rav Soloveitchik continued that this *chiddush* could also explain why the *Kohen Gadol* had to wait in the *Kodesh HaKodashim*

after placing the *ketores* upon the burning coals, until נתמלא עשן כל הבית כולו עשן – “the whole chamber filled with smoke” (*Mishnah, Yoma* 5:1). The tarrying of the *Kohen Gadol* is required here based on the *passuk*, את הכפורת ענן הקטורת – “so that the cloud of the incense shall blanket the ark-cover” (*Vayikra* 16:13). This *halachah* may also be a reflection of the prescribed entry into and exit from the *Kodesh HaKodashim*, which, in this analysis, includes a certain amount of waiting in that location as well.

[The Rav sent these words of *chiddushei Torah* to his uncle, the Brisker Rav, whose letter in response is appended to the end of *Chiddushei Maran Ri"Z HaLevi al HaRambam*, dated 3 Elul 5681. The letter begins, ... והנה חזיתי ליקירי שמפרש – “Behold, I have seen [a letter of] my precious [nephew, Rav Soloveitchik], who explains ...” and proceeds to outline an entirely different understanding of the nature of this *halachah*.] [See *Rav Schachter on the Moadim, Avodas Yom HaKippurim*, section IV.]



PARSHAS KEDOSHIM

THE NATURE OF ISSUR NIDDAH

ואיש אשר ישכב את אשה דוה וגלה את ערותה ... ונכרתו שניהם מקרב עמם.
A man who shall lie with a woman during her [menstrual] flow, and has uncovered her nakedness ... the two of them will be cut off from the midst of their people. (*Vayikra* 20:18)

BOTH IN *Parshas Acharei Mos* and in *Parshas Kedoshim*, the Torah places the prohibition of *niddah* in the midst of the listing of the *arayos* (forbidden relatives). This seems to imply that *issur niddah* is included in the category of *giluy arayos* (illicit relations), which may be generally defined as an *issur bi'ah* (prohibited cohabitation) that carries the punishment of *kares* (and sometimes even *misas beis din*).

On the other hand, although *kiddushin* does not take effect with an *issur arayos*, *kiddushin* does take effect with a *niddah*. The *Gemara* in *Kiddushin* (68a) derives this from the *passuk*, ותהי נדתה עליו - "her state of *niddus* shall be upon him" (*Vayikra* 15:24). Since תהי is a form of the term הויה, which is taken to mean "becoming married," the *passuk* implies that there is *tefisas kiddushin* (effectuated *kiddushin*) with a *niddah*. Furthermore, whereas the union of *issurei arayos* produces *mamzeirus* in the resulting offspring, this is not the case with regard to a *niddah* (*Yevamos* 49a-49b).

Thus, the case of *niddah* is clearly an exception to the rule - the question is in which direction. From one perspective,

these *halachos* – the ability to effect *kiddushin* and the absence of creation of *mamzeirus* – indicate that *issur niddah* is **not** an *issur arayos*. The exception, then, is that despite *niddah* not being one of the *issurei arayos*, it carries a punishment of *kares*. We may, however, understand *niddah*'s exception very differently: Notwithstanding the fact that *niddah* is an *issur ervah*, as evidenced by its associated *issur kares*, *kiddushin* does take effect with a *niddah*, and such a union does not produce *mamzeirus*. These two points of view represent a fundamental *machlokes* between *Rabbeinu Tam* and the *Rambam*.

Tosfos (*Yevamos* 2a, s.v. *v'achos ishto*) questions why, if a woman is a *niddah* when she initially falls for *yibbum* upon the death of her husband, she does not remain forbidden to the *yavam* forever. Why is this situation different than that of a *yevamah* who is the *yavam*'s wife's sister, who remains ineligible for *yibbum* even if the *yavam*'s wife subsequently dies? Rav Soloveitchik commented that in asking this question, *Tosfos* clearly assumes that *niddah* is one of the *arayos*, and it is therefore plausible to compare the case of a *niddah* to that of an *achos ishah* (a wife's sister). Just as in the case of *achos ishah*, if at the time a woman falls for *yibbum* there cannot be *zikah* (attachment) to the *yavam* due to the *issur ervah* of *niddah*, the *din* of *yibbum* should not begin at a later time when the *issur* is no longer present.

The Rav explained that *Tosfos*'s answer reflects a different understanding of the *issur niddah* than the question implied. *Tosfos* answers that *issur niddah* cannot be compared to the *issur* of *achos ishah*, since *achos ishah*, like the other *arayos*, constitutes a prohibition only to the *yavam*, whereas a *niddah* is forbidden to every man. *Rabbeinu Tam* elaborates on this distinction in *Sefer HaYashar* (*Chelek HaTeshuvos*, Berlin ed., 5658, *siman* 80), arguing that *issur niddah* is merely an *issur bi'ah* and not an example of *giluy arayos*. As such, *issur niddah* is not excluded from the *din* of *yibbum*. In other words, the *passuk* of

ותהי נדתה עליו, which teaches that there is *tefisas kiddushin* with a *niddah*, also teaches that *niddah* is **not** an *ervah*.

As proof to this contention, *Tosfos* cites the universal nature of the *niddah* prohibition, in contrast to the specific prohibition of *issurei arayos* that affects certain men in particular – in this case, the *yavam*. In this sense, *Tosfos* echoes the *Gemara* in *Yevamos* (45b) that discusses why the child of a non-Jewish man and a married Jewish woman is not disqualified as a *mamzer*. The *Gemara* explains that this case is not analogous to *eishes av* (a father's wife), the source for deriving which unions create *mamzeirus*. For an *eishes av*, there is no *tefisas kiddushin* only with the father's son; however, the same woman is in principle eligible for *kiddushin* with other men. In contrast, a non-Jew is incapable of effecting *kiddushin* with any Jewish woman.

The *Gemara* thus characterizes the status of *mamzeirus* as being the result of an *issur* of *arayos*, wherein *kiddushin* is ineffective between a particular man and woman but would be effective between them and others. A universal prohibition, in contrast, indicates that the union under question is an *issur bi'ah*, which does not create *mamzeirus*, and not an *issur* of *giluy arayos*. [Of note, a different definition of *mamzeirus* emerges from the *girsas* of Rav Hai Gaon in this *Gemara*, cited by the *Rashba*.] [See *Eretz HaTzvi*, pp. 112-113.]

Rav Soloveitchik pointed out that the *Rambam* disagrees with *Rabbeinu Tam* as to the nature of *issur niddah*. The *Rambam* (*Hilchos Issurei Bi'ah* 4:1) writes, הנדה הרי היא כשאר כל העריות – “The *niddah* is like all other forbidden relationships.” Thus, the *Rambam* understands that the principle derived from ותהי נדתה עליו is that even though *niddah* is counted among the *arayos*, there is nevertheless *tefisas kiddushin*.

Furthermore, the *Rambam* (*Hilchos Ishus* 4:12) writes that although there is *tefisas kiddushin* with a *niddah*, it is inappropriate to be *mekadeish* a *niddah*. The *Minchas Chinuch* (*Kometz Minchah, mitzvah* 206) explains that the *Rambam* here refers to

an *issur d'oraisa* that the *Sefer HaChinuch* describes – that it is prohibited to perform a *ma'aseh kiddushin* with an *ervah*, even if it cannot lead to *tefisas kiddushin*. Thus, the *Minchas Chinuch* also recognizes that according to the *Rambam*, *issur niddah* is an *ervah*, and that is why *kiddushin* with a *niddah* is improper.

The *Keren Orah* (*Sotah* 7a) writes that the *issur* of *yichud* (seclusion) on a level of *d'oraisa* only exists between a man and woman who are *arayos* to each other, not when there is merely an *issur bi'ah* between them. [This is against the view of the *Perishah* (*Even Ha'Ezer* 22:1) and *Chazon Ish* (*Even Ha'Ezer* 34:6).] Thus, according to the *Rambam's* classification of *niddah* as an *ervah*, we might have expected an *issur d'oraisa* of *yichud* between a *niddah* and her husband. Nevertheless, the *Gemara* in *Sanhedrin* (37a) applies the notion referred to as סוגה בשושנים – “hedged with roses” (*Shir HaShirim* 7:3) to the permissibility of *yichud* with one's wife when she is a *niddah*. The *Gemara* expounds this *passuk* to attest to the fact that the Jewish People adhere to the Torah's dictates, abstaining from marital relations when a woman is a *niddah*: “They [Jews] will not make breaches through a hedge of roses [that are red like *dam niddah*].”

Tosfos (s.v. *haTorah*) explains further that in the case of a *niddah*, since a wife will eventually become permitted to her husband, the husband can more readily refrain from any prohibited act. This is not true in cases of a woman who will always remain prohibited to him as an *ervah*; in such a case, the temptation to sin is greater, and, consequently, a man may not seclude himself with such a woman. *Tosfos* adds that the leniency given to a *niddah* applies only to a couple which had already engaged in marital relations; a newly married couple may not be secluded if the wife is a *niddah*, because in that situation as well, the temptation to sin would be greater.

Thus, the *Gemara* in *Kesubos* (4a) teaches that if a woman became a *niddah* prior to entering the *chuppah*, before her husband had cohabited with her, they must sleep separately;

he sleeps among the men and she sleeps among the women. The Rav felt that the implication of the Rambam's presentation of this *halachah* (*Hilchos Issurei Bi'ah* 22:1), along the lines of his view that considers *niddah* to be an *ervah*, is that the *issur yichud* in this case is a prohibition on a *d'oraisa* level (see the concurring views of *Divrei Yechezkel* 16:3 and *Lev Aryeh* 1:24).

The Rambam's view has further implications for the possibility of effecting *nisu'in* with a *niddah*. *Chuppah* is the formal entry of a *kallah*, following *kiddushin*, into her husband's domain for the purpose of *nisu'in*. The Rambam (*Hilchos Ishus* 10:2, based on *Kesubos* 56a) maintains that entering the *chuppah* effects *nisu'in* only if the woman is *re'uyah l'bi'ah* (fit for marital relations). Thus, if she is a *niddah* at the time of the *chuppah*, she remains an *arusah*. The *ishus* (marriage) cannot be finalized, since the *chuppah* is not one that is presently *re'uyah l'bi'ah*.

The *Kesef Mishneh* quotes the *Ran*, who rejects the Rambam's view on the basis of the opinion of Rav (*Yevamos* 57b), which is accepted *l'halachah*, that *יש חופה לפסולות*. In other words, there is legal significance to a *Kohen's chuppah* with a woman disqualified from *Kehunah*, such as a *gerushah* (divorcee), despite the fact that she is *einah re'uyah l'bi'ah*. *Chuppah* with a *niddah* should be no different!

We may suggest that the Rambam understands the requirement of *chuppah hare'uyah l'bi'ah* to exclude only a relationship of *arayos*. Even though, as mentioned, there is *tefisas kiddushin* with a *niddah* based on *ותהי נדתה עלי*, this exception is specific to *הויה*. One can effect *kiddushin* with a *niddah* despite her *ervah* status. However, with regard to *nisu'in*, which serves to complete the state of *ishus*, we revert back to the general principle that *ishus* cannot be effected with *arayos*. Since a *niddah* is an *ervah*, the Rambam holds that *chuppah* with a *niddah* does not effectuate *nisu'in*. The case of *gerushah* to a *Kohen*, in contrast, is an ordinary *issur bi'ah*, and it therefore was never excluded by the Rambam's requirement of *chuppah hare'uyah l'bi'ah*.

A further manifestation of the *machlokes Rambam* and *Rabbeinu Tam* relates to whether the requirement of *yehareig v'al ya'avur* – to allow oneself to be killed rather than transgress a prohibition – applies to *issur niddah*.

Rebbi Akiva Eiger (*Yoreh De'ah*, 157:1, s.v. *mashma*) notes that the *halachah* of *yehareig v'al ya'avur* only applies to prohibited relations associated with a punishment of *kares*. In other words, only *giluy arayos* necessitates *yehareig v'al ya'avur*, not a mere *issur bi'ah*.

Nevertheless, the *Mechaber* (*Yoreh De'ah* 195:17; see *Shach* 20) cites *Teshuvos HaRamban*, who prohibits a doctor from taking his wife's pulse when she is a *niddah*. In other words, we do apply the principle of *yehareig v'al ya'avur* to *issur niddah* and its *abizraihi* (ancillaries), such as touching a *niddah*. This position accords with the view of the *Rambam*, that *issur niddah* is an *issur* of *giluy arayos*. [See Rav Tuvia Goldstein, *Eimek Halachah* (3:49), who concludes against the *psak* of the *Mechaber* in this major *machlokes haPoskim*.] [See *Ginas Egoz*, pp. 104-105.]



PARSHAS EMOR

TUM'AS KOHANIM FOR RELATIVES

אמור אל הכהנים בני אהרן ואמרת אליהם לנפש לא יטמא בעמיו. כי אם לשארו הקרוב אליו ... לה יטמא.

Say to the *Kohanim*, the sons of Aharon, and tell them: Each of you shall not contaminate himself to a [dead] person among his people; except for the relative who is closest to him ... to her shall he contaminate himself. (*Vayikra* 21:1-3)

THERE IS a *machlokes* between Rabbi Yishmael and Rabbi Akiva (*Sotah* 3a) as to whether the phrase לה יטמא reflects a *reshus* or a *chovah*. According to Rabbi Yishmael, the Torah merely extends **permission** to a *Kohen*, who **may** be *metamei* himself for one of his close relatives. However, we accept the opinion of Rabbi Akiva, that the Torah is expressing an **obligation**; a *Kohen* **must** allow himself to become *tamei* upon the death of a close relative.

[There are two other cases that involve a similar dispute between Rabbi Akiva and Rabbi Yishmael: – “וקנא את אשתו – and he had warned his wife” (*Bamidbar* 5:14), and לעולם בהם תעבודו – “You shall work them forever” (*Vayikra* 25:46). They argue whether the Torah merely **permits** a husband to warn his wife from secluding with a man or a master to work his *eved Cana’ani* without freeing him, or if the Torah **obligates** him to do so.]

When a *Kohen* becomes *tamei* for his close relative, we may view the nature of the dispensation to waive the *issur* of *tum’as Kohanim* as *hutrah* (permitted) or as *dechuyah* (overridden).

Hutrah means that at the very outset, when the prohibition was given, it never applied in a particular situation. If a prohibition is *dechuyah*, however, the *issur* exists in principle in all situations. Only when the performance of a *mitzvah* comes into conflict with the *issur* do we recognize that the need to fulfill the *mitzvah* pushes off the *issur*. [See essay for *Parshas Tetzaveh*.]

The *Gemara* in *Berachos* (20a) establishes the principle that Biblical prohibitions always takes precedence over considerations of *kavod habriyos* (human dignity), if the *aveirah* would be violated actively. Accordingly, *Rashi* and *Tosfos* (s.v. *shev*) are bothered by the *din* that a *Kohen* is obligated to become *tamei* for a *meis mitzvah* (an unattended corpse) and for close relatives. Here is a case in which the Torah indicates that considerations of *kavod habriyos* actually supersede an *issur d'oraisa*!

To resolve this difficulty, *Rashi* explains that in allowing a *Kohen* to bury a *meis mitzvah* or a relative, the Torah did not **override** the *issur* of *tum'as Kohanim*. Instead, the nature of the dispensation is *hutrah*; the *issur* of *tum'as Kohanim* was never formulated with regard to these *meisim*. Indeed, this is the simple reading of the *passuk's* exclusionary clause, **כי אם לשארו** **הקרוב אליו**: The Torah only prohibited a *Kohen* to be *metamei* to ordinary *meisim*.

Tosfos offers a different distinction to explain the exemption granted a *Kohen* in these cases. The *issur tum'ah* is not directed to all Jews, but rather only to a *Kohen* (and *nazir*), and, as such, the demands of *kavod habriyos* more easily override it. Thus, according to *Tosfos*, the *issur* of *tum'as Kohanim* for close relatives is merely *dechuyah*; the need to participate in the *mitzvah* of *kevurah* pushes off the *issur*.

A practical outcome of this *machlokes* may relate to the question of whether a *Kohen* may be *metamei* for a relative not for the purpose of *kevurah* – for example, on Shabbos. Here, there is no *mitzvah* of *kevurah* to override the *issur* of *tum'as Kohanim*. Thus, if *tum'as Kohanim* for relatives is merely *dechuyah*, a *Kohen*

may be forbidden to come into contact with the *meis* without cause (*Tosfos, Pesachim 9a, s.v. b'shifchaso*). On the other hand, if a *Kohen's* immediate relative is simply not included in the *issur tum'ah*, he would be permitted, and even obligated, to be *metamei* himself, even on Shabbos. There are two opinions cited by the *Mechaber* (*Yoreh De'ah 373:5*) regarding this matter.

Rav Soloveitchik (*Shiurim L'Zecher Abba Mari Z"l I*, pp. 40-47) noted that the *Rambam* in *Hilchos Avel* (2:15) clearly views *tum'as Kohanim* for relatives as *dechuyah*, like *Tosfos*: *לכל הותרה ולא הותרה דחוייה היא ולא הותרה לכל* – “*Tum'ah* for relatives is overridden, not permitted to all.” Yet, unlike *Tosfos*, the *Rambam* understands that it is not the *mitzvah* of *kevurah* that overrides the *issur tum'as Kohanim*, but instead the *mitzvah* of *aveilus*. As the *Rambam* writes in the *koseres* (heading) to *Hilchos Avel*: *להתאבל על הקרובים ואפילו כהן מתטמא ומתאבל על* – “[There is a *mitzvas aseh*] to mourn over relatives, and even a *Kohen* becomes *tamei* and mourns over his relatives.” The *Rambam* (2:6) writes further: *כמה חמורה מצות אבילות שהרי* – “How strict is the *mitzvah* of *aveilus*, for [the *issur*] *tum'ah* was overridden for it with regard to relatives.”

The source of the *Rambam's* position connecting *tum'as Kohanim* to *aveilus* seems to be the *Beraisa* cited in *Mo'ed Katan* (20b): “All those [relatives] about whom it is stated in the *parsha* regarding *Kohanim* that a *Kohen* must be *metamei* himself for them, an *avel* mourns for them as well.”

As further evidence for this idea, the Rav pointed to the exclusion of those executed by *beis din* from the *din* of *tum'as Kohanim* (*Hilchos Avel* 2:8), despite the fact that there is a *mitzvas kevurah* regarding these *meisim*. Apparently, since there is no *aveilus* for *harugei beis din* (*Sanhedrin* 46b), there is no allowance for a *Kohen* to be *metamei* for them. *Tum'as Kohanim* is dependent on the fulfillment of the *mitzvah* of *aveilus*.

The *Mishkenos Ya'akov* (*Yoreh De'ah* 75) explains that the principle of *הלכה כדברי המיקל באבל*, that we rule in accordance with the lenient opinion in the realm of *Hilchos Aveilus*, is based on the correspondence between *tum'as Kohanim* and *aveilus*. The *Sifra* (*Emor, parsha* 1) expounds *לה יטמא* to teach that a *Kohen* is not *metamei* for a *meis* who is only questionably his relative, and this idea carries over to *Hilchos Aveilus*. Therefore, we decide any doubt with regard to a *halachah* regarding *aveilus* leniently. This rule applies even on the first day of *aveilus*, despite the view of many *Rishonim* that this is a *d'oraisa* obligation (if both the death and the *kevurah* occur on this day). [See *B'Ikvei HaTzon*, pp. 258-259.]

Rav Soloveitchik elaborated on this notion, explaining that it is not merely that the *mitzvah* of *aveilus* overrides the *issur tum'ah*. The connection between *aveilus* and *tum'as Kohanim* is more fundamental – the *Kohen* actually **fulfills** the *mitzvah* of *aveilus* through allowing himself to become *tamei*. In other words, *לה יטמא* serves as the source for the institution of *kavod habriyos*, which is the basis of *aveilus*. In allowing himself to become *tamei*, a *Kohen* demonstrates *kavod hameis*, and thereby fulfills the *mitzvah d'oraisa* of *aveilus* (see *Sefer HaMitzvos, mitzvas aseh* 37). [See *Ginas Egoz*, p. 95.]

Thus, unlike the view of *Tosfos* mentioned above, according to the *Rambam*, the *nihug aveilus* to become *tamei* would apply on *Shabbos* as well, even though there is no *kevurah* on this day.

This is the explanation of a remarkable ruling of the *Rambam* (*Hilchos Avel* 2:6) that the *mitzvah* of *לה יטמא* applies only to male *Kohanim*, and not to *Kohanos* (or *Leviyim* and *Yisraeilim*). Although the simple understanding of the *passuk* is that **even** *Kohanim* are *metamei* to their relatives, the *Rambam* contends, against the other *Rishonim*, that this allowance and obligation devolves **only** upon *Kohanim*.

The explanation is that a *Kohen's* act of becoming *tamei* is a true expression of *kavod hameis*, since it involves *chillul kedushas Kehunah*. Therefore, a *Kohen* in particular, who is usually prohibited from coming into contact with a *meis*, is obligated to become *tamei* for his relative. However, someone who is never adjured regarding *tum'as meis*, such as a *Kohenes*, does not exhibit any *kavod hameis* by becoming *tamei*, and therefore is not commanded to do so.

The Rav added that in light of this analysis, we understand why the *Rambam* **must** hold that the *issur tum'as Kohanim* is *dechuyah*. Were the *issur tum'ah* considered *hutrah*, a *Kohen*, similar to a *Kohenes*, would not be expressing *kavod hameis* by allowing himself to become *tamei*. If, from the very outset, the *issur tum'ah* was never formulated with regard to relatives, one could not conclude *כמה חמורה מצות אבילות*. Thus, according to the *Rambam*, the *Kohen* is adjured regarding the *tum'ah* of his relatives, but the *mitzvah* of *aveilus* overrides the *issur*. It is specifically through his "violating" the *issur tum'ah* and profaning his *kedushah* that a *Kohen* accomplishes his *kiyum aveilus*.

The *Rambam* (*Hilchos Avel* 2:15) provides another practical difference that emerges from *tum'as meis* being *dechuyah*. He writes that a *Kohen* is not permitted to be *metamei* himself to another *meis* even at the time he attends to his dead relative. Therefore, we should be careful to bury a *Kohen's* dead relative at the edge of the *Beis HaKevaros* so that the *Kohen* does not need to enter the cemetery and become *tamei* from other graves when he buries his *meis* (*Yoreh De'ah* 373:7; see *Shach* 12).

Rav Soloveitchik explained that this *halachah* stems from the *Rambam's* understanding that it is the *kiyum aveilus* that overrides the *issur tum'ah* and permits the consequent *chillul kedushas Kehunah*. If a *Kohen* were to be *metamei* to an unrelated *meis*, even if that were necessary in order to enable him to bury his relative, that *chillul kedushah* would not accomplish a

kiyum aveilus, since he has a *mitzvah* of *aveilus* only regarding his own relative. According to the *Rambam*, the necessity of *kevurah* (for a *meis* that has others to perform the *kevurah*) does not permit *chillul kedushas Kehunah*. The *mitzvah* of *לה יטמא* is accomplished only when a *Kohen* mourns for his relative and becomes *tamei* for his relative.

The Rav suggested that this discussion is also relevant to the status of an *onen*, one who loses a close relative and is exempt from performing all positive *mitzvos*. An *onen* may also not consume *kodshim*, and the *Rambam* (*Hilchos Avel* 1:1) invokes this *issur* as a source for the *mitzvah d'oraisa* of *aveilus yom rishon*. In other words, like a *Kohen's* becoming *tamei* for his dead relative, the *onen's* abstaining from consuming *kodshim* is similarly a fulfillment of the *mitzvah* of *aveilus*. *Tosfos* (*Berachos* 17b, s.v. *v'eino mevareich*) maintains that an *onen* is **not allowed** to perform any *mitzvah* until after the *kevurah*; he must focus his attention on his *aveilus*. By refraining from participating in *mitzvah* observance, the *onen* demonstrates *kavod hameis*.

The Rav felt that we should employ an approach to the *onen's* injunction against fulfilling *mitzvos* that is in line with the *Rambam's* view that the *issur tum'as Kohanim* is *dechuyah*. Accordingly, instead of assuming that an *onen* is exempt (and prohibited) from performing *mitzvos*, perhaps we should argue that an *onen* is obligated in *mitzvos*, but is commanded not to fulfill them. If an *onen* were exempt from *mitzvos*, his failure to perform them would not demonstrate any *kavod hameis*. However, if he is obligated in *mitzvos* but must refrain from performing them, his being *mevateil* the *mitzvos* serves as a form of *nihug aveilus*. This corresponds to the *Rambam's* understanding of the *mitzvah* of *לה יטמא* – that a *Kohen* is obligated to “violate” the *issur tum'ah* and to be *mechaleil* his *kedushas Kehunah* in order to demonstrate *kavod hameis*.

The *Maharshak* (*Tiferes Shmuel* commentary on *Rosh*, *Mo'ed Katan*, os 19) expresses an opinion along these lines. Our *psak*

follows the opinion of the *Maharam MiRotenburg* that if one becomes an *onen* on Shabbos, he recites *Havdalah* on Sunday after the *kevurah*, when his *aninus* concludes. The *Rosh* (*Berachos* 3:2) cites the *Maharam's* explanation, that the *chiyuv Havdalah* extends from Motza'ei Shabbos until Tuesday night. The *Ma-harshak*, however, understands the *halachah* differently. The recitation of *Havdalah* on Sunday is, in fact, a form of *tashlumin* (compensation) for the *Havdalah* that he failed to fulfill on Motza'ei Shabbos.

If an *onen* were considered to have been completely exempt from *Havdalah*, he would not be eligible for *tashlumin*. The *Ma-harshak* must therefore view the *onen* as being **obligated** in *Havdalah*, but temporarily unable to fulfill that obligation because of his state of *aninus*. Thus, his situation is one of *ones* (an unavoidable circumstance), and it qualifies for *tashlumin* for the *Havdalah* that he missed. [See *Ateres Tzoi* and *Kol Zoi*, vol. 18, "B'Inyan B'Dibbur Echad Ne'emru."]

[With regard to a *tefillah* that an *onen* misses, if the state of *aninus* extended throughout the entire *zeman tefillah*, there would not be any *chiyuv tashlumin* (*Yoreh De'ah* 341:2). The *Pischei Teshuvah* (18) discusses whether an *onen* whose relative died in the evening and who failed to daven *Maariv* should recite a *tefillas tashlumin* (compensatory *Shemoneh Esrei*) when he davens *Shacharis* after the *kevurah* (if it is still before *chatzos*). He cites the ruling of the *Dagul MeiRevavah*, that since in this case he was obligated in *Maariv* when the evening started, and he became an *onen* only later, he should recite a *tefillas tashlumin* when he davens *Shacharis*.]



PARSHAS BEHAR

HETER MECHIRAH

ושבתה הארץ שבת לד'.

The land shall observe a Shabbos rest for Hashem. (*Vayikra* 25:2)

THERE IS an *issur derabbanan* of *amirah l'nochri* (instructing a non-Jew to perform a forbidden activity) with regard to performing *melachah* on Shabbos. The *Gemara* in *Bava Metzia* (90a-90b) questions whether *amirah l'nochri* is a general rabbinic prohibition that applies to all *issurei Torah*, leaving the matter unresolved. The *Ra'avod* (*Hilchos Kilayim* 1:3) rules stringently, maintaining, in disagreement with the *Rambam*, that it is prohibited to have a non-Jew plant *kilayim*. *Tosfos* (*Rosh Hashanah* 24b, s.v. *sha'ani*) concurs with the *Ra'avod* that *amirah l'nochri* applies to all *issurei Torah*.

In the case of a Jew instructing a non-Jew to work his field in Eretz Yisrael or renting his field in Eretz Yisrael to a non-Jew during *shemittah*, it seems that there is a more serious prohibition. The *Gemara* in *Avodah Zarah* (15b) draws a comparison between *shevisas behemto* (the resting of one's animal) on Shabbos and *shevisas sadeihu* (the resting of one's field) during *shemittah*. If a Jew provides a non-Jew with his animal to perform *melachah* on Shabbos, he violates the *issur d'oraisa* of *shevisas behemto*, not merely the *issur derabbanan* of *amirah*

l'nochri. One must ensure that no *melachah* be performed with his animal in Shabbos, even if he is not the one performing the *melachah*.

The *Tosfos Ri" d* (s.v. *amar*; see also *Minchas Chinuch, mitzvah* 112) points out that the *Gemara* seems to have understood the *passuk* of 'ושבתה הארץ שבת לד' in this way as well. Thus, the Torah requires that no *melachah* be performed on one's field during *shemittah*, and not only that one must personally abstain from working the land. Accordingly, a Jewish owner of a farm would violate an *issur d'oraisa* if he were to have a non-Jew perform work on his farm during *shemittah*. *Amirah l'nochri* during *shemittah* constitutes an *issur d'oraisa*, not merely an *issur derabbanan*.

Many farmers in Eretz Yisrael employ a *heter mechirah*, in which land in Eretz Yisrael is sold to non-Jews for the duration of the *shemittah* year in order to avoid the stringencies of *shemittah*. One of the stipulations of the *heter mechirah* issued in the late 1800s was that *melachos (d'oraisa)* could only be performed on the land by non-Jews (*Yeshu'os Malko, Yoreh De'ah* 55; *Mishpat Kohen* 67, 71:2-3). However, given the understanding of 'ושבתה הארץ שבת לד' that emerges from the *Gemara*, it is not at all clear that hiring non-Jewish workers lowers the level of the *issur*. As in the case of *shevisas behemto* on Shabbos, *amirah l'nochri* to work one's land on *shemittah* may be an *issur d'oraisa*.

The simple understanding of 'ושבתה הארץ שבת לד' is that it represents not only an *issur aseh* (a prohibition expressed as a positive commandment), but a *mitzvas aseh* as well - to see to it that all of one's land lies fallow over the *shemittah* year. This point may be significant with regard to the implementation of the *heter mechirah* as well. Years ago, after the *Medinah* was established, the *Chazon Ish* was opposed to relying on the *heter mechirah*, and Rav Binyomin Mendelson, *rav* of Moshav Komemiyut, explained that his position was related to the *mitzvah* of 'ושבתה הארץ שבת לד' (see *V'Shavsah Ha'Aretz*, p. 31).

This stance can be best understood by means of examination of the concept of *ha'aramah*, a legal fiction.

The sale of *chametz* to a non-Jew before Pesach is a *ha'aramah*, since we generally have no real economic interest in such a sale, and it is clear that we intend to buy the *chametz* back from the non-Jew after Pesach. What is the propriety of engaging in this *ha'aramah*?

The *Gemara* in *Bechoros* (3b) relates that Rav Mari bar Rachel would transfer ownership of the ears of the firstborn animals in his flock to a non-Jew (while they were still in their mothers' wombs) to prevent the animals from receiving the status of *bechor*. He used this tactic because he was concerned that if the animals were to have *kedushas bechor*, he might mistakenly commit a transgression by shearing the animals or working them. Although Rav Mari did not, in fact, use these animals for shearing or work, and although he gave the animals to *Kohanim* as if they were subject to the laws of *bechor*, all of these animals died. The *Gemara* explains that Rav Mari was punished with the loss of his flock because he deliberately prevented the firstborn animals from attaining *kedushas bechor*.

Tosfos (s.v. *deka mafka*) grapples with the *Gemara's* conclusion, as it was common in the times of the *Ba'alei HaTosfos* for Jews to sell a portion of each kosher female animal in their flocks to a non-Jew, in order to prevent the animals' firstborn offspring from attaining *kedushas bechor*. *Tosfos* defends the practice by introducing a distinction regarding *ha'aramah*.

In the times of Rav Mari, the expertise existed to inflict a *mum* (blemish) upon a firstborn fetus before it emerged from the womb. Doing so would give the animal the status of a blemished *bechor*, which could in turn be used to fulfill the *mitzvah* of *nesinah l'Kohen* (giving it to a *Kohen*). The *Kohen*, too, would have to treat the animal as sanctified, not shearing its wool or working with it, but since it was disqualified from being offered as a *korban* by virtue of its *mum*, it could be

slaughtered and eaten. As a result of his sale of the firstborn animals to a non-Jew, however, Rav Mari prevented them from receiving any *kedushas bechor* at all. Thus, his act precluded the possibility of the *mitzvah* of *nesinah l'Kohen*, and it is inappropriate for one to engage in a *ha'aramah* in order to **avoid the performance of a *mitzvah***.

However, a different situation existed for the *Ba'alei Ha-Tosfos*, in whose time the expertise to inflict a *mum* upon a fetus no longer existed. In their situation, if firstborn animals were allowed to attain *kedushas bechor*, this would inevitably result in people transgressing the stringent laws regarding a *bechor*. The purpose of selling the animals to a non-Jew was to exempt the firstborns from the laws of *bechor*, thereby preventing inadvertent transgression. *Tosfos* argues that one may engage in a *ha'aramah* in order to **avoid an *issur***. *Ha'aramah* to avoid an *aveirah* is always permitted, since, in the end, no one will have violated an *issur*.

The basis of our *mechiras chametz* follows the principle advanced by *Tosfos*. Although this sale is a *ha'aramah*, it is nevertheless perfectly acceptable, since it in no way affects the fulfillment of any *mitzvah*. The motivation behind the *ha'aramah* of *mechiras chametz* is to avoid the transgression of **בל יראה ובל ימצא** (having *chametz* in one's possession). Although the *mitzvah* of *tashbisu* requires one to physically destroy his *chametz* on *erev Pesach*, one fulfills that *mitzvah* regardless of whether one destroys a large amount or a small amount of *chametz* (if that is all he owns). The *mechiras chametz* does not include all of the *chametz* in one's possession; a small percentage of one's *chametz* is excluded, and the seller performs *tashbisu* with that *chametz*. Thus, the *ha'aramah* helps one avoid violation of an *aveirah*; it does not prevent one from performing any *mitzvah*.

Returning to *shemittah*, as we noted above, the simple reading of **ושבתה הארץ שבת לד'** is that there is a *mitzvah* to let every inch of land owned by a Jew in Eretz Yisrael lie fallow

during *shemittah*. Accordingly, selling the land to a non-Jew, aside from avoiding the violation of the *issurim* of *shemittah*, results in the loss of an opportunity to fulfill this *mitzvah*. Thus, unlike *mechiras chametz*, which is a *ha'aramah* to avoid violation of *בל יראה ובל ימצא*, the *heter mechirah* is a *ha'aramah* that precludes the fulfillment of a *mitzvah* that would have otherwise been fulfilled. *Ha'aramah* to avoid an *aveirah* is permissible, but *ha'aramah* to avoid a *mitzvah* is not. This explains the opposition of the *Chazon Ish* to the *heter mechirah*. [See *B'Ikvei HaTzon*, pp. 73-76.]

As mentioned, the *mitzvah* of *ושבתה הארץ שבת לד'* is fulfilled by anyone who owns a field in Eretz Yisrael and leaves it fallow over *shemittah*. Thus, it is a worthwhile endeavor to become a partner in a field before *shemittah* in order to fulfill this *mitzvah*, a practice that has become more popular recently. A similar practice has been employed with regard to the *mitzvah* of *zero'a*, *lechayayim*, and *keivah* (the foreleg, jaw, and maw). One may become a partner in a *beheimah kesheirah* in Eretz Yisrael, and thereby fulfill the *mitzvah* of presenting these sections of the animal to a *Kohen* (see *Kreisi U'Pleisi* and *Yad Efrayim, Yoreh Dei'ah* 61:21).



PARSHAS BECHUKOSAI

BRIS AVOS AND BRIS SINAI

וזכרתי את בריתי יעקב ואף את בריתי יצחק ואף את בריתי אברהם אזכור והארץ אזכור. והארץ תעזב מהם ... יען וביען במשפטי מאסו ואת חקותי געלה נפשם. ואף גם זאת בהיותם בארץ אויביהם לא מאסתים ולא געלתים לכלותם להפר בריתי אתם ... וזכרתי להם ברית ראשונים אשר הוצאתי אותם מארץ מצרים לעיני הגוים להיות להם לאלקים.

I will remember My covenant with Yaakov, and also My covenant with Yitzchak, and also My covenant with Avraham will I remember, and I will remember the Land. The Land will be bereft of them ... because they were revolted by My ordinances and because their spirit rejected My decrees. But despite all this, while they will be in the land of their enemies, I will not have been revolted by them nor will I have rejected them to obliterate them, to annul My covenant with them ... I will remember for them the covenant of the ancients, those whom I have taken out of the land of Egypt before the eyes of the nations, to be G-d unto them. (*Vayikra* 26:42-45)

ON MANY OCCASIONS, Rav Soloveitchik explained that *Hashem* made two *brisos* (covenants) with the Jewish People (see *Chameish Derashos*, pp. 90-93). He made a *bris* with Avraham, Yitzchak, and Yaakov, and He made a second *bris* at Har Sinai. The *tochechah* in *Bechukosai* represents that second *kerisas bris* (sealing of the covenant), and it was proclaimed on the occasion of *Ma'amad Har Sinai*, after the *Aseres HaDibros*. As the *tochechah* concludes, אלה החוקים והמשפטים – “These are the decrees, the ordinances, and the teachings that *Hashem* gave,

between Himself and *Bnei Yisrael*, at Har Sinai" (*Vayikra* 26:46).

The *peasukim* cited above appear at the conclusion of the *tochechah*. The first *passuk* in the series – describing *Hashem's* remembering the *bris* that He made with Avraham, Yitzchak, and Yaakov – is undoubtedly a great source of comfort for the Jewish People. Yet, that *bris* does not serve as the basis of redemption of the Jewish People, as this *passuk* is immediately followed by further admonition. Apparently, the ultimate *ge'ulah* is granted only on the strength of the second *bris*, made with those who left Mitzrayim.

Based on an analysis of the different *brisos*, the Rav suggested an interpretation to clarify the sequence of these *peasukim*.

The *Ramban* (*Bereishis* 26:5) offers a well-known solution to the problem of the apparent breach of Torah law committed by Yaakov when he married two sisters. The *Ramban* writes that Yaakov, like his father and grandfather, observed the laws of the Torah on a voluntary basis. However, his observance was limited to when he was in Eretz Yisrael, and that is why he did not refrain from marrying Rachel and Leah in *chutz la'Aretz*.

The *Ramban* (*Vayikra* 18:25) adds that *Hashem* arranged that Rachel died on the road upon Yaakov's entry to Eretz Yisrael so that Yaakov would not reside in the Land with two sisters as wives. This is also the *Ramban's* explanation (*Bereishis* 48:7) for why Yaakov did not bury Rachel alongside Leah in *Me'aras HaMachpeilah*. In the words of the *Ramban*, "he would be ashamed before his forefathers," lest it appear to his ancestors that even in Eretz Yisrael, he still regarded both women as his wives. It was Leah who was entitled to burial in *Me'aras HaMachpeilah* because she was the one married to him first, permissibly.

The Rav suggested that the basis for the *Ramban's* assertion is the *passuk* in the aftermath of the *Bris Bein HaBesarim*:

והקמותי את בריתי ביני ובינך ובין זרעך אחרוך ... ונתתי לך ולזרעך אחרוך את ארץ מגורך את כל ארץ כנען לאחוזת עולם והייתי להם לאלקים.

I will establish My covenant between Me and you and between your offspring after you ... and I will give to you and to your offspring after you the land of your sojourns – the whole of the land of Cana'an – as an everlasting possession; and I shall be a G-d to them. (*Bereishis* 17:7-8)

In this *passuk*, the *bris* that *Hashem* sealed with each of the *Avos* is clearly linked with Eretz Yisrael. From the perspective of the *Bris Avos*, *kedushas Yisrael* and *kedushas ha'Aretz* are inseparable.

The Rav understood this position in the context of a discussion of the *Mishneh LaMelech* (*Parashas Derachim*, *drush* 1) as to whether the halachic status of the *Avos* before *Mattan Torah* was that of a *ben Noach* or that of a *Yisrael*. The *Ramban* maintains that the resolution to this question involves a compromise position: The *Avos* did indeed leave the status of *bnei Noach*, but only when they resided in Eretz Yisrael, not when they were in *chutz la'Aretz*.

The Rav explained that initially, in the time of the *Avos*, Avraham's family was selected as the chosen *mishpachah*. According to the *Ramban*, the *bris* signifying the *bechirah* of *mishpachas Yisrael*, *זרעך אחרוך*, is dependent on residing specifically in Eretz Yisrael. Since the full measure of *kedushas Yisrael* granted to the *Avos* by means of the *Bris Avos* was restricted to Eretz Yisrael, when Yaakov returned to Eretz Yisrael and attained the full status of "*Yisrael*," Rachel had to die so that he would not be married to two sisters.

In contrast to the *bechirah* of *mishpachas Yisrael*, the *bris* associated with *Mattan Torah* was sealed with the Jewish **Nation**, and on that occasion, upon acceptance of the full weight of the *taryag mitzvos*, the Jewish People became the Chosen **Nation**. This was a fulfillment of *Hashem's* words to Moshe even before *yetzi'as Mitzrayim*, *ולקחתי אתכם לי לעם* – "I shall take you to Me for a People" (*Shemos* 6:7). Indeed, as Rav Soloveitchik was fond of quoting from Rav Sa'adyah Gaon's *Emunos VeDe'os*

(*ma'amar* 3), אין אומתנו אומה אלא בתורתיה – “Our nation is not a nation except through her Torah.”

Unlike the *Bris Avos*, the *Bris Sinai*, forged between *Hashem* and *Am Yisrael*, is not restricted to Eretz Yisrael. It binds the Jewish People to *Hashem* and His Torah wherever the nation may find itself. As proof, the Rav cited the *passuk* stated in anticipation of *Ma'amad Har Sinai*:

ועתה אם שמוע תשמעו בקולי ושמרתם את בריתי והייתם לי סגולה מכל העמים כי לי כל הארץ.

And now, if you hearken well to Me and observe My covenant, you shall be to Me the most beloved treasure of all peoples, for Mine is **the entire world**. (*Shemos* 19:5)

From the perspective of *Bris Sinai*, a Jew's *kedushah* stays with him wherever he is. It is above time and place.

Rav Soloveitchik elaborated on the enduring impact of the *Bris Avos* based on a comment of the *Gemara* in *Kesubos* (110b): כל הדר בארץ ישראל דומה כמי שיש לו אלוק וכל הדר בחוצה לארץ דומה כמי שאין לו אלוק – “Whoever dwells in Eretz Yisrael is considered to be one who has a G-d, and whoever dwells outside the Land, is considered to be one who has no G-d.” He explained that we find many *pesukim* in the Torah that demonstrate that the *Bris Avos* was never replaced or superseded by the *Bris Sinai*. For example, in the *passuk* at the conclusion of the *tochechah*, וזכרתי את בריתי יעקב ... והארץ אזכור, *Hashem* alludes to the earlier *bris* even after the broader *Bris Sinai* was sealed. In other words, even after the *Bris Sinai*, the *Bris Avos* remains in effect and can serve as a source of *kedushas Yisrael*. [See *Rav Schachter on the Moadim, Kapparos Yom HaKippurim* sections III-IV.]

It emerges that a Jew who resides in Eretz Yisrael may be labeled with both *kedushas Avos* and *kedushas Sinai*, whereas a Jew in *chutz la'Aretz* must suffice with merely the single *kedushas Sinai*. He lacks the *kedushas Yisrael* of the *Bris Avos*, which is bound to *kedushas ha'Aretz*. This may be what *Chazal* allude to in stating that a Jew in *chutz la'Aretz* is “like one who has no G-d.”

The Rav noted that there are certain *mitzvos* that only apply in Eretz Yisrael because they are strictly agricultural in nature. However, there are other *mitzvos*, such as *eglah arufah*, *semichah*, and *kiddush hachodesh*, that are unrelated to the land per se, yet nevertheless only apply in Eretz Yisrael.

When the *Rambam* (*Hilchos Sanhedrin* 4:6) cites the *halachah* that *semichah* may only be conferred in Eretz Yisrael, he writes that “all of Eretz Yisrael that was settled by the *olei Mitzrayim* (in the days of Yehoshua) is fit for *semichah*.” This is most surprising, because we generally assume that the *kedushah rishonah* bestowed at the time of Yehoshua was nullified; only those areas endowed with *kedushah* through the subsequent *kedushah sheniyah* at the time of Ezra currently possess *kedushas ha’Aretz*. Thus, the boundaries acceptable for conferring *semichah* should have been limited to the areas settled by the *olei Bavel*, for only that land enjoys *kedushas ha’Aretz*.

The *Radvaz*, quoting the *Kaftor VaFerach*, explains the *Rambam* by distinguishing between two distinct aspects of the uniqueness of Eretz Yisrael. Using the terminology of Rav Moshe Soloveitchik, Eretz Yisrael possesses a *kedushas ha’Aretz*, necessary for the application of the *mitzvos hateluyos ba’Aretz* (agricultural *mitzvos*), such as *terumos* and *ma’asros*. In addition, we recognize the concept of *shem Eretz Yisrael*, the **status** of Eretz Yisrael. The *Rambam* in this ruling teaches that the *shem Eretz Yisrael* applies to any land that was once sanctified with *kedushas ha’Aretz*, even if it no longer possesses that *kedushah*. It is specifically in the land that acquired a *shem Eretz Yisrael* in which *semichah* may be conferred. [See *Nefesh HaRav*, 1994 ed., pp. 79-82; Rav Ahron Soloveichik, *Kedushas Eretz Yisrael V’Shem Eretz Yisrael*, *Beis Yitzchak* vol. 34, pp. 49-54; *Rav Schachter on the Parsha*, *Parshas Lech Lecha*.]

The connection between the *mitzvos hateluyos ba’Aretz* and *kedushas ha’Aretz* is clear. These obligations only devolve on produce that grew in a land endowed with the *kedushah* of Eretz Yisrael. This is not the case, however, for *eglah arufah*,

semichah, and *kiddush hachodesh*. As mentioned, these have no connection to *kedushas Eretz Yisrael*, only to *shem Eretz Yisrael*. The restriction of these *mitzvos* to Eretz Yisrael is not a function of the **land** of Eretz Yisrael, but rather the **person** who lives in Eretz Yisrael. These *mitzvos* may not be fulfilled in *chutz la'Aretz* because a Jew in *chutz la'Aretz* lacks the *kedushah* of the *Bris Avos*.

In light of the preceding analysis, the Rav clarified the sequence of the *pessukim* at the conclusion of the *tochechah*. The first *passuk* in the series is a reference to the *Bris Avos* and its relationship to Eretz Yisrael, והארץ אזכור ... וזכרתי את בריתי יעקב ... והארץ תעזב מהם ... יען וביען במשפטי מאסו ואת חקותי געלה נפשם.

Nevertheless, the Torah assures us, ואף גם זאת בהיותם לא מאסתים ולא געלתים לכלותם להפר בריתי אתם. בארץ אויביהם לא מאסתים ולא געלתים לכלותם להפר בריתי אתם. What, then, is the basis of this consolation and the ultimate redemption of the Jewish People? The next *passuk* provides the answer: וזכרתי להם ברית ראשונים אשר הוצאתי אותם מארץ מצרים. Even in *galus*, when the *Bris Avos* ceases to function, *Hashem* still remembers the *Bris Sinai* that was sealed with “those whom I have taken out of the land of Egypt.” The *bris* with the Jewish Nation is universal. It remains intact in *chutz la'Aretz*, no matter where the Jewish People go, and it is that *bris* that ensures the redemption of the Jewish People from *galus*. [See *Divrei HaRav*, 2010 ed., pp. 264-265.]



PARSHAS BAMIDBAR

SHEVET LEVI IN THE ARMY

מבן עשרים שנה ומעלה כל יוצא צבא בישראל תפקדו אותם לצבאותם אתה ואהרן.

From twenty years of age and up – everyone who goes out to the army in Israel – you shall count them according to their armies, you and Aharon. (*Bamidbar* 1:3)

ACCORDING TO the simple understanding, the purpose of the census in *Parshas Bamidbar* was to prepare for war, as implied by the instruction to count כל יוצא צבא בישראל. Based on this assumption, *Rashi* derives from this *passuk* that no one under the age of twenty may be drafted into the army.

Therefore, the fact that a census was not taken of *Shevet Levi*, “But you shall not count the tribe of Levi, and you shall not take their census among *Bnei Yisrael*” (*Bamidbar* 1:49), lends support to the well-known opinion of the *Rambam* (*Hilchos Shemitah V’Yovel* 13:12) that *Shevet Levi* is exempt from joining the Jewish army:

Why did the *Levi* not receive a portion in the inheritance of Eretz Yisrael and in its spoils with his brethren? Because he was set apart to serve *Hashem*, to minister unto Him, and to instruct the people in His just paths and righteous judgments, as it is written: "They shall teach Your ordinances to Yaakov and Your Torah to Israel" (*Devarim* 33:10). Therefore, they were separated from worldly affairs. They do not wage war like the rest of the Jewish People, and they do not inherit land.

In recent years, the next *halachah* in *Hilchos Shemittah V'Yovel* (13:13) has often been quoted by various *roshei yeshiv'ah* with regard to the army service of *bnei yeshivah*. In that *halachah*, the *Rambam* expands the charge of *Shevet Levi* to anyone who wishes to dedicate himself to continuous Torah study:

ולא שבט לוי בלבד אלא כל איש ואיש מכל באי העולם אשר נדבה רוחו אותו והבינו מדעו להבדל לעמוד לפני ד' לשרתו ולעובדו ... הרי זה נתקדש קדש קדשים ויהיה ד' חלקו ונחלתו לעולם ולעולמי עולמים.

Not only *Shevet Levi*, but each and every man from all walks of life whose spirit moves him to dedicate himself, and his knowledge makes him understand to separate himself, to stand before *Hashem*, to minister, and to serve Him ... he is thereby consecrated as Holy of Holies, and *Hashem* will be his portion and his inheritance forever and ever.

Anyone is able to become an “honorary member” of *Shevet Levi*, and perhaps this distinction extends to abstention from participating in the army as well. [The *Chazon Ish* (*Orach Chaim* 114:3) points out that if we need more fighters to win a war, everyone is obligated to come to the aid of their brethren, even if they are usually exempt from fighting in a *milchemes reshus*.]

This argument is significant, as although the *Gemara* in *Nedarim* (32a) excludes *talmidei chachamim* from the draft, that statement does not refer to all *bnei yeshivah*.

The issue of *Shevet Levi's* exemption from army service is not a simple matter, however. In fact, other *Rishonim* do not seem to agree with the *Rambam*. For example, *Rashi* (*Bamidbar* 1:49) cites two other reasons for *Shevet Levi's* exclusion from the census in *Parshas Bamidbar*, ignoring the obvious explanation that its constituents are not drafted into the army. Obviously, *Rashi* feels that *Shevet Levi* **did**, in fact, participate in the army.

This difference of opinion is further evident in *Parshas Matos*, where the Torah instructs *Bnei Yisrael* to assemble an army to wage war against Midyan:

החלצו מאתכם אנשים לצבא ויהיו על מדין לתת נקמת ד' במדין. אלף למטה אלף למטה לכל מטות ישראל תשלחו לצבא. וימסרו מאלפי ישראל אלף למטה שנים עשר אלף חלוצי צבא.

Arm men from among yourselves for the army, that they may be against Midyan to inflict *Hashem's* vengeance against Midyan. A thousand from a tribe, a thousand from a tribe, for all the tribes of Israel shall you send to the army. So there were delivered from the thousands of Israel a thousand from each tribe, twelve thousand armed for the army. (*Bamidbar* 31:3-5).

Rashi's girsa of the *Sifrei* (157) is that the phrase *לכל מטות ישראל* comes to include *Shevet Levi* in contributing one thousand soldiers. There was a total of only twelve thousand soldiers, even though *Shevet Levi* was represented, because *Menashe* and *Efraim* were counted as the single *shevet* of *Yosef*. The *Rambam*, however, has an alternate *girsa* of the *Sifrei* (also maintained by the *Gra*), which states that *Shevet Levi* was excluded from participating in the war effort and that *Menashe* and *Efraim* must have each contributed one thousand soldiers.

On the assumption that *Shevet Levi* is drafted into the army, there is a further question with regard to *Kohanim*. In the *Maftaichos* in the back of the *sefer Binyan Shlomo* (*siman* 57), Rav Shlomo HaKohen (*Av Beis Din* of Vilna in the late 1800s and the *magi'ah* of the Vilna Shas) mentions a *chiddush* that he had written to his brother, Rav Betzalel HaKohen, on this topic. The *Binyan Shlomo* suggests that according to the view of the *Sefer HaChinuch* (*mitzvah* 603) that women, who do not serve in the army, are exempt from hearing *Parshas Zachor*, which describes waging war against Amalek, the same may be true for *Kohanim*. Since *Kohanim* may not come into contact with the dead, they too may be unfit for the army and may be similarly exempted from *Parshas Zachor*. Accordingly, perhaps a *Kohen* should not serve as the *ba'al korei* for the *leining* of *Parshas Zachor*, since only one who is equally obligated in a *mitzvah* is able to discharge another person's obligation in that *mitzvah* (*Rosh Hashanah* 29a).

Rav Betzalel applies his brother's *chiddush* to explain how the *Chachamim* during *Bayis Sheini* could establish Yom Nikanor on the thirteenth of Adar as a minor Yom Tov on which fasting was prohibited (*Ta'anis* 18b). According to *Rabbeinu Tam* (cited by the *Rosh*, *Megillah* 1:1), *Ta'anis* Esther (also the thirteenth of Adar) was instituted much earlier, in the days of Mordechai and Esther, when the Jews assembled for public fasting and *davening* as they sought to defend themselves against their enemies. If so, how could the later *Chachamim* annul the earlier *takanah* of a *ta'anis* on this day? Rav Betzalel answers that Yom Nikanor may have been instituted only for *Kohanim*, who, in this analysis, were not included in the *takanah* of fasting on *Ta'anis* Esther because they did not take part in the related battle.

During World War I, the British government turned to Chief Rabbi of the United Kingdom Joseph Hertz and asked his opinion regarding drafting *Kohanim* into the British Army. A great debate ensued when he permitted the participation of *Kohanim* in battle, as Rav Yitzchak HaLevi Herzog disagreed based on the *Rambam* cited above (see Rav Shmaryah Menashe Adler, *Mareh Kohen* 3:147; Rav Shlomo Yosef Zevin, *L'Or Ha-Halachah* [5764 ed.], p. 58).

One source in support of the position that *Kohanim* may be drafted is the *Mishnah* in *Sotah* (44a), which lists the prohibited marriages of an *almanah* to a *Kohen Gadol* and a *gerushah* to an ordinary *Kohen* as the sort of *aveiros* on account of which a soldier returns from the battlefield. Similarly, the *Gemara* in *Kiddushin* (21b) questions whether the leniency of *yefas to'ar*, the permissibility of a Jewish soldier to have relations with a gentile captive, applies to a *Kohen*, as it does to a *Yisrael*. The *Mordechai* (*Gittin* 432) seems to cite this *Gemara* as indicating that *Kohanim* do participate in the army (see *Doveiv Meisharim* 3:69).

A related discussion centers around whether a *Kohen* who took someone's life in battle is disqualified from reciting

Birkas Kohanim, as the Gemara in *Berachos* (32b) derives from the *passuk*, וּבְפָרְשְׁכֶם כַּפֵּיכֶם אֶעֱלִים עֵינַי מִכֶּם ... יְדֵיכֶם דָּמִים מְלֹאוּ – “And when you spread your hands, I will hide My eyes from you ... your hands are full of blood” (*Yeshayah* 1:15), that a *Kohen* who has killed a person may not confer *Birkas Kohanim*.

Rav Ovadiah Yosef (*Yechaveh Da'as* 2:14) discusses this question specifically regarding *chayalim* in *Tzahal* who kill the enemies of Israel during battle. He points out that there is a *machlokes haPoskim* as to whether this *halachah* applies to taking the life of a non-Jew. Furthermore, if a *Kohen* is forced to kill, he would remain fit to *duchen*. Rav Ovadiah therefore argues that an Israeli soldier, who fulfills a great *mitzvah* by fighting to protect the Jewish People, should certainly be permitted to *duchen* even if he kills in battle.

Rav Soloveitchik, however, felt that a *chayal* who is responsible for someone's death, even while defending the Jewish People, is unfit to *duchen*. He noted that Pinchas certainly acted properly in killing Zimri and Kazbi, yet the *Zohar* (*Pinchas* 214a) questions how he could subsequently function as a *Kohen*. In this context, the Rav cited *Hashem's* words to Dovid HaMelech regarding the building of the *Beis HaMikdash*:

Dovid said to Shlomo: “My son, I had in mind to build a House for the Name of *Hashem*, my G-d. But the word of *Hashem* came to me, saying, ‘You have shed much blood and have made great wars; you shall not build a House for My Name's sake, for you have shed much blood upon the ground before Me.’” (*Divrei HaYamim* I 22:7-8)

The simple reading of this passage is that it is referring to the blood of the enemies of Yisrael, yet *Hashem* nevertheless prevented Dovid HaMelech from building the *Beis HaMikdash*. [See *Nefesh HaRav*, 1994 ed., p. 132.]



PARSHAS NASO

EMUNAS CHACHAMIM

דבר אל בני ישראל ואמרת אליהם איש איש כי תשטה אשתו.

Speak to the Children of Israel and say to them: Any man whose wife shall go astray. (*Bamidbar* 5:12)

THE PARSHA OF SOTAH is the only instance in which the Torah promises that a miracle will occur. Generally, we follow the principle of אין סומכין על הנס – “we do not rely upon a miracle,” but here the husband may rely on the *sotah*-water to ascertain the innocence or guilt of his wife.

The *Mishnah* in *Eduyos* (5:6) records that Akavya ben Mahalalel, in contrast to the opinion of the *Chachamim*, expounded the clause, דבר אל בני ישראל, to teach that this miracle was promised only to those born as Jews (*Rashi*, *Berachos* 19a). Thus, Akavya excluded the wife of a *ger* or of a freed *eved Cana'ani*, who has the status of a *ger*, from the *sotah* procedure.

In support of their view, the *Chachamim* cited an incident that occurred in Yerushalayim, in which Shemayah and Avtalyon, who officiated as the *Nasi* and *Av Beis Din* in the generation preceding Hillel and Shamai, administered *sotah*-water in such a situation. To this, Akavya disparagingly replied, דוגמא השקוה – “They [Shemayah and Avtalyon] gave her [*sotah*-water] to drink because they were similar [to her],” being descendants of *geirim* themselves (*Gittin* 57b; *Yoma* 71b). The *Mishnah* describes that

these words caused a fierce reaction. Akavya, despite his being a great man, was placed in *niduy* (excommunication), and he actually died in that state. The *beis din* placed a large stone on his coffin to serve as a token of stoning, signifying that he died because of the curse of the *niduy*.

What was so bad about Akavya's statement? Apparently, Akavya accused Shemayah and Avtalyon of advancing their opinion in favor of *geirim* since they themselves descended from *geirim*. In other words, they decided the *halachah* this way in order to make a self-serving point about equality for *geirim*. According to the *Mishnah*, the punishment for expressing such an attitude is nothing less than *niduy*!

Emunas Chachamim entails believing that honest *talmidei chachamim* develop their views based on what they think the *halachah* should be, and not as a result of their personal biases. One is not permitted to impute socio-economic or political considerations into the minds of *talmidei chachamim* and claim that those factors directed them to a particular *psak*.

Years ago, whenever Sukkos followed a *shemittah* year, there would be two consecutive advertisements in the Yiddish newspapers. Satmar *chassidim* would place an ad asserting that since the *heter mechirah* (the sale of parts of Eretz Yisrael to non-Jews in order to avoid the stringencies of *shemittah*) is not reliable, one should be careful **not** to buy *esrogim* that grew in Eretz Yisrael. A second ad would be placed by the Mizrachi, quoting Rav Soloveitchik, stating that one **should** purchase these *esrogim* and support the *yishuv* in Eretz Yisrael that year, just as in other years.

There were always those who commented that they could have predicted the halachic positions of these *rabbonim*. After all, the Satmar Rebbe, being an anti-Zionist, would certainly disqualify these *esrogim*, whereas Rav Soloveitchik, the honorary president of the Mizrachi, would surely approve of their use!

The truth of the matter is, however, that the *pesakim* had nothing to do with Zionism. The Satmar Rebbe's view was based on the fact that an *esrog* must have a *heter achilah* (*Sukkah* 35a), and *Rabbeinu Tam* (*Tosfos*, *Yevamos* 122a, s.v. *shel*) maintains that since the Torah demands that all produce be left for the public during *shemittah*, *meshumar* produce (produce that was guarded in the field during *shemittah*) may not be eaten. Therefore, one would not fulfill the *mitzvah* with *esrogim* grown through reliance on the *heter mechirah*.

Rav Soloveitchik's *heter* was similarly based on halachic reasoning. First, the opinion of *Rabbeinu Tam* that guarding fruit during *shemittah* renders it forbidden is not necessarily accepted *l'halachah* (see *Igros Moshe*, *Orach Chaim* 1:186, 5:42; *Chazon Ish*, *Shvi'is* 10:6, s.v. *v'esrogin*). Second, even according to *Rabbeinu Tam*, an *esrog hameshumar* is not classified among the *ma'achalos assur* (forbidden foods), like an *esrog* of *orlah*. Rather, one may not eat such an *esrog* since by doing so, he thereby participates in the violation of not making *shemittah* produce *hefker*. This does not confer a change of status on the *esrog* itself, which remains an item that **has** a *heter achilah*. [See *Nefesh HaRav*, 1994 ed., pp. 83-84.]

As we saw from the *Mishnah* in *Eduyos*, it is not proper to have the attitude that non-halachic concerns affected a *psak halachah*. Assuming that the Satmar Rebbe and Rav Soloveitchik were honest *talmidei chachamim*, one must have the *emunas Chachamim* that they were expressing their honest halachic opinions, completely free of outside considerations.



THE SHVIL HAZAHAV

IN *HILCHOS DEI'OS* (*perakim* 1-3; see also *Shemoneh Perakim*, *perek* 4), the *Rambam* formulates his famous principle known as *shvil hazahav* – “The Golden Mean.” The *Rambam* writes that proper conduct demands that one follow the “*middah beinonis*,” a middle path between two extremes. For example, one should practice some restraint with regard to his desires, as that is the middle path between overindulgence and abstinence. Similarly, one should act generously, as that is the median between stinginess and extravagance. A person acquires good character by habituating himself to behave in accordance with the Golden Mean.

The *Rambam* adds that if a person sees that he has a predilection for leaning towards a certain negative character trait, he should correct himself by practicing the opposite extreme, until he learns to remain in the *derech habeinonis*. It is necessary to take this extreme measure because a shift to the middle path would not be sufficient to “cure his affliction.” Once he reaches this state of equilibrium, however, he should turn away from the extremes and continue following the middle path.

The *Rambam* (1:5) writes that acting in this fashion is a fulfillment of the *mitzvah* of *והלכת בדרכיו* – “And you shall go in His ways” (*Devarim* 28:9), listed among the very first *mitzvos* in the *Rambam's Sefer HaMitzvos*. In fact, this middle path is the “*derech Hashem*,” regarding which *Hashem* singled out Avraham Avinu, recognizing that Avraham would instruct his children to behave in this fashion (*Bereishis* 18:19).

Shadal (Shmuel Dovid Luzzato) attacked the *Rambam* for incorporating ideas that he gleaned from Greek philosophers like Aristotle into his *sefarim*. One of the concepts that the *Rambam* was accused of copying is the principle of conducting

oneself according to the Golden Mean. In defense of the *Rambam*, the *Maharitz Chayes* wrote the essay *Tiferes L'Moshe*, explaining that although the *Rambam's* presentations may have utilized Aristotelian terminology, the *Rambam* always based his ideas on sources in *Chazal*.

It seems that the source for the *Rambam* with regard to adhering to the *middah beinonis* is the *Gemara* in *Sotah* (2a), quoted by *Rashi* (*Bamidbar* 6:2) in commenting on the juxtaposition of the *parsha* of *nazir* to the *parsha* of *sotah*:

למה נסמכה פרשת נזיר לפרשת סוטה. לומר לך שכל הרוואה סוטה בקלקולה יזיר עצמו מן היין.

Why was the passage of the *nazir* put adjacent to the passage of the *sotah*? To tell you that whoever sees a *sotah* in her state of disgrace should take upon himself to abstain from wine [by becoming a *nazir*].

Since it may have been wine that brought the *sotah* to this state, one should limit his consumption of wine to prevent the mood of levity that might lead him to immorality.

This statement must be understood in light of the *Gemara* in *Ta'anis* (11a). Interpreting the *passuk*, וּכְפַר עָלָיו מֵאֲשֶׁר חָטָא עַל הַנֶּפֶשׁ – “And [the *Kohen*] shall provide him atonement for having sinned regarding the soul” (*Bamidbar* 6:11), *Rebbi Elazar Ha-Kappar* explains that a *nazir* is called a *chotei* for depriving himself of the pleasure of drinking wine. Indeed, the *Mesillas Yesharim* (*Middas HaPerishus*, perek 13), citing the *Yerushalmi* (*Kiddushin* 4:12), writes that after a person dies, he will be held accountable for every permitted thing that his eyes saw and of which he did not partake. *Hashem* desires that we enjoy all of the pleasures that He created in the world, and it is therefore considered improper that the *nazir* abstains from wine. In other words, the *nazir* is considered a *chotei* precisely because he has not conducted himself according to the *middah beinonis*, but has instead favored an extremist approach. *Hashem* wants a person to partake of wine in moderation, and becoming a *nazir* is deemed excessive.

Thus, the exception expressed by the *Gemara* in *Sotah* proves the general rule of the *Rambam*. The extreme approach of the *nazir* is warranted only as a reaction to his being confronted by a *סוטה בקלקולה*. Indeed, one who finds himself in a particularly promiscuous society may properly take the position of total abstention from wine and refrain from indulging in anything even remotely related to *giluy arayos*. Likewise, if one lives in a generation in which theft and cheating are pervasive, he should tilt disproportionately in the opposite direction. He should be overly scrupulous in monetary matters, even when halachically permissible, in order to counteract the outside influences. Absent these extreme situations, however, it is clear from *Chazal* that the *shvil hazahav* is the optimal course of conduct.



PARSHAS BEHA'ALOSECHA

SEFER BIFNEI ATZMO

ויהי בנסוע הארון ... ובנחה יאמר.

When the *aron* would journey ... And when it rested. (*Bamidbar* 10:35-36)

THE GEMARA IN SHABBOS (116a) cites a *machlokes Tanna'im* as to how many "Chumashim" comprise the *Chamishah Chumshei Torah*. We accept the opinion that there are in fact a total of seven *sefarim* in the Torah, as the inverted *nunim* found before and after the section of ויהי בנסוע הארון indicate that these *pesukim* are to be regarded as a *sefer bifnei atzmo*, a book unto itself. Thus, *Sefer Bamidbar* is actually made up of three *sefarim* – the portion of *Bamidbar* that precedes this section, the section of ויהי בנסוע הארון itself, and the portion that follows it. In accordance with this opinion, the *Gemara* quotes the *passuk*, חצבה עמודיה שבעה – "[Wisdom] has hewn out her seven pillars" (*Mishlei* 9:1), representing the seven *sefarim* of the Torah.

There is a *halachah* derived from the fact that the section of ויהי בנסוע הארון has the status of a *sefer bifnei atzmo*. The *Gemara* above teaches that if a *sefer* of *Tanach* became worn out, such that its writing was erased, as long as there remains a minimum of eighty-five intact letters, similar to the *parsha* of ויהי בנסוע הארון, the *sefer* retains the status of *kedushas kisvei hakodesh*.

What is the significance of labeling the section of **ויהי בנסוע הארון** as a *sefer bifnei atzmo*? It seems that this represents the idea that the Torah is able to travel from one continent to another and that it can be applied in all generations; the *aron* "travels." Despite the fact that the world changes at such an accelerated pace, the *dinei haTorah* are as relevant today as they always were.

Throughout the generations, the principal method employed in *paskening* a *sheilah* was being **מדמה מילתא למילתא** – comparing one case to another, the case at hand to an established precedent. A *posek* seeks to accurately select the appropriate *halachah* that most resembles the current situation. For many years, *Acharonim* in Galicia and Hungary utilized this style of *psak halachah* in their *sefarim* of *sheilos u'teshuvos*. They would cite earlier *teshuvos*, and their discussion centered around whether the circumstances of the *sheilah* they had been sent were analogous to one *teshuvah* or another.

However, this method is difficult to implement in a fast-changing world. If merely superficial similarities are used in evaluating the various cases, one may easily draw the incorrect conclusion. Instead, it became more appropriate to employ a different approach, based on reasoning. Thus, in the Lithuanian *teshuvos* of the past hundred years, starting from the time of Rav Chaim Ozer Grodzinsky, rather than *paskening* by analogy, a system of *paskening* by analysis was developed. Rav Moshe Feinstein, for example, first seeks to elucidate the underlying principles of the relevant *Gemaros* and *Rishonim*. After clarifying the definitions of the *halachah*, the *psak* in the particular case presented to him emerges logically.

As an example, in the 1800s, when electric bulbs first began to be used widely, the *Maharsham* (2:247) held that turning on lights on Shabbos could not possibly be a *melachah d'oraisa* of *hav'arah* (kindling), since these lights did not exist

in the *Mishkan* from which we derive the thirty-nine forbidden *melachos* of Shabbos. We have however accepted Rav Chaim Ozer Grodzinsky's dissenting opinion (*Achiezer* 3:60), that heating a metal filament until it glows constitutes a *melachah* of *hav'arah* (*Rambam, Hilchos Shabbos* 12:1).

In fact, Rav Soloveitchik reported that Rabbi Chaim Ozer would routinely use an electric bulb for *Havdalah* in order to demonstrate how strongly he felt that electricity should be treated exactly like fire from the perspective of Halachah. With the strength of *Torah SheBe'al Peh*, we can adapt *halachos* that were originally formulated millenia ago and apply them to the modern world. [See *Nefesh HaRav*, 1994 ed., p. 156.]

Along these lines, *Maseches Sofrim* (16:5) teaches that if the entire Torah would have been committed to writing, it would not be a dynamic Torah, but, instead a rigid one that is "etched in stone." *Torah SheBe'al Peh*, with its concomitant rabbinic input, allows the Halachah to keep pace with an ever-changing world.

Thus, after an *aliyah*, we recite the *berachah*: אשר נתן לנו תורת אמת וחיי עולם נטע בתוכנו - "Who gave us the Torah of truth and implanted eternal life within us." We praise *Hashem* for giving us not only a תורת אמת, a reference to the text of *Torah SheBichsav*, but also for providing us with the ability to develop a "living" *Torah SheBe'al Peh*, a חיי עולם, that *Chachamim* in later generations can use to evaluate new situations (*Orach Chaim* 139:10, *Bei'ur HaGr"a*).

The Halachah does not change, but the application of a previously held *halachah* may have changed due to a different set of circumstances. Through an understanding of the underpinnings of the Halachah, the *dinei haTorah* relate to every era and location. Thus, the same halachic system that was valid two-thousand years ago in the days of the *Gemara* is relevant nowadays as well, despite completely different conditions. [See *Rav Schachter on the Parsha, Parshas Toldos*.]

The Torah is able to travel. It transcends time and place, and it applies in each generation, to every society. This was a recurrent theme in many of Rav Soloveitchik's *derashos* (see *Chameish Derashos*, pp. 111-113). He would make the point by stating, "If I would have been the *Rambam*, I would have written a fourteenth *ikar ha'emunah* (Principle of Faith): This Torah can be fulfilled under all conditions, and it has significance in every country in the world and in every period in history." The *pessukim* of ויהי בנסוע הארון, especially their special status as a *sefer bifnei atzmo*, convey this message. [See *Nefesh HaRav*, 1994 ed., p. 276.]



THE DUAL ROLE OF THE BEIS DIN HAGADOL

אספה לי שבעים איש מזקני ישראל.

Gather to Me seventy men from the elders of Israel. (*Bamidbar* 11:16)

ACCORDING TO THE *RAMBAM* (*Sefer HaMitzvos, mitzvas Aseh* 153; *Hilchos Kiddush HaChodesh* 5:1-2), *kiddush ha-chodesh* (sanctification of the new moon) and *ibbur hashanah* (intercalation of the year) must be carried out under the auspices of the *Beis Din HaGadol* (High Court). If so, how is it that we sanctify the months nowadays, when we lack the presence of a *Beis Din HaGadol* (see *Ramban, Hasagos to Sefer HaMitzvos*)?

In his first *yahrtzeit drashah*, Rav Soloveitchik explained (*Shiurim L'Zecher Abba Mari Z"l I*, pp. 129-131, 137-139; *Kovetz Chiddushei Torah*, pp. 52-56) that there are two *parshiyos* regarding the *Beis Din HaGadol* in the Torah. One *parsha* describes

the role of the *Sanhedrin* as the final legal authority, as deciders of Halachah:

כי יפלא ממך דבר למשפט ... וקמת ועלית אל המקום אשר יבחר ד' אלקיך בו ... ודרשת והגידו לך את דבר המשפט.

If a matter of judgment is hidden from you ... you shall rise up and ascend to the place that *Hashem*, your G-d, shall choose ... You shall inquire and they will tell you the word of judgment. (*Devarim* 17:8-9)

In *Parshas Beha'alozecha*, however, we find a second *parsha* with regard to the *Beis Din HaGadol*, which describes its capacity to act as the representative of *Klal Yisrael*:

אספה לי שבעים איש מזקני ישראל ... ולקחת אותם אל אהל מועד והתיצבו שם עמך ... ונשאו אתך במשא העם.

Gather to Me seventy men from the elders of Israel ... take them to the *Ohel Mo'ed*, and have them stand there with you ... And they shall bear the burden of the people with you. (*Bamidbar* 11:16-17)

The Rav noted the precise wording of the *Rambam* to demonstrate this second role of the *Sanhedrin*. The *Rambam* in *Hilchos Melachim* (5:6) writes that for a conquest to qualify as a *kibbush rabbim* (communal conquest) of Eretz Yisrael, it must be conducted under the auspices of the *Beis Din HaGadol*, על פי בית דין. Yet, in *Hilchos Terumos* (1:2), in describing the same *halachah*, he writes that the conquest must be מדעת רוב ישראל. Both of these descriptions are identical, the Rav explained, because the opinion of the *Sanhedrin* represents the opinion of the *tzibbur* (congregation) as a whole. In this sense, the *Sanhedrin* fills a role akin to that of the Congress in the United States.

The Rav explained that when the *Rambam* holds that *kiddush hachodesh* requires the authorization of the *Sanhedrin*, it is not in its capacity as the Supreme Court of the Jewish People, rendering the final legal decision on a given halachic question. *Kiddush hachodesh* does not necessarily involve a complicated *psak halachah*, requiring the greatest legal minds of the

Jewish Nation. Rather, the necessity of the involvement of the *Sanhedrin* in the process of *kiddush hachodesh* is due to its **second** role – that the *Sanhedrin's* decision represents the majority opinion of the Jewish Nation.

The Rav elaborated by explaining that the responsibility of *kevi'as halu'ach* ultimately rests upon the entity of *Klal Yisrael*. This is how the *Gemara* in *Berachos* (49a) interprets the conclusion of the middle *berachah* of the Yom Tov *Amidah*, מקדש ישראל והזמנים – “Who sanctifies *Yisrael* who, in turn, sanctify the Yomim Tovim.” We do not recite מקדש בית דין הגדול והזמנים because, in fact, it is *Klal Yisrael* that is responsible to be *mekadesh* the Yomim Tovim.

When there is a *Beis Din HaGadol*, it performs this function acting on behalf of *Klal Yisrael*. When a *Beis Din HaGadol* is not available, however, the *mitzvah* reverts back to *Klal Yisrael* itself. When its members recite *birkas hachodesh* and observe the *dinim* associated with Rosh Chodesh (*Ya'aleh V'Yavo*, *Mussaf*, *Hallel*, *seudah*), they demonstrate that the day is Rosh Chodesh and sanctify it as such.

In fact, the *Rambam*, both in *Sefer HaMitzvos* and in *Hilchos Kiddush HaChodesh* (5:13), contends that it is particularly the Jews living in Eretz *Yisrael* who are responsible to be *mekadesh* the *chodesh*. Those Jews, even if they constitute a small fraction of the world Jewish population, are the ones who are classified as “*Klal Yisrael*,” and it is the body of *Klal Yisrael* that is assigned the role of being *mekadesh* the *chodashim* (*Avnei Nezer*, *Orach Chaim* 314:4). [See *Eretz HaTzvi*, p. 231.]

The *Rambam* claims that there is a *Halachah L'Moshe MiSinai* that in the absence of the *Beis Din HaGadol*, the *mitzvah* is incumbent upon *Klal Yisrael*. The *Ramban* (*Sefer HaMitzvos*, *Hasagos*, *mitzvas aseh* 153) questions this assertion, arguing that such a *Halachah L'Moshe MiSinai* does not appear anywhere in the Talmud. To this, the Brisker Rav (*Kuntres MeiChiddushei Maran Ri"z HaLevi al Inyanei Kiddush Hachodesh Yoma V'Sukkah*,

Hilchos Kiddush HaChodesh 5:1) responds that this is in fact the meaning of the *Gemara's* reference to the סוד העיבור, "the secret of intercalation" (*Rosh Hashanah* 20b, as explained by *Rabbeinu Chananel* in the name of the *Ge'onim*).

Accordingly, we understand that in the *Rambam's* view, when the *Beis Din HaGadol* ceases to exist, the responsibility of *kevi'as halu'ach* shifts back to *Klal Yisrael*. *Klal Yisrael* has the ability to sanctify the months in place of the *Sanhedrin*. [See *Rav Schachter on the Parsha, Parshas Bo*.]



PARSHAS SHELACH

MINYAN FOR DEVARIM SHEB'KEDUSHAH

עד מתי לעדה הרעה הזאת.

How long shall this evil congregation exist. (*Bamidbar* 14:27)

BASED ON THIS *PASSUK*, the *Gemara* in *Megillah* (23b) establishes that *devarim sheb'kedushah* (matters of sanctity) – such as *Kaddish*, *Kedushah*, and *Barchu* – require a quorum of ten men.

The term *עדה* in this *passuk* has the connotation of ten men, since of the twelve *meraglim*, only ten, the *עדה הרעה*, gave an evil report about Eretz Yisrael.

On this basis, the *Mishnah* in *Sanhedrin* (2a) establishes that a *beis din* for the purpose of *dinei nefashos* (capital crimes) is composed of twenty-three *dayanim*. The *passuk* states, *... והצילו העדה ...* – “And the congregation shall judge ... And the congregation shall save” (*Bamidbar* 35:24-25), implying that *dinei nefashos* require that the *beis din* include an *עדה* that argues to convict and an *עדה* that argues to acquit. The *Mishnah* explains that since each *עדה* represents ten *dayanim*, we know that we must have at least twenty *dayanim*. Given that a two-vote majority is necessary to convict and a *beis din* cannot consist of an even number of *dayanim*, we arrive at a total of twenty-three.

The *Gemara* in *Megillah* proceeds to connect the term עדה with the word תוך, as found in the *passuk* referring to the rebellious congregation of Korach, הבדלו מתוך העדה הזאת - "Separate yourselves from amid this congregation" (*Bamidbar* 16:21). Therefore, when the *passuk* instructs, ונקדשתי בתוך בני ישראל - "And I shall be sanctified among the *Bnei Yisrael*" (*Vayikra* 22:32), it indicates that a *davar sheb'kedushah*, through which *Hashem* is to be sanctified, requires a *minyan* of ten men.

The *Mishnah Berurah* (*Orach Chaim* 55:47) quotes a *teshuvah* of the *Rambam* (*Pe'eir HaDor, siman* 71) regarding whether *Karaite*s may count for a *minyan* for *devarim sheb'kedushah*. The *Rambam* contends that an *apikores* who does not believe in the veracity of *Torah SheBe'al Peh* and the statements of *Chazal* cannot be *mitztareif* to (join) a *minyan*.

Of note, *Rav Moshe Feinstein* (*Igros Moshe, Orach Chaim* 1:23) argues that *Chazal* (*Arachin* 15a) comment that the *meraglim* were themselves *apikursim*, as they understood the spies' words, כי חזק הוא ממנו - "for it is stronger than we" (*Bamidbar* 13:31), to mean, "for it is stronger than **Him**." The *meraglim* here made a heretical statement, intending that the nation of *Cana'an* is stronger than *Hashem*. Nevertheless, the *meraglim* constituted an עדה, indicating that *apikursim* do, in fact, count towards a *minyan*.

We usually assume, however, that we learn from the *meraglim* merely that an עדה consists of ten men, but not necessarily that individuals such as the *meraglim* themselves would constitute a *minyan*. This begs the question, however, of why the *meraglim* serve as *Chazal's* source that ten men are required for *devarim sheb'kedushah*, especially if the *meraglim* themselves would not have actually qualified for a *minyan*!

Perhaps we may suggest an answer based on the idea that the principal place for the *tziruf* (combination) of *Klal Yisrael* is in *Eretz Yisrael*, the National Homeland of the Jewish People. The *Avnei Nezer* (*Orach Chaim* 314:4) writes that this idea is

implicit in the *Rambam's Sefer HaMitzvos* (*mitzvas aseh* 153). The *Rambam* writes that *kiddush hachodesh* (the sanctification of the month) and *ibbur hashanah* (the intercalation of the year) are functions that the *Sanhedrin* may perform only in Eretz Yisrael. He adds that if a Jewish presence were ever to cease to exist in Eretz Yisrael, חלילה לקל מעשות זאת - "G-d should forbid this from occurring," we would be unable to establish a day as Rosh Chodesh (and, by extension, Yom Tov) based on the calculations of Jews in *chutz la'Aretz*, because this function must be executed by the *kahal* of *Klal Yisrael*. The Jews of *chutz la'Aretz* have *kedushas Yisrael*, but they do not constitute ***Klal Yisrael***. [See *Rav Schachter on the Parsha, Parshiyos Lech Lecha, Bo, Ki Savo.*]

Rav Soloveitchik (*Divrei Hagus V'Ha'arachah*, pp. 114-115) explained that, essentially, all of *Klal Yisrael* is required for the recitation of *devarim sheb'kedushah*: ונקדשתי בתוך בני ישראל. *Kaddish*, *Kedushah*, and *Barchu* may be recited in the presence of a *minyan* of ten men because they represent the entirety of *Klal Yisrael*. At the time of the travels in the *midbar*, the twelve *meraglim* were the only Jews who had ever visited Eretz Yisrael, and, as we noted, it is only in Eretz Yisrael that we can speak of a *tziruf* of Jews. The Jews outside of Eretz Yisrael, though they may be numerous, are only considered *yechidim* (individuals). This may be why the *Gemara* chose to derive the *halachah* that ten men are required for *devarim sheb'kedushah* from the *meraglim* - since they had the distinction of having been in Eretz Yisrael, and they therefore represent the body of *Klal Yisrael*.



MACHANEH YISRAEL

אל תעלו כי אין ד' בקרבכם ולא תנגפו לפני אויביכם.

Do not ascend, for *Hashem* is not in your midst! And do not be smitten before your enemies. (*Bamidbar* 14:42)

AFTER THE INCIDENT of the *meraglim* and the decree that the current generation of *Bnei Yisrael* would not merit to enter the Land, there was a group of *ma'apilim* who defiantly insisted on advancing to Eretz Yisrael. Moshe Rabbeinu warned them that they would not succeed in conquering the Land, since the *Shechinah* would not be with them. The *passuk* indicates that if the *Shechinah* is absent, the Jewish People cannot be successful in conquering Eretz Yisrael. Apparently, in 1948, when the Jews won the War of Independence, the *Shechinah* was in their midst. Despite the fact that many of the fighters were irreligious, the *Shechinah* accompanied the Jewish army and enabled them to be victorious.

The fate of every other country is governed by the rules and regulations of history, and this includes their wars and associated conquests. Russia can wage war and seize the Ukraine without the presence of the *Shechinah*. The Jewish People's conquest of Eretz Yisrael, however, falls within the realm of *ruchniyus*. The *kibbush ha'Aretz* in the days of Yehoshua originally endowed Eretz Yisrael with its *kedushah* (*Rambam, Hilchos Beis HaBechirah* 6:16). Thus, *kibbush ha'Aretz* is not merely a historical event, but a *mekadeish*, and it is ineffective unless the *Shechinah* is present.

The *Chazon Ish* (*Orach Chaim* 114:1) writes that the halachic definition of *machaneh Yisrael* (Jewish army encampment), which is relevant to a number of *halachos* discussed in the *Gemara* in *Eiruvin* (17a), is a Jewish army sponsored by a Jewish government that wages war in Eretz Yisrael. The *Yerushalmi* (*Eiruvin* 1:10; cited by *Rabbeinu Chananel, Eiruvin* 17a) raises the

question of how many soldiers need to be present in a given location to constitute a *machaneh Yisrael*. The *Chazon Ish*, based on a comment of the *Maggid Mishneh* (*Hilchos Eiruvim* 1:3), rules that only if there are ten soldiers gathered together does the group constitute a *machaneh*.

In other words, in the same way that ten Jews join together for a *davar sheb'kedushah* based on the principle, כל בי עשרה שריא שכינתא שריא – “The Divine Presence rests on every assembly of ten Jews” (*Sanhedrin* 39a), ten Jewish soldiers assembled for battle to fight *milchemes Hashem* on behalf of the Jewish People bring the *Shechinah* in their midst. Accordingly, the *Chazon Ish* maintains that the ten soldiers must be individuals who would qualify for a *minyan* for a *davar sheb'kedushah*; an *apikores* would not be eligible to create a status of *machaneh Yisrael* (as per the *Rambam*, *Pe'eir HaDor*, *siman* 71).

Some individuals should leave the battlefield under the category of מי האיש הירא ורך הלבב – “Who is the man who is frightened and faint of heart” (*Devarim* 20:8). According to one Tannaitic opinion, this refers to one who is fearful on account of the *aveiros* he has committed (*Sotah* 44a). The success of the Jewish army depends on the participation of the *Shechinah*, and the *Shechinah* will only “feel comfortable” among a *minyan* of *tzadikim*. Waging *milchemes Hashem* on behalf of *Klal Yisrael* is considered a *davar sheb'kedushah*.

Therefore, the Torah instructs the Jewish soldiers to be careful to cover their excrement and to dress properly out of respect for the *Shechinah*. As the *passuk* states:

כי ד' אלקיך מתהלך בקרב מחניך להצילך ולתת אויבך לפניך והיה מחניך קדוש ולא יראה בך ערות דבר ושב מאחרך.

For *Hashem*, you G-d, walks in the midst of your camp to rescue you and to deliver your enemies before you; so your camp shall be holy, so that He shall not see a matter of nakedness among you and turn away from behind you. (*Devarim* 23:15)

Interestingly, the *Gemara* (*Berachos* 25b; *Shabbos* 150a) derives the *halachos* of cleanliness and proper dress with regard to *davening* and learning Torah from this *passuk*, which appears in the *Chumash* in the context of *machaneh Yisrael*. The *Netziv* (*Ha'amek Davar*) raises the question of how *Chazal* derived these *halachos* from the requirements that pertain specifically to Jewish soldiers. Apparently, since the Torah promises that the *Shechinah* will be present when a *minyán* of soldiers fights "Hashem's battles," the *Gemara* applied these restrictions to *davening* and learning, as they are also associated with *hashra'as haShechinah*.



PARSHAS KORACH

L'CHATCHILAH D'ORAISA

בהרימכם את חלבו ממנו.

When you raise up its best from it. (*Bamidbar* 18:30)

THE PORTION one separates for *terumah* or *challah* should be in close proximity, מן המוקף, to the produce or dough on whose behalf it is separated (*Challah* 1:9). If someone designates *terumah* from distant produce and the produce is in existence, the *hafrashah* (designation) takes effect *bedi'eved* (post facto), but one may not *l'chatchilah* (optimally) designate *terumah* for produce that is located elsewhere.

The *Mechaber* (*Yoreh De'ah* 331:26) rules that if different batches of produce are in the same room in uncovered receptacles, one may separate *terumah* from one *kli* on behalf of the others. The Vilna Gaon (*Bei'ur HaGr"a* 325:8) disagrees, however, and provides the following guidelines: If different batches are placed in uncovered *keilim*, the principle of מן המוקף requires that the *keilim* touch each other. If the *keilim* are covered, one may not separate from one for the other at all. If the produce is not contained in *keilim* and one is not adamant about keeping them separate, one may separate *terumah* from one batch for the others if they are in one room, even if they are not touching.

Rashi (*Gittin* 30b, s.v. *mukaf*) and *Tosfos* (s.v. *litrom, v'chi*) disagree as to whether the מן המוקף requirement is a *gezeirah derabbanan* or *min haTorah*. *Rashi* writes that the *Chachamim* issued

the *gezeirah* out of concern that if someone designates *terumah* from distant produce, that produce might no longer be in existence, having been destroyed or ruined, when the *terumah* was designated. This would render the *hafrashah* meaningless, and whoever would then eat the produce at hand would violate the *issur* of eating *tevel* (food from which no *terumah* has been taken). *Mid'oraisa*, one may rely on the *chazakah* (status quo) that the distant produce still exists, but *miderabbanan*, the *Chachamim* added this stringency in order to be certain that the *hafrashah* is effective.

Tosfos disagrees and maintains that it is a *din d'oraisa* that one should be *mafrish* מן המוקף. Indeed, the *Sifrei* expounds the *passuk*, מן המוקף את חלבו ממנו – “when you raise up its best **from it**” (*Bamidbar* 18:30), to teach that one should separate *terumah* only מן המחובר – “from that which is attached.” Since we already know that one may not be *mafrish* from produce that is still attached to the ground, the *Sifrei* must be describing the *din* of מן המוקף. This *drashah* is apparently what *Tosfos* refers to in claiming that מן המוקף is a *din d'oraisa*. [The *Gr"a* and the *Netziv*, in their commentaries on the *Sifrei*, changed the *girsah* from מן המחובר to מן המובחר – that one should take the *terumah* from the choicest part of the crops, as the word חלבו in the *passuk* implies. However, a recently published manuscript, *Sifrei im Peirush Meyuchas L'HaRa'avod* (*piska* 122), concurs that מן המוקף is what the *Sifrei* calls מן המחובר.]

The *machlokes Rishonim* may be understood in light of a principle advanced by *Tosfos* (*Niddah* 66b, s.v. *kol hara'uy*), who distinguishes between a *matir*, whose purpose is to remove a certain state, and a *mitzvah*.

With regard to the former category, if there is a condition that is not *me'akeiv* (essential), we do not require that condition even *l'chatchilah*. Take, for example, the case of a *tevilah* in a *mikveh* that removes a person's *tum'ah*. Must the water of the *mikveh* enter the *beis hasetarim* (the areas within the cavities of

the body)? Since a *tevilah* that does not satisfy this condition renders a person *tahor bedi'eved* (*Niddah* 66b), the *tevilah* must be acceptable *lechatchilah* without it as well.

A *get* that permits a woman to remarry is similarly a *matir*. That is why there is no *hiddur mitzvah* (beautification of a *mitzvah*-object) to write a *get* on an expensive piece of parchment; a *get* is not a *mitzvah* at all. Thus, whenever the Halachah states that a particular *get* is *kasher bedi'eved* (*Gittin* 86a), that is an indication that it is also *kasher l'chatchilah* (and any disqualification under discussion is merely *miderabbanan*).

Along these lines, when considering an *issur d'oraisa*, it is not logical to differentiate between *l'chatchilah* and *bedi'eved*. For example, the *halachah* is that one may not cook in a *kli* used for non-kosher food that is presently *eino ben yomo* (not used for hot food in the last twenty-four hours), but if one did so, the cooked food remains kosher. This cannot be a *din d'oraisa*. *Mi-d'oraisa*, a *kli* is either completely kosher or completely non-kosher. Instead, the explanation of this *halachah* is that the food cooked in a *kli* that is *eino ben yomo* remains kosher because the non-kosher flavor that was absorbed in the *kli* becomes unpalatable by the following day and is *nosen ta'am lifgam* (contributes an unfavorable flavor to the food). Nevertheless, the *Chachamim* introduced a *gezeirah* not to cook in such a *kli*, lest one come to use a *kli ben yomo* (used that day for non-kosher food) (*Avodah Zarah* 76a).

In the realm of *mitzvos*, however, we may find conditions that one should fulfill *l'chatchilah*, but which, *bedi'eved*, do not affect the *kiyum hamitzvah* if they are not met. A case in point is the *mitzvah* of *tzitzis*. Most *Rishonim* hold that the absence of *techeiles* strings does not disqualify the white strings (*Menachos* 38a). In other words, the *mitzvah bishleimusah* (in its complete form) consists of the full complement of *techeiles* and white strings. If one lacks *techeiles*, since it is a non-critical element of the *mitzvah*, he fulfills the *mitzvah shelo bishleimusah*, in an

incomplete fashion. The existence of a stipulation that is required only *l'chatchilah*, but not necessary *bedi'eved*, indicates clearly that we are dealing with a *mitzvah*.

Since *Tosfos* claims that the *halachah* of מן המוקף is *d'oraisa*, *Tosfos* must assume that *hafrashah* of *terumah* is a *mitzvah*, not simply a *matir* of the *issur tevel* on the produce. That is how it is possible to find a *l'chatchilah d'oraisa* with regard to *hafrashah*; *l'chatchilah*, the *terumah* must be taken מן המוקף, but *bedi'eved*, it is acceptable if it is not מן המוקף. On the other hand, perhaps *Rashi* was compelled to conclude that the requirement of מן המוקף is merely *miderabannan*, since *Rashi* understands *hafrashah* as a *matir*, and it is not possible to have a *l'chatchilah d'oraisa* with regard to a *matir*. If מן המוקף were a *din d'oraisa*, a *hafrashah* that is not מן המוקף would be disqualified even *bedi'eved*.

Along the lines of *Rashi's* approach, the *Magen Avraham* (*Orach Chaim* 8:2) writes that *hafrashah* of *challah* is not a *mitzvah*; it is only performed to prepare the food for consumption. Therefore, he explains, the *berachah* may be recited while seated, even though the *berachah* over a bona fide *mitzvah* like *tzitzis* is preferably recited in the standing position. The *Taz* (*Yoreh De'ah* 1:17) disagrees and maintains, like *Tosfos*, that it is a *mitzvah* to be *mafrish terumah*, even if one is not interested in eating any of the produce.

Rebbi Akiva Eiger, referencing the *Magen Avraham*, questions the *Taz's* premise and argues that one who has no interest in consuming the *tevel* produce would have no need to be *mafrish terumah* (although once *terumah* is separated, there is certainly a *mitzvas nesinah* to give it to the *Kohen*). The *Maharsham* (*Da'as Torah*, *Orach Chaim* 8:1, *Yoreh De'ah* 1:7) lists numerous sources in the *Rishonim* with regard to this major *machlokes*.

Interestingly, the *Kli Chemdah* (*Parshas Shelach*, 5695 ed., p. 120, s.v. *v'im kein*) suggests that a *passuk* in *Yechezkel* (44:30) implies a compromise position: וכל תרומת כל מכל תרומותיכם לכהנים יהיה - "All *terumah* of

any kind, of all your *terumah* gifts, shall be for the *Kohanim*; and **you shall give** the first portion of your dough to the *Kohen*, to bring a blessing to rest upon your home." Thus, perhaps separating *challah* is a bona fide *mitzvah* that one should actively perform in order to then give it to a *Kohen*, and not because he wishes to partake of the remaining dough. In contrast, *hafrashas terumah* is merely a *matir*, performed to sanction subsequent *achilah*. The *Kli Chemdah* writes that he saw this comment in the writings of one of the *ge'onei Lita*, among the *talmidei haGr"a*, who attributed this distinction to the *Gr"a*.

A similar discussion relates to the *shechitah* required to permit an animal's consumption. The *Gemara* in *Chullin* (27a) teaches that although *bedi'eved* it is sufficient to sever the majority of each of the two *simanim* of an animal (the windpipe and the esophagus), *l'chatchilah* one should sever the entire *siman*. The *sefer Lev Aryeh* points out that the *Rishonim* disagree as to whether severing the entire *siman* represents a *l'chatchilah d'oraisa* or only a *gezeirah derabbanan*, enacted as a precautionary measure lest the *shochet* fail to sever the majority of the *siman* (see *Chasam Sofer* and *Meromei Sadeh*, *Chullin* 20b).

We may explain the *machlokes* along the lines of our analysis above. If *shechitah* serves only as a *matir*, there cannot be a *l'chatchilah d'oraisa* to sever the entire *siman*. Based on the principle of *rubo kekulo* (the majority is viewed as the whole), severing the majority of a *siman* is sufficient, and there is nothing gained by severing it entirely. However, if *shechitah* is indeed a *mitzvah* (for someone who wishes to eat meat; see *Rambam*, *Sefer HaMitzvos*, *mitzvas aseh* 146, as opposed to the view of the *Ra'avad*; *Kesef Mishneh*, *Hilchos Shechitah* 1:1), it is quite understandable to require the severing of the entire *siman l'chatchilah* in order to fulfill the *mitzvah bishleimusah*, and not to rely on *rubo kekulo*. [See *Rav Schachter on the Haggadah*, pp. 55-58, regarding drinking a full *kos* for the *arba kosos*.]

If a woman's husband died without children, and she is not interested in remarrying, the *Acharonim* (see *Beis Shmuel, Even Ha'Ezer* 165:9; *Pischei Teshuvah* 7) debate whether there is a need to arrange a *chalitzah* for her. Perhaps *chalitzah* is required only if the *almanah* wishes to remarry, in order to remove the *zikhah* (attachment) to the *yavam* that prohibits her to others. The *machlokes* is generally understood to revolve around the question of whether *chalitzah* is a *mitzvah* or functions merely as a *matir*.

In this context, Rav Eizel Charif (*Eimek Yehoshua, siman 23*) cites the comment of the *Tosfos* in *Niddah* cited above. Of the three components of *chalitzah* – removing the *yavam's* shoe, *rekikah* (spitting), and *kri'as hapessukim* – only the first is essential to the validity of a *chalitzah* (*Yevamos* 105a). The fact that there is a *l'hatchilah d'oraisa* – to perform *rekikah* and *kri'as hapessukim* – clearly indicates that *chalitzah*, aside from serving the role of *matir*, is also a bona fide *mitzvah*. The *Maharit* (quoted in *Be'eir Heitev, Even Ha'Ezer* 169:47) concurs, as he forbids a woman in the state of *aninus* (when one loses a close relative and is not allowed to perform any positive *mitzvos*) to participate in a *chalitzah*. According to this approach, perhaps, the *mitzvah* of *chalitzah* should always be executed, even if the *yevamah* is not interested in remarrying and does not require the *heter* of *chalitzah*.

[This argument alone does not prove conclusively that an *almanah* must always perform *chalitzah*, however, since the *mitzvah* of *chalitzah* may be a conditional *mitzvah*. In this sense, *chalitzah* may be comparable to *shechitah* (in the view of the *Rambam*), which is a *mitzvah*, but only for one who wishes to eat meat. Similarly, even though *chalitzah* is indeed a *mitzvah*, the obligation to perform the *mitzvah* may only apply in a situation where the *yevamah* wishes to remarry.] [See *Ginas Egoz*, pp. 9-12.]



PARSHAS CHUKAS

KOL YISRAEL AREIVIM

זאת התורה אדם כי ימות באוהל כל הבא אל האוהל וכל אשר באוהל
יטמא שבעת ימים.

This is the teaching regarding a man who dies in a tent:
Anything that enters the tent and anything that is in the tent
shall be *tamei* for seven days. (*Bamidbar* 19:14)

A *MEIS* is *metamei* through *magga* (contact), *massa* (carrying),
and *ohel*. There are three types of *ohel* – when a person
passes over a *meis*, when a *meis* is passed over a person, and
when a person and a *meis* share a common roof, referred to
as *ohel hamshachah*.

The *Gemara* in *Yevamos* (61a; *Bava Metzia* 114b) cites the
opinion of Rabbi Shimon ben Yochai with regard to a non-
Jewish corpse:

קברי עובדי כוכבים אינן מטמאין באוהל שנאמר ואתן צאני צאן מרעייתי אדם
אתם. אתם קרויין אדם ואין העובדי כוכבים קרויין אדם.

The graves of non-Jews do not transmit *tum'ah* by way of a
roof. For it is stated [in relation to the nation of Israel]: “Now,
you My sheep, the sheep of My pasture – you are אדם!”
(*Yechezkel* 34:31). You [Israel] are referred to as אדם, but non-
Jews are not referred to as אדם.

In our *parsha*, the Torah uses the term אדם to describe a *meis*
that transmits *tum'as ohel*, indicating that these laws apply
specifically to *meisei Yisrael*, who may be called אדם, and not
to *meisei akum*.

Nevertheless, both the *Mechaber* and the *Rama* (*Yoreh De'ah* 372:2) write that the proper practice is for *Kohanim* to abstain from entering a non-Jewish cemetery.

One reason for the *chumrah* is that there may be a Jewish *meshumad* who is buried in the non-Jewish cemetery, and such a *meis* certainly does render a *Kohen tamei* through *tum'as ohel* (see *Tashbeitz* 3:323, who records that Rabbeinu Peretz HaKohen observed this practice in Barcelona). Furthermore, despite the fact that the majority opinion is in accordance with the view of Rebbi Shimon ben Yochai (*Avnei Nezer*, *Yoreh De'ah* 466:16), we are stringent to adhere to the view of *Tosfos* (*Yevamos* 61a, s.v. *mimaga*), who *paskens* against Rebbi Shimon and rules that *meisi akum* are *metamei b'ohel*.

A third way to explain this *halachah* relates to the very definition of the *issur* of *tum'as Kohanim*. Instead of viewing the *issur* as an injunction to avoid **becoming** *tamei* from a *meis*, we may suggest that the nature of the *issur* is to avoid **התקרבות למת** – **coming in contact** with a corpse. Therefore, even if non-Jewish *meisim* are not *metamei b'ohel*, it may still be forbidden for *Kohanim* to enter an *ohel* with a non-Jewish *meis*, since a *Kohen* is prohibited from **nearing** a *meis*, even if he will not thereby make himself *tamei*. [See *B'Ikvei HaTzon*, pp. 232-238; *Rav Schachter on the Parsha*, *Parshas Emor*.]

The idea that the *issur* entails coming in contact with a *meis*, and not necessarily becoming *tamei*, may explain a number of *halachos*.

The *Shach* (*Yoreh De'ah* 371:1) cites a comment of the *Rokei'ach* regarding the entry of a *Kohen's* pregnant wife into a room in which a *meis* is present. If the fetus inside her is male, there should be an *issur* for an adult to actively cause this *Kohen* to become *tamei*. (There is no *issur* of contact with a dead body upon female *Kohanos*.) We derive this from the *passuk* at the beginning of *Parshas Emor*, אמור אל הכהנים בני אהרן ואמרת אליהם – “Say to the *Kohanim*, the sons of Aharon, and

you shall say to them, "To a [dead] person he shall not become impure among his people" (*Vayikra* 21:1). The redundant use of the word "say" enjoins the adults with regard to the minors: אמור ואמרת להזהיר גדולים על הקטנים (*Yevamos* 114a).

The *Rokei'ach* rules leniently in this case on the basis of it being considered a ספק ספיקא (double doubt). First, we are unsure whether the pregnancy will go to term with a live baby; the woman may miscarry. Second, even if a baby will be born, it may be a female. [If the doubts in the case of the ספק ספיקא are easily discernible, or certainly if one already knows that the *Kohen's* wife is pregnant with a male fetus, the leniency of the *Rokei'ach* should not apply.] The *Magen Avraham* (*Orach Chaim* 343:2) questions this statement of the *Rokei'ach* based on the *Gemara* in *Chullin* (71a), which teaches that טהרה בלועה – a *tahor* object that is completely "swallowed up" – does not acquire *tum'ah* from other objects. Thus, even without the logic of the ספק ספיקא, there should be no *issur* in the case of a fetus, which is totally concealed within its mother!

Both Rav Chaim Ozer Grodzinsky *zt"l* (*Teshuvos Achiezer* 3:65:5-6) and Rav Elchonon Wasserman *Hy"d* (*Kovetz Shiurim* 2:41), who were brothers-in-law, offer the following resolution to the question of the *Magen Avraham* (cited in *Teshuvos Lev Aryeh* 2:8). Apparently, the *Rokei'ach* is of the opinion that the *issur* of *tum'as Kohanim* applies even if, due to a legal technicality, the *Kohen* does not actually contract any *tum'ah*. The nature of the *issur* is that the *Kohen* is prohibited from **nearing** a dead body, even if he does so in a way in which he will not become *tamei* at all.

The son-in-law of the *Nesivos* (*Zecher Tzaddik Yesod Olam*, p. 13a, also cited in *Pesach HaOhel* 5:2; see *Yesodei Smochos*, p. 66-67, by Rav Aaron Felder, in the name of Rav Moshe Feinstein) quotes his father-in-law as saying that although *Kohanim* are generally stringent with regard to *tum'as ohel* of a non-Jewish *meis*, the stringency is limited to avoiding passing over

a *meis* or having a *meis* pass over them. However, they may be lenient in a situation of *ohel hamshachah*.

This distinction may be explained in the following way. Aside from the two approaches discussed above in defining the nature of the *issur* of *tum'as Kohanim*, there is a third possibility: that either of the two elements – **טומאת מת** or **התקרבות למת** – cause a violation of the *issur*. In other words, it is forbidden to come near a *meis* even if the *Kohen* does not become *tamei* as a result, **and** it is forbidden to become *tamei meis* even when it does not involve nearing a *meis*.

We may suggest that **התקרבות למת** occurs only in the more direct forms of *ohel*, when one passes over a *meis* or a *meis* passes over him; an *ohel hamshachah* is not considered **התקרבות למת**. The only reason that *ohel hamshachah* is forbidden with *meisei Yisrael* is that the *ohel* causes **טומאת מת**. However, since *meisei akum*, according to most *Rishonim*, do not transmit *tum'as ohel*, a case of *ohel hamshachah* with *meisei akum* is permitted, since it involves neither **טומאת מת** nor **התקרבות למת**.

Throughout history, non-Jews have been very offended by the *derashah* of **אתם קרויין אדם**. In 1913, Menachem Mendel Beilis was falsely accused of committing the ritual murder of a Christian child and was tried in a notorious court case in Kiev. The well-respected government-appointed Chief Rabbi of Moscow, Rav Yaakov Mazeh, who was university-trained in the practice of law and who had a reputation as an eloquent Russian orator, was chosen to defend Beilis from the blood libel. In the end, Beilis was acquitted. Rav Mazeh addressed the court, delivering an eight-hour long detailed speech. Among other points, he explained that the *passuk*, **וְדָם חַלְלִים יִשְׁתֶּה** – “and [Israel] will drink the blood of the slain” (*Bamidbar* 23:24), is meant to be understood metaphorically, not literally; in fact, Jews are not permitted to consume human blood.

In his presentation, Rav Mazeh dealt extensively with the Jewish attitude towards non-Jews, as the Jewish religion, specifically the Talmud, was accused of not respecting the value of

non-Jewish blood and of inciting Jew against non-Jew. In this context, Rav Mazeh was asked to explain the meaning of the *Gemara's* statement, אתם קרויין אדם ואין העובדי כוכבים קרויין אדם, which seems to consider non-Jews subhuman. The interpretation that he offered of this statement of *Chazal* (attributed to Rav Meir Shapiro), in defense of the Jewish religion, has since been quoted by many *rabbonim*, including Rav Soloveitchik.

Rav Mazeh explained that this Talmudic quote reveals a very important insight into the nature of the Jewish People and that it is not derogatory towards non-Jews at all. In Hebrew, there are four synonyms for man – אדם, איש, גבר, אנוש. Of these, three have a plural form – אנשים, גברים, אנשים – whereas אדם remains the same in both the singular and the plural. Thus, the *Gemara* here teaches the principle that with regard to non-Jews, there is no concept of a united *tzibbur* (congregation) as there is with *Klal Yisrael*; all non-Jews are considered *yechidim* (individuals). With regard to the Jewish People, however, there is a sense of solidarity and even shared responsibility; the fate of a single Jew is borne by every Jew.

Rav Mazeh told the judge how Rav Meir Shapiro – then the Rav of Galina, Poland – sent a letter to him in Moscow, urging him to defend Beilis in Kiev. If a non-Jew were accused of a similar crime and was standing trial in a distant country, would people in other countries take a personal interest in him? Certainly not! There is no such connection between people of different countries.

Indeed, the *Gemara* in *Nazir* (61a-61b) teaches that *nezirus* only applies to one who belongs to a *tzibbur*, and thus not to a non-Jew, who would only be accepting *nezirus* upon himself as an individual. A non-Jew is not subject to the *dinim* of *tum'ah*, nor, by extension, to the *dinim* of *nezirus*. The source of this distinction is the *passuk*, ואיש אשר יטמא ולא יתחטא ונכרתה הנפש ההוא – מתוך הקהלה – “The man who will be unclean and does not purify

himself, that soul shall be cut off from the midst of the congregation" (*Bamidbar* 19:20), excluding a non-Jew, who is not included in any *kahal*.

This distinction between the Jewish People and other nations also explains a phenomenon that we often witness. If a Frenchman or Englishman acts improperly, people do not condemn all of his countrymen, since regarding the nations of the world, every person is an individual. There is no *tziruf* (combination), and one person's shortcomings therefore do not shed light on the masses. People are able to distinguish between the singular איש and the plural אנשים. There seems to be a double standard, however, when it comes to the Jewish People. When one Jew acts in an inappropriate fashion, the world often indicts all Jews, thereby causing great *chillul Hashem*. The individual's behavior is viewed as representative of that of the masses.

In truth, this assessment is correct. It is in accordance with the halachic principle, כל ישראל ערבים זה בזה - "All Jews are guarantors for one another," such that every Jew bears responsibility for the actions of his fellow Jew (*Sanhedrin* 27b; *Shavuos* 39a). There exists a shared communal accountability for the *mitzvos* and *aveiros* of each individual. As we have seen, both the individual Jew and the *tzibbur* of Jews may be called אדם. The application of this term to Jewish People implies an equality between the individual and the collective, and the actions of the individual are therefore indicative of the rest of the people, just as the welfare of each individual becomes the responsibility of the entire *tzibbur*. It is not only in the eyes of Halachah that all Jews combine to form a singular entity, but also in the eyes of non-Jews. [See *Divrei HaRav*, 2010 ed., pp. 315-316; *Rav Schachter on the Parsha, Parshas Lech Lecha*.]



PARSHAS BALAK

MUKTZEH

מי מונה עפר יעקב.

Who can count the dust of Yaakov? (*Bamidbar* 23:10)

THERE IS a very old *minhag* from the days of the *Ge'onim*, based on a comment of the *Zohar* (*Lech Lecha*, 95a), to bury the skin of the *orlah* in sand after a *bris milah* (*Yoreh De'ah* 265:10). *Pirkei D'Rebbi Eliezer* (*perek* 29) understands that this practice is what Bilam referred to when he praised the Jewish People in the *passuk* cited above: "Who can stand in the face of the merit of all the *bris milos* that are buried in the sand of the *Midbar*?"

The *Shulchan Aruch* rules that we perform this *minhag* even on Shabbos and Yom Tov, when sand is *muktzeh* and may not be handled, by preparing sand for this purpose before Shabbos.

The *Chachamim* feared that handling items on Shabbos might lead to a violation of the *issur* of *hotza'ah* (see *Ra'avad*, *Hilchos Shabbos* 24:12), and they therefore enacted the *gezeirah* of *muktzeh* in order to limit the items that one may handle on Shabbos. On the other hand, they did not want to be so restrictive as to prohibit all items. Therefore, they limited their *gezeirah* to those items that are generally "useless" anyway, and that is how they established which items are or are not *muktzeh*.

There are four categories of items that contract *tum'ah* – *adam*, *keilim*, *ochlim*, and *mashkim* (man, utensils, food, and drink).

These are the items that the Torah considers useful. Everything else – such as *eitzim*, *avanim*, and *afar* (wooden branches or twigs, stones, and dust) – serves no significant function, and therefore is not *mekabeil tum'ah*. According to the *Gemara* in *Shabbos* (123a), these are the types of items that the *Chachamim* labeled as *muktzeh*.

The *Gemara* explains that, in general, any object that is classified as a *kli* because it is fit for practical use, and is thus susceptible to *tum'ah*, is deemed non-*muktzeh*. In contrast, something that is not considered a *kli* with regard to *tum'ah* is not considered a *kli* with regard to *Shabbos*. In other words, the basic principles of the *gezeirah derabbanan* of *muktzeh* were patterned after the *dinim d'oraisa* of *kabbalas tum'ah*. In fact, all rabbinic enactments conform to the guiding principle, כל דתקון רבנן – “Whatever laws the Rabbis enacted, they enacted along the lines of Biblical laws” (*Yevamos* 11a). The building blocks that the *Chachamim* used to formulate *halachos derabbanan* must always be concepts that exist on the level of *d'oraisa* as well. This way, the *dinim derabbanan* are able to blend in to become a genuine *chelek* of *Torah SheBe'al Peh*. [See essay for *Parshas Ha'azinu*.]

The correspondence between *muktzeh* and *tum'ah* is not absolute, however. For example, only Jewish people are *mekabeil tum'ah*, not non-Jews. There are certain *keilim* that are not *mekabeil tum'ah* – those made from dung, stone, or earth. Likewise, only food fit for human consumption is *mekabeil tum'ah*, not *ma'achal beheimah* (animal food). Nevertheless, for the purposes of *hilchos muktzeh*, all people, *keilim*, and food are not considered *muktzeh*. With the exception of these (and some other) details, however, if an object is not *mekabeil tum'ah*, it is regarded as *muktzeh* on *Shabbos*.

As noted, trivial items such as *eitzim*, *avanim*, and *afar*, which are not *mekabeil tum'ah*, have the status of *muktzeh machmas gufo* (inherently *muktzeh*). Nevertheless, with regard

to the usage of *muktzeh* items, the *Gemara* in *Beitzah* (33a) teaches: לא נתנו עצים אלא להסקה – “permission was not granted for wooden logs to be used for anything [on Yom Tov] other than kindling.” If one is *mazmin* (designates) logs for kindling, he may handle them on Yom Tov. Similarly, if *afar* is set aside in advance of Shabbos, it may be used to bury the *orlah*-skin after a *milah* on Shabbos.

The *Ramban* (*Milchamos, Shabbos*, 49a in *dapei haRif; Beitzah*, 18b in *dapei haRif*) notes the uniqueness of this concept, whereby a *muktzeh* item that one was *mazmin* for a particular purpose may be moved on Shabbos for that purpose or for some other equally important or more important purpose.

Sometimes, one may perform a preparatory act that converts a *muktzeh* item into a *kli* that is non-*muktzeh*, such as arranging boulders so that they function as seats (see *Orach Chaim* 308:21; *Mishnah Berurah* 89). When one merely designates logs of wood, however, they remain *muktzeh* for most usages; the *Chachamim* granted a specific dispensation, a limited *heter tiltul* (permission to handle), to allow the logs to be used for kindling (see *Shiurei HaRav HaGaon R' Yosef Dov HaLevi Soloveitchik Zt"l al Maseches Shabbos*, p. 173). Similarly, when one prepares *afar* for the *orlah*-skin, the *afar* remains *afar* and therefore remains *muktzeh*, but it may nevertheless be used for the purpose of fulfilling the *minhag* even on Shabbos.

Another example of the application of כל דתקון רבנן כעין תקון דאורייתא in the area of *dinei muktzeh* relates to the general principle of מיגו דאיתקצאי לבין השמשות איתקצאי לכולי יומא. According to this rule, an item that was *muktzeh* for the duration of *bein hashmashos* (twilight) at the onset of Shabbos can no longer be considered “prepared” for Shabbos use. It therefore remains *muktzeh* throughout Shabbos, even if the underlying reason for its *muktzeh* status is removed. One such case that the *Gemara* in *Shabbos* (44a) discusses is the leftover oil in a lamp. According to Rebbi Yehudah, since the oil was *muktzeh* at the beginning

of Shabbos when the lamp was still burning (because it serves as a base to the flame), the oil automatically remains *muktzeh* for the duration of Shabbos, even after the lamp extinguishes.

Interestingly, the *Ran* (*Chiddushei HaRan, Shabbos 124b, s.v. im*) applies this principle in the lenient direction as well, commenting on the case of a *shever kli* (the shard of a utensil), which is still fit to be used as a cover for other utensils. The *Gemara* in *Shabbos* (124b-125a) teaches that since this type of *kli* is of borderline value – some people would continue to use it while others would discard it – the owner's attitude towards the continued usage of the *kli* determines the status of the *kli*.

Thus, if the owner discards the *shever kli* in the garbage before Shabbos, thereby indicating that he will no longer use it as a *kli*, he strips the *shever* of its classification as a *kli*. It is thereby converted into *muktzeh* and is prohibited for use on Shabbos. However, writes the *Ran*, if the owner discards the *shever kli* only **after** Shabbos has begun, since it was prepared for use at the onset of Shabbos and was thus classified as a *kli*, it does **not** lose its status as a *kli* and does **not** become *muktzeh*. [This *halachah* applies only to borderline *keilim*. If a *kli* breaks in the middle of Shabbos in such a way that it is completely unusable, it does become *muktzeh*, since it is now a different object; it is not the same *kli* (*al pi din*) that was permissible at the beginning of Shabbos.]

In this context, the *Ran* utilizes the phrase, *כיון שהותרה הותרה* – since the *shever kli* was not *muktzeh* at the start of Shabbos, it remains non-*muktzeh* for the duration of Shabbos. This idea is borrowed from the *Gemara* in *Eiruv* (17a, 93b) which discusses two *chatzeiros* that were joined in a common *eiruv* via an entrance in the wall between them. If the entrance became sealed on Shabbos, the *chatzeiros* now lack this essential requirement for joining in an *eiruv*. Nevertheless, the *Gemara* rules that *כיון שהותרה הותרה* – since carrying between the two *chatzeiros*

was permitted when Shabbos began, it remains permitted for the remainder of that Shabbos.

Similarly, if a wall that separated two *chatzeiros* collapses on Shabbos, thereby rendering them like one *chatzeir* whose residents do not share a common *eiruv*, the status of the *chatzeir* does not change in the middle of Shabbos (according to Shmuel, whose view we follow). The residents of each *chatzeir* may continue to carry in their own *chatzeir*, as they did before the wall collapsed.

In the same manner, since the *shever kli* was not restricted by an *issur muktzeh* at the onset of Shabbos, it cannot become *muktzeh* in the middle of Shabbos.

It is noteworthy that the *Rama* (*Yoreh De'ah* 266:2; see also *Taz* 1, in the name of the *Maharshal*) seems to concur with the *Ran's* assertion. The *Rama* writes that the *izmel* (*milah*-knife) used to perform a *bris milah* on Shabbos may be moved after the *milah*. Even though the *izmel* is no longer needed on that Shabbos, since at *bein hashmashos* it did not become *muktzeh*, due to its anticipated use over Shabbos, it remains non-*muktzeh* even after it has been used.

What is the source of the notion that it is the advent of the Shabbos that establishes the *muktzeh* status of a *kli*?

Rav Soloveitchik suggested that the *Chachamim* patterned the *halachah* of *מיגו דאיתקצאי* after a *d'oraisa* construct, whereby the beginning of the day of Shabbos creates the day's *issur melachah*. The Rav cited the comment of the *Maharam MiRotenberg*, quoted by the *Rosh* (*Mo'ed Katan* 3:96), who discusses the case of the death of a relative of a *katan*. Although a *katan* does not observe *aveilus*, if the child were to become *bar-mitzvah* in the middle of the *shloshim* following the death of his relative, the *Maharam* rules that he would be obligated to observe *shiv'ah* and *shloshim* at that time. [This is similar to the *halachah* of *shemu'ah kerovah*, when one is informed of the death of his relative during *shloshim* and is then obligated to observe *shiv'ah* and *shloshim*.]

The *Maharam* brings support for this notion – a *mechayeiv* that becomes effective only at a later time – from the *Gemara* in *Yevamos* (33a) regarding a *katan* who becomes *bar-mitzvah* in the middle of Shabbos itself (by virtue of the emergence of two pubic hairs). When Shabbos arrived, the child was still a *katan* and was therefore not legally obligated to observe the Shabbos. Yet, the *Gemara* considers the *issur melachah* to come into being for him **on** Shabbos. We see from here that *bein hashmashos* can be *mechayeiv l'achar zeman* – the obligation to observe Shabbos at *bein hashmashos* takes effect upon him at a later time. The *Maharam* argues that the same holds true with regard to *aveilus*. The *mechayeiv* of the *aveilus* occurred when the child was still a *katan*, but it can obligate him once he becomes a *bar-mitzvah* at a later date.

The *Rosh*, prefacing his words with the warning that “one cannot refute the lion after his death,” proceeds to challenge his *rebbe*'s proof. The *Rosh* argues that every moment of Shabbos possesses a separate *kedushas hayom*, and the *mechayeiv* of Shabbos observance is the *kedushas hayom* of that exact moment. That is why a *katan* who becomes a *gadol* on Shabbos becomes obligated to observe Shabbos from that time on. In contrast, the *mechayeiv* of *aveilus*, the *Rosh* reasons, is the one-time *kevurah* of the *meis*. Therefore, a *katan* who was not obligated at that time remains exempt from the *chiyuv aveilus* forever.

Thus, there seems to be a fundamental *machlokes* as to the *mechayeiv* of the observance of Shabbos on the level of *d'oraisa*. According to the *Rosh*, every **moment** of Shabbos is its own *mechayeiv* of the *issur melachah*. The *kedushas hayom* of each moment of Shabbos prohibits that moment from *melachah* anew. However, the *Maharam* contends that the *mechayeiv* of observing the entire Shabbos is the *kedushas hayom* at *bein hashmashos*. The beginning of the day of Shabbos prohibits *melachah* for the entire day.

Interestingly, the Kozoglover Gaon *Hy"d* (*Eretz Tzvi* 1:44, s.v. *uy"l*) writes that this exact point was debated by the Sochatchover Rebbe (the *Avnei Nezer*) and the Tchechenover Rebbe (see *Avnei Nezer, Orach Chaim* 89:4). He applies this *machlokes* to a discussion as to whether one who travels across the halachic dateline, from a place where it is Shabbos to a place where it is weekday, must continue to observe Shabbos. According to the *Avnei Nezer*, in line with the view of the *Maharam*, at the moment of *bein hashmashos*, the *chiyuv* of *shemiras Shabbos* for the entirety of the Shabbos devolves upon a person. Therefore, one's obligation is dependent on where he was located when Shabbos entered. Even if he were later to travel to a place where it is not Shabbos, his prior obligation remains in force until the conclusion of "his" Shabbos.

As proof to the view of his *rebbe*, the *Avnei Nezer*, the Kozoglover cites the principle of *מינו דאיתקצאי*, that on a *derabbanan* level an item's *muktzeh* status is determined at *bein hashmashos*. He reasons, as did Rav Soloveitchik, that since *כל דתקון רבנן כעין דאורייתא תקון*, we must conclude that the *issur melachah* of Shabbos on a level of *d'oraisa* also operates in this way. The *Chachamim* must have patterned their *dinim* of *muktzeh* (and of *eiruvei techumin* and *eiruvei chatzeiros*) after the *din d'oraisa* that *bein hashmashos* of Shabbos is the *mechayeiv* of the day's *issur melachah*. [Indeed, Rav Elchonon Wasserman *Hy"d* (*Kovetz He'aros* 66) lists various instances where the *Gemara* proves a detail regarding a *din d'oraisa* from a *din derabbanan*, since it was certainly enacted along the lines of a *d'oraisa*.] [See *Eretz HaTzvi*, pp. 66-69.]



PARSHAS PINCHAS

AVEIRAH LISHMAH

פינחס בן אלעזר בן אהרן הכהן השיב את חמתי מעל בני ישראל בקנאו את קנאתי בתוכם.

Pinchas son of Elazar son of Aharon HaKohen, turned back My wrath from upon *Bnei Yisrael*, when he zealously avenged My vengeance among them. (*Bamidbar* 25:11)

RASHI, QUOTING the *Gemara* in *Sanhedrin* (82b), explains why the Torah mentions here that Pinchas was the grandson of Aharon HaKohen. Pinchas had a second grandfather, Yisro, who served as a “*galach*” for *avodah zarah*, and members of the other *shevatim* mocked Pinchas by saying, “His mother’s father is an idol-worshipper, yet he killed a *Nasi*?!” Therefore, the Torah traces his ancestry to Aharon HaKohen.

Rav Dovid Soloveitchik (*Shiurei Rabbeinu Meshulem Dovid HaLevi al HaTorah, Parshas Pinchas*) wondered how this explanation answers why it was important to mention Pinchas’ lineage. The only real question regarding Pinchas is whether he acted properly or improperly in killing Zimri. If the *Halachah L’Moshe MiSinai* is that הבוועל ארמית קנאין פוגעין בו – “One who cohabits with an Aramean woman, zealots may kill him” (*Mishnah Sanhedrin* 81b), he was correct, regardless of his lineage. If the *halachah* does not apply in this case, his act was unlawful even if his grandfather was Aharon HaKohen!

Rav Dovid explained that the *halachah* of פוגעין בו applies only to one whose zealousness inspires him to avenge the honor of Hashem. In this sense, פוגעין בו is related to the concept of חטא בשביל שתזכה – “sin in order to gain.” In rare instances, we instruct a person to commit an *aveirah* if something significant will be accomplished through his sinful act (*Menachos* 48a).

The *Gemara* in *Nazir* (23b) elaborates on this notion in labeling the selfless act of Yael as an עבירה לשמה, as she offered herself to Sisera for the sake of the salvation of the Jewish People. Despite the fact that Yael (who was a married woman) engaged in illicit relations, since she did so for noble purposes, it was considered a “righteous transgression” that was worthy of great merit. The *Gemara* comments, גדולה עבירה לשמה – “A transgression committed for the sake of Heaven is greater than a *mitzvah* performed for ulterior motives.” [This is cited *l’halachah* by the *Beis Shmuel* (*Even Ha’Ezer* 178:4) in the name of the *Maharik*; see *Chochmas Shlomo*.]

The *Keren Orah* (*Nazir* 23b) writes that עבירה לשמה is permissible if it is למגדר מילתא, for the purpose of stemming widespread sinning. With this comment, the *Keren Orah* alludes to the related principle of אין כח ביד חכמים לעקור דבר מן התורה – “The *Chachamim* are empowered to actively suspend a Biblical law only as a temporary ruling and to curb a matter of rampant sin” (see *Yevamos* 90b). The *Rambam* (*Hilchos Mamrim* 2:4) elaborates on this idea:

אם ראו לפי שעה לבטל מצות עשה או לעבור על מצות לא תעשה כדי להחזיר רבים לדת או להציל רבים מישראל מלהכשל בדברים אחרים עושין לפי מה שצריכה השעה. כשם שהרופא חותך ידו או רגלו של זה כדי שיחיה כולו כך בית דין מורים בזמן מן הזמנים לעבור על קצת מצוות לפי שעה כדי שיתקיימו כולם כדרך שאמרו חכמים הראשונים חלל עליו שבת אחת כדי שישמור שבתות הרבה.

If they [the *beis din*] saw that it was necessary to temporarily suspend a positive *mitzvah* or violate a negative *mitzvah* in

order to bring people at large back to the Jewish faith or to save many Jews from transgressing in other matters, they may do what is necessary at that time. Just like a physician may amputate one's hand or foot so that the person as a whole will live, so too, at times, *beis din* may rule to temporarily violate some of the *mitzvos* so that all of them will endure. In this vein, the *Chachamim* of the previous generations said, "Violate one Shabbos for a person so that he will keep many Shabbosos."

Thus, the *Rambam* understands that the source of the idea of מגדר מילתא is the *passuk*, ושמרו בני ישראל את השבת – "The *Bnei Yisrael* shall observe the Shabbos" (*Shemos* 31:16), which the *Gemara* in *Yoma* (85b) expounds: חלל עליו שבת אחת כדי שישמור – "Violate one Shabbos for the sake of a person [whose life is in danger, and save his life], so that he will keep many Shabbosos." It emerges from the *Rambam* that this *passuk* serves as the source of the principle of חטא בשביל שתזכה and the concept of עבירה לשמה.

Every legal system subscribes to the idea that, in unusual cases, the ends justify the means. The only question is which ends and which means. For example, everyone will agree that one who rushes his wife in active labor to the hospital in the middle of the night may drive through a red light. The police would even assist him in doing this. It is recognized that those ends justify those means. This does not mean, however, that one can establish a yeshiva by taking funds from the government illegally. Those ends do not justify those means.

The *Likkutim* in the margin of *Mishnayos Yachin U'Vo'az* explains that the *Mishnah* in *Avos* (2:1) echoes this idea: והוי מחשב ... שכר עבירה כנגד הפסדה – "Calculate ... the reward of a sin against its cost." According to this interpretation, the *Mishnah* teaches that in rare cases, a person **should** commit an עבירה לשמה, since the reward he receives on behalf of his virtuous intention eclipses the more minor detriment caused by the sinful action itself. If, according to his estimation, there is

a definite and significant gain to be achieved by performing the *aveirah*, this benefit overshadows the adverse effects of the *aveirah*, and he may act according to the principle of **חטא בשביל שתזכה**.

Tosfos (*Shabbos* 4a, s.v. *v'chi*) applies this concept to the *Gemara* in *Berachos* (47b) that relates an incident involving Rebbi Eliezer, who freed his *eved Cana'ani* in order to complete a *minyan* of ten men with him. Rebbi Eliezer thereby transgressed an *issur* for the sake of fulfilling the communal *mitzvah* of *tefillah b'tzibbur*. The *Mechaber* (*Orach Chaim* 306:14; see *Bei'ur HaGr"a*) rules accordingly with regard to the permissibility of violating the *Shabbos* to save one's abducted daughter, who, it is feared, may be brought to apostasy as a consequence of her abduction. In this extreme case, we allow a person to commit an *aveirah* in order to benefit his fellow Jew.

Likewise, the *Gemara* in *Ta'anis* (11a) quotes Shmuel, who teaches that whoever fasts voluntarily is called a *chotei* (sinner), much as a *nazir* is similarly labeled even though he abstained from only wine. *Tosfos* (s.v. *amar*) notes that Shmuel himself holds that under certain circumstances one is permitted to fast. This is because the *mitzvah* that he accomplishes through fasting outweighs the *aveirah* he violates through his abstinence. *Tosfos* compares this to one who observes a *ta'anis chalom* (a fast over a frightening dream) on *Shabbos*, who should then observe an additional fast on a weekday to atone for his fast on the *Shabbos* (*Ta'anis* 12b).

The *Gevuros Ari* (*Ta'anis* 11a, s.v. *amar Shmuel*) and the *Netziv* (*Meromei Sadeh*, *Ta'anis* 11a) wonder why the term *chotei* and the necessity for atonement apply in these situations. One who violates *Shabbos* for *piku'ach nefesh* (in a life-threatening situation) or who acts in accordance with the principle of **עשה דוחה לא תעשה** (a positive commandment overrides a prohibition) certainly does not require any atonement!

The explanation is that there is a significant difference between these cases and one who fasts voluntarily or becomes a *nazir*. In situations of *piku'ach nefesh* and *עשה דוחה לא תעשה*, the *aveirah* is overridden. Since no *aveirah* has been violated, there is no need for *kapparah*. However, when one volunteers to fast or to become a *nazir*, both a *mitzvah* and an *aveirah* continue to be present. Although he has the right to calculate the *שכר עבירה* כנגד הפסדה, and he may correctly conclude that the proper course of action is *חטא בשביל שתזכה*, the *aveirah* nevertheless remains in place. The act is labeled as an *עבירה לשמה*, and therefore a *kapparah* is necessary for that which he violated.

There is a second difference that emerges in reference to the special rule of *חטא בשביל שתזכה*. Although when one performs a *mitzvah* we require *kavanah*, the recognition that he thereby discharges his obligation, what **motivates** him to perform the *mitzvah*, whether it be a desire to fulfill the *ratzon Hashem* or an ulterior motive, is generally not mandated. In fact, the *Gemara* in *Pesachim* (50b) teaches, *לעולם יעסוק אדם בתורה ומצוות אף על פי* – “A person should always engage in Torah study and the performance of *mitzvos* even for ulterior motives, because from Torah and *mitzvos* for ulterior motives he will eventually come to Torah and *mitzvos* for their own sake.”

In contrast, in relation to the application of *חטא בשביל שתזכה*, the *Gemara* in *Nazir* uses the term *עבירה לשמה*, implying that what prompts the performance of this act is critical. The *Netziv* (*Harchev Davar, Bereishis 27:9*) points out that this is due to our earlier observation that the *aveirah* remains an *aveirah*. Therefore, only one who is religiously motivated and performs the *aveirah* for the sole purpose of arriving at the intended spiritual benefit may rely on the calculation of *שכר עבירה* כנגד הפסדה. When one engages in an act of *חטא בשביל שתזכה*, his motivations must be completely *l'sheim Shamayim*, without personal gain.

Rav Shlomo Kluger (*Ha'Elef Lecha Shlomo, Even Ha'Ezer* 120) makes a related point in reference to a man who wanted to move to Eretz Yisrael for the purpose of improving his livelihood. The *Gemara* in *Kesubos* (110b) teaches that if one spouse wishes to relocate to Eretz Yisrael from *chutz la'Aretz* and the other spouse refuses, the latter is considered to be at fault regarding the dissolution of the marriage. This point has relevance to the requirement to pay the *kesubah* upon the couple's divorce. If the wife refuses to make *aliyah*, she must accept a *get* without receiving a *kesubah*; if the husband refuses, he must release her from the marriage and pay her the sum stipulated in her *kesubah*.

In this case, however, the husband's motivation to make *aliyah*, and divorce his wife who refused to go with him, was not in order to fulfill the *mitzvah* of *yishuv Eretz Yisrael*, but instead, was due to *parnassah* related considerations. Rav Kluger rules that one spouse's right to force the other to relocate to Eretz Yisrael is only when he does so **for the sake of the mitzvah**. In other words, divorcing one's wife in order to make *aliyah* is a form of *עבירה לשמה*, and here, when the husband is acting *shelo lishmah*, it is forbidden for him to divorce his wife.

In a similar vein, the *Mishnah* in *Avos* (2:2) specifies, **וכל העוסקים עם הצבור יהיו עוסקים עמהם לשם שמים** – "All who exert themselves for the community should exert themselves **for the sake of Heaven**." When one is involved in communal affairs, there is no well-delineated *ma'aseh mitzvah* that he performs, such that we could label his actions, in and of themselves, as *mitzvos*. A *lishmah* intent is therefore necessary to convert his act on behalf of the public welfare into a *ma'aseh mitzvah*. This is comparable to *עבירה לשמה*, where the act in and of itself is actually a *ma'aseh cheit*, not a *ma'aseh mitzvah* at all. Only if a person is moved by a *l'sheim Shamayim* consideration can we justify his commission of an *aveirah* under the rule of **חטא בשביל שתזכה**. [See *B'Ikvei HaTzon*, pp. 16-18.]

The *Netziv* (*Meishiv Davar* 1:46) extends this idea to any innovation, such as presenting *chiddushei Torah* or starting a new *minyan*. An action that is a distinct *mitzvah*, like donning *tefillin*, is always labeled as such, even if one's intent when performing it was *shelo lishmah*. However, when a new practice is introduced, if it lacks an intention of *lishmah*, there is nothing in place that first establishes the practice as a *kiyum hamitzvah*.

There are numerous other circumstances in which the designation of a practice as a *mitzvah* is not clearly defined, and that makes the need for *lishmah* indispensable. For example, the *Chasam Sofer* (*Orach Chaim* 208, s.v. *l'hodi'a*) contends that the allowance to print *chiddushei Torah*, in the face of what ought to be a violation of transmitting *Torah SheBe'al Peh* in a written form, only applies to one who does so with sincere motives. The *Rambam* (*Hilchos Sanhedrin* 24:10) similarly specifies the requirement of pure intent with regard to a *dayan* who inflicts punishment in situations not clearly mandated by Torah law. Likewise, the *Gilyon Maharsha* (on *Shach*, *Yoreh De'ah* 246:8) rules that a new *minhag*, even if appropriate, may not be practiced if it was instituted by a *rasha*. We must assume it was established by the *rasha* with a motive that was *shelo lishmah*. [See *B'Ikvei HaTzon*, pp. 26-27.]

Given the above analysis, Rav Dovid Soloveitchik concluded that when Pinchas acted based on the principle of *קנאין פוגעין בו*, he was required to be a *kana'i l'sheim Shamayim*. If Pinchas' intentions were not completely pure, he would have had no right to kill Zimri, and his act would have been tantamount to *retzichah* (murder).

This was the basis of the *shevatim's* taunting of Pinchas. Since his grandfather was an idol-worshipper, they presumed that he must have had ulterior motives when he killed Zimri. To deflect this accusation, the Torah traces Pinchas' ancestry to his other grandfather, to indicate that he really was a *kana'i*

l'sheim Shamayim. Whether Pinchas acted *l'sheim Shamayim* or not determined whether the act was proper or improper, and Pinchas' intent was related to which grandfather he patterned his actions after. Thus, Pinchas is identified as a grandson of Aharon HaKohen, known as **אוהב שלום ורודף שלום** - "loving peace and pursuing peace" (*Avos* 1:12), to teach us that Pinchas killed Zimri in keeping with the values of this grandfather. Since Pinchas acted completely *l'sheim Shamayim*, his act was permissible, and thus highly praiseworthy.



PARSHAS MATOS

HECHSHER KEILIM

אך את הזהב ואת הכסף את הנחושת את הברזל את הבדיל ואת העופרת.
כל דבר אשר יבוא באש תעבירו באש וטהרו.

Only the gold and the silver, the copper, the iron, the tin, and the lead – everything that comes into the fire – you shall pass through the fire and it will be purified. (*Bamidbar* 31:22-23)

AFTER THE BATTLE with Midyan, the Torah specifies how the *keilim* taken in the war, which had been previously used for non-kosher food, could be *kashered*. If a *kli* had been used for broiling – such as a spit or a grill, in which the food was heated on the fire without the presence of intervening liquids – it had to undergo *libun*, purging with fire. However, if the *kli* was used with hot liquids to cook non-kosher food, such as a pot, kettle, or urn, it could be *kashered* through *hag'alah*, purging in boiling water.

While the Torah permits a metal pot in which meat of *korbanos* was cooked to be re-used after *hag'alah*, it requires that a *kli cheres* be shattered: וכלי חרש אשר תבושל בו ישבר – “An earthenware vessel in which it was cooked shall be broken” (*Vayikra* 6:21). The reason is that the *bli'ah* (absorbed flavor) in the *kli* becomes *nosar* (a *korban* that was left over) after a *korban's* time-limit elapses. Although *hag'alah* is effective in removing the *bli'ah* from a metal *kli*, a *kli cheres* must be shattered and discarded, since there is no way to *kasher*

it through *hag'alah*. As the *Gemara* in *Pesachim* (30b) teaches: **התורה העידה על כלי חרס שאינו יוצא מידי דופיו לעולם** – “the Torah has testified regarding an earthenware vessel that what it has absorbed never leaves its walls.”

In this context, *Tosfos* (s.v. *haTorah*) wonders why re-firing the *cheres* pot in a kiln is effective (*Zevachim* 96a), despite the Torah's declaration that its absorbed flavors can never be purged. *Tosfos* explains that the fiery kiln does not, in fact, remove the *bli'ah* from the walls of a *kli cheres*. Rather, this constitutes a **remanufacturing** of the *kli*, such that the “old” one has in effect been “shattered.” After all, the method used to produce a *kli cheres* is to burn a clay utensil in a kiln, which transforms it from a *kli adamah* into a *kli cheres*.

At first glance, this explanation seems very difficult. Despite the *kli's* “*panim chadoshos*” (“new face”), a non-kosher *bli'ah* is still found within its walls! This should render any food cooked in it non-kosher, since the *bli'ah* transfers from the walls of the *kli* into the food. In the realm of *tum'ah*, we readily understand that if a *kli* has *panim chadoshos*, it loses its *tamei* status; it is simply not the same *kli* that contacted *tum'ah* in the past. However, with regard to the *bli'ah* of an *issur* that is physically present inside the walls of a *kli*, why should its status as a “new” *kli* have any bearing on its *kashrus* status?

The answer seems to be based on a novel understanding of the Torah's requirement to *kasher* the *klei Midyan*.

When a prohibited food is cooked with a kosher food and imparts a flavor to it, the kosher food becomes prohibited, even though the prohibited food itself is subsequently removed from the mixture and all that remains is the prohibited flavor, without any of its substance. This is known as the concept of **טעם כעיקר** – “flavor is equivalent to substance.” There is a *machlokes* found throughout the *Gemara*, and later among the *Rishonim*, as to whether this is a *d'oraisa* concept or merely a stringency *miderabbanan*.

The *Gemara* in *Pesachim* (44b) teaches that according to the view that **טעם כעיקר** is not *d'oraisa*, the Torah's insistence on *kashering* the *klei Midyan* is a *chiddush* (an exception to the general rule). The *Ohr Samei'ach* (*Hilchos Ma'achalos Asuros* 9:9), quoting the *Ra'oh* (*Bedek HaBayis* 4:1, p. 11a in 5642 ed.) in the name of the *Ramban*, defines the nature of this *chiddush* as a "*ma'alah*," a higher standard that forbids cooking in a *kli* that contains a forbidden *bli'ah* within its walls. This *issur* is unrelated to the effect that the *bli'ah* has on the food cooked in the Midianite *kli*. Indeed, if **טעם כעיקר** is not *d'oraisa*, the kosher food that would be prepared in this *kli* would remain permissible *mid'oraisa* and would not be affected by the non-kosher *bli'ah* absorbed in the *kli*.

Furthermore, even if **טעם כעיקר** is *d'oraisa*, when cooking kosher food in the *klei Midyan*, the flavor of the non-kosher food would be weakened twice – once when it was transmitted from the non-kosher food into the *kli* and a second time when it was transmitted from the *kli* into the kosher food. This is known as **נ"ט בר נ"ט** – a taste of a taste, or **נותן טעם בר נותן טעם**. The *Pri Megadim* (*Sifsei Da'as* 94:22) cites *Rishonim* who maintain that on a *d'oraisa* level, a forbidden "second" flavor of **נ"ט בר נ"ט** does not actually prohibit the kosher food that absorbs it. In other words, kosher food cooked in a non-kosher *kli* remains kosher. Why, then, did the Torah require *hag'alah* of the *klei Midyan*? The answer is that the Torah required *kashering* the *keilim* as a separate *mitzvah*, declaring that it is not permitted to cook in a non-kosher *kli*.

This is the basis of *Tosfos's* proposal to explain why returning a *kli cheres* to the kiln makes it permissible. It is true that even after *libun*, one never succeeds in removing all of the non-kosher *bli'os* in the walls of the *kli*. Nevertheless, *libun* enables us to use the *kli* because it now has a *panim chadashos*. We are not concerned about the effect that the non-kosher *bli'ah* will have upon food subsequently cooked in it. *Tosfos* apparently

maintains that *נ"ט בר נ"ט* is only an *issur derabbanan*, and the *Chachamim* never prohibited a *ta'am sheini* once *libun* is performed. The reason we may not cook with the *kli* before *libun* is the independent *issur* described above – the prohibition to cook with a *kli shel issur*. After *libun*, the “new” *kli* becomes permissible, since it is not identical to the *kli* in which forbidden food was previously cooked, despite the presence of the partial *bli'ah* that remains in its walls.

This analysis sheds light on the Torah's requirement of *merikah* and *shtifah* (purging and rinsing) of *keilim* used for cooking *kodshim* as well. According to the *Gemara* in *Avodah Zarah* (76a), *hag'alah* is effective on a *kli* used for *kodshim*, even one that was used for broiling, because it is a case of *היתירא בלע* (the *kli* absorbed permitted flavor). Thus, the *Rambam* (*Hilchos Ma'aseh HaKorbanos* 8:14) writes that all *keilim* used for *kodshim* require *merikah* and *shtifah* *עקב אכילה* – immediately after eating the *korban*. At that point, before it becomes *nosar*, the *bli'ah* of the *korban* in the walls of the *kli* is still permissible. Presumably, if the *bli'ah* were allowed to become *nosar* before *kashering* the *kli*, *libun* would be required. [See *Parshas Tzav* for an explanation of the *Rambam's* opinion.]

The *Ra'avad's* approach, in contrast, is that since *merikah* and *shtifah* is a *mitzvah*, it is only logical that the Torah instruct us to perform this *mitzvah* on a *kli* that is already prohibited, not on a *kli* that is still kosher. Thus, in his view, the process of *merikah* and *shtifah* must apply **after** the *bli'ah* in the *kli* becomes *nosar*. The obvious difficulty is that if we perform *hag'alah* at this time, the rationale of *היתירא בלע*, that the original *bli'ah* was permissible, should not seem to have any bearing on the *kli* at hand, which now contains a *bli'ah* of *issur* in its walls. Since the *kli* absorbed what is presently a forbidden *bli'ah* through broiling, *libun* should be required!

Given our earlier explanation, we may suggest that the *Ra'avad* views the kosherization process in the same way that

Tosfos does – as addressing the *issur* of cooking with a *kli shel issur*. From this standpoint, we may make a clear distinction between *בלע איסורא בלע* and *היתירא בלע*, even if the original permissible *bli'ah* has subsequently been transformed into *nosar*. If the *kli* originally absorbed prohibited flavor, the *kli's* status as a *kli shel issur* demands a complete purging of the forbidden *bli'ah* to remove that status. Therefore, a *kli* used for broiling must undergo *libun*, since some of the *bli'ah* will remain if only *hag'alah* is performed. However, if the *kli* originally absorbed **permitted** flavor, and it was only later, while it was within the walls of the *kli*, that the *bli'ah* transformed into a forbidden flavor, the Torah is more lenient. Although we still recognize the *kli* as a *kli shel issur*, the Torah allows for the removal of the *kli shel issur* status through *hag'alah* alone, since *hag'alah* does remove the overwhelming majority of the *bli'ah*. Consequently, the prohibition of cooking with a *kli shel issur* no longer applies to this *kli*.

L'halachah, the *Poskim* (see *Shach*, *Yoreh De'ah* 121:17) rule against the view of *Tosfos*, and instead accept the explanation of the *Ra'oh* (*Bedek HaBayis* 4:4, p. 37b in 5642 ed.) as to why re-firing a *kli cheres* in the kiln is effective despite the Torah's testimony that what a *kli cheres* absorbs never leaves its walls. The *Ra'oh* asserts that this statement is only with regard to **expelling** the *bli'ah* from inside the walls of a *kli cheres*. *Libun* functions in an entirely different way, however. Instead of **removing** the *issur* from the *kli*, *libun* **burns** the non-kosher flavor wherever it is present – *sorfo bim'komo* – and its removal from the *kli* is therefore unnecessary. The Torah never differentiates between *klei cheres* and other *keilim* with regard to the ability to incinerate a *bli'ah* within the walls of a *kli*.

This distinction helps explain another major difference between *hag'alah* and *libun*. The *minhag* is to perform *hag'alah* using water that is *ma'aleh resichah* (boiling). However, if this

is not feasible, we follow the rule of כבולעו כן פולטו – “in the manner that it absorbs the flavor, so does it expel it” (*Pesachim* 30b), in determining the requisite temperature of the water used for *hag’alah*. Rav Tzvi Pesach Frank (*Mikra’ei Kodesh, Pesach* 1, p. 248) points out that we apply כבולעו כן פולטו only to *hag’alah*, not to *libun*. This is because, as the *Ra’oh* explains, the purpose of *libun* is **not** to expel the flavor from the *kli*. Instead, *libun* serves to burn the absorbed flavor when it is still inside the *kli* itself. This occurs only at the temperature at which *nitzotzos nitzim* (sparks will fly), even if the temperature at the time these flavors were originally absorbed was much lower.

Along these lines, the *Avnei Nezer* (*Orach Chaim* 2:368) discusses *libun* on a metal *kli* in which the *kli* begins to glow, thereby giving it the halachic status of fire itself. He maintains that the language of the *Shulchan Aruch HaRav* (*Orach Chaim* 451:8) implies that *libun* is effective because the nature of fire is to draw a *bli’ah* inside a *kli* towards itself. Thus, if during *libun* the *kli* itself becomes “fire,” it will draw the *bli’ah* to itself, thereby negating the effect of the *libun*. Nevertheless, the *Avnei Nezer* concludes that since, according to the *Ra’oh*, the rationale behind *libun* is that the fire is *sorfo bim’komo*, the *bli’ah* will most certainly be incinerated if the *kli* itself is made to glow like fire. [See *B’Ikvei HaTzon*, pp. 144-147.]



PARSHAS MASEI

ZEH HADAVAR

זה הדבר אשר צוה ד' לבנות צלפחד לאמר לטוב בעיניהם תהיינה לנשים
אך למשפחת מטה אביהם תהיינה לנשים.

This is the word that *Hashem* has commanded regarding the daughters of *Tzelofchad*, saying: "Let them be wives to whomever is good in their eyes, but only to the family of their father's tribe shall they become wives." (*Bamidbar* 36:6)

THE GEMARA in *Bava Basra* (120a) records the statement of Shmuel, who asserts based on the words, לטוב בעיניהם, תהיינה לנשים, that *bnos Tzelofchad* were in fact permitted to marry into any of the *shevatim*. The subsequent phrase, אך למשפחת מטה אביהם תהיינה לנשים, was not a commandment, but simply sound advice – namely, that they should marry only men who were fitting for them.

There was a *hora'as sha'ah* (temporary ruling) forbidding women of that generation who inherited shares in Eretz Yisrael from marrying outside their *shevet*. As the *passuk* states, וכל בת יורשת נחלה ממתות בני ישראל לאחד ממשפחת מטה אביה תהיה לאשה – "Every daughter who inherits an inheritance of the tribes of *Bnei Yisrael* shall become the wife of someone from a family of her father's tribe" (*Bamidbar* 36:8). The reason for this restriction was so that the woman's share would not pass over to the *shevet* of her husband or son, who would inherit it upon her death. Nevertheless, Shmuel maintains that this *hora'as sha'ah* did not apply to *bnos Tzelofchad*.

Shmuel's statement is quite puzzling (see *Ohr Hachaim* 36:6). The simple meaning of the *passuk* is that *bnos Tzelofchad* did not have the option of marrying whomever they chose; rather, their choice was limited to members of their father's *shevet*. What compelled Shmuel to interpret the *passuk* against its simple reading and to claim that *bnos Tzelofchad* specifically were exempt from the *hora'as sha'ah* that applied to others in that generation, even though the entire *parsha* is addressed to them?

We may suggest an answer based on a comment of *Rashi* (*Vayikra* 6:2) that the Brisker Rav elaborated upon (see *Chiddushei Maran Ri"z HaLevi al HaTorah, Parshas Shemini*). *Rashi* cites the *Gemara's* statement: "[The word] צו (command) expresses urging on, for the immediate moment and for future generations" (*Kiddushin* 29a). Thus, in contrast to *hora'as sha'ah*, "מצוה" is a technical term that connotes the fact that the *din* remains in effect throughout all future generations.

There is a further distinction between a *hora'as sha'ah* and a *mitzvah*. A *mitzvah*, as such, may only be relayed through the *nevu'ah* of Moshe Rabbeinu. We derive this principle from the concluding *passuk* of *Sefer Vayikra*, אלה המצוות אשר צוה ד' את משה - "These are the *mitzvos* that Hashem commanded Moshe to *Bnei Yisrael* on Har Sinai" (*Vayikra* 27:34), which *Chazal* understand as teaching that אין נביא רשאי - "A *Navi* is not permitted to introduce anything new from now on" (*Megillah* 2b). Therefore, any command given to a *Navi* other than Moshe Rabbeinu may only be temporary in nature, a *hora'as sha'ah*.

Along these lines, in *Sefer HaMitzvos (shoresh shelishi)*, in discussing which commandments are included in the count of *tar-yag* and which are not, the *Rambam* states that a command that was only a *hora'as sha'ah* is not a *mitzvah* and is therefore excluded from this list. In other words, *Nevi'im* other than Moshe received "*nevu'ah*," and this was binding only as a *hora'as sha'ah*. In contrast, Moshe's uniqueness was that he was the only *Navi* able to convey "*Torah*," defined as *mitzvos* that are everlasting.

It is therefore noteworthy that the Torah employs the expression 'אשר צוה ד' to introduce the *parsha* regarding *bnos Tzelofchad*, since this expression indicates that what follows is a *halachah* that applies for all generations.

An additional, related observation is the Torah's use of the words זה הדבר in this context. The *Sifrei*, cited by *Rashi* in the beginning of *Parshas Matos* (*Bamidbar* 30:2), teaches that there is an important difference between the *nevu'ah* of Moshe and that of the other *Nevi'im*. Other *Nevi'im* prophesied with the phrase כה אמר ד' – "So said Hashem," but Moshe, uniquely, prophesied using the phrase זה הדבר – "This is the word [that Hashem has commanded]."

The *Kedushas Levi* (*Shemos* 11:4) explains that the other *Nevi'im* perceived a vision in a dream, which they then interpreted using the *ruach hakodesh* that rested upon them, in their own language and from their own perspective. They introduced their *nevu'ah* with כה אמר ד' because their *nevu'ah* reflected the general message that Hashem showed them, but was not transmitted in the actual words of Hashem. This is why no two *Nevi'im* prophesy using the same language (*Sanhedrin* 89a). Even if two *Nevi'im* were to be shown the exact same vision, they would each interpret it from their unique perspective, using their own language.

In contrast, Moshe's *nevu'ah*, introduced with זה הדבר, consisted of a **direct dictation** given to him by Hashem, word for word and letter for letter. *Chazal* call this אספקלריא המאירה – a "clear glass" vision. Since his *nevu'ah* contained אותיות ונקודות (precise letters and vowels), there was no need for his personal commentary and explanation. This distinction corresponds to the point we made earlier – that Moshe was the only *Navi* able to transmit "Torah" and *mitzvos*, which are binding throughout all future generations. The *nevu'os* of other *Nevi'im*, preceded by כה אמר ד', were not intended to convey a *mitzvah* for all future generations, but rather only a *hora'as sha'ah* (or a message that did not contain a particular *mitzvah*).

Following this line of reasoning, the phrase 'כה אמר ד' would be appropriate even to introduce a *nevu'ah* of Moshe if it were only a *hora'as sha'ah*. Even Moshe at times conveyed prophecies that were *hora'os sha'ah*, such as the special directives involved in *makkas bechoros* and the *Korban Pesach* in Mitzrayim. This is why Moshe's *nevu'ah* regarding *makkas bechoros* is introduced with 'כה אמר ד' in the *passuk*, 'ויאמר משה כה אמר ד' כחצות הלילה אני יוצא בתוך מצרים – "Moshe said, 'So said Hashem: At about midnight I shall go out in the midst of Mitzrayim'" (Shemos 11:4), for it contained no *mitzvah* for future generations. This *nevu'ah* was apparently not through an *המאירה*, and was thus akin to the level of *nevu'ah* of the other *Nevi'im*. [See Rav Schachter on the *Parsha*, *Parshiyos Vayishlach* and *Beha'aloscha*.]

Thus, the fact that in the context of *bnos Tzelofchad*, the Torah employs the introductory phrase, 'זה הדבר אשר צוה ד', indicates that the Torah intends to present a *halachah* that applies to all future generations, and not the *hora'as sha'ah* that forbade women of **that** generation from marrying outside their *shevet*. This is how Shmuel deduced that *bnos Tzelofchad* were exempt from the *hora'as sha'ah*, and that they were instructed to follow the general rule of 'לטוב בעיניהם תהינה לנשים' that would apply in future generations.

We can extend the above analysis to numerous other *parshiyos* of the Torah. In describing the formation of *Bnei Yisrael's* encampment in the *Midbar*, the Torah states: 'ויעשו בני ישראל ככל אשר צוה ד' את משה כן חנו לדגליהם וכן נסעו – "Bnei Yisrael did everything that Hashem had commanded Moshe; so they encamped according to their banners and so they journeyed" (Bamidbar 2:34). According to the above formulation of the Brisker Rav, we must explain why the Torah chose to use the expression, 'ככל אשר צוה ד' את משה', in relation to the encampment of the *shevatim* in the *Midbar*, as clearly these were *dinim* that applied only in that generation.

We may suggest that the manner of the *masa'os* of the *shevatim* does, in fact, have continued halachic relevance. The *Midrash*

(*Bamidbar Rabbah* 2:20) comments that the formation of the *shevatim* according to their banners was as beloved to *HaKadosh Baruch Hu* as the construction of the *Mishkan*, as is reflected in the use of *צוה ד' את משה* in both contexts. The *Midrash* thus indicates that the *hora'as sha'ah* of the *masa'os* is a *chelek* (portion) of the more general *mitzvah* of building the *Mishkan* and *Beis Ha-Mikdash*, which is certainly a permanent *mitzvah*.

This idea may be seen from the *Mishnah* in *Shabbos* (92a) that teaches that one who carries an object on Shabbos from one domain to another on one's shoulders is liable for punishment. That was, after all, the method of carrying used by *bnei Kehas*, who were responsible for transporting the *klei haMishkan* as *Bnei Yisrael* traveled through the *Midbar*. From this precedent, we derive that carrying on shoulders is a normative method of transport. Apparently, although we derive the forbidden *mela-chos* of Shabbos from the activities performed in the *Mishkan*, they may be derived from the *masa'os* as well, since the *masa'os* are viewed as an extension of the *mitzvah* of constructing the *Mishkan*. Perhaps it is for the same reason that the Torah employs the term *צוה* in relation to the *masa'os*.

Along these lines, it is interesting to note that the Torah uses the phrase *זה הדבר אשר צוה ד'* in connection with collecting the *man* (*Shemos* 16:16), despite the fact that this practice was merely a *hora'as sha'ah*. Here too, we may explain that there are aspects of the instruction regarding the *man's* collection that apply at all times, such as the obligation of a man to provide for his wife and young children. This is spelled out in the conclusion of the *passuk*, *עומר לגלגולת מספר נפשותיכם איש לאשר באהלו תקחו*, "[Gather from it] an *omer* per person – according to the number of your people, everyone according to whoever is in his tent shall you take."

A further example might be the signs that *Hashem* gave Moshe to present before *Bnei Yisrael*, such as turning his stick into a snake, in connection to which we again find the phrase

'ד כּאשר צוה (Shemos 7:10). The Rambam (*Hilchos Yesodei HaTorah* 10:1) writes that a *Navi* must perform certain signs and wonders, or repeatedly make predictions that come true, before being accepted as a true *Navi*. Thus, although Moshe's performance of the signs was only a one-time occurrence, since in order for Moshe to establish himself as a *Navi* he needed to perform those signs, and this requirement is a *din* for generations, the term צוה is appropriate.

In a related discussion, the Ramban (*Sefer HaMitzvos, Hasagos, shoresh shlishi*) defends the *Bahag*, who counts *terumas hameches*, the tribute portion given to the *Kohanim* and *Levi'im* from the spoils of the war with Midyan, as a *mitzvah* among the *taryag mitzvos*. The Rambam takes issue with the *Bahag*, since this allotment was merely a *hora'as sha'ah*. The Ramban, however, explains that although these specific donations were temporary obligations, the *Bahag* may maintain that there is a *kiyum mitzvah* (fulfillment of a *mitzvah*) for generations to donate to the *Beis HaMikdash* from what was gained in battle, and that suffices for it to be included in *taryag*. Given the Ramban's comment, we may further explain the Torah's use of כּאשר צוה ד' את משה in the context of *terumas hameches* (*Bamidbar* 31:31), since it does contain an enduring *kiyum mitzvah*.

Likewise, we may understand the use of ד' הדבר אשר צוה ד' with regard to the *korbanos* that were offered on the eighth day of the *Mishkan's* inauguration (*Vayikra* 9:6). The opinion of the Ramban (*shoresh shlishi*) is that there is a *mitzvah chiyuvis* (obligatory *mitzvah*) for all generations to offer special *korbanos* celebrating the dedication of a *Mishkan* or *Beis HaMikdash*. Accordingly, the term צוה is not at all problematic. An alternative suggestion, however, is that although the *korbanos* offered on this occasion may have been merely a *hora'as sha'ah*, since offering *korbanos* in general is an ongoing *kiyum mitzvah*, it is fitting to use the term צוה. [See *B'Ikvei HaTzon*, pp. 131-135.]



PARSHAS DEVARIM

MESIRAS HATORAH

הואיל משה באר את התורה הזאת לאמר.

Moshe began explaining this Torah, saying. (*Devarim* 1:5)

THE *GEMARA* in *Nedarim* (38a) teaches that originally, only the Written Torah, along with all of its requisite *halachos*, was to be transmitted by Moshe to *Bnei Yisrael*. The פילפולה של תורה, the dialectic of Torah – the Oral Torah’s methodology and style of exegesis of the *Torah SheBichsav* – was exclusively given to Moshe and his descendants as a private undertaking. It was only because Moshe acted generously, “with a good eye,” that he shared this discipline – the ability to “read in between the lines” of the text of the Torah to derive the details of each *halachah* – with all of *Bnei Yisrael*.

When did this generous act, in which Moshe imparted his full understanding of *Torah SheBe’al Peh* to all of *Bnei Yisrael*, take place? The *Netziv* (*Ha’amek Davar*, *Devarim* 1:3-5) explains that it occurred shortly before his death and is described with the words, הואיל משה באר את התורה הזאת לאמר. The *passuk* in *Va’eschanan*, וזאת התורה אשר שם משה לפני בני ישראל, – “And this is the teaching that Moshe placed before *Bnei Yisrael*” (4:44), is a reference to this process as well.

This reflects an important difference between *Chumash Devarim* and the other four *Chumashim*. While the other *Chumashim* began as *Torah SheBichsav*, *Chumash Devarim*, which consists of

the great speech that Moshe delivered before *Bnei Yisrael* in Arvos Mo'av, began as *Torah SheBe'al Peh*. Of course, once *Hashem* dictated the words contained in *Sefer Devarim* to Moshe to be written down, they too were incorporated into the *Chamishah Chumshei Torah* and became part of *Torah SheBichsav*.

Rav Soloveitchik added that the above difference forms the basis of the distinction between *Chumash Devarim* and the rest of the Torah with regard to the exegetical principle of *semuchim*, expounding details of one *mitzvah* to another in an adjacent *passuk*. (When two *mitzvos* appear within the **same** *passuk*, the derivation of *dinim* based on the comparison of one to the other is referred to as *hekesh*.) The *Gemara* in *Yevamos* (4a) teaches that we apply the methodology of *semuchim* only to *Chumash Devarim*, not to the rest of the Torah.

As we described, there is an element of *Torah SheBe'al Peh* to *Chumash Devarim*, and one who transmits the Oral Torah arranges his lesson in such a way that the topics discussed are associated with one another. We are thus able to derive *dinim* based on that order of association. However, in the rest of *Torah SheBichsav*, topics are not necessarily arranged by association. [See *Nefesh HaRav*, 1994 ed., pp. 54-56; *MiPinei HaRav*, 2001 ed., pp. 338-339; Rav Schachter on the Parsha, *Parshas Devarim*.]

The difference in the manner of transmission of the *Torah SheBichsav* and *Torah SheBe'al Peh* has important ramifications. The *Gemara* in *Gittin* (60b) analyzes the *passuk*, כַּתֵּב לְךָ אֵת הַדְּבָרִים – “Write for yourself these words, for on the basis of these [orally transmitted] words I have established a covenant with you and Israel” (*Shemos* 34:27), noting that the first part of the *passuk* indicates that the words of the Torah are to be written (כַּתֵּב לְךָ), whereas the second part connotes an oral transmission (עַל פִּי).

The *Gemara* explains that this is not a contradiction. *Hashem* revealed to Moshe that just as He had initially given a portion of Torah, the *Aseres HaDibros*, in a written form and other

portions in an oral form, that is the proper method to fulfill *mesiras haTorah* in future generations as well. Thus, we derive that **דברים שבכתב אי אתה רשאי לאומרו על פה** – “Teachings that were given in writing, you are not permitted to transmit orally,” and that **דברים שבעל פה אי אתה רשאי לאומרו בכתב** – “Teachings that were given orally, you are not permitted to transmit in writing.”

In later generations, due to a decline in the intensity of *limmud haTorah*, *Torah SheBe'al Peh*, which had until then been learned by heart, was in danger of being forgotten. The *Chachamim* deemed it necessary to allow the recording of *Torah SheBe'al Peh*, and they expounded a *passuk* to justify their actions: **עת לעשות לד' הפרו תורתך** – “When it is a time to act for Hashem, nullify your Torah” (*Tehillim* 119:126). They argued, based on this *passuk*, that it is preferable that one *halachah* be uprooted so that the *Torah SheBe'al Peh* itself not be forgotten (*Temurah* 14b).

Many *Rishonim* are troubled by our practice of reciting various *parshiyos* of *Torah SheBichsav* orally, such as *Az Yashir* and *kri'as Shema*, seemingly in violation of the rule **דברים שבכתב אי אתה רשאי לאומרו על פה**. Reciting words of *Torah SheBichsav* from a *siddur* is also considered *ba'al peh*. In fact, anything less than a complete *Chumash*, even if it is written on *klaf* (like some use to recite *Parshas HaKetores*), does not have the status of *kri'ah bichsav*.

The *Mechaber* (*Orach Chaim* 49:1) defends the practice, maintaining that it is permissible to recite *pessukim* that one knows fluently, including the well-known *parshiyos* of *kri'as Shema*, *Birchas Kohanim*, and *Parshas HaTamid*. However, the Vilna Gaon (*HaGahos HaGr"a*, *Temurah* 14b; *Bi'ur HaGr"a*, *Orach Chaim* 49:2) comments that the true resolution of the difficulty is the answer recorded by the *Tur*, in the name of the *Rosh* and *Tosfos* (*Temurah* 14b, s.v. *devarim*), that the *halachah* of **דברים שבכתב אי אתה רשאי לאומרו על פה** applies only to *pessukim* recited on behalf of a *tzibbur* in order to discharge their obligation.

The basis for this distinction is that the *halachos* discussed in the *Gemara* in *Gittin* are derived from *Ma'amad Har Sinai*, when Torah was transmitted to the Jewish People. Thus, rather than positing restrictions on one's personal *limmud haTorah*, these *halachos* represent the way to fulfill *mesiras haTorah* in the most complete fashion (see *Tosfos Yeshanim*, *Yoma* 70a). Whenever Torah *SheBichsav* is taught to others, it should be read from a *sefer kasher*. Likewise, disseminating Torah *SheBe'al Peh* in public using a written text is improper, since this is not the intended, optimal form of *talmud Torah SheBe'al Peh* (Rav Chaim Zimmerman, *Binyan Halachah, Hakdamas HaRambam*).

However, as the *Rambam* writes in his *Hakdamah* to *Yad HaChazakah*, one was always permitted to write personal notes, a *megillas setarim* (hidden scroll) from which he could refresh his memory with regard to his learning (*Shabbos* 6b; *Bava Metzia* 92a). Only the **teaching** of Torah *SheBe'al Peh* must take place orally. Similarly, with regard to Torah *SheBichsav*, private recitation of *Az Yashir* and *kri'as Shema* was never included in the restriction. In contrast, the *leining* of the Torah or the *haftorah* to discharge the obligation of the *tzibbur* requires *kri'ah mitoch hak'sav* from a *sefer kasher*.

The divergent modes of transmission of the different parts of the Torah may be relevant to another aspect of *mesiras haTorah* as well. The *Rama* (*Choshen Mishpat* 25:1) rules that if, on the strength of clear proofs in a *posek's* analysis, he feels that the correct ruling is not in accordance with the earlier *psak halachah* of the *Ge'onim*, he has a right to rule against them. This is in accordance with the principle, *יפתח בדורו כשמואל בדורו* – “Yiftach in his generation is like Shmuel in his generation” (*Roshi HaShanah* 25b). However, the *Rama* includes an important limitation in the license to disagree with halachic precedent – a ruling that goes against a dictum of the *Amora'im* in the *Gemara*.

As the source for this statement, the Vilna Gaon (*Bi'ur HaGr"a* 6) cites the *Gemara* in *Bava Metzia* (86a), which brings a

quotation from the *Sifra D'Adam HaRishon*. In this "Book of Adam HaRishon," *Hashem* showed Adam how world history would develop based on the free choice and actions of humankind, but with the guiding Hand of *Hashem* seeing to it that history progresses in a particular direction. This is the case not only regarding world history, but also regarding the development of *Torah SheBe'al Peh*. To that end, *Hashem* showed Adam each generation's Torah leaders, even recording details regarding certain *talmidei chachamim*, such as the fact that only Rav, and not his contemporary Shmuel, would receive *semichah* from Rabbi Yehudah HaNasi.

One of the lines from this *sefer* that is cited by the *Gemara* is, רב אשי ורביןא סוף הוראה – "Rav Ashi and Ravina [shall be] the last [of the *Chachamim* of the era] of adjudication." This statement has the connotation that a *talmid chacham* from a later period does not have the ability to disagree with the consensus of opinion formulated before the *chasimas haTalmud* (conclusion of the Talmud) at the time of Ravina and Rav Ashi (approximately the year 500 CE). One may not add on to, subtract from, or disagree with the analysis of the *Gemara*. However, with the exception of such a *machlokes*, in all other generations, a *talmid chacham* may disagree with rulings of an earlier generation.

Why is it that the *chasimas haTalmud* serves as a cutoff point? Rav Moshe Soloveitchik zt"l suggested that the answer is based on the recognition that there is an optimal, complete form of *mesiras Torah SheBe'al Peh*. We usually assume that although Rabbi Yehudah HaNasi edited the *Mishnah* in approximately the year 200 CE, the *mishnayos* were still recited orally until the days of Ravina and Rav Ashi (see *Rashi, Eiruvin 62b, s.v. kegon*). Rabbi edited the *mishnayos* with respect to how they should be recited orally, but he did not publish and disseminate the *Mishnah* in written form. It was only **after** the *chasimas haTalmud* that *mishnayos* were taught and studied from a written text.

It is notable that the *Rambam*, in his *Hakdamah* to *Yad Ha-Chazakah*, enumerates only the forty generations of *Chachamim* from Moshe and Yehoshua until Ravina and Rav Ashi in his chronicle of the *seder haMasorah*. This is in contrast to the approach of the *Meiri*, who, in his introduction to *Maseches Avos*, records a similar listing, but continues it until his times, including the *Rabbanan Savora'i*, *Ge'onim*, and *Rishonim*, and up to his own *rebbe*, *Rebbi Reuven ben Rebbi Chaim*.

Rav Moshe Soloveitchik explained that the *talmidei chachamim* before Ravina and Rav Ashi, who were still studying and transmitting the *Torah SheBe'al Peh* orally, in its intended form, possessed a more elevated status of *ba'alei Masorah*. After that time, since all of our learning is from a written corpus, *talmidei chachamim* possess a lower status of *ba'alei Masorah* from a halachic perspective. That is why post-Talmudic *talmidei chachamim* are legally unable to disagree with the *maskana* of the *Gemara*. The *Rambam* in his *Hakdamah* wished to provide a halachic definition of the *seder haMasorah*, not merely a historical account of the transmission of *Torah SheBe'al Peh*. For this reason, the *Rambam* did not extend his list until the *Chachamim* of his era, by which time the *Masorah* was not as strong *al pi din*. The primary *seder haMasorah* was only up until the days of Ravina and Rav Ashi, and the *Rambam* therefore concludes his list with them. [See *Nefesh HaRav*, 1994 ed., pp. 34-37; *Rav Schachter on the Parsha, Parshas Yisro*.]



PARSHAS VA'ESCHANAN

S'CHAR BATALAH

ראה למדתי אתכם חוקים ומשפטים כאשר צוני ד' אלקי.

See, I have taught you decrees and ordinances, as *Hashem*, my G-d, has commanded me. (*Devarim* 4:5)

THE SIMPLE explanation of this *passuk* is that Moshe Rabbeinu fulfilled *Hashem's* command to teach *Bnei Yisrael* the Torah. *Chazal* had a tradition, however, that the *passuk* contains an additional level of interpretation – that Moshe taught the Torah to *Bnei Yisrael* **in the same manner** that *Hashem* taught the Torah to him. Just as *Hashem* taught Moshe free of charge, so did Moshe teach *Bnei Yisrael* free of charge, and that is the way Torah must be taught for all generations (*Bechoros* 29a).

The *Mishnah* in *Bechoros* extends this requirement to other *mitzvah*-related services for which one may not take payment – serving as a judge, testifying, or sprinkling or consecrating *mei chatas* (the water of the *parah adumah* for one who is *tamei meis*). Likewise, one who performs *hashavas aveidah* (returning a lost object) – including a doctor who restores an ill person's health to him – may not charge for his services (*Yoreh De'ah* 336:2).

However, the *Gemara* in *Bava Metzia* (31b) teaches that one who performs *hashavas aveidah* may be paid *s'char batalah* – the wage of a worker who stands idle from his usual work, which enables him to instead carry out the easier job of returning

a lost object. A doctor, as well as one who teaches Torah, may be similarly compensated.

The idea behind this type of compensation in the case of a *talmid chacham* for example, is that the *kehillah* decides that it is worthwhile to pay him a salary on the condition that he refrains from taking any form of employment. This way, he remains available to teach Torah to the *kehillah*. At the same time, in keeping with the *Gemara* in *Bechoros*, he engages in teaching Torah completely free of charge. Similarly, in the case of a doctor's compensation, a group of patients pays their doctor not to work in a different profession so that he can treat his patients gratis. [Only the *cholim* that the doctor actually treats pay his wages by dividing the *s'char batalah* among themselves. This is not because the payment is for services rendered, but because only they are interested in the arrangement of paying him not to work.]

This understanding of *s'char batalah* is relevant to the issue of *s'char Shabbos*, wages for a job performed on the Shabbos. Although it is generally forbidden *miderabbanan* to take *s'char Shabbos* (*Bava Metzia* 58a), in light of our analysis, it seems that there is no prohibition of *s'char Shabbos* when a doctor treats a *choleh* on Shabbos. Even when a doctor renders medical care on a weekday, his wage is not in lieu of that particular treatment; rather, it is compensation for not taking a different job. The treatment of the *choleh* must always be free of charge. Since a doctor's compensation is not for the job performed on the Shabbos, it is not *s'char Shabbos*. It is therefore completely permissible for the doctor to receive *s'char batalah* for treating a patient on Shabbos.

The *Chasam Sofer* (*Choshen Mishpat* 194, s.v. *v'hinei s'charo*) discusses whether a Jewish doctor should accept payment for treating a *nochri* patient on Shabbos. On the one hand, since the payment is *s'char Shabbos*, he may not derive benefit from it. Alternatively, perhaps he should take payment to avoid the violation of giving free gifts to *nochrin* (*Avodah Zarah* 20a).

Therefore, the *Chasam Sofer* advises that the doctor should take the payment and donate it to *tzedakah*.

It seems that the issue of *s'char Shabbos* in that case is due to the fact that the doctor treated a *nochri* specifically. Since we do not have a *mitzvah* of *hashavas aveidah* to a *nochri*, we likewise have no obligation to restore his good health to him. Therefore, the doctor may be paid **directly** for his work, not as *s'char batalah*, and that is why the *Chasam Sofer* considers his payment a problem of *s'char Shabbos*.

L'halachah, we are lenient with regard to *s'char Shabbos* when the payment is for the performance of a *mitzvah* (*Mishnah Berurah* 306:23-24). Nevertheless, the *Shulchan Aruch* (*Orach Chaim* 585:5) states that one who takes payment for blowing the *shofar* will not see a *siman berachah* (sign of blessing) from that money. This is quite puzzling. We should apply the *halachah* taught in the *Mishnah* in *Bechoros* to this case. It should be forbidden for one to charge a regular wage for *shofar*-blowing, but receiving *s'char batalah* should be permissible. Accordingly, just as with regard to a doctor who treats a *choleh* on *Shabbos*, the prohibition of accepting *s'char Shabbos* should not apply at all. Why should the *ba'al tokei'ah* not see a *siman berachah* from that money?

The answer is that this calculation is not correct. Rav Hirsch (*Bamidbar* 19:17) explains that the *mitzvos* listed in the *Mishnah* in *Bechoros* are all examples of one person performing a *mitzvah* on behalf of another when the latter **could not** perform it on his own. Obviously, one may not judge or serve as a witness in his own *din Torah*, nor can he sprinkle the *mei chatas* on himself or return his own *aveidah* to himself.

Similarly, oftentimes, one cannot teach Torah to himself when he is unfamiliar with the portion of Torah in question. Since many people are unable to perform this *mitzvah* themselves, the Torah places an obligation on someone who possesses Torah knowledge to transmit that Torah to anyone who lacks that knowledge. Thus, *Chazal* interpret the *passuk*, *וּשְׁנַתֶּם לְבַנְיָן* – “You

shall teach them thoroughly to your children" (*Devarim* 6:7), as a reference to teaching Torah to *talmidim* (*Sifrei*). The Torah similarly obligates a witness who knows information about a *din Torah* to testify. Furthermore, in placing these obligations, the Torah also required that one perform these *mitzvos* without charge.

However, other *mitzvos* that one **could** discharge on his own, such as blowing *shofar*, are in a different category. Even though many are not expert in blowing *shofar*, they could, in theory, learn to do so. For this reason, the Torah never posited an obligation on a *ba'al tokei'ah* to blow *shofar* to discharge another's obligation. The Torah similarly never obligated a person to tie *tzitzis* on someone else's garment, nor a *sofer* to write a *sefer Torah*, *tefillin*, or *mezuzos* for another. Therefore, one who performs these *mitzvos* on another's behalf is permitted to take **full** payment and need not suffice with taking *s'char batalah*. For this reason, when one blows *shofar* for others on Yom Tov and they compensate him, there is a definite concern of *s'char Shabbos* with regard to accepting this payment.

Our earlier analysis of *s'char batalah* is pertinent to the subject of sick-leave as well. Many employers insert a clause in employment contracts that allows for a certain number of paid sick days. [If this is the common practice in a particular place and field of work, it is self-understood that the employer obligates himself to provide sick pay, even if such a stipulation is not included in the contract.] In effect, the employer agrees that in the event that the employee misses a certain number of days of work due to illness, he will pay the employee **more than** his usual wage for the days that he actually does work.

We may argue that in the case of a *rebbe* employed in a *yeshiva*, where his salary is based on *s'char batalah*, there is no need to stipulate in his contract that he is entitled to paid sick leave. As we explained above, a *rebbe* is not paid for teaching Torah; the wages that he receives are for agreeing to not occupy himself

with a **different** job. A *rebbe* who had to miss teaching days due to illness did abide by this agreement; he did not take another job. Thus, he is, in fact, entitled to an unlimited number of sick days, and he may still continue to collect his full salary. [When the time comes to renew his contract, however, the *kehillah* or administration may decide that since it no longer benefits from his teaching of Torah, it is not worthwhile to pay the *rebbe* a salary so that he avoids taking other employment.] [See *Ginas Egoz*, pp. 185-188.]



PARSHAS EIKEV

ZECHIRAS CHEIT HA'EIGEL

זכור אל תשכח את אשר הקצפת את ד' אלקיך במדבר.

Remember, do not forget, that you provoked *Hashem*, your G-d, in the *Midbar*. (*Devarim* 9:7)

BASED ON this *passuk*, the *Magen Avraham* (*Orach Chaim* 60:2), quoting the *Yalkut Shimoni* (*Bechukosai* 671), maintains that there is a *mitzvah* to *lein* the *parsha* of *cheit ha'eigel* every year from a *sefer Torah*. The *Ramban* (*Hashmotos L'Minyan HaMitzvos, mitzvos aseh* 7) also mentions this *passuk* as an instruction to remember *cheit ha'eigel*. He is uncertain, however, whether this applied only to the *dor haMidbar* or continues as a bona fide *mitzvah* throughout the generations to remember the *chessed* that *Hashem* displayed towards *Bnei Yisrael* in forgiving their *aveirah*.

In *Parshas Ki Seitzei* (*Devarim* 24:9), the Torah commands that we remember the *cheit* of *Miryam* as well. The *Magen Avraham* – in line with the view of the *Ramban* cited above, who included this command in his *minyan hamitzvos* – holds that one should mention *cheit Miryam* daily in order to fulfill this *mitzvah*.

The *Magen Avraham* explains that *Chazal* did not enact an annual *kri'as haTorah* of the *parsha* of *cheit Miryam*, as they did for *Parshas Zachor*, out of respect for the righteous *Miryam*, so as not to publicize her *aveirah*. Likewise, since it would be

disgraceful to publicly mention the *aveirah* of *Bnei Yisrael*, the *Chachamim* did not institute a special *kri'ah* to remember *cheit ha'eigel*. Nevertheless, when we read *Parshas Ki Sisa* and *Parshas Beha'aloscha* as the *parshas hashavua*, the *ba'al korei* and those listening to the *laining* should have in mind that they wish to fulfill these additional *mitzvos d'oraisa* (see *Machatzis HaShekel*).

The *Beis Yosef* (*Orach Chaim* 685) quotes an enigmatic comment of *Tosfos* (*Berachos* 13a, s.v. *b'lashon*), which has since been removed from our editions, that it is a *mitzvah d'oraisa* to *lein Parshas Parah* every year, just like *Parshas Zachor*. Rav Baruch Epstein, the author of the *Torah Temimah*, suggests a fascinating source for such a *kri'ah* based on the above discussion.

Rav Epstein (*M'kor Baruch*, *chelek* 3, *perek* 27:58) explains that the *kri'ah* of *Parshas Parah* might be *d'oraisa* as a result of its association with *cheit ha'eigel*. *Rashi* (*Bamidbar* 19:22), quoting Rav Moshe HaDarshan, notes that many of the aspects of the *avodah* of the *parah adumah* correspond to various facets of the *cheit ha'eigel*, since *Hashem* gave us the *mitzvah* of *parah adumah* to serve as a *kaparah* for the *cheit ha'eigel*: "This can be compared to the son of a maidservant who soiled the palace of a king. They said, *תבא אמו ותקנה הצואה* – 'Let his mother come and wipe away the excrement.' Similarly, let the [Red] Cow come and atone for the [Golden] Calf."

Accordingly, Rav Epstein suggests that in order to fulfill the *mitzvah* of *zechiras cheit ha'eigel*, while at the same time abiding by the concern of the *Magen Avraham* not to publicly embarrass the Jewish People, the *Chachamim* instituted *kri'as Parshas Parah* as a substitute for *laining* the *parsha* of *cheit ha'eigel*. Thus, we are obligated to *lein Parshas Parah* not for its own sake, but in order to remember the *cheit ha'eigel*.

This explanation fits with the reason that we are obligated to remember the *cheit ha'eigel*. The *Gemara* in *Avodah Zarah* (4b-5a) teaches:

לא ישראל ראוין לאותו מעשה ... אלא למה עשו לומר לך ... שאם חטאו
ציבור אומרים להו לכו אצל ציבור.

Bnei Yisrael were not suited to perform that deed [with the *eigel*] ... If so, why did they act in this manner? To teach you ... that if a *tzibbur* sins, we tell them: "Go to another *tzibbur* [the ones who worshipped the *eigel* and then did *teshuvah*, and their *teshuvah* was accepted]."

In other words, *Hashem* suspended the people's *bechirah chofshis* (free will) on this occasion and forced them to sin, in order to teach this lesson of *teshuvah*.

Thus, the *mitzvah* to remember *cheit ha'eigel* is not for the Jewish People to have a guilty conscience over the *aveirah*. After all, the *Gemara* claims that the *aveirah* was caused *min haShamayim*. The lesson of the *cheit ha'eigel*, and the reason *Hashem* brought it about, is to teach us the power of communal *teshuvah* and the *kerisas bris* (sealing of the covenant) regarding the effectiveness of the *yud gammel middos* (Thirteen Attributes of Mercy) that were revealed at that time. [See essay for *Parshas Ki Sisa*.]

Since this is why we must remember the *cheit ha'eigel*, it stands to reason that *leining Parshas Parah* is the proper way in which to fulfill this *mitzvah*. The *mitzvah* of *parah adumah* represents the correction of the *cheit*, and therefore *leining* this *parsha* in particular, not the *parsha* that describes the *aveirah* itself, reminds us of the ability to do *teshuvah*.



TEACHING TORAH TO CHILDREN AND TO TALMIDIM

ולמדתם אותם את בניכם לדבר בם.

You shall teach them to your children to discuss them.
(*Devarim* 11:19)

IT IS CLEAR from the *Gemara* in *Kiddushin* (29b-30a) that *Chazal* understood this *passuk* in the second *parsha* of *kri'as Shema* as a reference to teaching Torah to one's sons, while the *passuk* in the first *parsha*, **ושננתם לבניך ודברת בם** – “You shall teach them thoroughly to your children and you shall speak of them” (*Devarim* 6:7), refers to teaching Torah to *talmidim*. Since the simple translation of both *pesukim* indicates an obligation to teach one's own children, what prompted *Chazal* to understand **ושננתם לבניך** as a reference to *talmidim*?

The *Gemara* often employs the exegetical principle of *im eino inyan* when the Torah writes the same directive twice. According to this rule, if a certain passage in the Torah cannot be explained as referring to its own subject matter, because it would then be redundant, it may be explained as referring to a related matter. Thus, the first time that the Torah mentions a directive, it is understood to teach the plain meaning of the *passuk*. If the Torah mentions the same directive again, since we already know the plain sense of the *passuk*, the second reference is assigned an additional element.

Based on this, if *Chazal* had taken the directive that appears earlier in the Torah, **ושננתם לבניך**, as a reference to one's children, and the Torah's second charge, **ולמדתם אותם את בניכם**, as expanding the *mitzvah* to apply to one's *talmidim*, it would have been quite understandable. But *Chazal* interpret the *pesukim* in exactly the opposite way – applying the *passuk* in the **first parsha**, **ושננתם לבניך**, to *talmidim*, and not to children!

Rav Mordechai Gifter *zt"l* explained that the key to *Chazal's* interpretation of these *pessukim* lies in the word **ושוננתם**. The *Gemara* in *Kiddushin* expounds this word as conveying the notion **שיהו דברי תורה מחודדים בפין** - "that the words of Torah should be 'sharp' in your mouth." One should develop a precise command of the Torah, such that if he were to be asked something concerning a point of Torah knowledge, he would be able to answer immediately.

While one is certainly obligated to teach Torah to his children, not everyone is blessed with children who are capable of reaching this level of expertise in Torah knowledge. It is only reasonable to aspire to this caliber of proficiency in the setting of a *yeshiva*, where a *rebbe* instructs his *talmidim* with the goal that they master the Torah in all its detail and depth.



PARSHAS RE'EH

ALIYAH L'REGEL ON ROSH CHODESH

שלש פעמים בשנה יראה כל זכורך את פני ד' אלקיך במקום אשר יבחר
בחג המצות ובחג השבועות ובחג הסוכות.

Three times a year all your males should appear before *Hashem*, your G-d, in the place that He will choose: on *Chag HaMatzos*, on *Chag HaShavuos*, and on *Chag HaSukkos*. (*Devarim* 16:16)

COMMENTING ON the *passuk*, מתי אבוא ואראה פני אלקים – “When shall I come and appear before G-d?” (*Tehillim* 42:3), the *Midrash* (*Yalkut Shimoni*, *Yeshayah* 514) describes the Jewish People as asking the *Ribbono shel Olam* when He will return to them the honor of performing *aliyah l’regel*, so that they can once again appear before the *Shechinah*. *Hashem* replies, “When the *ge’ulah ha’asidah* arrives, you will be *oleh regel* not only three times a year, but on each and every month, as the *passuk* states (*Yeshayah* 66:23): והיה מדי חודש בחדשו ומדי שבת בשבתו – “It shall be that at every Rosh Chodesh and on every Shabbos all mankind will come to prostrate themselves before Me, says *Hashem*.”

The *Heichal Ra’anan* commentary on *Yalkut Shimoni*, quoting the Vilna Gaon, explains that the word שבת in the phrase וּמְדֵי שַׁבַּת בְּשַׁבְּתוֹ is, in fact, a reference to Yom Tov. The precedent for such an interpretation is the well-known *passuk*, וּסְפַרְתֶּם לָכֶם מִמָּחָרֵת הַשַּׁבָּת – “You shall count for yourselves from the morrow of the Rest Day” (*Vayikra* 23:15), where שבת refers

to the Yom Tov of Pesach, not to the day of Shabbos. Thus, the *passuk* in *Yeshayah* does not mean that *le'asid lavo* there will be a *mitzvah* of *re'iyas panim* (appearing before *Hashem* in the *Beis HaMikdash*) even on Shabbosos. Rather, the innovation of the *passuk*, as elaborated upon by the *Yalkut Shimoni*, is that the *mitzvah* will apply on *Roshei Chodashim*, in addition to the *Shalosh Regalim*.

The *Rambam* included as one of the thirteen *ikarei ha'emunah* (Principles of Faith) שזאת התורה לא תהא מוחלפת – “that this Torah will not be exchanged;” the *dinim* of the Torah are immutable. The *Rambam's* source is the *Gemara* in *Megillah* (2b), which cites the concluding *passuk* of *Sefer Vayikra* (or the similar concluding *passuk* of *Sefer Bamidbar*; see *Maharsha, Chiddushei Aggados, Shabbos 104a*), אלה המצוות אשר צוה ד' את משה – “These are the *mitzvos* that *Hashem* commanded Moshe to *Bnei Yisrael* on Har Sinai” (*Vayikra 27:34*), as teaching that אין נביא רשאי לחדש דבר מעתה – “A *Navi* is not permitted to introduce anything new from now on.”

Indeed, it is this *ikar* that differentiates the Orthodox from the non-Orthodox, who believe that the *dinim* of the Torah are subject to revision. Due to this *ikar*, even if a recognized *Navi* were to call for a permanent change in a *din* of the Torah, he would be branded a *Navi hesheker* and would receive the death penalty. The reason for this obstinate insistence on the immutability of the Torah is that the Torah represents a description of *Elokus*, the essence of *Hashem* Himself. Thus, this *ikar* is a direct outgrowth of the *passuk*, כי אני ד' לא שניתי – “For I, *Hashem*, have not changed” (*Malachi 3:6*). Change is relevant only to created beings, not to the Creator Himself. Since the Torah is the Wisdom of *Hashem*, and since He and His Wisdom are one, the *dinim* of the Torah are also not subject to modification. [See *Rav Schachter on the Parsha, Parshiyos Metzora and Eikev*.]

This presents us with an obvious difficulty: The comment of the *Midrash* that the *mitzvah* of *aliyah l'regel* will change at

the time of the *ge'ulah ha'asidah* seems to be at odds with the *Rambam's* principle of immutability of the Torah.

We may suggest the following approach to answer this difficulty. The *Gemara* in *Rosh Hashanah* (16b) cites *Rebbi Yitzchak*, who teaches that a person is obligated to visit his *rebbe* during Yom Tov. He derives this from the *passuk* in reference to the Shunemite woman's traveling to visit *Elisha*, whom she considered to be her mentor: *שבת לא חודש ולא שבת* – "Why are you going to him [*Elisha*] today? It is neither a Rosh Chodesh nor a Shabbos" (*Melachim II* 4:23), which implies that it is proper for one to visit his *rebbe* on these days.

The *meforshim* are troubled as to how *Rebbi Yitzchak* proves the obligation to visit one's *rebbe* on Yom Tov from a *passuk* that specifies Rosh Chodesh and Shabbos. The *Vilna Gaon* (*Ma'aseh Rav HeChadash* 14) explains that, like the *passuk* cited above regarding *re'iyas panim le'asid lavo*, the term *שבת* in this *passuk* should be understood as connoting the day of Yom Tov.

The *Noda B'Yehudah* (*Tinyana, Orach Chaim* 94, cited in *Sha'arei Teshuvah* 529, s.v. *chayav*) asserts that there is a more profound relationship between *re'iyas panim* and visiting one's *rebbe*. He quotes the *Gemara* in *Kiddushin* (33b) that a *talmid* is not permitted to stand up in the presence of his *rebbe* more than once in the morning and once in the evening so that the honor afforded to his *rebbe* does not exceed the honor afforded to *Hashem*, as we are *mekabeil ol malchus Shamayim* only once in the morning and once in the evening. Accordingly, the *Noda B'Yehudah* maintains that while it is commendable for one to visit his *rebbe* on Rosh Chodesh, the *chiyuv* (obligation) to do so applies only on Yom Tov. Since there exists no obligation to greet the *Shechinah* in the *Beis HaMikdash* on Rosh Chodesh, placing an obligation on a *talmid* to visit his *rebbe* on these days would constitute a violation of affording greater honor to one's *rebbe* than to *Hashem*.

The *Noda B'Yehudah* notes that for the same reason, there cannot be a *chiyuv* to greet one's *rebbe* nowadays even on the

Shalosh Regalim, after the *churban Beis HaMikdash*. Since we cannot bring the requisite *korbanos olos re'iyah* and *shalmei chagigah*, despite the fact that the *Shechinah* remains present in the *makom haMikdash*, we no longer travel to Yerushalayim to greet the *Shechinah* on the *Shalosh Regalim*. The *chiyuv* to visit one's *rebbe* should parallel this condition. That is why, the *Noda B'Yehudah* explains, the *halachah* of greeting one's *rebbe* was not included by the *Mechaber* in the *Shulchan Aruch*, although it is still a proper practice.

The *Noda B'Yehudah's* comparison between *re'iyas panim* and visiting one's *rebbe* introduces the prospect of a *mitzvah kiyumis* (fulfillment of a *mitzvah*) of *re'iyas panim* on Rosh Chodesh. This emerges from the correspondence found in the *pessukim*: והיה מדי חודש בחדשו ומדי שבת בשבתו יבוא כל בשר להשתחוות לפני אמר ד' and, מדוע את הולכת אליו היום לא חודש ולא שבת. Although, as mentioned, there is no *chiyuv* of *aliyah l'regel* on Rosh Chodesh, perhaps there exists a *kiyum mitzvah* to do so.

[The concept of the existence of a *kiyum mitzvah* even in situations in which a *chiyuv* is not present was a common theme in many of the Rav's *shiurim*. Some claim that the very concept of a *kiyum d'oraisa* without a *chiyuv d'oraisa* is an impossibility and that the term *mitzvas hareshus* is an oxymoron; a commandment cannot be optional. However, the Vilna Gaon and the *Netziv* seem to embrace this notion.] [See *Rav Schachter on Tefillah*, pp. 2-3.]

This idea finds additional support in the *Gemara* in *Bava Metzia* (85b), which relates that on one occasion, Eliyahu, who often visited the *mesivta* of Rebbi, arrived late. Upon being questioned by Rebbi as to the reason for his lateness, Eliyahu explained that on Rosh Chodesh he must separately wake each one of the *Avos*, wash their hands for *davening*, and lay them back to rest. Based on the *pessukim* quoted above in reference to *re'iyas panim* and visiting one's *rebbe*, the *Eitz Yosef*, in the name of the *Toras Chaim*, comments that it was the usual practice

of the *Avos*, even after their passing, to greet the *Shechinah* on Roshei Chodashim.

Indeed, the *passuk* that the *Tur* (*Orach Chaim, siman* 419) cites as a source for the *mitzvah* to partake of a *se'udas* Rosh Chodesh implies that there is a *mitzvah* of *simchah* on Rosh Chodesh:

וביום שמחתכם ובמועדיכם ובראשי חדשיכם ותקעתם בחצוצרות על עולותיכם ועל זבחי שלמיכם.

On a day of your gladness, and on your Festivals, and on your New Moons, you shall sound the trumpets over your *Olah*-offerings and over your *Shelamim*-offerings. (*Bamidbar* 10:10)

The *passuk* describes that during the *nisuch hayayin* (wine libation) of *korbanos tzibbur* (communal offerings), the *Levi'im* engaged in *shirah* through singing and musical accompaniment (on weekdays), which included the use of *chatzotzros*.

This indicates that there is an element of *simchah* on Rosh Chodesh, just as there is on the other days mentioned in the *passuk*. There is no *chiyuv* to perform a positive act of *simchah* on Rosh Chodesh, such as to consume meat and wine or to recite full-Hallel, but there is a passive demonstration of *simchah* on this day, expressed through an *issur ta'anis* (and *hesped*), which in this analysis seems to be a *d'oraisa* prohibition (*Rosh Hashanah* 19a).

Rav Soloveitchik (*Shiurim L'Zecher Abba Mari Z"l* II, 5745 ed., pp. 188-196) explained that whenever the Torah speaks of *simchah*, it connects this emotion with one's appearing before *Hashem*. The state of *simchah* on Yom Tov is described in the *passuk*, **וּשְׂמַחְתֶּם לִפְנֵי ד' אֱלֹהֵיכֶם שִׁבְעַת יָמִים** – “And you shall rejoice before *Hashem*, your G-d, for a seven-day period [on Sukkos]” (*Vayikra* 23:40). Indeed, on the *Shalosh Regalim*, when one is *oleh regel* to the *Beis HaMikdash*, termed *Beis Hashem*, he finds himself in the presence of *Hashem*. Thus, the fact that there is an aspect of *simchah* on Rosh Chodesh on a level of *d'oraisa* suggests that there should be a corresponding *kiyum mitzvah* of *re'iyas panim* on this day. [See *Nefesh Harav*, 1994 ed., pp. 314-315; *Rav Schachter on the Moadim, Sukkos: Recitation of Hallel*, sections I-V.]

Given the above discussion, we understand that greeting the *Shechinah* on Rosh Chodesh is **not** an innovation that will begin *le'asid lavo*, but rather is something that was practiced even in the days of Rebbi, and even in the days of Elisha. There always was a *kiyum* of visiting one's *rebbe* on Rosh Chodesh, and a parallel *mitzvas hareshus* of *re'iyas panim* on Rosh Chodesh, aside from the *chiyuv* of *aliyah l'regel* that exists on the *Shalosh Regalim*. Thus, there will not be any change in the halachic status of Rosh Chodesh *le'asid lavo*.

As the *passuk* states, *מתי אבוא ואראה פני אלקים* - the Jewish People during their lengthy *galus* call longingly to Hashem to be able to be *oleh regel*. Therefore, *HaKadosh Baruch Hu* will offer us the opportunity to volunteer to fulfill this *mitzvas hareshus* on Rosh Chodesh. In a sense, those who will seize the opportunity on Rosh Chodesh will thereby compensate for their previous lack of observance of *re'iyas panim* during the years of *galus*. [See *B'lkvei HaTzon*, pp. 13-14.]



PARSHAS SHOFTIM

MIDDAS HAGA'AVAH

לבלתי רום לבבו מאחיו ולבלתי סור מן המצוה ימין ושמאל.

So that his heart does not become haughty over his brethren and not turn from the commandment right or left. (*Devarim* 17:20)

THIS *PASSUK*, though stated in reference to the *melech*, adjures every person to be careful not to exaggerate his importance. One who is very good-looking, very bright, or very wealthy, or, for that matter, who possesses any *ma'alah* (quality) over others, may become arrogant as a result. On the contrary though, he should be mindful of the *passuk*, אל יתהלל חכם בחכמתו, ואל יתהלל הגבור בגבורתו אל יתהלל עשיר בעשרו – “Let not the wise man glorify himself with his wisdom, and let not the strong man glorify himself with his strength, let not the rich man glorify himself with his wealth” (*Yirmiyah* 9:22).

One's talents and gifts are all *min haShamayim*. Hashem decides one's basic predispositions and which experiences will befall him. The *Gemara* in *Niddah* (16b) teaches that the *mal'ach* appointed to oversee conception of new embryos takes the drop from which a child will be conceived, sets it before *HaKadosh Baruch Hu*, and says before Him: “*Ribbono shel Olam!* This drop, what is its destiny? [Will the person who develops from it be] mighty or weak, intelligent or foolish, wealthy or poor?” One's degree of strength, intelligence, and wealth are determined at

the time of conception. There is nothing to boast about; he was simply born this way.

The *Gemara* notes that the *mal'ach* does not mention whether the child is destined to be a *rasha* or a *tzaddik*. This accords with the principle הכל בידי שמים חוץ מיראת שמים – “Everything is in the hands of Heaven, except for the fear of Heaven.” The *Maharsha* explains that this observation of the *Gemara* follows from the very next *passuk* in *Yirmiyah*, כי אם בזאת יתהלל המתהלל השכל וידע אותי, – “For only with this may one glorify himself – contemplating and knowing Me” (9:23). Exercising one’s *bechirah chofshis* (free will) properly in accordance with *yir’as Shamayim* is the only thing worthy of praise.

Rav Soloveitchik recounted that in the *Hakdamah* to the *Smag*, Rav Moshe MiCoucy writes that after he had completed his list of *taryag mitzvos*, he was shown in a dream that he had mistakenly omitted the *mitzvoah*, ורם לבבך ... ואלקיך את ד’ אלקיך – “Take care, lest you forget Hashem, your G-d ... and your heart will become haughty and you will forget Hashem, your G-d” (*Devarim* 8:11-14). He reconsidered his count of *mitzvos* when he awoke in the morning, and, realizing that this prohibition represents a major principle in one’s *yir’as Hashem*, he included it in the *Smag* (*lo sa’aseh* 64).

Indeed, the *Gemara* in *Sotah* (5a) derives the prohibition against exhibiting haughty behavior from this *passuk*, to make sure that one’s *ma’alos* do not lead him to forget Hashem. It is possible for one to observe all of the *taryag mitzvos* but, out of a sense of arrogance, fail to be properly mindful of the existence of the *Ribbono shel Olam*. It is a tragedy when Jewish leaders view the Jewish religion as revolving about them, as if G-d dances around them. In our religion, G-d is supposed to be in the center; we are supposed to dance around G-d.

The *Gemara* continues to explain that one should learn to desire humility from his Creator, who, when giving the Torah, passed over all the great mountains and instead rested His

Presence on the modest Har Sinai. Likewise, when He first communicated with Moshe, instead of appearing on a majestic tree, He chose the lowly and humble thornbush. The *Gemara* in *Shabbos* (104a) similarly teaches that it is through extraordinary humility that a person merits the acquisition of Torah knowledge.

Several *meforshim* (see *Ru'ach Chaim*, *Kedushas Levi*, and *Likutim*, *Maseches Avos*) interpret the opening words of *Maseches Avos*, משה קיבל תורה מסיני – “Moshe received the Torah at Har Sinai,” along these lines. They see in these words an added lesson, implied by the word מסיני, instead of בסיני. *Hashem* appreciates humility, and that is why He chose to give the Torah particularly through Moshe, whose extreme humility was akin to the modest elevation of Har Sinai.

Rav Chaim Volozhiner elaborates on this idea through a *mashal* to a *kli*. The thinner the *kli*'s walls, the more it can hold. Taken further, if a *kli* were to have as its walls only mathematical “lines,” it would be entirely a receptacle and could hold the greatest possible amount. With regard to one's capacity to absorb words of Torah as well, the lowlier one's spirit, the more “empty space” he has to receive Torah.

Along these lines, the Rav poignantly described how he felt as if *Hashem* revealed Himself to him when he discovered a new insight in Torah, as if he perceived a glimpse of *Elokus* at that time. This, the Rav felt, should lead the student of Torah to melt into insignificance, to be overcome with a profound sense of humility, never arrogance. [See TorahWeb.org, 2003, “Ego and Humility in Torah Study.”]

In the vast majority of disputes between *Beis Shamai* and *Beis Hillel*, the *psak* is in accordance with *Beis Hillel*, and the *Gemara* in *Eiruvim* (13b) attributes this to the fact that the *talmidei Beis Hillel* were deferential to the *talmidei Beis Shamai* and were exceedingly humble. The explanation is that there is a greater likelihood that a person who is humble will arrive at a correct *psak*.

He will be able to reconsider his own first impression in the face of challenges from his peers, and he will be willing to admit that he may have made a mistake.

In *Hilchos Dei'os* (*perakim* 1-3), the *Rambam* formulates his famous principle known as *shvil hazahav* – “The Golden Mean.” The *Rambam* writes that proper conduct demands that one follow the “*middah beinonis*,” a middle path between two extremes. For example, one should practice some restraint with regard to his desires, as that is the middle path between overindulgence and abstinence. Similarly, one should act generously, as that is the median between stinginess and extravagance. A person acquires good character by habituating himself to behave in accordance with the Golden Mean. It is thus not surprising that in the first *perek* of *Hilchos Dei'os*, the *Rambam* includes the traits of displaying anger and separating oneself from pride along with many other traits that a person should balance equally; one should avoid the extremes of all traits.

The *Lechem Mishneh* raises the question though that in the very next *perek* (2:3), the *Rambam* seems to contradict himself, maintaining that there are certain temperaments with regard to which one is forbidden to follow the middle path. Quoting the *Mishnah* in *Pirkei Avos* (4:4), **מאד מאד** **היי שפל רוח** – “Be **very, very** humble in spirit,” the *Rambam* writes that arrogance, as well as anger, are exceptionally bad qualities, and that one should remove himself from them and adopt the opposite extreme.

Obviously, the *Rambam* here does not accept the opinion in the *Gemara* in *Sotah* that it is proper for a *talmid chacham* to possess an eighth of an eighth of *ga'avah*. *Rashi* writes that this opinion holds that a small degree of haughtiness is essential to enable a *talmid chacham* to influence people and to rebuke them when necessary. Instead, the *Rambam* rules like the final opinion in the *Gemara*, that of Rav Nachman bar Yitzchak – a person should desire neither a full measure of *ga'avah* nor any part of it:

“Is it insignificant that it is written about it [arrogance] (*Mishlei* 16:5): *לב כל גבה לב* – ‘Every haughty of heart is an abomination to Hashem’?!”

[Interestingly, many interpret the *Gemara* as referring to an insignificant proportion of *ga'avah*, one that equals only an eighth of an eighth, or one sixty-fourth, which is a quantity that is *batel b'shishim* (nullification in a mixture containing sixty times the amount). This indicates that the small dose of *ga'avah* that is permitted is so trivial that it will not adversely affect the *talmid chacham's* basic *middos tovos*. An additional, homiletic explanation of this statement is quoted in the name of the Vilna Gaon (*Kol Eliyahu, Chiddushei Aggados, Sotah* 5a), who noted that the eighth *passuk* in *Parshas Vayishlach*, the eighth *parsha* of the Torah, reads, *קטנתי מכל החסדים ומכל האמת אשר עשית את עבדך* – “I have been diminished by all the kindnesses and by all the truth that You have done Your servant” (*Bereishis* 32:11). In other words, the *Gemara*, by referring to this *passuk*, asserts that a *talmid chacham* should in fact not possess any *ga'avah*. Instead, like Yaakov Avinu believed, a person should feel as if *HaKadosh Baruch Hu* is so kind to him, bestowing goodness upon him that he does not at all deserve.]

The *Ohr Samei'ach* points out that the *Rambam* himself resolves the discrepancy in *Hilchos Dei'os* in his *Peirush HaMishnayos* to *Maseches Avos* (4:4). He explains that in the first *perek* of *Hilchos Dei'os*, the *Rambam* outlines the *din* on a level of *d'oraisa*, which is that one may follow the middle path **even** with regard to *ga'avah* and *ka'as*. However, the *Chachamim* instituted a *gezeirah derabbanan* with regard to these *middos*, and this is what the *Rambam* records in the second *perek*. We are familiar with *gezeiros derabbanan* in many areas of Halachah, but the *Rambam* innovates the idea that *gezeiros* were instituted in the area of *middos* as well. Although in all other character traits one should avoid extremes, in regard to humility and anger, one must seek the ultimate measure; one should take an extreme approach.

The reason the *Chachamim* enacted this *gezeirah* is that most people will misjudge themselves and not gauge correctly what the middle path truly is. Although there is an ideal midpoint *mid'oraisa*, the *Chachamim* ruled that it is better not to seek this ideal measure. A person who tends towards arrogance will usually err in the estimation of his traits and will often find them to be intermediate. By following the rabbinic restriction, one need not calculate the middle path, and will thereby not risk overstepping the proper measure and crossing into the territory of haughtiness (see *Taharas HaMishpachah, Tahor MiTamei*, 5774 ed., pp. 127-128, by the *D'var Avraham*).

The *Chayei Adam* (*Hakdamah, Zichru Toras Moshe*) has a different understanding of why the trait of arrogance demands that one adopt an extreme approach. The *Rambam* (1:5) writes that the reason we must follow the middle path is to fulfill the *mitzvah* of והלכת בדרכיו – “And you shall go in His ways” (*Devarim* 28:9). Since in different places in *Tanach*, *Hashem* is described as displaying disparate *middos*, the only way to properly fulfill והלכת בדרכיו with regard to almost all *middos* is to follow the middle path.

However, the *Tanach* **never** describes *HaKadosh Baruch Hu* as exhibiting *ga'avah*. The *Chayei Adam* points out the translation of *Targum Unkelos* of the phrase, כי גאה גאה – “I shall sing to *Hashem* for He is exalted above the arrogant” (*Shemos* 15:1): ארי אתגאי על גיותניא. Thus, the *passuk* does **not** mean that *Hashem* acted in an arrogant fashion, but that He deflated the egos of the arrogant human beings. This is also the meaning behind the statement of *Chazal*, כל מקום שאתה מוצא גבורתו של הקב"ה אתה מוצא ענוותנותו – “Wherever you find mention of the might of *HaKadosh Baruch Hu*, you will also find mention of His humility” (*Megillah* 31a). Therefore, with regard to *ga'avah*, the correct way to fulfill the *mitzvah* of והלכת בדרכיו is to adopt the extreme position of מאד מאד הוי שפל רוח.



PARSHAS KI SEITZEI

TA' AMEI HAMITZVOS

כי יקרא קן צפור לפניך בדרך ... לא תקח האם על הבנים. שלח תשלח את האם
ואת הבנים תקח לך.

If a bird's nest happens to be before you on the road ... you shall not take the mother with the young. You shall surely send away the mother and take the young for yourself.
(*Devarim* 22:6-7)

THE MISHNAH (*Megillah* 25a; *Berachos* 33b) teaches that when one asks for mercy, it is improper to say, על קן צפור יגיעו רחמיך - "Your mercy extends to the bird's nest." One of the explanations given in the *Gemara* for the inappropriateness of this statement is that it renders the *mitzvah* of *shilu'ach hakein* an act of mercy on the mother bird, while in truth, all of the Torah's *mitzvos* are exclusively *gezeiros* (decrees) from *Hashem*.

It would seem that according to this opinion in the *Gemara*, *Hashem* gave us the *mitzvos* only to discipline us, לצרף בהם את הבריות - "in order to purify mankind through them" (*Bereishis Rabbah* 44:1). The *mitzvos* are merely a reflection of *Hashem's* Will, and through them, we demonstrate our submission to His Will. That is why it is improper to ascribe any intrinsic reasoning to the *mitzvos*; instead, we should regard them as arbitrary Divine edicts, devoid of rationale.

The *Rambam* writes in *Moreh Nevuchim* (3:48) that we do not accept this approach. In fact, the *Ramban* (*Devarim* 22:6)

argues that there was not even a minority opinion to this effect. According to the *Rambam*, the accepted opinion is that the *mitzvos* most certainly **do** have reasons, although we do not always understand them. The *Gemara's* reference to *mitzvos* as *gezeiros* means that *Hashem* did not give the *mitzvah* of *shilu'ach hakein* out of compassion for birds, but rather as a decree **for us**, to instill **in us** the quality of mercy.

[It is interesting that the *Zohar* (*Tikkunei Zohar*, *Tikkun* 6, 23a, quoted by *Chasam Sofer*, *Orach Chaim* 100, and *Chavos Ya'ir* 67, cited in *Pischei Teshuvah*, *Yoreh De'ah* 292:1) offers an almost opposite *ta'am hamitvoh* (reason behind the *mitzvah*). The goal of *shilu'ach hakein* is to act with *achzariyus* (cruelty), not *rachmanus*, towards the mother bird! When the mother is driven from her nest and her young cry out in pain, the *mal'ach* appointed over birds petitions *HaKadosh Baruch Hu* for mercy. This arouses *rachamei Shamayim*, which then extends to all of *Hashem's* children in *galus*.]

Rav Ahron Soloveichik was fond of saying that *ta'amei hamitvos* are to be compared to the *ta'am* – literally, the taste – of food. It is more enjoyable if nutritious food is tasty, but one must eat nutritious food to remain healthy even if it does not have a good taste. Here too, one must perform the *mitzvos* whether he knows their *ta'am* or not. There is added “flavor” if one appreciates their *ta'am*, but the *mitzvos* must be observed even if they are beyond our comprehension.

The *Meiri* (*Beis HaBechirah*, *Pesichah*; *Sefer HaMiddos*, *Mitzvos*, *Ta'amei HaMitzvos*) similarly comments on the *passuk*, טוב טעם ודעת למדני כי במצותיך האמנתי (*Tehillim* 119:66). Recognizing that the word **כי** bears numerous meanings (*Rosh Hashanah* 3a), Dovid HaMelech's request of *Hashem* may be interpreted as follows: “Teach me the reasons behind Your *mitzvos*, **despite the fact** that I have *emunah* and that I will perform the *mitzvos* regardless of reason.”

This is what *kabbalas ol malchus Shamayim* entails – an obligation to observe the *mitzvos* only because the *Melech* commanded us to do so. One who decides to perform *mitzvos* only when he comprehends them and agrees with their meaning is deficient in his *kabbalas ol malchus Shamayim*. We do what *Hashem* commands even when it does not make sense to us; our observance is not dependent on our investigation.

Yirmiyah HaNavi was instructed by *Hashem* to purchase a field in Eretz Yisrael and to preserve the contract so that his grandchildren would be able to claim the land. Yirmiyah first complied with the instruction, and only later asked *Hashem* for its rationale, given the impending Babylonian conquest of the Land. At that time, *Hashem* responded that Yirmiyah's purchase of the field would serve as a sign to others that *Bnei Yisrael* would indeed return to Eretz Yisrael after a relatively brief *galus Bavel* of seventy years (*Yirmiyah* 32:6-44). Like Yirmiyah, one must first do what he was commanded; only afterwards does he have the right to seek its explanation.

The Rav added that this response is reflected in the *Akeidah* as well. *Rashi* (*Bereishis* 22:12) explains that Avraham Avinu questioned *Hashem* as to how to reconcile three contradictory statements: "Previously, You said to me, **כִּי בִיצְחָק יִקְרָא לְךָ זֶרַע** – 'Since through Yitzchak will offspring be considered yours.'" *Hashem* told Avraham that the Jewish People would emerge only through Yitzchak. "You subsequently said, **קַח נָא אֶת בְּנֶךְ** – 'Please take your son [and bring him up there as an offering].'" This command undermined the first *nevu'ah*, as Yitzchak did not yet have children. "Now You say to me, **אֵל תְּשַׁלַּח יָדְךָ אֶל הַנְּעָר** – 'Do not send forth your hand at the lad.'" The Rav noted that Avraham acted exactly as he was instructed, taking Yitzchak as a *korban* upon the charge of **קַח נָא** and withdrawing upon the directive of **אֵל תְּשַׁלַּח**. He posed his question only **after** the final *nevu'ah*, when there was no further command to fulfill.

There is a Tannaitic dispute between Rabbi Shimon and Rabbi Yehudah as to whether דרשינן טעמא דקרא – “we expound the rationale of Scripture.” Ascertaining the *ta’am hamitzvah* certainly does constitute an important aspect of Torah study. It allows us to glean the moral, ethical, or religious principle that the Torah is trying to teach us through any particular *mitzvah*. The *Tanna’im* argue, however, regarding whether the reason for a *mitzvah* can regulate the application of the *mitzvah*, such that the *mitzvah* does not apply if the reason does not apply (*Tosfos, Gittin 49b, s.v. v’Rebbi*). In other words, the *machlokes* of דרשינן טעמא דקרא centers around whether or not *ta’am hamitzvah* constitutes one of the מידות שהתורה נדרשת בהן (exegetical principles through which the Torah is expounded) and can serve as the source of a *derashah* of the *Torah She-Be’al Peh*.

For example, there is a *machlokes* regarding whether the restriction on taking the garment of a widow as security for her debt applies to a wealthy woman. The reason for the *issur*, posits Rabbi Shimon, is that the creditor would have to return the garment to her each day, thereby giving her a bad reputation among her neighbors. Therefore, according to Rabbi Shimon, one would be able to exact security from a wealthy widow, to whom he need not return the garment, since she does not need it for daily use.

The accepted opinion is לא דרשינן טעמא דקרא; the rationale of the *mitzvah* does not define the limits of its *dinim*. However, there is an exception to this rule. It is evident from the *Gemara* in *Sanhedrin* (21a) that when the Torah itself states the reasoning behind an *issur* explicitly, even Rabbi Yehudah maintains דרשינן טעמא דקרא.

That is how the *Chachamim* in the days of Dovid HaMelech knew to expound the *passuk* in our *parsha*, לא יבא עמוני ומואבי בקהל ד’ – “An Ammonite or Moavite shall not enter the Congregation of Hashem” (*Devarim 23:4*), to limit the *Ammoni* and

Mo'avi restriction to males: עמוני ולא עמונית מואבי ולא מואבית – “*Ammoni*, but not a [female] *Ammonis*; *Mo'avi*, but not a [female] *Mo'avis*” (*Yevamos* 76b). When the Torah prohibits marriage to an *Ammoni* or *Mo'avi*, it reveals to us the reason for the *issur*: על דבר אשר לא קדמו אתכם בלחם ובמים בדרך בצאתכם ממצרים – “Because of the fact that they did not greet you with bread and water on the road when you were leaving Egypt” (*Devarim* 23:5). Since it was customary for only men, and not for women, to greet travelers with bread and water, the women of *Ammon* and *Mo'av* could not be blamed for being negligent in providing food to *Bnei Yisrael*, as this was never expected of them. Since the Torah itself provides the *ta'am hamitzvah*, we **do** maintain דרשינן טעמא דקרא.

Another such example is the *halachah* that the *Tur* (*Yoreh De'ah* 270:2) quotes from his father, the *Rosh*, that nowadays the proper way to fulfill the *mitzvah* to write a *sefer Torah* is by buying *sefarim* to create a full Jewish library for oneself. The basis for this ruling is that the reason for the *mitzvah* to write a *sefer Torah* is so that one can learn from it. Since nowadays we learn from *sefarim* and not from a *sefer Torah*, one fulfills the *mitzvah* through buying printed *sefarim*. The commentaries on the *Tur*, the *Beis Yosef* and the *Perishah*, debate whether the *Rosh* meant that nowadays it is not sufficient to write a *sefer Torah* alone, but one would have to purchase additional *sefarim* to fulfill this *mitzvah*, or that the writing of a *sefer Torah* has been replaced by the purchase of printed *sefarim*.

The *Chasam Sofer* (*Teshuvos*, *Yoreh De'ah*, *siman* 254) questions how, according to the latter explanation of the *Rosh*, a *mitzvah* can change with changing times. Within the view of *Rebbi Shimon*, it could be that nowadays the *mitzvah* may be fulfilled with printed *sefarim*, as indicated by the *ta'am hamitzvah*. The difficulty is that we do not *pasken* like *Rebbi Shimon*, but rather maintain דרשינן טעמא דקרא לא.

The *Minchas Elazar* (2:54, *he'arah* 1) answers with the distinction we made above: When the Torah provides the reason for the *mitzva* along with the *mitzva* itself, all agree דרשינן טעמא דקרא – ועתה כתבו לכם את השירה הזאת, – “So now, write this Song for yourselves,” the Torah openly explains, ולמדה את בני ישראל – “and teach it to *Bnei Yisrael*” (*Devarim* 31:19). We may therefore assume that the *mitzva*’s reason does define its parameters. [See *Eretz HaTzoi*, pp. 98-99, 135.]

This analysis helps explain a different *mitzva* in the *parsha*. The Torah formulates the *mitzva* to bury the dead in the context of the *passuk* that refers to a person executed by *beis din*:

לא תלין נבלתו על העץ כי קבור תקברנו ביום ההוא כי קללת אלקים תלוי.
His body shall not remain for the night on the gallows;
rather, you shall surely bury him on that day, for a hanging
person is a curse of G-d. (*Devarim* 21:23)

Rashi explains that a hanging body constitutes “a degradation of the King, for man is made in the likeness of His image, and *Yisrael* are His children.” All Jews, in addition to being created בצלם אלקים – “in the image of G-d,” like all of humanity, also possess the more enhanced status referred to as בניים למקום – “sons of the Omnipresent” (*Avos* 3:14). It would therefore be considered disrespectful to *Hashem* to leave a Jew’s body uninterred. Thus, the prohibition of *halanas hameis* – leaving a corpse unburied overnight – is due to *kavod hameis*.

It is noteworthy that the *Mishnah* in *Sanhedrin* (46a) teaches that if הלניהו לכבודו – “one left [the corpse unburied overnight] for the sake of his honor,” he does not transgress any prohibition. *Acharonim* (see *Aruch LaNer*) are troubled by the question of why it is permitted to delay burial when the deceased’s honor is best served by doing so. Although it is true that the *Gemara* (47a) associates the *issur* of *halanas hameis* with the idea of *bizui hameis* (degradation of the corpse), which is clearly not applicable in this case, לא דרשינן טעמא דקרא. Thus, even when

the reason for a *mitzvah* does not apply, the *mitzvah* is still binding.

Based on our analysis of the parameters of the principle of לא דרשינן טעמא דקרא, we can explain that since the Torah associates the *issur* of *halanas hameis* with קללת אלקים, which signifies the concepts of צלם אלקים and בנינים למקום, it itself provides the reason for the *issur* – avoidance of *bizui hameis*. Therefore, the *ta'am hamitzvah* may be utilized to regulate the application of the *issur*. This is the justification for postponing the *kevurah* if doing so will serve to enhance *kavod hameis*.



PARSHAS KI SAVO

HAKARAS HATOV

ובאת אל הכהן אשר יהיה בימים ההם ואמרת אליו הגדתי היום לד' אלקיך
כי באתי אל הארץ אשר נשבע ד' לאבותינו לתת לנו.

You shall come to whoever will be the *Kohen* in those days, and you shall say to him, "I declare today to *Hashem*, your G-d, that I have come to the Land that *Hashem* swore to our forefathers to give us." (*Devarim* 26:3)

THE PARSHA of *Arami Oved Avi* that follows this *passuk* was recited by a farmer when he brought his *bikkurim* to the *Beis HaMikdash*. *Rashi*, quoting the *Sifrei*, explains that by acknowledging to the *Kohen* that *Hashem* has fulfilled His promise, the farmer demonstrates that he is not *kafuy tovah*, "unappreciative." Similarly, the *Targum Yonasan* interprets the word הגדתי as ואודינא - "I acknowledge," since as the farmer makes this declaration of thanks, he acknowledges the goodness that *Hashem* has bestowed upon him.

That is why *Chazal* established that the *mitzvah* of *sippur yetzi'as Mitzrayim* should be fulfilled specifically through the recitation of the *parsha* of *Arami Oved Avi* - because this *parsha* is the *parsha* of *hakaras hatov*. *Rav Soloveitchik* explained, based on the *Rambam's* presentation of the *mitzvah* in *Sefer HaMitzvoos* (*mitzvas aseh* 157), that *sippur yetzi'as Mitzrayim* does not merely entail relating the story of *yetzi'as Mitzrayim* and the *ikarei emunah* that we learn from it. It should also be an expression of our gratitude towards *HaKadosh Baruch Hu* for redeeming us.

The *Chovos HaLevavos* (*Pesichah* to *Sha'ar Avodas Ha'Elokim*) views *hakaras hatov* as a basis of all of our *avodas Hashem*. *HaKadosh Baruch Hu* is a קל מסתתר – “a G-d Who conceals Himself” (*Yeshayah* 45:15), so much so that there are many people who deny His existence. Because He is invisible, it is very easy for someone not to be mindful of the *Ribbono shel Olam*. One of the ways that one may keep *Hashem* in the forefront of his mind is to develop within himself the *middah tovah* of *hakaras hatov*. By recognizing the great debt of gratitude we owe *Hashem*, we strengthen our *emunas Hashem*. That is why there are so many *mitzvos* that are related to the theme of thanksgiving – to strengthen our awareness of the need for *hakaras hatov*.

In this context, Rav Yaakov Lessin, the late *Mashgiach* of our *yeshiva*, was fond of relating the *Midrash* (*Bereishis Rabbah* 38:9) quoted by *Rashi* on the *passuk*, וירד ד' לראות את העיר ואת המגדל – “*Hashem* descended to look at the city and tower that the sons of man built” (*Bereishis* 11:5). *Chazal*, commenting on the superfluous description of the builders of *Migdal Bavel*, בני האדם, see in this phrase an allusion to Adam HaRishon. After being confronted by *Hashem* regarding his *aveirah* of eating from the *eitz hada'as*, Adam responded, האשה אשר נתתה עמדי היא נתנה לי – “The woman whom You gave to be with me, she gave me of the tree, and I ate” (*Bereishis* 3:12). The reason that the people who built *Migdal Bavel* rebelled against *HaKadosh Baruch Hu* is that they followed in the footsteps of their ungrateful ancestor, Adam, who was unappreciative of the wife that *Hashem* provided for him. It was specifically a lack of *hakaras hatov* that was the negative character trait that led Adam's descendants to rebel against *Hashem*.

The *Midrash* (*Tanchuma*, *Shemos* 1:5) makes a similar comment with regard to Pharaoh's lack of gratitude. After Moshe approached Pharaoh in the name of *Hashem* to free the Jewish People, Pharaoh responded with impudence, מי ד' אשר – אשמע בקולו לשלח את ישראל לא ידעתי את ד' וגם את ישראל לא אשלח –

“Who is *Hashem* that I should heed His voice to send out Israel? **I do not know** *Hashem*, nor will I send out Israel!” (*Shemos* 5:2).

According to the *Midrash*, the Torah, in using this expression, makes reference to an earlier description of Pharaoh, ויקם מלך חדש ויקם את יוסף על מצרים אשר לא ידע את יוסף – “A new king arose over Mitzrayim, who **did not know** of Yosef” (*Shemos* 1:8). What does this *passuk* mean? Was Pharaoh ignorant of his country’s history? Could it be that he was unfamiliar with Yosef’s role in saving Egypt from economic ruin? The explanation is that Pharaoh did not feel a sense of indebtedness to Yosef. Despite all that Yosef did to assist Mitzrayim, Pharaoh ignored his contribution and felt no gratitude towards him. He passed harsh decrees against the Jewish People as if he had never known Yosef (*Sotah* 11a). As with the builders of *Migdal Bavel*, the end result of Pharaoh’s ungrateful attitude was a denial of the existence of *Hashem* Himself.

Rav Soloveitchik noted that there is an inherent difficulty in expressing gratitude to others. One can advance a logical argument that would obviate the need to express *hakaras hatov* in most situations. For example, the recipient of a gift need not thank his benefactor, since the recipient has obviously provided some favor or advantage to the benefactor that led to the beneficence. This type of calculation may be applied to nearly all interpersonal relationships. A wife performs many acts of kindness for her husband, but if he benefits her in return, he may reason that he has no need to thank her. An employee may claim that he has no need to express gratitude to his employer, since the employer also profits significantly from their arrangement. He thinks, “Where could he find such a good employee for the salary I receive?” Of course, the wife and the employer may argue similarly in the opposite direction.

In short, using this logic, one may conclude that he really does not need to thank anyone, since no one really performed

true *chessed* for him; anyone who benefits him is merely recompensing a reciprocal act! Everything is merely a *quid pro quo*.

The Rav noted that a *Gemara* in *Bava Kamma* (92b) serves to dispel this mistaken notion. The *Gemara* quotes the popular adage: חמרא למריה טיבותא לשקיייה – “The wine is the master’s, but the appreciation goes to the one who poured it.” In other words, even though only the *ba’al habayis* truly deserves our *hakaras hatov* for providing the wine, it is proper etiquette to thank the wine steward when he pours the wine for us. There is an important reason for this: If we withhold thanking the wine steward who directly benefits us, we will eventually be ungrateful to the *ba’al habayis* as well.

The Rav went further, applying this rule vis-à-vis *hakaras hatov* towards *HaKadosh Baruch Hu*. He noted that in the *berachah* of *Nishmas*, *Nusach Ashkenaz* includes the phrase, המהולל ברוב התשבחות – “[G-d] Who is extolled through most of the praises.” This *nusach* is in line with a statement of Rabbi Yochanan, cited in the *Gemara* in *Berachos* (59b), that discusses the proper *berachah* to recite over rain. Rabbi Yochanan suggests a *nusach* that is an abbreviated form of the *Nishmas tefillah*, concluding with the phrase, ברוך אתה ד’ רוב ההודאות, – “Blessed are You, *Hashem*, with most thanksgivings.” The *Gemara* immediately asks, “‘Most thanksgivings,’ and not ‘all thanksgivings?’” Rather, answers Rava, one should say, הקל ההודאות – “the G-d of thanksgivings.” Rav Papa concludes that since there is a *machlokes* as to how to end the *berachah*, we should use both phrases: רוב ההודאות והקל ההודאות – “most thanksgivings and G-d of thanksgivings.”

The *Gemara* never resolves Rava’s question, however. Do we not owe *Hashem* **all** thanks?

Rav Soloveitchik suggested the following explanation of the phrase רוב ההודאות. We must be careful to thank *Hashem* and recognize His beneficence, but only for **most** of the favors

He does for us – not for all of them. Despite the reality that *hakaras hatov* is truly relevant only towards *HaKadosh Baruch Hu*, nevertheless, *Hashem* wants us to reserve feelings of thanksgiving for human beings as well. In other words, due to a consideration of *לשקייא טיבותא למריה חמרא*, it is necessary to limit somewhat our expression of *hakaras hatov* to *Hashem* and to leave some *hakaras hatov* for people. If we neglect thanking other people, it will not be long before we deny the need to thank *Hashem*.

Thus, we must be *makir tov* to our employers, workers, and spouses, despite the calculations mentioned above. If we lack *hakaras hatov* towards these people, we will come to be ungrateful for all of the goodness that *Hashem* does for us as well. According to the *Midrashim* cited, this will, in turn, inevitably lead to a lack of *emunah* in *Hashem*. That is why we recite both endings of the *berachah*, *רוב ההודאות* and *הקל ההודאות*. [See *Nefesh HaRav*, 1994 ed., pp. 111-112.]



PARSHAS NITZAVIM

BECHIRAH CHOFSHIS

העידתי בכם היום את השמים ואת הארץ החיים והמות נתתי לפניך הברכה והקללה
ובחרת בחיים למען תחיה אתה וזרעך.

I call heaven and earth today to bear witness against you – I have placed life and death before you, blessing and curse; and you shall choose life, so that you will live, you and your offspring.
(*Devarim* 30:19)

THE TORAH here formulates the principle of *bechirah chofshis* (free will), a term taken from the words **ובחרת בחיים**.

Rav Soloveitchik pointed out that when the *Rambam* (*Hilchos Teshuvah* 5:1-2) writes that the possibility of *teshuvah* is based on the premise that Man was created with *bechirah chofshis*, he uses a noteworthy expression in this regard: **רשות לכל אדם נתונה לו** – “Every man is given the ability [to sin].” Of course, the word **רשות** does not mean “permission,” that a person has the right to choose to do *aveiros*, but rather that he has the **ability** to choose to do *aveiros*.

The Rav felt that this phrase has a more inclusive connotation than the expression *bechirah chofshis*. *Bechirah* refers to the option that one has to choose from any one of a number of alternatives that he is presented with, similar to the usage of the word *bechiroth* (elections) in Modern Hebrew. In contrast, the implication of **רשות** is that we have the capacity to select a path that is distinctly different from any of the alternatives that we are given.

A child raised in a totally religious environment has the ability to become totally secular. A young man whose parents present him with numerous options of secular universities to attend may insist of his own accord that he instead attend a *yeshiva*, an option that was never offered to him. One can choose a different way of life than the ones presented to him, similar to how a prisoner may release himself from prison. The *Rambam* depicts this stronger form of *bechirah chofshis* as a fundamental principle of *teshuvah*. [See *MiPninei HaRav*, 2001 ed., p. 131.]

This type of decision-making is, in a sense, tantamount to creating something *yesh mei'ayin* (ex nihilo). The *Meshech Chochmah* interprets the description of how Adam was created, **בצלם אלקים ברא אותו** – “in the image of G-d He created him” (*Bereishis* 1:27), as a reference to the *bechirah chofshis* that was given to Man. The Torah instructs us, **והלכת בדרכיו** – “And you shall go in His ways” (*Devarim* 28:9), and by imitating the ways of *Hashem*, we preserve the **צלם אלקים** that was implanted within us. This includes a charge to make original decisions for ourselves; we were given the ability to determine the way in which we lead our lives.

Rav Soloveitchik related that Rav Simcha Zelig Rieger, the *Dayan* of Brisk, told him that on one occasion, he accompanied Rav Chaim Soloveitchik on a visit to someone's home. While waiting for the host, Rav Chaim glanced at a *sefer* consisting of a compilation of *Chabad chassidus* that examined the question of why *Hashem* created the world (see *Tanya, Sha'ar HaYichud V'Ha'Emunah, perakim* 4, 7). One suggestion was that it is the nature of a being that is *tov* (good) to be *meitiv* (bestow goodness). *Hashem* therefore created the world to enable Him to shower His kindness upon others. A second explanation was that *Hashem* desired to be a *Melech*, and since **אין מלך בלא עם** – “there can be no king without a people,” *Hashem* needed subjects over whom to rule.

The discussion in the *sefer* upset Rav Chaim, whereupon he closed the *sefer* and asserted that it is not proper to discuss what motivated *Hashem* to do something. Such a discussion suggests that *Hashem* lacked something – either the ability to act kindly to others or to be known as a *melech* – and that He created the world to meet that need. In truth, *Hashem* is completely perfect; it may not be said that *Hashem* was missing something. Only a human being has needs, and his desire to provide for his needs motivates him to act. Instead, we must say that *Hashem* created the world purely because it was His *ratzon* (will) to do so (see *Ish HaHalachah*, p. 52; *Halakhic Man*, 1983 ed., p. 52; *Marbitzei Torah U'Mussar* 1:136). [See *Divrei Harav*, 2010 ed., pp. 249-250.]

Just as nothing forced *Hashem* to create the world, and He did so out of His pure *ratzon*, Man, who was created **בצלם אלקים**, is not pressured into his decisions. Of course, a person may have certain tendencies or predispositions that lead him in one direction or another, and he may take these considerations into account when he makes a choice, but ultimately he is the one who chooses whether he will follow those tendencies or disregard them. Likewise, one's life may be more comfortable if he follows a certain expected course, but again, there is nothing forcing him to make a decision one way or the other. The final decision to do *mitzvos* or *aveiros* remains in our own hands. In other words, our **צלם אלקים** gives us the ability to make decisions in all facets of life that are completely *yesh me'ayin*, in the same manner in which *Hashem* decided to create the world.

Most psychologists in our day do not accept this concept. They believe that every person is born with a mind that is already “preprogrammed” to make certain choices that determine what kind of life he will lead. For example, it has already been decided what sort of person he will marry, which career he will pursue, the type of community he will live in, etc., as if all of his future decisions are “built-in” from the start.

We do not accept this view. The *Rambam* (*Hilchos Teshuvah* 5:3) writes that we believe, as one of our *ikarei ha'emunah* (Principles of Faith), that a person has *bechirah chofshis*. This is in accordance with the *Gemara's* principle, הכל בידי שמים חוץ מיראת שמים – “Everything is in the hands of Heaven, except for the fear of Heaven” (*Niddah* 16b). The *Rambam* includes under the heading of *yir'as Shamayim* the totality of human activities in which one chooses to do *mitzvos* or *aveiros*. In fact, exercising one's *bechirah chofshis* properly in accordance with *yiras Shamayim* is the only thing worthy of praise, because only such decisions are made solely by us and not by *Hashem*. [See essay for *Parshas Shoftim*.]

[It is true that there are some individuals who do not have *bechirah*. Halachah classifies a person who lacks the ability to control himself and abstain from doing an *aveirah* as a *shoteh* (a deranged person) and does not hold him accountable for his actions.]

It is obvious that Man's observance of *mitzvos* is only meaningful if Man has *bechirah chofshis*. If Man would not have *bechirah*, there could not be a system of *s'char va'onesh* (reward and punishment). This explains why the *Rambam* did not include *bechirah chofshis* in his thirteen *ikarei ha'emunah*. He felt it was subsumed under the eleventh *ikar* of *s'char va'onesh* – *Hashem* rewards those who choose to observe His *mitzvos* and He holds responsible those who choose to violate them.

It emerges from the above discussion that the phrase וּבַחֲרַת בְּחַיִּים is not a *mitzvah* per se, but instead a statement of fact: Man has *bechirah chofshis*, and he is urged to exercise that *bechirah* and observe all of the *mitzvos haTorah*. It is therefore interesting to note that the *Sefer Chareidim* (9:20) counts וּבַחֲרַת בְּחַיִּים as one of the *taryag mitzvos* – the *mitzvah* of *sfeika d'oraisa l'chumrah*, that doubtful cases involving Torah law are decided stringently.

Most *Rishonim* view the *halachah* of *sfeika d'oraisa l'chumrah* as a *din d'oraisa* (*Rashba*, *Toras HaBayis* 4:1, s.v. *u'mistavra*; *Ran*, *Kiddushin*, 15b in *dapei haRif*, s.v. *garsinan*; *Rashi*, *Kiddushin* 73a,

s.v. *v'iba'is eima*). The *Rambam* (*Hilchos Tum'as Meis* 9:12), however, maintains that this *halachah* is a *din derabbanan* (see *Shev Shmaita* 1:1-5). According to the *Rambam*, on a level of *d'oraisa*, a *safek* with regard to any *issur* is permissible; the Torah forbade only definite prohibitions, not questionable ones.

The *Mesillas Yesharim* (*perek* 11) writes that logic dictates that *sfeka d'oraisa* should be *l'chumrah mid'oraisa*. He assumes that forbidden food is poison to the heart and soul. Accordingly, which intelligent person would allow himself to eat food about whose permissibility there is some question? In this view, *issurei Torah* are considered *issurei cheftza* (prohibitions that take effect on objects); that is, there are properties of *issur* contained within a forbidden item that have a negative effect upon one's *neshamah*.

The *Rambam*, in contrast, apparently views *issurei Torah* as *issurei gavra* (prohibitions that take effect on people), and he maintains that the Torah adjures a person to abstain only from a **definite** *issur*. Even if a questionably prohibited food was later discovered to be *assur*, since the person was not aware of that when he consumed it, he did not act inappropriately (*mid'oraisa*).

The question of whether *issurei Torah* are *issurei cheftza* or *issurei gavra* seems to be the subject of a *machlokes Rishonim*. Accordingly, the *Mechaber* (*Yoreh De'ah* 215:5-6) cites two opinions with regard to whether a *neder* takes effect upon something that is already prohibited by the Torah. If *issurei Torah* are classified as *issurei gavra*, there is a new dimension of *issur* added by means of the *neder*, since a *neder* creates an *issur cheftza* on an object (*Nedarim* 2b), and this element was not present earlier. However, if *issurei Torah* are viewed as *issurei cheftza* (which always places a prohibition on the *gavra* as well), a status of *issur cheftza* was present on the prohibited item even before the *neder* was made. Therefore, a *neder* cannot be made

on a prohibited item, since אין איסור חל על איסור – “a prohibition cannot take effect upon a similar preexisting prohibition.”

If we do not accept the *mashal* of the *Mesillas Yesharim* comparing *issurim* to poison, and instead consider *issurei Torah* as *issurei gavra*, there must be a different rationale that forms the basis of the opinion that *sfeika d'oraisa* is *l'chumrah mid'oraisa*. Rav Shimon Shkop (*Sha'arei Yoshel, Sha'ar HaSefeikos, perek 8*) suggests the following explanation. The other *Rishonim* agree with the *Rambam* that the Torah's concept of *issur neveilah*, for example, is limited to something that is **definitely** *neveilah*. A *safek neveilah* is not forbidden due to the *issur* of *neveilah* per se; as far as the *issur* of *neveilah* is concerned, one would not be adjured to abstain from it. Instead, Rav Shimon explains, the *halachah* of *sfeika d'oraisa l'chumrah* is a new, independent *issur d'oraisa* that is derived from *s'vara* (logic): The Torah expects that we abstain from a *safek issur* as from an *issur vadai*.

Accordingly, even if the questionably prohibited food turns out to be permissible, one who ate it when it was questionable violated this independent *issur*. If the food turns out to be *neveilah*, he violated two different *issurim* – the command to avoid a *safek issur*, as well as the *issur neveilah*. Rav Shimon's approach is thus analogous to the way the *Sefer Chareidim* understands ובחרת בחיים, as positing an independent *mitzvah d'oraisa* to act stringently whenever one is faced with a doubt regarding an *issur*.

The *Rashba* and the *Ran* present a challenge to the *Rambam's* position that *sfeika d'oraisa* is *l'chumra* only *miderabbanan* from the institution of *Asham Taluy*. One offers this *korban* when he is uncertain whether he violated an *aveirah* that would require a *Chatas* had he been certain that he violated the *aveirah* unintentionally. If a *sfeika d'oraisa* is really *l'kula mid'oraisa*, as the *Rambam* maintains, one is actually permitted (*mid'oraisa*) to partake of a questionable *issur*, and there should be no need for him to offer an *Asham Taluy* for atonement!

The *Acharonim* (see *Pri Megadim*, *Shoshanas Ha'Amakim*, end of *klal* 11, and *Mishbetzos Zahav*, *Orach Chaim* 439:1; *Pnei Yehoshua*, *Pesachim* 9b, s.v. *u'b'Tosfos*) explain that the *Rambam* should be understood in light of his ruling in *Hilchos Shegagos* (8:2) that one offers an *Asham Taluy* only in a case in which *ikva issura* (the presence of a prohibited object has definitely been established) – namely, when one ate “one piece out of two pieces.” For example, one had before him **two** pieces of fat, one of which was definitely *cheilev* (prohibited fat) and the other *shuman* (permissible fat). If he inadvertently ate one of the pieces without knowing which piece he ate, he is obligated to bring an *Asham Taluy*. If, however, he had before him only **one** piece of fat, and it is not known whether the piece was *cheilev* or *shuman*, he does not bring an *Asham Taluy* if he ate the piece (*Kereisos* 17b).

Had the *Rambam* ruled that *Asham Taluy* is offered in every case of *safek*, he would necessarily have to maintain that *sfeika d'oraisa* is *l'chumrah mid'oraisa*. However, since the *Rambam* restricts the institution of *Asham Taluy* to an *ikva issura* type of *safek*, he is free to adopt the position that in a standard *safek*, a case of “a single piece of fat,” *sfeika d'oraisa* is *l'kulah mid'oraisa*. In a case of *ikva issura*, however, since this is a more stringent form of *safek*, the *Rambam* would agree that *sfeika d'oraisa* would be *l'chumrah mid'oraisa*.



PARSHAS VAYEILECH

CHIZUK

חזקו ואמצו אל תיראו ואל תערצו מפניהם ... ויקרא משה ליהושע ויאמר אליו לעיני כל ישראל חזק ואמץ כי אתה תבוא את העם הזה אל הארץ אשר נשבע ד' לאבותם לתת להם ואתה תנחילנה אותם.

Be strong and courageous, do not be afraid and do not be broken before them ... Moshe summoned Yehoshua and said to him before the eyes of all Israel, "Be strong and courageous, for you shall come with this people to the Land that Hashem swore to their forefathers to give them, and you shall cause them to inherit it. (*Devarim* 31:6-7)

SHORTLY BEFORE his death, Moshe gave *chizuk* (strengthening) both to *Bnei Yisrael* and to Yehoshua, since conquering Eretz Yisrael and establishing a Jewish *Medinah* requires perseverance. The *Gemara* in *Berachos* (32b) lists four other activities that require *chizuk*: *limmud haTorah*, the practice of good deeds, *tefillah*, and pursuing a livelihood. Eating, relaxing, and sleeping come very naturally to a person; they do not require concentrated effort. However, these four activities demand our close attention; we must focus on them and ignore all of life's many distractions.

The *Mechaber* (*Orach Chaim* 139:11) writes that one should hold onto the *sefer Torah* while reciting the *berachos* upon receiving an *aliyah*. The *Rama* comments that this practice is based on *pessukim* that relate the notion of *chizuk* to *limmud haTorah*, לא ימוש ספר התורה הזה מפידך ... חזק ואמץ – "This Book of

the Torah shall not depart from your mouth ... Be strong and courageous" (*Yehoshua* 1:8-9). The *Rama* writes that the *minhag* to declare "*Chazak*" upon completion of a *sefer* of *Chumash* during *kri'as haTorah* is based on the same idea.

Likewise, many aspects of *tefillah* require *chizuk*. The *Gemara* in *Berachos* (6a) teaches that it is proper to *daven* in a *Beis HaKnesses*, even if one is *davening b'yechidus* (as an individual): *אין תפילה של אדם נשמעת אלא בבית הכנסת* - "A person's prayer is heard only [if he recites it] in a *shul*." Similarly, the *Yerushalmi* (*Berachos* 5:1) interprets the *passuk* *דרשו ד' בהמצאו*, - "Seek Hashem where He can be found" (*Yeshayah* 55:6), as a reference to the potency of *tefillah* in *Batei Keneisiyos* and *Batei Medrashos*, where Hashem is "found." One stands a better chance of having his prayers answered if he *davens* in a *Beis HaKnesses*.

Rebbi Akiva Eiger (*Gilyon HaShas, Berachos* 6a) cites *Tosfos* (*Avodah Zarah* 4b, s.v. *keivan*), who had an alternate *girsas* of the *Gemara* in *Berachos*: *אין תפילה של אדם נשמעת אלא עם הציבור* - "A person's prayer is heard only [if he recites it] **with the tzibbur**." Likewise, the *Gemara* in *Berachos* (8a) teaches, based on the *passuk*, *הן קל כביר ולא ימאס*, - "Behold, G-d does not despise the numerous" (*Iyov* 36:5), that *אין הקב"ה מואס בתפילתן של רבים* - "The Holy One, Blessed is He, does not despise the prayers of the *tzibbur*."

Thus, the *Zohar* (*Parshas Vayechi*, 234a) explains that when a *yachid davens*, his *tefillah* will enter in front of Hashem only if it is offered with "strong force." First, Hashem will examine the *tefillah*, as well as the righteousness of the one who offered it. When a *tzibbur davens*, however, the *tefillah* always enters in front of Hashem, without attention to the sins of those who offered it. Even if a person does not deserve to have his prayers answered, if he *davens* along with the *tzibbur*, the *zechus ha-tzibbur* will enable his prayers to be answered.

Rav Yisroel Avraham Stein, the *Faltishaner Rav*, related that when he founded his *shtiebel* in Bensonhurst, his arrangement

with his *balabatim* was that they could choose any particular time to start *davening* on Shabbos. He had one requirement – everyone must be in *shul* at whatever time they chose. Coming late shows a lack of seriousness with regard to *davening*.

The problem is that everyone learns at an early age how to abridge *Pesukei D’Zimra*, which “allows” them to come late to *davening*. In truth, we should all be present to answer *amen* to the *chazzan’s* *Birchos HaShachar* (which may count towards one’s daily recitation of one hundred *berachos*) and to say *korbanos*.

One of the *Ba’al HaTanya’s* letters (*Iggeres HaKodesh* 1) emphasizes the importance of *kavanah* during *tefillah*. He requests of his *chassidim* that they accept upon themselves to appoint *shlichei tzibbur* who do not have to rush to work and who are able to *daven Shacharis* on weekdays for at least an hour and a half! He writes that he planned to send spies to the various *minyanim*, and if he learned of individuals who have the ability to prolong their *davening*, but are remiss in doing so, he would keep them at a distance when they come to visit him. Indeed, some people *daven* much quicker than they would ever speak to a human being.

The *Gemara* in *Berachos* (32b) quotes a statement of Rebbi Chamma b’Rebbi Chanina, that if a person sees that he has *davened* but has not been answered, he should go back and *daven* again. This is derived from the *passuk*, *קוה אל ד’ חזק ויאמץ לבך* – “Hope to *Hashem*, strengthen yourself and He will give you courage, and hope to *Hashem*” (*Tehillim* 27:14). *Rashi* explains that the *passuk* implies that one should repeat his *tefillah* over again and hope to *Hashem* that it will be accepted.

Accordingly, Rav Soloveitchik suggested that the *chizuk* referred to in the *Gemara* connotes the element of repetition, the constant renewal of one’s efforts in these areas. It seems that this is why, when we conclude a *masechta*, we reinforce our *limmud haTorah* by immediately beginning the next *masechta*. Similarly, after we finish *Sefer Bereishis* on Shabbos morning,

we *lein* from *Sefer Shemos* at *Mincha*, and on *Simchas Torah*, we immediately follow the completion of one cycle of *kri'as ha-Torah* with the beginning of the next cycle.

The notion of providing *chizuk* for *tefillah* is relevant to the recitation of the *piyyut Adon Olam*. The *minhag* in many communities is to begin *Shacharis* with *Adon Olam*. Some explain that this practice is related to the *halachah* cited by the *Mechaber* (*Orach Chaim* 5:1) that when one recites a *berachah* and mentions *Hashem's* Name, he should have in mind both the pronunciation of the Name, אדוני - that *Hashem* is the אדון הכל, Master of All - in addition to its written form, יקוק - which connotes *Hashem* as היה הוה ויהיה, that He was, is, and will always be in existence. [The *Bi'ur HaGr"a* comments that strictly speaking, it is only necessary for one to intend this dual meaning during the first *passuk* of *kri'as Shema*.]

In *Adon Olam*, we elaborate on these concepts, describing *Hashem* as the אדון הכל and as possessing the quality of היה הוה ויהיה. In this way, the *piyyut* serves as a declaration, in advance, that whenever we mention *Hashem's* Name throughout the *davening*, it is with the understanding that we include *kavanah* for both of these themes, even if we do not have this express intention at the time.

The Rav suggested that the source of the common *minhag* to conclude the *davening* on *Shabbos* and *Yom Tov* with *Adon Olam* is the idea that *tefillah* requires *chizuk*. *Shacharis* begins with *Adon Olam*, and after we finish the *davening*, we recite *Adon Olam* again as if to demonstrate that we are prepared to repeat the *davening* from the beginning another time. This may similarly explain our practice of concluding *Shacharis* with *U'Va L'eTziyon*, which includes *Kedushah D'Sidra*, and the *minhag* of *Nusach Sefard* to conclude *Ma'ariv* with *Barchu*. [See *Nefesh HaRav*, 1994 ed., pp. 164-165.]



SEFER AZARAH

ויכתוב משה את התורה הזאת ויתנה אל הכהנים בני לוי הנושאים את ארון ברית ד' ואל כל זקני ישראל ... ויצו משה את הלויים נושאי ארון ברית ד' לאמר. לקוח את ספר התורה הזה ושמתם אותו מצד ארון ברית ד' אלקיכם והיה שם בך לעד.

Moshe wrote this Torah and gave it to the *Kohanim*, the sons of Levi, the bearers of the *aron* of the covenant of *Hashem*, and to all the elders of Israel ... Moshe commanded the *Leviyim*, the bearers of the *aron* of the covenant of *Hashem*, saying, "Take this *sefer Torah* and place it at the side of the *aron* of the covenant of *Hashem*, your G-d, and it shall be there for you as a witness." (*Devarim* 31:9-26)

THE MIDRASH (*Devarim Rabbah* 9:9; *Yalkut Shimoni* 941) teaches that Moshe was very concerned that after his passing, the people would not have the same level of reverence towards Yehoshua bin Nun as they had for him, and that this may give way to זיוף התורה – falsification of the Torah. Therefore, once he knew he was to die on that day, he wrote thirteen *sifrei Torah*, one for each of the twelve *shevatim* and one to be placed in the *aron* beside the *luchos* (or on a shelf that protruded from the side of the *aron*; *Bava Basra* 14b).

The simple explanation of the *Midrash* may be that it is based on the extra words ואל כל זקני ישראל, which imply that aside from the *sefer Torah* placed in the *aron*, other *sifrei Torah* were given to the elders of each of the *shevatim*. Some *meforshim* (see *Mei Michel*) suggest that the *Midrash* derives this idea from the fact that the word תורה or שירה appears thirteen times from the beginning of *Vayeilech* until the end of the Torah. Indeed, the *Gemara* employs this style of *derashah*, based on how many times a word appears, to derive the sum of thirty-nine forbidden *melachos* on Shabbos (*Shabbos* 49b), the amount of applications of blood of *korbanos* to the *mizbei'ach* (*Zevachim* 37b), the number of walls required for a *sukkah* (*Sukkah* 6b), the taking of three *hadasim* on Sukkos (*Rashi, Sukkah* 34b, s.v. *anaf*),

and that three *dayanim* are necessary to constitute a *beis din* (*Sanhedrin* 3b).

The *sefer Torah* written by Moshe that the *passuk* explicitly mentions, *ספר התורה הזה*, is the *sefer Torah* of the *Beis HaMikdash*, the *sefer Azarah*. Its purpose was to preserve the authentic text of the Torah. Thus, the *sefer Azarah* was meant to address Moshe's concern of *זיוף התורה*, since it could be used to disprove anyone who might seek to misrepresent the Torah. Likewise, the *parsha's* subsequent *mitzvos* – *hakhel*, involving a public *kri'as haTorah*, and the writing of a *sefer Torah* by each Jew – have the same objective. They would also serve to protect against forgery and distortion of the text of the Torah and maintain the *Masorah* for future generations.

The *Sifrei* discusses a situation in which a doubt arose regarding whether the first word in the *passuk*, *מעונה אלקי קדם* – “The abode of G-d immemorial” (*Devarim* 33:27), should be spelled *מעונה* or *מעון*. Apparently, many *sifrei Torah* had one spelling, while many had the other. The *Chachamim* resolved the question by checking the three *sifrei Torah* that were in the *Azarah* of the *Beis HaMikdash*. They determined the correct *Masorah* of the *passuk* based on the *rov* (majority), as two of the three *sifrei Torah* spelled the word *מעונה*.

Rav Soloveitchik was bothered by a strong question: Why was the *rov* determined by these *sifrei Torah*, and not by the *rov* of all of the *sifrei Torah* in the world? The Rav explained that it appears from the *Sifrei* that there was a special halachic status attributed to the *sifrei Torah* of the *Azarah*. Those *sifrei Torah* alone – being that they were copied from a *sefer Azarah* and held in the *Beis HaMikdash* (in the *Kodesh HaKodashim*) – served the role of preserving the *Masorah* of the official, accurate text of the *Chamishah Chumshei Torah*. Therefore, in a situation of uncertainty regarding the *Masorah*, we needed to examine those *sifrei Torah* in particular, and not others.

The *Sifrei* is along the lines of the *Midrash's* statement cited above, that Moshe wrote thirteen *sifrei Torah*, one for each of the twelve *shevatim* and one to be placed in the *aron*, as a safeguard against the possibility of זיוף התורה.

There may be other functions specific to the *sefer Azarah*. *Rashi* (*Bava Basra* 14b, s.v. *sefer*) comments that the *sefer Azarah* that Moshe wrote was so called because the *Kohen Gadol* on Yom Kippur and the *melech* during *hakhel* read from it in the *Azarah*. Indeed, the juxtaposition of the *parsha* of *hakhel* to the *passuk* that first describes the *sefer Azarah* seems to suggest this requirement.

In addition, the *Rambam* (*Hilchos Melachim* 3:1) rules that the additional *sefer Torah* of a *melech* should be written from the *sefer Azarah*. Every *sefer Torah* must be copied in its entirety directly from an existing *sefer Torah* (*Hilchos Tefillin* 1:12). [There is a further *minhag* for a *sofer* to also enunciate each *passuk* before he copies it (*Yoreh De'ah* 274:2; *Tosfos, Menachos* 30a, s.v. *u'Moshe*).] The *melech's sefer Torah*, however, must be written specifically from the *sefer Azarah*, due to its unique status *al pi din*. Perhaps, in this way, the *melech's sefer Torah* attains the status of a *sefer Azarah*, and it may then be utilized by the *melech* when he leins the *kri'as haTorah* of *hakhel*. [See *MiPninei HaRav*, 2001 ed., p. 193.]

As we have seen, the role of the *sefer Azarah* is to protect the authenticity of the *Torah SheBichsav*. In contrast, the responsibility of the *Beis Din HaGadol* (Supreme Court), whose official meeting place is also in the *Beis HaMikdash*, is to preserve the *Masorah* of *Torah SheBe'al Peh*. In this way, the *Beis HaMikdash* serves as the center of Torah – both the *Torah SheBichsav* and the *Torah SheBe'al Peh*.

The Rav concluded the *hesped* that he delivered for his uncle, Rav Velvele, on a poetic note that relates to the idea of preventing זיוף התורה. The *Gemara* in *Kesubos* (22a) discusses a case in which one of the *dayanim* in a *beis din* that is convened

for *kiyum hashtar* (certification of a document) passes away before the certification is signed. The *Gemara* teaches that they should write the *kiyum* as follows: *במותב תלתא הוינא וחד ליתוהי* – “We were seated as three, and one [of us] is no longer [alive].” This way, their decision will be enforceable on the basis of the two survivor’s signatures alone.

The Rav recounted the times when he was in Brisk, and he sat engrossed in Torah learning together with his father, Rav Moshe, and his uncle, Rav Velvele. It was a period, much as in our own times, when *זיוף התורה* was being perpetrated by members of the Reform movement, as well as others who proposed false interpretations of the *Gemara*. It was necessary for “*beis din*” to perform “*kiyum hashtar*” – the preservation of authentic *Masorah*. This *kiyum* is accomplished by the fact that there are Torah giants in every generation who learn the Torah for the sake of truth and in purity and who teach it in this way to others. But now, alas, the Rav concluded, *חד ליתוהי*, the head of the *chaburah* that protected the Torah from *זיוף*, is no longer alive. [See *Nefesh HaRav*, 1994 ed., p. 33.]



PARSHAS HA'AZINU

DINIM DERABBANAN

שאל אביך ויגדך זקניך ויאמרו לך.

Ask your father and he will relate it to you, your elders and they will tell you. (*Devarim* 32:7)

THE GEMARA in *Shabbos* (23a) discusses why we may recite the phrase, אשר קדשנו במצותיו וצונו – “Who has sanctified us with His commandments and has commanded us,” in the *berachah* over lighting *neiros Chanukah*, as this *mitzvah* was never commanded by *Hashem*, but is rather rabbinic in origin. The *Rambam* (*Hilchos Berachos* 11:3) records the *passuk* cited as the *Gemara*’s first response: לא תסור מן הדבר אשר יגידו לך ימין ושמאל – “You shall not deviate from the word that they [the *Chachamim*] will tell you, right or left” (*Devarim* 17:11). This implies that every rabbinic command or prohibition is subsumed under this *mitzvah d’oraisa*. Although the *passuk* refers to the *Beis Din Ha-Gadol* (Supreme Court), the assumption is that the same applies to the *gedolei hador* in every generation. In fact, the *Gemara* in *Berachos* (19b) cites only this *passuk* as providing the *Chachamim* with the authority to require observance of *mitzvos derabbanan*.

The first section of the *Rambam*’s *Sefer HaMitzvos* contains the fourteen *shorashim* (guiding principles) that determine whether a given *mitzvah* should be included in the count of *taryag mitzvos*. In the first *shoresh*, the *Rambam* writes that *mitzvos derabbanan* do not warrant inclusion in this list, since they are

collectively subsumed under the prohibition of לא תסור. This is in contrast to the view of the *Bahag*, who does include several *mitzvos derabbanan* in his *minyán* of *taryag*.

In contrast to the *Rambam*, the *Ramban* (*Sefer HaMitzvos*, *Hasagos*, *shoresh rishon*) adopts the second *passuk* brought by the *Gemara* to provide for a Biblical source for the *mitzvos derabbanan*: שאל אביך ויגדך זקניך ויאמרו לך. The *Ramban* contends that the context of לא תסור relates to an unresolved halachic dispute that is causing friction in the community:

כי יפלא ממך דבר למשפט ... דברי ריבות בשעריך ... ובאת אל הכהנים הלויים
ואל השופט אשר יהיה בימים ההם ... ועשית על פי הדבר אשר יגידו לך ... לא
תסור מן הדבר אשר יגידו לך.

If a matter of judgement is hidden from you ... matters of dispute in your cities ... You shall come to the *Kohanim*, the *Levi'im*, and to the judge who will be in those days ... You shall do according to the word that they will tell you ... you shall not deviate from the word that they will tell you. (*Devarim* 17:8-11).

In this situation, the *Beis Din HaGadol* in Yerushalayim must be consulted to issue a *psak*, and לא תסור insists that the *psak* is binding on all of *Klal Yisrael*. Thus, the *parsha* refers to a case in which the *Beis Din HaGadol* interprets a *din d'oraisa*, not when they invent a new *din derabbanan* like the *takanos* of Chanukah and Purim. In the latter case, there is no doubt that needs to be resolved; on a *d'oraisa* level, we know that Chanukah and Purim do not exist.

The *Ramban* claims that the *Gemara* in *Berachos* (19b) cited above did not present the prohibition of לא תסור as the binding force of *dinim derabbanan*. Instead, the *Gemara* cited this source as an *asmachta* (support), upon which the *Chachamim* relied when making rabbinic legislation. He argues further that it cannot be that *dinei derabbanan* are subsumed under the *passuk* of לא תסור. After all, if we are Biblically required to observe *dinim derabbanan*, what is the basis of leniency in a *sfeika derabbanan* (see *Berachos* 21a)? We should always apply the

principle of *sfeika d'oraisa l'chumrah*, that an uncertainty pertaining to Torah law is decided stringently, even to *dinim derabbanan!*

However, we may ask a basic question on the *Ramban's* opinion. The *passuk*, שאל אביך ויגודך זקניך ויאמרו לך, merely instructs us to learn from history, to take advantage of the counsel of the elders who have greater life experience; it is not a mandate. How can this *passuk* serve as the source of the binding force of all *mitzvos derabbanan* if it is itself not one of the *taryag mitzvos* of the Torah? Why are we obligated to comply with the rabbinic laws if there exists no command in the Torah to do so?

Rav Elchonon Wasserman *Hy"d* (*Kuntres Divrei Sofrim* 1:17) explains that in the view of the *Ramban*, the real source of the obligation to abide by all of the *mitzvos derabbanan* is the fact that they represent רצון ד' – the will of *Hashem*. In other words, it is the *passuk*, ואהבת את ד' אלקיך, – “And you shall love *Hashem*, your G-d” (*Devarim* 6:5) that obligates us. That *mitzvah* demands of us not only an obligation of the heart, but an obligation of the body as well – to demonstrate through action that we love *Hashem*.

The *Mesillas Yesharim* (*perek* 18) explains that this is done by engaging in activities that we know would please Him, even though He did not explicitly state these directives in the Torah. How does one demonstrate that he loves his spouse or his parents? If he knows that a certain activity would please someone he loves, he does not wait until he is asked, but instead does it on his own. We too should go above and beyond that which *HaKadosh Baruch Hu* instructs us to do. We should not adhere to merely “the letter of the Law.” Rather, we should discern “the spirit of the Law” and please *Hashem* by observing more than He commanded.

The *Mishnah* in *Avodah Zarah* (2:5) expands upon this point by citing the *passuk*, כי טובים דודים מין – “for your love is dearer

to Me than wine" (*Shir HaShirim* 1:2), in relation to the rabbinic prohibition against *gevinas akum* (gentile-made cheese). The *Gemara* explains that דודיק - "your love" - refers to *divrei Sofrim*, the words of the *Chachamim* which are more pleasant than "the wine of Torah," the Written Torah itself (*Avodah Zarah* 35a). Thus, *Chazal* teach us that *Hashem* cherishes our observance of rabbinic Law more than He appreciates observance of Torah Law. This is because it is specifically through the observance of *mitzvos derabbanan* that we demonstrate that we love *Hashem*, for we are conforming to practices that He has not commanded - simply in order to please Him. Adherence to more than the *taryag mitzvos*, and thereby living up to "the spirit of the Law," is an expression of our *ahavas Hashem*.

There is an obstacle that may present itself, however. Some people invent new *minhagim*, thinking that adopting these new customs is the way to please *Hashem*. Unfortunately, sometimes these new *minhagim* seem to distance a person from what *Hashem* desires, instead of bringing him closer. Given this inherent difficulty with regard to all new, man-made practices, how are the Jewish People able to volunteer *mitzvos derabbanan* to express our love for *Hashem*?

This, Rav Elchonon explains, is why the *Gemara* in *Shabbos* cites the *passuk*, שאל אביך ויגוד זקניך ויאמרו לך, which teaches us to follow the instruction of the *talmidei chachamim* throughout the generations. Since it is the case that הסכימה דעתן לדעת המקום - "their thinking is in accord with the thinking of the Omnipresent" (*Yevamos* 62a), they will know what it is that we should volunteer to do in order to demonstrate that we really do love *Hashem*. Only *talmidei chachamim* versed in *kol haTorah kulah* may be relied upon. Since they are fully knowledgeable in "the letter of the Law," and therefore have a proper perspective of what the *mitzvos* truly represent, they also possess a sense of "the spirit of the Law" to be able to determine which practices would please *Hashem* and which would not.

The *Ramban* continues to explain that whether we adopt the first or the second *passuk* is not merely an abstract question. In fact, it is nothing less than a matter of life and death!

A *zakein mamrei* is a *talmid chacham* who *paskens* publicly against the *psak* of the *Beis Din HaGadol*; the Torah considers this a capital crime. *Beis din* metes out bodily punishments such as *misah* (death) or *malkus* (lashes) only if one violates the warning of a *lo sa'aseh*, not if one merely refrains from fulfilling a *mitzvas aseh* (*Yoma* 81a). Thus, the *zakein mamrei's* capital punishment is a result of his violation of the *lo sa'aseh* of לא תסור.

In line with his view of לא תסור as the Biblical source of rabbinic injunctions, the *Ramban* (*Hilchos Mamrim* 4:1) rules explicitly that a *zakein mamrei* who challenges an *issur derabbanan*, such as that which prohibits *chametz* before *chatzos* on *erev Pesach*, receives the death penalty. The *Ramban*, however, disagrees and maintains that there is no punishment in this case. This is consistent with his opinion that the prohibition of לא תסור does not address *dinim derabbanan*.

Rav Soloveitchik would often comment that he failed to understand why the *Ramban* considered this *machlokes* so fundamental and so far-reaching an issue, as evidenced by the *Ramban's* lengthy attack of the *Rambam's* opinion. According to the *Ramban*, as we explained, the basis for *dinim derabbanan* is the *passuk*, וְאֵהָבֶת אֶת ד' אֱלֹקֶיךָ, and שֶׁאֵל אֲבִיךָ וַיְגַדְךָ instructs us to follow the advice of the *Chachamim* to determine which practices to volunteer in order to demonstrate our love for *Hashem*. Thus, the *Ramban* also agrees that *dinim derabbanan* are rooted in a Biblical source! Furthermore, it is very unclear why the *Ramban* considers the disparity between the rules of *sfeika d'oraisa l'chumrah* and *sfeika derabbanan l'kula* to be a question on only the *Rambam's* source. Did the *Ramban* think that the *Rambam* held that *dinim derabbanan* are binding *mid'oraisa* based on לא תסור?

In order to explain this *machlokes*, we must first examine the nature of *dinim derabbanan*.

The Rav gave a weekly *shiur* for many years in Moriah Synagogue on the Upper West Side, and for over ten of those years, the *shiur* was on *Maseches Berachos*. On the occasion of the *siyum* on the *masechta*, he commented that one could raise an important question: Since the bulk of *Maseches Berachos* deals with *dinim derabbanan*, does that mean that on the level of *d'oraisa*, we engaged in *bitul Torah* every week? Was it only *talmud Torah miderabbanan*? Would it have been a better choice to learn *Zevachim* or *Menachos*, which are rich in *dinim d'oraisa*, so that we would have had more *talmud Torah d'oraisa* and less *bitul Torah d'oraisa*? [Rav Aharon Leib Shteinman (*E'eleh B'Tamar - MiToras Beis Brisk*, p. 106) attributes this line of reasoning to the Rav's uncle, the Brisker Rav; Rav Shteinman was inclined to adopt Rav Soloveitchik's approach, outlined below.]

Rav Soloveitchik felt that one cannot entertain such a possibility, arguing that the entire premise of the question is incorrect. Although it is true that the *chovas hagavra* (one's personal obligation) to observe a *mitzvah derabbanan* is merely *miderabbanan*, nevertheless, in terms of its status, a *din derabbanan* is classified as a *cheftza shel Torah* (a text of Torah) on the level of *d'oraisa*.

All rabbinic enactments conform to the guiding principle, *כל דתקון רבנן כעין דאורייתא תקון* – “Whatever law the Rabbis enacted, they enacted in the manner of a Biblical law” (*Yevamos* 11a). The building blocks that the *Chachamim* use to formulate *halachos derabannan* must always be concepts that exist on the level of *d'oraisa* as well. Although they are not binding to the same extent, the *dinim derabbanan* are patterned after *dinim d'oraisa*. This way, the *dinim derabbanan* are able to blend in to become a genuine *chelek* of *Torah SheBe'al Peh*.

Thus, once the *Chachamim* introduce a *din derabbanan*, one fulfills *talmud Torah d'oraisa* by studying its *halachos*. A *sfeika derabbanan* is decided *l'kula* since this rule is within the realm of the *chovas hagavra* to perform a *mitzvah*, and the *chovas hagavra*

for *mitzvos derabbanan* is clearly only *miderabbanan*. However, the *mitzvah* of *talmud Torah* does not depend on *chovas hagavra*, but rather on whether a particular *halachah* enjoys the status of *cheftza shel Torah*.

The dichotomy between *chovas hagavra* and the status of *cheftza shel Torah* should not be surprising. Take, for example, the numerous *sugyos* in *Shas* that explicate the opinions of *Beis Shamai*. In practice, the Halachah unequivocally accepts *Beis Hillel's* view over that of *Beis Shamai* and declares that בית שמאי – “the view of *Beis Shamai* in contrast to that of *Beis Hillel* is of no authority” (*Berachos* 36b). But despite the fact that the *chovas hagavra* follows the majority opinion of *Beis Hillel* in almost all cases, with respect to the many disputes between *Beis Shamai* and *Beis Hillel*, the *Gemara* in *Eiruvin* (13b) applies the principle אלו ואלו דברי אלקים חיים – “These and those are the words of the living G-d.” This does not mean that one has the option to follow either opinion in practice. Instead, it means that when we study the opinion of *Beis Shamai*, it is considered a fulfillment of the *mitzvah* of *talmud Torah*, because the opinion has legitimacy. Since *Beis Shamai* arrived at their positions by working with the מידות שהתורה נדרשת בהן (exegetical principles through which the Torah is expounded), they are considered to have a bona fide point of view, and the opinions that they developed constitute a *cheftza shel Torah*. [See *Nefesh HaRav*, 1994 ed., p. 41; *B'Ikvei HaTzon*, p. 259.]

In the *Hakdamah* to *Peirush HaMishnayos*, the *Rambam* outlines five categories that constitute *Torah SheBe'al Peh*: פירושים המקובלים – *מפי משה* – interpretations of Biblical phrases that we have as traditions from Moshe (such as the definition of *pri eitz hadar* as *esrog*), *Halachos L'Moshe MiSinai*, *halachos* derived through the מידות שהתורה נדרשת בהן, *gezeiros derabbanan*, and *takanos derabbanan*. This classification clearly implies that the *gezeiros* and *takanos* have become an integral *chelek* of *Torah SheBe'al Peh mid'oraisa*, like the first three categories that the *Rambam* lists.

This is the basis for the *Bahag's* inclusion of some *mitzvos derabbanan* in his *minyán* of *taryag*. In the count of the *mitzvos*, we include not only *mitzvah* obligations, but also subjects that the Torah discusses, such as the *parsha* of *shomrim* and the *parsha* that outlines the signs of *kasher* animals. It is not surprising, then, that the *Bahag* also includes *mitzvos derabbanan*, since these *halachos* constitute a portion of the general corpus of Torah.

Some *Acharonim* have taken the notion that *dinim derabbanan* are recognized on a *d'oraisa* level even further. For example, Rav Yosef Engel (*Asvin D'oraisa*, *klal* 10; see also *Tziyunim L'Torah* 30, *Beis Efrayim*, *Orach Chaim* 59) uses this idea to answer a well-known question raised by the *Shach* (*Yoreh De'ah* 99:19) in reference to the principle of *איסור לכתחילה* – we may not deliberately nullify a prohibited item.

The *Gemara* in *Beitzah* (4b) teaches that this principle is limited to *issurei d'oraisa*, and the *Mechaber* (*Yoreh De'ah* 99:6) therefore rules that deliberate *bitul* of *issurei derabbanan* is permitted. Thus, if a food that is *assur miderabbanan* was mixed with a *rov* (majority) of permissible food, but not with enough to cause *bitul b'shishim* (nullification in sixty times the amount of the prohibited food), in order to avoid the monetary loss of the permissible food, we may add more permissible food in order to cause *bitul b'shishim* of the *issur*.

In *Hilchos Chanukah* (*Orach Chaim* 677:4), however, the *Mechaber* seems to contradict himself. Oil used for *neiros Chanukah* (when the *ner* extinguished within the first half hour of lighting) is *huktzah l'mitzvos* (reserved for the purpose of a *mitzvah*) and may not be used for mundane purposes. Thus, leftover oil from a previous night of Chanukah may only be used (with additional oil) on a subsequent night for *neiros Chanukah*, but not for any other purpose. If oil was left over on the eighth night, the *Mechaber* cites the opinion of the *Maharam MiRotenberg* that it should be burned completely. Even if the oil was inadvertently already mixed with a *rov* of other oil, one may not add more oil

and cause *bitul b'shishim*, even though the oil is only *assur miderabbanan*.

Rav Engel resolves the inconsistency in the *Mechaber's* rulings by explaining that although the *chovas hagavra* to light *neiros Chanukah* is only *miderabbanan*, once they are lit, the oil becomes *huktzah l'mitzvaso min haTorah*, and it is therefore not permissible to deliberately perform *bitul*. This distinction is based on the point we made above: Even though one's obligation to perform a particular *mitzvah* may be only *miderabbanan*, a *din derabbanan* is nevertheless deemed a *cheftza shel Torah* on a level of *d'oraisa*. This, in turn, introduces the possibility that the *kiyum mitzvah* (fulfillment of the *mitzvah*) of a *mitzvah derabbanan* is also recognized *mid'oraisa*, and this creates a *cheftza shel mitzvah* that is *huktzah l'mitzvaso* on the level of *d'oraisa*.

It seems that this *chiddush* is dependent on a related issue that the *Acharonim* raise with regard to the principle of *העוסק במצוה – פטור מן המצוה* – “one who is occupied with the performance of one *mitzvah* is exempt from another *mitzvah*” (*Sukkah* 25a). *Acharonim* (see *Aruch LaNer, Sukkah* 25a, s.v. *hacha tarid*; *Kovetz Shiurim* 2:32, *Pesachim* 97; *Bei'ur Halachah* 72:4, s.v. *im*) question whether one who is occupied with a *mitzvah derabbanan* is exempt from a *mitzvah d'oraisa* as well. One who performs a *mitzvah derabbanan* discharges a *chiyuv mitzvah* that is clearly only *miderabbanan*. The issue at hand, then, seems to be whether in discharging the *chiyuv derabbanan*, he has also accomplished a *kiyum mitzvah* on the level of *d'oraisa*. If such a *kiyum* in fact exists, it might serve to exempt him from performing even another *mitzvah d'oraisa*.

In light of the preceding analysis, Rav Soloveitchik framed the *machlokes* between the *Rambam* and *Ramban* regarding *zakein mamrei* as follows (*Shiurim L'Zecher Abba Mari Z"l* I, 1983 ed., pp. 231-232). He explained that both sides agree that the *chovas hagavra* to perform *mitzvos derabbanan* is only *miderabbanan*.

Everyone also agrees that *dinim derabbanan* constitute a *cheftza shel Torah SheBe'al Peh mid'oraisa*. The *machlokes* revolves about a detail with regard to the nature of the *psak* that a *chacham* must render in order to be characterized as a *zakein mamrei*.

According to the *Rambam*, the *psak* must be a *hora'ah* (ruling) on a *cheftza shel Torah*, and since a *din derabbanan* is a *cheftza shel Torah mid'oraisa*, a *chacham* who issues a *psak* against the *Beis Din HaGadol* regarding a *din derabbanan* becomes a *zakein mamrei*. In contrast, the *Ramban's* reasoning is that a *chacham* is not liable to punishment as a *zakein mamrei* עד שיורה לעשות – “until he instructs people to act in accordance with his opinion” (*Mishnah Sanhedrin* 86b). Since, *halachah l'ma'aseh*, the *chovas hagavra* to perform a *mitzvah derabbanan* is only *miderabbanan*, it is self-understood that the criterion of עד שיורה לעשות cannot be met *mid'oraisa* with a *psak* on a *din derabbanan*. [See *Mesorah*, vol. 5, pp. 10-14; *Ateres Tzvi* and *Kol Zvi*, vol. 17, “*Chavivoin Divrei Sofrim*.”]



PARSHAS V'ZOS HABERACHAH

TARYAG MITZVOS

תורה צוה לנו משה מורשה קהילת יעקב.

Moshe commanded us the Torah as the heritage of the Congregation of Yaakov. (*Devarim* 33:4)

THE GEMARA in *Makkos* (23b) cites the teaching of Rebbi Simlai that is based on this *passuk*: “Six hundred and thirteen *mitzvos* were related to Moshe – three hundred and sixty-five negative commandments and two hundred and forty-eight positive commandments.”

The Jewish People assembled at Har Sinai heard only the first two of the *Aseres HaDibros* directly from *Hashem*, אֲנִי – “I am *Hashem* your G-d” and לֹא יִהְיֶה לָךְ – “You shall have no other gods.” Moshe alone heard the other eight, and he communicated them to the nation, as he did with the rest of the Torah. The *Ramban* (*Shemos* 20:7) notes that this is clear from the grammar of the *pessukim* themselves, as there is a shift in pronoun usage between the first two *dibros* and the others. The first two *dibros* are phrased in the first person, since it is *Hashem* speaking: “I am *Hashem* your G-d ... You shall have no other gods before **Me**.” In the last eight *dibros*, however, *Hashem* is referred to in the third person, since Moshe conveyed that which *Hashem* spoke. For example, in the third *dibrah*, we find: “You shall not take the **Name of Hashem**, your G-d, in vain,” as opposed to “You shall not take My Name in vain.”

Given this distinction, the *Gemara* explains that the *passuk* in our *parsha* alludes to Rebbi Simlai's teaching. The *gematriya* (numeric valuation of the Hebrew alphabet) of the word תורה is 611, representing the *mitzvos* that were taught to us by Moshe, תורה צוה לנו משה. By adding the first two of the *Aseres HaDibros*, which *Hashem* commanded *Bnei Yisrael* directly, we arrive at the total of *taryag* (613) *mitzvos*.

In *Kaddish*, we recite ten praises of *Hashem*: ... יתגדל ויתקדש ... יתברך וישתבח, but we separate the first two praises from the last eight. The *Mishnah Berurah* (56:2) rules that יתגדל ויתקדש should be said in Ivrit, with a *tzeirei*, rather than a *pasach*, beneath the "ד", whereas the other praises are in Aramaic. The reason for these differences is that the ten praises correspond to the *Aseres HaDibros* (*Beis Yosef*, citing *Shibalei HaLeket*). Since the first two were uttered by *Hashem*, and the others by Moshe, we divide the two sets accordingly and recite the first two in Ivrit. [The rulings of the *Mishnah Berurah*, like his view regarding the correct pronunciation of יתגדל ויתקדש, are not really an accurate description of the practices followed in the pre-war Lithuanian *yeshivos* (see "*Minhagei Lita*" by Rabbi Menachem Mendel Poliakoff, pp. 7, 22-23, 56).]

The statement of Rebbi Simlai is the main source for the vast literature surrounding the various lists of *taryag mitzvos* compiled by many of the *Ge'onim* and *Rishonim*. There are a number of difficulties regarding Rebbi Simlai's teaching, however. First, although the notion of *taryag mitzvos* is widespread throughout the *Gemara* and *Midrash*, the *Ramban* (first *Hasagah* to *Sefer HaMitzvos*) wonders why we never find in the *Gemara* a discussion as to which *mitzvah* replaces the one that a *Tanna* or *Amora* has declared not to be a *mitzvah*. He thus raises the possibility that Rebbi Simlai's assertion is not necessarily the accepted opinion among the *Amora'im*. Another question that remains unresolved is the practical relevance of the concept of *taryag mitzvos* or to a *mitzvah's* inclusion in *taryag*.

A further matter that bears examination is whether the *dibrah* of אנוכי is actually one of the *taryag mitzvos*. Based on the *Gemara* above, the *Rambam* (*Sefer HaMitzvos, mitzvas aseh* 1) counts אנוכי as one of the *taryag mitzvos* of the Torah – the *mitzvah* to believe in the existence of *Hashem*. The *Bahag* does not include אנוכי as a *mitzvah*, since, in his view, it is a statement of fact.

The *Ramban* (*Hasagos*) defends the *Bahag*, explaining that there cannot be a *mitzvah* to believe in G-d, since if there is no *metzaveh*, there cannot be a *mitzvah* (see *Ohr Hashem, Hatz'ah*). Instead, אנוכי is the preamble to the *mitzvos*. First, we must accept *malchus Shamayim, Hashem's* sovereignty; then we can accept His *mitzvos* as binding. [In order to arrive at *taryag*, the *Bahag* must understand that the second *dibrah* of לא יהיה לך contains **two** *mitzvos*, a prohibition against making or possessing idols and a prohibition against worshipping *avodah zarah*.]

An additional dilemma with *Rebbi Simlai's* computation is the *Ramban's* observation that the second *dibrah*, לא יהיה לך, really comprises **four** separate *aveiros*: it is forbidden to believe in idols – לא יהיה לך אלהים אחרים – it is forbidden to make or possess them – לא תעשה לך פסל – it is forbidden to prostrate oneself (or slaughter an animal, offer animals or libations) to them – לא תשתחוה להם – and it is forbidden to worship them – לא תעבדם.

Finally, a more basic challenge is the teaching of the *Mishnah* in *Avos* (3:18) that *gematriya'os* are merely like *פרפראות לחכמה* – “‘dessert’ for wisdom.” This means that *gematriya* is not one of the *מידות שהתורה נדרשת בהן* (exegetical principles through which the Torah is expounded), and thus cannot serve as the source from which *halachos* are derived.

The only *halachah* that appears to be derived from a *gematriya* relates to the length of standard *nezirus*. If a person declared that he is a *nazir* without specifying the duration of his term of *nezirus*, he is a *nazir* for thirty days. As the source of this *halachah*, the *Gemara* in *Nazir* (5a) cites the *passuk*, קדוש יהיה –

“He shall be holy” (*Bamidbar* 6:5), as the word יהיה has the numeric value of thirty. The *Rambam* (*Peirush HaMishnayos*) writes, however, that the *halachah* of the *Mishnah* must have been known as a tradition of the *Torah SheBe’al Peh*; the *Gemara’s* derivation based on *gematriya* is merely a Scriptural allusion in support of the tradition.

The *Pnei Yehoshua* (*Shabbos* 49b, s.v. *hadar*) makes a similar point with regard to the *Gemara’s* use of *gematriya* in its derivation of the total number of forbidden *melachos* of *Shabbos*. The *Gemara* in *Shabbos* (70a) learns this from the phrase that prefaces the general prohibition against performing *melachah* on *Shabbos*, אלה הדברים – “these are the things” (*Shemos* 35:1). The plural דברים implies two *melachos*, the prefix “ה” adds one more, and the *gematriya* of אלה is thirty-six, for a total of thirty-nine *melachos*. In this context, the *Pnei Yehoshua* comments that the *Gemara* did not rely on *gematriya*, but instead knew the count of *melachos* from other derivations. Evidently, in the case of *Rebbi Simlai’s* teaching as well, *gematriya* was merely a hint to a tradition *Chazal* must have had regarding *taryag mitzvos*.

As mentioned, the *Ge’onim* and *Rishonim* who composed lists of *taryag mitzvos* assumed that the *Gemara* means that there are six hundred thirteen obligations. However, the brother of the *Vilna Gaon*, *Rabbeinu Avraham* (beginning of *sefer Ma’alos Ha-Torah*, s.v. *isa*) recounts that his brother had a completely different understanding of *Rebbi Simlai’s* statement.

It is interesting that the *Gr”a* lived around the same time that *John Dalton* developed the Atomic Theory of Matter. *Dalton* proposed that everything in the universe is composed of atoms, which are the fundamental building blocks of matter. The atoms of different elements vary in size and mass, and all compounds are composed of combinations of atoms of different elements in different proportions.

In parallel, *Rabbeinu Avraham* explains that the *Gr”a* felt that there are really an infinite number of *mitzvos*. Every single

detail of one's life and one's every action is guided by Torah and *mitzvos*, and we thereby perform *mitzvos* every instant of our lives. Rather than representing six hundred thirteen obligations, the Gaon's approach to *taryag* may be viewed as an Atomic Theory of *Mitzvos*. He envisioned six hundred thirteen *shorashim* (literally, roots), which subdivide into many branches. These *shorashim* are basic ideas or concepts that form the basis of all of the countless *mitzvos*. One *mitzvah* may share a number of concepts with a different *mitzvah*, but each *mitzvah* consists of a unique combination of different concepts.

The children of the Gaon reported that when their father was younger, although he conceived of *taryag* in this fashion, he could not discern what the six hundred thirteen principles were. Later in life, however, he felt that he did succeed in identifying these *shorashim*, though he did not record their identity.



