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HEMDAT YAMIM

PARASHAT HASHAVUAH

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A Swarm of Locusts ... and People

It is interesting to follow Par'oh's responses, before, during, and after certain plagues. Certain plagues seem to have nearly broken him or at least made him give in on previous negotiating stances.

Arbeh (locusts) seems to have raised particular fear in Par'oh. When Moshe threatened that a great swarm of them would come and "cover the eye of the land ... and eat the remainder of what was leftover from the hail" (Shemot 10:5), his wise men convinced him to give in (ibid.:7-8). Par'oh said that the men could go serve Hashem, objecting only to the children taking part, for they do not do service anyway (see Ramban to 10:10). Moshe said that all must go because it was "a festival of Hashem for us" (ibid.:9), prompting Par'oh to send him away for being dishonest in his request, as Par'oh accused him (correctly) of planning to escape (see ibid.:11). When the plague actually came and ate all the remaining greenery, Par'oh hurriedly capitulated (temporarily), begging that Moshe remove "this death." He even made a moral admission: "I have sinned to Hashem, your G-d, and to you" (ibid. 17). The sin to Moshe is easily identifiable, as Par'oh had thrown him out of the palace. However, what did Par'oh mean by sinning to Hashem, as he had already agreed to allow the sacrifices that Moshe said that Hashem wanted?

The point might be that Hashem had demanded Par'oh to capitulate to whatever demands Moshe made in His name (see ibid.:3). Not obeying was by definition disrespectful. Let us suggest, though, another possibility. Par'oh had in essence claimed that Hashem could only have been asking to receive sacrifices, thereby satiating His appetite in a pagan sense, *ka'v'yachol*. Moshe had countered that Hashem is interested in a festival with Him that is actually for the benefit of the people. Par'oh's agreement to allow Hashem's needs from a pagan perspective was a snub to the concept that Hashem wanted a festival that would impact on the people. The sin was, then, denying Hashem the right to define His role as G-d of the Hebrews in the manner He wanted. Indeed, the next time Par'oh made an offer (ibid.:24), he said that everyone could go and only held back taking their flocks (beyond those needed for sacrifice).

Let us end off by suggesting what about the *arbeh* had shaken Par'oh. After all, at the point he contacted Moshe, they had already eaten all the vegetation, and *arbeh* are not carnivorous. What "spooked out" Par'oh so much to make him at least temporarily give in? The key may be found in the phrase "cover the eye of the land." This is a phrase that Balak used (Bamidbar 22:5) to describe the multitude of Bnei Yisrael that he saw and was disgusted by (similar to the Egyptian reaction to the increased number of Jews - see Shemot 1:12). The *arbeh* reminded him of the Hebrews who were also a swarm of annoying creatures, who, when focused on a certain goal, cover the land by their multitude and make things unlivable. This led him to allow them to get their idea of feasting with Hashem taken care of so that they would settle back to be submissive slaves. However, Par'oh was to learn later that they would become tame, but not as his slaves, but as Hashem's servants.

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Ask the Rabbi

Question: Some *kohanim* in my shul do not go up to do *nesi'at kapayim* (=duchenen =birkat kohanim =bk) at the proper time. Sometimes, one washes his hands right after *Kedusha*, goes back to his place, and does not remember to move toward the *duchan* (platform or any area in the front of the shul where *bk* is done) when the rest of the *kohanim* do. Other times, someone will get a late start toward washing and is still doing so during *R'tzei*. Are they allowed to do *bk* under such circumstances?

Answer: The *gemara* (Sota 38b) says that just as Aharon is described as blessing the people at the time of *avoda* (bringing of *korbanot* – Vayikra 9:22), so too *kohanim* should go up for *bk* at *avoda* (the *beracha* of *R'tzei*, in which we request that the service will return to Zion). The *gemara* continues to say that the *kohanim* do not need to actually go up to the *duchan* during *R'tzei* as long as they uprooted themselves (*akar*) from their place at that time. The Shulchan Aruch (Orach Chayim 128:8) and many others put the main emphasis on *akar*, which is classically done at the beginning of *R'tzei*, but can be done until the end of that *beracha* (Mishna Berura 128:25). If he has not done it by then, then he may not do *bk*. (According to most *poskim*, if he “went up” anyway, he should go down, but if he was prevented from going on time due to an *oness* (extenuating circumstance), then if he went up, he may stay (see Radvaz I, 516)).

Regarding a case where he went to wash during *R'tzei* and did not make it back toward the *duchan* by the end of *R'tzei*, the matter depends on a *machloket*. The Ateret Zekeinim (on the Shulchan Aruch, *ibid.*) says that only going toward the *duchan* counts. The Pri Megadim infers from the following Magen Avraham (128:10) that going to wash is considered like *akar*. The Radvaz said that if a *kohen* was on his way to shul during the time he should have been approaching the *duchan*, that is not considered like *akar* and he may not do *bk*. However, says the Magen Avraham, if he left his house that was close to shul (for the purpose of coming to do *bk* – Chayei Adam 32:13) but arrived after the end of *R'tzei*, that is considered *akar*. The Pri Megadim (*ad loc.*) posits that the logic is that a movement, even if it is not one of approaching the *duchan* but of preparing to do *bk*, counts as *akar*. According to this approach then, he says, it is even clearer that going to wash one's hands suffices. Thus, there is room for leniency to allow a *kohen* who went during *R'tzei* to wash to continue on for *bk*, especially if the way to wash is generally in the direction of the *duchan* (see something similar in the Mishna Berura 128:27). (Realize that the requirement to go on time is apparently rabbinic - see Mishneh Halachot VIII, 15). Under such circumstances, one should certainly not try to stop a *kohen* who assumes he may go up from doing so. (It might be worthwhile to educate him pleasantly to avoid the situation in the future.)

The other case you raise is more problematic. If he went to wash soon after *Kedusha* and subsequently lost track of time, there are two reasons to say that going to wash is less effective than above. Firstly, it is possible that *akar* works only after the *chazan* has started *R'tzei* (Kehunat Yitzchak, pg. 32), whereas here he went to wash well before *R'tzei* (Shevet Halevi VIII, 23 says it is preferable not to go early but that doing so is not disqualified after the fact). Secondly, washing likely works as *akar* only when it is followed directly by proceeding to the *duchan*. However, when one plans to and does go back to his own place, it turns out that the washing was quite preliminary. This possibility is particularly plausible considering that according to some opinions, one can rely on the washing that he did before coming to shul (see Shulchan Aruch 128:6 and Mishna Berura 128: 20). Therefore, it is important for the *kohanim* to leave their place to go toward the *duchan* before the end of *R'tzei*.

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Ein Ayah

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

Bo

Conflicting Chillul and Kiddush Hashem

(based on Berachot 3:31)

Gemara: [The gemara in Ta'anit 23a tells the story of the prayers of Choni Hame'agel (the circle maker) who, upon not succeeding when asking for rain during a severe drought, declared that he would not leave his circle until it rained. Subsequently, the wrong types of rain fell, so Choni kept on making strong requests until the matter was rectified.] What is a case of one who showed chutzpa in dealing with Hashem? Like that which is related in a *mishna*: Shimon ben Shetach said to Choni Hame'agel: You deserve to be put in *niduy* (excommunication) and if you were not Choni, I would decree *niduy* upon you, but what can I do, for you sin before Hashem and He does what you ask for, like a son who sins before his father and the father does what he wants. About people like you the *pasuk* was said: "Your father and mother will be happy, and she who bears you will rejoice" (Mishlei 23:25).

Ein Ayah: The foundation of *k'vod shamayim* (the honor of Heaven) is actually that due to *k'vod shamayim* all of the paths of straightness in the world will be laid out before us. When *k'vod shamayim* is undone, even a little bit, the foundations of justice and broad morality collapse, and then people will go in darkness. That is the main problem with minimizing *k'vod shamayim*, as Hashem does not need honor from us. Rather, by honoring Hashem, mankind directly takes steps toward *shleimut* (completeness).

Therefore, if something appears haughty in relation to Hashem and thereby lowers *k'vod shamayim*, but increases the honor of a righteous person, it can be that the pillars of morality will be supported by it. This is because when the nation sees how great the honor of the righteous is, to the point that a *tzaddik* "sins" and is still answered by Hashem, then everyone will want to make efforts to follow his path of righteousness. This is what Choni was thinking – that his actions would actually increase Divine honor, by causing people to improve their attributes and actions.

However, this is true only in regard to short term results: people of the generation, who see the honor of the *tzaddik*, will increase their desire for goodness and righteousness. However, regarding the future, only *k'vod shamayim* is the foundation of the paths of justice and straightness, as Hashem is "the righteous of the world." When Divine honor increases, each generation will pass on to the next word of this honor and people will try to follow the path of kindness and truth through *imitatio dei*. A weakening of Divine honor leaves a stain in the hearts over generations. In contrast, the honor of the righteous, like the person himself, passes over time.

Prayer is called "life in the short term." Therefore, great people who had a strong connection with their Maker and with prayer, regularly concentrated on Israel's present spiritual level. This is important because when one fixes the present, the future comes out better. Torah is called "eternal life." Therefore, those leaders of the generation who focused on Torah sought to determine how things will influence matters in the long term.

While Choni was great in Torah, his main influence was in the area of prayer and he sought to improve the nation in the present. He, therefore, took the approach that by strengthening regard for *tzaddikim*, he would bring people closer to a proper way of life, even if it came through actions that looked like chutzpah toward Hashem. He felt that this would ultimately increase Divine honor. However, Shimon ben Shetach was concerned with the welfare of future generations, whereby even a small lessening of *k'vod shamayim*, especially if performed by a great *tzaddik* whose influence would last into the future, would bring future damage that would exceed the present gain. Yet it was a situation which, from the *tzaddik's* perspective, was rooted in fear of Heaven and unblemished service, so he related the *pasuk*: "your father and mother will be happy." This focuses on the quality over the quantity. Therefore, although the impression for the people of the time was that the action included chutzpah, from his perspective it was an act of service of Hashem and *shleimut*. [Therefore Hashem accepted it and Shimon ben Shetach would not censor him].

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Laws of Witnesses – part I

(based on Sha'ar Ladin – Halacha Psuka, vol. 34)

We have dealt, in the past, with different elements of the process of testimony. Let us now give some thought to the question of how witnesses testify in practice. Normally they are to testify while physically before *beit din* in a standing up position (although an issue is not usually made about the latter). We will now look into the question of when a witness does not have to testify in the classical way, specifically: when someone else can present his testimony, when he can testify through a translator, and when he can testify in writing.

The *mishna* (Sanhedrin 37a) says that *beit din* warns the witnesses regarding capital cases: “Perhaps you are relating based on assumption or rumor, or you heard testimony, one witness from another or from a reliable person.” The *gemara* (ibid. 37b) says that the inadmissibility of an account coming from someone else applies to monetary law as well. The exception to this rule is when the first testimony was related to a *beit din*, in which case, the *dayanim* or others present in court may repeat the information in front of a different *beit din*. According to many authorities, this is only when the first *beit din* determined that the testimony was accurate. Another exception is that witnesses can testify about what they saw in a valid document, which is of value if the document was subsequently erased or destroyed [regarding written testimony, in general, see next week].

Based on this, when a witness is in a distant location, *beit din* can send three *dayanim* to the witness to hear his testimony, and they can later testify on that which they heard from him. According to almost all opinions, there must be three people accepting the testimony; one representative of the court is insufficient. Therefore, a simple notarized statement does not have a special halachic standing.

Regarding hearing testimony through a translator, the *mishna* (Makkot 6b) says that it is not valid. However, the *gemara* says that if the *dayan* understands the language reasonably and needs a translator only to communicate his questions to the witness, it is permitted to do so. The Radvaz says that the disqualification of hearing through a translator is only rabbinic, and therefore if there is no *dayan* available who understands the witness, a translator may be used. This, though, is still talking about a case where the witness speaks and the translator translates in front of *beit din*. If the translator alone comes to court to relay testimony, that is actually a case of one testifying in the name of another, which, we saw, is invalid.

Mishpetei Shaul

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Shevat 2-8, Bava Batra 149-155

Delaying Burial (154)

Rav Ofer Livnat

This week in the Daf Yomi the Gemara (154) discusses a case where a boy sold some of the family's assets and passed away. His relatives claimed that the sale was not valid, as he was not yet of age for his sale to be effective. The case was brought before Rabbi Akiva, and he was asked regarding the possibility of checking the body to see if the deceased was old enough for the sale to be valid. Rabbi Akiva rejected this request for two reasons. The first is that checking the body would be a disgrace to the person who passed away. The second reason is that one cannot rely upon the examination of the body because of the changes that can occur to the body after death.

The Gemara explains that both reasons are necessary. The first reason, of disgrace to the person who passed away, is sufficient to reject a request from family members, as they are uniquely obligated to respect their relative. However, if the request were to come from the buyers who are not related to the deceased, the issue of disgrace to the dead is not a sufficient claim to cause a potential monetary loss to the buyers, and an examination would be permitted. Thus, the reason that the examination will not provide conclusive results is necessary.

The Or Zarua (volume 3 Baba Batra 199) tells an interesting case that came before Rabbeinu Tam. Reuven owed Shimon a certain sum, and Reuven passed away. Shimon demanded to delay the burial until the inheritors paid off the debt from the assets they inherited from Reuven. Rabbeinu Tam ruled that Shimon may delay the burial. The Or Zarua restricts this to a case where Shimon is not a relative of Reuven, for if he was, he would not be allowed to delay his burial.

Summary and Ruling:

The Remma in the Shulchan Aruch (Choshen Mishpat 107, 2) rules that a debtor, who is not a relative of the deceased, may delay the burial of the one who owed him until the inheritors pay off the debt from the assets they inherited. The Shach (6) explains that the case is that the inheritance is not large and the debtor is concerned that the inheritors will spend it all on the burial expenses. Similarly, adds the Remma, even if after paying off the debt there will not remain enough money for the burial expenses, the debtor may still collect his debt, and he is not obligated to contribute to the burial expenses. That is the responsibility of the family and the community.

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