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The Order of Building a State

Harav Yosef Carmel

At this auspicious time of the year, after Yom Ha'atzmaut and right before Yom Yerushalayim, it is a good time to look at the interplay between a Torah-based Jewish life and national life, as finds expression in an independent state. Let us look at the matter through the actions of David and Shlomo, founders of the Kingdom of Israel in Yerushalayim.

After receiving the approval of all the tribes for his kingdom in Chevron, David took the following steps. He chose a capital city that would symbolize the unification of the tribes into one political entity and captured that city, Yerushalayim, from the enemy. Yerushalayim had several advantages, including the following. It had never been inhabited by Jews of any tribe. The city connects between the sons of Leah and the sons of Rachel, as it is on the border between Yehuda and Binyamin (see Yehoshua 15:7-8). One can add in that there is an opinion among *Chazal* that Yerushalayim was not included in the division of the Land among the tribes.

Another step that David took was creating diplomatic connections that ensured him raw materials and engineering expertise to enable him to succeed in national projects. This was done between David and Chiram, the King of Tzor. A third step that David took at that time was to bring the *aron* that contained the *luchot habrit* (the tablets) to Yerushalayim, in a first step toward the eventual building of the *Beit Hamikdash*. This turned Yerushalayim to not only the political capital of Israel but the spiritual one as well. Thus, the order of events was to first create the political base for the nation, then to make diplomatic arrangements, and only afterward to start building the Temple.

We see Shlomo developing matters in this order as well. The first two *perakim* of Melachim deal with the question of who would sit on David's throne after him. The next three deal with developments in the political, financial, and international realm. Only in the subsequent three *perakim* is the matter of building the *Beit Hamikdash* raised. Again, first a stable kingdom, then a *Mikdash*. Interestingly, after discussion of the *Beit Hamikdash*, the *navi* returns to the topic of national developments, thereby creating an envelope that makes it clear that the matters are interrelated.

This order applies also in regard to the events commemorated during the time of *sefirat ha'omer*. First we have Pesach, celebrating the emergence from slavery to freedom. Only afterward do we celebrate Shavuot, symbolizing our spiritual freedom. The acceptance of the Torah enables the spiritual element to enter the national arena and give it meaning.

In our days as well, first we celebrated the establishment of the State, on the 5th of Iyar, and less than two decades later, we were blessed with the liberation of the complete area of Yerushalayim including the site of the *Beit Hamikdash*, on the 28th of the same month. Let us pray that we will soon merit that the political entity we received will be increasingly more essentially Jewish, which will enable us to build the State in a manner that its Torah values are at its center.

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by Rav Daniel Mann

Question: In an article of yours in Torah Tidbits about whether a guest has to make an act of acquisition for the *matza* at the *seder* (you said he does not), you used the concept of *setimat haposkim* (the silence of halachic authorities) as a proof. Can you tell me why and when one can use this concept?

Answer: *Setimat haposkim* is a post-Talmudic tool for helping decide halacha. We have found several hundred occurrences of the phrase in the Bar Ilan Responsa Project, especially among *Acharonim*.

The thesis of *setimat haposkim* is that if a certain common halachic issue or a distinction in a halacha is not raised, or is raised in only a handful of sources, one can assume that the consensus of *poskim* opposes it. The logic is that if the matter had been accepted to a reasonable degree, it would have found its way into several rabbinic sources.

How do we know, then, what the halacha is, when there are no sources on the case? Usually, one should assume that the simple understanding or practice is correct. If there is an accepted halacha but there is logic without sources to limit the halacha to certain cases, *setimat haposkim* indicates that there is no halachic distinction. Regarding a matter like the one you referred to, where the issue is whether to require a special act (e.g., of acquisition for the *matza*), *setimat haposkim* is a reason to not require an act that is not mentioned as necessary. *Setimat haposkim* is often used to reject a new stringency, as it would have been irresponsible for a large number of *poskim* to have omitted it, were it necessary. It can also be used to reject a novel leniency.

Scholars in many areas of research can use this tool. For example, if a researcher studying the history of a particular neurological disorder made an extensive study of medical records of a certain era and found no evidence of relevant symptoms, he might safely conclude that this disorder did not exist then or was extremely rare.

There are certain conditions that must be met in order to employ *setimat haposkim*. First, one must have searched through a sufficient number of sources. Sample size is always important, especially when drawing conclusions from what is not written. The necessary volume depends on a few factors. If the situation at hand is common, relatively fewer sources are needed. Regarding responsa literature, common issues would be expected to come up more often. Regarding codes, while codifiers cannot discuss every case, it is more important to discuss common issues.

Another factor is the proximity of the issue to topics in the literature. If there are detailed sources about cases similar to the issue at hand, the absence is more significant. Returning to our example, a medical textbook that surveys, say, 150 medical conditions can be 'forgiven' for not mentioning a given neurological disorder, but a detailed textbook on neurological conditions cannot.

One must be experienced and careful in using *setimat haposkim* and know how to analyze the background. In our medical example, perhaps in the studied era, the disorder was viewed as a psychological, not a neurological disorder, thus explaining its absence in the neurological contexts. Returning to halacha, perhaps the issue is common nowadays but was not in the past. For example, one should not dismiss pre-nuptial agreements due to a lack of source material on their past use since there were, in the past, fewer recalcitrant husbands and, consequently, a smaller need. Sometimes an issue is barely discussed because the answer was taken for granted. For example, the laws of a *mechitza* in *shul* became a relevant topic only when some people tried to do away with it and then only in certain circles. Previously, its existence and requirements were a given that did not raise halachic questions. Using grape juice for the Pesach *seder* was not discussed because grape juice was not available in the spring before the days of vacuum packing.

In our day and age, *setimat haposkim* is a more compelling tool than ever. We have access to far more *seforim* than our predecessors both because with every generation more works have been written and because we have easier access to more of them. There are works on virtually all topics that give summaries with extensive footnoting and indexing. Certainly, with powerful computer search engines that now exist, an experienced researcher should be more confident in coming to conclusions from what he does not find.

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Ein Ayah

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

Exaggeration in Dreams

(condensed from Ein Ayah, Berachot 9:36)

Gemara: Rav Chisda said: Neither a good dream nor a bad dream is completely fulfilled.

Ein Ayah: Hashem planted the power of imagination in man so that he can picture the good and the bad that can come in the future. In that mode, the picture is generally more extreme than what actually happens, and this is for man's benefit.

When the good is exaggerated in a person's imagination, he is able to enjoy his expectations in a more joyous and optimistic light, which strengthens his body and spirit. When the bad is portrayed in an exaggerated way, so that it is more frightening than what actually occurs, it will make the person more determined to avoid that which can bring on the realization of the negative possibility.

Dreams are a result of the power of imagination, even though they have a connection to a person's future, based on the deep plan that Hashem set when He created the world and connected the powers of physicality, spirituality, and ethics to each other. However, since they emerge from the power of imagination, dreams, whether good ones or bad ones, cannot be fulfilled fully.

An Uninterpreted Dream

(condensed from Ein Ayah, Berachot 9:37)

Gemara: Rav Chisda said: A dream that was not interpreted is like a letter that was not read (Rashi- it is not good and not bad, for all dreams follow their interpretations).

Ein Ayah: A letter that is sent is a sign of the desires of the person who sent the letter. It can also be a factor in whether these wishes are fulfilled. Whether or not the recipient reads the letter obviously does not change the desire of the sender. However, whether or not he reads it impacts whether his desire is carried out. Reading it may help it come about. If the recipient does not read it, though, the sender can still work on having his desire fulfilled in other ways.

Since dreams are a set part of the nature of a person's soul, they must have a purpose. One of the purposes is to prepare a person for that which may come to him in the future. Like other powers that serve people, a dream's positive or negative potential is realized when one connects human intellect to it. So too, the realization of preparing a person for what will be in the future by means of a dream is connected to the interpretations of dreams. The interpretation incorporates the understanding of the spirit, the quality of the imagination, and its connection to what transpires in the world.

When one has a dream interpreted correctly, it turns out that the dream properly prepares him for a future event. If it is not interpreted, this preparation is not made. Certainly, the desire of He who sent the dream does not change as a result of the lack of interpretation. Rather, Hashem will see to it that that which needs to transpire will transpire with the help of other factors, whether external or internal. Still we view those who interpreted a dream and were thereby involved in its realization as if they caused the result. This is similar to what Chazal said about the *pasuk* (regarding one who did not erect a fence around his roof): "Lest the one who falls fall" (Devarim 22:8): the person was fit to fall from the six days of creation, but good things are brought about by good people and bad things by bad people (Shabbat 32a).

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P'ninat Mishpat

A Kibbutz's Rights to Fringe Benefits

(condensed from Hemdat Mishpat, rulings of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) is a member of a *kibbutz* (=pl) who served for many years as a teacher outside the *kibbutz*. According to the *kibbutz's* agreement with its members, all salary, funds, and property that come into the member's possession are to be given to the *kibbutz*. One of the benefits that a teacher receives is a fund to be used to take enrichment classes, and def took advantage of this opportunity over the years. Upon def's retirement, he was allowed to convert remaining money in the fund to a cash payment, which came to approximately 50,000 shekels. Pl claims that this money is a form of income, which belongs to them. Def counters that this fund is earmarked for a special type of personal use, which makes it off-limits to pl. Secondly, def claims, there have been occurrences where other members of the *kibbutz* kept monies that likely should have gone to the *kibbutz* according to the letter of the law, and pl did not take action.

Ruling A *kibbutz* is a special type of framework founded upon the value of partnership and equality, which finds expression both in the social sphere and in the legal sphere. When *beit din* is asked to decide matters in the legal/monetary realm, it must base itself on the written agreements between the members of the *kibbutz* and the *kibbutz* as a whole. *Beit din* cannot be influenced by the social elements of the dispute, which is the domain of the *kibbutz* itself. Thus, complaints about favoritism and selective enforcement are not relevant in the venue of *beit din*. Only when a certain manner of handling financial matters becomes the norm does it become a factor that *beit din* should take into account. By means of analogy, if workers at a factory steal raw materials and the management does not always prosecute or punish such workers, this does not mean that they cannot take action against a certain individual worker. Only if the situation is that the management, as a rule, lets workers take the materials may a worker follow the established norm. Therefore, *beit din* will not alter its ruling based on alleged individual cases of selective enforcement of *kibbutz* rules.

The *kibbutz's* by-laws are the basis of the members' rights and privileges in relation to the *kibbutz*, based on the rule that "if one makes a condition, everything follows the condition" (Shulchan Aruch, Choshen Mishpat 176:5). The by-laws clearly state that any money or property that an individual receives from any source is supposed to be handed over to the *kibbutz*. The use of the enrichment fund was an exception as long as its purpose was such that it could be used only by an individual member, in this case, def. However, once def converted the assets into money that can be used for any purpose by anyone, those monies are like any other that def received. This is similar to other fringe benefits that can be converted into money that can be used for any purpose, and thus it is pl's right to receive that money.

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