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HEMDAT YAMIM

PARASHAT HASHAVUA

Shemini, 20 Adar II 5774

The Main Thing is Either Intention or Result

Harav Yosef Carmel

Before commencing the regular service in the *Mishkan*, Aharon and Bnei Yisrael were commanded to offer special *korbanot*. Aharon was to bring a calf as a *chatat* (sin offering), and Bnei Yisrael were to bring a goat for a *chatat* and a calf and a sheep as an *olah* (burnt offering) (Vayikra 9:1-3). The Sifra (Shemini 1:3) relates that Moshe told Aharon that even though Aharon was forgiven for the sin of the Golden Calf, he still needed atonement for it. Yet, Moshe pointed out, Bnei Yisrael needed more atonement than Aharon did because not only did they need atonement for their involvement in the Golden Calf but also for the sale of Yosef, in which most of the forefathers of Bnei Yisrael were involved. Since the sale involved the slaughter of a goat (to cover up the disappearance of Yosef, making their father believe that Yosef was killed by a wild beast), they had to bring a goat as a *chatat*.

(One can discuss how the *midrash* reads the *pasuk* regarding the status of Bnei Yisrael's calf offering – whether it was an *olah* or a *chatat* – and thus in which way it served as an atonement. It is also interesting to note that this is the only appearance of the phrase "*egel ben bakar*" in the Torah, while we find many appearances of "*par ben bakar*.")

Many quills have been broken in trying to explain the connection between the two sins for which Bnei Yisrael needed atonement – the sale of Yosef and the Golden Calf – two events that were separated by several generations and were obviously perpetrated by different people. We will discuss this week the Malbim's explanation, which appears in his commentary on the aforementioned Sifra.

The Malbim explains that in the case of each of these sins, Bnei Yisrael had a claim that minimized their guilt and perhaps could have had them exonerated from the harshest punishments. Regarding the sale of Yosef, the brothers could have claimed that the end result of their action must be considered. Due to their sale of Yosef, Yosef eventually emerged as a powerful leader, and he also was able to save Bnei Yisrael by providing for them food and security during a grave time of famine and danger.

Regarding the sin of the Golden Calf, they could have made the opposite claim. Although the idol worship that resulted from the creation of the Calf was horrible, their intention was just to do something which would cause the Divine Presence to dwell among them. Thus, while misguided, their actions were in the realm of an attempt at service of Hashem.

Before beginning to serve Hashem, properly this time, Bnei Yisrael had to cover themselves. Whether the main factor is the result or it is the intention, they were deserving of full punishment and in need of atonement for at least one of the sins and, to an extent, for both. This is why Bnei Yisrael's need for atonement was so pronounced. We also should point out that since the goat preceded the calf, the first thing for which they required atonement was for the sin between man and his fellow man. Only afterward did they seek atonement for the sin between man and his Maker.

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by Rav Daniel Mann

Cosmetic Surgery

Question: What does halacha have to say about cosmetic surgery?

Answer: We will survey halachic elements of the topic that relate to cases where it is readily understandable why a serious observant Jew would feel a need or a strong desire to have surgery. Needless surgery or, in the other direction, cases of gross malformations are, respectively, very different matters from a halachic and a philosophical perspective.

The fundamental issue that the *poskim* discuss is that of damaging oneself. The *gemara* (Bava Kama 91b) refers to a *machloket* among *Tannaim* whether one is allowed to damage himself, and the Rambam (Chovel U'mazik 5:1) and Shulchan Aruch (Choshen Mishpat 420:1) rule it is forbidden. The question is whether totally elective surgery done for an understandable reason is included in the prohibition. On the one hand, in the immediate stage, surgery includes cutting the body, and Tosafot (Bava Kama 91b) says that one may not damage himself even for gain. On the other hand, *Chazal* allowed cutting the skin for certain purposes, including bloodletting and removing splinters (Yevamot 72a; Sanhedrin 84b). Some say that a procedure done to correct a blemish, even if it is just a significant aesthetic one and not a classic medical problem, is considered healing and included in the doctor's mandate to heal (Mishneh Halachot IV:266, based on Ketubot 74b). Others infer from the Rambam's language that only violent damage to the body is forbidden, not constructive cutting done to improve it (Igrot Moshe, Choshen Mishpat 5:66; see Minchat Shlomo II:82 and Minchat Yitzchak VI:105). There is a difference between the two approaches to leniency in a case where the initial situation is not one of a blemish, while the surgery can still provide substantial and not frivolous improvement. Yabia Omer (VIII, CM 12) reasons that one should distinguish between different levels of gain.

Another issue is the potential danger to life from surgery, specifically one that requires general anesthetic. Objectively, in our times, the chance of death from simple surgery is tiny (assuming a responsible choice of medical practitioners). While we do not generally take stands on medical questions, one could say that the danger is roughly equivalent to that from driving a few hundred miles. While there have been *poskim*, at least decades ago (Minchat Yitzchak *ibid.*, Aseh Lecha Rav IV:65), who have forbidden cosmetic surgery that requires anesthetic on those grounds, this is a difficult position to take (see Yabia Omer *ibid.*).

Some *poskim* suggest an interesting distinction between the genders. Cases in which men act with concern about their own appearance to a degree that is not normal for men raise questions of a prohibition of *lo yilbash*. While this literally refers to cross-dressing, *Chazal* apply it to several activities that are normal specifically for the opposite gender. One *gemara* (Shabbat 50b) says that it is permitted for a man to remove certain scabs from his face due to pain, but it is forbidden for beautification. Rashi (*ad loc.*) explains that the problem is *lo yilbash*. Tosafot (*ad loc.*) says that pain does not have to be physical but that if a man is embarrassed to be among people in that state, "there is no greater pain than that." Therefore, while there is likely to be a difference between genders regarding the extent of blemish that justifies intervention, surgery can be permitted for a man whose aesthetic problems would be disturbing for the average man (Mishneh Halachot IV:267; Minchat Shlomo *ibid.*).

The Tzitz Eliezer (XI:41) claims that performing surgery to change one's G-d-given appearance (excluding the results of illness or injury) is improper intervention in the way Hashem created the world. Most of his contemporaries reject or ignore this position regarding cases where patient's feelings are understandable. However, it is worthwhile to add this philosophical point to the above halachic ones regarding cases where there is absolutely nothing wrong with a person's appearance.



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Ein Ayah

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

Details Prove Sanctity

(condensed from Ein Ayah, Maaser Sheni 17)

Gemara: [In the declaration upon fulfilling the *mitzvot* of *ma'aser*, one says] "... I did not stray from the *mitzvot* that You commanded me" – this means that "I did not take off *ma'aser* from one species onto another species, and not from the detached from the ground onto the attached to it or from the attached onto the detached, and not from the new onto the old or from the old onto the new."

Ein Ayah: *Mitzvot* have impact in two ways. One is through each *mitzva's* specific purpose. The other, even greater, impact is by virtue of their being G-dly commandments, and this sanctifies and purifies the heart. It also provides the *mitzva* with the character of sanctity that befits it and operates within the depths of the soul so that the impact will last forever, as the *pasuk* says: "The word of our G-d will stand forever" (Yeshaya 40:8).

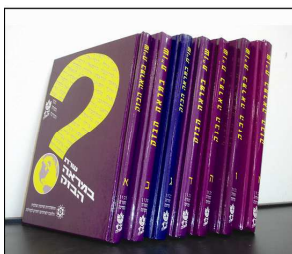
How does one clearly stress that *mitzvot* are G-dly [and not a humanly motivated moral act]? This is done by fulfilling the *mitzva* in great detail and with many conditions. If the only purpose of *mitzvot* related to the revealed moral elements, there would not be grounds for such extensive requirements. These wonderful minutiae infuse the *mitzva* and the one who performs it with the spirit of Hashem by reminding the person that he is involved in the *mitzva* of Hashem. Although the *mitzva's* evident purpose exists, he is made aware that Hashem, whose wisdom is beyond comprehension, commanded it.

Therefore, we should look deeply into the meaning of the words and letters of the Torah along with the reliable traditions about the details of the *mitzva*, which complete the internal message that we do not claim to understand everything about the *mitzva*. Actively fulfilling the *mitzvot* with all their details has an even more profound impact. One perceives that there is more than the pleasant *mitzva* based on its known reason, for example, the idea of strengthening the Torah by giving presents to the *kohanim* and *levi'im*. It teaches him that we, with our very limited intellect and emotion, are not capable of imagining all the glory and significance of the general benefit to the nation and to the world for all generations as the Master of all Actions knows. Therefore, the intricacies show that we are drawn by "ropes of love" to the purpose of *mitzvot*, not just according to our limited perception but based on Hashem's broad wisdom.

The Torah's wording of the declaration, "I did not stray from Your *mitzvot*," teaches the idea of not passing over the boundary of the fulfillment of the *mitzvot* as divine *mitzvot*. Therefore, there are divine limitations on how the *mitzva* can be fulfilled, even though according to the human outlook on them, the details should not be important. Thus, the intricacies provide the *mitzvot* with their full aura, grandeur and permanence.

This idea is particularly appropriate regarding the declaration that accompanies a G-dly *mitzva* that has reasons that are clear to man, e.g., giving tithes. The message is to try to fulfill the *mitzva* without missing its specifically divine elements which are noticeable specifically by virtue of the details that can only be due to their godliness. It is reminiscent of the world of nature, where being careful about something's specific physical attributes shows the great breadth of the wisdom of the rules of nature. These intricacies of nature exist throughout the physical and spiritual world, as set up by divine omniscience.

"I did not stray from Your *mitzvot*" and was careful to keep them within their character and fulfill them to their fullest without allowing intellectualism to claim to encompass the entire *mitzva*. It is not enough that I gave to the *levi*, the foreigner, the orphan, and the widow. I also put the divine light into the *mitzva* and showed that I am involved in the service of Hashem and in lofty rules that do not allow passing over boundaries.



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Hasagat G'vul Regarding Franchise Arrangements with the Government

(based around Shut Maharam Padova 74)

[This second installment from the work of Rav Meir Katzanellenbogen of Padua, Italy is partially based on classical halacha, but incorporates elements of the practices of the Italian Jewish community of the time. While we are not used to harsh words such as he uses, we are also not used to the communal structure and the economic strategies adopted at other times under circumstances not all of which presently exist.]

There is a new phenomenon which has come to destroy and to be *masig g'vul* (enter the domain of an existing business). There are stores in the region who have already paid for their franchise from the king to be involved in usury, and now others are coming, some clandestinely and some openly, to buy rights from the king so that they too can lend with interest. In doing so, they have ignored the *cherem* (ban) that has always been in place within the Italian community on this matter. It is also pertinent that we do not follow the opinion of Rabbeinu Tam which says that it is enough for someone to be willing to take part in the local taxes in order to have the right to compete with local businesses (see Bava Batra 21b). Rather, we hold like Rashi that he must have been taking part in paying local taxes beforehand.

Therefore, these people will be punished for violating the local established rules of following Rashi on the question of *hasagat g'vul* and for violating the specific *cherem* in regard to establishments of usury. This is also included in the older *cherem* of Rabbeinu Gershom not to take away from another Jew's franchise arrangement regarding the renting of houses, [as this is a similar type of financial construct, as applied to a different time and place]. This is all the more so if the original business paid money while being told they were receiving exclusive rights. The idea of equating the rules for the two different types of franchises was the ruling of my grandfather Rav Yehuda Mintz for the community of Padua.

I have also heard that this bad practice has begun to take place in the community of Orkaneilo, as well. Therefore I am telling them and anyone else who reads these words that whoever has acted in this way requires atonement for their past deeds, and if they will purposely act this way after reading my words, they are to be excommunicated.

If someone who is involved in these practices has reason to think that these rules do not apply in his case, he should go to a nearby *beit din* to ascertain what the Torah says on the matter. The one condition is that the rabbi should not be under the same government and that the owner of the first business should be present. Let the two present their arguments and follow the ruling they will receive.



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