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PARASHAT HASHAVUA

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Seeing – In Perspective

Rabbi Daniel Mann

The Torah presents the *mitzva* of *hashavat aveida* (returning lost objects) in a manner that teaches other lessons as well. The Torah writes: “Do not see your brother’s ox or his sheep wandering and you will turn a blind eye to them; return them to your brother” (Devarim 22:1). This *mitzva* seems to be written both in positive and negative terms in order to strengthen the *mitzva*. Yet, the *gemara* (Bava Metzia 30a) paradoxically learns that “there are times that you may turn a blind eye” and applies it to a case where it is beneath the dignity of the finder to be involved in returning it. What caused *Chazal* to explain the *pasuk* in this way, and what can we learn from it?

Another surprising linguistic phenomenon in this section is that the last *pasuk* of the set on *hashavat aveida* is an apparent repetition of “do not turn a blind eye.” It is likely that *Chazal* understood (and this is the way the *Sefer Hachinuch*, among others, lists the *mitzvot*) that the second appearance is the negative commandment. As a result, the first appearance can be used for the nuanced idea that there are times not to ignore the lost object and times to ignore it. There may be a hint from the proximity of sections as well. The Torah previously teaches the *mitzva* of burial. Rav Hirsch says the *mitzvot* are connected because burial is, in a way, the returning of a lost object (the body), which was separated from its master (the person’s soul) and needs to be handled properly. One can also connect the *mitzvot* in a related but different way. One of the main sources for the concept of making halachic accommodations due to human dignity refers to special halachic allowances needed to bury (e.g., for a *kohen*) when he is uniquely needed to do so due to the dignity of the deceased. The next *pasuk* would then continue the theme – *hashavat aveida* can also be waived to preserve the finder’s dignity.

One of the differences between the two examples of human dignity is that regarding burial one is obligated to be concerned about another’s dignity (the deceased). In contrast, the finder is allowed to exempt himself if he feels that the situation is such that if it were his animal he would not *shlep* it through the streets. However, such people are encouraged to follow the example of Rabbi Yishmael ben Rabbi Yossi who returned a lost object despite his exemption (Bava Metzia 30b). The *gemara* continues to stress the importance of going beyond the letter of the law and concludes that the Second Temple was destroyed because of people’s unwillingness to do so. Rav Hirsch suggests that the idea of the *hashavat aveida* exemption is hinted at with the connection of “do not see ... and turn a blind eye.” In other words, you can’t look and ignore. However, when one looks carefully, sees the whole picture, and realizes that *hashavat aveida* is not called for, he has the right to do so. However, when looks at the picture, he fully has to look at the whole picture and determine not only when the *mitzva* must be fulfilled as opposed to when there is an exemption, but also when it is appropriate to apply the exemption and when it is proper to push oneself and forego the exemption.

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by Rav Daniel Mann

Shortening Psukei D'zimra to Catch Up

Question: I have noticed in a few *shuls* that a minority of the *tzibbur* starts *Shemoneh Esrei* (=SE) together and many people who come in a few minutes late do not try to catch up. Isn't it correct to skip parts of *P'sukei D'zimra* (=PDZ) in such a case?

Answer: The Shulchan Aruch (Orach Chayim 52:1), based on *Geonim* and *Rishonim*, rules that one should shorten PDZ in order to catch up to the *tzibbur* and details the order of precedence. The Shulchan Aruch allows skipping all of PDZ if needed for that purpose (Yalkut Yosef (PDZ 24) concurs), while most Ashkenazi *poskim* require a minimal PDZ (Mishna Berura 52:6). (Some say it is important to finish *Yishtabach* with the *tzibbur* (see Avnei Yashfeh, OC I:10), but starting SE together is the main issue (Mishna Berura *ibid.*.)

Discussion was awoken by a passage in the Maggid Meisharim (quoted in Ba'er Heitev 52:1) in which Rav Yosef Karo's angel warned him to come to *shul* early because skipping parts of PDZ is like "fiddling with the pipes." The Ba'er Heitiv continues that many pious people thus do not shorten PDZ even if they come late.

There are few reasons to stick by the Shulchan Aruch's ruling despite the story involving its author. First, the *maggid's* instruction was to come early to shul, which actually implies that if he did not come early, he should skip parts of PDZ (Eliya Rabba 52:4). Furthermore, we do not follow kabbalistic sources against a halachic consensus (Chacham Tzvi 36). It may be different for people who follow all kabbalistic practices (see Ma'amar Mordechai 52:1), [few of whom read our column]. While significant halachic authorities follow the Ba'er Heitev's understanding of Maggid Meisharim, the pillars of contemporary halacha do not (see Mishna Berura *ibid.*; Igrot Moshe OC, IV:91; Yechaveh Da'at V:5; Halichot Shlomo 8:41).

Cases that the classical sources did not discuss explicitly are riper for *machloket*. The Sha'arei Teshuva (52:1) says that if one *davens* too slowly to keep up with the *tzibbur*, he is allowed (apparently not required – see *Ishei Yisrael* 12:22) to say everything at his own pace and miss SE with the *tzibbur*. The implication is that he is not required to start *davening* early to "build up a lead" (*ibid.*). (He should, though, have his *tallit* and *tefillin* on and have recited *Birkot Hashachar* by the time the *tzibbur* starts PDZ.)

The Eshel Avraham (Butchatch- 52) says that it suffices to join the *tzibbur* at *chazarat hashatz*, and one should not skip PDZ to start the silent SE together. This depends on a broad question of if or to what extent *chazarat hashatz* counts as *tefilla b'tzibbur* (see Yabia Omer II, OC 7; our column, Tazria 5766); the Pri Megadim (EA 52:1) says it does not. This question has an opposite ramification in a different case in our issue – does one shorten PDZ to make it on time to *chazarat hashatz* when he anyway will miss silent SE? Each fundamental approach has a strong basis, but we prefer the approach that *davening* along with the *chazarat hashatz* fulfills a lower level element of *tefilla b'tzibbur*, but that regarding our context the crucial point is only the beginning of silent SE (Mishna Berura 52:6; Halichot Shlomo 8:41 (citing Rav S.Z. Auerbach)). (It is very difficult to read the classical sources any other way.) Starting SE significantly late but while the *tzibbur* is still *davening* is probably a similar level as that of joining *chazarat shatz*, and it is also permitted only if one will finish his SE by *Kedusha* (Shulchan Aruch, OC 109:1; Pri Megadim 109, EA 2; see B'tzel Hachochma IV:3).

In summary, we recommend to skip as much of PDZ as needed to give one a good chance to start silent SE (and, in most cases, *Barchu*) together. We respect other legitimate opinions, especially under certain consequences (see above). Having a *shul* start SE without a large percentage of the *tzibbur* joining together is regrettable. While it is proper to slow down to the average participant's *davening* speed, "holding back" those who come on time to accommodate latecomers is also problematic.



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Ein Ayah

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

Learning All One Can from a Great Teacher

(condensed from Ein Ayah, Shabbat 1:19)

Gemara: Rav Chisda was holding two portions of cow meat (given to *kohanim*). He said: "I will give these portions to whoever comes and tells me a new teaching of Rav." Rava bar Machsiya said in the name of Rav: "One who gives a present to his friend should inform him, as it says: '...to know that I am Hashem who sanctifies you'" (Shemot 31:13). Rav Chisda gave him. [Rava commented about Rav Chisda's great love for Rav's teaching:] "That is as Rav said: 'Nice clothing is dear to those who wear them.'" Rav Chisda said: "The second teaching is even better than the first. If I had more, I would give you."

Ein Ayah: Eating meat is somewhat distant from the way of the Torah, and it is a concession to the *yetzer hara* when people have a craving for it (see Devarim 12:20). More fundamentally, man needs meat to strengthen himself, which is crucial for his physical and spiritual success. Were it only for physical success, eating meat would still be immoral in relation to the animal kingdom, but since spiritual advancement will lead to an eventual progression toward world spirituality that will encompass animals, it is fair to partake of animal meat until that historic stage is reached. It is therefore most appropriate for meat to be eaten in the context of an increase in wisdom, and it is problematic for an utterly non-spiritual person to eat meat (see Pesachim 49b). That is why the Torah instructed to give specifically meat to *kohanim* (the only other species that the Torah, not the Rabbis, required to be given to *kohanim* are grain, wine, and olive oil), as cow meat is particularly capable of spawning deep thought (Bava Kama 72a).

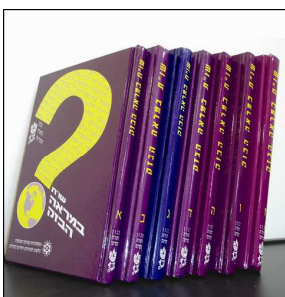
There are two special elements to acquiring the Torah taught by a scholar of historic proportions: the wisdom itself, and the clearer picture it gives of the holy Torah personality, which is collected from the sparks emanating from his various teachings. That is why one who helps complete a disciple's picture of his master by providing a missing piece of knowledge deserves to receive a double portion [as Rav Chisda gave].

The first teaching Rava told captures the idea that it is better to sacrifice the personal high level of doing acts of kindness without external gain in order to allow the world to be improved by allowing the recipient to experience gratitude, an attribute that can affect the masses. This spiritual sacrifice is reminiscent of the great person's eating of meat so that he can have strength even though he feels guilty for causing an animal's death, as we expect a great person to feel (see Bava Metzia 85a).

The excitement Rav Chisda felt for the teachings of his great master, Rav, showed that he was fit for the thoughts of Rav and that they allowed him to grow from and implement them practically. This is not to be taken for granted, as there are different paths of wisdom to which different scholars gravitate, and one should follow his feeling. That is why Rava related another teaching of Rav by equating Rav Chisda's connection to that of one who is used to wearing a certain fine garment, which is a level beyond just owning the clothing.

Rav Chisda was even more taken by Rava's second teaching in Rav's name because it related not only to an intellectual teaching but to a practical one, which is the highest utilization of his master's teachings. It would have been most appropriate to capture the specialness of learning this new teaching by performing an action – giving a present to Rava – which Rav Chisda lamented he was unable to do at that time. However, the feeling of wanting to do so stemmed from a feeling of natural sanctity and an internal inclination.

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P'ninat Mishpat

Competition Between the Licensed and the Not Licensed

(based around Shut Shoel U'Meishiv I:1:20)

[In a certain town, a Jew had a store, which was licensed by the government and for which he paid a tax, while another Jew had a competing store without a license or paying a tax (for some reason, the authorities did not stop him). The licensed store wanted to prevent the unlicensed store from operating, including possibly by complaining to the authorities about him.]

In general, even if one does not pay taxes, he has a right to compete with another proprietor if he lives in the city where the business is (see Shulchan Aruch, Choshen Mishpat 156:5). However, it is arguably different regarding a tax that is specifically on the right to open a store, and perhaps the idea of *pasact l'chiyuta* (you ruined my livelihood) applies.

Still, it seems that the complaint is valid only in a case where the authorities have decided how many stores of one type there will be and the unauthorized proprietor causes that number to be exceeded. Otherwise, if he is allowed to open a store, just that he should have to pay a tax, what impact does it have on the paying proprietor if the government has similarly made his competitor pay or not? Even if one would say that the competitor would not have opened if he had to pay a tax, we still can counter that someone else would have opened a competing store. In truth, it is not clear that the whole claim of *pasact l'chiyuta* is accepted regarding someone from the same city. It is ostensibly a matter of *gerama* (indirect damage), and if it cannot be proved that the competitor is damaging in a way that someone else would not have, he cannot be stopped. One cannot claim that the fact that he unfairly has a store prevents a third person from opening a store because there is no specific person who can make that complaint.

One circumstance in which the licensed storeowner can complain is if the unlicensed storeowner is charging cheaper prices. [Although usually one can charge lower prices,] it does not make sense to allow someone to do so when it is likely he can do so because he does not have the expense of paying a tax.

If the above is not the case, then to complain to the authorities about him is a case of *mesira* (causing the non-Jewish authorities to punish a fellow Jew), as follows from the Yerushalmi in the 1st perek of Peah.

According to the conclusion of the *sugya* in Bava Batra we do not accept the opinion of *pasact l'chiyuta* and the fact that we do not allow competition from outside the city is because of *chezkat hayishuv* (the rights of town dwellers). This does not apply here because they are both from the town. Within the town, each one can say, "I am working within my own domain." Only in a case like that which the Aviasaf discusses, where one puts his store at the entrance of a dead-end street when the competition is inside is it forbidden because it is considered directly damaging the other.

[There is further technical analysis of the *sugya*, but we will summarize that unless the unauthorized proprietor takes advantage of his situation to undercut the prices, he cannot be removed or reported to the authorities in order to cause him damage.]



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