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PARASHAT HASHAVUA

Tazria Metzora, 29 Nissan 5775

Hashem's Glory – Essential or Additional?

Rabbi Daniel Mann

[In deference to our readers outside Israel and since we often "pass over" Parashat Shemini due to Pesach, we will deal with Parashat Shemini rather than Tazria Metzora.]

Parashat Shemini describes what could be considered the first day of the operations of the *Mishkan*, "the eighth day," following the seven days of *miluim* in which Moshe had been serving as the *kohen*. After Aharon offered several *korbanot*, the Torah writes: "Moshe and Aharon entered the Tent of Convocation, and they exited and blessed the people, and Hashem's glory (*k'vod Hashem*) appeared before the entire nation. Fire came out from before Hashem and consumed on the altar the burnt offering and the fat ..." (Vayikra 9:23-24).

What is "Hashem's glory" that the fortunate people of that time merited experiencing? Prof. Nechama Leibowitz develops various possibilities by comparing this portion to the first time in the Torah the phrase comes up – in *Parashat Beshalach* in the context of the *manna* that fell for the first time in the desert. There the phrase actually comes up twice – once as a promise that the people would see Hashem's glory in the morning, the time the *manna* fell (Shemot 16:7). It appears again when the people looked to the desert and "alas, Hashem's glory was seen in the cloud" (ibid. 10). Rashi and the Ramban (ad loc.) both say that these same words refer to different phenomena. The former is that the great miracle of the falling of the *manna*, a unique creation, was a miracle that illustrated that Hashem was with the nation. The second was a manifestation of the Divine Presence. Where does our *pasuk's* glory of Hashem fit into things? The Rashbam connects our two *p'sukim* with Beshalach and says that the fire coming out of the heaven to consume the offerings was a unique miracle that showed the people that Hashem was with them. Thus, Hashem's glory was the miracle. The Ramban (Bereishit 18:1) says that Hashem's glory in our *parasha* is the ostensibly unnecessary appearance of the Divine Presence. Usually, Hashem appears to a holy person to communicate with him. However, when the Divine Presence appears just to reward a person or the nation with a sign of His presence without further communication, this is called Hashem's glory. According to this, the Divine Presence was a palpable revelation of Hashem, whereas the consuming of the offerings was a miracle that showed that Hashem "appreciated" and accepted them.

The Ramban is consistent with his approach to the main point of the *Mishkan/Beit Hamikdash*. The Ramban (Sefer Hamitzvot, Aseh 20) says that the main idea is to provide a house for our service of Hashem. The Ramban (beginning of *Parashat Teruma*) develops the idea that the essence of the *Mikdash* is as a place where the Divine Presence dwells (see development in *Minchat Asher*, Vayikra 48). Thus, according to the Ramban, the sign of the success of the *Mishkan*, for which Moshe and the people had anxiously awaited (see Rashi, Vayikra 10:23), was the appearance of Hashem's glory. The additional miracle of the consuming fire was a one-time extra. The other approach, which we can attribute to the Rashbam and Ramban (each from a different part of the equation) is that the *raison d'être* of the *Mishkan* was to have sacrifices that evoked Divine acceptance. Thus, the fire that consumed the *korbanot* was the miracle that engendered Hashem's glory.

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by Rav Daniel Mann

Stealing by Accident?

Question: If one accidentally took and used a friend's similar coat, is he considered a *ganav* (thief)? Is he obligated to pay *kefel* (double)? Must he pay the owner if something happens to it (*onsin*)? [The querier then presented sources he found about *geneiva b'shogeg* (unintentional theft).] How can there be *geneiva b'shogeg* considering one needs intention to acquire something?

Answer: We will only scratch the surface of the scholarship on whether one is obligated for *geneiva b'shogeg* and relate to some of the issues you raise.

The K'tzot Hachoshen (25:1) is among those who posit that a *ganav b'shogeg* is exempt. He infers this from *Rishonim*, but his main rationale is that the concept of culpability for accidental financial harm to his friend is limited to *mazik* (one who physically damages another's property) because it specifically is derived from a *pasuk*. Thus, if one takes another's object without damaging it, he is not responsible to pay for it. Of course, he has to return it when he finds out the truth, but the matter is important if it was lost, damaged, or passed on to someone else.

The Machaneh Ephrayim (Geneiva 7) cogently presents opinions of *Rishonim*, but agrees with those who obligate a *ganav b'shogeg*. He is particularly impressed by the *gemara* (Pesachim 32a) concerning payment made by one who accidentally ate *teruma*, which says that if the food's price went down after he ate it, he pays the higher price because "it is no less than one who steals." The Machaneh Ephrayim sees this as proof that there is payment for *geneiva b'shogeg*.

Let us now discuss your quandary about the need for intention. The *gemara* (see Bava Kama 79a) does speak of a *kinyan* (an act of acquisition) as a necessary step for the obligations of a *ganav*, and *kinyanim* require a certain level of intent. However, not all of the levels of intent pertinent to *geneiva* are equal to those regarding other acquisitions. If one lifted up an object to move it out of his way, he would clearly neither acquire nor be considered stealing it. If he wanted to use it without ever returning it, this would be intention for theft even if he tried to be "shrewd" by having in mind to "not acquire it" (it indeed would not become his). Furthermore, even one who intended to briefly borrow something without permission is considered a *ganav* (Shulchan Aruch, Choshen Mishpat 359:5).

The Machaneh Ephrayim makes a relevant fundamental distinction. *Geneiva b'shogeg* can be culpable when one intended to bring the object from another's possession into his own. If one thought he was just continuing using his own, that would not be considered an act of stealing. (This idea is indeed parallel to the halacha regarding intention to acquire something legally (see Yevamot 52a).) According to this, the accidental coat switcher is not even a *ganav b'shogeg* and does not have, as of the time he took the object, the accompanying responsibilities for its welfare. Cases in which *geneiva b'shogeg* applies include unknowingly buying a stolen object or even borrowing one.

The Marcheshet (II:32) posits that a *ganav b'shogeg* has the basic obligations of a *ganav*. He sees the K'tzot Hachoshen's source to exempt – the obligation of an unintentional *mazik* – as the source to obligate an unintentional *ganav* as well. As such, though, just as a *mazik* is exempt *b'oness* (under extenuating circumstances), so too a *ganav b'oness* is exempt. In our case, taking another's coat is usually *shogeg* rather than *oness*. According to this approach, it could be considered *geneiva*. Regarding intention, he does intend to use something that turned out to actually belong to someone else.

All agree that one is not disqualified for anything (e.g., testimony) due to such an unintentional *aveira*. *Kefel* is never levied in our days, and it is thus not discussed much by *poskim*. However, logic and implicit statements indicate that this *k'nas* (penalty), which applies to only certain types of theft and when one is exposed by witnesses, is predicated on full culpability and does not apply *b'shogeg*.



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Ein Ayah

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

The Torah's Impact on Our Spiritual and Physical Lives

(condensed from Ein Ayah, Shabbat 2:16)

Gemara: The *pasuk* says, "Outside of the partition of the testament [between the Holy and the Holy of Holies] they will arrange [the *menora* (candelabrum)]" (Shemot 27:21). Did He really need its light? Is it not so that during the forty years in the desert, they went in His light? Rather it is a testament to the people of the world that the Divine Presence dwells within Israel.

Ein Ayah: The internal light, the light of the Torah, divine inspiration, and prophecy, flowed from the light that emanated from the *Beit Hamikdash*. Hashem provided it for Israel alone, whereas the nations did not have a part in it.

The light of Torah provides Bnei Yisrael with guidance that elevates them above the lowliness of materialism and brings them close to the divine light. Even if this light would keep them in the dark concerning external, nonspiritual life and not help them progress and adorn their intellect in practical physical matters, this spiritual light would still be worthwhile. However, in truth, Hashem's Torah also teaches us things in mundane life. Its wisdom helps us succeed and become a powerful nation, full of practical knowledge and wisdom, as the Torah's special sanctity elevates Israel to a lofty station with a spirit of sanctity and knowledge of Hashem and His ways.

By means of parable, the *menora* spread its light outside the partition of the testament. The light at this location indicates internal light, connected to the honor of Hashem, reaching beyond to provide Israel with external light. This external light provides Israel with good manners as individuals and a dignified mode of activity as a state and kingdom.

One may wonder: why does a holy nation, which possesses holy, internal light, need external light, whose purpose is for matters that are the realm of the nations, whose satisfaction is limited to external life. That is what the *gemara* meant by saying, "Is it not so that during the forty years in the desert, they went in His light?" In other words, during that time, when Israel's life was based on miracles, they lacked nothing, even though they did not have experience in normal activities needed to provide for a nation in the physical world. Rather, miracles from Hashem's "strong hand" and the revelation of His Divine Presence provided for them. Doesn't that show that Israel does not need a lower level of cultural life?

If Israel could maintain the high level they reached in the desert indefinitely, that would have been fine. However, Hashem could not allow a situation whereby if they sinned and their level went down, they would have no preparation for an external light that would then be necessary. That requires a lowering of level, which emanates from sanctity, which enables other forms of service of Hashem and setting a different form of sanctity.

The *gemara* continues by explaining that the light was to show the world that the Divine Presence dwelled in Israel. Specifically, only when external light connects to internal light, does Israel overlap with the rest of the world. The nations that reach a nice level in their natural development will recognize the grandeur and sanctity of the Torah and its paths and will come to grasp the upright ways of Hashem and His wisdom through the light of Israel. This is possible only when an external light shines also on Israel. This enables the nations to appreciate what we have to offer, whereas they are not prepared to absorb internal light, and the testament itself would not impact upon them. When the two lights are connected and we are able to develop good natural lives as a developed nation through the light the nations can see, along with Torah, then we will be able to serve as a proper testament.

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P'ninat Mishpat

Taking Guarantees from Parties to Assure Mutual Participation

(based on Chelkat Yaakov, Choshen Mishpat 3)

Case: Reuven from Belgium, who is visiting Zurich, is suing Shimon in *beit din* in Zurich. Shimon agrees to participate only if Reuven is willing to put in escrow the money for which he wants to sue Reuven in another case. Shimon explains that he is afraid that Reuven will leave and never agree to adjudicate on his claims. Does Shimon have the right to link these two cases?

Ruling: The Rama (Choshen Mishpat 14:1) says that even though the plaintiff generally has to go to the defendant's place to adjudicate, one can sue a visitor in the town he is visiting. This halacha, which comes from the Maharik (14) is based on the same reasoning that Shimon is using.

The Rama also says that when one has the authority to have the courts seize funds to secure possible future payment, this requires the defendant to come to the plaintiff's place to adjudicate. The Rama (CM 73:10) says that in our days, we are relatively willing to seize funds in that way without proof of great need, and the Shach (ad loc.) says that it is quite common to even let the non-Jewish courts carry out this process. In our case, we are not even talking about unilaterally seizing new funds from Reuven, but just having Shimon refuse to adjudicate in Reuven's suit against him until such guarantees are made.

Although there is a concept that we "first address the needs of the plaintiff" – i.e., we do not wait until the defendant presents material for a counter claim (Shulchan Mishpat, CM 24) – we do not do so when this will cause a loss to the financial standing of the defendant. In any case, there it is talking about a case where the plaintiff is in possession of an ostensibly valid document. The concept also does not apply if that which the defendant is claiming can be used as payment for the plaintiff's claim, as it is then considered as if the defendant is claiming that he already paid (see Netivot Hamishpat, ad loc.). In this regard, it is important to compare, at first glance, the apparent strength of the mutual claims. In our case, neither side starts off with an obviously strong claim.

It is true that the Maharsham (II:165) says that we *pasken* like the Shach that *beit din* does not generally force a defendant to put money in escrow, due to a concern that the money may get lost. However, when it is possible to make a guarantee for the defendant, it is permitted to demand escrow. In this case, Shimon is deserving of financial guarantees that Reuven will agree to go to a *din Torah* on his claims in return.

On such matters, we say that the level of guarantees and other necessary steps are up to *beit din's* discretion (see Shach, CM 75:34). Therefore, *beit din* should try to determine to what extent Shimon's claim that Reuven should not be trusted is convincing. In order to even things out, it is also suggested that *beit din* similarly take financial guarantees from Shimon, who also could be guilty of evasive behavior, despite his ostensibly well-founded claims.



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