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PARASHAT HASHAVUA

Acharei Mot Kedoshim, 6 Iyar 5775

"Be Holy" – Regarding Workers Rights, Too

Harav Yosef Carmel

In the beginning of *Parashat Kedoshim*, the Torah warns: "Do not cheat your friend and do not steal; do not leave overnight by you the pay of a worker" (Vayikra 19:13). The Torah repeats in *Sefer Devarim*: "Do not cheat the wages of a poor person ... on its day pay his wages ..." (Devarim 24:14-15). *Chazal* saw an employer's obligation toward a worker as a very serious matter and derived that an employer who is not careful about payment can violate up to five negative commandments (Bava Metzia 111a). While Rashi claims that some of the commandments apply to all workers and some only to poor workers, the Zohar on our *parasha* stresses the severity of these matters even in regard to rich workers.

Following is a rough translation of the Zohar's strong statement. Whoever shortchanges the payment of a worker is like one who takes the soul of the worker and the members of his family. He harmed the soul of the workers; Hashem will shorten his life and take away from his Life to Come. The Rabbis said that the above is true for rich workers and all the more so for poor ones. This is how Rav Hamnuna would act: at the moment his worker would complete the job, he would say, "Take you soul," and he would pay him right away. Even if the worker said that Rav Hamnuna could hold on to the money because he did not need it yet, he would not agree. Rav Hamnuna would say that just as he could not be master over his worker's body, so too he could not be master over his soul. This is something that is reserved for Hashem, as the *pasuk* says: "In Your hand I entrust my spirit."

This is among the sources that illustrate the extent to which the Torah was careful that we not detract from a worker's rights. The matter is all the more so when the worker's economic status is low and he makes no more than minimum wage. This applies not only to the wages of waiters and supermarket cashiers. This applies also to workers in educational institutions, including Torah education institutions. Not always do they receive all the benefits that are coming to them according to the law of the State, whether it be various social benefits or timely payment. Our *parasha* teaches that it is not enough to be careful about the *kashrut* of the food that the institutions feed their students and about modesty in dress and in action. They should be even more careful not to cheat workers out of what they deserve, whoever and wherever they work.

We hope that the "Torah world" will serve as a model for proper treatment of workers, just as it should be a model in a variety of Torah-mandated areas of behavior. This is included in the title and opening of our second *parasha*: "Be Holy."

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by Rav Daniel Mann

The Need for a *Mechitza* Without a *Minyan*

Question: Is there a need for a *mechitza* between men and women when there is no *minyan*?

Answer: We must start our answer with some sources that serve as the basis for the need for a *mechitza*. Most explicit discussions on the matter are relatively recent, as the *mechitza* was taken for granted without halachic discussion until the 19th/20th century."

The *gemara* (Sukka 51b) tells of structural changes made in the *Beit Hamikdash* to deal with the growing realization of problems of modesty between the genders. Rav Moshe Feinstein (Igrot Moshe, Orach Chayim I:39) is prominent among those who learned from the fact that such changes in the *Beit Hamikdash* are generally prohibited that the need for separation must be a matter of Torah law.


The only context in which there is any Orthodox unanimity that a physical separation is necessary is when *davening* in *shul*. It appears that the concept need not be linked specifically to *davening*, as the *gemara* says that *Beit Hamikdash* renovators based themselves on a *pasuk* relating to a funeral (Zecharia I:28:12). On the other hand, in practice there is not a history of anything close to universal separation between the genders. Rav Moshe (ibid., OC V:12) makes a distinction between settings that are private (i.e., by permission only), which do not require separation, and those that are open to the public, which require.

Since the setting of *davening* in *shul* is unique in its unanimity and its level of definitiveness, it is worthwhile to investigate the *halacha's* scope by broadening your question. Does all *tefilla* require a *mechitza*? Does everything in *shul*? How do we define a *shul*? A man is not allowed to *daven*, learn aloud, or even make *berachot* when exposed to a lack of modesty (see Shulchan Aruch, OC 75 with commentaries). However, it is agreed that regarding *davening* in a place that is not set for *tefilla*, the formal requirement of *mechitza* per se does not exist. This is more obvious in a public place, like a plane. The need for a *mechitza* is more of an obligation to put one in the proper place than a prohibition to *daven* without it. Therefore, since there is no way to expect an airline servicing Jews and non-Jews to put up a *mechitza*, there is no problem. Even in places like *sheva berachot* and a *shiva* house, there is not a formal need for a *mechitza* (see Igrot Moshe ibid.).

If men are *davening* in a *shul* at a time when there is no *minyan*, it would seem that a *mechitza* is needed if women are present (one or two women are likely not a problem (see ibid.; Ishei Yisrael 9:28)). After all, they are *davening* and the *shul* has sanctity that elevates *tefilla* even without a *minyan* (see Shulchan Aruch, OC 90:9).

What about a place that is set for *tefilla* without a *minyan*? The *gemara* in Megilla 27b can be instructive. In explaining the various positions on whether a communal *beit kneset* can be sold to become a *beit kneset* of an individual, the *gemara* raises the claim for R. Meir that an individual's *shul* does not have *kedusha*. Rashi (ad loc.) and others explain that this is because matters of *kedusha* (i.e., elements of prayer that require a *minyan*) are not recited there. On one hand, this downplays the status of a *shul* without a *minyan*, but many posit that even according to R. Meir it has some *kedusha* (Ramban, ad loc.) and at least the status of a *beit kneset*. We note that many places that have semi-regular *davening* but without a *minyan* usually have several other uses, which also makes it less like a classic *shul*, in which we know a *mechitza* is required.

Tying things together, we suggest the following approximate guidelines (there are many slightly varying cases). In a room that is treated like a *shul*, just that it belongs to such a small community that there is not usually a *minyan*, there should be a *mechitza*. In a multi-use room that has semi-regular *davening* but without a *minyan*, *davening* should be done with a separation between men and women, but a *mechitza* per se is not necessary (assuming it is done in a way that there are no modesty in dress problems).



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Ein Ayah

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

The Purpose of the “Western Lamp”

(condensed from Ein Ayah, Shabbat 2:17)

Gemara: [The *menora* was] a testament to the world that the Divine Presence dwells in Israel. How was it a testament? Rav said: It refers to the *menora*'s “western lamp,” into which they put the same amount of oil as the other ones, but from it they would light and with it they would finish.

Ein Ayah: [Last time we saw that the *menora* represented the internal light emanating from the holiest parts of the *Mikdash*, spreading to outside the *Mikdash*.]

External (material) life requires external light. There is a difference between Israel and the nations concerning how much external light is needed to enjoy a life of culture as is common for rich, powerful, cosmopolitan nations. Religious life is one of the important needs of every nation. Regarding their external life, religion has to find its place and not overstep its bounds and conflict with other spiritual lights.

This is very different for Israel. Other nations do not have other lights to improve their social and national life. Therefore they borrow light from their religion, but it remains unconnected to other facets. In contrast, the testament in Israel is that the Divine Presence dwells and shows that the Torah is the source of life for all of its aspects, including the most complex external ones. Our humanism does not stem from what is known as culture but from Hashem's Torah that we merit to have in our midst.

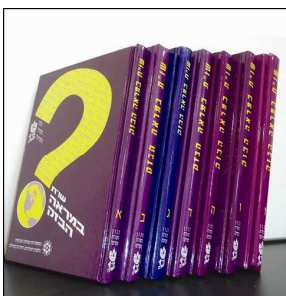
The purpose of external life in the Jewish mindset is also different. It does not have a separate purpose but rather serves to prepare us to be what we can from a perspective of internal light of Torah.

[What is the significance of the western lamp?] The Divine Presence is [most strongly] found in the west. This is in contrast to the east, which is the direction in which the material world is most strongly felt, as the sun begins to give its light there. Israel strives for lofty lives that transcend such concerns, as the *pasuk* says: “The moon will be shamed, and the sun will be embarrassed, for Hashem will reign in Zion and in Jerusalem, and there will be honor toward the wise” (Yeshaya 24:23). We look forward to a time when there will not be a need for the light of the sun and the moon, as we will function by the light of Hashem (see *ibid.* 60:19). This divine light is hidden in the souls of Israel, the nation that can say, “When I sit in darkness, Hashem is a light for me” (Micha 7:8). Hashem's light is thus felt in the west, where the sun stops giving its light.

In holy venues, the internal light (represented by the western lamp) serves alone. Concerning external matters, it serves along with the other lamps. Superficially, it is not discernable as superior to the other lights (i.e., all the lamps receive the same amount of oil). However, the *gemara* says that they would start in the *Mikdash* from the western lamp. This represents that we start all worthwhile efforts from the light of Torah, which lifts us to the highest levels of a wise nation that is able to excel in all facets of life. That is the idea of lighting from the western lamp. The idea of finishing with that lamp hints at the idea that it provides the goals for all of our activities in life. We live in order that we will, individually and collectively, reach the high level that the Torah sets out for our lives. This is the testament for Israel, as it is something that no other nation received.

The miracle that the western lamp always stayed lit shows the world the source of the dwelling of the Divine Presence in our midst. While in many parts of our external life we share much with the nations, the place from where it comes and to which it is directed is particularly lofty and holy. While the western lamp looks the same and contains the same amount of oil, it still stands out as the source of the light of others and remains light-emitting forever.

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P'ninat Mishpat

Money Lost in Transit

(based on Chelkat Yaakov, Choshen Mishpat 7)

Case: In 1939, Reuven told Shimon's wife (both in Zurich) that Shimon should send him 1,000 units of gold currency from Shimon's home to Reuven's (both in Poland) and wanted to give her 600 Swiss francs. She was not sure Shimon could send the money, so she did not take Reuven's francs. Reuven was afraid to take the francs to Poland, and so he gave them to Levi to watch. Shimon informed his wife he could send the gold, and she asked Levi for the francs. Levi said he would give them francs only when Reuven sent word from Poland that he received the money. Shimon's wife told Shimon to send the money to Reuven. By the time Reuven sent the money at the post office, thinking his wife had already received the francs, WW II had just broken out. A few months later, Shimon came to Zurich with proof he sent the money to Reuven, but Levi refused to give the francs because Reuven, now under Russian control and unable to be contacted, had not yet confirmed receipt. Shimon claims that since he followed Reuven's instructions, he deserves the money, even if Reuven did not receive his. (Shimon needs the money immediately to move to Israel or elsewhere, as the Swiss authorities will not let him stay there.)

Ruling: The Shulchan Aruch (Choshen Mishpat 121:1) says that if a lender tells his borrower to pay via a messenger, even one who cannot be a halachic *shaliach*, and it gets lost in transit, the borrower is exempt. We assume this as long as it is not reasonable that the lender thought the borrower would accompany the messenger. In this case, Reuven could not have expected Shimon to accompany the money from one side of Poland to another; rather, he meant the money should be sent through the post office. Therefore, if Reuven were here, we would require him to pay Shimon.

It is true that CM 121 is referring to releasing the borrower from payment, and here we are referring to creating an obligation (to give francs). However, the Tiferet Yisrael (to Bava Metziah 91b) says that the two are equivalent. This is not a simple assumption when one sends the money with one who cannot be a *shaliach*, given that there are two opinions in the Rama (CM 380:1) whether one who says "Throw money to the sea, and I will pay you" is obligated if he does so. The Ran (Kiddushin 8a) says that when one gives money as instructed via a thinking person (as opposed to throwing to the sea), he is obligated like a guarantor. This applies in our case. It is even possible to consider the non-Jewish post office as a *shaliach* according to the Machaneh Ephrayim that a paid worker is considered a *shaliach* even if otherwise unfit.

Even though Levi stipulated that he would not give the money without Reuven's confirmation, since Reuven owes Shimon and Reuven's only available money is in Levi's hands, Levi has to give it based on *shibudda d'Rabbi Natan*. It might also make a difference that Reuven was originally willing to give the francs before the gold currency was sent. Additionally, even if we view the matter as a doubt whether the responsibility for the lost money is Reuven's or Shimon's, there is a double doubt in Shimon's favor, because it is possible that Reuven really did receive the money, even if Levi cannot confirm it.

Despite the above, I employed a compromise because it is possible that Shimon was negligent in sending the money two days after the war started, even though he claimed that at that time there was still order in Poland.



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