



HaRav Shaul Israeli zt"l
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HEMDAT YAMIM

Parashat HaShavua

Matot, 30 Tamuz 5776

The Power of Speech

Harav Yosef Carmel

Our *parasha* begins with the laws that arise from oaths, especially in the context of family relationships. That makes it a good time to discuss the power of one's speech. Based on the power the Torah gives to a person's oaths, things that he says can change matters on the ground in many ways.

The power of speech is stressed as early as the story of creation. "Hashem created man, dirt from the earth, and He blew into him the soul of life, and man became a *nefesh chaya* (lit., a living spirit)." Unkelus (who provides a quite literal translation, with cases of anthropomorphisms being common exceptions) translates the end of the *pasuk* as "spirit that speaks."

On one hand, oral communication is not unique to humans, as many species have the ability to make sounds with which they communicate. There are many different forms of communication among species throughout the world, on the ground, in the air, and even in the sea. We might note that whales can send and receive sounds over great distances. The matter is that speech is not just the ability to communicate within a social setting. Man is able to express himself in abstract matters and to connect to Hashem through Torah. At the time when prophecy was prevalent, speech had an additional function in connecting to Hashem, and even imagination was involved in accepting divine messages.

The higher and more developed a person's abstract thinking is, the deeper he can go in his Torah study. This ability allows one the merit of being a partner in developing Torah through the generations, which even makes him a partner of sorts with Hashem, through the powerful medium of the Oral Torah. This finds expression, first through the spoken word and only later through the written word, as the Oral Law was allowed to be written only later in history and only reluctantly. Man's involvement in this process makes him unique and the crown of creation. This requires him to guard the sanctity and purity of his thoughts and his speech, and the importance of this matter cannot be overstressed, for these are the utensils for his connection to Torah and the Divine Presence. (Protection of what one looks at is also a critical value.)

Since speech enables creativity, it is no surprise that oaths are an important subject that the Torah stresses, as we find in our *parasha*. The negative commandment against violating that which one accepted upon on himself by means of an oath is "*lo yachel*," perhaps best translated as do not de-sanctify. This same root is used to describe the harming of the relationship between early humanity and Hashem, which *k'v'yachol* chased away the Divine Presence (Bereishit 4:26). The *midrash* (Bereishit Rabba 23) sees the root as connected to rebelliousness, as it is used in the context of the pre-flood generation (Bereishit 6:1) and of Nimrod (ibid. 10:8).

The idea is apparently that preventing involvement in spirituality on a deep level is rebellious against Hashem. At some point in the future, we will discuss the connection between idolatry, murder, and adultery/incest and between the ability to speak and think abstractly. In the meantime let us pray that we will merit fixing our shortcomings in these important areas.

Refuah Sheleymah to Orit bat Miriam and Elchanan ben Adina

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Ask the Rabbi

by Rav Daniel Mann

Halachic Ramifications of Ad-blocks

Question: I went on a religious website, and it detected that I have an ad-block program. They gave me a choice to disable my ad-block or continue while violating *geneiva* because ad-blocking takes away their *parnasa*. Would it be forbidden to continue with ad-blocking?

Answer: (We are not addressing the desirability of avoiding ads, some of which are not appropriate; hopefully a religious site's ads are appropriate.) At first, this seems to depend on the broad question of intellectual property rights. Reuven produces something of value to the masses and, due to financial considerations, attaches conditions, classically not to copy even if one legally bought the object with the content (e.g., book). Here, the question is making viewing a site's contents conditional on allowing advertisements on your screen.

Much has been written on the topic (see articles in Techumin VI). Our opinion upholds the halachic basis for guaranteeing such abstract rights in various contexts (see Living the Halachic Process, II, J-1; Techumin XXXII: p. 233-237). In short, there are three main issues, none of which are both unanimously held and apply in all circumstances, that can forbid using someone else's "creation" freely. 1. A form of theft even without an object being taken. 2. A requirement to pay for benefit received from another's property (*neheneh*). 3. *Dina d'malchuta dina* – the law of the land upholds many of the creators' claims to ownership.

Ad blocking causes great losses to many website owners. Historically, many technological innovations, including the internet itself, have enriched some and impoverished others. Upholding intellectual property rights also does not support every claim by every "owner," so let us analyze.

Let us start with #3. As far as we have seen, ad-blocking is not illegal, and we do not know if the site's warning is legally significant. Thus, it is questionable whether *dina d'malchuta* will forbid using the site with ad-block.

Neheneh is complex to apply in this case. We rule that *zeh neheneh v'zeh lo chaser* (the user gains without the owner losing) is exempt (Shulchan Aruch, Choshen Mishpat 363:6). However, if the owner incurs any damage from the usage, the user has to pay the entire benefit he received (Tosafot, Bava Kama 20b; see Noda B'Yehuda II, CM 24). In this case, the site owner apparently sustains a loss when people use the site, in that it slows down the server, making the site less attractive to those who bring in revenue. While each individual person's impact is negligible, the owner can argue that he treats ad-block users as a group he is unwilling to allow "for free." On the other hand, it is possible that users cause more gain than damage even with ad-block (analysis is beyond my expertise), just that the site owner wants to force them to provide greater advantage. This would preclude a *neheneh* obligation (see Bava Kama 21a). If it is a site with ample free alternatives, there may not be enough user benefit to pay. Therefore, it is hard to be conclusive on this matter.

While we are not confident the issues above make it forbidden to use ad-blocking against the pleas of the website, we believe the owner can make it forbidden to use it. Even in a case of *zeh neheneh v'zeh lo chaser*, if the owner says up front that he forbids usage, it is indeed forbidden (see Shulchan Aruch, *ibid.*). At first glance, this restriction applies only according to those (far from unanimous) opinions that intellectual property is owned in a manner that stealing applies. However, here the owner is in a stronger halachic position because the user is connecting to a physical server, owned by them or, usually, by a web host whom he pays for their services. Therefore, usage is like using remote control to use someone's equipment against his will, which is forbidden.

Therefore, our tentative position is that an owner can forbid you to use his site. (What it means if they do not prevent access but say it is forbidden is unclear.) **We invite feedback on different elements of this new topic.**



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Blessing for Those Who Know How to Appreciate the Future

(condensed from Ein Ayah, Shabbat 2:226)

Gemara: Due to the sin of not giving *terumot* and *ma'asrot* (tithes to *kohanim* and *levi'im*, respectively), the skies are prevented from giving rain and dew ... If they give, they are blessed, as the *pasuk* says: "Bring the *ma'aser* to the storehouse, and it shall be food in My house, and test Me in this ... if I will not open up the skylights of the heavens and pour out limitless blessing" (Malachi 3:10) – until your lips get worn out saying "enough."

Ein Ayah: A person's affection for a *mitzva* is affected by his understanding of its purpose, which increases with his knowledge of the depths of the Torah and the ways of Hashem. This can be lacking in the realm of general lack of connection to Torah or in a more localized manner that relates to a specific *mitzva*, making him lax in fulfilling it.

The general deterioration is more serious, as it represents a darkening of the divine light in the world. The specific lacking for a *mitzva* is less severe, but while it does not indicate a cursed status, it does not represent blessing. To fully appreciate a *mitzva*, the nation's spiritual status must be excellent, and the general populous must be able to recognize the positive impact of holy people. When the proper outlook is strong, life improves dramatically.

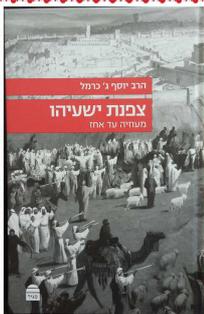
Before a dangerous deterioration of people not giving *ma'asrot*, first a lack of appreciation of the impact of holy people and of the covenant of *kehuna* may weaken their enthusiasm to give. Even if a person does not reach the level at which he denies *kohanim's* status, he might say that in his time it is not of value, as it will be obvious only in the Days to Come. So while he does not violate the laws, he looks for loopholes to obviate the need to give, a phenomenon the *gemara* bemoans (see Berachot 35b).

While this is not very destructive, as people follow the rules, it is far from a situation of blessing. Such a generation does not fully appreciate the true values of life and how the eternal spiritual needs (i.e., the place of *kohanim* and *levi'im*) transcend the situation in any specific era. The general level is a product of the cumulative service of many generations, which build "palaces" in the heaven and on earth based on embracing Torah and *mitzvot* in full vigor. It is not enough for people to comply with divine commands without sensing their greatness, the divine grace they contain, and their responsibility for the world's development.

With a limited outlook, man can never have full satisfaction or success. How can an external blessing be valuable if he does not see the purpose of life? When life is not firmly settled, true blessing cannot take hold in the world. Each generation must elevate itself to a broad outlook that sees how the power of life must be cumulative over generations, and, in that way, emulate Hashem, Who is from the outset and is also with those of later generations (see Yeshaya 41:4). Then, even if the *kohanim* are not making an obvious impact in the present generation, they are still crucial due to their assured crucial role in the Time to Come, based on the connection built in the past, present, and future.

When things are viewed correctly, life deserves internal blessing, which can find expression in physical things as well. Not violating the *mitzvot* of *ma'asrot* is not enough; one must make the effort to actually give with intention and love. The resulting blessing is wonderful. On one hand, it is in the physical world, while its foundation is general and internal. The blessing brings one to realize that life is intrinsically good even when it requires hard work.

Then man is ready for a blessing in which one continually says "enough." One can never have such satisfaction when his life is only focused on the present, as he will never be satisfied with what Hashem gave him. When received properly, the blessing fills one's spirit, so that enthusiasm breaks forth externally (lips) as well, as an expression of internal emotion.



Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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P'ninat Mishpat

A Loan or a Gift? – part II

(ruling 74052 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: A few years ago, Shimon wanted to buy a home and asked his brother, Levi, for help. Levi gave him 60,000 shekels and then later another 100,000. Levi has put Shimon on notice that he wants Shimon to repay him the 100,000 shekels, which was a loan, when he has the ability. Shimon asked *beit din* to make a declaratory ruling that the money had been a gift. This, he says, is evidenced by the fact that there was no loan contract and is in line with the many gifts Levi had given Shimon over the years. Something had just caused Levi to “change his tune.” Levi says that originally Shimon had asked him for a loan for the entire cost of the home, but that he had agreed only to a more modest gift plus a loan. Levi described a discussion before the loan in which he had said that he was unable to give the 100,000 as a gift. Shimon says that occurred well after the money was given, and that, in any case, Levi had previously pledged the money as a present, without which Shimon would not have bought the home.

Ruling: [*The main subject we saw last time was the different opinions in the poskim on whether the claim that money was given as a present is believed without a migo.*]

It is possible that the claim that money was a present is a stronger one when the parties are close relatives. There is an apparent contradiction regarding cases where a man gives something of value to a woman with whom marriage does not take effect, whether the man can demand the object back or whether we assume it was given as a present. The Yeshuot Yaakov says that when the recipient is a sister, we assume it was a present, and when it is a woman who is not related, we do not assume it was a present.

On the other hand, we find several important sources that indicate that we do not assume presents even between close family members. When a father-in-law obligated himself to feed (“on his table”) his daughter and son-in-law for a certain amount of time and after it was completed, they continued eating there, the father can later charge them for what they ate and the children are not able to say that it must have been a present (Rama, Choshen Mishpat 246:17, based on Terumat Hadeshen 317). The Mahari Ibn Lev (I, 77) discusses someone who fed his young stepson, whom he treated like a son, for years. The son died as an adolescent, and the father sued his estate (the son had inherited a significant amount of money) to return the money he spent on him. The ruling was that although the two were close, we are to assume that money was given with the rights reserved to demand it back at a later time unless there is real evidence that it was a gift.

The distinction that explains the varied sources is that presents between relatives are common, but that when large amounts of money are involved, there have to be special indications that the money was a gift which the giver cannot demand to have returned (see article by Rav Yoezer Ariel in Techumin, vol. XXVII).

[*Next time we will explore the possibility that Levi did not stipulate explicitly that he wanted the money returned but that this was his intention.*]

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