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# HEMDAT YAMIM

## Parashat HaShavua

Toldot , 3 Kislev 5777

### The Left Hand Should Push Away and the Right Draw Close

Harav Shaul Yisraeli – based on Siach Shaul, p. 84-6

As the two brothers, Yaakov and Eisav, were born and developed, Israel's constant tension vis a vis Eisav's descendants was set for generations. The struggle began with the prophecy before their birth that "one nation will overcome the other nation" (Bereishit 25:23).

Let's look at Hashem's part in all of this. Rivka was barren and needed a miracle to conceive. Why did the miracle include a twin brother, who anyway is not part of the Chosen Nation? Taking various statements of *Chazal*, we arrive at an answer. Shir Hashirim Zuta (1:15) indicates that Eisav was born with the possibility of greatness, and the Tachuma (Shemot 1) blames Yitzchak for the failure by not disciplining Eisav. True, Yitzchak's intentions were good, as he did not want to distance Eisav. However, he could have done what *Chazal* (Sota 47a) call having one's left hand push away and his right hand draw close.

So, the two nations in Rivka's womb could have turned into two tribes, and jealousy between the two could have pushed them toward greater spiritual achievement. However, instead, Eisav, and eventually Amalek, emerged from the lost potential. The epic historical struggle that ensued will end with "Saviors shall come from Mt. Zion to judge the mountain of Eisav" (Ovadia 1:21). However, the blessing of the conception of twins could have ended positively.

Indeed we can find areas of gentleness and goodness in Eisav. His treatment of his parents was legendary (see Bereishit Rabba 65:16). Even his hypocrisy before his father stemmed from his sincere desire to make him happy. On the other hand, his bad attributes grew out of control, which led to transgressing five cardinal sins (Bava Batra 16b). How do these trends go hand-in-hand?

There is such a thing as a nature that one starts off with. Educational work is required to make the most of the nature, bridle it, and direct it. Eisav, the son and grandson of Yitzchak and Avraham, respectively, inherited very positive characteristics. But that is not enough. His personality as a whole had to be kept under a more effective guard. "I have created the evil inclination, and I have created Torah as a remedy" (Kiddushin 30b). That is the only way to restrain the wild side of an Eisav.

There are groups in Israel these days that talk about "Jewish identity." We know they are not happy about the situation; they wanted more than this. However, identity is just not enough. It is not enough for an Israeli to grow up knowing how his father and his grandfather prayed, without following them. Having some respect for his parents is not enough to prevent him from fooling them into thinking that he is more than he really is. We need youngsters to dwell in the tent of Torah, like Yaakov.

"The actions of the fathers are a sign for the children." The mistakes of our parents (i.e., Yitzchak) must also be a warning. Amalekites do not emerge immediately. It starts with Eisav, who at least had an element of embarrassment from sin. His grandson was a full-blown evil person. Pushing away with the left is an effective tool to accompany the drawing near with the right. We need this to fix our generation, as was the case throughout history.

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# Ask the Rabbi

by Rav Daniel Mann

## Musaf or Hallel?

**Question:** After *davening Mincha* on Rosh Chodesh, I (a woman) wanted to make up *Hallel* and *Musaf* that I did not have a chance to do in the morning. I saw that I did not have enough time before sunset to do both. Which one should I have done?

**Answer:** There are certain set factors that *Chazal* used for precedence, such as *tadir* (the one which is more regular) and *mekudash* (the one that has more sanctity). On these grounds, there is what to discuss regarding *Musaf* and *Hallel* (see Igrot Moshe, Orach Chayim III:70). However, the subject is somewhat complicated to delve into in this context, and so we will leave those elements as inconclusive.


You had a few reasons to give the preference to *Musaf* over *Hallel*. One is their relative importance for women. There is a *machloket* whether women are obligated in *Musaf*. The Tzelach (Berachot 26a) says that the opinions that women are obligated in *davening* similarly to men do not apply to *Musaf*. The reason to obligate them, despite it being a time-based *mitzva* is that it is critical since it is a request of mercy (Berachot 20b). However, since *Musaf* is a special *tefila* added in connection to the service in the *Beit Hamikdash* and does not have to do with requesting mercy, women are not obligated. There are a few reasons to claim they are obligated (see Elef Hamagen 106:4), with perhaps the strongest one being that we do not easily distinguish between one *tefila* and another (see opinions in Halichot Beita 6:(8)). The Mishna Berura (106:4) cites both opinions without expressing a preference.

In contrast, women are clearly exempt from reciting *Hallel*, which is a time-based *mitzva*, and at least on Rosh Chodesh, there are no special reasons to obligate them (Tosafot, Sukka 38a; Magen Avraham 422:5). While some women (perhaps including you) accept upon themselves an obligation to recite *Hallel* (see Be'ur Halacha to Orach Chayim 422:2), one would still give preference to the part of *davening* in which they are more likely to be innately obligated (*Musaf*). To this we add the fact that *Hallel* on Rosh Chodesh is only a *minhag* even for men (Tosafot, Berachot 14a).

Another factor favoring *Musaf* relates to the firmness of the deadline. You are working with the assumption that *Musaf* and *Hallel* (and presumably *Mincha*) must be done before sunset, which makes sense for non-Chassidic Ashkenazim. However, there may be room to *recite Mincha* several minutes thereafter (see Ishei Yisrael 27:6), based on one or more of the following factors. 1) According to Rabbeinu Tam and others, the day does not end until well after what we call sunset. 2) Even after sunset, it is not definite night, but *bein hashemashot*, which is treated as a doubt whether it is day or night. 3) If a certain moment during *bein hashemashot* is too late for *Mincha*, then it is time for *Maariv*, and therefore one can make a condition that the *tefila* count for whichever is appropriate (see development of this idea in Be'ur Halacha 233:1).

#3 does not apply to *Musaf*, which is uncalled for if it is night, and therefore *davening Musaf* after sunset, with all the questionable *berachot* involved, is very problematic. However, *Hallel* is different in this regard. Granted, the time for *Hallel* is only during the day (Megilla 20b), but that primarily relates to fulfilling the *mitzva*. There does not appear to be a prohibition to recite *Hallel* at night. You can, then, recite *Hallel* right after finishing *Musaf*, even if it turns out that you will not finish it by sunset, as long as you do so without a *beracha*. This way, you have a decent chance of fulfilling the *mitzva*. (It is not a problem to recite *Hallel* without a *beracha*, which is always Sephardic practice on Rosh Chodesh, based on several *Rishonim*.) Although one may not recite *Hallel* freely (Shabbat 118b), doing so on a one-time basis when it is possibly still the time for it should be fine. You could not do this for *Musaf* if you did *Hallel* first.

Therefore, we would have recommended doing *Musaf* first, followed by *Hallel*, without a *beracha* if it was after sunset.



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# Ein Ayah

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

## Rabbi Shimon's Painful Return to the "Physical World"

(condensed from Ein Ayah, Shabbat 2:279-281)

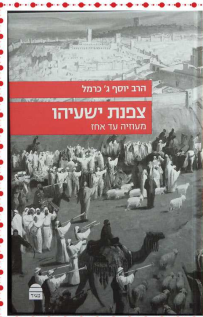
**Gemara:** [After Rabbi Shimon left the cave], his son-in-law, Rabbi Pinchas ben Yair, came out to greet him. R. Pinchas brought him to a bathhouse and was massaging his skin. R. Pinchas saw that there were cracks in the skin throughout his body. R. Pinchas cried, and his tears caused R. Shimon to scream out in pain. R. Pinchas said: "Woe is to me that I have to see you in this state." R. Shimon answered: "Fortunate are you to see me in this state, for if you had not seen me, you wouldn't be able to receive from me to the same degree."

**Ein Ayah:** The goal of R. Shimon's stay in the cave was to transcend life as known in the material world so that he could subsequently impact it with such strength as to sanctify it. He was to teach the ways of the lofty world to those who were overly entrenched in a world of physical feeling. Therefore, as long as he was in an elevated state, he did not notice the destruction of his physical state. When the time came to impact on the people of the material world, the first thing he needed to do was to rebuild his physical state, which had suffered greatly during the time that he was in a highly spiritual state.

It took the involvement of people close to R. Shimon for him to realize that he had a painful condition. This is in line with the need for his body to be repaired in order to impact on others, and so it was the crying of others that caused to him to feel the pain from his damaged body [*ed. note – I am not sure if this last line captures Rav Kook's intention.*] It was R. Shimon's own state that caused the pain. His body and his physical feelings were so forgotten due to the spiritual light that he was unaware of them. It was only his return to a connection with normal living beings which made him aware, and the return was needed because in order to impact upon them, he had to return to a semblance of belonging to their peer group.

From the perspective of Rabbi Shimon's ability to impact on others, his lack of physical normalcy and weakness was certainly a major detriment. It is true that from the perspective of the great person whose spirituality is growing, he does not notice his physical state greatly. The light of life is far greater, and it sweetens any possible feeling of pain and protects the lofty soul.

As far as the ability of people who are entrenched in the material world to be impacted by the great person, success depends upon the extent to which those people are able to connect to him. Rabbi Shimon told Rabbi Pinchas that not only for himself was it important that he had a period in which he allowed his body to deteriorate while becoming more spiritual. Rabbi Pinchas also benefitted from exposure to Rabbi Shimon's experience. It made it easier for him to appreciate the great light that emanated now from R. Shimon. Since no words could capture what had happened to R. Shimon and impacted his soul, the more R. Pinchas saw for himself, the more he could be influenced.



### 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

## Going to Beit Din After Suing in Secular Court – part II

(based on ruling 70004 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) sued the defendant (=def) in secular court. He sent a letter of claim, which made it necessary for def to hire a lawyer and write a letter of defense, but they have not yet had a hearing. Pl now says that he wants to go to *beit din* and claims that he sued in secular court just so that def would have to respond and could not continue to be elusive. Def says that he would have been happy to go to *beit din*, but since he already paid money in preparation for the secular court adjudication, he is now unwilling. He also suspects that pl changed his mind because he is afraid he would lose there, and def refuses to change venues on those grounds.

**Ruling:** [Last time, we saw that whether the idea that one who initiated adjudication in secular court and lost cannot demand a retrial in *beit din* is based on accepting the ruling or on penalty, it does not apply at the earliest stages of adjudication.]

The opinion in the Rama that we do a retrial in *beit din* after the non-Jewish court ruling was not said in a case that the first adjudication caused losses to the other side. The Lev Aryeh (52) says that this applies even to the expenses of hiring a lawyer, as this justifies employing a penalty against the one who initiated the improper judicial process. This seems to apply in our case. However, it makes sense that the Lev Aryeh is talking only about cases where the adjudication was completed in secular court. The Imrei Yosher (36) also argues with the Lev Aryeh and says that only irreversible damage, such as incarceration, prevents a retrial in *beit din*. Simple payment can be made up by having *beit din* make the plaintiff reimburse the expenses. In our case, pl has promised to cancel the claim in secular court before any further damage will be caused and to sign that he agrees that *beit din* rule whether he should reimburse def.

The Divrei Chayim (II:CM 1) said, regarding a similar case, that the plaintiff is required to pay expenses **before** continuing on to *beit din*. However, it is possible that this was only in a case when the plaintiff turned to *beit din* because he thought he would lose in the non-Jewish court and because the damage was very direct.

In our case, def has claimed that the reason pl wants to return to *beit din* is that he believes he will lose in secular court. There is logic to penalize pl in such a case and refuse the request. However, def has not provided support, let alone proof, for that contention. In general also, when there is a doubt whether a penalty is forthcoming, we do not levy one (see Nachal Yitzchak, CM 25).

There is also a *machloket haposkim* (see S'ma 26:7 and Tumim 26:3) regarding a case where one already received a reward in secular court adjudication that he did not initiate, with some saying he is required to go to *beit din* to confirm he deserves the money. This is one more reason to prefer that the adjudication be transferred at this point to *beit din*.

Therefore, pl is right to correct his path and return to *beit din* even if def wants to continue in secular court. (As usual, def may choose the *beit din* which will adjudicate.)

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