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HEMDAT YAMIM

חֶמְדַּת יָמִימִים

Parashat HaShavua

Yitro, 18 Shevet 5778

“His Congregation He Founded on the Land”

Harav Shaul Yisraeli – based on Siach Shaul, p. 236-7

The *midrash* (Bamidbar Rabba 15:18) connects the *pasuk*, “Assemble for me seventy men” (Bamidbar 11:16) to “He built the Heavens level upon level, and His congregation He founded on the land” (Amos 9:6). The *midrash* comments that, as hard as it is to say so, Hashem’s throne in the Heavens is stable only if Israel forms a cohesive congregation. What is the great significance of this unity? The *midrash* (Bereishit Rabba 38:6) says on the *pasuk*, “There is a connection in Ephrayim through idols; leave him” (Hoshea 4:17) that even if the people are idol worshippers, if they are connected to each other, Hashem will leave them unscathed. What possible positive element can come from the binding together of wicked people?

In our *parasha*, we find that Bnei Yisrael “stood at the bottom of the mountain” (Shemot 19:17), from which the *gemara* (Shabbat 88a) learns that Hashem held the mountain over the people’s heads. About that great event at Sinai, when the people said “We will do and listen,” the *midrash* (Shemot Rabba 42:8) says that they spoke differently than was in their hearts. But how could they have spoken deceitfully, if as a result of their great statement, the angels rewarded them by giving them special crowns (*gemara*, *ibid.*)?

We find that Bnei Yisrael soared up to the high level that enabled them to accept the Torah in an unnaturally precipitous manner (49 levels of impurity to 49 levels of sanctity). How did this occur? The turnabout was made possible by a unique revelation of the Divine Presence, especially at the Splitting of the Sea (Mechilta, Beshalach 3). The incredible revelation created a situation in which there was no room for doubts about Hashem, so that there was almost a suspension of free will. How can one refuse to accept the Torah and *mitzvot* when he clearly sees Hashem’s greatness?! This is the deeper meaning of holding the mountain over the people’s heads. It turns out, then, that Bnei Yisrael were not being deceitful when they said “we will do and listen,” but rather because of their overwhelming experience, they were unable to have the decision percolate through their consciousness. This is the idea of there being a difference between their statement and their hearts.

How did they reach this level? It came from the unity which *Chazal* saw in the encampment at Sinai (see Rashi to Shemot 19:2). This is because every person has two types of spiritual power: that which emanates from innate spiritual qualities (*segula*); that which results from positive actions. The fact that even a sinful Jew is considered a Jew (Sanhedrin 44a) stems from the *segula*. However, the strength of this *segula* is predicated on the nation being unique and united, so the unifying factor impacts their souls. For this reason, the mutual responsibility of members of the nation for the sins of others began only when the nation crossed into *Eretz Yisrael*. Only when unified by acquiring the Land together could every individual be compared to various limbs of one body. The *segula* found full expression, so that any straying from the path of the Torah was antithetical to the national existence. We praise the unity in Israel because it ultimately necessitates that Torah will exist. At some point, the sinning will come to its end and the nation will return to fulfillment of the Torah. “He built the Heavens level upon level, and His congregation He founded on the land.”

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Finishing Time for *Mincha*

Question: Am I correct that *l'chatchila*, it is proper to start *Mincha* early enough to finish before *shekiah*? If so, what are the key sources on the matter?

Answer: There are two opinions in the *gemara* (Berachot 27a) about the end time for *Mincha* – until *plag haMincha* or the *erev* (evening). The Shulchan Aruch (Orach Chayim 233:1) says that the latter opinion, which most people now regularly follow, is until *layla* (night), which for the Shulchan Aruch (see Mishna Berura 261:20) is around an hour after sunset. (There are two major approaches in the *poskim* whether what the *gemara* calls *shekiah*, which is the first part of the break-off point between day and night, is what we call sunset or is when the sun is well under the horizon. This *machloket* has many direct and indirect halachic implications, and this is one of them.) The great majority of us (except those who follow the much later opinion for the end of Shabbat and the time to start Ma'ariv known as Rabbeinu Tam/Magen Avraham) follow the opinion (often called the Gra's opinion) that halachic *shekiah* is sunset. The Rama (ad loc.) is more specific, saying that this means *tzeit hakochavim* (stars coming out).

The Mishna Berura (233:14) points out that they do not mean full night, i.e., *tzeit hakochavim*. Rather, the intention is for approximately a quarter hour before, when *bein hashemashot* starts and it is a doubt whether it is night or day. Furthermore, he contends that many disagree with the Shulchan Aruch and follow sunset like the Gra. Therefore, indeed *shekiah* is the presumed cut-off point. Because there are opinions that later is sufficient, there is room for leniency in times of great need (Mishna Berura, *ibid*), especially within the first thirteen and a half minutes, which is no later than *bein hashemashot* (see also Shevet Halevi IX:48).

Does one only have to start or also finish in time? Most *poskim* posit that, as a rule, things must be finished by their time limit, and this rule also applies to *Mincha* (Mishna Berura *ibid.*, Ishei Yisrael 27:6). A minority say the beginning is enough (Aruch Hashulchan, OC 110:5; see sources in Ishei Yisrael 27:(12)). Therefore, many *poskim* (Mishna Berura *ibid.*, Ishei Yisrael 27:6) say that it is better to *daven* without a *minyan* before *shekiah* than to finish it after *shekiah* with a *minyan* (*ibid.*). One could claim that given the minority opinions above and here, there is more reason for leniency if one starts soon before and ends soon after sunset (see Piskei Teshuvot 233:7). This, though, is not simple for those who do not heed Rabbeinu Tam's opinion at all.

Fundamentally, there is little difference between *Shemoneh Esrei* and *chazarat hashatz*, which, after all, is supposed to be *Shemoneh Esrei* for certain individuals and/or the *tzibbur*. On the other hand, if everyone already got in their own *Shemoneh Esrei*, the stakes regarding *chazarat hashatz* are lower. Therefore, it should not be a surprise that there is a *machloket* among *Acharonim* whether it is better to do a shortened *chazarat hashatz* (*heiche Kedusha*) or to finish *chazarat hashatz* after *shekiah* (see Ishei Yisrael 27:40). Thus, it is quite important to finish *chazarat hashatz* in time. However, several *poskim* say that if one is in a *shul* in which *chazarat hashatz* is being done after *shekiah*, even one who does not accept that approach may answer *Amen* (see Maharam Shick, OC 91; Shevet Halevi IX:20; Tefilla K'hilchata 18:33).

While we do not put our heads down for Tachanun at night, the Mishna Berura (131:17) says that it can be done during *bein hashemashot* (certainly including thirteen and a half minutes after sunset). He also says (*ibid.* 16) that one can say the words of Tachanun without putting his head down even at night. We note, though, that several report a *minhag Yerushalayim* not to recite Tachanun after *shekiah* (see Halichot Shlomo 13:4). Reciting *Kaddish Titkabel* (after *chazarat hashatz*) after *shekiah* is not a problem whether one finished *chazarat hashatz* before or after *shekiah* (see Ishei Yisrael 27:39).

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.

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The book cover for "Living the Halachic Process" features a geometric design with overlapping triangles in shades of blue, green, and white. The title "LIVING THE HALACHIC PROCESS" is at the top, with "Volume 4" and "Questions and Answers for the Modern Jew" below it.	<p>We are happy to present our fourth volume of "Living the Halachic Process". The book offers a compilation of questions and answers from our "Ask the Rabbi" project. Sources for the answers can be downloaded from our website. Special price for Hemdat Yamim readers: \$20</p>
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Ein Ayah

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

The Turning of the Shoe and the Fall of the Spirit

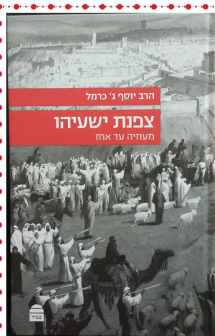
(condensed from Ein Ayah, Shabbat 6:8-10)

Gemara: What is the background behind the prohibition on a shoe called *sandal hamesumar*? Shmuel said: there was a decree [made by enemies], and people were hiding in caves. The people in the caves agreed: "Whoever comes in, comes in; and whoever leaves, leaves." The shoe of one of them was turned around, so that they thought that one of them left and was seen by the enemies who were now attacking. They started pushing each other and killed more of each other than the enemies killed of them.

Ein Ayah: The source of falling is the collapse of the spirit, as the intellect leaves him and his imagination sinks. It is as the *pasuk* says: "Israel abandoned goodness; the enemy will pursue" (Hoshea 8:3). The imagination lowers a person and the nation as a whole to a ditch, i.e., into dense materialism and its ugly and lowly tendencies. It is not the external perceptions that is dominant in its midst, as the *pasuk* says: "To the action of Hashem they did not look, and they did not see the work of His Hand" (Yeshaya 5:12). External imprints have their impact according to their natural ability to give light. They do not extend to revive the spirit and to spread light to the intellect and one's personal attributes. [This is what the *gemara* means by that which comes in, comes in, and that which leaves leaves.] The results are similar to what one would expect. There is a lowliness of the spirit, fear of the enemy, hiding in a cave, and a lowly decision based on continual decline, due to fear of the enemy.

Imagination, which is from the outset the factor that causes people to abandon Hashem and the paths of straightness, itself becomes the medium through which punishment comes. It deepens the feelings of evil and increases the weakness of the spirit to the greatest degree. When something changes even in the slightest, it causes the whole world to turn around for him. Imagination is not like intellect, which can handle each new situation and conception throughout physical and spiritual life and use its strength to lead one in the proper and righteous path. In contrast, imagination is spoiled by a small wind; one murky idea can summon up many bad feelings and consequences. Thus, when one shoe was turned around, frightening and desperate decisions were made, and they believed that the enemies discovered them and were attacking.

Not only does the decision one comes to based on imagination tend toward bad, decline, and despair, but it actually causes the ruin of the person with the imagination. It does not allow the individual and the community to notice their situation and return to a higher level by using the intellect and morality to elevate them over the situation of lowliness and fight off the situation of difficulty. Rather imagination increases commotion and inner enmity and ends the glimmer of hope that the powers can be summoned to survive. This is the horrible tragedy of a person who causes more destruction to himself than any enemy. It all starts when he is removed from the light of the pure intellect and the lofty aura, the light of the G-d of truth. It causes him to embrace fleeting mistruths and improper personal attributes that stem from a bad imagination. It concretizes the bad thoughts with thick mud and with irremovable nails. "Your evil shall oppress you, and your iniquity will rebuke you; you shall know and see that it is bad and bitter that you left Hashem your G-d, and My fear is not upon you" (Yirmiya 2:19). Instead of a thought-out fear of Hashem, which puts the mind at ease and fixes every group that lost its moral content, the bad imagination creates extreme, purposeless fear. This pollutes the mind and increases commotion and self-destruction beyond what any enemy could accomplish.



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

Responsibility of Mefakeiach for Contractors' Flaws – part I

(based on ruling 76052 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) was doing major renovations and hired the defendant (=def) as a *mefakeiach* (private building inspector) for 30,000 shekels. Pl then signed a contract with two Palestinian contractors for 420,000 shekels. Def, who had been consulted regarding the choice of the contractors, also signed on that contract, although he was not referred to in it. Pl discovered several flaws with the contractors' work and fired them and def before the work was completed, after the latter had received 20,000 shekels. Pl is suing def for 544,242 shekels for the flaws, claiming that def is responsible for them for a few reasons: def was in effect the general contractor (see discussion below); def recommended hiring the contractors without seeing their past work; after starting his work, def took on another job and stopped coming enough; specific mistakes were made that def should have caught. Def denies being the general contractor, saying he was no more than a *mefakeiach*. He suggested hiring the contractors because they were much cheaper than other options, and while he spoke with them and determined that they seemed to be professionally qualified, it was pl's informed decision. A *mefakeiach* does not have to be present every day, and after taking a part-time job, he was still present enough. The flaws that he did not catch were trivial, and the bigger flaws would have been fixed by the contractors for free had they not been fired.

Ruling: [Much of the technical information was provided by an expert in the field whom *beit din* employed.]

Beit din determined that def did not serve as a general contractor, as his job was defined as a *mefakeiach*. It is accepted in the Israeli "marketplace" that a *mefakeiach* is a representative of the homeowner and not some sort of general contractor. Def signed a contract with pl which spelled out his responsibilities, and the responsibilities of a general contractor were not included. We will respond one-by-one to pl's claimed proofs that def went beyond the role of a regular *mefakeiach*:

Def took pl's checks for the *kablanim*, paid them in cash, and lent them money for the job – def's explanation, that the contractors refused to take a check and that he was doing pl a favor so that the work could progress, is reasonable. Helping out financially is not a proof of responsibility for all elements of the work.

Def signed on the contract of the contractors – def explained (and was not contradicted by pl) that since he had written the contract for pl, pl wanted him to take responsibility for the contract and sign it. That is reasonable. Responsibility for the contract does not mean that if the contractors do a bad job that def has to pay instead of the contractors themselves. In general, if there is a question of how to interpret a contract, the one who wants to claim another party's obligations based on it has the burden of proof that that which he claims is included.

Therefore, def does not have the obligations of a contractor. [Next time we will consider other grounds for payment by def.]

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David Chaim ben Rassa
Lillian bat Fortune
Yafa bat Rachel Yente
Eliezer Yosef ben Chana Liba
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