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HEMDAT YAMIM

Parashat HaShavua

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Confident of his Predictions or Not?

Harav Yosef Carmel

In the story of *Megillat Esther* (as learned with the classical *midrashim*), there seems to be no more confident a person than Mordechai as far as relying on his understanding of what Hashem wanted and with what He would help. He knew that it was a mistake to take part in Achashverosh's party. He knew that it was correct not to bow down to Haman and that it was not necessary to even avoid him. Yet, in the ostensibly most obvious of all observations, he seems to "punt." When he asked Esther to intercede to save the people and she was hesitant, he said: "Do not imagine ... to run to the palace ... if you will be silent ... salvation will come to the Jews from a different place ... and who knows if for a time such as this you made to kingdom" (Esther 4:13-14). So he knew the Jews would be saved somehow, but even though he was confident that Esther should risk her life now, it was only a possibility that she had become queen for this reason!? Considering the *gemara* knew (Megilla 13b), as do all Jewish schoolchildren, that Hashem prepared the remedy (Esther's position) before the affliction (Haman's decree), why did Mordechai, of all people, not know? Could there be a more profound reason than this for Esther to have been thrust into this position, despite Mordechai's and Esther's attempts to keep her out of it?

Rashi actually understands the key words in a different manner. Mordechai was pointing out to Esther that she should not rely on her ability to have sway with Achashverosh closer to the time of the planned anti-Jew attacks later in the year. One can suggest a simple answer based on good *middot*. Perhaps to doubt that simply Esther was the most worthy, from a Persian perspective, to be chosen queen, was insulting to her. However, there are both technical and philosophic reasons to reject this approach, and so we will present another one.

Mordechai had strong beliefs and faith that Hashem would protect those who would do the right thing, even when the prospects looked bleak. What could otherwise be a reckless act became a necessary one when there was a principle to stand up for or a *kiddush Hashem* to be made. Thus, the Jews must not capitulate religiously or culturally to Haman, or to Achashverosh, for that matter. When the option was an operative one, they must seize the opportunity to act nobly with confidence that Hashem would make sure that things would work out, in whatever manner they would. The proper action for a person to take should be treated as a surety; Hashem will make sure it will work. The specific means through which Divine Providence would prevail was Hashem's secret to which man was not necessarily privy. Thus, Esther must act according to the significant power she had, which gave her a better natural chance than anyone else. Why was it that Esther was in such a position, while undoubtedly a fascinating philosophical question, did not impact on what she needed to do. Therefore, Mordechai mentioned the possibility that her rise to the throne was for this purpose to give Esther motivation and strength to act. However, there was no need to turn it into a definite statement with philosophical implications.

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Ask the Rabbi

by Rav Daniel Mann

When Does a Negative Practice Become Binding?

Question: If one decided to accept a stringency and is refraining from doing something, without a verbal acceptance of a *neder* (oath), at what point is it considered binding? While for something active, three performances make it binding, how does refraining from action work to accomplish it?

Answer: Let me strengthen this insightful question. We find sources that positive *minhagim* are more identifiable than *minhagim* of refraining. The *gemara* (Pesachim 55a) deals with the possibility that refraining, for religious purposes, from something in front of others who believe it is permitted is *yohara* (haughtiness). The *gemara* says, though, that when one whose *minhag* is to not work on Tisha B'Av refrains from work in front of those who do, no one takes offense because onlookers will say that he is idle because he happens to not have work to do. Similarly, when one, for example, refrains from eating a certain food due to *kashrut* concerns, the "non-act" of not eating is not like a clear, noticeable, countable religious practice. Can one count three occurrences of not doing something?

This being argued, there is a concept of those who are bound to a practice of refraining from action and that this is an extension of the concept of *neder* (Nedarim 15a). This is likely a Rabbinic obligation (Tosafot ad loc.), although significant opinions hold it is a Torah law (see presentation in Kol Nidrei 72:5).

Your reference to three times is arguably a popularly held mistake. The classical *Rishonim* and the Shulchan Aruch (Yoreh Deah 214:1) do not mention a need for three times to be binding. On the other hand, besides mention of the text of *Hatarat Nedarim*, many *Acharonim* mention three times. The standard way of dealing with the apparent contradiction is as follows. If one intends the practice to be binding, it becomes so even after one time. If he did not have clear intention as to whether or not it be permanent, then three occurrences make it the norm, and therefore automatically binding (Shulchan Aruch Harav, Orach Chayim 468:17; Kaf Hachayim, OC 417:25).

Now to get to your question – how does doing an inaction (whether three times or once) become binding? I did not find this question discussed where one might expect it. We must determine what this dearth of sources means here (see Living the Halachic Process, V, G-1). Apparently, refraining from something for religious reasons does not need special requirements to be halachically significant. Let us consider that a *neder* is a matter between a person and Hashem and that since Halacha extends it to occurring without verbalization, it does not need to be clear to others what he was thinking. So if one was in a situation that he would have done *X* and he did not do so for a religious reason, this is equivalent in our context to actually performing a *mitzva*.

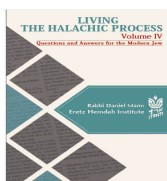
This same concept is behind the fulfillment of negative commandments in general. Every moment one does not sin is not a *mitzva* of refraining for which he receives reward but is neutral. However, if he is tempted to do an *aveira* (e.g., eat non-kosher food, drive somewhere on Shabbat.) but is refraining because of the *mitzva* to do so, he does receive reward (Kiddushin 39b). In such a case, refraining, beyond the letter of the law, from something one wants, creates a *neder*.

What is a little trickier is the following. Sometimes a person refrains from something, not out of a full decision, but because of "why not?" Let's say that when he goes to a store and there is *chalav Yisrael* milk and regular milk, he purposely picks the *chalav Yisrael*. If he thought that he will henceforth only have *chalav Yisrael*, this should be binding. But it could also be that if he were in a place that the only milk is regular, he would buy that as well. Is that considered refraining from something? While it is hard to know where to draw the line, there might be a difference between three positive acts and three acts of refraining that are not necessarily indicative of his future plans.

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Ein Ayah

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

The Type to Understand the Land

(condensed from Ein Ayah, Shabbat 9:9)

Gemara: What does it mean, "...that the first ones gave the boundaries" (Devarim 19:14)? Rav Shmuel bar Nachmani said: That which it says, "These are the sons of Se'ir the Chorite, the settlers of the land" – does it mean that others sit in the sky?! Rather it means that they were experts in settling the land, for they would say that the place where this measuring stick is found is good for an olive tree; the place of this stick is for grapes; the place of this stick is for a fig tree.

Ein Ayah: People's connection to the land must be entrenched well in the beginning. At the time that those who have the characteristics to connect their most internal part of their lives to the land appear on the stage of history, it is important that no matter of spirituality hold them back. For it is only when there is a total dedication to matters of the land that a man will be prepared to penetrate into the depths of knowledge with a sense of the internal spirit to know the ways of the land and its life. He can thus be connected in a manner that is appropriate for one who was meant to "work the earth from which he was taken" (see Bereishit 3:23).

These were the first people – people upon whom the higher spirituality of Torah did not shine. They were able to be absolutely linked to the land; they were the "settlers of the land." The depth of the connection and the internal desire for the land was what brought about the penetration and the knowledge of the land's qualities and the ability to create the first foundations for supporting the land and using it to develop its cultivation. They were able to determine which land was right for olives and which for grapes and which for figs.

Their total dedication to the land and deep connection to it caused them to have a sharp, internal and personal connection to it. It was not just a quick scan of what was needed to work the land that they possessed. Rather, since their senses were focused on it, they reached the deepest, most individual knowledge, so that they knew how to maximize the plantings. They understood the needs of olives, grapes, and figs, each according to its value. This definitely applied to the lower plants, such as grain and legumes, and the like, which are the basis of physical life.

This lower culture of mankind, as a species that cultivates and is sustained by the earth, preceded the light of Torah. In this way, the higher form already would find its strong basis in the fabric of society, upon which it can rest. The society of the land settlers needed to precede the Torah society chronologically, before the heavenly light appeared. "You have seen that I have spoken to you from the heavens" (Shemot 20:19). The people of the land, who are imbedded in the land with all of their life senses, have their spirituality leaning toward physical beauty, the happiness of the flesh, and the pleasure of the senses. The olive makes the face shine (Tehillim 104:15) – the realm of beauty. The grape is related to man's happiness (see *ibid.*). The fig is the source of a type of honey, which is most beloved by one's taste buds, which is so important to people.

More than any other, people are most concerned about grapes, because drunkenness connects physical happiness to excited imagination, so that one is ready to be motivated by other physical pleasures. That is why olive and fig are written in singular and grapes are written in plural. Indeed, many are interested in there being as many grape orchards as possible.



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

Sharing the Expansion Area

(based on ruling 71031 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) and the defendant (=def) are neighbors in a building. Both of them and two others presented the municipality with plans for all of them to expand their apartments; pl and def were to also get 20 sq. meters of the floor space at the building's entrance for storage rooms. Def's plans, which pl signed, has his storage area turning into a room, attached to his apartment by internal stairs, and also has him getting an actual storage room next to pl's planned storage room. Pl said that he did not want to agree to this joint plan, but did so because at a meeting at the municipality, he was told that if he opposed it, the plans as a whole would be rejected, and everyone would be delayed for years. Note that pl tried to have a *beit din* hearing, in which he would express his rejection of the plan, before the hearing at the municipality, but def delayed the *beit din* hearing until afterward. Pl complains that it is unfair for def to receive both the room and a storage room, and so pl should receive a second storage room. Although by-laws do not allow one owner to receive more than 20 sq. meter of storage room, one of the other neighbors has agreed to have the room in her name, yet allow pl to use it exclusively. Furthermore, pl demonstrates that around 7% of his storage room is unusable due to a support wall.

Ruling: *Beit din* cannot and will not require def to transfer ownership in a storage room to a neighbor who neither wants it for herself (she received special rights to the roof instead) nor is a litigant in these proceedings.

Pl wants to back out of the agreement to def's plans based on the claim that he was forced into it by the circumstances. In general, when one agrees to sell something under pressure, the sale is valid (Shulchan Aruch, Choshen Mishpat 205:1). This applies here where he gave and received in the agreement. While such a person is able to make a *moda'ah* (disclaimer) before agreeing, that works only if the witnesses to the *moda'ah* are aware that he was improperly forced (see *ibid.* 12). Furthermore, in this case, the pressure was not directly applied by def, but was a need of pl to not have his request for expansion seriously delayed.

Pl complains that had def not avoided *beit din*, he never would have been able to present his plans to the municipality. However, this is a valid claim only if the municipality is not the right place to argue about the propriety of the plans. We believe that on such matters, the municipality has halachic right to decide (see Tzitz Eliezer XI:93). Def did not do anything wrong by trying to maximize his building rights, and pl was capable of likewise presenting his needs and desires to the municipality.

Regarding the wall that takes away from the space envisioned for pl, this indeed is an agreement based on a mistake. Since it is impractical to change the exact locations of the mutual storage rooms, *beit din* requires def to compensate pl for the decrease in value due to the support wall. It is too expensive to bring a professional appraiser, and so *beit din* estimates that def must compensate pl the sum of 3,000 shekels.

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