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PARASHAT HASHAVUAH

Behar Bechukotai 24 Iyar 5770

Shemitta and Yovel as the Basis for the Whole Torah

Rav Shaul Yisraeli, from Si'ach Shaul, pp. 350-1

Our two *parshiyot* share a special theme, the laws of *shemitta* (sabbatical year) and *yovel* (jubilee). Behar talks about the laws of these two special years, and the section of rebuke in Bechukotai warns that if we do not follow these laws, the land will rest while we are in exile. Yet the Torah says that in general we are punished for "My laws (*mishpatay*) you despised and My statutes (*chukotai*) your souls reviled" (Vayikra 26:43). What are these *chukim*, and how are they related to the *mishpatim*?

Rashi explains that the Torah stressed that the laws of *shemitta*, like other laws, were given in details at Sinai. Why is the holy source of the laws communicated specifically in regard to *shemitta*? Rashi on the beginning of Bechukotai puts a very different stress. The concept of following Hashem's *chukim*, he says, refers to toiling in Torah study, not on actively performing the *mitzvot*. Why?

Sometimes one takes care of his needs as they arise, and sometimes one plans well in advance. One of the differences is that plans for the immediate period need to be very specific, whereas for distant plans one can suffice with a basic outline. Most of the *mitzvot* that Bnei Yisrael received at Sinai were applicable immediately. However, Hashem knew that several decades would go by before *shemitta* and *yovel* would be operative. Why shouldn't Hashem put the stress on details regarding the immediately operative *mitzvot*?

The answer is that the resting of the land and the holy jubilee year are central pillars of the Torah. The Torah says not to plant during *shemitta*. Although the poor were able to share with the rich landowners, our sources indicate that things were harder for the poor during *shemitta* than during other years (that is why they left some land without sanctity so as to support the poor from that land (Chagiga 3b)), so the needs of the poor were not the reason for *shemitta*. Rather the Torah's goal is to cause man to realize that worldly possessions are not of intrinsic or of stable value.

The Torah promises a blessing for those who deserve it: "You will eat your bread in satiation" (Vayikra 26:5), from which the Rabbis learn that one will eat a little, but it will find blessing in one's intestines. Would people be happy with a special pill that provides all the nutrients one needs, and eat nothing else? What about the enjoyment of eating? That's why the Torah stresses to be preoccupied with Torah. When engrossed in the words of Torah, one does not find worldly pursuits so compelling. In a Torah world, one can leave competition behind and be happy helping others rather than accumulating wealth. The discipline needed to keep *shemitta* is related to the power to dedicate oneself to Torah.

Deep involvement in Torah is designed to take one from fighting class struggles over power and resources to struggling to determine the truth in age-old question of halacha or ethics. The latter is certainly more worthwhile.

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Question: Must a child obey if parents disapprove of his choice of a spouse?

Answer: The basic answer to the question is that he or she need not obey, as the Rama (Yoreh Deah 240:25) rules, based on the Maharik (166), and later *poskim* accept apparently unanimously. We will see the Maharik's reasons and briefly consider if there are exceptions to the rule. If an actual case tragically arises, one should ask according to all the particulars.

The Maharik has three main reasons: 1) If a child does not have to give up his money for *kibud av va'em* (honoring his parents), he certainly does not have to accept the mental anguish pain of parting from the woman he wants to marry. 2) A parent may not tell his child to violate even a rabbinic prohibition. Since one may not marry a woman we have reason to fear he will not love (Kiddushin 41a), they cannot make him give up the woman he loves and possibly marry one he will resent. 3) The sacrifices one must make for his parents relate to things to benefit his parents, not things his parents want him to do for his welfare. The Aruch Hashulchan (YD 240:45) says that there is a general matter that a parent cannot force a child to perform a *mitzva* other than the way he sees fit. Most *poskim* seem to think that all of the reasons are valid individually, although it is difficult to determine that conclusively. This is an important point because in some cases, some reasons apply but not all of them. We do find different opinions in some of those cases.

A minority opinion holds that a daughter has to obey her parents' refusal of her choice of a husband, based on the (questionable) assumption that she does not have a *mitzva* to get married. However, the great majority of *poskim* reject this opinion (see Noda B'Yehuda II, EH 46; Yabia Omer VIII, YD 22). A more serious issue is when the parents not only disagree with the choice, but it will cause them disgrace. The Netziv (Meishiv Davar II, 50) says that this does impact them directly and that the disgrace overshadows the other considerations. The Tzitz Eliezer (XV, 34) asks from the fact that the Maharik discussed a woman about whom there were serious, publicly known questions of morality. He says that the Netziv's distinction applies only in the case where the disgrace is recognized by *Chazal* or classical sources. Otherwise, the parents should try to make their viewpoint conform to their child's choice, not vice versa. For example, parents' bigotry toward a certain type of fine Jew should not be rewarded by being considered an objective disgrace.

The Divrei Yatziv (EH 3) cites the Netivot Lashevet who says that if the choice of spouse will curtail the child's ability to perform *kibud av va'em* (e.g., he will have to move away), then it affects the parents, and they can object. The former disagrees because the Maharik's other reasons still apply. It seems, though, that those reasons apply only when a decision to marry has been or is almost made. However, if one is considering a "*shidduch*" idea (before there is an emotional connection) which will negatively impact his or her parents, their feelings or interests should be considered. This is not an absolute rule, as one should consider the child's range of dating partners, age and dating history, and whether this is an unusually promising idea.

We would also urge a child, who hopefully values his relationship with his parents, to not only be right but be smart and look at the "fifth Shulchan Aruch," the ability to apply halacha wisely. Parents are very often right and when they try to protect their child from a horrible mistake, the child should not only consider their motive but also the possibility that parents have picked up on what he overlooked due to the excitement of the relationship. He or she would do well to discuss the matter with a wise advisor. That being said, the same reservations apply to the parents, who may make the moral or tactical mistake of their lives by getting improperly involved.

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When to Downplay Physicality

(condensed from Berachot 4:38)

Gemara: When [Rabbi Yochanan ben Zakai] was about to die, he said to [his students]: Remove the utensils from here because of impurity and prepare a place for Chizkiya, the king of Judea, who is coming.

Ein Ayah: It is a serious failure for a leader of the community at large to ignore physical needs because his aspirations lie only in the realm of *shleimut* (completeness) of spirituality. This is because the physical state has an impact on the spiritual state.

However, the above is a shortcoming in the leader only when he is not diligent about physical *shleimut* because he does not realize its value. This would be a sign of a diminished spirit, for a great spirit will, despite its high spiritual level, be able to “look down” and be careful about little things as well, as they impact on important matters. However, sometimes the leader decides that the nation has to give up on physical matters because of an important cause, in which case, one should respect his decision.

[Rabbi Yochanan ben Zakai was the leader at the time of the fall of the Second *Beit Hamikdash* and Commonwealth, and he was in a special situation where he could ask a major favor of the Roman conquerors (see Gittin 56b).] Rabbi Yochanan ben Zakai gave up on the national *shleimut* in the political realm and only asked that the rabbinical academy in Yavneh be preserved to create a *shleimut* of Torah in Israel. In this way he was similar to Chizkiya, who pressured the people to dedicate themselves to Torah study at the expense of financial advancement (see Sanhedrin 94b). Chizkiya realized that this was crucial because Bnei Yisrael had gone down several levels and became overly engrossed in physical desires at the time of his father, Achaz, to the extent that they had become estranged from Hashem. Therefore, it was seen that there was a need to take steps that are usually against the prescribed Torah-ordained balance and put an excessive emphasis on spirituality. Chizkiya's laxness on physical pursuits was not out of a lack of understanding of its value, just that for the needs of the time, he trampled them to make way for great Torah scholarship.

We see from the Torah itself that financial concerns are of great importance. One such case in the Torah is the halacha that before a *kohen* declares a house to be afflicted with leprosy, he has the house evacuated of its utensils, so that they not need to be discarded (Nega'im 12:5, based on Vayikra 14:36). We find a similar concern for simple utensils regarding Yaakov, who with all his preoccupation with love of Hashem, found time and energy to go back for small vessels left behind as he traveled (Chulin 91:1).

Since great people know the value of material possession, if they give these up to gain other things, we can imagine how great the things that they purse are. This is what Rabbi Yochanan ben Zakai was trying to communicate as he died and was entering the world of the holy. Chizkiya was to visit at that time, as the prototype of a leader, like him, who had sacrificed the physical for the needs of the spiritual, by preventing the Torah from falling. He also told his students to remove the utensils so that they not become impure to show that he, like Yaakov, valued even simple utensils, as he had not forsaken the concept of concern for worldly pursuits. It had been because of the crucial importance of preserving Torah leadership that he had appeared to be uninterested in other elements of the nation's needs.

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Support for Sons Not Living With Their Father

(p'sak of Rav E. Goldshmidt, Rav S. Yisraeli, Rav M. Eliyahu - condensed from Mishpatei Shual, siman 22)

Case: A couple is living separately, with the husband initially demanding to be allowed to divorce his wife and the wife asking for support. In the meantime, their older son is living at an institution, and the younger one is living with his mother. The father demands to have them in his custody, saying that his older son is in an institution because his mother is not able to raise him. The matter has been sent to a social worker to determine what is in the children's best interest, but that report has not yet become available. In the meantime, the father says that if he does not have custody of his sons, he should not have to support them.

Ruling: At first glance, the husband is correct. The Shulchan Aruch (Even Haezer 82:7) says that after the age of six, boys are to be with their father and if they are not, he has a right to withhold child support. *Beit din* still did not rule on where the children should be, apparently because there is consideration as to how he will be able to care for them properly when he is out of the house most of the day. However, ostensibly we should say that until there is a decision, the standard halacha should be the starting point.

However, further investigation raises the following conclusion. The obligation to support one's children is not a direct result of their being in his home so that he can teach them Torah. In fact, regarding girls, where they are normally stay with the mother, the father has to support them anyway. Rather, the idea of withholding support when the boy does not come to his father is specifically a form of putting on pressure, so that the son will indeed come to where he can be more properly educated. Therefore, if under certain circumstances the son is not able to live by his father, the father does have to support him.

In this case, there has still not been a determination as to where the child should be, and a decision is in the process of being arrived at. Therefore, there is no place for pressure to conform to any custody arrangement. The father should continue paying the share that was already decided upon for the institution that takes care of his son. The mother is, effectively, not raising him and therefore cannot demand of the father to pay for her trips to visit or for treats she may decide to bring him. However, regarding the younger son, who is being raised in the meantime by his mother, the father must continue to pay support while the decision on custody of the child is pending [and if the decision is made to continue custody by the mother, for the welfare of the child].

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Iyar 18-24, Sanhedrin 79-85

Kidnapping (85b)

Rav Ofer Livnat

This week in the Daf Hayomi, the Gemara (85b) begins to deal with the issue of kidnapping. The Gemara (86a) interprets the eighth commandment of the Ten Commandments, "do not steal," as referring to kidnapping. Later on, in Parshat Mishpatim (Shemot 21, 16), the Torah specifies further: "If one steals a man and sells him, and he is found in his hands, he shall be put to death." In Devarim (24, 7) the Torah again addresses this issue. From these verses we see that the death penalty is issued for kidnapping, and the Gemara learns most of the Halachot pertaining to this issue from these verses.

One of the questions the commentators raise is why kidnapping is defined as gneiva (stealing). Regarding stealing money or other belongings, we find two different terms used by the Torah (Vayikra 19, 11-13): gneiva and gzeila. The difference between them is in the method the thief uses to illicitly take something. The gazlan uses strength, taking the property from the rightful owner by force. The ganav, on the other hand, uses stealth as his means, and takes from the owner without being seen. See Hemdat Hadaf Hayomi on parshat Vayakhel Pekudei (Baba Kama 77-83) where we deal at length with this issue.

Thus, it would seem that, for kidnapping, the term gzeila would be more appropriate, as each person is the owner of himself, and the kidnapper overpowers him. Why then does the Torah use the term gneiva for kidnapping?

This question was posed before Rav Betzalel Ashkenazi (author of the Shita Mekubetzet) in his Responsa (response 39). In his response, he further clarifies the distinction between gneiva and gzeila. As mentioned, the definition of gzeila as opposed to gneiva, is in regards to the interaction with the *owner* of the object, for by gzeila the object is taken forcefully from the owner, while, by gneiva, the owner is not initially aware of the act of theft. Thus, although by kidnapping the person is aware that he is being kidnapped, he is not considered to be the owner, rather he is the object that is being stolen. Who is considered to be the owner? The relatives of the person kidnapped. Rav Ashkenazi derives this from the language of the verse in Devarim (24, 7), which Chazal interpret to mean one who steals a person from his relatives. He brings several proofs to this idea. Thus, he claims that kidnapping may be done both in a form of gzeila and in a form of gneiva. If one kidnaps without the relatives seeing, it is gneiva, and if one forces the victim away from the hands of the family, it is gzeila. Therefore, he reasons, since in the Torah and in Halacha we see only the term gneiva used, the death penalty will be incurred only if the kidnapping took place in a gneiva manner. The logic behind this distinction, he explains, is that when one kidnaps in front of the relatives, they know whom to chase after to free their relative. However, when one kidnaps without the family seeing, the relatives have no way to find the victim, and it is considered to be a much more serious offense.

Rav Perla, in his commentary to Rasag's Sefer Hamitzvoth (Lo Ta'aseh 91) strongly disagrees with Rav Ashkenazi and claims that in no way can the family be defined as owners of a person. Rather, he claims, each person owns himself. If so, why doesn't the Torah define kidnapping as gzeila? He answers that the most common kidnapping is of little children. Since in a kidnapping of a small child there is no real confrontation between the kidnapper and the child being kidnapped, the term gneiva is more appropriate. Thus, while the kidnapping of an adult would be considered gzeila, the Torah chose to use the term gneiva since that is the more common form of kidnapping. However, the Halacha is that both for the kidnapping of a child and an adult the death penalty is issued and thus there is no ramification to this distinction.

Next week in the Hemdat Hadaf Hayomi, after B"H we will have learned in the Daf Yomi more of the conditions required for one to be liable for kidnapping, we will attempt to suggest another explanation based on these Halachot.

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