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from the world of Jewish Jurisprudence

## **A Concerned Kohen**

The *parasha* begins with Hashem telling Moshe to command (*tzav*) Aharon and sons about the laws of the *olah* (burnt offering). However, instead of detailing the *korban's* laws, the Torah mentions only the fact that the animal's body remained on the *mizbeach* all night and that one would remove ashes in the morning. Rashi cites *Chazal's* statement that the strong word *tzav* is used when there is a prospect of loss of money, which people have trouble overcoming. Why were the *kohanim* so charged, considering that they did only the service but did not pay for the *korban*?

One could answer that the *kohanim* might not encourage people to bring a *korban olah* for which they did the work but did not receive any meat to eat in return. However, generally we say that failure to receive something is not equivalent to losing money.

Rav Yaakov Kaminetsky (in *Emet L'Yaakov*) allows one point to answer the other. The *mizbeach* had to always have a *korban* on its ever-lit fire. When one was running out, the *kohanim* would bring a *korban olah* to continue. Aharon, being a great lover of Jews, not only from a spiritual perspective but also in regard to their physical needs, was concerned with the expense to the Jewish people of continuously providing *korbanot olah*. Since their loss was like his loss, the Torah encouraged the *kohanim* not allow this concern to hinder their work. It also stressed in this context that a single *korban olah* would last on the *mizbeach* all night and into the morning, and thus the expenses would not be prohibitive.

The *kohanim's* concern about the *korbanot's* expense to *K'lal Yisrael* also found expression in a negative light. The *gemara* (*Sukka* 56b) tells of sanctions to the Bilga group of *kohanim* because words of an apostate from their midst made it evident that some of them complained that the *mizbeach* was using up Jews' funds. Although this concern could be abused, the choice of Aharon's family for service in the *Beit Hamikdash* was apparently not despite the fact they were concerned for their fellow Jew's physical, in addition to spiritual, well-being, but at least partially because of it. Even within the realm of worship of Hashem, "spiritual needs" are to be balanced with physical ones. That balance is not to be achieved because of lack of passion about either state but because one is passionately concerned about both. As Rav Kaminetsky posits, Hashem Himself was concerned with Bnei Yisrael's finances and took steps to limit the number of *olot* needed.

Also within the realm of halacha, Hashem's main concern in the absence of the *Beit Hamikdash*, we are told that Hashem wants to spare Israel's money (*Chulin* 49b). This is the rationale for many leniencies when monetary loss is involved. In that context as well, it is not out of a lax approach to halacha that a rabbi could and should be appropriately lenient but out of a justified concern for his fellow Jew's physical well-being.

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# Ask the Rabbi

**Question:** How should teens be treated regarding different *kibudim* (honors) in *shul*? In some *shuls*, they receive only “less desirable” *kibudim* like *peticha* and *gelila*.

**Answer:** The *mishna* (Megilla 24a) lists things that a *katan* (boy before bar mitzva) can and cannot do. Actually, he can get an *aliya* (the longstanding *minhag* does not allow it- see Ask the Rabbi, Yitro 5762) but cannot be a *chazzan* for the core parts of the *tefilla*. Teens are halachically able to lead any part of the services (assuming, as we almost always do without checking, that he has physical signs of the beginning of maturity). The question is of appropriateness.

The *gemara* (Chulin 24b) states that only one whose beard has grown in may be chosen as *chazzan*. Most *Rishonim* and the Shulchan Aruch (Orach Chayim 53:6) limit this rule to the honor and responsibility of being a set *chazzan*, due to the congregation's honor; on an occasional basis, teens may serve without issue. One occasionally comes across (in life or in the writings of a *posek*) a local practice not to allow singles or the young to be a *chazzan*, but this type of approach is not seen as halachic or mainstream policy regarding an occasional *chazzan* (see Shevet Halevi V, 19).

Regarding *aliyot*, there are no halachic issues whatsoever about honoring teens. In general, while being a *chazzan* has strong elements of an honor, *aliyot* are more a matter of an opportunity to do a *mitzva*, which applies to all ages (compare Shulchan Aruch, OC 53:16 and Mishna Berura 141:25). It is appropriate and sometimes required to honor “the most deserving” with the earlier *aliyot* (*kohanim* and *levi'im*; on Shabbat, even “regular” *aliyot*- Shulchan Aruch, OC 136:1). However, there is apparently no point of skipping totally over upstanding but young people. One can prove, albeit from a halacha that is out of practice, the concept that youngsters are also expected to receive “medium-level” *kibudim*. The *mishna* (Megilla 24a) states that one who receives the (then) lower-level *aliya* of *maftir* is “compensated” by getting to be *chazzan* for *Musaf*. The *mishna* says that if a *katan* gets *maftir*, while he cannot *daven Musaf*, we give the honor to his father. While the *gemara* softens the matter a little, the clear assumption is that a *katan*, let alone a teen, would not be relegated to those “honors” that others did not want. Admittedly, there were and still are places where youngsters are not given *aliyot* on Shabbat, but this is not seen as healthy under normal circumstances and is certainly not a halacha (see Tzitz Eliezer VII, 1.13).

The matter of policy depends quite a bit on the *shul's* circumstances. One reason to prefer adults for *kibudim* is that at least regarding *davening*, they are, in theory and often in practice, more experienced and proficient than adolescents. When this is the case, it is certainly a factor, which is somewhat countered by the value of training the next generation. In some *shuls*, when there are not always enough *kibudim* to go around, adults are more likely to expect the more “desired” *kibudim* and get insulted by a perceived slight. This too is a factor, but should not necessarily exclude but limit youngsters' participation. In general, making youngsters feel appreciated and respected is subconsciously important regarding their developing attitudes toward *shuls* and religion in general. Therefore, in all but exceptional communities, we would suggest giving teens a fair share, quantitatively and qualitatively, of the honors and including pre-bar mitzvahs among sections where halacha allows it (*peticha*, *gelila*, “*An'im Zemiroth*,” *P'sukei D'zimra*, *Kabbalat Shabbat*). When youngsters are more included officially, there is likely to be a general, more welcoming atmosphere toward them in the *shul* (greetings after *davening*, etc.) and their behavior is likely to improve somewhat.

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**Religion and Science- part IV**

(from Perakim B'Machshevet Yisrael, ch. 30)

*Rav Yisraeli gathered classical and more contemporary rabbinic views on the interaction between religion/belief and science. We present his sources in an abridged, free translation form.*

**6. Contradictions Between Torah and Exact Sciences Are Impossible***Hamadah V'Hadat*, ch. 2 (Dr. Y. R. Holtzberg)

The concept of "proof" is known, but not everyone recognizes the simple definition of the concept and the conclusions that emanate from it. Proof is affirming a statement by means of other statements accepted as truths. In order to prove the other statements, yet other statements are needed and so on. At the end of the chain are statements whose truth we accept as givens without proof; we call these axioms. From a certain set of axioms, for example, the scientific basis of geometry is set, and such a set of axioms is necessary for every field of exact science.

Once upon a time, people viewed axioms with respect, as a truth upon which one may not cast aspersions, and this is also the case nowadays. However, more than a century ago, an event fundamentally changed scholars' outlook on axioms, as one was "publicly disgraced," uncovering the weakness of all of the world's axioms. This is what happened. A famous axiom regarding parallel lines, set by Euclid, 360 years before the Common Era, can be described as follows. Through a point that is outside a straight line only one straight line traverses the point and is parallel to the first line. For 2,000 years people tried to prove the axiom, in other words, to base it on other axioms without having to replace it with another axiom, but no one succeeded. Then three scholars tried to prove it by means of the negative. They assumed that the axiom was incorrect, an assumption from which followed far-reaching conclusions, and looked for contradictions between the conclusions and other axioms. Surprisingly, not only were there no contradictions, but it was proven that there could not be such contradictions. Based on their assumption, which contradicts the axioms of parallel lines, they built a new field of geometry without internal contradictions.

What is the basis of the choice of an axiom? Science's surprising answer is that it is not on the basis of its truth but on its convenience for us. Normally, Euclid's axiom is more convenient because it allows for shorter calculations.

This event brought into question the outlook on exact sciences, as the source and wellspring of absolute truth. All conclusions of science, even exact sciences, are conditional on axioms that the science accepts and relies on as if they were absolute truth. The event demonstrated that this was necessary of any systematic work of human logic. Furthermore, the acceptance of something as an axiom is arbitrary, and not based on some logical necessity in the recognition of truth. Science is unable to contradict conclusions that flow from other basic assumptions that are based on different axioms than the ones it accepts.

The matters of science that contradict the stories of the Torah (about the creation of the world) do not disprove the stories. The axiom upon which science's conclusions regarding creation is based is that all past phenomena occurred only on the basis of powers that function now in nature as we know it. The axiom that contradicts science's basic assumption can be expressed in the words of one verse from the Torah: "In the beginning, G-d created the heavens and the earth." The contradiction is indeed a result of different fundamental assumptions, different axioms, if you will, from which science and religion emanate. The assumptions upon which science is based are themselves not scientific, lack the weight of science, are not worthy of the great respect with which we treat science.

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# P'ninat Mishpat

## Who Pays for Damages That a Hired Driver Causes to a Third Party

(based on Halacha Psuka, vol. 40, condensation of a *p'sak* of Beit Din Gazit, Tzfat)

**Case:** The plaintiff (=pl) at times drives a vehicle for the defendant (=def). Once he caused an accident, for which he was charged for both a criminal violation and a monetary suit for damages. He was offered a plea bargain according to which, he would admit fault in the monetary case and be spared of the criminal claim. Pl demands that def reimburse him because def did not tell him that he wasn't insured for third party damages as is customary. Def responds that it is sufficient that he had the minimum insurance and that, in any case, pl may not make an admission to def's detriment just to protect pl from criminal prosecution.

**Majority Ruling:** [We will omit the matter of pl's culpability for damages to def's vehicle and the minority opinion.]

The *mishna* (Bava Kama 98b) says that if a builder who is hired to undo a wall breaks stones, he has to pay. The Meiri and R. Yonatan say that this obligation applies even to third parties who were injured by the stones because one who damages directly is always obligated. R. Yonatan adds that while the employer may be exempt if the worker is paid by time, the employer is obligated like a watchman for damages. However, the above applies when the worker caused the damage as part of the fulfillment of his job. Since pl was negligent while driving in a manner that was out of the scope of his job, def is not obligated to pay the third party.

On the other hand, pl claims that he would not have accepted the responsibility of driving the vehicle had he known that he was uninsured regarding third party damages. Customarily, an employer insures a car for such damages, and thus pl's claim is valid. The Mabit (III, 154) talks about an equivalent case, where Reuven appointed Shimon to buy something from a non-Jew and then backed out, which resulted in the court's charging Shimon for the transaction. The Mabit said that since Reuven, not Shimon, was responsible for the cancellation and payment, he must reimburse Shimon. So too, in this case, def has to pay pl for the amount that insurance would have covered according to the custom.

Since def will have to pay for what the courts will obligate pl, it is forbidden for pl to admit fault in court. This is equivalent to the *gemara's* (Bava Kama 60b) conclusion that one is forbidden to save himself by causing the damage of his friend's property. Tosafot (ad loc.) and the Shulchan Aruch (CM 388:2) say that the question is whether, after saving his life through someone else's property, he is responsible to pay (which he is). In this case, pl does not admit that he is fully at fault but says that saying so is worthwhile for him. As long as that admission has a negative financial impact on def, pl cannot do so without paying for the consequences.

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