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HEMDAT YAMIM

Parashat HaShavua

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Post-Modernism in Ancient Times and Today

Harav Yosef Carmel

We will discuss those who Israelis call *elitot* (members of the “elite” class), who have been championing a spiritual trend in which the individual is at the center, and religious, ethnic, or national groups take a backseat. Personal rights overcome obligations to the public, and individuality is not just part of the mosaic of society but has the power of “for me the world was created.” For such people, irrefutable authority, whether political or spiritual, is foreign, which explains a lot of what we see.

In the past few *parshiyot*, different people have challenged Moshe’s leadership. Eldad and Meidad prophesied in the encampment without Moshe’s permission. Yehoshua wanted to take action against them (Bamidbar 11:28), but Moshe refused: “If only the entire nation of Hashem could be prophets, that Hashem would place His spirit upon them” (ibid. 29).

In our *parasha*, Korach openly opposed Moshe. He was an elitist, as *Chazal* said that he was a great scholar and one of the people who carried the Holy Ark (Bamidbar Rabba 18:3). The Torah also describes his 250 associates as part of the elite of society (*kri’ei moed, anshei shem* – Bamidbar 16:2; see Sanhedrin 110a). They all complained that since the entire congregation is holy, there is no excuse for Moshe and Aharon to exert such control. “Everyone has the ability to lead himself!” In this case, Moshe’s reacted very differently, setting a showdown intended to doom the losers to death. What happened to the tolerance of self-expression that Moshe displayed toward Eldad and Meidad?

We must distinguish between two scenarios. Judaism is fundamentally based on acceptance of authority that stems from the chain of tradition. This system gives a great advantage to the older and wiser. The young student’s subservience to his teacher ensures that the tradition will continue to be passed on. Within the realm of Halacha, the student who “never says anything he did not hear from his teacher” is praised, which makes it necessary for the student to be very attentive to his teacher.

Prophecy, in contrast, is an experience of the individual, not the group. In fact, “no two prophets prophesy in the same manner” (Sanhedrin 89a). One achieves prophecy after he follows the path of purity, bringing on sanctity, which brings on divine revelation. There is no need for a specific tradition in order to become a prophet, as prophecy relates to new situations, not set, old matters. (Admittedly, one of the common ways to become a prophet was to join a group of “sons of the prophets,” who were apparently led by an established prophet.) Therefore, the fact that Eldad and Meidad testified without Moshe’s permission was not a problem, as prophets speaking their mind with the divine word is part and parcel of the institution of prophecy. In contrast, Korach and his entourage spoke without and against Hashem’s instructions without respect for the established spiritual leadership.

Let us pray for the development of the individual and the success of each in finding his own style in serving Hashem, within the set framework of Torah and *mitzvot*. Elitists can maintain a measure of individualism if they are still dedicated to the path passed down for generations from our patriarchs and matriarchs. Then, people will be able to say things that “the ear has never heard” while, paradoxically, still only saying that which they received from their teachers.

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Ask the Rabbi

by Rav Daniel Mann

Hatarat Nedarim for Promise Toward Another

Question: If someone committed to a certain amount of Torah study to win a special *aliya*, may he do *hatarat nedarim* on it (with a good excuse)? (I assume there is no problem of *nidrei mitzva*.)

Answer: First, we urge the *beit kneset* to consider favorably stipulating that these commitments will not have the status of *neder*. Generally, we are to avoid *nedarim* (Shulchan Aruch, Yoreh Deah 203:1-5). Although making a *neder* regarding Torah learning goals, among other *mitzvot*, is an exception (ibid. 6), it is different when there is particular concern he will not abide by the *neder* (see Kol Nidrei 3:2).

It is problematic to undo a *neder* to fulfill a *mitzva* in which one is anyway obligated, including accepting an amount of Torah learning (Aruch Hashulchan, YD 228:128-133). However, it can be done when there is enough need, and in certain cases of very great difficulty one may not even need *hatarat nedarim* (ibid.).

Is there is an added problem if there is a *neder* that was made as a means of acquiring something from his counterpart? According to the understanding of most *Rishonim* (see Beit Yosef, YD 228) the *gemara* (Nedarim 65a) says that such a *neder* can only be undone in the presence of and with the agreement of the counterpart (Rama, YD 228:20; the Shulchan Aruch apparently agrees- Shach and Taz ad loc.).


The *gemara* cites relevant stories from *Tanach*. Hashem told Moshe he required permission from Yitro to return to Egypt because of Moshe's oath to stay with him, even though *hatarat nedarim* would have had obvious justification (i.e., to orchestrate *yetziat Mitzrayim*). King Tzidkiyahu was punished for not keeping his oath to Nevuchadnetzar to keep an embarrassing secret quiet, even though he too had a good reason for *hatarat nedarim*.

Rishonim deal with many complicated questions, including whether the *hatarat nedarim* works *b'dieved* if done improperly. On the one hand, Tzidkiyahu was a righteous king, so he ostensibly would not have relied on an invalid *hatarat nedarim*. On the other hand, perhaps his punishment is a sign the *hatarat nedarim* did not work (see Ran ad loc. and two opinions in the Shulchan Aruch, YD 228:20).

In our case, it would seem clear that one needs permission as the *noder* (the one making the *neder*) did get something (the honor) because of his learning pledge. (While it is a complicated matter, we will work with the assumption that the pledge is considered a *neder*.) There is an opinion that if there is a *mitzva* need for the *hatarat nedarim*, it is permitted without permission (Tosafot, Nedarim ibid., cited by the Rama, YD 228:20). One example of *mitzva* need is when the load of learning the person accepted is taking away from his more important/appropriate service of Hashem. It is far from clear that this leniency is accepted, (see Taz 228:33, who denies the Rama meant to rely on it).

However, the Noda B'Yehuda (II, Orach Chayim 117, cited by Pitchei Teshuva, YD 228:13) says that when there is a *mitzva* and no one loses out by his not keeping the *neder*, all permit *hatarat nedarim*. The analysis of our case, in terms of a loss to others, is tricky. On the one hand, if people can receive *kibbudim* by making pledges they will not keep, the system will not work. Additionally, the one who would otherwise have received the honor might be considered to lose out retroactively. On the other hand, if the pledge was sincere and realistic at the time, and the circumstances changed, does anyone gain by holding him to it?

In practice, our standard halachic advice would be that if there is a serious need, the *noder* should ask permission from an appropriate representative of the congregation (preferably the rabbi). It also makes sense for him to change the pledge for which he won the *kibbud* to another one of parallel seriousness that he can still handle. However, the specifics of each case need to be considered. We again urge congregations to consider explicitly making such bidding *bli neder*.



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Mitzvot to be Preserved and Appreciated

(condensed from Ein Ayah, Shabbat 2:212)

Gemara: Rabban Shimon ben Gamliel says: The laws of *hekdesh* (donations to the *Beit Hamikdash*), *terumot* (setting aside from produce for *kohanim*), and *ma'asrot* (setting aside from produce for *levi'im*) are essential matters of Torah, and they were handed over to *amei ha'aretz* (simple people).

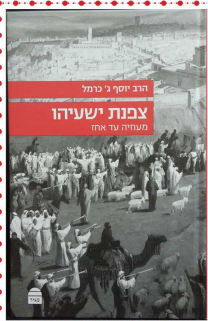
Ein Ayah: We can divide the *mitzvot* of the Torah into three categories: 1) those that are intended to publicize the honor of Hashem in the world; 2) those that have a practical purpose; 3) those that are a combination of the two.

Matters that are between man and his fellow man have a purpose which is simple to discern. Therefore, when a person's fulfillment is lacking, it is not because of a lack of understanding of the matter's value, and we need not expect the problem will expand significantly. In contrast, matters that are related to divine honor, which are a foundation of the world, can be properly understood only if one knows Torah. Despite this, the laws of such matters are handed over to *amei ha'aretz*, who have the potential to disrespect them because of their lack of understanding. The idea is that these great matters have the power to impact positively on the nation even when there is only partial observance.

Hekdesh is connected to divine honor, as it consists of taking something physical and sanctifying it for the purpose of the Creator, by simply making a declaration. *Teruma* is likewise sanctified by a statement. This is done in recognition of the important work the *kohanim* do in the *Beit Hamikdash* and to sustain them on a practical basis. So, this is an example of a combination of factors. *Ma'asrot* are an example of practical needs of others alone: mainly, the *levi'im* and the poor people. The exception is *ma'aser sheni*, which encourages people to spend time in the proximity to the Temple, eating holy food, and thereby increasing their likelihood of being inspired. In any case, these matters represent the three categories of *mitzvot*, and they were handed over to *amei ha'aretz* despite the danger of disgrace.

We learn from here that one should not give up hope if he sees deterioration in the regard for Torah and *mitzvot* in his generation. If one thinks that this means that the power of the sanctity of the Torah in that generation has been lost, he is wrong. Hashem prepared from the outset protection in that in those things to which *amei ha'aretz* may not show proper regard, Torah scholars will embrace them and will even be able to get *amei ha'aretz* to appreciate some of their sanctity. In those elements that the simple people are unable to appreciate properly, there will not be too much overall damage. The goal of these important *mitzvot* is to have enough people taking them seriously so that the overall goal is met, in a manner that even the *amei ha'aretz* are improved. If this could not be accomplished, these *mitzvot* would never have been given over to *amei ha'aretz* and would not have been considered as essential parts of the Torah. Thus, the overall benefit is reached even if some are disrespectful.

On the other hand, the standing of each individual is impacted according to his approach, and this impacts on the level of the whole. However, these problems must not break our spirit. If it were not for the best, these matters that relate to divine honor would never have been given to the masses, and thus we must be capable of protecting the *mitzvot* sufficiently. Our nation is capable of keeping *mitzvot* of the Torah even when some people do not appreciate their significance sufficiently. Thereby, the desired divine goal can still be accomplished.



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.

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Lawyer's Rights to Full Fees from Reluctant Client – part III (ruling 72060 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) is a lawyer (/owner of a law firm) who represented the defendant (=def), a wealthy businessman (/businesses he owned) in many matters, including several multimillion-shekel (attempted) purchases. Def paid pl more than 1.6 million shekels over 4 years, but pl claims that he is still owed more than 2 million shekels.

Issue #3: Pl handled several cases that included advanced preparations for major purchases, which def eventually decided against. In some cases, they had agreed on a large lump-sum fee after the completion of the deal, and in others there was no agreed upon commission. Def claims that it is accepted for a lawyer who works on a potential purchase to get paid only if it comes to fruition. Pl says that this makes sense regarding simple purchases where initial stages are not intensive, not for deals that require tens of hours of legal preparation.

Issue #4: Def produced documentation of several payment demands and settlement offers made by pl, which ignored matters about which he is now making claims. Def claims that this is proof that he does not owe for those cases, either because of: 1) prior payment (from the 1.6 mil. shekels paid, much of which was not earmarked) covered cases in question; 2) pl realized money was never due, or 3) pl waived rights (*mechila*) to certain payments in return for other benefits.

Ruling: **Issue #3.** The *gemara* (Bava Kama 116b) says that if Reuven gave up his animal in danger to save Shimon's and he did not succeed, he receives only pay for his toil and not for his animal. We see that even a worker who did not get the desired result deserves some pay.

Perhaps, though, one can distinguish between cases where regular compensation was promised for success, in which one gets paid something without success, and those with the chance of exceptional gain, in which case great potential could be instead of modest profit without success. The latter applies in some of our cases. [We will not get into pl's claim that the great reward was for suggesting the deal, not the legal preparations.] Still, we do not have a clear source to legitimize def's "all or nothing" claims when def did not bother to stipulate it, considering that is not the common practice.

Issue #4: Regarding the possibility of prior payment, where there was a definite obligation and a definite claim by pl and def's claim is only that he might have paid, def is obligated to pay. This is reinforced by *beit din's* strong impression that def avoided answering far too many questions posed to him (see Rama, Choshen Mishpat 75:1, that a suspicious lack of answers can be held against a litigant).

Pl's explanation, that he concentrated on only certain payments at one time in order to make at least partial payment more likely, is legitimate when someone refuses to pay that which he owes. Silence on other claims at that time thus does not preclude making claims later (see Ketubot 44a). Even if pl expressed explicit *mechila* due to def's improper lack of payment (which was clear in certain cases), def would still have a moral obligation to pay, and there is a *machloket* if *beit din* can force him to pay (Shulchan Aruch, CM 12:14 and Rama, CM 12:6).

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