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HEMDAT YAMIM

Parashat HaShavua

Metzora, 8 Nisan 5779

The Content of Slavery and the Content of Kingdom – part I

Harav Shaul Yisraeli – Shirat Hageula, pp. 22-25

The Seder night is accompanied by songs of freedom, greatness, and *malchut*, which form a contrast to the situation we could have sunk into had we remained in Egypt, as permanent slaves in the “house of slaves.” We set an atmosphere of “All Jews are the sons of kings” (Shabbat 67a) and “are fit to be kings” (Horiyot 13a).

What is this idea of *malchut* which we are linked to? Usually it means rulership. The king rules over someone, who is under his control as his servant. If this is the meaning, then it is difficult. Should it be our desire to rule over others? If so, what does it mean that we are all fit for kingdom? After all, if we are all kings, who we will be king over? If it means that we will rule over other nations, it is still difficult in light of the hope for the End of Days that there will not be conflict between nations and everyone will subscribe to the proposition that “beloved is man who is created in Hashem’s image.”

Malchut is a characteristic of the spirit, which gives one a certain power, irrespective of whether he controls anyone else. A person can be a king even if he possesses no more than “a stick and a backpack.” One who has such an internal power often induces others to follow him. But what constitutes this power, and what is the opposite – *avdut* (servitude)?

When Avraham’s servant Eliezer suggested his daughter should marry Yitzchak, Avraham replied: “You are cursed and I am blessed, and the cursed cannot cling to the blessed” (Bereishit Rabba 59). If Eliezer being cursed was just about his being a servant, Avraham could have solved the problem by releasing him!

The first time being cursed and being a servant are connected is in regards to Noach’s grandson, C’na’an (Bereishit 9:25). There the implication is that because he was cursed, he will be a servant, not vice versa. Rather, such people have a negative characteristic, and this played a role in their becoming servants. Let us look to the story of Eliezer to learn more.

The *midrash* (ibid.) says that while Avraham told Eliezer to look for a wife for Yitzchak from Avraham’s family, Eliezer was plotting how to arrange a match between Yitzchak and his own daughter. Only afterwards did he discover that this would be impossible. Realize that Eliezer had greatness, so much so that Lavan thought that he might be Avraham (ibid. 60). He also is described as disseminating Avraham’s teachings and ruling over his evil inclinations. Why should it not be possible for such a person’s daughter to be fit for Yitzchak? Why was it wrong for him to plan and try to arrange such a match?

We will continue with an explanation next time.

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Ask the Rabbi

by Rav Daniel Mann

The Logic Behind the Unusual Fast of the Firstborn

Question: What type of fast is *ta'anit bechorot* on *Erev Pesach*? If it is a real fast, why do people use a loophole (taking part in a *siyum*) to get out of it?

Answer: *Acharonim* raise several peculiarities of this fast, some of which may be related to the various opinions as to why the firstborns are supposed to fast

The fast's source is in Massechet Sofrim (21:3), which is significant but later and of lesser stature than the Talmud. It is cited by many (including Tur, OC 470, Tosafot, Pesachim 108a) but not all *Rishonim*, but it is brought as a fact by the Shulchan Aruch, without mentioning a way (e.g., a *siyum*) out of it.

The Tur is among sources that indicate that it is a commemoration of the miracle of the saving of the firstborn from *makat bechorot*. This is the explicit rationale behind two *mitzvot* – redeeming human firstborns and sacrificing animal firstborns (Shemot 13:15). But questions are raised on this approach. We usually celebrate positive miracles; we do not fast over them! The miracle impacted the descendants of the firstborns in Egypt, not contemporary firstborns! Isn't Seder night the right time to commemorate the miracle (that's when it occurred)? The Birkei Yosef (470:7) says that it should have been that night but was moved up because we cannot fast on *Yom Tov*.

Others (see Mikraei Kodesh (Frank) Pesach II:22) say that we are reliving a fast that occurred in Egypt on the 14th. When the Jews realized that all firstborns were in danger, firstborns fasted lest they be killed along with the Egyptian firstborn. Although the decree was for the death of Egyptians, not Jews, they did not rule out the possibility that sins would connect with the danger and some Jews might die. Reliving this act of protection would also explain the *minhag* of some that parents fast for their firstborn who are too young to do so (see Shulchan Aruch and Rama, Orach Chayim 470:1-2), as parents are concerned for their children. Otherwise it is difficult, as if one's child is too young to do a *mitzva*, where do we find that a parent does it in his place? In this way, it is also parallel to Ta'anit Esther, which commemorates Esther's fast (see Rambam, Ta'anit 5:5).

There is a third approach, which is found, with variations, which we will inexactly combine (Halichot Shlomo, Pesach 8:(1) in the name of Rav Auerbach; Mo'adim U'zmanim VII:169). The firstborn were elevated to a special level when being saved in Egypt, and this should have enabled them to lead the service in the *Mikdash* for all generations. However, Bnei Yisrael's sin of the Golden Calf, excluding the Tribe of Levi, caused the distinction to be taken away from them. On *Erev Pesach*, which is a prominent type of *Mikdash* service, the firstborn take note of their descent into a lower level, and seek atonement by means of fasting.

Some *minhagim* and varied opinions work out differently according to the different explanations; we will only hint at some directions, without much detail. There is some question as to which Egyptian firstborns died, and thus which Jews were saved. This question can impact on the *minhagim* of whether firstborn girls fast or not (see Shulchan Aruch and Rama, OC 470:1). Firstborn girls were not slated for service in the *Mikdash*.

The Aruch Hashulchan (OC 470:5) explains the acceptability of using *seudot mitzva* such as a *siyum* to get out of the fast as follows. The fast is not a very strong *minhag*, and since it is hard for people to finish Pesach preparations and go into the Seder fasting, it is fine to be lenient and find a legitimate way out. The author of the footnotes to Mikraei Kodesh (ibid.) suggests that if the main thing is to commemorate what happened, unlike regular fasts, participation in a *siyum*, which people know is needed to justify firstborns not fasting, is itself a commemoration of what happened. The unusual nature of the fast also can explain why the eating at a *seudat mitzva* justifies continuing to eat throughout the rest of the day (see discussion in Minchat Yitzchak VIII:45).

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



Ein Ayah

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

Unadulterated Heavenly Inspiration

(condensed from Ein Ayah, Shabbat 9:16)

Gemara: Moshe went up [to Sinai to receive the Torah] in the beginning of the morning, and he came down from the mountain [with the Torah] early in the morning. The fact that he went up early is learned from that which it says: “Moshe woke up early in the morning and he ascended to Mt. Sinai” (Shemot 34:4). The fact that he came down early is learned from the *pasuk*, “Go, come down, and you shall go up, you and Aharon with you” (ibid. 19:24). The descent is connected to the ascent – just as the ascent was early in the morning, so too the descent was early in the morning.

Ein Ayah: Moshe Rabbeinu’s prophecy was the high divine influence that comes through the “light-giving mirror.” It was the source of the Torah and its power. It was the source and the beginning of existence of all the worlds, and it proceeds until it comes to the life of man, both his spiritual and his practical side. It relates to both the individual and the broad group.

This divine influence is not impacted by life and environs, but rather it sets out the path to the character of the environs of the nation and the world. There is no need and thus it is a shortcoming to wait until part of the day has already passed and life starts activity before preparing oneself to accept the divine, glowing light in its clearest form. Specifically because it is free of any influence of the limited world of life, it has the power to give its superior power to give life, to perpetuate existence, and renew creation. It even makes the world of activity gentler and elevates the general creation to the highest levels, to spirituality, which conquers all with the grandeur and power of sanctity. The same is true not only for receiving the Torah but also for its being brought down from where it was received, by the holy spirit of Moshe, to the nation. The nature of its original state remains intact and has no need for the influence of the environs and of life.

Indeed, early in the morning did he go up. This was while the content of life, especially those that usually stick out, remained covered with a curtain, disappearing from broader society. They sleep in the bosom of power, and the energy of the actions is not yet revealed. There is no assistance from any experience of life; there is no preparedness based on the inclinations of the community. Rather there is the light of “the lofty G-d, Who possesses heavens and earth” (see Bereishit 14:22). This is the divine desire, which is at the essence of the existence of everything, and it makes life stand and pushes existence to its maximum height in the world of action and of spirit, from the first of the levels to the last of the levels. Only this holy light “flows forth” early in the day. Only this lofty prophecy which was transmitted to Moshe, who was able to speak to Hashem “mouth to mouth” (see Bamidbar 12:8), was presented to the one who was trusted in Hashem’s home (see ibid. 7) to establish a testament in the Nation of Jacob (see Tehillim 78:5) forever by having the whole world stand by the spirit of Hashem Who created all.

The same is true of the descent. The presentation to the nation was like its acceptance by Moshe. This Torah of truth and completeness was given directly *frpoom* the Heaven and it remains above life. It renews life and all the expressions of existence in a higher level and a light of life, from the storehouse of divine life, from the G-d of creation and Master of all souls. There is no change or reduction due to the desire to let the community have an impact on it or limit it to fit the limited world around it. Indeed, the ascent to the mountain and descent from it are intertwined. The heavenly element stays the same. He came to the land with His great power. “Moshe went to the Heavens and grabbed a captive; he took presents that are valuable to man (based on Tehillim 68:19).



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

Worker's Benefits

(based on ruling 77070 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=p) planned to buy an apartment in the project being built by a construction company (=def). The municipal planning board approved six apartments, but def decided to break each one into two, which concerned pl. Pl signed a preliminary contract with def, which included a 12,000 shekel down payment to show seriousness and called for the sides to reach agreement on a full contract. Months after the down payment and before signing a full contract, pl decided not to buy the apartment. He is demanding return of the down payment.

Ruling: Par. 4 of the first contract states that if the sides do not reach agreement on a full contract within three months, the down payment becomes final (here, more than three months passed). On the other hand, pl included a clause that he can raise objections to the new contract, which def must consider, and that if no agreement is reached on the contract, the down payment will be returned. Def argues that this was intended for cases in which there are unresolved disagreements about the contract, not when pl backs out of the sale for a different reason. In this case, pl mentioned several times that it was the lack of approval of the plans that disturbed him.

Beit din agrees with def's reading of the contract for two reasons. First, the addition is written in proximity to discussion of the writing of a full contract, implying that the ability to recover the down payment is related to difficulties in this regard. Second, according to pl's reading, the idea of a down payment to show seriousness has no meaning, as pl can always get the money back. This is neither logical nor does it fit with the language of "without taking away from the above ..." It became clear during the hearing that there were disputes about provisions of the proposed contract.

Pl cannot back out due to the lack of planning approval because there are several proofs that he was aware of that problem before signing the agreement and that he knew that this could take a long time to be resolved.

The question that remains is: given that there was not an agreement on a sale, is the promise that the down payment will later become irretrievable a halachically binding obligation or is it an *asmachta* (an obligation one did not expect to be operative)? According to the Shulchan Aruch (Choshen Mishpat 207:11), if one gives a guarantee payment for a transaction to the seller and the buyer backs out, the buyer does not receive the guarantee back. The Rama (ad loc.) says that he can get it back. The Pitchei Teshuva (ad loc. 13) says that the seller can demand to follow the Shulchan Aruch's opinion. While the Chazon Ish's (CM 16:11) opinion on the matter is complex, Rav Daichovski (Lev Shomeiah L'Shlomo, p. 479) concludes that the down payment becomes irretrievable. Part of his rationale is that due to the law that confirms this possibility, the accepted practice impacts the mindset of the participants and makes them serious about the matter.

In conclusion, def does not have to return the 12,000 shekels.

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