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# HEMDAT YAMIM

## Parashat HaShavua

Balak, 10 Tammuz 5779

### Why to Be Afraid or Not Be Afraid of Og, and Who Killed the Giants? – part II

Harav Yosef Carmel

Last week we saw that the giants were a prominent regional phenomenon for hundreds of years. They are first mentioned, with the name *nefilim*, already early in history, in *Parashat Bereishit* (Bereishit 6:4). We find at the time of Avraham that the four Mesopotamian kings killed out most of them, with Og being the remnant (see *ibid.* 14:5). When the spies returned from the Land of Canaan, they highlighted the presence of the three sons of the giant in Chevron (Bamidbar 13:22-33). On the way to *Eretz Yisrael*, the nation encountered Og, whose stature was described in great detail. In *Devarim* (2:10-11; *ibid.* 20-21), the relationship between the various groups of giants and the nations of Ammon and Moav is spelled out. When the *navi* describes the battles of Yehoshua after Bnei Yisrael crossed into the Land, the giants are once again stressed. They were removed from the whole country except for the area of Azza, Gat, and Ashdod, which would be known as the Land of the Plishtim (Yehoshua 11:18-22). Kalev asked as a reward for his valor in standing up to the spies to receive Chevron, so that he could (and did) remove the three giants (*ibid.* 15:14). David's family and servants ended the era of the giants in *Eretz Yisrael* (Shmuel II, 21:16-21).

What is the message behind the presence and demise of the giants? How does it connect to how Hashem looked out for His nation? The struggle between Avraham and Nimrod-Amrafel started in Ur Kasdim. Avraham escaped miraculously from the furnace and then began his trek to and around *Eretz Yisrael*. Although his main focus was on forming a nation that would change *Eretz C'na'an* into *Eretz Yisrael*, he also hoped to rid himself of Nimrod. Avraham's nation would be dedicated to pursuing charity and justice (see Bereishit 18:19), the opposite of Nimrod's "values." But Nimrod made it to Avraham's *Eretz C'na'an* with other regional kings and conquered the land. This included a political statement that the land belonged to the descendants of Cham, not Shem.

Let us look back in history at the real purpose of Nimrod's battles – to remove most of the giants from the Land, so that hundreds of years later it would be easier for Bnei Yisrael to enter *Eretz Yisrael* from the east. Moshe finished off the job by defeating Sichon and Og. Kalev removed giants from Chevron, but they still remained in the Plishti area. Why did they remain?

The Egyptians viewed *Eretz C'na'an* as part of their sphere of influence. It provided them with a path to Mesopotamia. When the new Plishtim, with a set of giants, arrived on its western coast, the Egyptians lost their free route. While this deterred Bnei Yisrael from taking the coastal path to the Land (Shemot 13:17), it also prevented the Egyptians from attacking. Only when David established a strong government in Jerusalem, with an army feared throughout the region, was there no longer a need for the giants to protect the coastal route. We see in the Torah (see Vayikra 26:32) the advantage at times of removing other inhabitants from the Land only at the right time from the perspective of Bnei Yisrael. Eventually, the sons of Avraham would set up a nation in the Holy Land dedicated to charity and justice. But the giants are just one example of something that was understandable only in historical retrospective, not at the time.

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# Ask the Rabbi

by Rav Daniel Mann

## Toveling which Utensil First

**Question:** I made a *beracha* before *toveling* several utensils, primarily glass, which I started with. Then I noticed that one of the utensils was metal. Since *toveling* metal is a Torah obligation and for glass it is Rabbinic, could the *beracha* on the glass utensil count for metal? Should I have made another *beracha* on the metal utensil?

**Answer:** *Tevilat keilim* for the six metals mentioned in the Torah (Bamidbar 31:22) is, according to many, from the Torah (see Beit Yosef, Yoreh Deah 120). For glass, it is indeed Rabbinic (Avoda Zara 75b). Let us work with your assumptions.

There are several halachic discussions about using Rabbinic fulfillments for Torah-level obligations, and we will mention a couple: making *Kiddush* when it is only Shabbat on a Rabbinic level; a bar mitzva boy doing *sefirat haomer* for adults when he became bar mitzva in the middle of the *omer* (see Mikraei Kodesh (Frank) Sukkot II, 13).

However, the issue does not apply here for two reasons. *Tevilat Keilim* ((Cohen) 9:(22)) points out that even when *tevila* is on a Torah level, the *beracha* is only a Rabbinic obligation. Therefore, he argues, the *beracha* of one doing *tevila* on glass can be used for one *toveling* metal. In truth, though, even regarding *Birkat Hamazon*, one who ate only enough for a Rabbinic obligation can be *motzi* (when there is a need) one who ate enough for a Torah-level *Birkat Hamazon* (Shulchan Aruch, Orach Chayim 197:4). Furthermore, in your case, the *beracha* applies to all of the utensils that were slated for you to *tovel*, not just the first one (see parallel application of this concept in Shulchan Aruch, YD 19:7). We even find that one can make a *beracha* directly before something that may not be a *mitzva*, and it can go on that which follows. An example is that while we do not know which set of *tekiot* are the correct one, we make the *beracha* before the first set and it works even if the second or third set is correct.

We can still ask whether there is at least a preference, had you thought of the issue, to have immersed the metal first, right after the *beracha*. We do find in regard to *berachot* before food that the *gemara* (Berachot 41a) brings rules of *kedimut* (precedence) – which *berachot* are made first, and which food should be eaten first after a given *beracha*. Even if one does not follow the proper order, the *beracha* takes effect (Magen Avraham 211:11), but we do like to do things correctly. Here, though, it is a different type of *beracha* – not a *birkat hanehenin* (on benefit, primarily food), but a *beracha* on a *mitzva*. So really the question is whether one *mitzva* has precedence over another.


The *gemara* (Zevachim 90b) does address order in *mitzvot*. *Tadir* (a more common *mitzva*) has priority over a less common one. Also, *mekudash* (a more holy *mitzva*) has precedence over others. What about a *mitzva* from the Torah over a Rabbinic one? Beit Shammai and Beit Hillel (Berachot 51b) disagree whether the *beracha* on wine comes before or after the *beracha* of *Kiddush*. The Sha'agat Aryeh (22) claims that the fact that pieces of logic including *tadir* are raised and the matter that *Kiddush* is essentially a *mitzva* from the Torah whereas the *beracha* over wine is not is not raised, shows that that Torah/Rabbinic obligation must not cause *kedimut*. On the other hand, R. Akiva Eiger (to Orach Chayim 7:1) assumes that being from the Torah is like being *mekudash*. The P'nei Yeshoshua (Berachot *ibid.*) also assumes that being from the Torah gives *mitzva* precedence, and explains that *Kiddush* over wine is usually only Rabbinic. Yabia Omer (IX, OC 100) bring several others who concur. However, I have not succeeded to find, in our context of *tevillat keilim*, that the utensil one puts in the *mikveh* first should be one that is obligated by Torah law.

In summary, it might be preferable to *tovel* the metal utensil first, but this is not clear in the sources, and it certainly does not make a difference after the fact.

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# Ein Ayah

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

## In Which Order Do we Light?

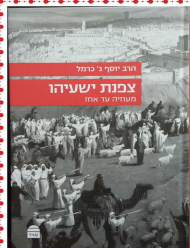
(condensed from Ein Ayah, Shabbat 9:49)

**Gemara:** [The Torah records twice that Moshe relayed how Bnei Yisrael responded to Hashem in preparation to the giving of the Torah.] It says: “Moshe responded (*vayashev*) with the words of the nation to Hashem” (Shemot 19:8), and it says, “Moshe told (*vayaged*) to Hashem the words of the nation” (ibid. 9). What did Hashem tell Moshe, what did Israel tell Moshe, and with what did Moshe respond to Hashem? ... Rebbe said: First he spelled out the punishment [for violating the Torah], as it says “*vayashev* Moshe” – things that are *meshavev* (weaken the interest of) a person. At the end, it says, “*vayaged* Moshe” – things that attract the heart of a person like *aggada* (homiletic sections of the Torah). Some [have an opposite version]: first he spelled out the reward [for keeping *mitzvo*] as the *pasuk* says: “*vayashev* Moshe” – things that restore one’s attitude, and at the end he spelled out the punishment [for violating the *mitzvo*], as it says, “*vayaged* Moshe” – things that are hard as sinews.

**Ein Ayah:** If one wants to light up the light of the soul with purity, so that it will be able to reach its goal of elevated life, one needs to first wage war against the blind power that dwells within a person, i.e., the power of physical evil. This power is liable to spread through the whole world of creations. When he uproots the power of darkness and prevents it from taking its normal actions, as a person removes his interests from bad things because he realizes how they are detrimental, he is ready for change. Then, when the flame of holiness comes to illuminate and the light of Torah brings life to the world, life becomes complete without the Satan and other dangerous things impeding the light’s clarity. According to this educational approach, first one has to attack the power of evil to uproot and weaken it, and then the spirit with the sanctity of Torah and knowledge of the divine comes to enlighten. The advantage of this system is that when the spiritual clarity comes forth, it is clean and refined.

However, there is also another approach, according to which one strives to use even the power of evil for the purpose of the lofty divine goal. Thereby, he does not go forth to first uproot the power of evil, but to try to light the soul with a complete light of sanctity. If there are pieces of impurity within the life of evil, it does not prevent the light from being absorbed. Rather it increases the positive when even the powers of evil are harnessed for good. Only if at the end there are elements of evil that cannot be purified by the great light, then the person has to turn to those remnants and eradicate them.

According to the first approach, Hashem first told the people about the punishment for sin, to shock them into removing the evil tendency to sin so that the venom of evil will not ruin the light and goodness. Only afterward did Hashem share the elements of reward for good actions. But according to the second approach, Hashem first told about the reward and only later went on to the punishment for evil actions. That is because the power of life is so great that it can purify that which is bad and enslave it to the service of good. Only in regard to that which remained of the evil there was later a discussion of the punishment for bad actions. These are matters that are as hard as sinews. Finally, the power of good is complete, powerful, and pure.



### 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.

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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

## **Additional Pay for Additional Work?**

(based on ruling 78005 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) is a company that supervises building projects. The defendant (=def) is a group that sought to receive rights and build two residential buildings. Def hired pl to supervise the building project for 384,000 shekels (2.5% of the cost of building). The contract says that this is a final price, and there cannot be renegotiating due to inflation, discovered costs, or anything else. The government required the group to build a two story parking building instead of the planned uncovered parking lot, and pl claims that it added more than 1,500,000 shekels to the price of the project and required extra work. Therefore, pl demands an extra 38,000 shekels, using the same 2.5% price key. Def responds that since the contract sets the price as totally final, pl cannot ask for more. They also included an estimate made for a loan application that puts the amount of increased expense at significantly less. Also, if someone should pay pl, it should be the *chevrat nihul* (cn – the company that def pays to handle the project as a whole), as they have been paying two thirds of pl's fee. Finally, a compromise had been worked out, for def to pay 27,350 shekels, and although it did not come to fruition, def should not have to pay more than that.

**Ruling:** *Beit din* determined that the price set was based on a blueprint of the project that did not include the parking building. As such, it does not cover the additional work, unless the standard practice is that a set fee cannot be changed even when major new elements of the work are added. The expert *beit din* hired said that the practice is to increase the price for new elements. It is also of note that the other major contracted companies saw an increase due to the change.

Regarding the amount due for the addition, pl's calculation, based on the agreed upon percentage per the amount paid already to the contractor for building, is a logical, precise way to calculate. In contrast, def's idea of taking the estimate presented early on to a bank in a financing request is arbitrary and inexact. Therefore, 38,000 shekel is the correct amount. The expert said that a 2.5% rate is under the norm for such jobs.

Even if, in practice, cn paid pl, that was based on an internal arrangement between def and cn. For our purposes, the important thing is that def obligated itself to pay pl, and thus it is responsible to ensure that pl receives as much as it legally deserves.

At first glance, the compromise agreement, even if unsigned, is binding because there was work done after the agreement, and this serves as a *kinyan* (see Shulchan Aruch, Choshen Mishpat 315:4). Second of all, since pl only had to be *mochel* (relinquish rights), this does not require a *kinyan*. However, since the compromise was made with the understanding that def would pay promptly and without a further legal battle, the *mechila* was done under false pretenses and is null (see similar idea in Eretz Hemdah-Gazit ruling 77015).

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