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Rabbi Hershel Schachter

Will the Real Adar Please Step Forward

If one dies during the month of Adar in a shanah peshuta (a non-leap year which has only one Adar), when do the children observe the yahrzeit during a shana meuberes (a Jewish leap year which consists of thirteen months, two of them called Adar)? Should the yahrzeit be kept during the first Adar or the second? The Shulchan Aruch (Orach Chaim 568:3) quotes a difference of opinion on this matter. The Sephardim follow the view of the Mechaber (Rav Yosef Karo) that the yahrzeit should be observed in the second month of Adar, while the Ashkenazim follow the view of the Rama (Rav Moshe Isserles) that it should be kept in the first Adar.

The presentation of this dispute in the Shulchan Aruch runs as follows: (I) the whole idea of observing a yahrzeit is a matter of minhag (custom) (II) customs are binding (rabbinically) because they are considered as if the individual had taken a neder l'dvar mitzvah (a vow regarding a mitzvah) (III) when it comes to nedarim the determination of what is and is not included depends on lashon beni adam (the common language usage in the place and time of the neder) (IV) the mishna in Nedarim quotes a dispute among the Tanaim whether in common usage it is the first or the second Adar which is referred to simply as "Adar" without specifying "first Adar" or "second Adar". The Mechaber and the Rama are arguing about which view of the Tanaim is the accepted view, i.e. do people have in mind the first or second Adar when they refer to Adar during a leap year?

We are still left with a major problem. Given that all languages change over time, just because in the days of the Tanaim in Eretz Yisroel the common usage of the term "Adar" during a leap year may have meant one or the other of the two months, perhaps over the years the usage has changed. The Meiri in his commentary to Maseches Nedraim repeats many times that the interpretations of lashon bnei adam as given by the Mishna and the Gemara only applied at that time and in that part of the world. It is quite possible that the usage of terms has changed.

The Rama concludes that one should observe the yahrzeit in a leap year during both months of Adar. We would probably understand this to be based on the Talmudic dispute regarding what is indeed the lashon bnei adam, and because of the doubt we recommend that one be machmir. However, Rav Soloveitchik was fond of pointing out the explanation given by the Vilner Gaon for this position. The Gaon said the yahrzeit should be observed in both months of Adar not because of a safek (a doubt) but rather b'Toras vaday (as a certainty).

The Tanaim had a major dispute regarding the observance of Purim during a leap year. Should the Megillah be read on the fourteenth day of

the first month of Adar or of the second month of Adar. In this context the Talmud does not refer to the aforementioned dispute between the Tanaim regarding a neder. The issue of what is included in a neder is a function of lashon bnei adam, but the reading of the Megillah is a function of which day is the real Purim, which in turn depends on which month is the real Adar. The Tanaim give seemingly tangential reasons for their views of when the Megillah should be read, and don't tackle the crux of the issue: which day is the real Purim? Therefore it would appear that both Adars are really Adar, and the fourteenth of both months is really Purim. In fact, the fifteenth of each month is also considered a day of Purim and thus a regular year has two days of Purim and a leap year has four days of Purim.

The Talmud and the Shulchan Aruch point out that it is forbidden to fast or to deliver a eulogy on any of the days of Purim, whether one lives in Jerusalem or Tel-Aviv. We leave out tachanun in a leap year on all four days of Purim. The question of when one reads the megillah is not really a question of which day is the real day of Purim, but rather on which of the four days should one observe the mitzvos of Purim. Pesach is a seven day yom tov in Eretz Yisroel but one can only observe the seder on the first night. Rosh Hashana is (biblically) a twenty four hour yom tov, but the mitzvah of shofar can only be fulfilled during the day. Similarly, all four days are really Purim but one can not read the Megillah on whichever day he chooses. One tana is of the opinion that we should not postpone reading the Megillah to the second month, since we are not allowed to forgo an opportunity to do a mitzvah - ein maavirin al hamitzvos. The second tana insisted that we read the megillah on the second Purim, which is closer to Pesach, to connect the geulos of Purim and Pesach.

And now the punch-line: the observance of the yahrzeit is not purely a matter of minhag. Rather the assumption is that since a person died on this day, perhaps this day is still a day of judgment (yom hadin) for the deceased (or perhaps for his entire family), and as such ought to carry with it certain observances (fasting, reciting of kaddish, learning mishnayos, etc.) in order to mitigate the din. If we assume that both months of Adar are really Adar, then both possible days of the yahrzeit may be viewed as yemei hadin, and hence the yahrzeit ought to be observed in both Adars, not merely out of doubt (meisafek) but rather as a certainty (b'Toras vaday).

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Rabbi Mordechai Kornfeld

NEDARIM 63b

THE REAL "ADAR" IN A LEAP YEAR

HALACHAH:

The Gemara cites a dispute between Rabbi Meir and Rabbi Yehudah who disagree about the nomenclature of the two months of Adar in a leap year. According to Rabbi Meir, the word "Adar" unqualified refers to the second Adar. When one wants to refer to the first Adar he must specify "Adar Rishon." According to Rabbi Yehudah, the word "Adar" unqualified refers to the first Adar. When one wants to refer to the second Adar he must specify "Adar Sheni."

The Mishnah (63a) follows the view of Rabbi Yehudah when it teaches that when one specifies that his Neder will last "until the beginning of Adar," his Neder lasts until the beginning of Adar Rishon. The Gemara explains that the Mishnah may conform with the view of Rabbi Meir as

well in a case in which the person made the Neder before he was aware that the year would be a leap year. Since he thought that there would be only one Adar, his words "until the beginning of Adar" obviously referred to the beginning of the first Adar (the month after Shevat).

What is the Halachah? Which Adar is considered the "real" Adar and which is the extra month?

(a) The RAMBAM (Hilchos Nedarim 10:6) rules in accordance with the view of Rabbi Meir. He infers that the Halachah follows Rabbi Meir from the fact that the Gemara attempts to explain how the Mishnah can conform with Rabbi Meir's opinion. Accordingly, when a person makes a Neder "until Adar," if he knows that there will be two months of Adar in the year, his words are understood to mean "until Adar Sheni." If he does not know that the year will be a leap year, his words are understood to mean "until Adar Rishon." (The SHACH (YD 220:8) infers from the words of TOSFOS (end of 63b) that Tosfos also rules like Rabbi Meir.)

(b) Most Rishonim (RAN, ROSH, RA'AVAD, TERUMAS HA'DESHEN #294, and others) rule in accordance with the view of Rabbi Yehudah and explain the Mishnah according to its straightforward understanding, that "Adar" unqualified always refers to Adar Rishon regardless of whether or not the person knows that it is a leap year. They rule this way because of the well-known rule (Eruvin 46b) that when Rabbi Meir and Rabbi Yehudah argue the Halachah follows the view of Rabbi Yehudah.

According to these Rishonim, when the Gemara attempts to show how the Mishnah conforms with the opinion of Rabbi Meir, the Gemara does so only because of the rule that an unattributed Mishnah (which mentions no name) is the view of Rabbi Meir, but not because the Halachah follows Rabbi Meir.

HALACHAH: The SHULCHAN ARUCH cites both in opinions in the laws of Nedarim (YD 220:8) and in the laws of writing a Get (EH 126:7). He seems to rule stringently and follow both opinions, l'Chumra.

However, in the laws of writing the date in a contract (CM 43:28), the Shulchan Aruch cites only the ruling of the Ran that the Halachah follows the view of Rabbi Yehudah who says that the first Adar is called "Adar" unqualified.

Apparently, the Shulchan Aruch considers the Ran's ruling the more conclusive one, but in matters which involve an Isur (such as Get and Neder) the Shulchan Aruch is stringent and follows both opinions. The REMA, in contrast, rules consistently like the Ran, that the first Adar is the "real" one (OC 568:7 and end of YD 402 with regard to the observance of a Yahrzeit; OC 427 with regard to the dating of contracts; EH 126:7 with regard to the writing of a Get).

However, in the laws of the observance of a Yahrzeit (OC 568:7), the Shulchan Aruch cites only the opinion of the Rambam that the Halachah follows the view of Rabbi Meir who says that the second Adar is called "Adar" unqualified!

The MAGEN AVRAHAM and VILNA GA'ON explain that although the Shulchan Aruch considers the Ran's ruling the more conclusive one and thus he rules like Rabbi Yehudah that the first Adar is "Adar," he rules this way only with regard to the way people speak (Lashon Bnei Adam). However, with regard to the essence of the month, the Shulchan Aruch rules that the "real" Adar is the second Adar. (Similarly, Tosfos here writes with regard to the reading of the Megilah on Purim that the second Adar is considered the "real" one. See also RASHI to Rosh Hashanah 19b, DH Kamah, and TOSFOS there, DH Adar, who point out that the Gemara calls the first Adar the "Chodesh ha'Ibur," the extra month.)

In practice, the SHACH (YD 220:7) writes that even in cases of Nedarim and contracts we should be stringent out of doubt and take into account the opinion of the Rambam, since a number of other Rishonim rule like him.

With regard to the date of the observance of a Yahrzeit (which does not depend on the way people speak), the Magen Avraham and Vilna Ga'on conclude that we should be stringent not only out of doubt but even according to the letter of the law and treat both months of Adar as the real Adar. The Mishnah in Megilah (6b) states that "there is no difference

between the first and second Adar except for the reading of Megilah and Matanos la'Evyonim." Accordingly, one should observe the Yahrzeit and fast (if he accepted upon himself such a practice) on the date of the Yahrzeit in both months of Adar.

One exception to this ruling is the age at which a boy becomes Bar Mitzvah. The REMA (OC 55:10) writes that a boy born in Adar of an ordinary year who reaches the age of thirteen in a leap year becomes obligated in Mitzvos as a Bar Mitzvah only in Adar Sheni. The Rema implies that this is not because of a doubt, but because he is considered an adult only in the second Adar. Why does the Rema rule like this? The Rema himself rules in the laws of Yahrzeit and Nedarim that the first Adar is the "real" one.

The ARUCH HA'SHULCHAN (OC 55:14) explains that the age of Bar Mitzvah does not depend on a specific date. Rather, it depends on the count of years that must pass before the child is considered an adult. Even if the first Adar is called "Adar," nevertheless when we count thirteen years from the boy's birth we must include the added month, the Chodesh ha'Ibur, as the Mishnah says with regard to a Neder. (That is, when one makes a Neder to prohibit wine upon himself for "a year," the Chodesh ha'Ibur is included in the Neder and he is prohibited from wine for thirteen months.) The boy's final year of childhood concludes after thirteen months have passed, including the final year's Chodesh ha'Ibur.

POINT BY POINT SUMMARY OF THE DAF

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Nedarim 63

THE EXTRA MONTH (a) (Mishnah): If one said 'wine is forbidden to me for a year', and the year was made a leap year, he is forbidden also in the added month; (b) If he said 'until Rosh Chodesh Adar', he is forbidden until Rosh Chodesh of the first Adar; (c) If he said 'until the end of Adar', he is forbidden until the end of the first Adar. (d) (Gemara) Inference: When one does not specify, 'Adar' means the first Adar. (e) Suggestion: The Mishnah is like R. Yehudah: 1. (Beraisa - R. Meir): When writing a document in Adar Rishon, one writes the date 'Adar Rishon'. In Adar Sheni, one writes just 'Adar'; 2. R. Yehudah says, in Adar Rishon, one writes 'Adar'. In Adar Sheni, one writes 'Adar Sheni'.

(f) Rejection (Abaye): Our Mishnah is even like R. Meir; 1. When one knows that it will be a leap year, 'Adar' refers to Adar Sheni. Before one knows that it will be a leap year, 'Adar' refers to Adar Rishon. (g) Support (Beraisa): If one said 'until Rosh Chodesh Adar', this is until Rosh Chodesh Adar Rishon. If it is a leap year, it is until Rosh Chodesh Adar Sheni. 1. Inference: (Surely, also the Reisha discusses a leap year! Rather,) in the Reisha he did not know that it is a leap year. 2. This is like Abaye. In the Seifa he knew that it is a leap year, so 'Adar' means Adar Sheni.

from **Rabbi Yissocher Frand** <ryfrand@torah.org ryfrand@torah.org, genesis@torah.org to ravfrand@torah.org date Feb 21, 2008 12:05 AM subject Rabbi Frand on Parshas Ki Sisa mailed-by torah.org Rabbi Yissocher Frand To sponsor an edition of the Rabbi Yissocher Frand e-mail list, click here Rabbi Frand on Parshas Ki Sisa

They Have Strayed QUICKLY

In this week's parsha, while Moshe was up on Mt. Sinai receiving the Luchos [Tablets bearing the Ten Commandments], the people became impatient waiting for his return. Aharon created the Golden Calf for them and they began worshipping it. G-d told Moshe: "Go, descend – for your nation that you have brought up from Egypt has degenerated. They have strayed QUICKLY from the way that I have commanded them; they have

made themselves a molten calf, prostrated themselves to it and sacrificed to it, and they said This is your god, O Israel, which brought you up from the land of Egypt." [Shmos 32:7-8].

Rav Yeruchum Levovitz, the Mirer Mashgiach, commented on the words "They have strayed QUICKLY from the way I have commanded them". Why is it important to know, he asked, that they quickly strayed from the path? Would they be any less culpable if they had slowly strayed from the path?

Rav Yeruchum Levovitz explained that had they strayed slowly from the path, it would be not be condoned, but it would at least be understandable. After they stood at the foot of Mt. Sinai and heard G-d speak to them directly — the only people in the history of the world to have such an experience en masse — it might be understandable if one or two or three years after that great event, the experience had begun to dissipate from their collective memories. This is the nature of human beings. We forget. Even major events in our lives become hazy in our memories as time goes on. Eventually they wear off.

The situation here was quite a different story. They heard "I am the L-rd your G-d" on the sixth of Sivan. The events with the Golden Calf happened on the seventeenth of Tamuz — less than six weeks later! If in 40 days, one can go from the experience of Revelation at Mt. Sinai to the making of a Golden Calf, unfortunately the timing brings into question the whole sincerity of their acceptance of the Torah and their declaration of "We will do and we will listen."

It is always somewhat depressing to me to see how short a time it takes — in myself and in others — for Yom Kippur to "wear off". We can reach a very high level on Yom Kippur. We spend the whole day in shul and reach a level of spirituality that we do not attain the whole year. How long does it last?

Chazal quote the pasuk [verse] written in connection with taking the Four Species on Succos: "And you shall take for yourselves on the first day..." [Vayikra 23:40]. Chazal say it is called the "first day" because Succos is the first day in which Yom Kippur wears off, so to speak, and one might begin to sin again. Some people "avoid the rush". Why wait until Succos?

I remember from my youth — and there are still such places today — where the Rabbi had to get up after Neilah and urge the people to Daven Ma'ariv after Yom Kippur and not run out as soon as the shofar was blown! Granted, these might have been the "3 day a year Jews", but even they should have acted differently.

In the Ma'ariv shmoneh esray after Yom Kippur we recite, "Selach lanu, mechal lanu..." [forgive us] as we do in every weekday Amidah. But we should ask — what could we have done since Yom Kippur ended and atoned for our sins that we have to ask for forgiveness again?

If we "leave so quickly" from the path of the commandments that we were given, what does that say about the impact of the "spiritually elevating experience" that we ostensibly just went through? This is the emphasis of the word "quickly" in the previously quoted pasuk. It is only the 17th day of Tamuz. It is not even a year! It is not even a quarter! It is just a little over a month!

This was a terrible indictment of the Jewish people and it is an indictment of us if after a Yom Kippur or another spiritually moving experience, we move back on the next day to "business as usual".

The Torah Describes The Luchos' Uniqueness When They Are Being Destroyed

The pasukim in our parsha read as follows: "Moses turned and descended from the mountain, with the two the Luchos in his hand, Luchos inscribed on both of their surfaces; they were inscribed on one side and on the other. The Luchos are the work of G-d and the script was the script of G-d, etched on the Luchos." [Shmos 32:15-16]. The Torah explains these Luchos. They were the most unique item in all of creation! They were something written by the Hand of G-d.

What does Moshe Rabbeinu do? He takes the Luchos and he breaks them!

The Shemen HaTov by Rabbi Dov Weinberger makes a very interesting observation. Is this the place to describe the Luchos? The proper place to describe them would have been earlier in the narrative, when they were first given to Moshe [Shmos 31:1]. Why now — as they are being broken — does the Torah first go into the detail describing how unique these Luchos were?

The simple interpretation is that the Torah is emphasizing — DESPITE the fact that the Luchos were so special and so unique, NEVERTHELESS Moshe broke them. The Shemen HaTov gives a different insight, which is a very true commentary about life in general.

We rarely appreciate what we have while we have it. Only when we are about to lose something do we first appreciate what we had. Earlier, when Moshe was first given the Luchos, we thought that they were ours and that we would have them until the end of time. We hardly noticed their special quality. But now when we are about to lose them, we finally begin to appreciate them.

We know this is so true. When we have someone we love and appreciate, it is often not until we are close to losing him or her that we appreciate what he or she was to us all along.

If one has ever had the experience of having a child who was very sick and then recovered from an illness, one knows that the kiss he gives that child before they go to sleep at night is a different kiss than he used to give the child before the child got sick. If someone, G-d forbid, comes close to losing that precious little child, the child becomes even more important to them.

That is the way people are. We only appreciate things in their absence. That is why the pasuk only emphasizes the unique characteristics of the Luchos here, at the time of their destruction.

These divrei Torah were adapted from the hashkafa portion of Rabbi Yissocher Frand's Commuter Chavrusah Tapes on the weekly portion: Tape #584, The Meat Delivery At Your Door. Good Shabbos!

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[internetchaburah] Internet Chaburah Ki Sisa 5768

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Prologue: It only takes two weeks.

The Torah informs us that "Ach Es Shabbosai Tishmoru" We ONLY must keep Shabbos. After the completion of all the commands regarding the establishment of the Mishkan, the Torah tells us "ACH- only" recall the the Shabbos. Our Rabbis (Shabbos 118) learn that the word ACH teaches us that if the Jewish nation would only observe the Shabbos for 2 weeks, we would immediately merit the full redemption.

The Maharsha (Niddah 35a D"H Chassidim) and others question the Gemara's proof. They ask how we limit the redemptive process to 2 weeks? Why is two weeks enough?

The Sheairis Menachem offers an interesting insight. He notes that the two weeks are not necessarily calendaric. Rather, the "2 Shabbosos"

referred to in the Talmud refer to the Shabbos of Menucha and the Shabbos of Kedusha. In other words, one needs to feel that on Shabbos he is experiencing both the full experience of rest and the full experience of holiness – both essential to Shabbos observance. When we achieve both, we will be ready for the redemption.

The great Rav Yosef Shaul Nathanson used to add that Menucha of Shabbos is comprised of 2 components as well. Namely, that on Shabbos one needs rest for the body and rest for the soul. When we recall to bring rest for both—not only for the body – then we will be ready for redemption. All it takes is the preparation and the observance – of a Full Shabbos -- for 2 weeks.

Maran Harav Mordechai Willig Shlita (Am Mordechai vol. II) noted that this is the Peshat in the popular Piyut, “Kol Mikadeish Shevii Karau Lo, Kol Shmoer Shabbos KaDaas MeiChallilo.” (Whoever hallows the Shabbos as befits him, whoever safeguards the Shabbos properly from desecration, his reward is exceedingly great in accordance with his deed). Hallowing the Shabbos AS BEFITS HIM, according to Rav Willig, refers not to the Shabbos but to the observer. That is, each community has its relevant Minhagim to honor the Shabbos. Each has its customs, established way of dress, diet and means of sanctifying and honoring the day. When the individual observes the Shabbos in accord with his Kehilla and its practices, it sets a tone for peace and Shalom Bayis, breeding a sense of Achdus—of brotherhood – among members of a community and Am Yisroel. Such a situation is worthy of great reward and immediate redemption.

Baruch Hashem, the greater Elizabeth/Hillside/Union Kehilla, where the chaburah currently originates, is blessed with a rich fascinating history of communal customs and those for Shabbos are no less enriching. One in particular, deals with Eruv Education and the dedication of a Full Shabbos to communal awareness of the laws of Eruv and the laws of carrying on Shabbos. In the spirit of that custom (which will be observed next Shabbos Parshas VaYakel) and of the 2 week rule, we present this week’s Chaburah appropriately titled:

Key(s) to Redemption

The Mishna (Shabbos 62a) notes that Biblically, a woman cannot carry her needle or a ring with a seal on Shabbos in public. The Talmud notes that the opposite is true for a man – he cannot wear a ring WITHOUT a seal. Either way, both cannot wear the ring that is not biblically forbidden, lest s/he remove it and carry it 4 amos.

The Yirushalmi seems to bring proof from a golden key in opposition to this position and the Rosh cites the Razah who notes that a key is a Tachsit (adornment) to both men and women. Accordingly, the Rosh rules, that when an adornment is made for both men and women, it is forbidden for both to carry it on Shabbos. The Rosh adds that when an adornment serves a dual purpose (as an adornment and a function like a key that is worn and utilized) it is forbidden to carry it on Shabbos lest others assume you are wearing it in order to open doors. This position is cited by the Shulchan Aruch (O.C. 301:11) who adds that other maintain that if it is made from Silver it would be Mutar.

The Mishna Berurah (See Biur Halacha) notes that the Heter would only be in regard to wearing the silver key when the individual wears it without the intention of using the key to open doors. If she intended to do both, it would be biblically forbidden like a signet ring. That being the case, how do we have Eruv keys and Eruv belts when an Eruv is not functional?

The Megillas Sefer (41:1) questions the Mishna Berurah’s position from a text later (147b) that notes that the bath house attendants would wear their towels in order to carry them to the bath house on Shabbos. Perhaps a Chiluk between clothes and Jewelry could be made, wherein the wearer of Jewelry must assess if he is concerned more with function or more with adornment. But what happens if the intention is evenly split? What if a woman wears a pin as a Jewelry adornment if it is also her house key?

Rav Willig Shlita (Am Mordechai II:Siman 30) thought that this would still not violate any Biblical law. The fact is that the Yirushalmi’s position was based upon a Gezaira lest one violate a biblical law and carry in the public domain. So long as the wearer includes any intention of adornment, the intent is not only for carrying skirting the biblical prohibition. Where the wearer makes a Jewelry piece out of the key, there is more room to be lenient as per the second opinion in the Shulchan Aruch.

Accordingly, Rav Willig cautions women wearing a key stickpin in an arena where there is no Eruv to be careful that the entire key be made of jewelry materials for adornment purposes.

Shabbat Shalom

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"...v'henei koran or panav va'yiru mi'gehes elav..." (34:30) ...and they saw that Moshe's face glowed, and were fearful of being close..." Moshe Rabeinu glowed. His face shone with luminescence of a rare and transcendent form. When he would turn to his nation to teach the holy words of Torah given to him by HaShem, that light burst from within him so that people were afraid to go near. The Recanati helps us grasp some of the metaphysical dynamics here. What was the nature of this light which beamed from Moshe Rabeinu? Moshe acquired the words of HaShem in a transmission unlike that of other prophets. He was able to apprehend the Presence in a waking state, by day, and grasped the Word with a purity, a clarity, which needed no interpretation, no translation, no conversion of the abstract or the symbolic into more concrete or verbal forms. This is known by Chazal as *ispaklaria ha'meira*, "seeing through the polished glass." The soul seeks union with that which is sacred. When one devotes himself to sensing that closeness with the Above, and when the soul clings to that quest, it transcends the physical self. It adopts something of the supernal and the numinous. All that we know about light in the physical world is but a metaphor for the light of creation. That higher light attracts the yearning soul, which in turn radiates with its glow. This is the nature of the "light" which could be sensed emanating from within and around Moshe Rabeinu. What was the function of that radiant glow? Part of it was for the sake of the nation. We needed to know that the work of Moshe, the utter devotion of our "faithful shepherd", was unlike that of other leaders who may come and go. His higher plane of apprehending the Presence was made evident to us by way of the illumination which surrounded him as he served as a vehicle for transmitting Toras HaShem. So, if the light was for our own sake, why did we fear to draw close? The Recanati writes that it was our vivid recognition that the light came from Above which gave us pause. Grasping the reality that Moshe ascended to such heights that the highest light above remained with him was astounding and not something that we could entirely get used to experiencing. Knowing that the teachings of Moshe were the selfsame teachings of the One Above was powerful, and people were apprehensive about the meaning of such greatness, and the distance which separated each one from reaching that lofty place. The Recanati adds that many great Torah teachers had the practice, after studying Torah in preparing their lessons, of turning away, sitting down, then covering their faces as they taught their students. They would signify that the experience of listening to words of Torah is like hearing Torah from Moshe Rabeinu. The students around them would capture a trace of that same feeling, as they heard and looked towards their great teachers sharing and transmitting Dvar HaShem. Many years ago, not long after obtaining my first ordination, I was invited as a visiting scholar to a number of communities. I remember giving the guest *drasha* in Beth Jacob, a large shul in Beverly Hills. As I approached the *amud*, I first faced the Aron Kodesh and kissed the *paroches*. As I turned to begin my *drasha*, the rabbi, Rav Maurice Lamm shlita came and draped a large talis over me, whispering "Kavod HaTorah, Kavod HaTzibur." I was still single, a *yeshiva bachur*, and not yet accustomed to wearing a talis! As the years

have gone by, particularly as I learned this Recanati, the depth of that custom has been illuminated for me. We are not prophets, and we are not Moshe Rabbeinu. Yet, when we learn, we are learning Toras Moshe, and Toras Moshe is Toras HaShem. When a person delivers, gives over, the words of Torah, his dvar Torah is in that sense Dvar HaShem. We aim to capture some of that sense by covering our heads, cloaked in a talis. We are recreating an image of that first sacred transmission of Torah. Kavod HaTorah, Kavod HaTzibur. We must look the part. We must act the part. We are links in a sacred chain, and have a holy mission. Good Shabbos. D Fox

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Covenant & Conversation

Thoughts on the Weekly Parsha from

Sir Jonathan Sacks

Chief Rabbi of the United Hebrew Congregations of the British Commonwealth

[From 2 years ago - 5766]

<http://www.chiefrabbi.org/>

Ki Tissa

This week's sedra begins with a strange command:

When you take a census [literally, "when you lift the head"] of the Israelites to determine their number, each one is to give to the Lord an atonement offering for his life when they are counted, so that they will not be stricken by plague when they are counted. (Exodus 30: 12) Evidently, it is dangerous to count Jews. This is confirmed by an episode in II Samuel 24. On one occasion, King David decided to take a census of the people. His chief of staff Joab strongly advised against it:

"But Joab replied to the king, "May the Lord your G-d multiply the troops a hundred times over, and may the eyes of my lord the king see it. But why does my lord the king want to do such a thing?" However, David overruled him. Once the census was taken, David began to realize that he had done a great wrong:

David was conscience-stricken after he had counted the fighting men, and he said to the Lord, "I have sinned greatly in what I have done. Now, O Lord, I beg you, take away the guilt of your servant. I have done a very foolish thing." The result, however, was tragedy. A plague struck the people, taking many lives. There is a tantalizing mystery here. Why is it dangerous to count Jews? The commentators offered many suggestions. Rashi says that counting is fraught with the danger of "the evil eye". Rabbenu Bachya suggests that when people are being counted, they are numbered one by one rather than all together. For a moment they are individuals, separated from the community. Hence the danger that an individual's merit may not be sufficiently great to save him from adverse judgement. Sforno says that a census reminds us of change; it draws attention both to those who have died and those who are still alive. This too is dangerous, since it raises the question: by what right am I here and others not? To avert this we must give, by way of ransom, a gift to the Temple and its Divine service.

If only by way of midrash, and with no suggestion that this is the plain sense of the verse, there is another possibility. Why do nations normally take a census of their population? To establish their strength: military (the number of people who can be conscripted into an army), economic (the number from whom taxes can be raised) or simply demographic (the numerical growth or decline of the nation). The assumption beneath every census is: there is strength in numbers. The more numerous a people, the stronger it is.

That is why it is dangerous to count Jews. We are a tiny people. The late Milton Himmelfarb once wrote that the total population of Jews throughout the world is smaller than a small statistical error in the Chinese census. We are a fifth of a per cent of the population of the world: by any normal

standards too small to be significant. Nor is this true only now. It was then. In one of his concluding addresses in Deuteronomy, Moses said:

The Lord did not set his affection on you and choose you because you were more numerous than other peoples, for you are the fewest of all peoples. (Deuteronomy 7: 7). The danger in counting Jews is that if they believed, even for a moment, that there is strength in numbers, the Jewish people would long ago have given way to despair.

How then do you estimate the strength of the Jewish people? To this the Torah gives an answer of surpassing beauty. Ask Jews to give, and then count their contributions. Numerically we are small, but in terms of our contributions to civilization and humankind, we are vast.

Think only of the makers of modern thought: in physics, Einstein; in philosophy, Wittgenstein; in sociology, Durkheim; in anthropology, Levi-Strauss; in psychiatry, Freud; in economics, a whole string of great thinkers from David Ricardo to Milton Friedman to Alan Greenspan to Joe Stiglitz (including 40 per cent of the winners of the Nobel Prize for economics). In literature, there were writers from Proust to Kafka to Agnon to Isaac Bashevis Singer; in music, classical composers like Mahler and Schoenberg, popular composers like Irving Berlin and George Gershwin, as well as some of the world's greatest soloists and conductors. Jews have won 48 Nobel prizes in medicine. They have made an outstanding contribution to law (in Britain, where they are one-half of a percent of the population, they contributed two of the last three Lord Chief Justices, the highest judicial office in the land). And all this without mentioning the Jewish contribution to industry, finance, academic life, the media, and politics (under John Major, at one time both the Home Secretary and Foreign Secretary were Jews).

But it is, of course, the Jewish contribution to the life of the spirit that is not only unique but shaped the entire course of Western civilization. Somehow this tiny people produced an unceasing flow of patriarchs, priests, poets and prophets, masters of halakhah and aggadah, codifiers and commentators, philosophers and mystics, sages and saints in a way that almost defies comprehension. It was not once that the Jewish imagination caught fire, but in century after century, sometimes under the worst persecution known to any nation on earth. Time and again, in the wake of tragedy, the Jewish people renewed itself in a burst of creativity. The destruction of the First Temple gave rise to systematic Torah study in Babylon. The destruction of the Second precipitated the great literature of the Oral tradition: Midrash, Mishnah and Gemarah. Encounters with Karaites, and later, Christians, produced the great Torah commentaries. The challenge of Islamic neo-Platonism and neo-Aristotelianism provoked one of the great ages of Jewish philosophy.

If you want to know the strength of the Jewish people, ask them to give, and then count the contributions. That is the majestic idea at the opening of this week's sedra.

Nor is this mere conjecture. There is one episode in the Book of Judges (chapters 6-7) that epitomizes this dazzling truth. The Israelites had suffered a devastating series of attacks from the Midianites. G-d called on a warrior, Gideon, and told him to wage war against them. Gideon duly assembled an army of 32,000 men. G-d responded with what must surely be one of the strangest lines in history: "You have too many men for me to deliver Midian into their hands" (Judges 7: 2). G-d tells Gideon to announce that anyone who wishes to go home should go home. 22,000 men did so; now a mere 10,000 remained. G-d said: There are still too many men.

He told Gideon to take the men to a place of water and observe how they drank. 9,700 kneeled down to the water to drink it directly. A mere 300 cupped the water in their hands and stayed standing. G-d told Gideon to dismiss the 9,700, leaving a mere 300 troops, an absurdly small number for any military engagement, let alone a war against a powerful enemy. Only then did G-d say to Gideon: "With the three hundred men that lapped I will save you and give the Midianites into your hands." (7: 7). Mounting a surprise attack at night, and using ingenious tactics to suggest the presence of a large army, Gideon struck and won.

Clearly this is not just a story about war. Tanakh is a religious text, not a military one. What G-d was saying to Gideon – what tacitly He has been saying to us and our ancestors for forty centuries – is that to win the Jewish battle, the battle of the spirit, the victory of heart, mind and soul, you do not need numbers. You need dedication, commitment, study, prayer, vision, courage, ideals, hope. You need a people who are instinctively inclined to give, to contribute. Give, then count the contributions: the finest way ever devised to measure the strength of a people.

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Peninim on the Torah

by Rabbi A. Leib Scheinbaum

- Parshas Ki Sisa mailed-by shemayisrael.com

PARSHAS KI SISA When you take a census of the Children of Israel according to their numbers, every man shall give Hashem an atonement for his soul. there will not be a plague Rashi explains that when Jews are counted, it is important that they not be counted individually by person; rather, they should each give a coin towards the Mishkan, and the coins will be counted. We open ourselves up to the effects of ayin hora, an evil eye. We must endeavor to understand the reasoning for this. What is the difference whether we count people or coins? Are the goals not the same?

Horav Eliyahu Lopian, zl, explains that, actually, the focus of their census varies. One who counts people does so to assess his strength and ability to succeed in war or to address other issues of security. As the numbers increase, so does his self-confidence in his ability to succeed. He becomes much more sure of himself and, thus, falls prey to the misguided belief of kochi v'otzem yadi, "my power and the strength of my hand" has accomplished all of these great achievements. It was me, me and only me.

It is not so for one who counts the coins that have been donated to the Mishkan. The focus turns to evaluating how many are dedicated and connected to Hashem. The focus is spiritual in nature and, therefore, not subject to the effects of the evil eye.

This idea presents a powerful lesson for us. Involvement in numbers is fine as long as the goal of this number is to note how many more are connected to the Almighty. If, however, the objective is to showcase one's strength and laud one's own achievements, the census taker is treading on risky ground.

Every man shall give Hashem an atonement for his soul. This shall they give - everyone who passes through the census as a portion to Hashem. Everyone who passes through the census shall give a portion of Hashem. The wealthy shall not increase and the destitute shall not decrease to give the portion of Hashem. (30:12,13,14,15)

Upon perusing the text, we note the Torah's emphasis on Hashem: "A portion to Hashem;" "a portion of Hashem;" "to give the portion of Hashem." What is the significance of this? Obviously, this is being given for/to Hashem.

In the Talmud Megillah 13b, Chazal say that Hashem knew that one day the wicked Haman would deposit shekalim to destroy the Jews. Therefore, He preceeded Haman's coins with His coins (half-shekel). This is enigmatic. If the purpose of the half-shekel was to preempt Haman's shekalim, why is there a prohibition against increasing or decreasing from the half-shekel amount? Haman gave ten thousand shekalim. We should not be restricted from superceding the half-shekel. Furthermore, what was so destructive about Haman's shekalim? Since when does Heaven concern itself with ten thousand shekalim?

Horav Sholom Schwadron, zl, addresses these questions as he teaches us the rationale behind the half-shekel contribution and the significance of performing a mitzvah totally l'shem shomayim, for the sake of Heaven. He cites the incident in Melachim (2:3:27) in which Meshah, king of Moav, offered his firstborn son as a sacrifice. This event precipitated a great wrath

to take effect against the Jewish People. Why should we suffer because some pagan decided to act in an utterly foolish manner, sacrificing his son to his pagan god?

This teaches us, explains Rav Sholom, that when a gentile is determined and resolute, demonstrating total commitment to his spurious ideals, by acting on behalf of his "cause," it serves as a prosecutorial grievance against us: Thus, when the wicked Haman takes out ten thousand silver shekalim from his treasury, it serves as a critique against us: "Look what the wicked Haman is willing to do in pursuit of his evil. See how far he will go. Behold his unmitigated commitment." If the gentile will do so much for something which is not even meaningful to him, how much more so should the Jewish People do for the Torah, which is their lifeblood.

The difference between a mitzvah performed lishmah, for its own sake, and one performed by rote, without aforethought, is great. Likewise, explains Rav Sholom, there is no comparison between an aveirah, sin, committed lishmah, for its own sake, with malice and intent to destroy and defame with passion and fervor, and one that is committed half-heartedly, for no apparent reason. Haman exemplified dedication to evil. He sinned with enthusiasm, zest and passion. His hatred for the Jewish People was so intense that he was prepared to relieve his coffers of a huge sum of money - if that is what it took to destroy the Jews. This is an aveirah lishmah at its nadir!

This aveirah, which was committed with such ardor, stood as a glaring denunciation of our own commitment for positive action in service of the Almighty. Therefore, in anticipation of Haman's actions, Hashem commanded us to contribute a half shekel solely l'shem shomayim, as a way of undermining the effect of Haman's shekalim. The machatzis ha'shekel had one purpose: mitzvah lishmah. Thus, each Jew had to contribute a prescribed amount - no more, no less - because the striking aspect of a mitzvah carried out lishmah is the attention to following every detail. Often for an aveirah lishmah, one will spend everything, do whatever he can do, go all out, to commit a sin. Not so, when it comes to a mitzvah. A commandment is to be followed according to the command. The greater the adherence to every minute detail of the command, without any form of deviation, the more it elevates the "lishmah" of one's actions. Following the command to the letter is the true litmus test of commitment.

This lesson applies to us today as well. When we look at the fervor, unremitting and relentless dedication to evil, that personifies our enemies, it makes us wonder. Do we express a similar devotion to our positive ideals? Is our mitzvah observance expressed with such enthusiasm? Is there a similar passion to our Jewishness? If we circumvent the effect of "Haman's" shekalim, we must raise and qualify our own level of commitment.

You must observe My Shabbosos You shall observe the Shabbos

The Bnei Yisrael shall observe the Shabbos. (31:13,14,16)

Shemiras Shabbos, observing Shabbos, is a term which is used constantly regarding the mitzvah of Shabbos. Chazal derive lessons from each time the word shemirah, observe, is used. From the word tishmoru, you must observe, they glean that one is enjoined in shvus, those acts of labor that are not prohibited in their own right, but rather because they enable one to transgress an actual melachah, act of labor.

The pasuk of u'shemartem, you shall observe, followed by v'shamru, and (Bnei Yisrael) shall observe, teaches us that pikuach nefesh, saving a life, docheh es ha'Shabbos, literally pushes away, overrides, the Shabbos. The Torah is telling us, "Desecrate one Shabbos, so that you will live to observe many others." All of these pesukim are written with the word shemirah, which-- according to the author of the Torah Temimah-- means safeguard: make a fence around the Shabbos; do what you must to see to it that Shabbos is observed.

Horav Eliyahu Schlessinger, Shlita, feels that Shemiras Shabbos is no different than the halachos that apply to shomrim, watchmen. According to the Torah, the responsibility of the shomer, watchman, is commensurate

with the degree of shemirah he accepts upon himself. If he does not treat the animal or object properly, he is liable for damages to the animal or those incurred by the animal. For a shomer to be completely patur, free of liability, there has to have been an accident that was beyond his control. Otherwise, we consider his shemirah, watching, as being deficient.

Shemiras Shabbos must be carried out in a manner in which there is no lapse whatsoever in the attention we pay to Shabbos. When one approaches Shabbos with such an attitude, then his shemirah, observance, of the holy day is complete, and he will not be negligent in its observance. Furthermore, since Shemiras Shabbos mandates one to be meticulous in thinking about Shabbos, ensuring that nothing occurs that would undermine his sense of Shabbos, one can never say lo yodati, "I did not know the halacha." This is not an excuse. If one is truly observant, he makes it his business to know the law.

Rav Schlessinger relates the following incident that occurred concerning the Brisker Rav, zl, which gives us insight into the meaning of "observing Shabbos." It was the beginning of World War II. The Brisker Rav and a number of other distinguished Jews had an opportunity to obtain passage on a ship leaving Odessa for Eretz Yisrael. The Rav was in Moscow; the ship was leaving on Motzei Shabbos from Odessa; the train from Moscow to Odessa was a two day trip, which left on Wednesday afternoon.

They would arrive in Odessa on Erev Shabbos, in the afternoon, if the train arrived on time. The Brisker Rav was not inclined to take a chance at arriving on Shabbos in case the train was late, an almost certain possibility, given the manner in which the Russian railroad was operated. When the Rav articulated his serious misgivings, the president of the shul in Moscow, who just happened to be a communist sympathizer, spoke up and said, "Rebbe, this is a question of life and death. One does not know what tomorrow might bring. It is best that the Rav take advantage of the earliest opportunity to escape." The Rav listened and, with a heavy heart, acquiesced to leave on the train.

The train left on time. Three hours into the trip, it was already running late. The Brisker Rav was extremely agitated. The thought of arriving on Shabbos and having to disembark the train on the holy day was just too much for him to handle. If the train kept up its "timely" schedule, they would arrive one day later than planned. Things certainly did not look very promising. Suddenly, the train began picking up speed. As it traveled faster, it began to make up for lost time until it arrived in Odessa on Friday afternoon, on time.

No one could understand how this abrupt change in schedule had transpired. It was as if a miracle had occurred. Rabbi Eliezer Yehudah Finkel, zl, the Mirrer Rosh Yeshivah, who was also part of the entourage, supported this idea. It was clearly a miracle performed for the sake of the Brisker Rav, because shemiras Shabbos meant so much to him.

Hashem smote the people with a plague because they had made the calf. "Go ascend from here, you and the people whom You brought up from the land of Egypt. And I will send an angel before you. For I will not ascend in your midst, for you are a stiff-necked people." The people heard this bad tidings and they grieved. He said, "My face shall go and I shall provide you rest." (32:35) (33:1,2,3,4,14)

After Klal Yisrael perpetrated the sin of the Golden Calf, and the offenders were punished, Hashem said that He would not ascend with them to Eretz Yisrael. The quality of the Jewish People's stiff-neckedness rendered them unworthy to have Hashem's Presence in their midst. Rashi explains that their stiff-neckedness did not directly render them unworthy, but rather it is a trait that might cause Hashem to become enraged with them in the course of their journey, which might lead to their annihilation. Therefore, it was best for their own sake for Hashem to send an angel to accompany them.

Immediately upon hearing this disheartening news, the people reacted as expected: vayasiblu, "they grieved." Rashi adds that the people were now divested of the spiritual crowns that they had received when they declared, "We will do before we will listen." At that point, sixty myriad ministering

angels descended and wove the crowns for each Jew: one for "we will do," and one for "we will listen." When they sinned, however, one hundred twenty myriad destructive angels descended and removed the crowns. This was all part of the Heavenly response to their sin.

When we note the text a few pesukim later, we see a startling revelation. Hashem rescinded His decree, and said that He would no longer send an angel, but rather, He would go and accompany the nation. We wonder what occurred to change Hashem's decree. There seems to be no indication of Klal Yisrael repenting. We also do not find Moshe Rabbeinu interceding on their behalf. We only find a decree for punishment which is shortly abrogated. What caused this annulment?

Horav Yosef Dov Soloveitchik, zl, of Brisk, explains that the key to this puzzle can be found in pasuk seven which states: "Moshe would take the tent and pitch it outside the camp, far from the camp, and he called it Ohel Moed, Tent of Meeting; and it would be that whoever would seek Hashem, would go out to the Tent of Meeting." Herein lies the resolution to our query. Targum Onkeles defines Tent of Meeting here as bais ulpanah, house of study, while in other places, he defines it as Mishkan Zimnah, temporary sanctuary. The Tent of Meeting was, as Rashi describes it, a place where those who were mevakeish Hashem, who wished to receive instruction in the Torah, would go and study. There were people who thirsted for-- and demanded-- the word of Hashem. They wanted to study Hashem's Torah from Moshe.

This atoned for Klal Yisrael's insurrection with the Golden Calf. When Moshe moved his tent out of the camp, an insatiable thirst for Torah developed among the people, and they followed Moshe outside the perimeter. This thirst was an indication that intrinsically the Jews seek and thirst for Hashem. Their sin was an extrinsic deficit, catalyzed by the mixed multitude and their own apathy. In reality, Klal Yisrael were not sinners; they were not evil; they could once again be accepted favorably. When a person is a mevakeish, someone who seeks Hashem with all his heart, he demonstrates his true essence, and Hashem supports and enables him to achieve greater, more exalted, levels of knowledge and spirituality.

Being a mevakeish stems from an individual's perception that Hashem and His Torah are all that exist. Nothing else counts; nothing else has significance. Horav Yeshaya Berdaki, zl, was the son-in-law of Horav Yisrael, zl, m'Shklov, a primary disciple of the Gaon, zl, m'Vilna. Rav Yisrael went with a group of the Gaon's students to Eretz Yisrael. When Rav Yeshaya followed his father-in-law to the Holy Land, he experienced a trip that was fraught with peril and tribulation.

Rav Yeshaya was traveling with his young son and daughter when the ship was battered by a storm of hurricane proportion. Their boat was battered by gale-force winds and waves that came crashing down on the fragile boat. Suddenly, a powerful wave slammed against the boat, shattering it, and catapulting its hapless passengers into the stormy sea. There were no lifeboats or life jackets. All Rav Yeshaya could do was instruct his two children to climb up on his back and hold on for dear life as he swam in the direction of land.

After two hours of grueling paddling in the water, the human life raft was about to give up. Rav Yeshaya could go no longer. His body was spent; his arms were practically numb; and it was suicidal to continue bearing the weight of both children. He had to make a terrible decision. If he continued, they would all drown. If he left one child, he might save the other and himself. Under such circumstances, the male, who has more mitzvos, takes precedence. He was now faced with the lamentable decision of telling his young daughter that he must leave her.

With a heavy heart and weeping profusely, he told his daughter that only one of his children could go on - and that one was to be her brother. The little girl did not understand. "Abba, Abba, why are you letting me go? Why are you doing this?" she wailed. "I have no choice," cried the grief stricken father. "Please, Abba, do not let me go! I have no father other than you. Why are you doing this to me?" she begged.

When Rav Yeshaya heard the words, "I have no father other than you," his heart would not let go of his daughter. He had to try to swim with both of his children. He swam and swam with superhuman strength until he finally reached the shore. Then he passed out.

When he came to, Rav Yeshaya, obviously shaken, looked at his daughter and said, "My child, remember your entire life what has transpired today. You certainly know that my decision to leave you was the most difficult decision of my life. You wept, and I wept, but there was no other choice. When you expressed yourself with the words, 'I have no father other than you,' however, it left such a powerful impression on me that I was motivated to try beyond hope and swim for it.

"Remember this lesson throughout your life. Whenever you are in a situation that seems hopeless, remember: Do not give up hope. Turn to Hashem and cry. Entreat Him with all of your heart and tell Him the exact same words that you said to me: 'I have no father other than You.' You must help me, because there is no one else but You, Hashem." A father can not turn away from his child - if the child is sincere. Some of us turn to Hashem as our Father only after we have exhausted all of our other fathers.' He alone is our source of salvation. He is our only Father.

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Divine Favor

Rav Moshe Lichtman

In Sefer HaParshiot, R. Elyahu Kitov quotes a keen observation made by the Abarbanel. Immediately following the Sin of the Calf, HaShem said to Moshe, Go, descend, for your people whom you brought up from the land of Egypt have become corrupt (32:7). For the next forty days, G-d was angry with the Jewish people, as Moshe tried to achieve atonement for them. Towards the end of these days of anger, HaShem said to Moshe: Now go, lead the people to where I have told you; behold, My angel shall go before you... (32:34). There is a slight improvement here – instead of "Descend," it says, "Lead" – but G-d is still angry. He does not mention the Promised Land by name (only, "to where I have told you"), nor does He mention the merit of the Patriarchs or the covenant He made with them regarding the Land. It is as if G-d does not want to mention the Land that He loves so dearly in connection with the people whom He is not particularly fond of at this time.

Finally, on the fortieth day, G-d indicates that His anger has abated: The Lord spoke to Moshe: "Go, ascend from here, you and the people whom you brought up from the land of Egypt, to the Land which I swore to Avraham, to Yitzchak, and to Ya'akov, saying, 'I shall give it to your descendants.' I shall send an angel before you, and I shall drive out the Canaanite, the Amorite...; into a Land flowing with milk and honey..." (33:1-3). Instead of "Descend" or "Lead," it says, "Ascend." Instead of an anonymous land to which the Jews have no apparent ancestral connection, HaShem speaks of "a Land flowing with milk and honey," which He swore to give to the Patriarchs and their descendants. This demonstrates that God's love for the Jewish people has returned, for whenever He mentions the Land, His attribute of love is present.

We know this from the end of the Tochachah (Admonition) in Sefer VaYikra (26:42), where it says, And I will remember My covenant with Ya'akov, and also My covenant with Yitzchak, and also My covenant with Avraham I will remember, and I will remember the Land. Chazal comment: "This can be compared to a king who has three sons and a maidservant who raises them. Whenever the king inquires about his sons, he [also] inquires about the woman who raises them. Similarly, whenever

the Holy One Blessed be He mentions the Patriarchs, He mentions the Land with them."

Thus, when HaShem remembers His Promised Land it is a sign of appeasement and renewed love for the Jewish people. So, now that HaShem has showed us the first signs of Divine favor by restoring Eretz Yisrael to us, it is only right that we reciprocate by accepting His gift.

From Rav Lichtman's "Eretz Yisrael In The Parashah", published by Devora Publishing

from **Rabbi Chanan Morrison** <ravkooklist@gmail.com> to Rav Kook List <Rav-Kook-List@googlegroups.com> subject [Rav Kook List] Ki Tissa: The Knot of God's Tefillin

Ki Tissa: The Knot of God's Tefillin

A Vision of G-d

One of the Torah's most enigmatic passages describes a mysterious encounter that took place after the sin of the Golden Calf. After successfully pleading for the sake of the Jewish people, Moses took advantage of that special moment of Divine grace. "Please let me have a vision of Your Glory."

It is impossible to see God's Presence and live, but G-d agreed to protect Moses in a mountain crevice as He "passed by."

"You will then have a vision of My back. My face, however, will not be seen." [Ex. 33:17-23]

This account raises many questions. The most obvious problem concerns the story's anthropomorphic elements. G-d has no body; what do the allegorical terms 'back' and 'face' mean here?

Unfortunately, the Talmudic commentary for this puzzling incident only adds to our confusion. In Brachot 7a, Rabbi Shimon Hasida explained that G-d revealed His 'back' to Moses by showing him the knot of God's tefillin shel rosh. (Tefillin, containing verses of God's unity and providence, are worn above the forehead. It is held in place by means of a leather strap tied with a knot on the back of the head.)

What did the Sages mean by stating that G-d wears tefillin? And what is special about the knot, that G-d revealed that particular part of His tefillin to Moses?

Knowing G-d

We need to distinguish between two types of knowledge. The first is an accurate knowledge of an object's true nature. The second is knowledge that is limited by our capabilities, intellectual or physical. Regarding tangible objects, there may not be a difference between the two. But when dealing with abstract concepts, and especially with regard to the nature of God, the difference will be great - perhaps infinitely so.

The Torah is based on the second type of knowledge. It presents us with a perception of G-d according to our limited grasp, since only this type of knowledge can provide ethical guidance. Knowledge of God's true nature, on the other hand, is not a form of comprehension at all; as G-d informed Moses, "Man cannot have a vision of Me and live" [Ex. 33:20].

Bound to the Head

Now we may begin to understand Rabbi Shimon's metaphor of God's tefillin. Tefillin contain verses expounding God's unity and nature; they signify a true comprehension of God's reality. This truth, however, is beyond human understanding. How can we relate to this infinite truth? What connects it to us? What brings it down to the level of our intellectual capabilities, enabling this knowledge to enlighten and influence us? This is the knot that binds the tefillin to the head. The knot symbolizes an understanding that relates to the abilities of the one contemplating, so that he may grasp it and utilize it.

The imagery of God's 'face' and 'back' similarly corresponds to these two levels of knowledge. True knowledge of God's reality is God's 'face,' while knowledge of His reality according to our limited understanding is God's 'back.' Moses was granted this partial knowledge, a grasp of the Divine that mortal man can appreciate and apply in his finite world.

[adapted from Ein Ayah vol. I, p.33]

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New Thoughts on the Brain Death Controversy - Part 1

by Rabbi Chaim Jachter

Introduction

Halachic authorities have been vigorously debating the issue of "brain death" for more than two decades. Discussions of the issue can be found in five essays on the subject printed in the Spring 1989 issue of the Journal of Halacha and Contemporary Society, Rav J. David Bleich's The Time of Death in Jewish Law, wherein he vigorously opposes brain death as a definition of death, and Dr. Abraham S. Abraham's Nishmat Avraham (Y.D. 339:2). In addition, the position of the Israeli Chief Rabbinate, including the official endorsement of the Israeli Chief Rabbinate of brain death as a criterion of death, can be found in Techumin (7:187-193).

Traditionally, death was defined as "total stoppage of the circulation of the blood, and a cessation of the animal and virtual functions consequent thereupon, such as respiration, pulsation, etc." (Black's Law Dictionary, fourth edition, 1951). At this point, secular law did not consider death to take place earlier than Jewish law did. In fact, pressure was put on the Jewish community of Germany in the late-eighteenth century to delay burial for three days due to the non-Jews' concern that the individual might return to life. The Chatam Sofer (Teshuvot Chatam Sofer Y.D. 338, cited in Pitchei Teshuvah 357:1) strongly opposed adopting the non-Jewish standard of death of that time, declaring, "All the winds of the world will not move us from the standards established by our Torah."

Since the 1970s, however, there has been a movement towards changing the traditional medical definition of death. The newer definitions define death as irreversible cessation of all functions of the brain, including the brain stem. The person would be declared dead despite the fact that the heart is still beating spontaneously. (Spontaneous respiration would cease in case of "brain death," since the brain controls respiration, but the heart would keep beating, as the "dead" part of the brain does not control coronary function.) A primary consideration for adopting this new definition of death is the current inability to transplant hearts, lungs, and livers from cadaver donors. The donor's heart must be beating spontaneously to be considered suitable to harvest the aforementioned organs for transplantation.

Proponents of the View that Halacha Regards Brain Death as an Acceptable Definition of Death

Halachic authorities have been deeply divided regarding this issue. We will first review the opinions of those who believe that Halacha accepts brain death as a definition of death. Israeli Poskim who support brain death as a criterion of death include Rav Avraham Shapiro, Rav Shaul Yisraeli, and Rav Mordechai Eliyahu. The point of departure for this debate is the Mishnah (Yoma 83a) that states that one should remove the debris from someone upon whom a building fell even if it is doubtful that he is still alive. The Gemara (Yoma 85a) concludes, "Life manifests itself primarily through the nose, as it is written, 'All in whose nostrils was the breath of the spirit of life' (Bereishit 7:22)." Both the Rambam (Hilchot Shabbat 2:10) and the Shulchan Aruch (O.C. 329:7) rule that one is required to continue excavation of the debris only until reaching the nose. Thus, it seems that breathing defines life.

Three different arguments are advanced by the advocates of the view that Halacha considers "brain death" as an acceptable definition of death. One argument is that the aforementioned Gemara strongly suggests that

respiration is the definition of death, and since one who is "brain dead" is incapable of spontaneous respiration, he is dead. This argument is advanced by the Chief Rabbinate for its endorsement of brain death as a criterion of death. It cites the Chatam Sofer's abovementioned responsum as a basis for its ruling. The Chatam Sofer states, "When respiration has ceased, we no longer violate Shabbat in rescue efforts [since the victim is dead]. Therefore, this is our accepted criterion of death from the time we became a people."

A second permutation of this argument is that the Gemara considers respiration to be an indication of life. If respiration ceases, this indicates life has ceased, but the lack of respiration is not per se the definition of death. Rather, the irreversible lack of respiration is an indication that "brain death" has occurred. According to this approach, brain death always has been the Halachic definition of death. (One wonders, though, what evidence exists to prove that Chazal were aware that the brain stem controls respiration).

The third argument equates brain death with decapitation. The Mishnah (Ohalot 1:6) discusses a situation in which animals whose heads have been removed and are convulsing are nevertheless considered ritually unclean, because they are dead. Some argue, by analogy, that one who is brain dead is considered to be "physiologically decapitated," since no blood flows to the brain.

Proponents of the View that Halacha Rejects Brain Death as an Acceptable Definition of Death

On the other hand, most leading Halachic authorities reject the concept of brain death as a Halachically acceptable definition of death. Rav Hershel Schachter (BeIkvei HaTzon Chapters 36 and 37) questions the analogy of a brain dead patient to one who has been decapitated. He points out that two early-twentieth-century Halachic authorities, Rav Meir Arik (Teshuvot Imrei Yosher 2:14) and Rav Yosef Engel (Gilyonei HaShas Kiddushin 24), permit Tefillin to be placed on a gangrenous arm. Rav Schachter asserts, "They obviously felt that although a limb has gangrene, it is still 'alive' as long as the basic circulatory system continues functioning for the rest of the body." Similarly, even though no blood is flowing to the brain, a person may still be considered alive if the circulatory system continues functioning for the rest of the body. Rav Moshe Feinstein (Teshuvot Igrot Moshe O.C. 1:8-9), it should be noted, disagrees with Rav Arik and Rav Engel. Rav Ahron Soloveitchik also asserts that no analogy may be drawn between actual, physical decapitation and brain death, which involves only a functional non-activity of the brain (see his essay in the Spring 1989 Journal of Halacha and Contemporary Society pp. 41-48).

Others argue that the various tests necessary to determine brain death cannot be performed due to the prohibition against moving a Goses, an individual who is near death (see Shulchan Aruch Y.D. 339:1 and Nishmat Avraham Y.D. 339:4). Yet the main argument of those who reject "brain death" as a definition of death is the fact that four eminent authorities (listed below) assert that if an individual's heart beats spontaneously, he is still considered Halachically alive. They point to Rashi's comments to Yoma 85a, where he explains that one checks the nose to see if there is a sign of life only "if he seems dead, [in] that he does not move any of his limbs." If one of the limbs is moving, the individual is considered alive. These authorities argue that the heart is considered a limb for these purposes, an assertion based on the aforementioned responsum of the Chatam Sofer, Teshuvot Chacham Tzvi (number 77), Teshuvot Maharsham (6:134), and Rav Yosef Shaul Natanson (Divrei Shaul p. 394). The proponents of this view note that the Chatam Sofer, in addition to the statement made above, also states, "as long as the individual is motionless like an inanimate stone and has no pulse, and if afterwards respiration has ceased, we have only our holy Torah [that teaches] that he is dead."

In addition to Rav Ahron, Rav Bleich and Rav Schachter, the long list of Poskim who do not accept brain death as death includes Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 2:83), Rav Yosef Shalom Eliashiv (letter printed in Nishmat Avraham 4 Y.D. pp. 148-150), Rav Nissim Karelitz (letter printed in HaModia 22 Marcheshvan 5747), Rav

Eliezer Waldenberg (Teshuvot Tzitz Eliezer 9:46), Dayan Yitzchak Weisz (Teshuvot Minchat Yitzchak 5:7-8), Rav Mordechai Willig (personal conversation), and Rav Shmuel Wosner (Teshuvot Sheivet HaLevi 7:235).

According to these Poskim, the Gemara, Rambam, and Shulchan Aruch teach that the absence of spontaneous respiration indicates only the lack of any life in the body but does not serve as an independent criterion for death. This was especially true before the introduction of respirators; when spontaneous respiration ceased, cardiac function inevitably ended soon after due to the lack of oxygen supplied to the heart. However, since today the heart can function spontaneously even if the patient requires a respirator to breathe, the absence of spontaneous respiration does not render a person dead. The majority of Poskim thus believes that as long as part of the body continues to function spontaneously, the individual is still considered to be Halachically alive.

New Thoughts on the Brain Death Controversy

In the Winter 2004 issue of Tradition, Dr. Joshua Kunin appeals to the proponents of brain death as a criterion of death to reconsider their ruling. He cites evidence from recent medical literature that demonstrates that even in patients where the brain stem has permanently ceased to function, there often remains some connections between the brain and the rest of the body for varying degrees of time, allowing certain processes to continue. These functions include an intact hypothalamic-pituitary axis in the brain, the continued function of the autonomous nervous system, the lack of diabetes insipidus (which indicates some blood flow from the body to the brain), maintenance of hemodynamic responses, and stable blood pressure. These findings appear to disprove the equation between brain death and decapitation.

However, writing in the same issue of Tradition, Dr. Edward Reichman, in an essay entitled "Don't Pull the Plug on Brain Death Just Yet," asserts that the primary consideration of the Rabbanim who advocate brain death is that the irreversible cessation of spontaneous respiration is a criterion of death and that this argument has not been disproved by the medical data cited by Dr. Kunin.

Nonetheless, the notion that the absence of spontaneous respiration and not brain death itself is the determining factor of life or death appears quite puzzling, as it is entirely unreasonable to suggest that a patient with end-stage ALS or polio, who cannot breathe without machinery, is considered dead. Rav Moshe Tendler appears to contend with this issue by asserting (in his essay that appears in the aforementioned issue of The Journal of Halacha and Contemporary Society), "The classic definition of death is absence of respiration in a person who appears dead." Accordingly, permanent loss of spontaneous respiration is insufficient to establish death unless the patient also appears dead. The basis of this addition is the aforementioned Rashi to Yoma 85a. Rav Tendler defines a patient who appears dead as one who "shows no movement and is unresponsive to all stimuli." We already have noted that the many Rabbanim who oppose brain death argue that since the heart of a brain-dead patient still beats spontaneously, the patient does not appear to be dead. Rav Tendler argues that this heartbeat is the equivalent of "the twitching of a lizard's amputated tail or the death throes of a decapitated man." One may counter, however, that it seems highly counterintuitive to argue that rhythmic heart beating and hypothalamic regulation of body temperature for days is analogous to the fleeting, spasmodic twitching of a decapitated individual.

The Need for to Sign a Health Care Proxy

We have discussed in the past (in essays available at www.koltorah.org) the critical need for everyone to sign a health care proxy designating a rabbinic authority to make Halachic decisions (and, of course, to consult with eminent Rabbis) in case of incapacitation. The need to sign such a document is underscored by the fact that outside of the Orthodox community, brain death is almost universally accepted as a definition of death. Signing a health care proxy is the only way one can insure that health care providers, institutions, and insurance providers will respect the rulings

of one's Rav should he follow the overwhelming majority of Poskim that does not accept brain death as a definition of death.

Conclusion

One should consult his Rav regarding the implications of the recent discussions and reevaluations of the brain death controversy. It is very possible that Rabbanim who heretofore supported brain death as a definition of death no longer maintain that position.

Postscript

Although most Poskim reject brain death as a definition of death, it seems that most Poskim now accept the ruling of Rav Ovadia Yosef (Teshuvot Yechaveh Daat 3:84) permitting kidney donations in cases where it does not pose a serious risk to the donor. In addition, this ruling would appear to also permit liver donation if there is no undue risk involved for the donor. Accordingly, Rabbanim should vigorously encourage live organ donation when possible, especially in light of the very serious Halachic and ethical problems associated with harvesting organs from dead or nearly dead individuals.