

## Weekly Internet Parsha Sheet

### Mishpatim 5765

[From Efraim Goldstein <efraim@aol.com>]

#### Weekly Parsha MISHPATIM Rabbi Berel Wein Feb 04 2005

Having just heard the exalted message of the Ten Commandments, the Jewish people were undoubtedly inspired and committed to do great things in their lives. Yet, the Ten Commandments, upon close inspection and analysis, are pretty much generalities. What is the definition of murder, of stealing, of coveting? How is one to remember the Sabbath day and to keep it holy? How is one to honor one's father and mother? What does it mean to take God's name in vain? None of this is spelled out for us in the Ten Commandments, as inspiring and demanding as these words are. The words of the Ten Commandments are too vague to implement, too lofty to translate into practical everyday human life. That is why the Torah immediately follows the section detailing the Ten Commandments with this week's parsha section of Mishpatim with its laws and details - the nitty-gritty of Jewish observance and tradition. And, since the written Torah itself does not communicate to us all of the necessary details and instructions, it is the Oral Law that provides the final interpretation and explanation that transforms the lofty ideals of the Ten Commandments into concrete actions and established behavior patterns of everyday human life. People tend to pay lip service to lofty goals and great ideals, but rarely are able to translate these goals and ideals into their own behavior without specific instructions and detailed guidelines.

We have seen in the world how great ideals like love, peace, tolerance, etc. fall by the wayside unless laws and judicial systems are put into place to define and safeguard them. The Torah does not leave these matters to chance or human vagaries. Judaism is a faith of details. I learned long ago in law school and later in actual legal practice that the devil is truly in the details. This week's parsha is the springboard for five or six major tractates of the Talmud, for many hundreds of pages of discussions and for the opinions of countless scholars over the ages - all to establish the details of Sinai and translate them into everyday life. Jewish life as we know it is an outgrowth of these discussions, opinions, explanations and minute details. Those who relegate details to unimportance are doomed to lose the ideals as well over time.

There is a story that ruefully illustrates this point. A rabbi is sitting next to a Jewish astrophysicist on a plane. The professor leans over and sees the rabbi studying Talmud and upon being told what Talmud is - the details of Jewish life - the professor loftily remarks: "I don't need any of that. All religion can be summed up in one sentence - love your fellow man. That is all there is to it." The rabbi upon learning that his traveling companion is a professor of astrophysics, sweetly retorts: "Well, I can sum up all of astrophysics in one sentence - twinkle, twinkle little star!" Life, Judaism, and astrophysics are all too complex to be summed up in one sentence, no matter how lofty the ideals expressed. That is why Mishpatim is such an important part of Torah learning. Shabat Shalom.

#### "RavFrاند" List - Parshas Mishpatim Change of Vowels Provides Chassidic Insight

Among the many civil and monetary laws in this week's parsha is the Torah's first mention of the prohibition against taking interest: "When you lend money to My people (ki tilveh es ami), to the poor person who is with you, do not act toward him as a creditor; do not lay interest upon him." [Shmos 22:24]

Homiletically, the Kotzker Rebbe offers an insight into this pasuk [verse] that differs from the p'shuto shel mikra [simple interpretation].

We learn in Pirkei Avos [Ethics of the Fathers]: "When a person dies he is not accompanied by his wealth or by his jewelry or by his precious stones, only by his Torah and his good deeds" [Avos 6:9]. This Mishnah expresses a truth with which we are all familiar—"You can't take it with you." This idea is one of the recurring themes of the Book of Koheles, which deals at

length with the futilities of this world. With that in mind, the Kotzker Rebbe gives a Chassidic insight into this pasuk.

The word 'Tilveh' which means 'lend' can also (by changing the vowels) be read 'Tilaveh' which means escort. The reading then is "If there is any type of money that will escort My people (to the World to Come) it is the money given to the poor person with you (as charity and kindness). That is the only type of money that will accompany a person to the next world.

#### Saying Is Not Believing

The pasuk in this week's parsha teaches that certain "wicked" people are ineligible to be witnesses [Shmos 24:21]. The Gemara [Sanhedrin 29a] discusses the instructions given to witnesses in a monetary trial in order to encourage them to tell the truth. Rabbi Yehudah states that we quote to them the pasuk from Mishlei, "Like clouds and wind without rain, so is one who lauds himself for a false gift" [25:14]. This means that just as abundant and seasonable rain is promised as a reward for faithfully keeping the commandments, so too rain is withheld as a punishment for people's sins. Thus the witnesses are warned that by their false testimony they may bring drought and famine.

Rava objects that this type of threat will only scare farmers. If the witnesses are accountants, this will not frighten them. Therefore, Rava suggests that we tell the witnesses that for false testimony dever [pestilence] comes to the land.

Rav Ashi in turn objects to Rava's threat because the witnesses may take the fatalistic attitude that "when our time is up, we will die," and not be scared by the threat of illness or plague. Rather, Rav Ashi suggests, based on the teaching of Nossan Bar Mar Zutra, we tell them false witnesses are despised even by the people who bought them off, as it is written (quoting Izevel's plan for her husband Achav to hire false witnesses) "Then seat two unscrupulous people (benei bli'ya-al) opposite him..." [Melachim I 21:10]. According to the Gemara, this portrayal of being a nothing, even in the eyes of the people who hired them to buy their testimony, is the most inhibiting threat that the Court can use to scare the witnesses into telling the truth. In the first place, people attempting to buy off others as false witnesses are not the most upstanding people in the community. If witnesses who agree to be bought off are perceived as worthless members of society even in the eyes of those who hired them, that is really significant.

This Gemara underscores one of the major themes of the Slabodka school of mussar. The way to appeal to a person, to influence him to improve and to want to be an upright Jew is to appeal to his sense of greatness. "You are a son of Avraham, Yitzchak, and Yaakov. You are a Jew. How can you allow yourself to be sold, to cheapen yourself even in the eyes of the corrupt members of society?" This concept of 'Gadlus haAdam' - emphasizing what a person is and what a person can become - is the most effective way of improving a person.

Rav Baruch Mordechai Ezrachi says that if Nossan Bar Mar Zutra's approach is correct—that their fear of appearing as low-lives in the eyes of their employers makes the witnesses tell the truth—then how is it ever possible for us to do something wrong? If the L-rd is in front of my eyes constantly, if He is standing 'right here' and He is watching me and He sees what I am doing, how can I ever do something wrong? I certainly would not want the Master of the Universe to think I am a low-life! How could a person talk in the middle of davening? It states "I have set Hashem before me always" [Tehillim 16:8]?

The answer is that "I have set Hashem before me always" is lip service. We say it. We say that we believe it. But it could not be real, because if it was real then the restraining power of G-d thinking we were "base men" would certainly inhibit us from doing any wrong.

Emunah [belief] is theory, but not practice. This helps us to better understand the Gemara at the end of Tractate Makkos [24a]. The Gemara cites different Tanach personalities who tried to synopsise the Torah, reducing the 613 commandments to their fundamental components.

Chabakuk [2:4] finally came and reduced them to a single principle: The righteous person will live through his faith. Every mitzvah and every sin boils down to one thing. If Emunah was real, if the words "I have set Hashem before me always" were real, we would be different people. The further we are from this reality, the further we are from the goal of true Torah observance.

If there is one single concept that a person should try to internalize, it is these words: "I have set Hashem before me always." This determines how real the Almighty is in a person's life. This will make the difference in the type of Jew and the type of person he will be.

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**TORAH WEEKLY Parshat Mishpatim**  
**For the week ending 5 February 2005 / 26 Shevat 5765**  
**from Ohr Somayach | www.ohr.edu**

**OVERVIEW**

The Jewish People receive a series of laws concerning social justice. Topics include: Proper treatment of Jewish servants; a husband's obligations to his wife; penalties for hitting people and for cursing parents, judges, and leaders; financial responsibilities for damaging people or their property, either by oneself or by one's animate or inanimate property, or by pitfalls that one created; payments for theft; not returning an object that one accepted responsibility to guard; the right to self-defense of a person being robbed.

Other topics include: Prohibitions against seduction; witchcraft, bestiality and sacrifices to idols. The Torah warns us to treat the convert, widow and orphan with dignity, and to avoid lying. Usury is forbidden and the rights over collateral are limited. Payment of obligations to the Temple should not be delayed, and the Jewish People must be Holy, even concerning food. The Torah teaches the proper conduct for judges in court proceedings. The commandments of Shabbat and the Sabbatical year are outlined. Three times a year - Pesach, Shavuot and Succot - we are to come to the Temple. The Torah concludes this listing of laws with a law of kashrut - not to mix milk and meat.

G-d promises that He will lead the Jewish People to the Land of Israel, helping them conquer its inhabitants, and tells them that by fulfilling His commandments they will bring blessings to their nation. The people promise to do and listen to everything that G-d says. Moshe writes the Book of the Covenant, and reads it to the people. Moshe ascends the mountain to remain there for 40 days in order to receive the two Tablets of the Covenant.

**INSIGHTS**

The Ultimate Glamour Slammer

"If you buy a Jewish slave..." (21:2)

McKean Federal Correctional Facility in Pennsylvania, USA reminds visitors of a college campus. It's housed in a low-profile building, decorated inside in a gray and salmon Navajo motif. Inmates stroll on concrete walkways to classes in basic reading skills, masonry, carpentry, horticulture, barbering, cooking and catering.

In August 1962, Kerala, India opened its first prison without walls. Viewed as an experiment, the prison holds 280 of Kerala's 5,308 prisoners. The open prison is known for treating prisoners with respect and entrusting them with responsibilities for work on the rubber plantation, personal chores and cooperation within the prison community. To date, there has been only one repeat offender.

And a revolution is taking place inside San Francisco's Jail No. 7 and Jail No. 8, known as the "glamour slammer." The 700 cons inside, doing time for everything from drug possession to armed robbery, mostly stay in open dormitories and spend up to 12 hours each day in some of over 50 separate treatment, counseling, training and education programs. Prisoners can join counseling groups, such as Tools for Healing, Drama Therapy, or take yoga and meditation classes. The idea is to break the cycle of violence by transforming the typical jailhouse culture of humiliation and violence into one of dignity and healing.

In this week's Torah portion we learn of the eved ivri. Eved ivri is usually translated as "a Hebrew slave". However, an eved ivri is a far cry from the typical picture of a slave. For starters, his maximum period of indenture is six years. It is forbidden to give him demeaning labor such as putting shoes on his master. His master must share whatever food he has with his 'slave'. If the master eats white bread, he may not give his slave dark bread. If he drinks wine he may not give his slave water. If he sleeps on a soft bed he may not give his slave straw on which to sleep.

Not only that, but if the master only has one pillow, the slave gets the pillow. And should the slave become ill and costs his master hefty medical bills, he owes his master nothing when he leaves. Some slavery!

How does a Jew become a 'slave'? One way is if someone steals and cannot afford the restitution that the Torah mandates, then the Bet Din sells the thief to reimburse the victim of the theft. However, rather than locking up the thief and exposing him to all deleterious influences that a jail encourages, he is placed in the most positive of environments - a Jewish family home. Rather than subject his family to shame and starvation, the Torah requires the master to not only care for the slave but to support the thief's family as well.

In fact, the master must provide his slave with such excellent conditions that it may seem that rather than acquire a slave, the master has acquired for himself a master.

As enlightened as recent prison reforms may be, they hardly compare with the Torah's emphasis on rehabilitation, for three thousand years ago the Torah had already instituted the ultimate glamour slammer.

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**Unity**

**Rabbi Mordechai Willig (TorahWeb)**

"When you will lend money to a poor person who is with you" (Shemos 22:24). Look at yourself as if you are the poor person (Rashi).

One cannot properly fulfill the mitzvot of tzedaka and chesed unless one establishes a strong sense of unity with the recipient. If one looks down on the poor, or is emotionally detached, the mere giving of money is only an incomplete mitzvah.

"Any gazing (hashkafa) in Scripture produces bad results, except for 'gaze from your holy abode', for great is the power of gifts to the poor" (Rashi Breishis 18:16). Why is hashkafa negative, and how does tzedaka transform it into a positive force?

The targum of the word "chabura - bruise" (Shemos 21:25) is mashkofi, an expression of beating. Similarly, the Hebrew word for lintel is mashkof, because the door beats against it (Rashi). Hashkafa (gazing), which is etymologically related to mashkofi, indicates an adversarial relationship; one gazes upon another, not upon himself. When we look at others as adversaries, "looks can kill", just as a physical blow can cause a bruise.

The only antidote to the hostility inherent in gazing is the unity of tzedaka. If we look at ourselves as if we are the poor person, if we overcome the adversarial relationship that typically exists between two people, Hashem's gaze upon us is transformed into a blessing.

"Do not take revenge nor bear a grudge against a member of your people, love your friend as yourself" (Vayikra 19:18). If one cut his left hand with his right, would he take revenge by then cutting his right hand? So, too, if you love your friend as yourself, as a part of you, you will not take revenge (Yerushalmi Nedarim 9:4, cited by Netziv).

Just as we must look at ourselves as if we are the poor person, so too must we relate to our friend as if he is a part of us. This unity is the true fulfillment of tzedaka and ahavas Yisroel.

When kohanim complete the Birchas Kohanim (Priestly blessings) they say, "Master of the world, we have done what You have decreed, now may You also do as You have promised us: Gaze from your holy abode and bless Your people." A kohein must bless those present with love (be'ahava). This love, like proper tzedaka, results in the unity which transforms hashkafa, which is usually adversarial, into a heavenly blessing. In a world of adversarial relationships, of banging and bruising, of looks which can kill, we are commanded to achieve unity between donor and

recipient, blesser and blessed. By viewing and loving others as part of ourselves, we can transform negative forces into positive ones, and merit Hashem's bracha.

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**Ohr Torah Stone - Rabbi Riskin's Shabbat Shalom  
Shabbat Mishpatim 26 Shevat 5765, 5 February 2005**

Efrat, Israel - "And he (Moses) took the book of the covenant and he read it into the ears of the nation; and they said, 'Everything which the Lord has spoken, we shall do and we shall listen.' And Moses took the blood (of the sacrifices just offered) and he sprinkled it on the nation; he said, 'Here is the blood of the covenant which the Lord has entered into with you on the basis of all these words'" (Exodus 24:7,8). Why is it only now, after the major legal portion of the Torah has been communicated to the Israelites, that G-d enters into His covenant with them, His special relationship with them? Would it not have been more logical for the establishment of the covenant to have occurred at the initial Revelation at Sinai, at the momentous event of the giving of the Ten Commandments by the Almighty Himself (as it were) in the midst of thunder, lightning and smoke-filled mysterium tremendum? Or even at the awesome miracle of the splitting of the Reed Sea, at the very instant when the Israelites triumphantly emerge from dry land while the chasing Egyptians just behind them are inundated by Tsunami-like violent and virulent waves?

Does not the establishment of the covenant at this point in time, at the conclusion of three chapters and exactly one-hundred verses of dry legalism from how we must treat our slaves to the boundaries of the Promised Land, seem somewhat anti-climatic - especially after the two major miraculous events of the splitting of the Sea and the Revelation at the Mount which all of Israel witnessed with their own eyes? After all, the "book of the covenant" over which the covenant is established consists of the portions of Torah given until this point - from the story of the Creation to the giving away of the Torah, the Noahide laws of morality and the laws given at Marah including the legal code of Mishpatim (Rashi 24:3,4,7) - was written by Moses alone, while the splitting of the Sea and the Revelation took place before the eyes of an entire nation! Yes, the Israelites saw the splitting of the Reed Sea, "Israel saw the great hand with which the Lord performed against Egypt; the nation feared the Lord, and believed in the Lord and in Moses His servant" (Exodus 14:31). Yes, seeing is even believing, as the Torah text testifies. But seeing is not yet understanding, is still not internalizing. We see only the externals, the event as it occurs, the individual how he acts. We do not necessarily understand what lies behind the event, what caused the individual to do what he did, and what that particular event or action has to do with us and our subsequent thoughts, activities and commitments. We look out in order to see; after having seen, the impression with which we are left is superficial and external. And external impressions fade from consciousness only too quickly. Hence shortly after the Splitting of the Sea, indeed, but three days and two verses after the Song at the Sea, the Israelites once again bitterly complain and kvetch against Moses at Marah because the waters are bitter (Exodus 15:23,24). And then the Almighty reveals the secret: "If only you would listen, surely listen to the voice of the Lord your G-d and do what is righteous in His eyes...then all the malaise I inflicted upon Egypt would not fall upon you" (Exodus 15:26).

G-d is not satisfied with our seeing; G-d is waiting for our listening! In His introduction to the Revelation at Sinai, G-d tells the Israelites, "You have seen what I have done to Egypt" - but seeing is not sufficient. "And now if you will listen, surely listen, to My voice ..., then you will be to Me a Kingdom of Priest-teachers and a holy people." (Exodus 19:14).

But alas, even during the Revelation, the Israelites merely "saw the sounds and the sound of the shofar; the nation saw and trembled and stood from far" (Exodus 19:15). When one sees, one may become awestruck and even frightened, but one remains distant, removed, far away; the sight quickly dissipates, fades from consciousness. And so only forty days after the Revelation, the Israelites worship the Golden Calf. Apparently it is only

when one listens that one is drawn close, that one becomes truly changed by the experience.

What does it mean to listen? The watch-word of our faith is "Hear oh Israel the Lord our G-d the Lord is One." What is the meaning of the introductory word, shema, hear? B.T. Berakhot 15a gives three explanations: the first is to let one's ear hear what one's mouth is saying, an aural function of hearing the words; the second goes one step further, suggesting cognitive appreciation, insisting that one recite the words in any language one understands; the third expresses the deepest meaning of hearing, to accept the yoke of the Kingship of G-d, to internalize the implications of the words, to listen in a way which one enlists one's commitment to the ramifications of the words! To internalize the truth that G-d is the one unity of the universe, the ground of all being and the purpose of our existence, means to commit ourselves to His will body and soul. This is what it means to listen and thereby enlist oneself - wholly and lovingly.

We are not the people of the sights; we are rather the people of the Book. And the Book consists of words which are spoken and speak out (dibbur, daber) to us, the Book is read and calls out (Kara, Mikra) to us - to change. A book must be read, heard, listened to, enlisted for, internalized within our very gut until our personalities are changed by its words from our insides out (Rabbi S.R. Hirsch says that the root of shema is ma, intestines). Sights are open to the interpretation of each viewer - and the Israelites apparently interpreted the sights as what G-d was doing for them; the Book of laws told Israel what G-d wanted them to do for Him; the Book explained G-d's purpose behind the events, His desire for every individual to be free, His demand that every individual be moral. The sights impressed the generation of the Exodus; the Book is a legacy for all generations.

Hence the Almighty must wait to enter into the covenant until we cry out "we shall do and we shall listen," we shall not merely see but we shall hear, internalize and change in accordance with the Divine words. And this pledge only comes at the end of this week's Torah reading, with Moses' presentation of the Book of the Covenant to Israel. Shabbat Shalom.

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**Peninim on the Torah by Rabbi A. Leib Scheinbaum  
PARSHAS MISHPATIM**

**You shall not cause pain to any widow or orphan. (22:21)**

The Torah focuses its prohibition against taking advantage of the weak and helpless, specifically with reference to the widow, orphan and convert, because they are the most susceptible to such treatment. But, clearly this admonition applies to anyone who is weak. Now, let us ask ourselves a question: do we know who is really weak, and who puts on a show that he is strong and filled with self-confidence? Do we have a clue as to "who" stands before us? How often do we attempt to excuse our behavior towards another Jew by saying, "I did not know that he had a problem. I did not know that there are issues at home." Everybody who stands before us is a potential orphan or widow. This means that the loneliness and helplessness that is so much a part of the lives of the widow and orphan might very well also be their companion. They, too, suffer but do not necessarily show it. There is only one option: we must view everybody who stands before us as having a potential problem and deal with them accordingly.

We have no idea how the way we act might affect another person in need. Horav Baruch Mordechai Eizrachi, Shlita, cites the following episode from the Mechilta. Rabbi Yishmael and Rabbi Shimon, two of the greatest Tannaim, were being led to their execution. Rabbi Shimon turned to Rabbi Yishmael and said, "My heart troubles me, for I know not for what sin I am being killed." Rabbi Yishmael replied, "Did it ever occur that a person came to you to have a judgment rendered concerning a halachic question and you asked him to wait until you finished your drink, or tie your shoe? The Torah says that you are not to cause another person anguish - regardless of the intensity of the pain." When Rabbi Shimon heard this, he said, "You have comforted me."

What Chazal are telling us is that we never know how what we might consider a simple delay, could be a major infringement on someone else's emotions. We must think before we act - and then think again, because it is so easy to hurt someone whose emotions are already frayed.

**You shall not cause pain to any widow or orphan. (22:21)**

People think that capital punishment is meted out only to one who sins with any of the three cardinal sins of murder, adultery, or idol worship. Horav Yitzchak Zilberstein, Shlita, cites a compelling incident from the Sefer Chasidim that teaches us otherwise. Indeed, if the person in question were alive today, we would probably speak of him in exalted terms and crown him with distinction. Nonetheless, he suffered a terrible and tragic punishment for his lack of empathy for a widow. The Sefer Chasidim relates a story about a man who tragically buried a number of his sons and those who survived did not have children to carry on their father's name. This individual was not a sinner; in fact, he was a Rosh Yeshivah who had over the years inspired many talmidim, students. Yet, prior to his death, the man confirmed that he had one sin that catalyzed all of these tragic occurrences. It seems that he had a younger sister who had been widowed and wanted to remarry. She was ashamed to articulate her feelings to her brother, who could have arranged a suitable match for her. The brother, who was presently speaking, said, "I could have helped her, but did not, because I wanted her property to revert to me."

One sin - a sin of omission - because he wanted to benefit from her possessions, was the cause of all this man's anguish. Certainly, one could find a rationale for justifying his non-action. She never asked for a husband! Should he be blamed for taking advantage of an awkward situation? Indeed, this was a man of distinction, a Torah scholar of reknown, who, quite possibly, wanted to use the money he would gain to sustain the students of his yeshivah. For this sin, his sons should die and he should never see grandchildren?

Apparently, Hashem views this incident from a different perspective. The Chida explains that this man was punished because his inaction caused this widow great pain. She could have had children but because of him, she was left childless. He caused a widow to suffer and that is something which Hashem does not overlook. How careful should we be in our inter-relationship with others - especially those who are helpless.

**Distance yourself from a false word. (23:7)**

There is no other transgression in the Torah whereby the Torah itself demands that we distance ourselves from it. Hashem is the essence of truth and He absolutely abhors falsehood. The Bais Halevi was well-known for his incredible integrity. Every word that left his mouth was the height of veracity. When he was rav in the city of Slutsk prior to accepting the rabbanus in Brisk, the beginnings of the Haskalah, Enlightenment, were taking root in the community. One day, a group of communal leaders came to him lamenting the fact that apostasy was beginning to seize the community. Heresy was rearing its ugly head and its tentacles were reaching into all areas of Jewish spectrum.

Rav Yoshe Ber looked at them with serious eyes and said, "What do you expect? Truth always wins out."

"What is the rav saying?" they asked incredulously. "How can the rav give credibility to kefirah, heresy?"

The rav looked them straight in the eyes and said, "I never said that they were correct. No! They are absolutely wrong in their beliefs, but they are sincere and truly believe in what they expound. Their heresy is founded in truth. They are true apostates! Therefore, they are successful. Regrettably, many of those among us are not really true yirei Shomayim, G-d-fearing. They are only acting outwardly as devout and pious Jews, but internally they do not really believe."

While most of us would never blatantly tell an untruth, at times we stretch the truth because we do not want to hurt someone. For instance, someone approaches us for a loan, which we suspect he is incapable of paying back. What do I do; tell him the truth? That will make him feel bad. Lend him the money; I will lose it. So, the natural response is to lie and say, "I do not have any extra money right now." The Sefer Chasidim categorically forbids such behavior, claiming that a lie is a lie and the heter, dispensation, of darkei shalom, maintaining peaceful co-existence with a

non-Jew does not apply even here, before the fact. It is only after an incident has occurred and nothing can be rectified, that Chazal have allowed one to be meshaneh b'diburo, change his words a bit, in order not to make a gentile upset and thereby instigate strife.

Now we come to the one place that most people have a difficult time maintaining their integrity: Shidduchim, information with regard to a potential matrimonial match. No one wants to utter a word of lashon hora, slanderous speech, and to say the truth might awaken some skeletons that have been buried deep in the proverbial closet. Some will say nothing, which, in effect, conveys a negative connotation. Others will openly prevaricate, an action which will only cause grief later on. The truth is probably the best route one should take, since this way the individual has the opportunity to explain whatever extenuating circumstances prevailed in causing whatever problem may exist within the family, or the prospective mate.

In the event one cannot tell the truth, either because it is too slanderous, or he fears repercussions, he should say nothing, by avoiding the issue or getting onto another subject. The option of lying should not exist. Horav Yisrael Salanter, zl, was wont to say, "One should not articulate with his mouth something that his heart cannot attest to its veracity. Horav Pinchas Koritzer, zl, said it differently, "When the sin of speaking an untruth will be as serious as the three cardinal sins of murder, adultery and idol-worship, Moshiach will come."

**You shall worship Hashem, your G-d, and He shall bless your bread and your water, and I shall remove illness from your midst. 23:25)**

Hashem is a personal G-d, Who can be reached directly, without having to go through intermediaries. In prayer, we speak directly to Hashem, a worship which results in our receipt of His blessings. The effect of Tefillah is even more compelling when prayed b'tzibbur, in a public forum of ten or more men. The Ma'or Va'shemesh derives the significance of Tefillah b'tzibbur from the above pasuk. He notes that the pasuk begins in the plural, va'avaditem, "and you shall worship", and ends with a blessing to the individual in the singular, lachmecha, meimecha, mikirbecha, "your bread, your water, your midst." Why the change? He explains that if one prays in a communal forum, the effect will be so powerful that the individual will be blessed with parnassah, a livelihood that is easy to come by, and good health. Alternatively, "your bread and your water" are a reference to spiritual achievements which will be gained only by he who prays to Hashem b'tzibbur.

The Ma'or Va'shemesh adds that one who prays b'tzibbur will have access to spiritual opportunities that are beyond the purview of the average person. Indeed, he interprets this into the meaning of the pasuk in Mishlei 14:28, B'rov am hadras melech, "A multitude of people is a king's glory." The word hadras, which is translated as glory/beauty can also be translated as being derived from hadar, as in hadarna bi, "I changed my mind," remorse, or a reversal of one's earlier decision or opinion. We thus praise Hashem, that He reverses His decision, so to speak, in favor of those who pray to Him, b'rov am, in a large communal forum.

The early commentators distinguish between Tefillah b'kavanah, prayer amid concentration and devotion, and Tefillah without kavanah. They compare the Tefillah without kavanah to a guf b'li neshamah, a body without a soul, which obviously has no sustaining life force. Likewise, without concentration, the prayer has no life to it. Individual prayer can easily fall into the category of Tefillah without kavanah, because one who prays alone is usually in a hurry, swallowing his words and certainly giving very little thought to them. The feeling of exaltation that one has upon praying with a large group, the enthusiasm, the excitement and fervor is overwhelming and inspiring. The words take on new meaning as one concentrates on their inner meaning, bringing one closer to Hashem.

The Ramban in his commentary to Shir HaShirim writes that one who prays b'tzibbur will have his prayer accepted by Hashem, even if he did not concentrate on every word. So great is the power of the tzibbur.

The significance of Tefillah b'tzibbur was recognized by the gedolei Yisrael throughout the millennia. Many stories are told of their overriding mesiras nefesh, devotion to the point of self-sacrifice, to be able to pray with a minyan. Rabbi Paysach Krohn in Reflections of the Maggid cites

the Talmud in Berachos 47b that teaches us: "A person should always rise early (to go) to the synagogue, so that he should merit to be counted among the first ten." Chazal explain that the first ten to arrive receive a reward equivalent to all those who came afterwards. The Maharasha explains, that the Shechinah, Divine Presence, graces a place where people pray only after there is a minyan in attendance. Therefore, it is only the first ten who receive credit for "bringing" the Shechinah to their place of prayer. Those who come later certainly receive reward for praying in a place where the Shechinah's Presence is manifest, but it is the first ten who get the credit for availing them the opportunity. Chazal are telling us that the initial reward for those first ten is equal to what everyone else receives for praying in the presence of the Shechinah.

Rabbi Krohn tells an intriguing story that should inspire us. There was a young man who owned a furniture store in a small community. One morning he noticed smoke rising up between the slats of his parquet floor. He quickly ran to the basement to see what was wrong, and soon had his worst fears realized. A fierce fire was raging in the basement. He was unsuccessful in his attempt to extinguish the fire with a portable extinguisher. By the time he ran upstairs, the fire had already spread to the first floor. The furniture was all aflame. He ran to the phone to call the fire department and then returned to his store, to watch helplessly as it burned to the ground.

The fire department finally arrived, but, alas, all they could do was water down the adjacent store to make sure the fire did not spread. His business was gutted. It would be months before he could even dream of opening up again.

A few days after the fire, this young man came to shul and remarked to a friend, "You know, a few days prior to the fire, a fellow came over to me and commented about my late arrival to Minyan. 'You come to shul everyday,' he said, 'but why do you always come so late? You are never there at the beginning of davening.'"

I replied to him, "What difference does it make when I come? The main thing is that in the end I am there!" "Now I realize that the fire department also came - in the end - when my store had already been turned to rubble. It was too late. Hashem showed me that coming in the end is not good enough. It is no different than the fire department. It was too late."

While this may address those who are not there at the beginning of davening, there is another group that is equally disdainful - those who leave early. There are Kaddeishim which are recited at the end of davening for a reason. Apparently, they must be important since it is a point when the yasom, orphan, or one who is reciting Kaddish for the deceased, says Kaddish. There are those of us who feel that this portion of davening is not pertinent to us. We leave at will, or we justify our absence with some form of contrived need. Regrettably, those who must stay for that part of davening are those who say Kaddish. Let us not act in a manner that Heaven has reason for criticizing our behavior. The alternative to leaving at will is being compelled to staying for reasons beyond our control.

**Everything that Hashem has said, we will do and we will obey. (24:7)**

Chazal teach us that when Hashem heard Klal Yisrael proclaim, "We will do and we will obey," He exclaimed, "Who revealed this secret to My children, the secret that the ministering angels use for themselves?" This is a reference to the fact that only angels have the same order of priorities; they obey Hashem's word without waiting for any explanation. Klal Yisrael's willingness to accept Hashem's command at face value, to be willing to act before they comprehended the command, elevated their status before the Almighty. What is the actual meaning of Naase v'nishmah, we will do and we will obey? Were they prepared to follow blindly and act without any clue as to what they were doing and why they were doing it?

The commentators, each in his own inimitable manner, explain this. Horav Aharon Kotler, zl, explains that Klal Yisrael were saying, "We will do - and we will understand after we carry out the mitzvah what is the rationale behind the command. Indeed, we realize that unless one performs the mitzvah, he is missing a sensitivity to it. We can attempt to explain the beauty of Shabbos to someone, but until he experiences it, he will not truly

comprehend its unique character. This applies to all mitzvos. One must live it in order to feel an appreciation and understanding of it.

***Va'ani Tefillah***

***Lo al tzidkaseinu anachnu mapilim tachanuneinu lefanecha, ki al rachamecha harabim.***

***Not because of our righteousness Do we throw our pleas before You, but rather because of Your great compassion.***

This prayer began with an emphasis on one being honest with Hashem and with himself. Bearing this in mind, we understand that we are, at best, insignificant and not worthy of our own accord, of any reward. It is only due to Hashem's boundless compassion that we stand here and request His Divine Assistance. The above phrase is taken from Sefer Daniel which stresses the notion that we do not come before G-d with demands based upon our worthiness, but rather, that appear before Him in all humility, conscious of our shortcomings. We realize our futility and nothingness and reflect upon the only aspect of ourselves that is of consequence: our soul. Mapilim tachanuneinu lefanecha, we literally "throw down" our pleas. Horav Shimon Schwab, zl, explains this beautifully. A common citizen comes before the king with a simple request. Trembling with fear, he does not have the audacity to actually hand the petition to the king. Rather, he falls to his knees, bowing in homage, and places it on the floor in front of the king. He knows that his only hope of a positive response is if the king is compassionate to him. This is what Daniel had in mind when he pleaded with Hashem for mercy to rebuild Yerushalayim. This idea should serve as a springboard for everything for which we entreat Hashem. We must realize that whatever we succeed in receiving is only because of Hashem's Divine mercy - not because of our worthiness.

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**Bar-Ilan University 's Parashat Hashavua Study Center**

**Parashat Mishpatim 5765/ February 1, 2005**

**Between Law and Law**

**Yair Hass - Elad**

Moshe Greenberg, in his classic article "Some Postulates of Biblical Criminal Law,"[1] claimed that the differences between criminal law in the Torah and criminal law in the other law codes known to us from the surrounding cultures of ancient Israel are founded on a revolutionary change in the ethical and spiritual perception of man. For example, Greenberg points to the punishment established by the Torah for a person who kills another human being—the death sentence—as opposed to the punishment in Hittite law, which requires the murderer to give over to the family of the murdered person a number of souls of equal status to that of the victim.[2] There is a revolutionary change in the view of the value of a human being: In Hittite law, he is perceived in terms of his value to society; in the Torah, all men are of absolute and unequalled value insofar as they are created in the image of G-d.

A precise and adequate formulation of the jural postulate underlying the biblical law of homicide is found in Genesis 9:5f: "For you lifeblood I shall require a reckoning; of every beast shall I require it .... Whoever sheds the blood of a man, by man shall his blood be shed; for in the image of G-d was man made." ... The meaning of the passage is clear enough: that humans were made in the image of G-d ... is expressive of the peculiar and supreme worth of mankind.[3]

Interestingly, hundreds of years before Moshe Greenberg another great scholar – Don Isaac Abarbanel (1437-1508) – observed a similar distinction in his analysis of the differences between the laws of the Torah and the laws of other peoples. Abarbanel made this distinction in grappling with the question why the Torah includes rational commandments.

No other commentator could be said to be more concerned for the integrity of the Torah than Abarbanel, both in terms of content and style,[4] and the very appearance of rational commandments in the Torah posed for him a philosophical challenge of the first degree. Commandments that human intelligence can deduce have no need to be written in the Torah and would appear to be superfluous. But superfluous elements in the Torah contradict the notion of the Torah's integrity as the word of G-d, so the exegete must

explain why nonetheless it was necessary for these commandments to be written down.

Abarbanel first relates to this subject in his commentary on the last five commandments of the Decalogue, which pertain to relations with one's fellow person:

Indeed, all five of the last commandments are expressed in the negative, since they are things that the intellect can deduce, and most of them were commanded of the descendants of Noah, and man as a human being is obliged to observe them. Indeed, the positive statement, which is righteousness and loving one's fellow like oneself, brings greater perfection to the human being. The Holy One, blessed be He, sufficed with warning not to do that which is unbecoming.

This does not fully solve the difficulty of the last five commandments, since the Torah did not have to mention them at all (even in the negative) insofar as what they command can be deduced by the intellect. Therefore, in his preface to Parashat Mishpatim Abarbanel explains that there nevertheless are significant differences between divine laws and human laws, and these differences explain why these commandments were included in the Torah:

Divine laws differ from the rest of the laws of the descendants of Noah and the other nations in two enormous ways: first, by the nature of the commandments themselves, the divine ones including several things, be it individual laws or several consequences following from the commandments, which is not the case with the laws of other nations. Second, they differ in terms of reward and punishment given to a person who observes the divine laws given by the Lord of the Universe, blessed be His name. In this way they are unlike humanly agreed laws, for the latter are but to establish a properly run state and society, and they carry with them neither reward nor punishment from the blessed Lord for observing, but only the benefit that they themselves bring.

These remarks appear in Abarbanel's discussion of the Ten Commandments, which he believes included all the rest of the commandments. His commentary on Exodus 22:22-23 implies that the Ten Commandments subsume, in one way or another, additional divine laws:

The commandment, "You shall not tolerate [lit. "let live] a sorceress," also applies to sorcerers. And the commandments, "You shall not wrong a stranger" and "You shall not ill-treat any widow or orphan," also apply to all the rest of one's fellow Israelites, but Scriptures wrote in terms of the present. All this is to inform us of the generality of the Commandments as divine laws.

Yet this still does not suffice, since Abarbanel does not succeed in applying the principle that "Scriptures wrote in terms of the present" (dibber hakatuv ba-hove), meaning that the Torah gave examples in contemporary terms, to every one of the laws in Parashat Mishpatim. Therefore in the vast majority of these commandments the problem of superfluity remains.[5] Hence Abarbanel comments on almost every single commandment, showing how the divine wisdom that can be seen in it is superior to the human wisdom underlying the laws of other nations.

In his explanations we can discern two fundamental approaches which appear at first glance to be contradictory. One approach sees the laws of the Torah as a pure reflection of perfect divine wisdom, in contrast to human laws which reflect limited and imperfect human wisdom. This is an approach which is consonant with Abarbanel's well-known skepticism about the ability of human intelligence to arrive at true conclusions.[6] Therefore the justification for rational commandments in the Torah is that, although they are rational, the intelligence of human beings would not be able to deduce them in actual practice. This is illustrated by his commentary on the verse, "But if what he stole – whether ox or ass or sheep – is found alive in his possession, he shall pay double" (Ex. 22:3):

Other peoples and nationalities either assumed according to their mores[7] that one who stole an ox or a sheep or other moveable property should be killed and hanged on a tree, or assumed that his ears should be cut off on the first offense and that he should be put to death on the second. Those who were more lenient in their sentencing required the thief to pay seven-fold... But the punishments of a Jewish court are not to be suspected, for

the ways of the Lord are straight, and a person who steals property is punished only in property, and in proportion to what was stolen, as I have explained.[8] And the laws of the Torah are all founded on what is true and proper.

In contrast to this explanation, elsewhere Abarbanel views the laws of the Torah as an expression not of truth but of mercy. For example, Abarbanel sums up his commentary on the laws concerning a Hebrew maidservant (Ex. 21:20) as follows:

Observe how much of the blessed Lord's mercy was extended to the daughters of Israel in this law, that even in servitude loving kindness and mercy be shown them, and that none of this was in the commandments of the descendants of Noah nor in the laws of other nations in their individual lands.

The most instructive explanation, however, which seems to combine the two, is in his commentary on the verse, "When a man strikes his slave, male or female, with a rod, and he dies there and then, he must be avenged" (Ex. 21:20):

It contains both divine wisdom and compassion ... for by the laws of other peoples a master is not punished for doing such a thing to his slaves, insofar as they say: he is his possession. But the Lord! – His deeds are perfect, Yea, all His ways are just; and He gave every person His law, male slave and master, female slave and mistress, alike.

Abarbanel, who was not familiar with the Code of Hammurabi or Eshnunna, anticipated the conclusion reached by Moshe Greenberg. Differences in laws concerning human life stem from differences in the perception of the human being. In contrast to places in the world where a person is measured according to his or her value to the society or to his or her lord, the Torah emphasizes that even a slave, whose entire duty is to serve his master, has absolute and unconditional value given him by the Creator of the Universe.

This is a very advanced distinction to be made by a medieval scholar, since what follows from it is that there is no such thing as pure logic or pure rationality; in law as well everything depends on the underlying assumptions. Different assumptions yield different conclusions.[9]

Perhaps this distinction can explain the two approaches that we have seen in Abarbanel's explanations of the Torah laws, based on reason and on mercy. Both are equally rational although they follow from different basic assumptions. A thief ought to be treated according to the letter of the law (but no more), since criminals must receive as they sought to do to others in order that they not repeat their actions. In such cases there is no room for mercy, since mercy towards a thief means a worse plight for his future victims. In contrast, regarding a Hebrew maidservant, mercy does not undermine truth, rather it is actually required by the very fact that the maidservant is a person created in the image of G-d. When, instead of proceeding from the assumption made in the laws of other peoples, that the value of a person is measured according to their usefulness, we proceed from the assumption that the value of every person is inestimable, insofar as everyone is created in the image of G-d, then according to Abarbanel mercy is justice itself, in line with the injunction, "Love truth and peace."

[1] Yehezkel Kaufmann Jubilee Volume, 1960, 5-28. See further, "More Reflections on Biblical Criminal Law," *Scripta Hierosolymitana* 31(1986), 1-17. The original article also appears in M. Greenberg, *Studies in the Bible and Jewish Thought*, Philadelphia: 1995, pp. 25-41.

[2] Kaufmann, p. 14; *Studies*, p. 30.

[3] Kaufmann, p. 15; *Studies*, p. 31.

[4] See Meir Waxman, "Don Isaac Abarbanel," *Sefer ha-Shanah le-Yehudei America III* (1938), 76; and especially chapter 1 of my master's thesis: Yair Hass, *Stiyot Methodologiyot shel Abarbanel be-Perusho la-Torah le-Or Tefisato et Mahut ha-Torah* (M.A. Thesis, Bar Ilan 2001).

[5] Apparently Abarbanel did not think that the reward given someone who obeys the laws of the Torah is sufficient to justify their being written down in the Torah, since this advantage does not concern their essence.

[6] Abarbanel clarifies this position of his at length in his commentary on I Kings 3:12 (Perush le-Nevi'im Rishonim, Torah ve-Da'at edition, p. 466ff.).

[7] It is unclear what laws Abarbanel was referring to here. Probably he was speaking of laws in practice in various places in his own time, although we cannot exclude the possibility that he had read in the writings of Josephus and other ancient authors about laws and practices in the ancient world.

[8] Above, in his commentary on 21:37 Abarbanel explains that the double payment means “the one that he stole, plus one of his own.”

[9] Perhaps it need be said that with this distinction Abarbanel put the Middle Ages behind him, marching forward towards the Renaissance, where the dominant view was that man himself creates his world and the truth depends on his own specific point of view.

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## YatedUSA Parshas Mishpatim February 4, 2005

### What I Borrow, I Must Surely Return

By Rabbi Yirmiyohu Kaganoff

In Parshas Mishpatim, the Torah teaches us the responsibilities we assume when watching or borrowing other people’s property. Personal experience has demonstrated that most people are unfamiliar with the halachic obligations entailed in borrowing.

#### SHE’EILAH VS. HALVA’AH

Hebrew uses two different words for borrowing, she’eilah and halva’ah, which describe two different types of transactions with major legal distinctions. She’eilah means borrowing an item that will itself be returned. In a she’eilah, the pikadon, the item loaned, remains the property of the lender, and the borrower has rights to use it. (The borrower is called the sho’el and the lender is called the mash’eil.) Halva’ah, on the other hand, refers to an item that will not be returned. Rather, the borrower uses the item and returns its value or a replacement item. Although often people think that only borrowing money is considered halva’ah, borrowing eggs is also halva’ah since they will be eaten and different eggs will be returned. Similarly, borrowing any item that will not be returned intact is halva’ah. In a halva’ah, the borrower becomes the owner of the loaned item and assumes financial responsibility to repay the lender. Once the borrower receives the loaned item, the lender loses his legal right to ask for the item back. (An exception to this is if the item is loaned in error, for example, if I loan someone an item that is more valuable than I intended.) This is in contrast to an item given as a she’eilah where the borrower assumes responsibility to care for the item and returns it intact when the loan is over. At times, borrowing money can be she’eilah and not halva’ah. For example, if I borrow a rare coin for an exhibit, it is understood that I do not intend to spend it and that I will return the same coin. Therefore, it has the laws of she’eilah.

#### OTHER DIFFERENCES BETWEEN SHE’EILAH AND HALVA’AH

There are many other halachic differences between she’eilah and halva’ah. For example, the borrower of a halva’ah that has no specific repayment deadline automatically has 30 days to repay the loan (Choshen Mishpat 73:1).

However, an item lent as a she’eilah without specifying a length of time must be returned as soon as the owner wants it back (Shulchan Aruch, Choshen Mishpat 341:1). Charging money for she’eilah is not prohibited; this is called rental. In this case, the “borrower” is now a “renter” and is less responsible for the item than a borrower is.

However, charging for a halva’ah is considered interest and is prohibited because of ribbis. It should be noted that in the case mentioned above where a coin was borrowed for an exhibit, one may charge a rental fee for the coin without incurring the prohibition of ribbis since it is a she’eilah and not a halva’ah (Yoreh Deah 176:1).

The following story illustrates a case where money was loaned as a pikadon and not as a halva’ah.

Reuven was negotiating a business deal which required investing a significant amount of his capital. The potential partner insisted on proof that Reuven could produce the required funds. Although Reuven had sufficient resources for this purpose, it was easier for him to “rent” money from a third party as a pikadon. The agreement was that he would not use the money and would return the very same banknotes to the lender.

Two shailos are involved in this case. 1. Is this act geneivas da’as, deception, since Reuven is showing the partner someone else’s money? (This shailah will, IY”H, be discussed in a future article.) 2. Is there a problem of ribbis?

Reuven may rent the money because he does not have the right to spend it; rather, he must return it intact. Therefore, the transaction is a she’eilah and not a halva’ah, and there is no ribbis prohibition.

We will discuss the halachos of ribbis at a different time, I”YH. For the rest of this article, we will focus on the halachos of sho’el, someone who borrows an item that will itself be returned.

#### RESPONSIBILITIES OF A BORROWER

In general, someone who borrows an item becomes totally responsible for its welfare. As the Torah says, if he borrowed an animal and it became injured or died, the borrower must repay, even if he was not negligent.

I borrow a friend’s laptop computer for a business trip. I take exceptional care of the laptop since it is someone else’s property, even making certain to put it in the hotel safe when not using it. While I am away one day, a fire breaks out in the hotel and the computer is irreparably damaged. Although the damage was totally accidental, I am still obligated to pay for the computer.

But why should I be obligated if something happened that was beyond my control? The damage was no fault of mine! Although the details of hilchos sho’el are basically a g’zeiras hakasuv, a declaration of the Torah, there is a rationale behind these rules. When I borrow something, I receive a pure gain from the transaction since I can use the item without giving the lender anything in exchange. Therefore, the Torah obligates the borrower to ensure that the owner receives his item back, even when the borrower is not responsible for the damage (see Gemara Bava Metzia 94b; Shu”t HaRan #20).

We will later discuss two circumstances where the borrower is not responsible to compensate for the loss.

#### CAN I LIMIT MY RESPONSIBILITY?

Someone wants to borrow my car, but does not want to be responsible for anything that might happen to it. According to halacha, while he is borrowing my car, he is responsible if it is stolen, suffers damage from a storm or fire or is hit by another car.

Can we arrange to absolve the borrower from this responsibility? Yes. The two parties can agree to limit the borrower’s responsibility to whatever level they are comfortable with. This is referred to as a tnai she’b’mamon, a condition included in a business agreement, which is fully valid in halacha. The Mishnah states that a borrower may stipulate that he is not responsible to pay for damages even if he is negligent (Bava Metzia 94a).

#### SOME INTERESTING SHAILOS

Someone once asked me the following shailah. Their yeshivah bachur son traveled back and forth between their hometown and his yeshivah, often transporting automobiles for a frum car dealer. Each side considered this an ideal arrangement - the son had free transportation and the dealer had his shipping needs serviced very inexpensively.

However, I pointed out that although the son is not considered a “sho’el” (who is responsible even for accidental damage, as explained above) since the dealer also gains from the arrangement, the son is still responsible for the total value of the car if he acts negligently. (Whether he is responsible to replace the car if it is stolen is dependent upon details that are beyond the scope of this article.) Needless to say, his parents were rather concerned about their son assuming this level of financial responsibility. I explained that their son should negotiate with the dealer exactly how much responsibility he was accepting.

My wife was once asked to transport a large sum of money on a journey. Although she was doing the other person a complete favor, she would still be responsible for negligence. We told the person that she was assuming no responsibility whatsoever, and he agreed. Since we made this condition, she could not be held responsible no matter what happened.

Similarly, someone who borrows an item may specify to the owner that he is not assuming full responsibility for the borrowed item, and this absolves him if the owner agrees. Of course, the owner may not want to lend the item if the borrower does not assume full responsibility.

#### DOES THIS ARRANGEMENT NEED TO BE IN WRITING?

No, an oral agreement or understanding between the two parties is perfectly sufficient. The main advantage of a written agreement is to

prevent misunderstanding or disagreement about the terms of the agreement.

But, hold on one second! Doesn't the Torah require the sho'el, borrower, to pay for damages? How can the Torah's instructions be pushed aside?

There is a major difference between the financial rules established by the Torah and its prohibitions. In business arrangements, two parties may create their own terms. Thus, an employer can agree to give his employee benefits beyond what halacha requires and be obligated to provide them. Similarly, when a couple marries, the husband assumes responsibility to support his wife. However, if the two choose to marry without this responsibility, they may do so (Gemara Kiddushin 19b).

However, two parties cannot make a business agreement that violates a Torah prohibition. Therefore, one cannot create a contract that charges interest, ignores the Shmittah time limit for collecting debts or authorizes using non-halachic courts for adjudication. These cases all involve Torah-dained prohibitions, and therefore cannot be eliminated by a "deal" between the two parties.

#### WHEN IS A BORROWER NOT RESPONSIBLE FOR DAMAGE?

I mentioned above that there are two circumstances whereby the borrower is absolved from paying for the damage. The Gemara calls these two cases "be'alav imo" literally, "the owner is with him," and "meisah machmas melacha," which means "the loaned animal died because of the work." The basis of each of these two *pturim*, absolutions, is totally different and both need to be explained.

#### BE'ALAV IMO

Be'alav imo means that if the lender was working for the borrower when the *pikadon* was borrowed, the sho'el is absolved from paying for any subsequent damage. According to the halacha, this applies only if the owner was working when the she'eilah began. However, if the owner began work after the loan was begun, the borrower is fully responsible (Bava Metziah 94a).

This rule sounds very strange. What is its rationale? We generally divide mitzvos into two categories, *bein adam lachaveiro*, mitzvos between us and our fellow men, and *bein adam laMakom*, mitzvos between us and Hashem. We are not surprised when mitzvos *bein adam laMakom* are beyond our comprehension and based on *gezeiras hakasuv*, decrees of Hashem in His Torah. For example, we never question why the Torah commanded holding an *esrog* on Sukkos and not a lemon - we know that the Torah's mitzvos are beyond our comprehension. Nor do we ask why the flimsy *schach* on a *sukkah* must come from plant growth. We understand that these halachos are *gezeiras hakasuv*.

However when we it comes to *bein adam lachaveiro*, we expect to understand them. Indeed, most halachos of civil law are very comprehensible and include relatively few halachos based on *gezeiras hakasuv*. However, there are some exceptions and the rule of *be'alav imo* is one of them. The Torah states that under these circumstances, the borrower need not pay, even though we cannot comprehend the difference. Nevertheless, several rationales have been suggested for the law of *be'alav imo*. In other words, even though it is a *gezeiras hakasuv*, we can derive certain *hashkafic* concepts from these laws. However, we must realize that these rationales should not be considered as "reasons" for the mitzvah.

After all, do we think that we can comprehend the reasons for Hashem's mitzvos? As the *Sefer HaChinuch* explains, the words *ta'am hamitzvah* should be translated as the taste of a mitzvah, rather than the reason for a mitzvah. This is because we can never explain why Hashem gave us mitzvos. We can only suggest ideas that will help us grow while we observe the mitzvos that Hashem has granted! Similarly, the *ta'amim* given to explain *be'alav imo* should be understood as tastes, ideas that illuminate these halachos. That being said, we can now present a *ta'am* suggested for the law of *be'alav imo*. Some explain that since the owner is being employed by the borrower, the borrower does not assume that he is responsible for the item borrowed. Rather, he assumes that the owner is taking care of his own item (Chinuch, Mitzvah 60). Under these circumstances, the Torah does not require the borrower to pay for damage done to the loaned item.

#### MEISAH MACHMAS MELACHA

The other occasion when a borrower is absolved from paying is "meisah machmas melacha," literally, "the loaned animal died because of the work." This is based on a logical concept that if the borrower had express permission to use the borrowed item for a certain purpose, he should not be penalized for utilizing it for that purpose (Tosafos; Nimukei Yosef).

There is an alternative explanation for *meisah machmas melacha* that contends that the borrower has the right to assume that a borrowed item can withstand normal wear and tear. If the *pikadon* did not withstand normal use, then we presume that it was inferior and the borrower is not responsible for the loss (Ramban; Sma 340:3).

#### A LOANED CAT

The Gemara discusses a strange case of someone who borrowed a cat to rid his house of unwanted mice. A *din Torah* was called when the mice killed the cat instead and the *mash'eil* claimed that the borrower must pay him for his loss! The Gemara concludes that the borrower is exempt because there must have been something wrong with a cat that was overpowered by mice (Bava Metziah 97a).

The following case is discussed by *poskim*. The residents of a threatened town borrowed weapons to defend themselves. They were defeated and the weapons were confiscated. Must they pay for the weapons? The *poskim* dispute this issue. Some rule that they are exempt because the items were borrowed specifically for use in self-defense and the loss is categorized as *meisah machmas melacha*. Others contend that they are obligated to pay since the weapons were not inferior (Sma 340:8 and Shach *ad loc.*). I was recently asked a *shailah* about someone who borrowed a power saw that was damaged during use. Is this considered *meisah machmas melacha*?

The halachic issue is to determine whether the borrower used the saw in a normal fashion, in which case he would be exempt from paying, or whether he perhaps abused the appliance, in which case he is obligated.

#### A FEW UNFAMILIAR HALACHOS ABOUT BORROWING

There are several halachos that even knowledgeable people are unaware of. If I borrowed an item for a specific purpose, may I use it for something else?

In most instances, the answer is no. It is prohibited to use the *pikadon* for a different job without permission, even for a job that involves less wear and tear than the task for which it was borrowed (Shulchan Aruch, Choshen Mishpat 341:7). Some *poskim* permit using the *pikadon* for a job that is clearly less taxing on the tool, but all agree that I may not use it for work that might be equally stressful (Taz 340:1; Sma 341:20).

#### RETURNING THE BORROWED ITEM

Many people are unaware that a borrowed item is not considered returned until the lender knows about it (Choshen Mishpat 340:8). Therefore, if I borrow a hammer from my neighbor and return it to his house, I have not discharged my obligation until he knows that it has been returned. If it becomes damaged in the interim, I am still responsible to pay!

I borrowed a *sefer* from someone. When I came to return it, his children told me that the owner had gone on vacation. Consequently, I am responsible for the *sefer* until he finds out that I have returned it to his house.

#### BORROWING COLLATERAL

Reuven borrowed money from a non-Jewish bank and placed a valuable painting in the bank's vault as collateral. Knowing that the painting was worth far more than the loan, Shimon asked Reuven if he could borrow some money from the bank, using the painting as collateral for his loan as well. Both Reuven and the bank agreed. Subsequently, a massive explosion at the bank destroyed the painting. According to secular law, neither Reuven nor Shimon were obligated to pay back the loans since the collateral was not returned. (Incidentally, according to halacha, if the lender was Jewish, he would be obligated to repay the loan since the lender was not at fault for the loss.)

However, Reuven wants Shimon to compensate him for the painting, claiming that Shimon benefited from his loss. Reuven claims that Shimon "borrowed" the painting as collateral, since without it Shimon could not obtain his loan.

Therefore, Shimon should have to compensate Reuven since he borrowed an item that he did not return. Does Reuven have any basis for his claim?

According to halacha, Shimon has no responsibility to compensate Reuven. The painting was in the bank's vault because of Reuven's loan, not because of Shimon's (Mordechai, Bava Metziah #371; Rama, Choshen Mishpat 340:1). However, if Reuven had never borrowed from the bank, but Shimon had used the painting as collateral, Shimon would indeed be responsible for it.

We have touched on some of the halachos involved when borrowing. This certainly indicates how much we have to know in order to observe them correctly. We should always bear in mind that the Gemara advises someone who wants to become a great tzaddik to ensure that he is highly familiar with all the halachos of damages!

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## MEANING IN MITZVOT by Rabbi Asher Meir

*Each week we discuss one familiar halakhic practice and try to show its beauty and meaning. The columns are based on Rabbi Meir's Meaning in Mitzvot on Kitzur Shulchan Arukh.*

### Visiting the Sick

In section 335 of Yoreh Deah, the Tur brings a number of explanations for the requirement of visiting the sick and for the details of this mitzva. All of the explanations come from the early Sages, yet the way the Tur presents them seems to highlight the contrasts and even paradoxes among them.

The Tur cites Shabbat 32a, "R' Yitzchak son of R' Yehuda said, a person should always seek mercy so that he shouldn't fall sick, for if he becomes sick they say to him, present some merit to exempt yourself." This source suggests that getting sick is an omen, a time of heightened judgment.

The Tur then continues, citing Sota 14a, "And once a person is sick, it is a mitzva to visit him, for so we find that the Holy One, blessed be He, visits the sick, as they inferred from the verse 'And Hashem appeared to him [Avraham] in Elonei Mamre' - this teaches that He came to visit the sick". From this source, illness sounds like an occasion for unique Divine closeness and favor. We certainly don't find that Avraham is asked to "bring a merit" to exempt himself, and we would find it hard to imagine what so righteous a person would be judged for.

The Tur mentions a seemingly unrelated reason for visiting, namely attending to the needs of the patient, and then goes back to the first, "ominous" reason. He writes that a visit should be carried out "even he is a cohort, who takes with him one sixtieth of the illness." This idea of a cohort reminds us of a recurring theme in Chazal, namely that members of a group are often judged together. "If one of a group dies, all the members of the group should worry" (Shabbat 106a, SA YD 394:5). By associating himself with the sick person, the visitor includes himself in his "group" and thus judgment; this slightly endangers the visitor but even more does it lighten the judgment of the patient, as the community is always judged more leniently than the individual. (See Rambam Teshuva 2:6.)

Then back again to the Divine favor approach: "[The visitor] should not sit on a bed or chair or bench [high above the patient], rather he should wrap himself and sit before him, for the Shechina is above the head of the sick person".

At the end the Tur mentions the importance of praying for the sick person and encouraging him to mend his ways and take care of any important unfinished business. For instance, perhaps there is money which he borrowed and neglected to return.

One way of understanding this seeming zig-zag in the Tur is to recall that being in God's favor and being in a state of heightened judgment are not really opposites at all. Part of the privilege which Israel as a whole enjoys is having a unique level of Divine Providence, including a closer level of scrutiny and judgment "The Holy One blessed be He is strict with those surrounding Him even to a hair's breadth" (Yevamot 121b). Note the use of the word "surrounding" specifically those who are close to Him are subject to this strict accounting.

This is one reason that any religious act that has the nature of "approaching" God is done with great awe and trepidation. The heightened scrutiny and judgment involved may be beyond our merits. However, we

should certainly not belittle the importance of any such occasion, even if we do not initiate it. As the Tur explains, illness can be a sign of Divine scrutiny leading to a greater degree of judgment, thus the sick person may be asked to present some merit. This scrutiny can apply to the patient and also to those in his family or group. At the same time, this degree of closeness is also a unique privilege, and visitors should be aware that the Divine Presence is above the sick person's head. The visitor should welcome the opportunity to participate to a limited "one-sixtieth" level in this "visitation", with of course an appropriate sense of awe.

The main thing is for the sick person and those around him in his "cohort" or "group" to use the illness as a prod to improve their ways. This includes both their spiritual level, as reflected in the requirement that visitors pray for the sick person and that he should repent, but also everyday acts of righteousness and kindness: taking care of the physical needs of the patient and urging him to arrange workaday affairs such as paying off debts.

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## Haaretz

### 'Harvard' of the Haredim

#### By Micha Odenheimer

Why has acceptance into the overcrowded, anti-Zionist Brisk Yeshiva in Jerusalem become the dream of every young ultra-Orthodox American man? Because of the charisma of its directors, scions of the powerful Soloveitchik family - and for its historical tradition of talmudic learning.

On Mea She'arim Street in Jerusalem you can buy a baseball cap with an inscription that is meant as a subversive comment on the current yeshiva reality. "I got accepted to Brisk" the cap announces, "but I learn in the Mir."

The "Brisk" that the cap is referring to - headed by Rabbi Avraham Yehoshua Soloveitchik - is the most exclusive yeshiva in the world; American Haredim (ultra-Orthodox) are desperate "to get into Brisk." But unlike the ivy-covered buildings of Harvard or Yale, Brisk has few outward signs of prestige.

Walking into the yeshiva, I am suddenly immersed in a crowd of young men trying to hear Reb Avraham Yehoshua's daily Talmud class. The room is too small to accommodate them: 40 of them have spilled into the hallway, which is framed by coat racks with rows of identical black hats and coats. Finally, Reb Avraham Yehoshua, outspoken, charismatic and known for his sharp tongue, finishes his lesson and departs with a last joke. The crowd laughs raucously.

The Brisk Yeshiva looks like a hundred other Jerusalem institutions. And yet, increasingly over the last decade, reputations, careers - and, most significantly, marriages - hang on whether a young man is accepted there. "The day they announced who got in and who didn't," an American student told me, "a thousand young men were crying."

"For an American, a lot depends on getting in," someone interjects. "If you want to get a top job, or marry the daughter of a wealthy man who will support you while you learn Torah, you have to get into Brisk."

This year, Brisk has become even more crowded; during the last academic year Reb Yehoshua refused to accept new applicants. There was simply no room. Yeshiva heads in America became desperate. Over the last decade, the path of an American ultra-Orthodox male has included studies in an American yeshiva until age 20, and then three years in Israel, preferably at Brisk. Afterward, the young men return to America for marriage and another few years of study, often at the huge Lakewood Yeshiva in New Jersey. The reputation of the "feeder" yeshivas depends on their ability to gain their talented students' admission into Brisk. "If you don't let our boys into Brisk, we might as well close down our yeshivas," the American yeshiva heads cried out. Eventually, Reb Yehoshua caved in, and last fall let in 200 new American students.

Why Brisk? A closer examination of its study hall will yield a clue to the secret. Alongside the Talmud and other standard texts are books you won't find anywhere else. These are samizdat works, bound Xeroxed notebooks full of handwritten commentary. On the covers, a warning: "It is forbidden to copy these pages or to take them outside the study hall."

These notebooks, and their warnings, represent the essence of the prestige of Brisk. They are the unpublished notes from the classes given by the late Rabbi Yitzchak Zev "Velvel" Soloveitchik, known as the "Brisker Rav," the post he held before the Holocaust forced him out of Eastern Europe and to Israel. From his arrival in 1940 until his death in 1959, the Brisker Rav taught a small group of cognoscenti in his home in Jerusalem, keeping his classes exclusive and familial. Although recognized as a master expositor of the revolutionary method of Talmud study introduced by his father, Reb Chaim Soloveitchik, he had no yeshiva and only occasionally intervened in ultra-Orthodox politics, where he was known as a fanatic anti-Zionist and an uncompromising religious purist. He refused to meet David Ben-Gurion, or to take any money from the Israeli government - a policy that is still a major cornerstone of the Brisk mystique today. Among disciples, the rigorous Brisk Talmudic method has become melded with the Rav's rejection of Zionism and opposition to Haredi participation in Israeli politics. Both, exponents of Brisk tell me, are expressions of the quality of clinging ferociously to the truth that Brisk represents.

The Brisker Rav's son, Rabbi Yosef Dov "Beryl" Soloveitchik, continued his father's tradition, teaching at home and in rented facilities. Then, in the late 1970s, as the number of full-time students quadrupled, Brisk began to take on a new role: bestowing a mark of distinction on a select group. Whereas formerly, being a yeshiva student meant being part of a small, scholarly elite, the last quarter-century has seen yeshivas grow into the center of a fully formed society, with tens of thousands of members. Within this world, studying Torah full-time into one's twenties has become a norm.

But if everyone is a scholar, a thorny problem arises. How is society to honor the particularly talented or well-connected? The need arose to demarcate an elite within the elite, a new and privileged caste. Brisk today fulfills this function. "If a prospective bridegroom is a top guy, he should have gone to Brisk," I was told by Rabbi Shimon Meller, author of eight volumes of Brisk history, authorized by the family. "And if he didn't, then the question is why not?"

#### Radical approach

Why have the purveyors of a 120-year-old Talmudic method been given the power to define the new American Haredi elite? Answering this means reviewing Talmud learning over the past 230 years. In the latter part of the 18<sup>th</sup> century, Rabbi Eliyahu of Vilna, "the Gaon," began to reshape traditional Jewish learning. Armed with prodigious knowledge and brilliance, he returned its focus to deriving the true meaning of the primary texts: the Talmud and its earliest, medieval commentaries.

The Gaon's most illustrious disciple, Rabbi Chaim of Volozhin, promoted his interpretation of his master's ideas brilliantly, translating his radical approach to Torah learning into the theology of "Torah l'shema" - Torah for its own sake. Previous generations understood that the Torah was created for the Jewish people, to guide them through the travails of this world toward a godly life. Rabbi Chaim rejected this notion. Responding, some historians contend, to the Hasidic movement and its challenge to scholarly authority, he reversed the hierarchy - declaring, essentially, that the Jewish people had been created for the sake of the Torah. Devotion and intensity in Torah learning became, in Rabbi Chaim's formulation, the central values of religious life. The Talmud, with its concern with areas such as economics and sex, would seem to be oriented toward life in this world. In reality, he said, the learning of Torah affects powerful spiritual changes. Original thinking in this realm has the potency to call new worlds into existence in the heavenly realms.

Whatever was happening in heaven, on earth Rabbi Chaim's ideas did create a new world: that of the first modern yeshiva. The Volozhiner Yeshiva, says Rabbi Moshe Lichtenstein, a historian of halakha (Jewish religious law) and himself a scion of the Soloveitchik family, would have been inconceivable before Rabbi Chaim's theological revolution. Previously, the great sages had been dispersed in large cities, and yeshivas consisted of small groups of disciples who gathered around them. In contrast, the Volozhin Yeshiva, founded in 1802, was located in a small town and was not subject to communal demands. It aimed to gather

together the best minds not for the purpose of guiding the Jewish people, but deepening and expanding the learning of Torah itself.

To the ideology of Torah l'shema and the new kind of yeshiva it had inspired, one more factor was necessary to complete the world of the Lithuanian yeshiva: the new method of analyzing Talmudic discourse developed by Rabbi Chaim Soloveitchik - known later in life, after inheriting his father's position, as Reb Chaim Brisk. In retrospect, it almost seems as if the Brisker method was inevitable, called into existence by the new spiritual and institutional territory that Rabbi Chaim of Volozhin had carved out.

#### Brisk revolution

Defining the exact nature of the Brisk revolution is not easy. Certainly, Reb Chaim Soloveitchik was an extraordinarily gifted teacher, who combined profundity and close analysis with clarity of explication. Yet much of the vocabulary he used is found in earlier sources. The emphasis on seeking an underlying conceptual stratum to explain halakha can also be traced to Soloveitchik's predecessors.

And yet there is no question that Reb Chaim's method of Talmudic analysis is revolutionary, not least because he created a language that could be applied to many different areas of halakha. Like Freud and Marx's terminology, his language mapped out new territories for consciousness to explore. His teachings inspired a generation of wildly creative Torah scholars. Whereas earlier Talmudic geniuses, as Lichtenstein writes, relied on brilliant intuitions that could not be replicated, Reb Chaim's methodology could be learned and disseminated. The sudden explosion of yeshivas at the beginning of the 20<sup>th</sup> century coincided with the spread of the Brisker method.

Some of Reb Chaim's early opponents, such as Rabbi Yaakov David Vilovsky (the "Ridvaz"), quoted in Shaul Stampfer's "The Lithuanian Yeshiva," accused him of inappropriately introducing scientific attitudes into Talmud study. The Ridvaz compared Reb Chaim's methodology to chemistry because of the way he breaks halakhic dilemmas into their components: "One rabbi invented the study of chemistry ... and this has been very, very bad for us, for it has introduced a foreign spirit from the outside into the oral tradition, which has been handed down to us from our teacher Moses from the mouth of God."

Yet soon it became clear that far from being a harbinger of "foreign" influence, Reb Chaim Soloveitchik's "scientific" method was wedded to a metaphysical stance that rendered everything outside of the Torah irrelevant. Science attempts to comprehend nature without asking why the world is as it is. For him, it was axiomatic that the halakha was the expression of God's transcendent and therefore unfathomable will. At the same time, his razor-sharp inquiries opened up a mesmerizing depth dimension of Talmudic tradition.

Some of Reb Chaim's students, most notably Reb Shimon Shkop, developed philosophical approaches that carried on a dialogue with contemporary ideas. But Reb Chaim himself seems to have absorbed the techniques of scientific analysis to explore a world whose borders were utterly sealed - a parallel universe whose laws related only to themselves, not to the increasingly chaotic reality of Eastern European Jewish life.

By the time Reb Chaim Soloveitchik died in 1918, his methods had spread throughout the world of Lithuanian yeshivas. His elder son, Moshe, immigrated in the 1930s to the United States, where he became dean of Yeshiva University, a position eventually inherited by his son, the renowned Talmudist and philosopher Rabbi Joseph B. Soloveitchik. This wing of the family, drawn toward Zionism and religious moderation, continues to have a powerful influence on religious Zionist society in Israel and the Diaspora.

Reb Chaim Soloveitchik's second son, Rabbi Isaac Zev "Velvel" Soloveitchik, inherited his father's position in Brisk and also his mantle in the ultra-Orthodox world. Reb Chaim had been famously compassionate and outgoing; Reb Velvel was introverted and reclusive, an aristocratic perfectionist. Reb Chaim had been religiously conservative, but an intellectually revolutionary with a burning curiosity. His son was a purist who concentrated on one, long-neglected area of the Talmud and applied his father's method scrupulously to the text. Whereas Reb Chaim's other

students merged his methodology with other modes of study, Reb Velvel and his descendants, Lichtenstein says, emphasized the unbreachable gap between Brisk Torah and all its predecessors.

Tensions explode

Disdainful of the maneuverings that eventually gained Israel's yeshivas the funds and army exemptions that allowed them to flourish, the Briskers were often at odds with the ultra-Orthodox leadership in Israel. In the early 1980s those tensions exploded when Rabbi Malkiel Kotler - grandson of Rabbi Aharon Kotler, a Holocaust refugee and Talmudic genius who had founded the yeshiva in Lakewood, New Jersey, the largest in the world - was called back from Jerusalem after his father's untimely death to take over as dean of his grandfather's yeshiva.

Kotler was married to a granddaughter of Reb Velvel, who had believed that America was a treife medina, unfit for habitation by devout Jews. Kotler's wife refused to go with him to the United States. He sued for divorce, which she would not accept. To annul the 10<sup>th</sup>-century decree that declared divorce legal only by mutual consent, Kotler had to collect the signatures of 100 rabbis. Rabbi Eliezer Schach, leader of Israel's "moderate" ultra-Orthodox, helped in this effort. His intervention was seen as a rebuke to the Brisker clan's willingness to break up a marriage over extreme religious claims.

Yet despite the tensions, Brisk's significance continued to expand throughout the '80s and '90s. This growth is even more mysterious because the Brisker Rav's successors, including the current one, Rav Avraham Yehoshua Soloveitchik, are not considered groundbreaking scholars. Their main claim to fame is their exacting exposition of their ancestors' teachings.

"The joke about Brisk," one prominent ultra-Orthodox scholar told me, "is that when Rav Avraham Yehoshua coughs during his lesson, he explains that he is coughing because 'Grandfather used to cough here, too.'"

A landmark essay written by another Soloveitchik-Yeshiva University historian, Prof. Chaim Soloveitchik, points to one possible explanation for the contemporary cult of Brisk. Called "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy" and published in Tradition Magazine in 1994, Soloveitchik's essay compares Orthodoxy today with the religious life of Eastern European Jews. He argues that while Jews used to learn how to be Jews naturally, imbibing laws and attitudes from their families, Judaism after the Holocaust has had to reconstruct itself self-consciously, with texts, rather than according to long-standing practices that were the "authenticators" of religious life. Faced with the infiltration of contemporary ideas about the cosmos and the human condition, Orthodoxy - even in Mea She'arim and Bnei Brak - is in a constant, desperate search for authenticity. "Only the texts remained untainted," says Soloveitchik, "and to them alone was submission owed." Texts, however, are difficult to live by. It is thus their interpreters, the master Talmudists, who become, in Soloveitchik's words, "the touchstone of religious authenticity."

In applying his analysis to the Brisk phenomena, it becomes clear that though the Brisk method spread because it sparked decades of unprecedented creativity, the family's current power, however, emanates from contemporary Orthodoxy's thirst for authenticity. Those notebooks, which cannot be studied elsewhere, and the classes in which the Reb coughs - they are the special qualities that Brisk offers. If yeshivas and those scholars who head them have replaced the family as the authenticator of religious attitudes today, the charisma of a family whose zealously guarded secret is a legacy of text interpretation from the greatest Talmudist of the last 150 years becomes significant. Brisk's aura of authenticity is augmented by its extreme political stance: Saturday nights, Rabbi Avraham Yehoshua teaches a class in the weekly Torah portion, which serves as a platform for fierce attacks on Zionism and the ultra-Orthodox leadership.

"Briskers don't accept anyone else's authority," says Rabbi Shimon Meller. "American boys come to Brisk to hear these uncompromising ideas, to get their head straight about politics," an American-born Haredi educator says. In the increasingly Zionist world of American Orthodoxy, Brisk is a growing counterforce.

Success means that resentment is brewing, as hinted above. Several ultra-Orthodox scholars complained that the Soloveitchik family's influence has dulled intellectual life. "We're becoming monochromatic," one scholar told me. "A good yeshiva lecture used to include ideas of Reb Shkop, Reb Elchanan Wasserman. Lately it's all Brisk, all the time."

The elitist admission practices also breed resentment. At the Mir Yeshiva, whose 5,000-member student body reflects its flexible admissions policy, young men are eager to talk about who Brisk lets in and why.

"A lot of it is contacts," one says. "If you are in any way related to the Soloveitchik family, then you're in. Also if you're an orphan." "An orphan?" I ask. "Out of compassion?" The boys are not even willing to grant the Briskers that point: "No, because they're worried about violating the biblical injunction, 'Thou shalt not oppress an orphan.' It's a law."

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## Shema Yisrael Torah Network

### A Cell Phone in the Beis Medrash is like an Idol in the Mikdosh

#### By HaRav Avrohom Yitzchok HaKohen Kook

This shmuess was given in response to the gathering of the rabbonim and their call to banish cell phones from yeshivas.

We had the privilege of watching a glorious scene that few people have seen. I cannot recall any events in the recent past that could compare to the gathering together of all of the gedolei hador, the illuminators of our generation, from all streams and backgrounds. Apparently at a time when clearing the heart to receive the yoke of Heaven stands on the agenda, the whole Nation rises up as one and shines with the light of "na'aseh venishma."

#### Avizraihu De'arayos

Let us examine some of what was said at that gathering.

A sentence was said in the name of Maran HaRav Eliashiv that astonished listeners. He said this device connects us to spoken words and other things that constitute licentiousness — avizraihu de'arayos.

Recently we have grown accustomed to hearing so much talk— some harsh, some not so harsh—that we have stopped absorbing what all the talk is really about. (At that same gathering HaRav Aharon Yehuda Leib Shteinman, shlita, said, "More than knowing what to say we must know what not to say.")

In order to understand what all the talk is about, first we will recount two anecdotes.

Once HaRav Chaim Ozer Grodzensky received a telegram from the Chofetz Chaim asking him to arrange for an exit permit from a certain city, saying it was a matter of pikuach nefesh.

The telegram arrived late on a Friday afternoon but HaRav Grodzensky turned to one of his assistants and said, "Drive out right away to take care of this matter!"

"Now?" he asked. "But such a trip would involve chilul Shabbos!"

Replied HaRav Grodzensky, "If the Mishnah Berurah said one had to desecrate Shabbos for a certain matter, you would understand that that is what has to be done. Now that you hear explicitly from the writing of the Kohen Godol that this is a case of pikuach nefesh, certainly you must desecrate Shabbos for it!"

Here we learn the weight of a written or spoken word by someone who is cautious with his speech.

All of us know Maran HaRav Eliashiv is Gaon HaTorah and Sar Hahoro'oh—in his speech as well!

A few years ago a letter had to be written denouncing a breach that had occurred. A very harsh letter was drafted and this writer was sent to have gedolei hador sign it.

Maran began to read the letter and when he heard what had taken place he said the matter was even more severe than the letter indicated, and then continued reading the letter until the end, where it referred to the matter as "avizraihu de'arayos." He turned to me and asked to bring in someone else who knew the details of the matter and could tell him exactly what had transpired.

The person arrived and described the event. Upon hearing his account Maran reacted very sharply, saying the matter was indeed very serious and must be denounced. “But,” he added, “the words ‘avizraihu de’arayos’ must be deleted!”

For he who is Torah through and through and whose every word is measured and weighed in the balance of justice, the halochoh does not refer to something as avizraihu de’arayos unless one must sacrifice his life over it — yeihoreg ve’al ya’avor—in the simple sense.

### **True Life**

Let us stop to consider the obligation of yeihoreg ve’al ya’avor.

The entire Torah is overridden by pikuach nefesh, “because of His great fondness for the life of a Jew” (Rashi, Pesochim 25b).

The most beloved thing in the eyes of HaKodosh Boruch Hu is the life of every Jew. All of creation was “for the sake of Yisroel, who are called ‘reishis.’” Similarly the Rambam, in explaining how pikuach nefesh overrides Shabbos, writes, “And it is forbidden to hesitate in desecrating Shabbos for a sick person whose life is in danger, as is written, ‘Asher ya’aseh osom ho’odom vechai bohem,’ i.e. he should not die as a result of [observing mitzvas]. From here we learn the laws of the Torah are not vengeance in the world but mercy and kindness and peace in the world” (Hilchos Shabbos, Chap. 2, Halocho 3). If so, we cannot fathom HaKodosh Boruch Hu’s great fondness for His people, Yisroel.

Yet despite this great love HaKodosh Boruch Hu has for the life of the Jew and His desire for him to live, there are cases where, in His holy Torah, He requires the Jew not to continue living, for in certain situations it is worthwhile and required of one to forego his life in Our World when it stands in contradiction to true life. “Ve’ohavto eis Hashem Elokeicho . . . uvechol nafshecho.” Life must be filled with ahavas Hashem Yisborach and closeness to Him and through this man becomes eternal.

When a situation arises, chas vesholom, that completely drains him of love for Hashem Yisborach and closeness to Him, one must choose true life, the eternal life one merits through acts that preserve the pure soul in its state of purity. In fact the love of life and appreciation for life require one to relinquish life if it falls under the rubric of avizraihu de’arayos—and to live a life of purity.

### **The Light of Yiras Elokim**

When issuing rulings to restrict cell phones, only a man of understanding whose heart really feels the great loss in losing the purity of the soul is able to set the limits of the prohibition.

The Rambam rules that stumbling-blocks must be carefully avoided: “According to Rabbinical decree a nozir may not sit among wine drinkers and should distance himself from them considerably, for this is a stumbling-block before him. Said the Chachomim, ‘Near the vineyard he shall not draw’” (Hilchos Nezirus, Chap. 5, Hal. 10).

When our guide and the illuminator of our path, Maran Rosh Hayeshiva zt”l read this halochoh during a shiur, he cried out, asking, “Tell me, is it permitted to step out into the city street in our day? Does the Rambam not say here explicitly that there are places where it is forbidden to go?”

The gemora discusses the severity of the prohibition against entering a situation that might entail succumbing to transgression. Even if one closes his eyes he is still called a rosho, “for he violated yiras Shomayim and he is among the reshaim, for he did not fear G-d, as is said, ‘Vetov lo yihyeh lerosho velo ya’arich yomim ketzel asher eineinu yiro milifnei ho’Elokim’” (Koheles 8:13) and see the gemora Bovo Basro 57b.

According to Shaarei Teshuvoh, keeping a distance from any possibility of stumbling is very commendable. “Extreme caution, restrictions and distance from the prohibited is one of the essentials of fear [of Heaven] . . . for he who is wary not to be alone with a woman out of a fear of stumbling in sin, as Chazal decreed, he is among those upon whose soul the light of yiras Elokim Yisborach shines.”

Here we find an important fundamental: distancing oneself depends on the individual’s ability to realize the gravity of the matter. “This can be compared to a man who wants to go to a town and is told the road leading to it is riddled with thorns and thistles and pitfalls, yet he insists his business is urgent. However when he is told a tiger lies in wait he will not set out on the journey. Says Shlomo Hamelech, ‘Loda’as chochmoh

umussor’ (1:2), meaning the ability to act to leave behind transgressions is called ‘chochmoh,’ much like we find in the verse, ‘Ki he chochmaschem uvinaschem’ (Devorim 4:6).

“Once one has knowledge of mitzvas and aveiros he must learn the reprehensibility of the aveiros and the loss they involve in order to distance himself from them.”

But to he who does not have the proper perspective this will seem excessive. Yet it is not! For his soul has never been lit with the light of Torah.

### **Yeshiva — A Dwelling Place for the Shechinoh**

We must also examine this Heavenly decree that has been visited upon us.

In Nefesh HaChaim HaRav Chaim of Volozhin tells us, “This, too, should strike fear in the hearts of a man of the Holy Nation, that He includes in his form all of the powers and the worlds which are the holy reality and the Heavenly Temple. And man’s heart, the center of the body, is the essence of all, and is parallel to the Holy of Holies, the Even Shesiyoh. It includes all of the source-roots of holiness, like it is holiness, and is hinted at by Chazal in the mishnah (Brochos 4), ‘One should direct his heart toward the Holy of Holies.’

“Therefore, when a man’s thoughts stray and in his heart he has an impure thought of adultery, Rachmono litzlan, he brings a harlot, the symbol of jealousy, into the Heavenly Holy of Holies, the most awesome of the holy worlds in Heaven, chas vesholom, and increases, Rachmono litzlan, the powers of tumo and the sitro achro in the Heavenly Holy of Holies. Much more than Titus caused the power of tumo to increase by bringing a harlot into the house of the Holy of Holies in the worldly Temple” (Shaar 1, Perek 4).

Furthermore, a yeshiva is a dwelling-place for the Shechinoh in our world in the immediate and direct sense of those words.

According to the Medrash, “R’ Tanchumo and R’ Chiyo said this Medrash came to us from the Diaspora: every place that says ‘Vayehi biyme’i’ [introduces] calamity. ‘Vayehi biyme’i Ochoz Ben Yosom’ [Yeshayohu 7:1]. What calamity occurred there? This can be compared to a king who sent his son to a teacher and the teacher hated him. He said, ‘If I kill him now I will have to give my head to the king [I.e. I will be executed]. Instead I will take his wet nurse from him and he will die on his own.’”

That was the plan of Ochoz to destroy Klal Yisroel: “If there are no kids there are no goats, if there are no goats there is no herd, if there is no herd there is no herdsman, if there is no herdsman there is no world.” In essence, Ochoz meant that if there are no young children there are no talmidim, if there are no talmidim there are no chachomim, if there are no chachomim there is no Torah, if there is no Torah there are no botei knessios and botei medrashos so HaKodosh Boruch Hu will not have the Shechinoh dwell in the world, for He cannot latch onto our world if the places that connect us to Him are lacking.

“What did he do? He went and locked the botei knessios and botei medrashos.”

Ochoz had decided that rather than starting from the beginning—the young children, talmidim, etc.—and waiting for such a long time, he would go straight to the goal.

“This is the meaning of the verse, ‘Bind up the testimony, seal the Torah among my disciples’ (Yeshayohu 8:15). R’ Huna in the name of R’ Eliezer said, ‘Why was his name Ochoz? Because he held onto [ochaz] the botei knessios and botei medrashos’ (Medrash Rabbah, Vayikra, 11:7).

Here lies the secret of the yeshivas: they are a special place where the Shechinoh dwells!

This definition also appears in Rabbenu Chananel’s commentary on the gemora, which says (Yuma 28b), “Said R’ Chomo in the name of R’ Chanina, ‘Never were our forefathers without a yeshiva. Avrohom Ovinu was an elder and sat in a yeshiva . . . Yitzchok Ovinu was an elder and sat in a yeshiva . . . Yaakov Ovinu was an elder and sat in a yeshiva . . .’” Comments Rabbenu Chananel, “They were elders sitting in a yeshiva, i.e. the Shechinoh was with them.”

In order for HaKodosh Boruch Hu to be connected with Klal Yisroel and to continue guiding them, they must belong to Him. And where is the place

with the power to form the heart in which the Shechinoh dwells in Yisroel? The yeshiva!

“If there are no botei knessios and botei medrashos,” says the gemora, which today refers to yeshivas, for they combine both beis knesses and beis medrash, “HaKodosh Boruch Hu does not have His Shechinoh dwell in the world,” for the tie between Klal Yisroel and HaKodosh Boruch Hu is severed!

This is the essence of the yeshiva: a place that preserves the state in which the Shechinoh dwells in Klal Yisroel.

In light of this we can understand the gravity of the directive issued by HaRav Aharon Yehuda Leib Shteinman, shlita, who bears with love the burden of the klal and the bnei yeshivos. “We have no alternative other than to adopt the strictest approach. For he who has this thing, it is a danger for him, a danger for the yeshiva, and thus the entire Torah world is in danger. And if there is no Torah there is no Klal Yisroel.”

Thus this decree — visited upon the entire klal and which has even breached our tower, i.e. the halls of Torah — is comparable to the decree to bring an idol into the Temple. Certainly we should be familiar with its origins and reasons, in order to be spared from it, for we know that removing the decree depends on strengthening ourselves against the neglect that caused it.

#### **A Ben Torah Should be Detached from the Outside World**

The chapter of Pirkei Ovos on acquiring Torah (6) reads, “Says R’ Yossi Ben Kismo, once I was walking along the way when a man came upon me and greeted me and I returned his greeting . . . He said, ‘Rebbe, would you like to live with us in our community and I will give you thousands and thousands of gold dinarim and precious stones and pearls?’ I said to him, ‘My son, if you give me all the silver and gold and precious stones and pearls in the world I will not agree to live anywhere except a place of Torah’ (6, 9).

HaRav Chaim of Volozhin comments that the man referred to was none other than Eliyohu Hanovi, who was sent to R’ Yossi Ben Kismo to try to tempt him to leave his place of Torah. Because he was walking along the way he was outside of the Torah chambers and their protection and placed in a situation of nisoyon.

Apparently we did not safeguard ourselves adequately from forging a connection with the cell phone device itself. Now gedolei Yisroel have told us that bringing one into the yeshiva is “a total contradiction” to the essence of the yeshiva.

A situation in which a bochur is connected to the outside world takes away from him the appellation of a ben yeshiva, devoted heart and soul to laboring in Torah. The moment this safeguarding drops away we are placed in a new nisoyon very akin to bringing an idol into the Temple.

If we truly and earnestly would like to have the new decree revoked we must attack the root of the problem. The remedy is to enter the chambers of Torah in order to merit its protection. “If you see suffering (physical, and all the more so by spiritual suffering) coming your way run to words of Torah and the suffering will flee from you immediately, as is written, ‘Lech imi bo bechadorecho’” (Eliyohu Rabbah, Parshoh 7).

We would do well to make use of the Rambam’s advice to spare ourselves: “. . . Most of all Chazal said one should clear himself and his thoughts for words of Torah and expand his mind with wisdom, for thoughts of arayos can only prevail in a heart empty of wisdom . . .” (end of Hilchos Issurei Bi’oh). “And of wisdom it says: “beloved and graceful . . . you should be constantly crazy with love for her (Mishlei 5:19).

HaRav Avrohom Yitzchok HaKohen Kook is rosh yeshiva of Yeshivas Meor HaTalmud, Rechovot

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#### **Shabbos Parshas Mishpatim, Feb. 5, 26 Shevat**

The *Haftorah* Is Read From Jeremiah 34:8-22 And 33:25-26. We Bless The Month Of *Adar I*; We Do Not Say *Kel Malei Or Av Harachamim*. We Do Say *Tzidkascha Tzedek At Mincha*.

**Erev Rosh Chodesh**, Tuesday, Feb. 8, 29 Shevat.

(Some Observe *Yom Kippur Koton*.) No *Tachanun At Mincha*.

**First Day Rosh Chodesh**, Wednesday, Feb. 9, 30 Shevat.

**Second Day Rosh Chodesh**, Thursday, Feb. 10, 1 Adar I

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