

BS"D



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INTERNET PARSHA SHEET
ON MISHPATIM - SHEKALIM -
5764

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RABBI ZVI SOBOLOFSKY

ALL MEN ARE CREATED EQUAL

The mitzvah of Shabbos is repeated many times throughout the Torah. The reasons usually associated with Shabbos are straightforward: Shabbos is a zecher l'm'aseh Beraishis, and a zecher l'yetzias Mitzrayim. It serves as a sign of the unique relationship between Hashem and the Jewish people. Shabbos appears to be a classic example of a mitzvah which is *bein adam lamakom*.

In Parshas Mishpatim, the Torah presents Shabbos in an entirely different light. Its appearance in the context of Parshas Mishpatim, which is devoted primarily to mitzvos *bein adam lachaveiro*, indicates that there is an additional dimension to Shabbos. The reason given for Shabbos in Parsha Mishpatim appears to be very different from those to which we are accustomed. Shabbos is given to us so that all members of society can rest; even servants are to be given a day of rest. "Vayinafash ben amascha v'hageir" is also a critical component of Shabbos. Even animals are to be given a day off.

This dual aspect of Shabbos, as a day to enhance our relationship with Hashem and a time to ease the pressure on the downtrodden members of our community, is also true of a mitzvah similar to Shabbos which also appears in Parshas Mishpatim. The mitzvah of shemita is referred to in Parshas Behar as a "Shabbos leHashem" – a year dedicated to Hashem. Yet in Parshas Mishpatim the social aspect of shemita is emphasized. It is a year in which the poor have free access to all fruit. Whatever remains can be eaten by the animals. Similar to Shabbos, shemita serves as a Shabbos leHashem and a time for social equality.

This theme of Shabbos being a time to dedicate ourselves to helping all members of society is repeated several times in Yishayahu. The haftarah read on a taanis tsibbat beseeches us, "Shamru mishpat veasu tzedakah," – act justly and perform acts of charity. Immediately following this calling to assist our fellow man, the navi speaks of the significance of being the shomer Shabbos and the machzik bebris of Hashem. A similar connection between improving our *bein adam lechavero* behavior and enhancing our shemiras Shabbos is found on the haftarah we read on the morning of Yom Kippur. After reprimanding the Jewish people for not caring properly for the poor and the oppressed, Yishayahu concludes by extolling the proper observance of Shabbos. It is the combination of helping the downtrodden and sanctifying the Shabbos that will win us favor in the eyes of Hashem.

What is it about Shabbos that is so directly connected to *tzedakah* and *mishpat*? How does a mitzvah which appears to be only *bein adam lechavero* impact upon our observance of mitzvos *bein adam lechavero*?

How does Shabbos sensitize us to the necessity of caring for our fellow man, particularly those who are oppressed and downtrodden?

In every society it appears that there are distinctions between its members. There are the fortunate, seemingly blessed members, and the less fortunate ones who are constantly struggling. Those who succeed tend to view their success as stemming from their own abilities. Those who are not as blessed are viewed with disdain and not as equals. This sense of inequality can lead to the taking advantage of the less fortunate members of society. The message of Shabbos is the remedy to this misconception. One who truly accepts his role in the world as a creature rather than a creator can never succumb to this error. Our equality with our fellow man derives from our common Creator. In the eyes of Hashem there are no distinctions between the different segments of society. It is the Shabbos which instills in us the fundamental truth of the Creator that enables us to view each individual properly. It is the Shabbos and shemita that call out a simultaneous message – remember your Creator and let your servants and even your animals breathe easier. Honor the Shabbos and care for your fellow men who are your equals in the eyes of Hashem.

May we merit to observe Shabbos in its entirety. Let its lessons of acceptance of our place in the world guide us as we improve our relationship with each other.

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From: Rafael Salasnik [rafi@brijnet.org] Sent: Feb 18, 2004 To: daf-hashavua@shamash.org Subject: daf-hashavua Mishpatim 5764/2004 Mishpatim-5764



UNITED SYNAGOGUE - LONDON (O)

Mishpatim Vol 16 No 22 21 February 2004 29 Shevat 5764 SHABBAT MEVARACHIM SHABBAT SHEKALIM Shabbat ends in London at 6.01pm THE ELECTRONIC VERSION OF THIS DOCUMENT IS PROVIDED BY: BRIJNET - British Jewish Network - UK branch of Shamash

JEWISH VALUES

by CHIEF RABBI DR JONATHAN SACKS

HOLINESS 2

To be holy is to be different. Shabbat is part of time yet it is also an intimation of an eternity beyond time. The Temple in Jerusalem existed in space, but it was also the home of G-d who is beyond space, existing everywhere. Likewise, the Jewish people were and are part of humanity, sharing its concerns, contributing to its progress, seeking to be a blessing to society and to the world. Yet they were summoned to holiness, meaning that we are called on to live lives and build a society based not on nature but on something beyond nature. That is what the words G-d placed in the mouth of the prophet Bilaam mean: "It is a people that dwells alone, not counting itself among other nations."

To be holy is to be different - not for the sake of difference, but to live in such a way as to be evidence of something beyond the normal laws of history and sociology. "All the peoples on earth will see that you are called by the name of the L-d," said Moses. "You are My witnesses - declares the L-d - that I am G-d," said Isaiah. Every religion has its holy individuals, its religious elite. Judaism was unique in the covenant it undertook at Mount Sinai to be a nation every one of whose members was charged with the task of holiness. Not privately in the soul but collectively in their history and social structures, the children of Israel were called on to expand the imaginative horizons of mankind by pointing to that which is beyond.

There is nothing sacrosanct about "human nature". *Homo homine lupus est*, goes the Latin proverb: "Man is wolf to man". "Out of the crooked

timber of humanity no straight thing was ever made" said Kant in an aphorism beloved by the late Sir Isaiah Berlin.

The history of mankind is written in the blood of violence and the tears of oppression. As individuals, all oppression. As individuals, all but a few have instincts of fairness and compassion, but en masse, whether as groups, tribes or nation states, humanity is capable of monstrous crimes of inhumanity. Reinhold Niebuhr called one of his books Moral Man and Immoral Society, to mark the difference between personal and crowd behaviour. That is why G-d summoned Abraham and his descendants not just to be holy individuals (that is neither difficult nor rare) but to become a holy nation, co-authors with G-d of a sacred society.

Hence the importance in Judaism of social structures - marriage, the family, the Synagogue, community, the school and house of study, acts of tzedakah and chessed and concern for the underprivileged, each a component of what Rabbi Aharon Lichtenstein once memorably called "societal beatitude". Judaism is about constructing a home for the Divine presence not just in the privacy of the soul but also in the public spaces of the life we share.

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MORAH YOCHEVED LINDENBAUM, YNJ 8G

Toward the end of Parashas Mishpatim, as Moshe has concluded a long unit of laws for Bnei Yisrael, we hear the famous response of the nation - "gnabu vagb" - "We will do and we will listen." It is interesting to note the slight differences between the response of the nation here and the previous words of Bnei Yisroel in Parashas Yisro. In Parashas Yisro, before hearing the Ten Commandments, the Torah records that the nation enthusiastically told Moshe together - "All that G-d has commanded we will do." The two subtle, yet important differences between Yisro and Mishpatim are 1) that in Parashas Yisro we hear that the nation spoke together (yachdav) and 2) in Parashas Mishpatim we have both words naaseh v'nishmah - (we will do and we will listen.)

The Pardes Yosef explains that these differences hint at the two possible ways every Jew can keep all the mitzvos. In reality, no one individual can observe all the mitzvos. Some mitzvos are exclusive for kohanim, some for men, some for women, some for farmers, some for judges, and some for someone who happens upon a bird's nest with eggs. No one person can fill all these roles.

We learn from the word yachdav (together) in Parashas Yisro that with everyone performing the mitzvos specific to them, then together, as a nation, we fulfill all the mitzvos. The Pardes Yosef quotes the maxim of Kol Yisroel areyvim zeh lazeh - all of Bnai Yisroel are responsible for each other.

From Mishpatim and the word nishma (we will listen) we learn that as individuals we can hear (or learn) about every mitzvah. We know that if one learns about korbanos, it is as if he gave korbanos. So, too, according to the Pardes Yosef, if we learn (hear) the whole Torah, it is as if, as individuals, we are keeping the whole Torah. In this dual manner, keeping the mitzvos that one can and learning about all the mitzvos of

the Torah, we can fulfill our personal and national promise of Naaseh V'nishmah.

<http://www.koltorah.org/ravj/Lechem%20Mishneh.htm>

Rabbi Jachter's Halacha Files (and other Halachic compositions)

A Student Publication of the Isaac and Mara Benmergui Torah Academy of Bergen County Parshat Mishpatim 27 Shevat 5762 February 9, 2002 Vol.11 No.18

LECHEM MISHNEH

BY RABBI HOWARD JACHTER

The Torah (Shemot 16:22) records that in the Midbar two portions of Mann fell on Fridays (see Rashi). The Gemara (Shabbat 117b) writes that based on the Pasuk we are obligated to take Lechem Mishneh on Shabbat. In this essay, we will discuss the parameters of this obligation. We will discuss the nature of the obligation, whether it applies to Seudah Shelishit, whether it applies to women, and whether it applies on Yom Tov. We will conclude with a discussion of which of the two breads we cut. We base our discussion on an essay written by Rav Binyamin Tabory, a Rebbe at Yeshivat Har Etzion (Daf Keshet 6:128-130).

The Nature of the Obligation - Rashi vs. Rashba The Gemara (Shabbat 117b) states that one must Botzeiah on two breads on Shabbat because of the aforementioned Pasuk that mentions that Lechem Mishneh fell on Fridays. Acharonim debate whether this is a biblical or rabbinical obligation. The Magen Avraham (618:10) indicates that it is only a rabbinic obligation, whereas the Aruch Hashulchan (Orach Chaim 274:1) states that it is a Torah obligation.

Rashi and the Rashba argue about the meaning of the word Botzeiah. Rashi (s.v. Livtzoa) explains it in this context as "recite a Beracha". Rashi implies (as noted by Rav Chaim Soloveitchik, see Mesorah 4:16) that one recites the Beracha on both breads but eats only one of them. The Rashba (commentary to Shabbat 117b s.v. Rabbi Zeira and Teshuvot) explains Botzeiah in this context to mean, "cut." According to the Rashba, one must cut both Challot.

The Shulchan Aruch (Orach Chaim 274:1) rules in accordance with Rashi and the Vilna Gaon (Biur Hagra ad. loc. s.v. Al Shtei) rules in accordance with the Rashba. The Mishna Berura (274:4) notes that common practice follows the Shulchan Aruch and the Aruch Hashulchan (O.C.274:3) records that many Jews in Lithuania follow the opinion of the Vilna Gaon. One should follow his family custom in this regard. If one is unaware of his family custom, he probably should follow the prevalent practice to follow the Shulchan Aruch's ruling. Interestingly, the Baer Heitav (O.C. 274:2) cites the practice of the Ari z"l to place twelve Challot on the Shabbat table at each meal. The twelve Challot correspond to the twelve Challot of the Lechem Hapanim (Vayikra 24:5-9) that the Kohanim would eat in the Bait Hamikdash on Shabbat. Rav Efraim Greenblatt (Teshuvot Efraim 1:201) rules that according to the prevalent Minhag to eat only from one of the two Challot, we are not, strictly speaking, required to remove the unused Challah from its plastic bag. However, he believes that it is preferable to remove the second Challah from its plastic bag when reciting the Beracha on the two Challot.

One may analyze the Rashi-Rashba dispute as follows. Rashi believes that the Lechem Mishneh obligation requires us to recreate the experience of our ancestors eating Mann on Shabbat. The Daat Zekeinim to Shemot 16:22 explains that every day two loaves of Mann fell, one for the morning meal and one for the evening meal. On Friday four loaves of bread fell. One is for the Friday morning meal, leaving three loaves left. On Friday night, they would eat one loaf, leaving two left. On Shabbat morning, they would eat one loaf, leaving one to eat during the third meal, which is eaten Shabbat afternoon. According to Rashi, we follow this schedule and eat only one of the loaves at each Shabbat meal.

This scheme does not fit the opinion of the Rashba. He does not believe that the Lechem Mishneh obligation is to recreate the eating experience of the Mann on Shabbat. Rather, he believes that the Gemara obligates us to eat two breads instead of the usual one bread. The idea of Lechem Mishneh, according to the Rashba, is that on Shabbat we double what we usually have. The Rashba in the Teshuva notes that this is consistent with other aspects of Shabbat where we double many things. Every day we offer one lamb for the Korban Tamid. On Shabbat, we offer two lambs for Korban Mussaf (Bemidbar 28:1-10). Every day we recite one Psalm of the day and on Shabbat evening and Shabbat morning we recite two Psalms of the day (Mizmor Shir Leyom Hashabbat and Hashem Malach Gei'ot Laveish). The Torah presents two aspects of Shabbat - Shamor and Zachor. Based on this, writes the Rashba, our practice is to light two candles.

Ramifications of the Rashi-Rashba Dispute - Seudah Shelishit, Women, and Yom Tov There are at least three ramifications of this dispute between Rashi and the Rashba. One is the dispute whether we require Lechem Mishneh for Seudah Shelishit. The Rama (O.C. 291:4) notes the common Ashkenazic custom to bless on only one Challah during Seudah Shelishit. The aforementioned Daat Zekeinim notes that the Ashkenazic practice corresponds to the practice of the Jews in the Midbar. Just as they had only one bread for Seudah Shelishit (that is what was left), so too we only have one bread for Seudah Shelishit. The Rama, however, concludes that it is best to have Lechem Mishneh at Seudah Shelishit as well.

On the other hand, the Rambam (Hilchot Shabbat 30:9) and the Shulchan Aruch (O.C. 291:4) state that we should have Lechem Mishneh for Seuda Shelishit as well. Rav Ovadia Yosef (Yalkut Yosef 4:1:406) notes that the practice of Sephardic Jews is to have Lechem Mishneh even by Seudah Shelishit. This approach seems to fit better with the Rashba's approach to Lechem Mishneh. According to the Rashba, this Halacha does not demand us to reenact the procedure of eating the meals on Shabbat in the Midbar. According to the Rashba, the fact that our ancestors did not have Lechem Mishneh for Seudah Shelishit is irrelevant for our observance of Lechem Mishneh. The idea of doubling the everyday norm applies to Seudah Shelishit as well.

Women and Lechem Mishneh The Ran (44a in the pages of the Rif, s.v. Vekativ Rabbeinu Tam) presents two explanations why women are obligated in Lechem Mishneh. Rabbeinu Tam (Rashi's grandson) says despite the fact that it is a time bound positive Mitzva, women are obligated to observe Lechem Mishneh because they too were involved with the miracle of the double portion of Mann falling on Fridays. The Ran (a disciple of a disciple of the Rashba) believes that the Gemara (Berachot 20b) that teaches that women are obligated to recite Kiddush implies that women are obligated in all matters relating to Shabbat. The Ran understands the Gemara to teach that men and women's obligations are the same as far as every aspect of Shabbat.

The two answers offered might hinge upon the Rashi-Rashba dispute. Rabbeinu Tam's approach that the women were also involved in the miracle of the double portion of the Mann fits well with Rashi's approach that the Lechem Mishneh obligation is to recreate the Mann experience of Shabbat. On the other hand, the Ran, who approvingly cites the Rashba's understanding of Lechem Mishneh (43b in the pages of the Rif s.v. Amar Rava), is dissatisfied with Rabbeinu Tam's approach. The fact that women participated in the miracle of the double portion of the Mann is irrelevant for the Rashba and Ran who do not view Lechem Mishneh as a recreation of the Midbar experience. Hence, the Ran must offer a different reason for why women are obligated in Lechem Mishneh.

Whatever the explanation, Poskim rule that woman are obligated in Lechem Mishneh (Mishna Berura 274:1, Aruch Hashulchan O.C. 274:4, and Rav Ovadia Yosef (Teshuvot Yechaveh Daat 4:25). The opinion of Rav Shlomo Kluger (Teshuvot Haelef Lecha Shlomo 114) that women

are excused from the obligation of Lechem Mishneh is rejected by almost all Halachic authorities.

Yom Tov The Rambam (Hilchot Chametz Umatza 8:6) and Shulchan Aruch (O.C. 629:1) state that the Lechem Mishneh obligation applies on Yom Tov as well as Shabbat. The Mishna Berura (629:10) and Aruch Hashulchan O.C. 274:5 explain that this ruling is in accordance with the Midrashim that believe that the Mann did not fall on Yom Tov. Thus, the miracle of the double portion occurred on Erev Yom Tov as well as Erev Shabbat (see Tosafot Beitzah 2b s.v. Vehaya who note the conflicting Midrashim whether Mann fell on Yom Tov). This approach fits with Rashi's approach that Lechem Mishna reenacts the Mann episode in the desert. However, either the Rashba disagrees and believes that the rule of Lechem Mishneh does not apply on Yom Tov (there is no evidence that the Rashba rules this way) or he has a different explanation for why we must have Lechem Mishneh on Yom Tov. An explanation might be that the rules pertaining to the positive Mitzvot of Shabbat and Yom Tov are very similar (see Rambam Hilchot Yom Tov 6:16).

Which Challah do we cut? The Bait Yosef (O.C.274 s.v. Katav Hakolbo) cites differing practices whether the top Challah should be cut or the bottom Challah should be cut. This discussion, of course, is relevant only according to those who follow Rashi's opinion that only one of the Challot are cut.

A reason for cutting the top Challah is the Talmudic rule of "Ein Ma'avirim Al Hamitzva," one should not pass an opportunity to perform a Mitzvah that is before him and instead perform a different Mitzvah (Yoma 33a and Megila 6b). The top Challah is closer and arguably should not be passed over to cut the lower Challah (Magen Avraham 274:1). The Bait Yosef writes that those who advocate cutting the lower Challah do so for Kabbalistic reasons.

The Shulchan Aruch (O.C. 274:1) rules that we should cut the bottom Challah. The Rama (ibid) notes the Ashkenazic custom (based on Kabbala) to cut the bottom Challah at night and the top Challah on Shabbat morning. The Rama writes that on Yom Tov, Ashkenazim cut the top Challah for both evening and morning meals. The Taz (O.C. 274:1) presents a method for cutting the bottom Challah and avoiding violation of the Ein Maavirim Al Hamitzvot rule. He writes that one should position the bottom Challah closer to himself, thereby making cutting the bottom Challah, the Mitzvah that presents itself more immediately. The Mishna Berura (274:5) cites the Taz as an option to solve this problem. Another option, writes the Mishna Berura, is to recite the Beracha on the top Challah and subsequently place that Challah on the bottom and cut it. Ashkenazim should follow either their family Minhag or the prevalent community Minhag.

There is some debate about the correct practice for Sephardic Jews. The Kaf Hachaim (274:2) rules in accordance with the Ari z"l that one who has only two Challot should cut the top Challah. Rav Ovadia Yosef (Yalkut Yosef 4:1:305) writes that Sephardim should follow the ruling of the Shulchan Aruch to cut the bottom Challah. He recognizes, though, that many Sephardim follow the Ari z"l to always cut the top Challah based on Kabbalistic reasons.

Conclusion Although many of these debates appear minor in the broader scheme of things, nevertheless one should properly adhere to the Lechem Mishneh obligation, a hallmark of the Shabbat table. I hope this essay will inspire study of all of the relevant Halachot pertaining to cutting of the Challah and conduct during the Shabbat meals.

From: RABBI YISSOCHER FRAND [mailto:ryfrand@torah.org]

Sent: Thursday, February 19, 2004 9:08 PM

Subject: Rabbi Frand on Parshas Mishpatim

The Sin of the Slave Owner

In this week's parsha, the Torah describes the law of the Hebrew indentured servant. He is sold into "slavery" for a six year period, at the end of which, he goes out free. However, the Torah stipulates that if at the end of that period he chooses to remain with his master, he is brought to court, his ear is pierced at the door and then he remains in servitude 'forever'.

Our Sages explain the appropriateness of the slave's punishment: "the ear that heard on Sinai: 'You shall be servants unto Me,' and then accepts another master, that ear shall be pierced!"

Rav Yisroel Salanter notes that the ritual of piercing the ear is not only a punishment for the slave; it is an unpleasant ordeal for the master as well. After all, it is not a very pleasant experience to have to put a peg through someone else's ear. Rav Yisroel Salanter asks, why is the master being punished? What did he do wrong? On the contrary, the master is a wonderful person. He is such a nice guy that his slave wants to stay with him after six years of service. What is his reward for being so nice? He experiences the bloody process of maiming the ear of his servant.

Rav Yisroel Salanter answers that the master's guilt was in fostering an environment in which the slave feels that it is appropriate to remain in servitude rather than being a free man. If the master's house was the type of home that a Jewish home should be, the slave who lived there for six years would understand that man's role in life is not just to serve a human master. He would not even consider extending his stay beyond the required six years.

No Jew should be happy working as a slave, living with a maid-servant, having children that will not be his own, and being totally nullified and subjugated to another person. "I have my three meals a day; my needs are taken care of" is not sufficient. There is no desire for growth or for elevation. This is a life of complacency that a Jew should not live. Therefore, the master who fosters such an environment of complacency, shares in the guilt and, as such, he is subject to part of the trauma of the process of piercing the ear.

Both Illness and Insult Come From G-d

The parsha discusses the laws of two people fighting, with resultant injury to one of them. The Torah specifies the payment of damages and states among other things that compensation includes reimbursement for lost work and medical expenses (rak shivto yeshalem, v'rapo yerapeh) [Shmos 21:19]. The Talmud [Bava Kamma 85a] derives from here that permission is given for a doctor to heal.

Rashi explains the reason why we need a pasuk to give license for doctors to practice medicine. Without the pasuk, we might have taken the fatalistic attitude "G-d caused me to suffer; let G-d heal me".

The Chofetz Chaim asks that this argument only seems to make sense in the case of illness -- illness is clearly caused by Heaven, so we might have thought that only G-d could provide the cure. However, when someone hits another person and the pain is induced, not by G-d, but by another human being, the logic of the necessity for this license to practice medicine seems to break down. Why should doctors require a license to heal a wound that is caused by another person?

The Chofetz Chaim explains that we see from this Gemara [Talmudic Passage] that the philosophy of a Jew must be that if a person hits him, it is really G-d that is causing the suffering. There is no difference between suffering from a virus -- where we clearly think 'this came from G-d' -- and suffering that comes from the hurt inflicted by one's fellow man. That too -- we should see -- as coming to us from G-d.

The Sefer HaChinuch writes (in the mitzvah prohibiting the taking of revenge): Therefore, when one is smitten or insulted by another person, he should know that G-d decreed this to happen to him. A person does not suffer pain or anguish in this world without G-d decreeing it upon him. Therefore, a person should not focus on what the other person did to him, but on what he himself did that caused him to deserve the pain or anguish!

The classic example that the Sefer HaChinuch cites is the situation when Shimee ben Gerah cursed Dovid HaMelech [King David] with a vicious curse. Dovid HaMelech did not take revenge against Shimee. Dovid HaMelech's attitude was that G-d told him to curse [Shmuel II 16:10]. "Leave Shimee alone. He will have to give his ultimate reckoning. I need to consider what I did to deserve this, rather than Shimee's action."

Rav Matisyahu Solomon wrote that at the end of Yom Kippur -- after the conclusion of Elul, at the end of the Ten Days of Repentance, and at the end of the whole day of Yom Kippur itself -- at the apex of the service, we recite the words "Hashem is the Elokim". "Hashem is the Elokim" is the 'theory'. What is the other side of the coin? What is the 'practice'? The practice is "G-d told him to curse".

If Hashem is really the G-d who calls the shots, then when a person suffers -- as we all do throughout the year as we experience the ups and downs of life and its uncertainties and insults and aggravations -- the person must tell himself "G-d is the Elokim" and "G-d is the one who told him to curse".

The Chofetz Chaim explains that is what the Gemara is teaching us. If not for the pasuk, I would have thought that when I got hit by this person, I should not seek a doctor's treatment because the bruise from my friend really came from G-d. Although the other person had no right to hit, and of course he will face an ultimate reckoning for his actions, I must view it as, ultimately, a hit that was directed at me from Heaven.

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From: Eretz Hemdah [eretzhem@netvision.net.il] Sent: February 17, 2004 Subject: Parshat Mishpatim 29 Shevat 5764 - from the works of Hagaon Harav Shaul Yisraeli zt"l

Hemdat Yamim Parshat Mishpatim 29 Shevat 5764

This edition of Hemdat Yamim is dedicated to the memory of R' Meir ben Yechezkel Shraga Brachfeld o.b.m., Yitzchak Eliezer Ben Avraham Mordechai Jacobson o.b.m. Eretz Hemdah is the premier institution for training young rabbis to take the Israeli Rabbinate's rigorous Yadin Yadin examinations. Eretz Hemdah, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities worldwide.



Moreshet Shaul (from the works of HAGAON HARAV SHAUL YISRAELI ZT"L) THE PURITY OF THE ISRAELI ARMY CAMP -

(from Eretz Hemdah, I, pg. 61-66)

The Torah instructs Bnei Yisrael that when they "go out as an encampment against your enemy, you should stay away from anything bad ...you should have a place outside the camp, and you should go out there. You shall have a shovel

along with your weapons, and it shall be when you shall be out, you shall use it to dig and you shall go back and cover your excrement. For Hashem, your G-d, is 'walking' in the midst of your encampment ... and your encampment should be holy ..." (Devarim 23: 10-15). The Rambam, in bringing these halachot (Melachim 10: 14-15), states that the laws of the purity of the battle encampment apply whether or not the aron (ark which held the Tablets of the Covenant) was with them. The Yereim (432), on the other hand, explains that these laws are predicated on the assumption that the aron was present, and the aron's presence is that which creates the need for the holiness and purity of the camp. He bases this claim on the words of the pasuk, "for Hashem, your G-d, is 'walking' in the midst of your encampment," which, he says, refers to the

machane aron (an encampment with the aron present). From where does the Yereim know that the aforementioned phrase refers to "machane aron"? The mishna (Sota 42a) does make such a derivation, but this was on a different pasuk (Devarim 20:4), which deals with soldiers returning from the battle front. Apparently, the Yereim felt that if these words refer in one place to the presence of the aron, then it presumably refers to the same thing in all places where this phrase is used. The Rambam understands the use of the phrase in a more limited fashion. The Sefer Hachinuch (mitzvah 56) apparently concurs with the Rambam's position, as he says that these laws apply at the time of the Beit Hamikdash. This seems to apply even to the time of the second Beit Hamikdash. Since at that time, the aron had already been hidden (Yoma 52b), it follows that the presence of the aron cannot be a condition for the implementation of the laws of purity of the encampment. What still needs explanation in the Sefer Hachinuch is why these laws apply only during the time of the Beit Hamikdash. Apparently, he felt that the special status of the encampment applied only at a time when there was a king in Israel who lead the army, and not when Bnei Yisrael might go out as a group of individuals. The two opinions, of whether or not the laws of the purity of the encampment apply when the aron is not present, seem to be linked to the following machloket. Rashi (on Bamidbar 10:33) explains that the Torah's reference to the aron traveling before the encampment of Bnei Yisrael refers to the aron which housed the broken, first luchot. So too, Rashi explains that the wooden ark that Moshe was commanded to make was to house the broken luchot, which was independent of the aron that was in the mishkan. The Ramban (ad loc.) argued on Rashi and said that only a single opinion among Tanaim subscribes to the idea that Bnei Yisrael had two arks with them. The majority opinion understood that there was one aron, and it housed both the intact and the broken set of luchot. The Ramban explains that that which an aron was taken out to battle at the time of the judge, Eiley, was an improper, one-time event. The Rambam, in his various writings, also only seems to refer to one aron. The Rambam now is consistent. Since there was only one aron and it was not intended to go out to war, it does not make sense that the Torah, in instructing about the proper conduct of the encampment would refer to a case in which the aron was present improperly. The mishna in Sota is then presumably talking according to the minority opinion that there was an aron which accompanied the encampment. It is difficult to claim that, despite a variety of sources to the contrary, the Ramban and Rambam do not accept the concept of an aron going out to battle (see Ramban on Sefer Hamitzvot, Shores 3). Rather, it seems that there were two historical periods in this regard. Before the mishkan had a set lodging place and the Levi'im carried its holy utensils, Bnei Yisrael were able to take the aron out to battle, as well. This is what happened when Pinchas went out with the army together with the aron (see Bamidbar 31:6). The full complement of halachot, including that of some soldiers' return from the front, existed only at that time. However, the laws of setting a place for one's bodily needs continued even after the mishkan and later, the Beit Hamikdash, housed the aron on a permanent basis, preventing it from being removed.

The question still remains: according to the Rambam and Ramban that all war encampments had laws of purity, irrespective of the presence of the aron, why does the Torah stress "for Hashem is 'walking' in your midst" in this context? It appears that according to the Rambam, there are two levels of purity that are demanded of the people in different contexts. When the aron was present, the requirement to refrain from anything unbecoming its presence was complete and applied even to urination. After the aron was confined to the Beit Hamikdash, only that which is described by the p'sukim as requiring a shovel, in other words, elimination, needed to be done outside the encampment.

[We mentioned ..that] the Sefer Hachinuch said that only at the time of the Beit Hamikdash did these halachot exist. We explained that there is apparently a need for a king at the helm of the army in order to have the

full status of a national war effort, not just a collection of individuals. The laws associated with a set place outside the camp and a shovel apply only when a specifically defined war encampment exists. If this is so, we can explain another halacha, as well. The Sefer Hachinuch also says that these laws apply only to men, for they are the ones who fight. The Minchat Chinuch asks on this claim, in light of the fact that the Rambam writes that for a mandatory war (milchemet mitzva) everyone, including women, went out. We can answer now based on the Radvaz's understanding of the Rambam, that women went out only to provide water and food for the fighters, not to fight themselves. If so, they were in the encampment, but did not belong to the same category of warriors who were specifically commanded to preserve their purity at that time. Had the aron's presence been the issue, then these laws would have been equally binding on everyone physically present in the encampment, not only the men.

Since we did not find anyone who argued on the Sefer Hachinuch's claim that these laws apply only in the time of the Beit Hamikdash, it is unlikely that we must follow the Torah's stipulations in this regard in our present-day battle encampments. But the matter deserves further attention.

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From: Rav Kook List [RavKookList@hotmail.com] Sent: Tuesday, February 17, 2004 Subject: Rav Kook Dvar Torah List - Mishpatim: Slavery in the Torah

RABBI ABRAHAM ISAAC KOOK

Mishpatim: SLAVERY IN THE TORAH

"If a man strikes his male or female slave with a rod, and the slave dies under his hand - the death must be avenged (the master is punished by death). However, if the slave survives for a day or two, his death shall not be avenged, since he is his master's property." [Exodus 21:20-21]

The Torah portion of "Mishpatim" deals primarily with laws governing society - personal damages, lending money, manslaughter, kidnapping, and so on. Overall, they fit in well with a modern sense of justice. The laws dealing with slaves, however, are difficult for us to digest.

(1) Why does the Torah distinguish between a mortally wounded slave who dies immediately, and one who lingers for a day or two? (2) Is a slave truly "his master's property"? (3) In general, does the Torah look favorably on the institution of slavery?

Slavery, Rav Kook wrote, is like any other phenomenon of nature. It can be used properly and responsibly; or it can be abused. As long as some people are wealthy and powerful, while others are poor and weak, the wealthy will hire out the poor to do their work and will control them. This is the basis of natural servitude, which exists even if slavery as a formal institution is outlawed.

For example, coal miners are de facto slaves to their employer, and in some ways worse off than legal slaves. The mine owner often will care more about his profits than his workers. He allows his miners to work without proper light and ventilation, in poorly built mines. It does not bother the owner that the workers' lives are shortened due to these abysmal working conditions. He is not overly troubled that the mine may collapse, burying alive thousands of miners - he can always hire more.

Yet, if these miners were his legal slaves, for whom he paid good money, then the owner would look out for their lives and welfare, just as he watches over his machines, animals, and the rest of his property. For this reason, the Torah emphasizes that a slave is his master's property. When it is in the master's self-interest to look after his slave's welfare, the servant can expect a better, more secure future.

Why distinguish between a slave who dies immediately after being struck by his master, and one who lingers for a day? The verse specifically mentions that the master struck with a rod. His intention was to discipline. If the slave dies due to mistreatment at the hands of his master, the Torah takes into account the natural concern all people have for their possessions. "His death shall not be avenged, since he is his master's property." In these circumstances, intentional murder becomes improbable, and the Torah looks for an additional indication - a non-immediate death - that the death was accidental. The Torah stresses that the goal is to serve justice, not to avenge. "His death shall not be avenged".

The legalized slavery of the Torah only comes to correct certain potential pitfalls of natural servitude. As long as slavery exists, the Torah legislated laws to protect slaves from abuse and mistreatment. If an owner knocked out his slave's tooth, the slave went free. An owner who killed his slave was executed, like any other murderer.

Since the destruction of the Temple, however, the Torah's positive influence upon general society has greatly weakened. The darkness of the Middle Ages severely corrupted natural forms of life, turning slavery and serfdom into a monstrous institution. Instead of protecting the weak by giving them the security of property, slavery became such a horror that mankind decided it needed to be permanently dismantled.

The Torah's form of servitude must be set aside, until the era when, once again, "Torah will go forth from Zion". At that time, servitude will not only protect the weak economically and socially, but also raise them morally and spiritually.

"Ten men from all languages of the nations will grab on to the cloak of a Jew, saying, 'Let us go with you, for we have heard that G-d is with you.'" [Zechariah 8:23]

When the heart has once again become a sensitive vessel of integrity and compassion, it is fitting that the morally deficient should be taken under the wings of the righteous and wise.

[Igrot I: 89]

http://www.geocities.com/m_yericho/ravkook - Rav A.I. Kook on the Weekly Parasha http://www.geocities.com/m_yericho/ravkook/thisweek.htm - This week's Dvar Torah



<http://www.ou.org/torah/tt/5764/mishpatim64/>

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.

Testimony of a Professional Gambler

The Mishna tells us that a dice-player (or other gambler) is disqualified as a witness in Beit Din. Rebbe Yehuda qualifies this, stating that a dice-player is disqualified only if he has no other occupation. The gemara explains that such a person "doesn't occupy himself with settling the world" (Sanhedrin 24b). This is the ruling of the Shulchan Arukh (CM 34:16).

What exactly is wrong with someone who "doesn't occupy himself with settling the world"? Where are we charged with such an obligation?

The answer is that lack of an occupation is not a disqualification in every individual, but specifically for a gambler. The mentality of gambling is in effect the opposite of a productive, constructive approach to livelihood. The ideal approach is to seek a livelihood in which a person's income is derived from some benefit he provides to others; the gambler by contrast, earns all his income at the expense of others. Ideally a person recognizes that a livelihood is earned through effort and "hishtadlut"; the gambler, on the contrary, experiences that all his ups and downs are dependent on the "luck of the draw".

Now we understand the disapproval of the gambler, but why is he disqualified from testimony? The Tur draws a concise and profound connection between the specific character flaw of the professional gambler and an inability to testify:

"Because he doesn't occupy himself with the settlement of the world, to know how much a person has to exert himself for money, and it is a light thing in his eyes to testify falsely to cause a loss to his fellow man" (Tur CM 34).

A witness in court must be conscious of the immense gravity of his testimony. On the basis of his words, the judges will make their judgment and determine who is entitled to the sum in dispute. A person accustomed to an "easy-come, easy-go" approach to money just doesn't see why it matters who wins. From his point of view, the court judgment itself is nothing more than the "luck of the draw".

There is a deeper connection between these issues. While we have to make an exertion, a hishtadlut, ultimately our livelihood comes from HaShem, "for poverty and riches are not from a profession, rather all is according to merit" (Mishna end of Kiddushin). Judgment too is ultimately the provenance of G-d, "For justice belongs to G-d" (Devarim 1:17). However, human beings are bidden to take an active role, a partnership, in these processes. A person who denies or neglects his role as a partner in the process of creating and distributing wealth is in danger of similarly denying or neglecting the importance of his role as an active participant in the system of justice. Thus a person whose only economic activity is gambling is in danger of taking lightly his responsibility as a witness in Beit Din.

"Meaning in Mitzvot" is undergoing intensive editing, and BE"H and the help of loyal supporters, we hope to have the book out soon. If you would be interested in helping with publication, please contact Rabbi Meir about making a dedication or subscription (advance purchase): mail@asherandattara.com, fax 02-642-3141 Rabbi Meir authors a popular weekly on-line Q&A column, "The Jewish Ethicist", which gives Jewish guidance on everyday ethical dilemmas in the workplace. The column is a joint project of the JCT Center for Business Ethics, Jerusalem College of Technology - Machon Lev; and Aish HaTorah. You can see the Jewish Ethicist, and submit your own Qs — www.jewishethicist.com or www.aish.com

<http://www.ezratorah.org/shevat.htm>

EREV ROSH CHODESH SHABBOS PARSHAS MISHPATIM PARSHAS SHEKOLIM 29 SHEVAT, FEB. 21

SHACHRIS We recite the regular Shabbos service (many say the Piyutim for special occasions for Parshas Shekolim). We take out two Sifrei Torah; seven Aliyahs in first Sefer Torah from the weekly Sidrah - Mishpatim; Half-Kaddish. The Maftir reads from Parshas Ki Sisah (Exodus 30:11-16). We read the Haftorah for Parshas Shekolim from Kings II 12:1-17. We do not permit a child to read the Haftorah for the congregation on any of the four special Shabbosos: Shekolim, Zochor, Parah, and HaChodesh. We bless the month of Adar; we do not say "Kel Malei" or "Av Harachmim". ...

MUSSAF Shemonah Esrei of Shabbos Mussaf; the Chazzan's Repetition; (Yozros for those who say them); Kaddish Tiskabel; Ein Keilakeinu; Aleinu; Shir Shel Yom; Anim Zmiros; Mourner's Kaddish; Adon Olam.

MINCHA Three Aliyahs in Parshas Terumah. We do not say "Tzidkascha Tzedek".

FIRST DAY ROSH CHODESH SUNDAY, FEB. 22, 30 SHEVAT & MONDAY, FEB. 23, 1 ADAR

The usual service for Rosh Chodesh: Yaale Veyavo in Shemonah Esrei; Half-Hallel; Torah Reading; Mussaf for Rosh Chodesh, etc.

From: RabbiWein@jewishdestiny.com Sent: February 19, 2004

Subject: RABBI BEREL WEIN'S WEEKLY COLUMNS

Parsha Archive February 20, 2004 MISHPATIM There is a concept in Jewish law and life that is called "lifnim meshurat hadin" - to enter an area beyond the letter of the law. In old English Common Law, there was a parallel legal system to the English courts known as "equity." It was meant to correct the sometimes-unavoidable moral injustices that could be caused by the strict application and narrow construction of the rules of traditional law and justice. In the Torah reading of Mishpatim we are told the laws and the legal system of Israel. But in 'Parshat Yitro' we were first commanded to do "observe the laws and the teachings (of the Torah) and to be taught the path upon which to walk and the behavior that they should follow." The Midrash states that the phrase "the behavior that they should follow" refers to this concept of "lifnim meshurat hadin" - doing more than what one may be held strictly, legally, liable to do. Even though, at first glance, this concept appears to be one of super-righteousness, the Talmud defines this concept as one of legal and societal necessity and not solely one of piety and saintliness.

The Talmud relates to us an instance when a well-known rabbi and scholar hired day laborers to move barrels for him. The workers were apparently not up to the task, for many of the barrels fell from their hands and shattered in the process of being moved from one place to another. The rabbi was justly disturbed by this turn of events and in order to protect himself in his claim for monetary damages against the workers, he confiscated their coats and cloaks. The workers objected to this seizure of their personal property and they, together with the rabbi/employer, appeared before the rabbinic judge of the town to have the matter adjudicated. The judge ordered the employer to return the seized clothing to the laborers. The rabbi/employer asked the judge, "Is that the law?" The judge replied, "Yes, that is the law!" The workers, heartened by this initial victory, then asked the judge to order the rabbi/employer to pay them their wages - to pay them for their time spent during the day in his employ. The judge did as they requested and ordered the employer to pay them the wage agreed upon. The rabbi/employer complained again, "Is that the law?" The judge reiterated his decision and said firmly, "Yes, that is the law. It is the law of "lifnim meshurat hadin" - of doing what is moral, even if the technicalities of the law do not require it."

The commentators to the Talmud explain that the employer was held to the standard of "lifnim meshurat hadin" being that he was a well-known Torah scholar and public figure. As far as he was concerned, "lifnim meshurat hadin" had become the actual din, the law itself!

There is another concept in Torah, enunciated by Rabbi Moshe ben Nachman - Ramban - of sanctifying one's self by refraining from acts which are legally permissible to one but do not engender a sense of holiness and G-dly service. Thus, there is room to legitimately follow a higher and stricter sense of kashrut than the basic one that renders the food kosher. One can refrain from physical pleasures that the Torah allows, if one feels that those pleasures will interfere with the quest for greater spiritual growth and that they will weaken eventual adherence to Torah discipline. If this concept of self-sanctification is true, as it is, in the realm of the observance of commandments and personal behavior, the concept of "lifnim meshurat hadin" is its natural companion in the realm of business and inter-personal relationships. It is the means of self-sanctification in the mundane and everyday world of commerce, labor, traffic and shopping. The Rabbis of the Talmud warned us that society could not long exist and prosper in an atmosphere where everyone insists on one's rights to the letter of the law. Courtesy, sensitivity to the feelings and needs of others, the ability to be non-judgmental about others and their apparent behavior, are all aspects of this great concept of "lifnim meshurat hadin."

This is especially relevant to our current Jewish world (and to the general world that we live in as well) where there is an acute shortage of

this necessary Torah attitude. In our democratic societies, where we pride ourselves on the strength of the rule of law, we would be wise to realize that there always is a higher rule of law that is demanded of us. It is only that higher rule of law - "lifnim meshurat hadin" - that guarantees the social harmony of society and allows for a full vision of the peaceful human society that the Torah envisions for humankind.

Shabbat Shalom. Rabbi Berel Wein www.RabbiWein.com