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Covenant & Conversation

**Thoughts on the Weekly Parsha from**

**Sir Jonathan Sacks**

Chief Rabbi of the United Hebrew Congregations of the British Commonwealth

[From 2 years ago - 5766]

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Vayakhel-Pekudei

Finally the long narrative of the construction of the Tabernacle - to which the Torah devotes more space than any other single subject - is at an end. The building, its frame, drapes and sacred furniture, were complete. Moses inspects the finished project. We then read:

The Israelites had done all the work just as the Lord had commanded Moses. Moses saw all the work, and behold - they had done it just as the Lord had commanded. So Moses blessed them. (Ex. 39: 43) Like many other passages in the description of the making of the Tabernacle, this echoes a line from the creation narrative: "G-d saw all that He had made, and behold - it was very good" (Gen. 1: 31 - the words in common are Vayar, "he saw", et kol, "all" and ve-hineh, "and behold").

The literary parallels between the Divine creation of the universe and the Israelites' construction of the Tabernacle are intentional and consequential. The Tabernacle was a micro-cosmos, a universe-in-miniature. In creating the universe, G-d made a home for humanity. In building the sanctuary, humanity made a home for G-d. And just as, at the beginning of time, G-d had blessed creation, so Moses blessed those who had a share in its human counterpart.

What, though, was the blessing Moses gave? The Torah itself is silent on this point, but the sages supplied the missing information.

With what blessing did Moses bless them? He said to them: "May it be G-d's will that His presence rests in the work of your hands." They responded: "May the pleasantness of the Lord our G-d be upon us. Establish for us the work of our hands, O establish the work of our hands" (Psalm 90: 17). (Sifre to Bamidbar, 143) The midrash is based on the following stream of thought. One, and only one, psalm is attributed to Moses: Psalm 90, which bears the superscription, "A prayer of Moses, the man of G-d." It ends with the verse cited above, "May the pleasantness (noam) of the Lord our G-d be upon us". The reference in the verse to "the work of our hands" must surely refer to the Tabernacle - the only "work", in the sense of constructive achievement, the Israelites performed in Moses' day. Hence the phrase "a prayer of Moses" must be understood as the prayer/blessing he pronounced on the completion of the Tabernacle.

The question then arises as to the meaning of the words "the pleasantness of the Lord". Another Psalm (27: 4) uses an almost identical phrase: "One thing I ask of the Lord, only this do I seek: to live in the house of the Lord all the days of my life, to gaze on the pleasantness (noam) of the Lord and worship in His temple." This suggests that both psalms are a reference to the sanctuary (in the wilderness, the tabernacle; in a later era, the temple),

and that "the pleasantness of the Lord" is a poetic way of describing the cloud of glory that filled the Tabernacle ("Then the cloud covered the Tent of Meeting, and the glory of the Lord filled the tabernacle", Ex. 40: 34) - in other words, the Divine presence. Thus when Moses said, "May the pleasantness of the Lord our G-d be upon us", he meant: "May it be G-d's will that His presence rests in the work of your hands."

It is a beautiful idea. Is it, though, something more? There is a hint here of a principle that has immense implications for the entire structure of Judaism. We can summarize it simply: It is not objects that are holy. It is human action and intention in accordance with the will of G-d that creates holiness.

Consider the following ruling of the sages (see Gittin 45b; Mishneh Torah, Yesodei ha-Torah 6: 8; Tefillin 1: 13): A Torah scroll, or tefillin, or a mezuzah, written by a heretic, is to be burned. Normally, to destroy a document containing G-d's name is absolutely forbidden. However, in this case, as Maimonides explains: "Since the person who wrote it does not believe in the sanctity of the name of G-d, and therefore did not write it with the requisite intent but merely as any other [secular] text, the [document containing] G-d's name is not sanctified [and may be destroyed]. Indeed it is a mitzvah to burn it so as to leave no record of heretics and their works."

Imagine two Torah scrolls, one written with the requisite intention and sanctity, the other written by an atheist. Physically, they may be indistinguishable. One cannot imagine any scientific test that - by examining the scrolls themselves - would establish which was holy and which not. Yet one is to be held in the highest possible sanctity, and the other to be burned. Holiness is not a property of objects. It is a property of human acts and intentions.

It is this idea that lies behind the very precise formula we use when we recite a blessing over the performance of a command: "Blessed are You . . . who has sanctified us by His commandments, and has commanded us to . . ." It is the commandments that make us holy: nothing else. When G-d said to the Israelites, before the giving of the Torah on Mount Sinai, "You shall be to Me a kingdom of priests and a holy nation" (Ex. 19: 6), He meant that the Israelites would become holy through their performance of the commands he was about to reveal to them, not that there was anything intrinsically holy about them, prior to and independent of the commands. As Issi ben Judah said (Mekhilta, Massechta de-Kaspa, 20): "When G-d enjoins a new mitzvah on Israel, He endows them with new holiness."

The great commentator and halakhist R. Meir Simcha of Dvinsk (1843-1926, often known by the name of one of his commentaries, Ohr Sameakh) was tireless and forceful in stressing the point. Mount Sinai was - as the site of the greatest ever revelation of G-d - momentarily the holiest place on earth, yet as soon as the revelation was over, even animals were permitted to graze on it (Meshekh Chokhmah to Ex. 19: 13). The first tablets Moses brought down the mountain were supremely sacred. They had been hewn and written by G-d himself. Yet Moses broke them to show the Israelites that nothing is holy except in the context of fulfilling G-d's will (Meshekh Chokhmah to Ex. 32: 19). We endow objects and places with holiness, through our intentions, our words and our deeds. There is no such thing as ontological holiness, intrinsic sanctity.

Returning to the sanctuary, the very idea that there can be a "house of G-d" - that we can create, in finite space, a home for the Infinite - seems a contradiction in terms. Indeed, Israel's wisest king, Solomon, and one of the greatest of its prophets, Isaiah, said so explicitly. On dedicating the Temple, Solomon said: "But will G-d really dwell on earth? The heavens, even the highest heaven, cannot contain You. How much less this temple I have built." (I Kings 8: 27). Likewise Isaiah said, "This is what the Lord says: Heaven is My throne, and the earth is My footstool. Where is the house you will build for Me? Where will My resting place be? (Isaiah 66: 1).

The answer was given by G-d to Moses at the very outset, before the construction of the Tabernacle was begun: "Let them make a sanctuary for Me, and I will dwell in them" - not "in it" but "in them" -- not in the

building but its builders, not in wood and metal, bricks or stone, but in those who build and those who worship. It is not objects, buildings, or places that are holy-in-themselves. Only acts of heart and mind can endow them with holiness.

That is the deep meaning of Moses' blessing to the Israelites: "May it be G-d's will that His presence rests in the work of your hands." G-d does not inhere in things - not in Mount Sinai, not in the tablets, not in the Tabernacle. His presence (the word Shekhinah, Divine presence, comes from the same root as Mishkan, sanctuary or tabernacle) lives in "the work of our hands" - whatever we do in accordance with His will. There was nothing grand about the tabernacle. It was small, fragile, portable. What made it holy was one thing only, that the Israelites "had made it just as the Lord had commanded". The simplest human act, if done for the sake of G-d, has more sanctity than the holiest of holy objects. That, to me, is a remarkable principle of faith.

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Sunken Gates Will Be Appended to Prefabricated Third Temple  
The pasuk says "Tavu b'Aretz She-areha..." [Eicha 2:9] -- the gates of the Beis HaMikdash [the Temple] were hidden away, sunken into the ground, before the Beis HaMikdash itself was destroyed. For some seemingly inexplicable reason, G-d allowed the entire Beis HaMikdash to be destroyed, but left the doors intact. This requires explanation.

Furthermore, the last 5 parshios -- Terumah, Tezaveh, Ki Tisa, VaYakhel and Pekudei -- have been dealing with the mitzvah of "You shall make for me a Sanctuary and I will dwell therein" [Shmos 25:8]. Apparently, this is a mitzvah that none of us will ever have the opportunity to fulfill. Even if, G-d willing, we will live to see the coming of Moshiach, it seems that we will still not be able to fulfill this Commandment. The reason for this is because our Sages say that the Third Beis HaMikdash will descend from Heaven complete. This would appear to mean that in His Kindness, G-d is removing this Mitzvah from us. G-d will do it for us! If so, what are we going to do? Is G-d not going to allow us to participate in this Mitzvah at all?

The Maharil Diskin (1818-1898) teaches a beautiful insight. The Talmud says [Bava Basra 53b] "If a person builds a palace on the property of a deceased convert (who has no legal heirs), and then a second person comes along and establishes doors for the palace -- the second person is the one who legally acquires the property." The person who attaches the doors is considered to have built the structure. [The Talmud explains that piling bricks one upon the other does not acquire the property beneath it. Only once one creates a complete enclosure is there an acquisition.]

Therefore -- says the Maharil Diskin -- G-d in His Mercy knew that He had to destroy the (Second) Beis HaMikdash, but He knew that ultimately he would send down a replacement (Third) Beis HaMikdash. In addition, G-d knew that by sending down a ready-made Third Beis HaMikdash, He would be removing a Mitzvah from the Jewish people. Therefore, He never destroyed the doors to the Second Beis HaMikdash.

In the future -- may it come speedily in our days -- the Third Beis HaMikdash will descend from Heaven, but it will be missing one thing. It will not have doors! The Jewish people will then attach the doors to the Third Beis HaMikdash. As a result, it will be considered as though we fulfilled the command of "You shall make for Me a Sanctuary". This is the meaning of the prayer "Show us its building (har-eynu b'vinyono) and gladden us with its establishment (v'samchenu b'Tikuno)" [Festival Liturgy]. "Show us its building" refers to sending down the virtually completed Third Beis HaMikdash. But we will be disappointed. We will say "What about our obligation to perform the mitzvah of building the Beis

HaMikdash?" To this G-d will respond: "Attach the doors". We will then "establish" the Beis HaMikdash by attaching the doors and will be gladdened by its formal establishment and by the fact that we fulfilled the command of building it.

Such is the Kindness of our Father in Heaven. Even when he punishes and burns our Temple, He has the forethought that in the future -- even if it may not be for over 2000 years -- there will be provisions made for us to rejoice in their participation of the final establishment of the Third Beis HaMikdash.

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### **Rabbi Shlomo Aviner Parashat Pekudei 5768 Sending Mishloach Manot to Soldiers of Tzahal: Two Teshuvot**

I am suggesting that the community greatly limit sending mishloach manot to friends, and to concentrate on sending them to the soldiers in the area, whose lives are difficult. According to Rabbi Shlomo Alkabetz, the reason for sending mishloach manot is to increase love between Jews, and according to the author of "Terumat Ha-Deshen," to provide someone with food for the festive meal of Purim. Regarding soldiers, both reasons apply. Therefore, no one should be offended if he does not receive a mishloach manot from his friend, and all of us will be aware that our gifts are lovingly going to the guardians of our security. [Shut She'eilat Shlomo vol. 5 #49 in the original edition] A year ago we began a tradition of greatly limiting sending mishloach manot from one person to his friend and to give mishloach manot to soldiers who safeguard our security and it is appropriate for us to do so. This year there is also an organized trip to an army base. Everyone should therefore donate to Tzahal, and do not be offended if you do not receive a mishloach manot from a friend. I guarantee that he is your friend with all of his heart. [Shut She'eilat Shlomo vol. 1 #234 in the

original edition] For example, you can send mishloach manot to Tzahal soldiers through the website: <http://www.pizzaidf.org/> Rav Aviner's article from this week's parashah sheet "Be-Ahava U-Be-Emuna" of Machon Meir (Translated by Rafael Blumberg) Brotherhood I would like to mention a new-old doctrine: the doctrine of brotherhood. We, the entire Jewish people, are all brothers. So were we created and so were we born. When we left Egypt, we were sunken at the bottom of the 49th level of impurity (Zohar). Everything that we learned from our father Abraham was almost forgotten (Rambam, Hilchot Avodah Zarah, end of Chapter 1). Yet a number of things still remained – the main things: we remained brothers; we didn't change our names, language or dress; and we didn't speak evil gossip. By the merit of all these we were redeemed. It is true that Moshe said, "Indeed the matter is known!" (Shemot 2:9) – now I understand why we suffer. It is because of evil gossip. I saved the Jew from the Egyptian who was smiting him, but evil people spread this news, and now I'm in danger" (Rashi). Yet we didn't all speak evil gossip. And those that did speak evil gossip, either didn't leave Egypt or dropped out along the way. They simply were not brothers. In the Pesach Haggadah, the evil son is told, "Had you been there you would not have been redeemed." How then did the evildoers leave Egypt? The answer is that the evildoer who would not have been redeemed was one who, like the evil son of the Haggadah, has "removed himself from the Jewish People." If he was an evildoer in many ways, yet remain tied with brotherhood to the Jewish people, he would have left Egypt. The brotherhood formed in Egypt is rectification for the groundless hatred that broke out between the brothers against Joseph, as well as the arrogance of the sons of Rachel and Leah to the sons of the maidservants. In Egypt, we were all in the same boat. We became brothers. And this rectification appeared in all its glory in the case of Moshe: "He went out to his brothers" (Shemot 2:11). This is the foundation of Israel existing as a people. On the other hand, our sages expounded as follows: "There was an opaque darkness.... People could not see each other" (Shemot 10:22-23). When a person does not see his friend that is the greatest darkness there is. This is the foundation of the Sabbatical year. Obviously, the First Temple was destroyed because of bloodshed, idolatry and sexual sin. These are terrible, heinous crimes. But was it destroyed because of the Sabbatical year? Could it go that far? Our master, Rabbi Avraham Yitzchak Kook, explains in his introduction to his book "Shabbat Ha-Aretz" and in his article "Nechamat Yisrael" (Ma'amarei HaRe'iyah) that the theme of the Sabbatical year is love. We no longer say, "Mine is mine and yours is yours," but rather, "Mine is yours." We say, "Take, my brother. The harvest belongs to us all. It is for all of us to eat, and not for sale, and not to be destroyed. It is not even for making medicines. For if we become brothers, we won't be sick." The Land is very pleased with this. Then it too participates and yields three times as much progress as usual. Kayin was cursed. G-d said, "When you work the ground, it will no longer give you of its strength" (Bereshit 4:12). Kayin had jeopardized brotherhood. During the Sabbatical year, brotherhood returns, and then the blessing of the Land returns. In the Mussaf Shemoneh Esreh we say, "Because of our sins who were exiled from our land." The Second Temple was destroyed because of groundless hatred (Yoma 9b). We had jeopardized our brotherhood. Now, brotherhood had returned, and we have returned to our land. Yes, brotherhood has returned! Our nation is full of love! Yes! Obviously, there is a small minority of haters. In every camp there are several haters. Yet that is a negligible minority. If our nation has 50,000 haters, that is just 1%. Yet in all walks of life, people are talking to one another. There is brotherhood. In every family there are Jews of different types and from different streams – and they love one another and help one another. And in every workplace, there are all sorts of workers, and they work together amicably. And especially in the Army, there is brotherhood. If there were no mutual love between comrades-in-arms, you could close down the army. Love between comrades-in-arms means that a person is ready to be killed for his brother. Is that not groundless love? And we find it not just amongst Israel's heroes who were decorated for bravery after the last Lebanese war and Israel's

wars that preceded it, but in every fighter. We are not uniform, but we are united. In our opinions we may be divided, but not divisively so. We can fight for our views, but let us not forget that we are brothers. Let us not say, "Cut the baby in half!" nor, "Let neither you nor I have it." (Orot, Orot HaTehiyah) 20. The Committee for Finding Flaws in Others is not us. We are not members! The very idea is crazy. It's divisive. It's impure. Instead of casting blame – build! Build the Land! Build the nation! Build up brotherhood. The Land of Israel and Safeguarding One's Life QUESTION: A certain Rabbi said that traveling or gathering in places like Sederot (on the border with the Gaza Strip) is not forbidden based on the commandment of "You shall surely safeguard your soul" (Devarim 4:15, 23:11). Is this correct according to the Halachah? ANSWER: This subject is divided into three parts: 1. Low-Probability Danger This Rabbi is certainly correct that the mitzvah of "You shall surely safeguard your soul" is a firmly established law. At the same time, there is a clear distinction in Halachah between a high-probability danger and a low-probability danger. If this were not the case, we would not be able to travel in a car since every year, to our great distress, six hundred people are killed in car accidents in Israel. Many more people have been killed in car accidents since the establishment of the State of Israel than all of the Kassam rockets and all of the terrorist attacks and all of the wars, even when they are added together. We nonetheless travel in cars, obviously with the required cautions, since this is called "a non-frequent damage" in Halachah (Pesachim 8b). In our time there are statistical tools to verify the frequency of a danger. This idea is also brought in the book "Mesillat Yesharim" (end of chapter 9) that there is appropriate fear and inappropriate fear. There is appropriate fear from actual danger and there is inappropriate fear from illusions. There is a halachic responsum on this subject by Ha-Gaon Ha-Rav Yitzchak Zilberstein, Rabbi of "Ramat Elchanan" (neighborhood in Bnei Brak). A student was learning in a yeshiva in "Yesha" (Yehudah, Shomron or Gush Katif) and his parents were concerned about the danger. Rav Zilberstein proves that "a frequent damage" is five percent. This means that if – G-d forbid – five percent of the students of the yeshiva were murdered, it would be forbidden to learn in that yeshiva. This is obviously far from reality - Baruch Hashem - since the Kassam rockets do not kill five percent of the population. In fact, Ha-Gaon Ha-Rav Yitzchak Isaac Herzog in Shut Heichal Yitzchak proves based on Shut Rabbi Akiva Eiger (#60) that a frequent danger is not five percent, but one in a thousand, but - Baruch Hashem - Kassam rockets do not kill one in a thousand people either. 2. Small risk for a Mitzvah It is permissible to take a "small risk" for the sake of a mitzvah. The Tiferet Yisrael discusses this principle on the Mishnah in Massechet Berachot at the end of chapter one. There is a story about Rabbi Tarfon who said the Shema at night while reclining according to the view of Beit Shammai. He endangered himself while doing so and the Sages admonished him for following the view of Beit Shammai instead of Beit Hillel. But the question remains: Why did Rabbi Tarfon endanger himself, since reciting the Shema is not in the category of "Be killed and do not transgress," i.e. requiring one to sacrifice his life for its fulfillment? The Tiferet Yisrael explains that it was permissible since there was only a small risk of danger. There is an additional proof from when Rabbi Akiva was in jail, and he used the water he received for "netilat yadayim" (ritually washing his hands) instead of for drinking. The halachic authorities ask: How could Rabbi Akiva endanger his life for this practice? The answer is that Rabbi Akiva understood that he would obtain more water, the danger he was taking was extremely minute and for a mitzvah it is permissible to take a small risk. We also find this idea in "Pitchei Teshuvah" (Shulchan Aruch, Yoreh De'ah 157). By the way, there is something else for which it is permissible to take a small risk – a livelihood. And, in truth, a livelihood is also a mitzvah. We find teachings that it is permissible to take a small risk for a livelihood and a mitzvah, and it is the law for the mitzvah of settling the Land of Israel. 3. Settling the Land of Israel It is obvious that settling the Land of Israel towers above every mitzvah. It is thus written in Shut Ha-Rashbash (#1) of Rabbi Shlomo Shimon, the son of the Rashbatz (Rabi

Shimon ben Tzemach Duran), that one who desires to make aliyah while it is dangerous: Ascend! But one who does not want to need not go. This means that he permits ascending to the Land of Israel under danger, but one is not forced to do so. But how is it permissible to endanger oneself for the sake of ascending to the Land of Israel? This question was already asked by the King of Kuzar to the Rabbi at the end of the book "The Kuzari," and Rabbi Yehudah Ha-Levi responds that the danger in ascending to the Land is certainly less dangerous than a soldier in an obligation war. Just as a soldier endangers himself in an obligatory war, so too does one who makes aliyah to a certain extent. Throughout the generations, Jews displayed self-sacrifice for the Land of Israel, whether making aliyah, establishing settlements or serving in the army. This includes Religious-Zionists and secular Jews and the Charedim (Ultra-Orthodox). Charedim – whether the students of the Vilna Gaon or the students of the Baal Shem Tov - made aliyah and established settlements with great self-sacrifice. For example, Charedim established Me'ah She'arim within an Arab settlement with self-sacrifice, and the city of Petach Tikvah despite the Malaria in which many paid with their lives and the neighborhood of Nachalat Shiva in Jerusalem, which was an extremely dangerous place. Even Ha-Gaon Ha-Rav Yosef Chaim Sonnenfeld ztz"l, one of the harshest opponents of Zionism, said that we cannot abandon even one place in the Land of Israel – even if there is danger involved. The story is told in the book "Ha-Ish Al Ha-Chomah" that during the Arab Pogrom of 5689 a multitude of Arabs descended on Me'ah Shearim, the leader had his sword drawn and they screamed, "Slaughter the Jews!" When they passed the flour mill, two Charedi Jews came out, one wielding a pistol and shot and killed the leader of the gang. The second one threw a hand grenade and the entire gang fled while the two of them pursued them – one with a pistol and the other with a hand grenade. The Arabs killed many of their own in their panicked flight, trampling one another. The next day, Ha-Rav Sonnenfeld, who lived within the walls of the Old City, had to go to Me'ah Shearim for a brit milah. He left through "Sha'ar Shechem" (the Damascus Gate), and in front of their eyes lay the dead Arabs. His students said to him: "Rav, what about safeguarding one's life?" He answered them: "If we surrender walking through 'Sha'ar Shechem,' there will be no Jews." By the way, the Charedi Jew who fired the pistol was Ha-Rav Aharon Fischer, the father of Ha-Gaon Ha-Ra Yisrael Yaakov Fischer, who was the Av Beit Din (head of the rabbinic court) of the Ultra-Orthodox community until a few years ago. We therefore see that the Charedim did not fear anything - not diseases and not Arabs, and they even used a weapon when necessary. In conclusion: a. A non-frequent danger is not considered a danger according to Halachah. b. It is permissible to take a minimal risk for a mitzvah or for a livelihood. c. One needs self-sacrifice for the sake of settling the Land of Israel. This is how we have acted throughout the generations and in its merits we are here today.

Stories of Rabbenu – Our Rabbi: Ha-Rav Tzvi Yehudah Ha-Cohain Kook Learning Torah Diligence in learning When our Rabbi was immersed in learning Torah, he did not see or hear anything. It once happened that he did not come to minchah. The students knocked on his door, but our Rabbi did not answer. They knocked again and again, but it did not help. They busted down the door and when they entered, they found him learning Rambam. He did not understand what they wanted from him. (Ha-Rav Tzvi Kostiner – Iturei Yerushalayim #16) Completeness During a class, our Rabbi asked the students where they had left off learning in a particular book at the end of last class. They told him and he began a few pages earlier and went over them again, and he did the same thing in various classes. (It seems that he acted this way in order to learn an entire issue and not to begin in the middle of a subject. Ha-Rav Yehudah ben Yishai – Iturei Yerushalayim #16) Learning Gemara A new student once had a difficult time learning Gemara. He asked our Rabbi: Why should I learn Massechet Pesachim!? After Rashi, Tosafot, the Rif and the Rambam, what else is there for me – the small one – to add? Our Rabbi responded: You have yet to learn Massechet Pesachim! Two people are not the same, and no one in

the world can grasp the way in which you learn. Your soul is not like Rashi's soul. Your soul can connect to Massechet Pesachim, and the light of the Oral Torah needs to appear through your individual soul. (Iturei Yerushalayim #16)

Special thank you to Fred Casden for editing the Ateret Yerushalayim Parshah Sheet Ha-Rav Shlomo Aviner is Rosh Yeshiva of Ateret Yerushalayim. All material translated by Rabbi Mordechai Friedfertig. For more Torah: [RavAviner@yahoo.com](mailto:RavAviner@yahoo.com)

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YatedUSA Parshas Pekudei 30 Adar I 5768 Halacha Discussion by **Rabbi Doniel Neustadt Women and Prayer: Obligations and Priorities**

The Halachah obligates men to daven to Hashem three times every single day — Shacharis, Minchah and Ma'ariv. The degree to which women are obligated to daven, however, is a subject debated by the early poskim. There are halachic authorities who exempt women from formal davening altogether as long as they recite a simple supplication in the morning.<sup>1</sup> Other poskim maintain that women are obligated to daven twice a day — Shacharis and Minchah — just like men.<sup>3</sup> Although most poskim agree with the second view that women are obligated to daven,<sup>4</sup> it was a rare woman who davened formally in the olden days. Running a household was an all-consuming task,<sup>5</sup> and many women were illiterate to boot. Most women, therefore, dispensed with their obligation to daven by reciting a simple supplication.<sup>6</sup> Nowadays, we are witnessing a remarkable turnabout in regard to women's formal prayer. Many women, especially single girls and older women, have assumed the obligation of davening regularly, as the halachah dictates. Even busy mothers attempt to daven as often as they possibly can. Nevertheless, women are still not as free to daven as men and the demands on their time may legitimately conflict with the halachic times for davening. We will therefore list, in order of importance, the parts of davening which take priority for a woman whose time is limited.<sup>7</sup> Depending on how much time she has she should recite as many as she can, and recite them in the order in which they appear in the siddur: 1. Reciting a simple supplication is the very least a woman must do according to all the poskim. Any supplication that opens with praise of G-d (shevach) and ends with thanksgiving for His benevolence (hoda'ah), such as Birchos ha-shachar<sup>8</sup> or Birchos ha-Torah<sup>9</sup> is sufficient.<sup>10</sup> 2. Shemoneh Esrei of Shacharis and Minchah. This is the minimum requirement according to most poskim.<sup>11</sup> 3. The first verse of Shema<sup>12</sup> and Baruch Shem.<sup>13</sup> Although women are technically exempt from Shema since it is a time-based mitzvah, the poskim recommend that at the very least they recite the first verse, which is the declaration of accepting Hashem's sovereignty upon oneself.<sup>14</sup> 4. Birchos ha-Shachar,<sup>15</sup> including Birchos ha-Torah.<sup>16</sup> [If a woman has already davened Shemoneh Esrei, she may no longer recite the blessing of Al netilas yadayim, since that blessing can be said only before davening.<sup>17</sup>] 5. The blessing of Emes v'yatziv until Ga'al Yisrael,<sup>18</sup> followed immediately, without any break, by Shemoneh Esrei, so that they fulfill the mitzvah of semichas geulah l'tefillah — the halachic requirement that no break take place between Shemoneh Esrei and the blessing that precedes it. 6. Pesukei d'Zimrah,<sup>19</sup> with priority given to Boruch sh'amar, Ashrei (Nishmas on Shabbos) and Yishtabach. 7. The entire Shema<sup>20</sup> prefaced by Kel melech ne'eman.<sup>21</sup> 8. The blessings of Yotzer ohr and Ahavah rabbah.<sup>22</sup> 9. Korbanos, <sup>23</sup> while giving priority to Parshas ha-Tamid.<sup>24</sup> As mentioned earlier, a woman who has the time to do so, should daven all of the parts of the davening that we have listed, in the right order and at the right time. Additional notes: ? The correct time to recite Birchos Kerias Shema is until the end of zeman tefillah, which is a third of the day, or four halachic hours from sunrise. A woman may not recite Birchos Kerias Shema after that time under any circumstances.<sup>25</sup> ? Shemoneh Esrei should also be completed before the end of zeman tefillah. If, however, a woman is unable to daven before then, she may daven Shemoneh Esrei until midday (chatzos).<sup>26</sup> After that time she may no longer daven Shacharis.<sup>27</sup> ? Just as it is forbidden for men to eat before

they fulfill their obligation of davening, 28 women, too, should not eat before davening. But many women eat after reciting Birchos ha-shachar, since as explained earlier, some poskim rule that they fulfill their minimum obligation of daily prayer by reciting any supplication. They may rely on this leniency even though they are planning to pray the entire Service later on.<sup>29</sup> ? Women are exempt from Tachanun, Ashrei-U'va l'tziyon and the Shir shel yom.<sup>30</sup> It has become customary for them to recite Aleinu after Shemoneh Esrei.<sup>31</sup> ? Women are exempt from Hallel on Rosh Chodesh, Pesach,<sup>32</sup> Sukkos and Shavuos, because it is a time-based mitzvah.<sup>33</sup> Some poskim require women to recite Hallel on Chanukah,<sup>34</sup> while others exempt them.<sup>35</sup> ? The poskim debate whether women are obligated to daven Musaf or not.<sup>36</sup> It is customary that they do.<sup>37</sup> Note that all tefillos in which women may be exempt, such as the daily Ma'ariv, Hallel, Musaf, Ashrei and U'va l'tziyon, are still permitted to be davened by women.

FOOTNOTES 1 Magen Avraham 106:1, based on the view of the Rambam. 2 Most authorities agree that women are not obligated to daven Ma'ariv, since Ma'ariv was initially established as a voluntary prayer even for men, and while eventually men accepted Ma'ariv as an obligation, women did not. A minority opinion holds that women should daven Ma'ariv as well, see Aruch ha-Shulchan 106:7 and Kaf ha-Chayim 299:62, and this is the custom of some women nowadays. 3 View of the Ramban (Sefer ha-Mitzvos 5). 4 Mishnah Berurah 106:4. 5 The Chofetz Chaim's son reported (Sichos Chofetz Chaim, pg. 13) that his mother rarely davened when her children were young. She said that the Chofetz Chaim exempted her from formal davening during that period in her life. 6 Rav M. Feinstein (quoted in Ko Somar l'Beis Yaakov, pg. 29) once remarked that the fact that many women were illiterate and were not required by the rabbanim to learn how to read is proof that they relied on the poskim who did not require women to daven Shacharis and Minchah, although women certainly recited supplications. See below. 7 The list is formulated for Ashkenazic women only, since some Sephardic poskim (see Yechaveh Da'as 1:68; 3:3) rule that women are not allowed to daven certain parts of the davening from which they are exempt. 8 From asher nasan lasechiv vinah until gomeil chasadim Tovim l'amo Yisrael. 9 Machazeh Eliyahu 19:5-15. 10 See Emes l'Yaakov, O.C. 106:1 and Halichos Shlomo 1:2-4 and Devar Halachah 5. 11 Mishnah Berurah 106:4. See also Mishnah Berurah 263:43. 12 Rama, O.C. 70:1 13 Levush, quoted by Pri Megadim and Kaf ha-Chayim 70:1. 14 Mishnah Berurah 70:4; 106:4. It is not, however, required that the Shema be said within the time frame allotted to men; Eishel Avraham (Butchach) 70:1. See also Aruch ha-Shulchan 70:2. 15 Mishnah Berurah 70:1; Aruch ha-Shulchan 70:1. 16 O.C. 47:14. See Be'ur Halachah that according to the opinion of the Vilna Gaon women are exempt from Birchos ha-Torah. Accordingly, a woman who is short of time should give priority to the other blessings. 17 Mishnah Berurah 4:1. 18 This blessing is given priority in order to satisfy the view of some poskim who hold that women are obligated to fulfill the daily mitzvah of Zecher l'yetziat Mitzrayim (the daily mitzvah to remember the Exodus); Magen Avraham 70:1. Other poskim, however, recommend that women recite this blessing but do not require it; see Rigshei Lev 4:18 quoting Rav Y.S. Elyashiv. 19 The poskim disagree whether or not women are obligated to recite Pesukei d'Zimrah; see Mishnah Berurah 70:1 and Sha'ar ha-Tziyun 4; Aruch ha-Shulchan 47:25; 70:1; Yechaveh Da'as 3:3. [See The Daily Halachah Discussion on 10 Tammuz whether or not women who come late to shul should skip parts of Pesukei d'Zimrah in order to daven b'tzibbur.] 20 Although clearly exempt from reciting Kerias Shema, it has become customary for women to try to recite the entire Shema, so that they, too, accept Hashem's sovereignty and commandments upon themselves. 21 Minchas Elazar 2:28. 22 Aruch ha-Shulchan 70:1. 23 Although some poskim, including the Mishnah Berurah (Be'ur Halachah 47:14, s.v. noshim) require women to recite korbanos, it is not customary that women do so, and there are many poskim who exempt them altogether from korbanos; see Halichos Beisah 4:1 and Machazeh Eliyahu 14:4. 24 See Shulchan Aruch ha-Rav 47:10 and Rav Y.S. Elyashiv in Koveitz Teshuvos 1:14. 25 Rav Y.S. Elyashiv, quoted in Rigshei Lev 5:17; Halichos Beisah 5:5. See Yisrael v'Hazmanim 8:33. 26 O.C. 89:1. 27 Rav M. Feinstein (quoted in Ko Somar l'Beis Yaakov, pg. 34); Machazeh Eliyahu 19:5-14. 28 O.C. 89:3. See details in The Monthly Halachah Discussion, pgs. 164-169. 29 Based on Igros Moshe, O.C. 4:104-4; Emes l'Yaakov, O.C. 106:1; Minchas Yitzchak 4:28-3; Rav S.Z. Auerbach (Halichos Shlomo 1:2-4); Rav Y.S. Elyashiv, quoted in Deror Yikra, pg. 363. 30 See Machazeh Eliyahu 20, Halichos Beisah, pg. 51-52 and Halichos Bas Yisrael, pg. 44, who offer various reasons for this. 31 Machazeh Eliyahu 20. 32 Except for the Hallel said at the Seder, which they are obligated to recite. 33 Be'ur Halachah 423:2. 34 Toras Refael, O.C. 75; Minchas Pitim 683; Moadim u'Zemanim 2:146. See also Igros Moshe, O.C. 1:190. 35 Halichos Shlomo 2:17-6; Rav Y.S. Elyashiv (quoted in Rigshei Lev 6:3). 36 Both views are quoted in Mishnah Berurah 106:4 without a decision. 37 Kaf ha-Chayim, O.C. 286:7. See also Rav Akiva Eiger, O.C. 106.

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**Yaakov Richter**

Parshas Pikudei #2- Betzalel: The Builder and Thinker

In perek 38 pasuk 22 it says, "And Bezalel the son of Uri, the son of Hur, of the tribe of Judah, made all that G-d commanded Moshe."

Rashi comments: "That which he (Moshe) commanded him (Betzalel) is not written here, but, rather, "all that G-d commanded Moshe," [thereby implying that] even things which his teacher (Moshe) had not told him, his own opinion was in agreement with what was said to Moshe at Sinai. For Moshe had instructed Betzalel to first produce the vessels, and afterward the mishkon. Whereupon Betzalel said to him: "It is customary in the world to first construct a house and afterwards put furnishings in it." Moshe responded to him: "[You are right] that is indeed what I heard from G-d." Moshe [then also] said to him "You must have been in the shadow of G-d, for, certainly, so did G-d command me." And so he (Betzalel) did it--- first the mishkon and afterwards he made the vessels.

If in fact Hakadosh Baruch Hu told Moshe to build the Mishkan first and then the Keilim, why did Moshe present the opposite message to Betzalel so much so that Betzalel needed to question the approach? Was Moshe trying to mislead Betzalel?

The Gemarah in Maseches Succah daf 45B discusses how many people are on the level to behold the countenance of the Divine Presence. The Gemarah there Asks, "Are those who view the Divine Presence through a clear screen, an aspaklaria hami'erah, so few? But Abaye has said: There are no less than thirty six righteous in the world who receive the countenance of the Divine Presence each day?" the Gemarah answers, "There is no difficulty. Abaye's teaching (Of thirty six people) refers to those who may enter only with permission, whereas Rabbi Shimon ben Yochai's statement (that only him and his son can perceive the Divine Presence through a clear screen) refers to those who may enter without permission."

Rashi explains that the thirty six righteous. Although they perceive the Divine Presence as through a clear screen, may not approach the shechina without first asking permission of the angels appointed for this purpose. Rabbi Shimon and his son may approach without proper permission.

Moshe Rabbeinu was different then any other prophet based on the fact that he communicated with Hashem through an aspaklaria hamieri, clarity and directness like no other Navi had. Rabbi Shimon ben Yochai and his son were not even prophets, so how can it possibly be that they Nevuah on the level of Moshe Rabbeinu. It goes against one of the 13 fundamental beliefs that there was no prophet and there will be no prophet like Moshe. What are the conceptual underpinnings over here? What does the Gemarah mean when it says that Rabbi Shimon ben Yochai and his son were able to have such a direct relationship with G-d? The Maharsha states that the countenance of the Divine Presence is not referring to people seeing it in the course of prophecy because Moshe Rabbeinu was the only one who saw Prophecy with countenance of the Divine Presence. Rather, this Gemarah is speaking about the perception of Hashem through limud hatorah, the study of Torah.

The Rambam in Hilchos Yesodei Hatorah chapter 4 halacha 13 spells out clearly that the process of discovery of a deeper understanding of G-d on a metaphysical plane, through the venue of limud hatorah, is a very difficult process which few are able to attain. How does one discover these ideas. The Rambam in Hilchos Yesodei Hatorah perek 4 halacha 11 says, "The topic of the Ma'aseh Hamerkava even to a single person we do not teach straight out. Unless, the person is a wise knowledgeable man and we give him the rashei haprakim, the general concepts and points.

My father, Rabbi Shalom Richter, suggested that the Gemarah in succah is using "those who may enter only with permission"(Ha Di'ayil b'var) and one who may enter without permission to describe two different type of people in their quest to understand Ma'aseh Hamerkava and the

Metaphysics. The first type of person is one who the rebbi gives rashei prakim and that is all he is capable of understanding. This is what the Gemarah refers to as the "Ha Di' ayil b' var". The second type of student is one who when the Rebbe gives him the Rashei Prakim is able to use them as a springboard to develop those ideas further. With the process of extraction, formulation, and conceptualization, the Talmid can go beyond the Rebbe, and get to the ideas behind the intended lesson and can discover subtle ideas in the knowledge of Hashem. This second category is what the Gemarah in Succah refers to as "Those who may enter without permission".

The Mishkan is a place where metaphysics and deep knowledge of G-d are brought out and amplified. It is a place where people could go to learn and investigate deep ideas. Betzalel, the builder of the Mishkan, needed to be aware of these deep ideas in the process of building the structure. Moshe's goal of not clearly stating what needed to be built first was to provide Betzalel an idea with which he needed to ask and engage in the study in the knowledge of G-d. By engaging and investigating further, beyond the information and methodology that Moshe gave him, Betzalel was able to Ha Di' ayil b' lo b' var: Go beyond the Rashei Perakim and develop the ideas further.

Have a Wonderful Shabbos!

Yaakov Please leave any ideas or thoughts that you have on the dvar torah. Thanks!

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### Lessons Of The Mishkan

#### By Rav Moshe Lichtman

These are the accounts of the Tabernacle, the Tabernacle of the Testimony, which were reckoned according to Moshe...

Rashi comments: "[The word] Mishkan is mentioned here twice in allusion to the Temple which was taken as a pledge by being destroyed twice for Israel's sins."

Rabbeinu Bachya finds a hint to this in the gematria (numerical value) of the words "Hamishkan, Mishkan Ha'edut". The numerical value of Mishkan is 410, corresponding to the number of years the First Temple stood. The gematria of the word Mishkan including its five letters, equals 420. This number corresponds to the duration of the Second Temple. And finally, the word "ha'edut" (without the letter vav, which is how it is spelled in the verse) numerically equals 479, which corresponds to the number of years the Mishkan stood before King Shlomo built the First Temple.

The Chatam Sofer switches the order around. According to him, the first word, Hamishkan refers to the First Temple, while the second word, Mishkan, refers to the Second one. He explains that Mishkan is written without the letter hay (whose numerical value is five), because the Second Temple lacked five major features that existed in the First Temple (see Yoma 21b).

Various sefarim quote a related idea based on the end of our verse "which were reckoned according to Moshe". We translated the word Pukad as "reckoned," but it can also mean, "missing." Thus, our verse can be interpreted as follows: The two Temples were destroyed (or "missing"), - because of the mouth of Moshe. Moshe was banned from entering Eretz Yisrael because he said to the Jews, Hear now, O rebels (BeMidbar 20:10). Had he not sinned with his mouth, he would have entered the Land, the Children of Israel would never have worshipped idols, and the Temple would never have been destroyed.

Midrash Tanchuma learns from the repetition of the word Mishkan that there is a supernal Temple in heaven directly opposite the earthly Temple here on earth. The Shelah HaKadosh explains this concept as follows:  
...It is known that the Holy One Blessed be He clings to us and we to Him. We cause this great clinging (d'veikut), for when we effect an awakening

from below, a great emanation awakens from above. This explains Rashi's comments on the verse To bring you to the place which I have prepared (Shemot 23:20). Rashi writes: "His [God's] place is already perceivable opposite it [the Beit HaMikdash]. This is one of the sources which indicate that the upper Beit HaMikdash is situated directly opposite the lower Beit HaMikdash." This is difficult! Who compares himself to whom? Surely, the smaller one compares himself to the greater one? Rashi should have said that the lower Beit HaMikdash is situated directly opposite the upper one. Furthermore, he contradicts himself. At first he says, "His place is already perceivable," implying that the upper Beit HaMikdash came first. But afterwards he says, "is situated directly opposite the lower one," implying that the lower one came first, G-d forbid!

The explanation is as follows. The upper Mikdash existed first. HaShem commanded that the lower Mikdash be made according to the secrets of the upper one, for the Divine service causes the lower Mikdash to be prepared to receive the influence from the upper Mikdash. But, this influence does not descend from above until a preparatory awakening ascends from below. Thus, in terms of this influence, the upper Mikdash is situated directly opposite the lower one. For, there must first be an awakening from below – that is, a seat and a foundation upon which the influence from the upper Mikdash can rest. (Sh'nei Luchot HaBrit 2:48b; quoted in Eim HaBanim Semeichah, pp. 218-19)

This concept – that G-d helps us reach greater spiritual heights only after we do our share – is alluded to elsewhere in the parashah. On the verse, They brought the Tabernacle to Moshe (39:33), Rashi comments: "No one was able to erect it [the Mishkan] due to the weight of the boards... Moshe said to the Holy One Blessed be He, 'How can man possibly erect it?' [God] said to him, 'Busy yourself with your hands.' He appeared to be erecting it, but it rose and stood up by itself..." One could ask: if G-d made it stand up, why did Moshe have to make believe he was helping? I believe that G-d wanted Moshe to prove that he was willing to do all that he could, and only then, the Almighty "chipped in" and finished the job.

The same is true of every spiritual endeavor, including aliyah to Eretz Yisrael. We must first show HaShem that we are doing our best to achieve the goal, and then He will help us succeed.

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

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Shabbat Shalom: Parshat Pekuday

### "Shabbat Shalom: Rabbi Shlomo Riskin's Parsha List"

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SHABBAT SHALOM: Parshat Pekuday (Exodus 38:21-40:38) 1 Adar 2, 5768 - 8 March, 2008

CLICK HERE TO PRINT ARTICLE Efrat, Israel - "And he made the ephod of gold, blue, and purple and scarlet ...And he made the breastplate of artistic work...He made tzeret of the ephod, weaving it completely...And they made coats of fine linen of woven work" (Exodus 39:1-31).

Why should priestly garments be so elaborately constructed, gold beaten into threads, embroidered sashes, blues and purples and scarlets skillfully and intricately woven? In this week's portion Pekuday, some 30 verses are devoted to the making of the priestly garments, and several portions back in Tetzaveh, more than 40 verses were devoted to these same garments. What's clear is that the priestly garments were unusual, awesome to behold.

Granted that priests should look different from the rest of the nation, but why isn't a white garment sufficient, something simple and functional? Indeed, one might even argue that priests should not wear anything special or unique because of G-d's declaration to all of Israel: "You shall be unto me a kingdom of priests and a holy nation" (Exodus 19:6).

Furthermore, in Tractate Zevachim (17b), the Talmud teaches that "...while their [priestly] garments are upon them, the priesthood is upon them. If their garments are not upon them, the priesthood is not upon

them." In other words, without the garments there is no priesthood, a far-reaching statement.

Over the centuries many commentators have addressed themselves to the question of priestly garb. In Tractate Eruchin (16a), R. Annani bar Sasson asks why portions of the priestly garments is next to that of the sacrifices, and the answer given is that just as the sacrifices atone for sins, these garments atone for sins as well -- the tunic for murder, the breeches for illicit sexual acts, the waist sash for one's innermost thoughts, the ephod for idol worship, the robe for slander, the turban for haughtiness...

Nachmanides sees the priestly garments as the garb of kingship and royalty, each one of the garments regal in its own right. For Nachmanides, the priestly garb need not be seen beyond its inherent beauty intended to exalt the priest into the domain of the majestic.

The author of the Sefer Hachinuch, an anonymous commentary on the 613 commandments first published in 1523 (usually identified as Rabbi Aharon HaLevy), acknowledges that a person's inner being is affected by his outer garments. Thought follows action, and since a priest must have special thoughts when he performs the service, unless he is transformed himself he won't be able to achieve the required concentration, a process which begins with the act of getting dressed in special garb. Extraordinary garments are intended to transform an ordinary human being into someone who becomes a master of thought -- kavanot. This idea recalls the text in Tractate Zevachim which states that without the priestly garments "there is no priesthood."

The Netziv (1817-1893) in his Torah commentary follows the principle of the Sefer HaChinuch except that he switches the focus from the priest to the Israelite coming upon the glory of the priests in their ceremonious garb. Seeking atonement, he is confronted with the gravity of what is about to transpire. And since the ultimate purpose of the sacrifice is to bring about this atonement, it is the Israelite's thoughts which are most significant, his contrition, his encounter with the transcendent. The garments of the priests are intended to draw the individual closer to his own spiritual cleansing.

These explanations certainly illuminate the complex and varied role of the priestly garment. But I would suggest that if we look at the first time a garment is mentioned in the Torah, we discover that there is more to clothes than meets the eye.

When Adam and Eve are exiled from the Garden of Eden, the text tells us that "the Lord G-d made for Adam and his wife, garments of skin, and clothed them" (Genesis 3:21).

Two verses later G-d drives them out of the Garden of Eden, and because of the power of the tale of this banishment, the reader tends to overlook how unique it is that G-d Himself created these garments.

After the creation of the universe, G-d commanded man to conquer the world, "...replenish the earth and subdue it, and have dominion" (Gen 1:28). The world is a tabula rasa for man to discover, unravel, invent, define, and so man discovers fire and bronze, wheels and windmills, atoms and electricity. There is nothing that man doesn't discover except the clothes on his back, and this he carries with him when he is banished. But of all the potential discoveries within human scope why should the creation of a garment be relegated to G-d Himself? What can it possibly mean?

It was a serpent that led to the banishment of man. Condemned to eat dust, the serpent remains naked, but G-d forms these garments for man to rise above his animal nature.

Worn in modesty, a garment paves the road toward recapturing what was lost in the Garden, redeeming a measure of holiness.

If we glance at the more visible symbols of Jewish life, we see how sanctity is associated with a covering. Inside the synagogue, the Sefer Torah is covered with its special garb; this is also the case regarding the table upon which the Torah is read from, similarly the Ark in which the Scroll stands. Everything holy needs a covering and it all began with the human body.

Commanded to wear unique garb during the temple service, the priest puts us in touch with the separation between the human and the animal. Perhaps the reason why G-d creates these garments Himself is because the

passage between the two realms -- before exile and after exile -- requires that G-d point the human in the direction he must take in order to fight the lure of the animal kingdom.

Departing from the Garden of Eden, Adam and Eve are taught the holiness of the body. Once they know this, they can go out and "conquer" the world, transforming it in the process, but if they forget that the body is holy, then the world transforms them, in the process getting drawn closer to their animalistic nature.

From the Jewish point of view, clothes do not make the man. Clothes do, however, distinguish the man, reminding him of the inherent sanctity of the body separating man from beast, priest from ordinary layman.

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### "SYNAGOGUE STORIES"

by Rabbi Berel Wein

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Rabbi Berel Wein has held a variety of prestigious rabbinic positions spanning 40 years. The following anecdotes give a glimpse into the life, rewards and vicissitudes of being a rabbi.

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#### THE SYNAGOGUE PRESIDENT

A week after I assumed my position, the synagogue president came to me and said: "Rabbi, I have to be perfectly honest with you, I voted against you at the selection meeting." Not knowing what to make of such refreshing candor, I was temporarily caught off guard and made no meaningful response. He then continued and said: "I hope that your knowing this will not affect our future relationship and our ability to work together for the growth of the synagogue."

He then proceeded to detail the names of most of the other members who had not voted in my favor. I made several attempts to stop him as this was blatant gossip and would serve no constructive purpose, but he was insistent and when he had finished what he had to say I got a word in edgewise. I finally responded by assuring him that now that I was elected the rabbi, as far as I was concerned, I was elected unanimously and couldn't care less about who had or had not voted for me. I would attempt to befriend and serve everyone in the synagogue with equal devotion and dedication.

However I was puzzled as to why in the world he would bother to share such information with me. After all, this was certainly a strange form of admission of guilt.

In the ensuing years, he proved to be a great synagogue president and a warm personal friend of mine and my family. But after he was no longer president, he came to see me again. He told me: "Rabbi, I lied to you when you first came here. I told you that I had voted against you. I really voted for you because the previous rabbi insisted that I do so. But I told you that I voted against you because I wanted to see your reaction and to test how you would relate in the future to me and the others I told you about. The fact that you did not take what I said personally is what has contributed to the growth and success of our congregation."

When he now asked me for my reaction to this new startling revelation of his, I sweetly replied: "You have taught me a great lesson. Don't always believe what the president of the synagogue tells you!"

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#### THE CLERGY ELEVATOR

When I was a rabbi in Monsey, New York, I spent some time almost every week visiting the patients at the local hospital. The hospital was run and partially staffed by Catholic nuns. It was a Roman Catholic not-for-profit hospital with a devoted nursing staff and almost all Jewish doctors on the medical staff.

One Saturday night as I was finishing my visiting rounds in the hospital I came to the bank of elevators to descend to the parking lot. There were two banks of elevators on either side of the hall, and the two banks of elevators operated independently of each other. I noticed the priest who was the hospital chaplain standing in front of the elevators. He pressed the down button. I went to the opposite bank of elevators and likewise pressed the down button.

We then smiled at each other, apparently sensing that this contest as to which elevator would arrive more quickly would somehow be a theological support. My elevator came first and as the priest ruefully joined me in the otherwise empty elevator he said to me: "Rabbi, what would you have said had my elevator arrived first?"

Noticing the twinkle in his eye as he asked the question, I replied in kind: "Father, one can never prove anything from a descending elevator!"

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#### THE BELIGERENT CONGREGANT

Disputes between members of the congregation are always painful, but for the rabbi they are especially dangerous. The rabbi may attempt to reconcile the disputants but oftentimes the rabbi will fail in this task. Then usually he will have made two enemies, for each disputant will resent that the rabbi did not back him fully in his self-justified claims.

This situation has occurred to me a number of times in my rabbinic experience. Once, one of the disputants in such a struggle demanded that I publicly denounce his opponent from the pulpit of the synagogue. When I refused to do so, he became my sworn enemy. Eventually his behavior toward me became completely unacceptable. He was asked by the officers of the synagogue to either desist or leave the synagogue. Naturally, he did neither.

Once, he took seriously ill and his son came to see me and demanded that I remove the curse that I had apparently placed upon him and which had caused his illness. I was complimented that he thought I had such powers, but I assured the son that I had done no such thing, and that in fact I prayed every day for his father's recovery.

Eventually the father recovered and the son convinced him that it was the rabbi's prayers that saved him. The father then agreed to "forgive" me and even adopted the compromise settlement that I had originally proposed to settle the dispute with the other congregant. I guess that it can help a rabbi if his congregants believe he is a miracle worker and possesses supernatural powers. However, I believe that the rabbi himself should never believe that about himself. Miracles, health and longevity are all G-d's department.

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#### THE ISRAELI CLERK

At the time that my wife and I made aliyah to live in Israel, the Ministry of Interior required certification through the chief rabbinate that any new immigrants were Jews in order to qualify for citizenship and immigrant benefits. After an hour-long wait at the ministry to be interviewed, my wife and I sat before a hard-faced clerk. I did not have a letter from a rabbi certifying to my Jewishness, but I felt confident that since I was on the chief rabbinate's list of approved rabbis whose letter would be accepted to verify the Jewishness of others, I would suffer no problem.

Well, I was wrong. The clerk acknowledged that my name did appear on that august list of recognized rabbis but she sweetly said: "Simply because you are acceptable to say about others that they are Jewish does not necessarily mean that you are yourself Jewish."

This baffling piece of legal logic astounded me. I told my wife to continue sitting at this clerk's booth and I hurried out and hailed a cab that delivered me to the house of a rabbinical friend of mine whose name was likewise on the approved list of rabbis. He wrote out a letter for me and I took the same

cab back to the Interior Ministry. My poor wife was still sitting at the clerk's booth as I breathlessly charged into the office and presented the letter to the clerk.

The clerk smiled at us and said: "Now you're Jewish!" And so we were. Never underestimate the power of a letter written by a rabbi who is on the approved list of the Israeli chief rabbinate.

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Rabbi Jachter's Halacha Files

(and other Halachic compositions)

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#### **Beit Din and Dina DeMalchuta Dina - Part 1**

**by Rabbi Chaim Jachter**

Introduction

A major issue that contemporary Batei Din (rabbinical courts) grapple with is when to apply the Talmudic principle of Dina DeMalchuta Dina, the obligation to honor the laws of land in which we reside. This principle certainly requires us to pay taxes and to obey civil rules such as traffic laws (see Shulchan Aruch Choshen Mishpat 369). However, a major area of debate is the extent to which Dina DeMalchuta Dina should be employed when resolving a monetary dispute between two Jews.

In this week's essay, we will explore a case that was adjudicated by the Beit Din of the Israeli city of Sderot that highlights the challenge of balancing the application of Halacha and civil law. Rav Yaakov Bareili, a Dayan (rabbinical judge) on the panel that adjudicated this case, presents his minority ruling in Techumin (26:350-354). We shall present his argument and what appears to be the reasoning of the majority opinion, which to the best of my knowledge has not been published. For a discussion of publishing minority opinions, which seemingly violates Halacha (C.M. 19:1), see Professor Eliav Schochetman's classic work Seder HaDin (pp. 371-374) and Techumin (19:235-238).

The Case

An employer fired his secretary when she was pregnant, in violation of an Israeli civil law that prohibits such a firing absent a special permit. The employer, on the other hand, explained that he fired her because the business was collapsing, not because of her pregnancy, and thus did not violate the civil law. Indeed, the business closed not long after the firing. The employer submitted an application for a firing permit five months subsequent to the firing, only to learn that such permits do not work retroactively. The secretary sued the employer in Beit Din for the five months of salary due to her in accordance with Israeli civil law.

Dina DeMalchuta Dina

The Rama (C.M. 369:11) rules that Beit Din applies the principle of Dina DeMalchuta Dina when the law is issued "LeTakanat Bnei HaMedinah," "For the betterment of society." For example, the Rama (C.M. 73:14) rules that Beit Din must honor a civil law forbidding a lender from selling an item he holds as collateral until one year has passed, even though Halacha permits a lender to sell the collateral after thirty days in case of default on payment of the loan. Such a law serves to better society, as the government perceives a need to stimulate the economy by easing the terms of repaying a loan.



The Shach (C.M. 73:39) strongly disagrees with the Rama. He writes: "Since according to Halacha the lender may sell the collateral after thirty days of default, how can we follow the Nochri laws and ignore the Torah law? G-d forbid - such a matter should not happen in the Jewish community!"

Nonetheless, many Poskim rule in accordance with the view of the Rama. These authorities include the Chatam Sofer (Teshuvot Chatam Sofer C.M. 44), Teshuvot Imrei Yosher (2:252:2), Teshuvot Doveiv Meisharim (number 77), Rav Moshe Feinstein (Teshuvot Igrot Moshe C.M. 2:62), and Rav Yosef Eliyahu Henkin (Kitvei HaGaon Rav Y.E. Henkin 2:96).

It seems clear that Beit Din should recognize the Israeli law forbidding the firing of a pregnant woman. This law clearly betters society, as it encourages couples to have children. An employer is tempted to fire a pregnant employee, since she is entitled to her salary even during the months after the birth during which she is legally permitted to miss work to take care of the newborn. Accordingly, women living under economic stress might choose not to have children in order not to jeopardize their jobs. The law, accordingly, provides an incentive for families to have more children without the fear of losing employment.

Applying the Details of Dina DeMalchuta Dina

The Sderot Beit Din, though, grappled with the question of whether it should respect the aspect of this Israeli civil law that forbids retroactive permission to fire a pregnant employee under special circumstances. Rav Bareili feels that this feature of the law was not made for the betterment of society. Rather, it is simply a matter of how to efficiently manage the application of the law. Thus, he argues, since the Beit Din is convinced of the legitimacy of the claim of the employer that he fired the woman because of problems with the business and that he was unaware that the law could not be applied retroactively, it is authorized to grant the retroactive exemption from the civil law and exempt the employer from having to pay the five months of salary.

We should note that the Beit Din panel unanimously agreed that Dina DeMalchuta Dina applies even to laws issued by the Israeli government. This follows the ruling of the Shulchan Aruch (C.M. 369:6) that Dina DeMalchuta Dina applies even to a Jewish king, the opinion of Rav Kook (Teshuvot Mishpat Kohan 144) that Dina DeMalchuta Dina applies even in a democracy, and the view of Rav Ovadia Yosef (Teshuvot Yechaveh Daat 5:64) that this principle extends to a Jewish government in Israel that does not abide entirely by Torah law.

Minhag HaMedinah

for Beit Din to accept the civil law is that monetary relationships, especially between employer and employee, very often follow Minhag HaMedinah, common business practice in that locale, unless the parties explicitly stipulated otherwise (see, for example, Shulchan Aruch C.M. 331). As the Chazon Ish (C.M. Likkutim 16:9) explains, "Minhag HaMedinah determines the intentions of the parties." Rav Bareili reports that his two colleagues on the panel believed that it should be assumed that the employer hired the secretary in accordance with the Minhag HaMedinah, which included the application of all the details of the law.

Rav Bareili, though, argues that the Rama (C.M. 331:1) rules that Minhag HaMedinah governs only when it is a common matter and has occurred numerous times. The Vilna Gaon (Beur HaGra Even HaEzer 66:48, in a related context) explains that one may assume the intention of the parties was to follow the Minhag HaMedinah only if the Minhag "was known to all." Rav Bareili argues that the rule that special permission to fire a pregnant employee does not apply retroactively is not sufficiently well-known to be recognized as a Minhag HaMedinah.

Moreover, Rav Bareili argues that this particular aspect of the law is arbitrary and unjust and thus should not be recognized by Beit Din. Among his precedents, he cites a ruling of Rav Moshe Shternbuch (Teshuvot VeHanagot 3:472), in which the latter recognizes severance pay as a legitimate Minhag HaMedinah, since it is just and fair. However, the law entitling severance pay to a worker who did not work for an entire year is

incompatible with the Torah view of justice in the context of the particular case that he adjudicated. As such, Rav Shternbuch concluded that such an unfair rule does not qualify as a legitimate Minhag HaMedinah.

Pesharah

Israeli Beit Din arbitration agreements typically include a provision authorizing the Beit Din to adjudicate the dispute "both in accordance with strict Halacha and Pesharah" (equity; see my Gray Matter 2 pp. 193-200). Rav Bareili argues that it is inequitable to hold the employer responsible for payment of five months salary in this case, because it emerged from the Beit Din hearing that the employer had sought to fire the secretary before she had become pregnant. She had pleaded with the employer to delay the firing for three months in order for her to qualify for unemployment insurance. He complied with her request, and it appears that the secretary, in turn, attempted to cynically take advantage of his kindness.

Rav Bareili notes the primary responsibility of Beit Din to rule in accordance with Torah law. He cites Rav Kook (Teshuvot Orach Mishpat number one), who explains when it is appropriate for the Beit Din to rule in accordance with equity when empowered to do so by the arbitration agreement:

Accordingly, Rav Bareili felt that the Beit Din's mandate to consider Pesharah precluded requiring the employer to pay the entire five months' salary.

The Majority Opinion

I surmise that the majority opinion in this case, which ruled in favor of the secretary, had practical considerations. Many Dayanim today, especially those who serve the Modern Orthodox community, seek to make Beit Din an attractive option for people to resolve their disputes so that they will not use civil courts, which is a severe violation of Halacha (see Shulchan Aruch C.M. 26 and my Gray Matter 2 pp. 164-178). These Dayanim are aware of two common critiques of Beit Din: that contemporary Batei Din seem to arbitrarily choose when to follow Halacha as opposed to civil law, and that contemporary Dayanim seem to arbitrarily decide when to rule in accordance with Pesharah in contradistinction to strict Halacha.

I have been told that, in an attempt to counter such perceptions, some Dayanim seek to rule as close as possible to strict Halacha and to implement Minhag HaMedinah to the fullest extent allowed by Halacha. For example, the Beth Din of America, in its Rules and Procedures (available at [www.bethdin.org](http://www.bethdin.org)), states in section 3 (e):

In situations where the parties to a dispute explicitly or implicitly accept the common commercial practices of any particular trade, profession or community... the Beth Din will accept such common commercial practices as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.

Accordingly, the Beit Din ruled in favor of the secretary because her view aligned more closely with the straightforward Minhag HaMedinah, which did not authorize the retroactive permit. The Dayanim did not consider Pesharah as a relevant factor because they wished to avoid the appearance of "arbitrarily" making use of equity as opposed to strict Halacha.

Conclusion

It is the intention of this discussion to enlighten our readers regarding the thought processes and approaches of contemporary Batei Din and to encourage the use of Beit Din as opposed to civil court whenever possible.

The intention of the clause "both in accordance with strict Halacha and Pesharah" is for Dayanim to rule in two manners. They should determine the application of pure Torah law to the case at hand, and they should see if the Halacha is not far from an equitable resolution of the case at hand. Then they should rule in accordance with the strict Halacha. If, however, they perceive that the application of the strict Halacha is inequitable, then a compromise should be made. Since the mandate of the Beit Din includes ruling in accordance with equity, the Mitzvah of 'Justice, justice shall you pursue' (Devarim 16:20) requires the application of Pesharah.

