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TO EMULATE LAVAN?

by *Rabbi Michael Hoenig*

At the beginning of Parashat VaYishlach, we learn of the much anticipated showdown between Ya'akov and Eisav. The Torah (BeReishit 32:5) states:

"VaYitzav Otam Leimor, Koh Tomerun LaDoni LeEisav, Koh Amar Avdecha Ya'akov Im Lavan Garti, Ve'Eichar Ad Atah", "And he [Ya'akov] commanded them [the Melachim], saying, so shall you say to my master to Eisav, 'Thus said your servant Ya'akov, I have lived with Lavan, and I have remained until now.'"

Rashi (ibid.) explains the Pasuk as follows:

"Davar Acher 'Garti' BeGematria Taryag, KeLomar 'Im Lavan HaRasha Garti, VeTaryag Mitzvot Shamarti, VeLo Lamadeti MeMa'asav HaRa'im", "another explanation, the Gematria of the word 'Garti' is equal to 613, as if to say that 'I lived with Lavan the Rasha, and I kept the 613 Mitzvot, and did not learn from his evil ways.'"

The simple explanation of Rashi is that Ya'akov remained loyal and dedicated to Hashem's commandments, and that he was not influenced negatively by the surrounding decadent society. However, Rav Meir Shapiro of Lublin has a very novel and beautiful understanding of Rashi. What was Ya'akov's true message? "Yes, I kept all the Mitzvot. However, I did not learn from the actions of Lavan. Indeed, Lavan was a crook and an extremely conniving individual. However, he had great passion and self-sacrifice in all the evil actions that he accomplished. I should have taken his passion, zeal, and sacrifice and used it to perform the Mitzvot." Ya'akov laments over the fact that he did not implement the characteristics of Lavan in a more righteous lifestyle.

Likewise, we can also learn from Eisav's personality. In Parashat Toledot, Ya'akov disguised himself as Eisav to secure the Berachot from his father. When Eisav discovered Ya'akov's plot, he began to weep. The Midrash Tanchuma explains that Hashem blessed Eisav with great peace and tranquility because of these tears. The Zohar, at the end of Parashat Toledot, explains that the heartfelt tears of Eisav placed Bnei Yisrael under his subjugation. As a result, we are currently in a deep and dark exile. The Zohar clarifies that we will only be redeemed when we also sincerely cry out to Hashem. The tears of Eisav put us into the dark exile. When we will have the fortitude to truly feel pain and cry out to Hashem, the exile will finally come to an end.

Similarly, Rabbi Zussia of Anipoli explained that he internalized

several characteristics of thieves that helped him in his Avodat Hashem. A thief always works, even at night. If he does not attain his goal the first time, he will continue to work hard to attain his goal the next time. He maintains a sincere love and commitment to his partners in crime. He sacrifices a great amount and works hard to attain small goals. He does not over-value his possessions. If an object is worth a lot of money, he will sell it for a minimal price. Even if he is caught, and they give him lashes or difficult torture, he will never admit to his actions. He will never boast of his accomplishments! He loves his profession very much, and he would not trade it for anything in the world.

We can truly learn from Lavan, Eisav, and the crook, but only their positive character traits. However, unfortunately, some of us fall into a dangerous trap. There are many people in life who do not share our political, worldly, or religious views. Mistakenly, we are stubbornly unwilling to learn anything from them. The Mishnah (Avot 4:1) teaches us the proper perspective: *"Ben Zoma Omeir: Eizehu Chacham? HaLomeid MiKol Adam, SheNe'emar 'MiKol MeLamdei Hiskalti'"*, "Ben Zoma says: Who is the wise one? The one who learns from everyone. As it (Tehillim 119:99) states, 'From all my teachers I gained understanding.'"

Rabbeinu Yonah (4:1) explains that David HaMelech, in the above Pasuk of Tehillim, states that he learned from every single individual. He never disregarded anyone's knowledge. He was the king, and yet, he was eager and willing to learn from each and every person. Rabbeinu Yonah compares the pursuit of knowledge to someone who lost one of their possessions. He will search around, asking everyone if they had seen it. Similarly, we should always be willing and eager to learn from every person, and doing so will, Be'Ezrat Hashem, enable us to develop into much more wholesome and enlightened people.

CERTAINTY AND THE RETURN TO BEIT-EL

by *Shimmy Greengart ('21)*

After the fiasco with Dinah in Shechem, Yaakov receives a command from Hashem: *"Kum, Aleih Beit El VeSheiv Sham, Ve'Aseiv Sham Mizbei'ach, La'Eil HaNireh Eilecha BeVarchacha MiPenei Eisav Achicha", "Arise, ascend to Beit-El and settle there, and make an altar there to the G-d who appeared to you when you were fleeing from Eisav your brother."* (BeReishit 35:1) This is the only time in Sefer Bereishit where Hashem directly commands someone to build an altar and offer Korbanot. Rashi explains that Yaakov received this unique instruction since he had not yet fulfilled a promise he made to Hashem. In last week's Parashah, Yaakov promised that, if Hashem protects him on his journey and brings him back safely to his father's house, he will give a tenth of everything he has back to Hashem (BeReishit 28:20-22). Rashi clarifies that Hashem is directing Yaakov

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to fulfill that vow, and that the affair with Dinah was Yaakov's punishment for delaying his responsibility (BeReishit Rabbah 81:2).

If you look at the actual text of the vow, however, this understanding seemingly falls apart. Yaakov stated in BeReishit 28:21, that one of the conditions of the vow was "VeShavti BeShalom El Beit Avi", "and I will return peacefully to my father's house." Yaakov only promised that he would give Ma'aser to Hashem after he returned to his father! Therefore, according to Rashi, Hashem is punishing Yaakov for neglecting to fulfill a vow that he was not yet obligated to complete!

The Abarbanel instead explains that Hashem's instruction to travel to Beit-El was really a commandment to leave Shechem. The Abarbanel states that the fact that the Canaanites refrained from attacking Yaakov after he destroyed Shechem was miraculous, and that we should not rely on miracles any longer than necessary. According to the Abarbanel's explanation, Hashem was not demanding Yaakov to thank him and fulfill his vow, but He was demanding this payment specifically in Beit-El to remove Yaakov from harm's way.

Later in his essay, the Abarbanel explains why Yaakov had to thank Hashem for salvation from Eisav's initial wrath, and not from Shechem. He states that when Yaakov made his vow when in Beit El for the first time, he was not sure if the vision of the ladder was prophecy, or merely an unusual dream. Thus, he was actually vowing that if the vision was truly prophecy, and he comes back safely, then he will give Ma'aser to Hashem. By the time Yaakov arrived at Shechem, Hashem had already saved him from Lavan, Eisav, and the man who wrestled with him at Nachal Yabok. He knew that G-d was with him, and therefore had the greatest obligation to thank him.

Perhaps this can be implemented to explain the BeReishit Rabbah's seemingly difficult opinion that the disaster in Shechem was to punish Yaakov for not yet fulfilling his vow. By this point, Yaakov should have had confidence in Hashem that he would be safely delivered to his father's house, because he had already been saved from so many other dangers. Yaakov should no longer have had any doubt in Hashem, and therefore he would be required to give Ma'aser. Hashem therefore punished him for his delay in fulfilling his responsibility

Sometimes, we say that we will complete a certain task only once we are absolutely certain that our information is correct. In many cases, however, we should not wait until we are convinced beyond a shadow of a doubt of the validity of our actions. Hashem always holds us responsible for our actions, therefore delaying is often detrimental to our cause.

THE NECESSITY OF JUSTICE IN THE PRESENCE OF THE SHECHINAH

Ned Krasnopol'sky ('19)

Editors' Note: The following article is based on a Shiur given by Rabbi Daniel Fridman to his Y17C Gemara Shiur at TABC.

Introduction

The Gemara (Sanhedrin 7a) records, "R. Shmuel bar Nachmani said in the name of R. Yochanan: Any Dayan who judges in accordance with Emet (absolute truth) causes the Shechinah to rest among Yisrael, as (Tehillim 82:1) states 'Elohim Nitzav Ba'Adat Eil BeKerev Elohim Yishpot', 'God stands in the divine assembly; among the divine beings He pronounces judgment.' And any Dayan who does not judge in accordance with Emet causes the Shechinah to remove itself from Yisrael, as it is stated (Tehillim 12:6), 'Mishod Aniyim MeAnkat Evyonim, Atah Akum Yomar Hashem', 'For the oppression of the poor, for the sighing of the needy, now will I arise, says the Lord.'" Clearly, the Almighty is concerned with the wellbeing of His people, and thus demands absolute truth in His subjects' system of judgement. He will dwell only where true justice presides. The institution of Beit Din is carefully calibrated to reflect this requirement.

The Shechinah as a Source of Din

In Parashat Shofetim, the Torah records, "Shofetim VeShoterim Titein Lecha BeChol She'Arecha Asher Hashem Elokecha Notein Lecha LeShevatecha VeShaftu Et Ha'Am Mishpat Tzedek", "Shofetim and Shoterim you shall appoint for yourself in all of your cities that Hashem, your God, is giving you for your tribes; who will judge the people righteous justice" (Devarim 16:18). This is the source, according to the Gemara (Sanhedrin 16b) for the appointment of judges and officers to a national court, tribal courts, and municipal courts. On the other hand, Rambam (Sefer HaMitzvot 176) writes that there exists a secondary source for the institution of a judiciary-- the Divine mandate given to Moshe to establish a Beit Din of seventy elders, as recorded in Devarim 11:16: "VaYomer Hashem El Moshe, Esfah Li Shiv'im Ish MeZiknei Yisrael", "and God said to Moshe, gather for Me seventy men from the elders of Yisrael." A parallel Rambam (Hilchot Sanhedrin 1:3) cites the same verse as the source for instituting a High Court.

Essentially, the Shechinah transferred itself onto the seventy elders, and Moshe Rabbeinu acted as the conduit. Their investiture gave them the power to adjudicate. This Beit Din was known as the Beit Din HaGadol, or Sanhedrin. Rambam notes (Hilchot Mamrim 1:1) that "the Beit Din HaGadol that resides in Yerushalayim represents the essence of the Oral Torah. Its members are the pillars of direction; law and order emanate from them to all of Yisrael... Anyone who believes in Moshe, our teacher, and in his Torah, must relate religious practices to them and lean upon them." Thus, Rambam views the Sanhedrin's connection to Moshe, and therefore the Shechinah, as an integral source of their judicial power. Since the Shechinah is a source of their judicial license, the ideals of the Shechinah must be reflected in their judgements, those being Emet

(absolute truth), and its derivatives: Tzedek U'Mishpat-- justice and lawfulness.

In order to ensure that justice is fully carried out under the auspices of the Almighty, the judiciary's connection to the Shechinah must be continuous. After all, "Ki HaMishpat Elokim Hu", "for judgment is God's" (Devarim 1:17). Therefore, Rambam notes that the Sanhedrin only has the ability to adjudicate capital cases when the Beit HaMikdash stands, and when the Beit Din resides within Yerushalayim. Without the Shechinah in Yerushalayim, the entire justice system operates on a diminished level. The Sanhedrin derives its power from the presence of the Shechinah in the "Makom Asher Hu Yivchar", "the place that He has chosen." On the other hand, as established by Sanhedrin 7a, the Shechinah demands the presence of truthfulness in judgement wherever it dwells.

The relationship is reciprocal in nature: a fully operational Sanhedrin requires the presence of the Shechinah, and the Shechinah requires the presence of a Sanhedrin that adjudicates with a sense of absolute truth. Their sense of truth is derived from, and maintained by the Shechinah. This mandate for truth actualizes itself in the Biblical prohibition established by Devarim 16:19: "Lo Tateh Mishpat, Lo Takir Panim, VeLo Tikach Shochad; Ki HaShochad Yi'aver Einei Chachamim Visaleif Divrei Tzadikim", "Do not pervert justice; do not display favoritism; and do not accept bribery, for bribery blinds the eyes of the wise and distorts words that are just."

The Exportation of the Shechinah through the Sanhedrin into Eretz Yisrael

The requirement of absolute justice is also realized through the obligation to institute courts throughout Eretz Yisrael. While Yerushalayim serves as the center of justice, as demonstrated by the presence of the Sanhedrin, the Shechinah demands an exportation of justice from the Beit HaMikdash into the surrounding land to ensure that justice is truthfully and ubiquitously administered throughout the nation of Israel. First of all, the Sanhedrin is tasked with forming the lower municipal and provincial courts (Rambam Hilchot Sanhedrin 5:1). Once a lower court is established by the Sanhedrin, the lower court is unable to create other courts. Only the Sanhedrin, the court closest to the Shechinah, is able to establish new courts. The Gemara (Sanhedrin 16b) elaborates that the system of investing courts with judicial power is modelled after Moshe's investiture of the original Sanhedrin, during which he acted as both a conduit, and as a full Sanhedrin.

When a lower court is uncertain of its verdict, it must travel to Yerushalayim so the Sanhedrin can settle the case, and so the lower Beit Din can learn how to adjudicate similar cases. As noted by Rambam (Hilchot Mamrim 1:1), in a case of uncertainty, the lower Beit Din travels through a hierarchy of courts. First, it travels to the Beit Din on Har HaBayit. If the case remains unresolved, all of the litigants and judges travel to the next higher court, until they arrive at the Beit Din HaGadol within the Lishkat HaGazit in the Beit HaMikdash. This protects the integrity of all judgements made throughout Eretz Yisrael, as it ensures that all courts are continuously connected to the Beit Din HaGadol in Yerushalayim, and consequently, to the Shechinah itself.

Different Standards of Din Inside and Outside of Eretz Yisrael

As the Shechinah rests in Eretz Yisrael, it is expected that a higher standard of Din would be present throughout the land. This is

in fact true, both in terms of ubiquity and judicial process. First of all, the Gemara (Makkot 7a) establishes that the Sanhedrin has jurisdiction inside and outside of Eretz Yisrael. However, it notes that in Eretz Yisrael, there is an obligation to establish Batei Din in every province and municipality, while outside of the land, "Atah Moshiv BeChol Pelech U'Pelech, Ve'I Atah Moshiv BeChol Ir Va'Ir", "you establish courts in each and every district, but you do not establish courts in each and every city." Rambam's formulation of this Gemara is rather difficult; he writes that *Beit Din Shel Pelech* is not a requirement outside of Eretz Yisrael, and he makes no mention of municipal courts (Hilchot Sanhedrin 1:2). The Kesef Mishneh and Lechem Mishneh (ibid.) both argue that he must have left out the word "Ela", thereby interpreting the Rambam as stating that the *Beit Din Shel Pelech* would be the only required Beit Din outside of Eretz Yisrael. Perhaps the most extreme interpretation of the Rambam is that of the Ramban (Devarim 16), who interprets the Rambam to mean that no formal Beit Din is to be instituted outside of Eretz Yisrael. Clearly, Eretz Yisrael has a higher standard of justice. This necessity for enhanced justice is a direct result of the presence of the Shechinah. Beit Din must be widespread to ensure that everyone has access to the Shechinah. Without courts that will adjudicate cases, the Shechinah will remove its presence from Yisrael. Lawlessness in the land is not a viable option. A lack of justice is a corruption of justice, a lack of absolute truth.

Additionally, the Halachah treats the Batei Din in Eretz Yisrael as having greater judicial merit. The Mishnah (Makkot 7a) records that "concerning one whose verdict was delivered and he was sentenced to death and he fled, and he then came before the same court that sentenced him, they do not overturn his verdict and retry him. Rather, the court administers the previous verdict." The Mishnah then states, that in "any place where two witnesses will stand and say: We testify with regard to a man called so-and-so that his verdict was delivered and he was sentenced to death in the court of so-and-so, and so-and-so and so-and-so were his witnesses, that person shall be executed on the basis of that testimony." The Gemara (ibid.) raises an internal contradiction within the Mishnah: in the first case, it is implied that the sentenced individual would be retried if he went to a different court, while the second case implies that the verdict would not be overturned in a different court if two witnesses testify to the first court's verdict. The Gemara elaborates that the first statement involves a situation in which the defendant fled from Eretz Yisrael to outside Eretz Yisrael, while the second statement involves the reverse scenario. Whenever one flees from outside of Eretz Yisrael to Eretz Yisrael, their original verdict is overturned, "Mipnei Zechutah Shel Eretz Yisrael", "because of the merit of Eretz Yisrael." Rambam (Hilchot Sanhedrin 13:7) opines that Beit Din would not overturn the original verdict if the original Beit Din travelled to Eretz Yisrael, implying that the overturning factor is not necessarily a "Zechut" of the land, but rather a change in Beit Din. Ritva

(Makkot 7a) explains that “*Zechutah Shel Eretz Yisrael*” refers to the *Zechut HaTzalah* present throughout Eretz Yisrael. Perhaps as a function of their judicial proximity to the Shechinah, the Ritva felt that Batei Din in Eretz Yisrael were able to adjudicate on a different level, and thus save the defendant from a verdict not in his favor.

Conclusion

The Gemara on Sanhedrin 7a establishes that in order for the Shechinah to dwell among Am Yisrael, there must be a presence of absolute truth in our judgements. The only way to “judge in accordance with Emet” is to judge in accordance with Halachah and within the broader and proper framework of Beit Din. Any deviation is considered to be a form of corruption, and consequently removes the Shechinah from our midst. The Sanhedrin in Yerushalayim must be continuously connected to HaKadosh Baruch Hu, and justice must be present throughout His land. The very land itself, as a consequence of the presence of God within it, mandates a higher level of justice, and thus provides its inhabitants with a type of judicial protection. Simply put, “*Ki HaMishpat Le'Elokim Hu*”, “for judgment is God’s”, and it is the Beit Din’s duty to ensure that it remains incorrupt.

ARE PETS MUKTZAH?

by Rabbi Chaim Jachter

The Gemara (Shabbat 128b) states that animals are Muktzah. The Magid Mishnah (commentary to Rambam Hilchot Shabbat 25:25) explains that this is because animals have no utility on Shabbat and Yom Tov. Animals’ lack of purpose makes them comparable to sticks and stones, which are classified as “*Muktzah Machmat Gufa*”, “*Muktzah by its very nature*.”

The Rishonim, however, debate whether an animal being used to quiet a child from crying is considered to be Muktzah. Tosafot (Shabbat 45b s.v. Hacha), Mordechai (Shabbat 316) and Hagahot Oshri (commenting on Rosh, Shabbat 3:21) cite authorities who believe that such animals are not Muktzah by virtue of the fact that they have utility. Yet Tosafot, Mordechai, Hagahot Oshri, and Rosh (cited in the responsa of Maharach Or Zarua, 82) reject these authorities because of two possible considerations. First, an animal’s ability to quiet a child from crying is simply insufficient cause to remove the creature’s status as Muktzah Machmat Gufa. Second, the rabbis classified all animals as Muktzah, regardless of whether a particular animal has utility on Shabbat and Yom Tov. This is an example of “*Lo Plug Rabbanan*,” a type of rabbinic legislation which was instituted for a reason, yet embraces even the cases for which the initial reason no longer applies. Shulchan Aruch (Orach Chaim 308:39) accepts the position that all animals are considered to be Muktzah without exception. Indeed, Shulchan Aruch Harav (308:78) rules stringently in this regard.

The question arises, however, whether circumstances have changed sufficiently since the time of the Rishonim to warrant a different Pesak. Modern authorities discuss animals which can be used to amuse children, but not those whose entire purpose is to entertain and provide companionship to their owners. Rav Shlomo Zalman Auerbach (cited in Shemirat Shabbat KeHilchata 27, footnote 96), in fact, raises the possibility of making this distinction, yet he

rules that pets are Muktzah. Rav Moshe Feinstein (Iggerot Moshe, O.C. 4:16 and cited in “The Halachos of Muktzah” p. 7 of the Hebrew section, paragraph twenty-four) and Rav Ovadia Yosef (Teshuvot Yabia Omer, 5:26) also reject the possibility of making such a distinction. It appears that this question is contingent on one’s acceptance of one of the two reasons (stated above) offered by the Rishonim) for why an animal that can be used to quiet a child from crying is Muktzah. If one adopts the position that the rabbis have deemed all animals to be Muktzah, regardless of their utility, then even household pets are to be included in this category. However, if one assumes the position that the possibility of using an animal to amuse a child is insufficient utility to remove it from being considered Muktzah, then if a pet is sufficiently useful to their owners on Shabbat and Yom Tov, it may not be Muktzah.

Rabbi Shmuel David (Sheilot U’Teshuvot MeiRosh Tzurim 38:6) concludes his discussion of this issue with a citation of the opinion of Rabbi Aharon Lichtenstein: It is proper to conduct himself in accordance with the stringent opinion in this matter, since this appears to be the opinion of Tosafot, Mordechai, Hagahot Oshri, and Rosh. Yet one need not admonish those who practice in accordance with the lenient opinion in this matter, since this issue is embroiled in a dispute amongst the Rishonim and the logic of those who rule leniently is compelling. However, even according to the stringent opinion it is reasonable to say that one may move a household pet to alleviate its suffering (Yabia Omer 5:26). This is because some authorities permit moving items which are undoubtedly Muktzah, to spare an animal from suffering (see Mishnah Berurah 305:70 and Chazon Ish 52:16). Since the question as to whether household pets are Muktzah is in dispute, there exists a Sefek Sefeika, a double doubt, which would lead one to rule leniently in this regard.

It should be emphasized, though, that one may not violate Shabbat even to save an animal’s life. One may, however, ask a non-Jew to do something Assur for a Jew on Shabbat, in order to alleviate an animal’s suffering. In addition, one may give a sick animal medicine on Shabbat (see, generally, Mishnah Berurah 332:5,6, and 9 and Shemirat Shabbat Kehilchata 27:54-58).

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