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A GATHERING OF HEROES

By Mr. Strassman, Guidance Department

In Parashat Emor we encounter the Mitzvah of Kiddush Hashem, sanctifying God's name. Hashem commands us, "*VeLo Techalelu Et Sheim Kodshi VeNikdashiti BeToch Bnei Yisrael Ani Hashem Mekadishchem,*" "You shall not profane My holy name, and I will be sanctified among the children of Israel, I am the Lord who sanctifies you" (Vayikra 22:32). What does it mean that God will be sanctified among His people? Rashi (ibid. s.v. *VeLo Techalelu*) presents the simple understanding of these words as the charge to give up one's life rather than violate the Torah: "*Masor Atzmecha VeKadeish Shemi,*" "Surrender yourself and sanctify My name." Indeed, countless Jews throughout our history have fulfilled this mandate to die Al Kiddush Hashem. However, many of these heroes did not intentionally surrender themselves, as Rashi described; nobody volunteers to be a victim. The recent terror attacks in Poway and Pittsburgh serve as a painful reminder that Jews do not always give up their lives by choice. It almost seems like our enemies are the ones who decide upon our martyrdom, and yet we believe that Jews who die in this way have made a Kiddush Hashem. One can be forgiven for feeling confused by this interaction. When a terrorist chooses to commit murder, the Jews who perish are credited with having fulfilled the command of *VeNikdashiti BeToch Bnei Yisrael*. How can we sanctify God without making the choice to do so?

One approach to this question unfolds upon examining another Halachah we learn from this verse. According to the Talmud Bavli (Berachot 21b), the parts of prayer that are especially holy, like Kaddish and Kedushah, can be recited only in the presence of a Minyan. This rule develops from a Gezeirah Shavah, a contextual connection established between two verses that share a common word or phrase. Here in Parashat Emor the Torah says that God will be sanctified "*BeToch Bnei Yisrael,*" "**among** the children of Israel" (ibid.), and later in Parashat Korach we find a similar phrase when Hashem instructs Moshe and Aharon to separate themselves "*Mitoch Ha'Eidah HaZot,*" "**from among** [Korach's] gathering" (BeMidbar 16:21). Since the word "among" appears in both verses, we can apply the context

of one to the other; the members of Korach's group are identified as a gathering, and so Hashem will be sanctified among a gathering as well. Furthermore, the Sages (Megillah 23b) use another Gezeirah Shavah to show that the "gathering" of Korach refers to a group of ten. The group of ten spies who deliver a disparaging report about the land of Israel in Parshat Shelach are called an "*Eidah Ra'ah,*" "An evil **gathering**" (BeMidbar 14:27), and so when Hashem calls Korach's group "*Ha'Eidah HaZot,*" "This **gathering,**" it must also refer to a group of ten. All told, the verse "*VeNikdashiti BeToch Bnei Yisrael*" teaches that Hashem will be sanctified among a gathering of ten.

Interestingly, the Talmud Yerushalmi (Berachot 7:3) employs "*VeNikdashiti BeToch Benei Yisrael*" as part of an entirely different Gezeirah Shavah to demonstrate the same Halachah. In this case, the connecting verse comes from Parashat MiKeitz, when Yaakov's sons travel to Egypt to buy food during a famine. "*VaYavo'u Bnei Yisrael Lishbor BeToch HaBa'im,*" "And the children of Israel came to purchase **among** those who came" (BeReishit 42:5). Again, the Sages point to the recurring word "*BeToch*" in establishing a contextual parallel between these two verses. Without Yoseif and Binyamin, the children of Israel were a group of ten when they traveled to Egypt "**among** those who came," and therefore a group of ten is required in order for God to be "sanctified **among** the children of Israel." Thus, the Yerushalmi also maintains that a Minyan is required when reciting Kaddish and Kedushah during prayer.

A compelling theme emerges from this analysis. God said He will be sanctified among the children of Israel, and Chazal forge connections between that statement and three groups of Jews. The first group rebelled against Moshe and the divinely established structure of the priesthood. The word "*Mitoch,*" "From among," was part of Hashem's instruction that Moshe and Aharon step *away* from Korach's rebellion while He destroyed them. The next group of Jews spread fear and doubt among the nation through negative reports about the land of Israel. God actually called these spies an "*Eidah Ra'ah,*" "An evil gathering," and their sin ultimately led to forty additional years of wandering in the desert. The final group of Jews tried to hide their familial ties by mixing in "*BeToch,*" "Among," the crowds. Hoping to avoid suspicion, they separated from each other and entered Egypt through different gates (Rashi ibid. s.v. *BeToch HaBa'im*). Here, Bnei Yisrael were seemingly afraid to show their unity and strength at a time of uncertainty. All three of these groups display negative or deficient attributes, yet they comprise the framework by which we understand that Hashem is sanctified among the Children of Israel. Clearly, our shortcomings do not negate our significance as a group of Jews. Chazal believe our gathering is inherently valuable to our Creator; He is sanctified by our presence regardless of our actions.

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The Torah may be communicating two distinct messages. *“VeLo Techalelu Et Sheim Kodshi”* teaches us that we must be careful not to disgrace God’s name through our actions. Certainly, our conduct matters, and we must follow Hashem’s Torah. At the same time, *“VeNikdashiti BeToch Bnei Yisrael,”* God is sanctified among *His children*. At its core, the Mitzvah is a statement about our collective identity as the Am HaNivchar. Together, we reflect the part of Him that lives in us. Thus, any gathering of Jews can be a Kiddush Hashem. Ten rebellious Jews attempting to thwart Torah leadership are still a Minyan. Ten sinful spies who spurn the land that is our home and heritage are still a Minyan. Ten Jews hiding from the truth while scattered among the masses are still a Minyan. Perhaps God is ultimately sanctified by who we are, not what we do.

The loss of innocent Jewish lives is a tragedy beyond measure, and we rightly recognize those whose flames were extinguished among our Kedoshim. While many do not surrender their lives by choice, we believe they enter an exalted gathering through their sacrifice. It is this gathering of heroes who embody the reflection of Godliness that defines a Jew, their memory resting at the heart of our collective identity as B’nei Yisrael. They remind us who we are, and there is no greater Kiddush Hashem.

THE OTHER WAY OF GIVING

By Menachem Kravetz ('20)

In honor of Mother’s Day, many children give their mother a present in order to show their appreciation to her and thank her for all that she does for them each and every day. In giving these presents, children are able to see their mothers’ faces light up because of the happiness that she gets in receiving these presents. But while giving gifts face-to-face is one way to make someone else’s day, there is another way to give a gift.

In Parashat Emor, Hashem instructs the owners of fields, *“UveKutzrechem Et Ketzir Artzechem Lo Techaleh Pe’at Sadecha BeKutzrecha VeLeket Ketzirecha Lo Telakei Le’Ani VeLageir Ta’azov Otam Ani Hashem Elokeichem,”* “And when you reap the harvest of your land, you shall not reap all the way to the edges of your field, or gather the gleanings of your harvest; you shall leave them for the poor and the stranger: I the LORD am your God” (VaYikra 23:22). It seems peculiar that Hashem would tell the farmers to leave uncollected crops for the poor and the stranger. Why doesn’t Hashem tell the farmers to harvest the crops (seeing as they own the proper farming equipment) and then give them away?

The Sforno suggests that the way to ensure that one will have financial success is through giving. The only way that one can guarantee financial success in from his crops is through giving charity to the deserving.

Another answer centers on the idea that the Torah

is not merely concerned with the financial welfare of a poor person, but also his or her self-esteem. When someone needs to take something from someone else, it can be quite embarrassing for them to come and admit that they rely on someone else for basic needs, as they are not able to get them by themselves. For this reason, Hashem tells the farmers to simply leave their crops instead of giving, so that the poor people can come take their necessities in a private, non-embarrassing way.

Today, most people are not farmers; how can we fulfill this goal of giving necessities in a private way?

One way is by giving anonymous presents to those who need. In doing so, one is able to show that he does not want anything in return, and is giving this gift only for the sake of helping another person; meanwhile, the recipient does not have to meet the donor. Giving presents is just a way to make the receiver happy. The giver should not give gifts to others in order to get a reward or seem like someone special, but in order to make the other person’s day and ensure their happiness and well-being.

As Lag Ba’Omer approaches, this lesson should be taken to heart. Rabi Akiva’s students were not helpful to one another, and they cared only about themselves and the rewards they got. They only cared about their own Torah study, and disregarded Ve’Ahavta LeRei’acha Kamocha. After the tragedies that happened to these students, it is important to act in a way to avoid this happening again. One should not seek out reward for giving gifts, but should sit in the backseat and let people benefit from anonymous acts. The greatest joy one can get is knowing that he helped someone too embarrassed to say that they need it. It is very important to show love for those who need it, even if they do not know that the love is coming from you.

GRAPPLING WITH THE RECALCITRANT ACH MUMAR

PART THREE

By Rabbi Chaim Jachter

Editors’ Note: This article is the third and final piece of a series on extracting a Chalitzah from an uncooperative, irreligious brother-in law. The first and second articles of the series can be found on <https://www.koltorah.org>

This week we conclude our discussion of the recalcitrant Ach Mumar, apostate brother-in-law who refuses to provide Chalitzah for his sister in law (Yevama). Rav Yehudai Gaon argues that a Yevama does not require Chalitzah for an Ach Mumar. Many have questioned the ruling of Rav Yehudai and we outline eight reasons offered to explain his approach. The first two parts of this discussion is archived at www.koltorah.org

Reason Number Five for Rav Yehuda’i Ga’on

Ohr Zaru’a offers another reason for excusing an Ach Mumar from Yibum and Chalitzah. The Pasuk (Devarim 25:5) states that Yibum and Chalitzah apply *“Ki Yeishev Achim Yachdav,”* “when brothers reside together.” Ohr Zaru’a argues

that if the husband remained a loyal Jew and the brother is a Mumar, then one can hardly describe this as "*Ki Yeishevu Achim Yachdav.*"

This approach is particularly shocking because post-Talmudic authorities usually do not enjoy the right to make original Halachic Derashot from a Pasuk and then apply it to be Halachah LeMa'aseh. Teshuvot Torat Chesed defends Ohr Zaru'a based on a Talmud Yerushalmi which uses the words "*Ki Yeishevu Achim Yachdav*" to exclude maternal brothers. The Gemara states that maternal brothers do not usually reside in the same house. Thus, the phrase "*Ki Yeishevu Achim Yachdav*" does not apply to them. The Torat Chesed reasons that the same applies to an observant brother and a Mumar brother - they hardly can reside in one home. The same concept related to Lot and Avraham Avinu that they very not able to reside together applies to these brothers living dramatically different lifestyles. Thus, the laws of Yibum and Chalitzah do not apply to them.

Our response is that it is extraordinarily surprising that a Rishon would create a Derashah that does not appear in the Gemara. Indeed, Netziv makes this argument against Rav Yehuda'i Ga'on. He asked how a Gadol who lives after the time of the Gemara could have the authority to permit something that one would have expected to appear in the Gemara were it to be true.

Reason Number Six for Rav Yehuda'i Ga'on

Avnei Miluim suggests an explanation that could justify Rav Yehuda'i Ga'on's position. There is an opinion amongst the Rishonim (Teshuvot HaRosh Kelal 17 number 10) that a Mumar does not inherit his father's property. His conclusion is derived from an episode in BeReishit where Hashem promises Avraham that (BeReishit 17:8) He will give the Land of Kena'an "*Lecha ULeZaracha Acharecha*" "to you and your descendants after you." The Ge'onim interpret the term "descendants" to include only those of the Jewish faith, because it is written in the previous Pasuk (ibid. 17:7), "*LeHiyot Lecha Le'Elokim ULeZaracha Acharecha,*" "To be for you a God, and for your descendants after you."

Only those who acknowledge that Hashem is God are considered descendants of Avraham, whereas those that deny Hashem are not considered Avraham's children. This can also be seen from the promise Hashem made to Avraham that his descendants will be exiled to Egypt, and then develop into a great nation. Although Avraham had two children, Yishmael and Yitzchak, the promise was fulfilled exclusively through the 'non-apostate,' Yitzchak, as it is written, "*Ki BeYitzchak YiKarei Lecha Zara,*" "For Yitzchak shall be called after your name" (BeReishit 21:12). Similarly, although Yitzchak had two children, Hashem's promise was fulfilled only through Yaakov (who went to Egypt), and not through Eisav.

Consequently, one can assert that since a Mumar does not inherit his father's property he will also not bind the widow to Yibum. This connection between inheritance and Yibum is taught in Yevamot 17b. The Gemara rules that the Mitzvah of Yibum does not apply to a maternal brother because the Torah indicates that it applies only for those who "share" an inheritance. Rashi (s.v. *HaMeyuchadim BeNachalah*) explains that they inherit one

property and bequeath one to the other. Rav Moshe Sofer, known as Chatam Sofer, (Teshuvot Even HaEzer Cheilek Bet Siman 74) expresses astonishment at the resolution of Avnei Miluim. Avnei Miluim's explanation is built on his assertion that Rashi connects the issue of inheritance from the father and Yibum. In fact, Rashi did not mention inheriting from the father. The only issue Rashi addressed regarding inheritances is the ability for the brothers to inherit and bequeath to one another.

Hence, our Gemara cannot be cited as support for Rav Yehuda'i Ga'on. On the other hand, to defend Avnei Miluim we may note that the second Rashi does mention that the brothers share an inheritance from the father. Thus, if the brothers do not share a Nachalah from the father, the brother is not Zokeik LeYibum.

However, Rav Shlomo Kluger (Chochmat Shlomo Even HaEzer 157) rejects Avnei Milu'im noting that the Mumar is disqualified from inheritance only as long as he is an apostate. However, since the Mumar has the potential to return to the Jewish fold, he has the potential to inherit and thus, is not disqualified from Chalitzah¹.

Reason Number Seven for Rav Yehuda'i Ga'on

The Gemara (Bava Kama 110b-111a) suggests that if a woman's husband dies without children and her brother-in-law is a Mukeh Shechin (a man afflicted with boils or leprosy), then she should not be required to perform Yibum or Chalitzah. She should be able to claim that "ADa'ata DeHachi Lo Kidshah Atzmah" - she did not marry her husband with the intent that if he dies she should have to marry the repulsive brother-in-law.

The Gemara rejects this suggestion, noting it is clear that it is worthwhile for her to do Yibum with her repulsive brother-in-law. (Note: this is Tosafot's explanation of the Gemara.) This is because the Gemara explains that a woman prefers to be married to even a marginal rather than to live alone.

Maharam MiRutenberg suggests that the Gemara here provides proof for those Ge'onim who rule that if the husband's brother was a Mumar at the time of the wedding and the husband later dies, then the widow does not have to do Yibum with the Mumar and may remarry even without Chalitzah. This is because it is clear that the bride married the man only on the condition that she would not have to do Yibum with his brother who is a Mumar. This is because a Mukeh Shechin is at least a marginal husband. However, a Mumar does not even qualify as a marginal husband.

¹ Rav Shlomo Kluger notes that if one argues that a Mumar is excluded from Yibum and Chalitzah, then if a deceased husband had only one child and that child is a Mumar, his widow should require Chalitzah! This argument is never advanced, argues Rav Shlomo Kluger, due to the Mumar's potential to return. Accordingly, Rav Shlomo Kluger concludes that a Mumar is not excluded from Yibum and Chalitzah.

This proof does not fit, however, with Rashi's explanation of the Gemara. Rashi explains the Gemara to be saying that it is worthwhile for her to marry the first brother even with the risk that later she may have to do Yibum or Chalitzah with her repulsive brother-in-law. Thus, one could argue that it is worthwhile for the wife to be married to her first husband even though she may fall into Chalitzah with an Ach Mumar. This could be yet another reason why Rashi rejected the lenient view of Rav Yehuda'i Ga'on².

Reason Number Eight for Rav Yehuda'i Ga'on

The final explanation for Rav Yehuda'i Ga'on is that a Mumar has the status of a Goy. The Gemara (Chullin 4a) compares a Mumar to a Kuti³. The Gemara (Chullin 6a) also records that Chazal proclaimed that a Kuti is not Jewish, therefore, one could argue that the Mumar is not Jewish.

In addition, Melachim II recounts that the Assyrian king Shalmaneser V exiled the ten tribes of the Northern Kingdom of Israel in 722 B.C.E. (Melachim II 18:9-11). According to Rabbinic tradition, the ten tribes were scattered among the nations, but will one day return (Mishnah Sanhedrin 10:3). Rav Asi (Yevamot 16b) asks why we are not concerned that every gentile who marries a Jew is a descendant of the ten lost tribes, and therefore, every intermarriage is, in fact, a case of Safeik Kiddushin. Shmuel responds that the Rabbis of that time decreed that the ten tribes had the status of complete gentiles. There are two conflicting implications that arise from this source. The first is that Jewish status endures throughout the generations, even if one is not living as a Jew. Although the ten tribes had been fully assimilated more than a thousand years before the Talmud's discussion took place, the implicit assumption is that without the special Rabbinic decree, their Jewish status would endure. The second implication of this source is that Jewish status is revocable – which is how the Rabbis were able to declare them gentiles. Thus, one could

² In a surprising ruling, Rav Moshe Feinstein (Teshuvot Igrot Moshe Even HaEzer 4:121) applies Maharam MiRutenberg's approach to permit a widow to marry in an extreme situation where a woman married a husband about to enter military combat and had only one brother who was an avowed atheist and communist party official. In such an extreme situation argues Rav Moshe, it is obvious that the woman entered the marriage with the implicit condition that the marriage is invalid if her husband dies without children. Rav Moshe (and Rav Ovadia Yosef) regards a militant atheist as the Halachic equivalent of an apostate.

³ Kutim is the rabbinic term for the non-Jewish people introduced by the Assyrians to Northern Israel (Melachim II Perek 17). They are referred to in Sefer Melachim as Shomeranim. These people underwent a conversion under questionable circumstances and their status as Jews is subject to a debate that rages throughout the Mishnah and Gemara.

conclude that just as Chazal was able to declare the Aseret HaShevatim to be non-Jewish, so too they can declare a Mumar to be non-Jewish.

On the other hand, one could argue that absent a specific Talmudic era decree regarding a specific group of apostate Jews, a Jew retains his status as a Jew despite his apostasy.

Conclusion

The arguments regarding the Ach Mumar have been raging for more than a millennium and appear to be unresolved. Each of the eight explanations for Rav Yehuda'i Ga'on's bold ruling is subject to considerable debate. In practice, Rav Ovadia Yosef (Teshuvot Yabia Omer 9: Even HaEzer 36-37) rules that we may permit the widow to remarry only if there is another component to supplement the opinion that an Ach Mumar is not Zokeik LeYibum.

In the case in which Rav Ovadia permitted the widow to remarry, in addition to the brother being classified as an Ach Mumar, there was a significant flaw in the Halachic validity of the original wedding. In such a situation there exists a Sefeik Sefeika (double doubt) which permits one to rule leniently. Without a second Safeik, Rav Ovadia was unwilling to rely solely upon Rav Yehuda'i Ga'on's lenient approach.

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