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**Parashat Acharei Mot**

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## KEEPING THE FAITH

*By Ilan Tokayer ('03) Z"l*

**Editors' Note:** In loving memory of TABC graduate Ilan Tokayer Z"l, this article, which he wrote in his sophomore year of high school, has been reproduced, entirely unedited, from Kol Torah Vol. 10 No. 30. In the wake of Yom HaSho'ah and the horrific events of Pittsburgh and Poway just this year, it is fitting that we dwell on the memories of those no longer with us, and on their eternal contributions to the remnants of the Jewish People. May we bear them in our hearts and minds forever.

The first of this week's Parshiot, Acharei Mot, ends with a list of prohibited Arayot. The Perek of Arayot opens with a seemingly strange Pasuk: *כמעשה ארץ מצרים אשר ישבתם בה לא תעשו וכמעשה ארץ כנען אשר אני מביא אתכם שמה לא תעשו ובחקתיהם לא תלכו* (Vayikra 18:3). Here, Hashem warns us about following the ways of the people of Mitzrayim and the people of Canaan. This leads us to ask a number of questions. First, what are *מצרים ארץ כנען* and *מעשה ארץ מצרים*? The Ramban (citing the Ibn Ezra) explains that the *מצרים ארץ מצרים* refers to Avoda Zara and *מעשה ארץ כנען* refers to Arayot. The balance of the Perek presents the various prohibitions of *מעשה ארץ כנען*, or Gilluy Arayot that prevail in the land that they are about to go into and serves as a warning so that Bnai Yisrael should not be like the Goyim amongst whom they will live. This is demonstrated through the Torah listing the prohibition of sacrificing one's children to the Molech together with the Arayot. Worshipping Molech is not an *ערוה*; rather it is a practice of idolatry that was common in *ארץ כנען* at that time. This practice involves passing one's children through furnaces as a human sacrifice to the Molech.

Now that we understand the term *מעשה ארץ כנען*, we ask why does Hashem now instruct Bnai Yisrael not to partake in *מעשה ארץ מצרים*? They will not be among the Egyptian idolaters in the future; they will be among the immoral Canaanites. To answer this, we must understand where Bnai Yisrael's

historical and cultural background. At this point Bnai Yisrael have just exited Mitzrayim after having been exiled there for 210 years, and have been very influenced by the Egyptian culture. Now when they are entering Eretz Canaan, also a place of many Toavot, Hashem is coming to the people to emphasize to them that they are an independent nation. No longer do they have a foreign nation ruling over and thereby influencing them. The Jewish people are now responsible for themselves (for better or for worse), with their own leaders, religion, and ultimately their own culture. This Perek opens with Toavot Mitzrayim in order to show this to Bnai Yisrael.

In our days, we are influenced by so many foreign aspects of society and in the blur of modern culture it is sometimes hard for us to distinguish what is right and wrong. As Jews, we must be able to filter the filth out of our environment and not give in to the Toavot of our surroundings. Bnai Yisrael did not even realize the influence of external society on them when they came out of Mitzrayim, and that is why Hashem speaks to them in this Perek in order warn them about it. We must remember that we too cannot live Jewish lives with a foreign nation ruling over us and thereby influencing us. We must learn to take responsibility for ourselves and live in an environment with our own leaders, religion and culture, and only through that will we be able to live our lives as proper Jews.

I would like to thank Harav Roni Dinnar and Arie Katz for helping me with the information for this article.

## PIRKEI AVOT LIGHTING THE WAY TO A PATH OF Unity

*By Ezra Sepowitz ('20)*

Many people have the Minhag (custom) to learn a chapter of Pirkei Avot each Shabbat, beginning after Pesach and concluding before Shavuot or Rosh HaShanah. The Gemara (Bava Kamma 30a) states that one who wishes to be a "*Chasida*," "Pious person," should learn Pirkei Avot. Rav Pinchas Kehati, the renowned banker from Tel Aviv who composed a Hebrew commentary on the entire Mishnah in 1963, states in his introduction to Pirkei Avot that this Masechet is different from all others in the sense that it does not discuss matters of Halachah, but rather, it accentuates matters related to "*Mussar VeDerech Eretz UMidot Tovot*," "Ethics, courtesy, and good character traits." Rav Kehati continues by describing the nature of the name of the tractate, Avot. He explains that the term Avot (literally, fathers) refers

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to the "*Avot Ha'Olam*," "Fathers of the world," whose opinions, which are "*Ikarot LeChol Chochmah UMitzvah*," "Fundamental to all wisdom and commandments," are expressed in the tractate. The Mishnah in Masechet Eiduyot (1:4) identifies the "*Avot Ha'Olam*" to be the prominent Jewish leaders since the time of Moshe Rabbeinu.

The custom to learn this Masechta during the historical time of redemption (Pesach to Shavuot) can be dated back to the days of Rav Amram Ga'on, who lived during the 9th century, and it can be found in the works of countless Rishonim and Acharonim as well. In fact, Rav Moshe Isserles, one of the leading Ashkenazi Poskim, strongly encourages people to uphold this Minhag (Orach Chaim 292:2).

A sixth Perek, known as Perek Kinyan Torah, was appended to the tractate after the completion of the Mishnah, to allow the study of one Perek each week during the six weeks from Pesach to Shavuot. The reason for the name Kinyan Torah is clear. The underlying premise in all of Torah observance is the achievement of proper moral character. The Mitzvot that were given to us at Har Sinai were merely a rubric to refine our character and persona; for this reason, Pirkei Avot begins by clarifying that these ethics were given directly to Moshe Rabbeinu by the Almighty Himself.

Unfortunately, across the entire Jewish world, the fabric of unity and cohesion that weaved our people together is being torn apart due to the disregard of etiquette and religious decorum which are "*Ikarot LeChol Chochmah UMitzvah*." This past Thursday, Jews from around the world commemorated the horrors that occurred in the Sho'ah 75 years ago. The Nazis, Yemach Shemam, did not take into account which Jew was Reform and which Jew was Orthodox, which Jew maintained a Kosher household and which Jew did not. A Jew was Jew. In the throes of the Sho'ah, every Jew was, in Rashi's famous phrase, "*Ke'Ish Echad BeLeiv Echad*," "As one man with one heart" (Rashi on Shemot 19:2 s.v. *VaYichan Sham Yisrael*). Accordingly, Hashem acknowledged our unity and granted us the first whiff of the ultimate Ge'ulah, the modern version of Matan Torah: the founding of Medinat Yisrael. Hashem granted us sovereignty over Eretz Yisrael solely because we upheld the core values of the Mitzvot.

The Gemara (Berachot 2a) points out that the very first Mishnah in Masechet Berachot atypically states that one can begin reading Kri'at Shema from the time that the Kohanim enter the Beit HaMikdash to eat the Terumah. The Gemara explains that this time is really Tzeit HaKochavim (the time when the stars are apparent in the sky), but Rabi Yehudah HaNasi phrased the Mishnah in this fashion to teach other Halachot as well.

Rav Kehati (Berachot 2:1) points out that the Kohanim may eat the Terumah anytime between Tzeit HaKochavim and Chatzot (midnight). Therefore, the Mishnah should have stated that one can recite Kri'at Shema from the time the Kohanim are permitted to enter the Beit HaMikdash to eat the Terumah, not from the time that they actually enter. Rav Kehati suggests that the Kohanim were zealous to fulfill the Mitzvah of Achilat Terumah, and therefore ate their Terumah right away. Rav Kehati then writes that it is important to be zealous when fulfilling the Mitzvot so as not to tarry and miss out on them completely.

This lesson is one of many that can be found beneath the surface of each and every Mitzvah recorded in the Torah. This past summer I attended NCSY Kollel. Before my night seder shiur began, my Rebbe, Rabbi Dovid Gottlieb, would stress the fact that the statements in the Torah were the mere tip of the iceberg; if one truly wants to grasp the essence of the Halachot, he or she must dive deep below the surface and delve into the statements of the Talmud and the great Rishonim. Pirkei Avot is the concomitant of such learning.

In Parashat Acharei Mot (18:4), the Pasuk states that we must walk in the ways of the statutes and laws of the Torah. The Or HaChaim (ibid. s.v. *Lalechet BaHem*) explains that the Mitzvot are likened to a lamp (Mishlei 6:23: "*Ki Neir Mitzvah VeTorah Or*," "For the commandments are a lamp and the Torah is a light,") which will illuminate our lives in a supernatural manner, as expressed in Tehillim (119:105), "*Neir LeRagli Devarecha Ve'Or LeNetivati*," "Your word is a lamp to my feet and a light for my path." When we walk in the ways of the Mitzvot (i.e. when we act in accordance with the moral principles underlying the Jewish faith) we achieve spiritual heights beyond our comprehension. Or HaChaim continues and suggests that this is the reason we use the light of a lamp to eradicate the Chameitz in our homes on the night of the 14th of Nissan. Only the refinement of Mitzvot in every aspect of our lives will eradicate the erroneous behavior which Chameitz represents. Furthermore, once we achieve a state of proper moral character, we can eat the Matzah and begin the redemption process.

This fundamental concept expressed by Rav Kehati and Or HaChaim also finds mention elsewhere. Shlomo HaMelech concludes the aforementioned Pasuk in Mishlei (6:23) by stating, "*VeDerech Chayim Tochechet Musar*," "And the way to life is the exhortations [from the Avot Ha'Olam] that instruct [us how to live our lives properly]." This declaration is quite similar to a statement of Chazal in Masechet Megillah (28b) which we recite after Mussaf on Shabbat and Yom Tov. The Gemara mentions that it was taught in the school of Eliyahu that anyone who learns Halachot will merit entry into Olam HaBa (the world to come). The Gemara cites a Pasuk (Chabakuk 3:6) which states, "*Halichot Olam Lo*," "[Hashem's] ways are eternal." The Gemara then claims that Hashem's Halichot (way of life) are the same as the Halachot. This

conclusion affirms Shlomo HaMelech's statement that the Mitzvot and their underlying principles transmitted by the Avot Ha'Olam are the pivotal ways to a proper Jewish lifestyle.

Finally, I would like to conclude with a story which I read in former MK Rav Dov Lipman's book "To Unify A Nation". Rav Aryeh Levin, one of the great Rebbeim in Jerusalem during the early years of Medinat Yisrael's existence, saw a young soldier in the street who was off from his military service. He invited the soldier to his home for tea, but the soldier, who was without a Kippah, felt uncomfortable eating at an ultra-Orthodox rabbi's home. Rav Levin smirked and responded that he is a short man and cannot see what is on the soldier's head; rather, he can see what is in the soldier's heart. Rav Levin then added that the soldier was putting his life at risk for the safety of the Jewish people in Israel; thus, he said again, "Please drink tea with me - your Kippah is probably bigger than mine." Rav Levin understood the Mitzvot at their core and implemented what is taught in Pirkei Avot. He put religious differences aside in order to connect with his Jewish brother.

The somber Sefirah period in which we are currently undergoing represents the antithesis of what is taught in Pirkei Avot. During the first thirty days of Sefirat Ha'Omer, Rabi Akiva's students, who lacked Achdut, were punished with death. It is our responsibility to learn from their mistakes and prepare for the Ge'ulah as one Am, "*Ke'Ish Echad BeLeiv Echad*", so that we can reach the heights of righteousness. As Shlomo HaMelech also notes in Mishlei (29:4), "*Melech BaMishpat Ya'amid Aretz*," "By justice [the Halachot and the Mitzvot] a king sustains the land." Our greatest threat is not our enemies abroad, but rather ourselves, should we fail to follow the ethical principles fundamental to the Torah. May we all take this message to heart, and together, may we see the final redemption speedily in our days.

## GRAPPLING WITH THE RECALCITRANT ACH MUMAR PART ONE

*By Rabbi Chaim Jachter*

### *The Case*

Israel's top Rabbanim in the 1970's had to grapple with the following situation: Yoram Spitzer<sup>1</sup>, a soldier in the Israeli Defense Force who was killed in the Yom Kippur war had no children. His wife, Helena, was not allowed to remarry without Chalitzah. Yoram's only brother lived in Germany and was married to a non-Jew. He adamantly refused to cooperate. His refusal was rooted in his extreme hatred toward his sister-in-law who he blamed for his brother's

death. He called her a murderer, because she insisted that she and Yoram remain in Israel instead of joining him in Germany.

The situation of an Ach Mumar (apostate) who refuses to perform Chalitzah is a recurring challenge which Jews have faced since the time of the Ge'onim and Rishonim. Netziv in Teshuvot Meishiv Davar (4:75) dealt with such a case in the late nineteenth century. Rav Moshe Feinstein in Teshuvot Igrot Moshe (Even Ha'Ezer Cheilek 4 Siman 121) ruled on a case that came before him in 1981. Rav Yonah Reiss, Av Beis Din of the Chicago Rabbinical Council, informed me in November 2018 that he was then dealing with such a case in the Midwest as well.

### *The Basic Issue*

The Mordechai (Yevamot 4:28-29) and Tur (Even Ha'Ezer Siman 157) cites a dispute among the Ge'onim as to whether an Ach Mumar is Zokeik (obligates) his sister-in-law for Yibbum. Rav Sherira Ga'on rules that it does, whereas Rav Yehuda'i Ga'on (the famous BeHaG, Ba'al Halachot Gedolot, according to many<sup>2</sup>) rules that an Ach Mumar is not Zokeik LeYibum. Rav Ye'hudai Ga'on, however, does not offer a reason for his opinion. Eight explanations have been offered for his approach, as we shall outline.

Shulchan Aruch (Even Ha'Ezer 157:4) rules that a widow who falls to a Yavam who is a Mumar must receive Chalitzah before she is permitted to remarry despite the existence of a differing opinion. Rama, however, cites a dispute concerning a widow who remarried without Chalitzah thinking that her husband did not have any brothers, and it was later discovered that there is a brother who is a Mumar. One opinion maintains that she does not have to leave her present marriage, whereas others maintain that Chalitzah is still required.

The Ba'eir Heitev (Even Ha'Ezer Siman 157) cites Teshuvot Radach who permits a Yevamah who is Zekukah to an Ach Meshumad to remarry if she is unable to obtain Chalitzah due to the Ach Meshumad living a great distance from her. On the other hand, Aruch HaShulchan (Even Ha'Ezer Siman 157) strongly rules against following Rav Yehuda'i Ga'on and the Radach.

*Explaining the Three Way Machaloket as to whether a Mumar is Zokeik*

Teshuvot Mahari Mintz (number 12; cited by Rama in the Darkei Moshe to Even Ha'Ezer 157) presents the three basic approaches articulated by the Ge'onim as to the

<sup>1</sup> The names have been changed to protect privacy.

<sup>2</sup> Others identify the BeHaG as Rabi Shimon Kayyara, another Ga'on.

status of an Ach Mumar whether he is Zokeik LeYibum. One opinion is that even if the brother was a Jew in good standing at the time of the wedding and became a Mumar after the wedding, then he is not Zokeik LeYibum. Opinion number two is that even if the brother was a Mumar at the time of the wedding until the death of his brother, then he is Zokeik LeYibum. Opinion number three is if the brother was a Mumar at the time of the wedding, then he is not Zokeik, but if he becomes a Mumar only after the wedding, then he is Zokeik. Here is a basic explanation of these Shitot (approaches). Shitah number two holds like Rashi's Teshuvah that a Mumar remains a Jew. Shitah number one holds that the Mumar has the status of an actual Nochri. Shitah number three holds that even though a Mumar has the status of a Nochri, Nisu'in Mapilin (the Yibum connection is established at the time of the original marriage, according to this opinion) establishes the fact that the Zikah was created at the time of the wedding to the deceased brother and not undone even after the brother's apostasy.

*Introduction to the Opinions that Support and Reject Rav Yehuda'i Ga'on*

Or Zaru'a (number 705) cites Rav Nachshon Ga'on, the Ge'onic Sefer Basar Al Gabei Gechalim and other Geonim who agree with Rav Yehuda'i Ga'on. On the other hand, Beit Yosef (Even Ha'Ezer 157) cites Maharik who questions Rav Yehuda'i Ga'on. Maharik goes as far to assert that Rav Yehuda'i Ga'on was blind and his Talmidim quote him inaccurately.

However, Mahari Mintz argues that had Rashi been aware of the many Ge'onim cited by Or Zaru'a who support Rav Yehuda'i Ga'on, he would not have dismissed Rav Yehuda'i Ga'on's Shitah. We may say similarly about Maharik. Moreover, Beit Yosef presents Rav Yehuda'i Ga'on as explaining Rav Sherira Ga'on, and thus, Rav Sherira Ga'on need not be perceived as rejecting Rav Yehuda'i Ga'on. Rav Sherira Ga'on may have ruled strictly only if the brother was not a Mumar at the time of the wedding. Rav Sherira Ga'on might agree if the brother was a Mumar at the time of the wedding.

Furthermore, Maharam MiRutenberg (number 922; cited in the Mordechai and Beit Yosef) tries to support Rav Yehuda'i Ga'on, as we shall see in reason number seven. However, in the end, Maharam MiRutenberg declined nonetheless to rule against Rashi.

Rambam (Hilchot Yibum VeChalitzah 1:6) writes that even a brother who serves Avodah Zarah is Zokeik LeYibum. This seems to indicate that Rambam subscribes to Rashi's Machmir stance on this issue. However, Radach argues that Rambam only addresses a situation where the brother also performs some Mitzvot, and for such a stance, we need to be concerned that perhaps he did Teshuvah from his serving Avodah Zarah.

Or Zaru'a posed a serious question on Rav Yehuda'i Ga'on from the Gemara (Yevamot 47b) which states that if a Geir reverts to his former identity and then marries a Jewish woman the Kiddushin takes effect (Kidushav Kiddushin) even though he is a Mumar. There are two answers to this: 1) Perhaps the Gemara speaks only of a Mumar who also observes some Jewish practices. 2) Maybe the Gemara is strict only due to the stringent issue of properly dissolving a marriage in which a potential capital crime looms large. However, marrying a woman without Chalitzah is a less severe prohibition - an Issur Lav (negative prohibition) - and not a capital crime. Thus, we may not be as stringent.

On the other hand, we must note that Beit Yosef and Aruch HaShulchan (Even Ha'Ezer 157:9) both reject the lenient approach in the strongest terms: "It is obvious that this opinion has no basis whatsoever and 'Oy Lemi SheMeikel BaZeh!' 'Woe is to one who is lenient about this matter.'"

These highly unusual strong words give pause to those, such as Netziv, who are inclined to be lenient about this matter. They will be lenient only if there is another reason to be lenient. Such as if there is a Safeik (doubt or possibility) that the Ach Mumar is dead (as in the case with which the Chatam Sofer dealt), or that a sort of questionable Chalitzah is done (such as a Chalitzah performed by a man unable to talk, as in the case with which Netziv dealt). On the other hand, the Encyclopedia Talmudit cites some Poskim (Panim Me'irov and MaHarash Engel) who reject using the lenient approach even as a Senif LeHakeil (component to a lenient ruling).

Next week, God willing, we will complete our discussion by setting forth the debate regarding eight possible reasons to permit the woman who is Zekukah to an Ach Mumar without receiving Chalitzah from her recalcitrant brother-in-law.

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