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MODESTY AND MORALITY

by *Rabbi Yoni Mandelstam*

Concentrating on the words we say during Davening is a truly challenging task. What is even more difficult is maintaining that same level of intensity and enthusiasm while I am alone. One strategy that has helped me in my own concentration is that I sometimes imagine that one of my rabbis or role models is standing right next to me as I Daven. However, this is not only true by Davening, but, in general, it is not always easy to do the right thing behind closed doors because there is no pressure on us to put forth our "A-game."

Rabbi Soloveichik ZT"l (Nefesh HaRav 272-273) explains that this very notion illuminates the advantage of Sheim over Yefet in Parashat Noach. When Sheim and Yefet are informed that their father is drunk and naked, they respond with a noble and modest act of covering up their father with a garment (BeReishit 9:20-23). Despite the joint effort, Chazal, as presented by Rashi (Pasuk 23 s.v. VaYikach), explain that Sheim received a greater reward for this action than Yefet, "Because he had more enthusiasm while doing this Mitzvah." The Rav explains that Sheim understood the necessity to constantly act in the proper manner and stand up for what is right despite the lack of morals surrounding him. In this case, while Noach lay in his lowly state, no societal pressure was being put on Sheim to stand up for his father's honor. Nevertheless, he jumped up at the opportunity to assist his father despite the lack of outside pressure to do so. This, explains the Rav, is why the descendants of Sheim received the great Mitzvah of Tzitzit. The Arizal (see Magein Avraham Orach Chaim 8:13) believes that the Tzitzit should be worn under our primary shirt, and only the strings should be shown to the public eye. The fact that the majority of the Tzitzit lay concealed from public view symbolizes the modesty of Sheim's morality. We wear the sacred garment in a way that is not be seen by onlookers because we do not perform Hashem's commandments in response to societal demands. Rather, the Jewish people have the responsibility to embody morality and purity despite the expectations and standards of the nations around us.

This idea connects very well to the prayer we recite each morning, commonly referred to as "LeOlam," where we state that, "We should fear God both in public and in private." There are two critical life lessons to be learned from this prayer. Firstly, as Sheim exemplifies, we must believe that fear of God should be

carried out equally in public and in private. This means that it would be inappropriate for a Jew to present himself as God fearing in public but sin in private. However, there is an additional, more challenging life lesson to be learned from these words. The Orchot Tzaddikim points out that even when we find ourselves in public, we have to make sure that our motives are pure. While being viewed by others, it is easy to put forth our best efforts because we know that others are watching our every step. However, the fact that others are watching us should not be our primary motivation. One common example of this is that it is easier to refrain from conversation during Davening when a parent or teacher is nearby. However, the reason to not talk during Davening should not be because of fear of our parents and teachers, rather, we should refrain from disrupting the prayer services out of respect for God and His sacred sanctuary. Therefore, in both public and private settings we should always try to act in the proper manner simply because it is the right thing to do, regardless of other pressures.

HOARDING Skills, HOARDING SINS

by *Simcha Wagner ('16)*

In Parashat Noach, when Hashem instructs Noach to gather up seven pairs of Kosher animals for Korbanot, he uses the interesting word of "Lecha," "for yourself" (BeReishit 7:2). This phrasing is rather unusual if we understand the Korbanot to be for the purpose of thanking Hashem, as not only Noach had been saved but his entire family as well. Why doesn't the Pasuk instruct that Korbanot are to be made Lachem, in plural, or Lecha ULeVeitecha, for you and for your family? The answer is that these Korbanot were not strictly to show gratitude. They had an element of repentance to them for something which Noach did that required atonement. What exactly did Noach do wrong? After all, he did exactly as Hashem asked, faithfully building the ark and caring for all of the animals contained within. However, if one studies the Parashah carefully, one notices that Noach is something of an isolationist. He doesn't really associate with humanity or attempt to change them. We hear nothing about his relationship with his peers or his attempts to reform them. Proof for this can be found in the first Pasuk in the Perek. Hashem tells Noach that the reason that he is being saved is because, "Otcha Ra'iti Tzaddik Lephana'i," "Only you have I seen righteous before me" (BeReishit 7:1). From this we can learn that Hashem saw his righteousness, but no one else did. He was righteous before Hashem, but before no one else. This is not to say that he acted wickedly before the rest of the people, but rather merely that he avoided them, and in doing so he deprived them of the ability to learn from his good example. He was focused only on himself, so

This issue is dedicated by the Feld family, In loving memory of Yaakov Mordechai Batalion, brother of Goldie Feld.

Hashem used that very idea in his subtle rebuke of Noach, shown by the word *Lecha*. Noach was the one good man in his generation, the one person who had a chance of influencing others to become better. Because of that, Hashem expected him to use his influence, and perhaps save some individuals or perhaps stop the flood entirely. In this, He was disappointed. Noach failed to reach anybody, failed to even try, and for this he required atonement. In life, all of us have certain skills, certain things that we are good at. One individual might be an excellent writer, another gifted in athletics. Of course, in life, there will also be others who are less skilled in certain areas, who would, perhaps, appreciate some aid or guidance in that particular department. At times, we may be tempted to hoard, so to speak, our abilities, so that we will be of a singular nature, at least in our own minds, ignoring those who might benefit from our instruction. Let us learn from the Parasha, from the word *Lecha*, not to be that kind of person. If we have gifts, we should share them, if we have talents, we should show them. After all, they were given to us for a reason.

WALK BEFORE, NOT BEHIND

by Simcha Shron ('18)

In Parashat Noach, Hashem tells Noach to build an ark to house his family and the animals, because Hashem is going to wipe out the world with a flood. Although it doesn't explicitly state in the Parashah how long it took Noach to build the ark, we can easily figure it out using clues throughout the Torah. The Torah tells us that Noach was five-hundred years old when he is commanded to build the ark (BeReishit 5:32). The Torah further states (7:6) that Noach is six-hundred years old when he enters the ark. From these *Pesukim* we learn that it took Noach about one-hundred years to build the ark. However, even with the technological limitations of that time, it should not have taken Noach and his three sons such a long time to build the ark. Furthermore, the ark that Hashem described to Noach was not big enough to hold everything that Hashem instructed Noach to bring into the ark. How do the dimensions that Hashem gave to Noach make sense with the amount of things that He wanted in the ark—and if Hashem told Noach to make the ark so small, why did it take him so long to build it?

Rabbeinu Bachya explains that the Torah is coming to teach us a very important lesson for our daily lives: that we have to live *BeDerech HaTeivah*, by the “way of the ark.” This means that we have to do everything in our power to help ourselves in a time of need. Once we have done everything we can possibly do, we may rely on a miracle or help from Hashem. Noach could not have possibly built the ark to the actual dimensions necessary, which is why he was not commanded to do it. He was commanded to do everything realistically possible, and Hashem would respond with a miracle. The practical lesson we learn from living life *BeDerech HaTeivah* is to balance our efforts with our trust in

Hashem. When we are sick, we have to seek medical help from the best doctor available to us. However, once we put our effort in by going to the doctor, we may then rely on Hashem to cure us.

We must now understand why it took Noach so long to build the ark. A widely accepted answer to this question is that Hashem wanted the ark building process to take as long as possible because he wanted the world to do *Teshuvah* during that time. Hashem did not want to wipe out his creations, so He was hoping that in the one-hundred years leading up to the flood, people would see the ark and do *Teshuvah*. It is clear from the continuation of the story, though, that they were destroyed since they did not repent. Noach's job, therefore, was not only to build an ark, but to also convince the wicked people of his generation to do *Teshuvah*. However, the destruction of the world implies that Noach failed at his mission. The Midrash states that when people would come by and ask what Noach was doing, he would respond, “I am building an ark because God is going to destroy the world.” Noach never mentioned anything about changing your ways and doing *Teshuvah*; he never went out to the town and preached to everyone to repent so that they should be saved.

In the following Parashah, the Torah states, “*VaYikach Avram Et Sarai Ishto VeEt HaNefesh Asher Asu VeCharan*,” “Avram took his wife Sarai...and all the souls they made in Charan” (BeReishit 12:5). Rashi (ad loc. s.v. *Asher Asu VeCharan*) explains that “*Asher Asu*” is referring to the souls that Avram and Sarai had converted to follow in the ways of Hashem. This sets up a sharp contrast between Noach and Avram: unlike Avram, Noach was unable to bring his generation to repentance and to follow in the ways of Hashem.

This contrast can teach us a very valuable lesson for our daily lives. Because Noach was not a strong enough character, he was unable to bring people to do *Teshuvah*. On the other hand, Avram was able to bring many people under his wing and turn them into followers of Hashem. Regarding Noach it says, “*Et HaElokim Hithaleich Noach*,” “Noach walked with God” (6:9), and regarding Avram it says, “*Hithaleich Lephantai*,” “Walk before Me” (17:1). Rashi (6:9 s.v. *Et HaElokim Hithaleich Noach*) says the reason for this difference is because Noach was not strong willed and he needed Hashem's constant direct guidance, while Avram was able to walk *before* Hashem.

Avram was a strong leader and Noach was a weaker character who was more of a follower. In life there are many leaders who implement peer pressure for bad things. We must not be like Noach who was more of a follower; rather we must have the strength to be like Avram and become a leader.

HETER MECHIRAH - PART 2

by Rabbi Chaim Jachter

Introduction

Previously, we began discussing the controversial *Heter Mechirah*, the practice of the Israeli Chief Rabbinate to sell farmland to a gentile to avoid *Shemittah* restrictions. We reviewed the dispute regarding whether the sale itself is permitted in light of the Torah prohibition to sell Israeli real estate

to a gentile. This week, we shall review the dispute about whether the sale is Halachically effective. We shall proceed to review the debate surrounding whether the sale can affect the laws of Shemittah. We will conclude with a discussion of how the consumer should deal with products whose Kashrut status hinges on the validity of the Heter Mechirah.

Is the Sale Effective?

In order for any transaction to be Halachically valid, the parties involved in the sale must have Gemirat Da'at, seriousness of intent (see Kiddushin 26b). Thus, some authorities argue, the Heter Mechirah lacks validity, since the parties are not serious about the sale. These authorities note that the sale is not registered with the government land registry. One of the most vociferous opponents of the Heter Mechirah, the Ridbaz of Tzefat, relates the following regarding the issue:

Think about it: If the Rav of Yafo writes on a piece of paper a bill of sale to a barefoot Arab that all the land in Eretz Yisrael that is owned by Jews is owned by the Arab, does this mean that the Arab actually owns the land and thereby removes the sanctity from the land? The bill of sale is worthless except for use as a bottle cap!

The proponents of the Heter Mechirah argue that if the sellers clarify that the sale will be valid despite the fact that it is not registered with the Israeli land registry, the sale is valid. They cite Kiddushin 26a as a precedent for this assertion. They also cite a ruling of the Teshuvot Divrei Chaim (Orach Chaim 2:37) that Mechirat Chameitz is Halachically valid even if the sale is not valid in the eyes of civil law.

The Impact of the Sale—Criticism of the Heter Mechirah

Even if the sale is permitted and valid, the Heter Mechirah still might not have an impact on the holiness of Eretz Yisrael. The opponents to the Heter Mechirah point out that the Halachah (Rambam Hilchot Terumot 1:10) follows the opinion (see Gittin 47) that gentile ownership of land in Eretz Yisrael does not affect the sanctity of the Land (Ein Kinyan LeNochri BeEretz Yisrael). Thus, even if the gentile owns the land, all the laws of Shemittah nevertheless apply.

The First Defense

The proponents of the Heter Mechirah present two responses to this formidable challenge. First, they cite opinions that since the holiness of Eretz Yisrael in our times is merely Rabbinic in nature (Shulchan Aruch Yoreh (De'ah 331:2), we may follow the

opinion that believes that gentile ownership of Israeli land does remove the holiness of the Land (Yeish Kinyan LeNochri BeEretz Yisrael). According to this opinion, gentile ownership of land in Israel removes the Shemittah restrictions from that land. This approach is suggested by the Sefer HaTerumah (Hilchot Eretz Yisrael) and is accepted as normative by the Vilna Gaon (Bei'ur HaGra Y.D. 331:6).

This argument is based on the statement of the Gemara (Gittin 47a) that all authorities agree that Yeish Kinyan LeNochri BeEretz Yisrael applies to Syrian land. Rashi (ad loc. s.v. BeSuryah) explains that the reason for this is because the obligation to observe the laws contingent upon Eretz Yisrael in Syria is only Rabbinic. The Sefer HaTerumah and Vilna Gaon extrapolate from the status of Syria to the status of Israel today where the obligation to observe the laws contingent on the Land is only Rabbinic.

DIASPOROPHOBIA

by Gavriel Epstein (15)

Towards the end of Parashat Noach, the people of Bavel conspire to construct a tower to prevent, "NaFutz Al Penei Kol HaAretz," "Being scattered upon the face of the entire Earth" (BeReishit 11:4). In response, "VaYafatz Hashem Otam," "Hashem scattered them," (11:8) just as they had feared. Hashem seems to be punishing them Middah KeNeged Middah, measure for measure, in accordance with what they feared. This is similar to His reaction to Par'oh's decision to afflict Bnei Yisrael, "Pen Yirbeh," "Lest they increase" (Shemot 1:10). Hashem responds by increasing the offspring of Bnei Yisrael tremendously while they were in Mitzrayim. In both cases, Hashem responds to a preventative measure by accomplishing that which that measure was intended to prevent. However, the fear expressed by the people of Bavel is much more difficult to explain than that of Par'oh. Par'oh logically assumes that by afflicting Bnei Yisrael, they would not multiply. Why exactly do the people of Bavel, on the other hand, fear being scattered, and how do they hope to prevent this by building a tower?

Criticism of the First Defense

The Chazon Ish (Shevi'it 20:7) notes that the Rambam clearly disputes the opinions of the Sefer HaTerumah and Vilna Gaon. The Rambam is the primary authority who holds that Kedushat Eretz Yisrael today is Rabbinic, yet he never mentions that today the Halachah follows the view that Yeish Kinyan LeNochri BeEretz Yisrael. Indeed, the Rambam in a responsum (Freiman edition number 132) explicitly states that even today the Halachah follows the opinion that Ein Kinyan LeNochri BeEretz Yisrael.

The Chazon Ish proceeds to point out that the accepted practice in Israel since the time of Rav Yosef Karo (sixteenth century) has been to separate

Terumot and Ma'aserot with a Berachah (during non-Shemittah years) from wine produced from grapes that were grown on Israeli land owned by gentiles. However, if we were to follow the Sefer HaTerumah and Vilna Gaon, there would be no need to take Terumot and Ma'aserot from produce grown on land owned by a gentile.

The Second Defense

The second defense of the proponents of the Heter Mechirah is the opinion of Rav Yosef Karo that even according to the opinion that Ein Kinyan LeNochri BeEretz Yisrael, during the time that a gentile owns the Israeli land, the laws that apply to Eretz Yisrael do not apply to that land. Rav Yosef Karo (Teshuvot Avkat Rochel 24 and Kesef Mishnah to

Rambam Hilchot Terumot 1:10) extracts this point from the following passage in the Rambam (Hilchot Terumot 1:10):

A gentile who purchases land in Eretz Yisrael does not annul the obligation to observe the Mitzvot [that one must observe in Israel]; rather, the land [he has purchased] remains holy. Therefore, if a Jew subsequently repurchases that land from the gentile, the Jew is not considered to have engaged in Kivush Yachid (a private conquering of Eretz Yisrael—see Gittin 8). Rather, the Jew is Biblically required to separate all tithes and bring Bikkurim [from produce grown in this property] as if the land was never owned by a gentile.

Rav Yosef Karo infers from the Rambam that one is obligated to separate Terumot and Ma'aserot from the produce of the land only after the Jew repurchased the land from the gentile. However, while the gentile actually owns the land, the laws that apply to Eretz Yisrael are not operative. Thus, Rav Yosef Karo rules that the laws of Shemittah do not apply to land that is owned by gentiles. In the time of Rav Yosef Karo, Jews did not own land in Israel, and his ruling was relevant only to the produce that Jews purchased from the gentiles. Indeed, the Pe'at HaShulchan (Chapter 23) records that the accepted practice from the time of Rav Yosef Karo has been to treat the produce grown on gentile owned land as regular produce not endowed with Kedushat Peirot Shevi'it.

This ruling of Rav Yosef Karo is the primary basis for the advocates of the Heter Mechirah. They argue that Rav Karo's ruling and the custom to follow it demonstrate that if one transfers ownership of Israeli land to a gentile, the Shemittah laws do not apply to it.

Criticism of the Second Defense

The ruling of Rav Yosef Karo was vigorously disputed by the Mabit (Teshuvot 1:11, 21, 217, 336 and 3:45) and the Maharit (Teshuvot 1:43). They challenged Rav Karo's interpretation of Rambam Hilchot Terumot 1:10, pointing out that the Rambam (Hilchot Shemittah VeYovel 4:29) writes that the Gezeirat Sefichim does not apply to Israeli land owned by gentiles. The Rambam explains that the reason for this is that the Gezeirat Sefichim was instituted to discourage Jews from violating Shemittah and thus is not relevant to produce grown in a field owned by a gentile. The critics of Rav Karo's ruling argue that if the laws of Shemittah do not apply to produce grown in a field owned by a gentile, why did the Rambam find it necessary to offer a rationale why the Gezeirat Sefichim does not apply to a field owned by a gentile? The Rambam could have stated that the Shemittah laws simply do not apply to land owned by a gentile.

Moreover, the Chazon Ish (Shevi'it 20:7) challenges the assertion that the Jewish communities of Eretz Yisrael accepted the ruling of Rav Karo. He also notes that many Acharonim rejected Rav Karo's ruling. In addition, he points out that the Rambam in a responsum (number 22) clearly supports Rav Karo's critics' reading of Hilchot Shemittah VeYovel 4:29. The Chazon Ish argues that had the Pe'at HaShulchan been aware of this responsum of the Rambam, he would have realized that his understanding of Hilchot Shemittah VeYovel 4:29 was flawed and would have reversed his decision.

Conclusion

We have seen that the Heter Mechirah is a highly debatable leniency. Both sides of the debate present reasonable and convincing arguments. In fact, Rav Hershel Schachter and Rav Menachem Genack both informed this author that Rav Yosef Dov Soloveitchik ruled that the Orthodox Union's Kashrut department should not rely on the Heter Mechirah. Rav Soloveitchik argued that the Heter Mechirah is a highly questionable leniency upon which one may contemplate relying only in case of very great need. Since such a pressing need does not present itself outside of Israel, there is no room for us to rely on the Heter Mechirah. The policy of the OU, Chof-K, OK, and Star-K is not to rely on the Heter Mechirah. This is also the practice of European Kashrut agencies such as the London Beth Din.

According to Rav Soloveitchik, one should not eat Israeli vegetables that were harvested during the Shemittah year or food containing grain that reached a third of its growth during the Shemittah year (see Rosh HaShanah 13b) because of the Gezeirat Sefichim. A notable exception might be produce that comes from areas in Eretz Yisrael that were not sanctified by the Kedushah Shenayah (those who returned with Ezra to build Bayit Sheini).

However, according to many authorities, one may eat Israeli fruit that blossomed during the Shemittah year, even if farmers who rely on the Heter Mechirah grew the fruit. The fruit, though, must be treated with Kedushat Peirot Shevi'it. These authorities include Rav Moshe Feinstein (Teshuvot Igrot Moshe O.C. 1:186), the Chazon Ish (Shevi'it 10:6), and Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 1:44).

One who resides or visits Israel must consider whether he will completely avoid the Heter Mechirah. Embrace it or rely upon it only in extenuating circumstances such as when visiting family and friends who rely upon the Heter Mechirah.¹ One should consult with his Rav about the issues raised in this and previous weeks' essays.

¹ On the other hand, one must consider the possibility we raised in the essay we printed two weeks ago that Shemittah observance might be upgraded to a Torah level obligation as it appears that at this point the majority of people defined as Jewish live in Eretz Yisrael.

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