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## Inyana D'yoma

### A Note on G-d's Kingship in the Exodus Story

RABBI SHALOM CARMY

Pharaoh pleaded with Moshe to remove the frogs. Moshe agrees to pray for their removal at a time to be determined by Pharaoh. An interlocutor asks whether Moshe's response is politically savvy. Would it not be more effective if he had told Pharaoh that the frogs would disappear after the Jews left Egypt? By agreeing to intercede before his demands were met, Moshe enables Pharaoh to renege once relief is obtained.

The question presupposes that Moshe is acting on his own, and not on divine instruction. This premise does not, in itself, disqualify the question. The Torah does not explicitly state that Moshe's response was dictated by G-d, and some commentators, notably Abarbanel, hold that Moshe acted on his own initiative when he promised to pray. Moreover, if he was obeying G-d's command, this would merely shift the question from Moshe to G-d: It would be G-d who would forego His advantage by letting Pharaoh off the hook.

The obvious explanation is that neither G-d nor His agent Moshe aim to liberate Israel from Egypt through naked force. The goal is to have Pharaoh tell them to leave of his own volition. That is why, in the later stages, G-d

strengthens Pharaoh's will and enables him to persevere until the bitter end. He must not acquiesce to their leaving as the result of negotiation. If Moshe had led the people out of Egypt while promising Pharaoh that he would remove the plague afterwards, Pharaoh's action would have been conditional. Pharaoh would be a sovereign making the most advantageous choice in a difficult situation. He would be acting, vis-à-vis G-d, like one king confronting a greater power. The divine plan, however, is that Pharaoh must submit completely to G-d's power, with no residual strings attached. He must forsake the prerogatives of dignified give and take negotiation. G-d is not only stronger; He is incomparably sovereign.<sup>1</sup>

Let me point out three consequences of this analysis. One pertains to the question of Pharaoh's "hardness of heart." Many thinkers, most notably Rambam, insert it in the context of the debate about moral responsibility and freedom. Their attention, then, is on whether and how Pharaoh retains responsibility for his acts despite the limits of his freedom. Regardless of how we understand these phrases in the Torah and their moral implications, our focus right now is on Pharaoh's status as a political

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figure: in order for him to recognize the power of G-d, he must be acting as a sovereign admitting the nullity of his royal powers. This means that, even if his actions as an individual are coerced by circumstances, from a formal perspective he must grant Moshe's demands without conditions or external reservations.

It seems obvious to us that recognition of G-d as King entails willingness to obey Him. As Mekhilta (Shemot 20:1) puts it: If you accept His kingship you must accept His laws. It is possible to resist the step that Israel took at Sinai. Pharaoh's grudging acknowledgement of divine sovereignty does not lead him to worship G-d. His character is not converted nor is it G-d's stated intention to extract from him genuine repentance. Only for a fleeting moment does he confess that G-d is righteous (*tsaddik*) and he and his people are wicked. What is required of him by the story of the exodus is only to relinquish his own pretense of sovereignty. Exodus is about the power of G-d

not the eschatological transformation of the world.

This sheds light on the importance of *kriat yam suf* as the climax of the Exodus story. This final episode depicts the subservience of all creation to G-d. In Tanakh the sea is often conceived as the great chaotic force of nature that must be vanquished to establish divine sovereignty: see for example Psalms 24, 29, 104, 96 and 98 *inter alia*. The participation of the sea in the final rescue of Israel and the drowning of Pharaoh's hosts is thus the final stage in demonstrating G-d's kingship over the universe. Therefore, it is in the Song of the Sea that G-d's is first presented as king forever. Once this recognition is achieved the path is open to Sinai where kingship is fully expressed as obedience to the Torah.

<sup>1</sup> Thanks to Alex Maged, Dovi Shaffier and Robbie Schrier who were my sounding board for these ideas. This is an abridged version of Shalosh Seuddot remarks at Young Israel of Ave J earlier this year.

## Doing G-d's Work: Must We Take Action to Carry Out the Divine Plan?

RABBI NETANEL WIEDERBLANK

On Pesach, we recall Egypt's malicious persecution of the Jewish people and the suffering the Egyptians experienced, presumably as a punishment for their evil behavior. Significantly, both the persecution and the servitude were predicted at the *Brit Bein ha-Betarim* (Bereishit 15:13).

Rambam (*Hilchot Teshuva* 6:5) asked how the Egyptians could be punished for persecuting the Jewish people if G-d already told Avraham of the occurrence.<sup>1</sup> Rambam explains that no particular Egyptian was forced to sin. While slavery was a certainty, each individual actor's role remained undetermined and therefore free. Ra'avad rejects Rambam's solution with the following question: "If G-d were to say to those who strayed, 'Why did you stray; I did not designate you?' they would respond, 'Upon whom was Your decree made, on those that did not stray? If so, Your decree would not be fulfilled.'"<sup>2</sup>

Ra'avad therefore proposes an alternative solution. Had the Egyptians initially listened to Moshe and released the Jews, they would not have been punished. Why? Wasn't the enslavement immoral? The answer is that there was a decree that the Jews be enslaved. The Egyptians should not be punished for carrying out the divine decree. However, because they did not obey G-d when He demanded the Jews be released, they were punished. Moreover, the Egyptians went further than the prediction in Avraham's prophecy. Avraham prophesied slavery and persecution,

while the Egyptians crushingly worked and murdered the Jews.

This analysis raises an obvious question: According to many thinkers,<sup>3</sup> no person will be persecuted unless there is a divine decree that he be persecuted (free will notwithstanding). If so, every persecutor should be exonerated according to Ra'avad for carrying out the divine will. One solution is to suggest that the Egyptians knew of G-d's plan and therefore would be acting meritoriously by carrying out the divine will (assuming they did it the way they were supposed to), while a typical murderer is not aware of G-d's plan and therefore is held responsible for his decision.<sup>4</sup> Even presumption of the divine will is insufficient; Pharaoh's acts could have been considered meritorious only because there was an actual prophecy concerning the enslavement. The other example cited by Ra'avad (Ashur) bears this out; in fact, Ramban (Bereishit 15:14) makes this very distinction.<sup>5</sup>

Ramban adds the moral justification for this distinction -- moral acts are merits even if a person does not intend to carry out G-d's will when performing them. But acts that generally are considered immoral (against the Torah) constitute a *mitzvah* only if one intends to carry out G-d's plan, as Yeihu did when he mercilessly wiped out the house of Achav. But if one perpetrates these acts for any other reason, such as hatred, they are considered a

sin deserving of punishment. By going beyond Avraham's prophecy, the Egyptians demonstrated that they were not acting to carry out the divine will, and as such they were punished.<sup>6</sup>

To appreciate the significance of Ramban's understanding, let us consider a basic question: Is it our responsibility to do what we can to carry out G-d's plan in history? Or, is our job to follow the Torah and do what we think is right, leaving G-d to carry out His agenda as He sees fit? Ramban's position here is that anyone who acts to carry out the divine plan is considered to be doing a *mitzvah*, even if he was not commanded.<sup>7</sup> Moreover, this *mitzvah* applies even if a person engages in what would otherwise be a Torah prohibition in order to further the divine agenda. Of course, this is only if he legitimately knows that what he is doing is the divine plan. With respect to doing acts that would otherwise be immoral, only prophecy suffices. Thus, terrorism cannot be carried out in the name of G-d (unless the terrorist is a genuine prophet).

Elsewhere, Ramban uses this thesis to address another baffling question. Yosef tortures his brothers and father when he accuses the brothers of being spies. Ramban (*Bereishit* 42:9) deduces from the *passuk* that Yosef's motivation in torturing his brothers was to precipitate the fulfillment of his dreams. Normally, such acts of vengeance would be inappropriate, but Yosef's behavior is considered commendable because his motivation was to realize the will of G-d as conveyed to him through his dreams.<sup>8</sup> Of course, the dreams contained no instructions.<sup>9</sup> Ramban nevertheless maintains that because Yosef knew them to be the will of G-d, he was right to facilitate their fulfillment.<sup>10</sup> However, Ramban implies that one must know of the divine decree (*Only if it he heard it*) and act entirely for the sake of heaven (*And he wanted to fulfill the will of his Creator*). The requirement that one receive the information via prophecy safeguards against abuse and prevents a person from presuming the divine will and carrying out immoral acts in His name. Ramban may presuppose this thesis in numerous other places.<sup>11</sup> We should note, however, that other thinkers reject Ramban's presumption and maintain that absent of an explicit divine command (such as in *Akeidat Yitzchak*), it is immoral to take actions that would otherwise be forbidden in order to carry out G-d's plan.<sup>12</sup>

These Ramban's may be the basis for a fascinating assertion of the Rav: "Halakhic man discerns in every divine pledge man's obligation to bring about its fulfillment, in every promise a specific norm, in every eschatological vision an everlasting commandment (the commandment

to participate in the realization of the prophecy)." (*Halakhic Man* pp 100)

The Rav sees this obligation as a reflection on Halachic Man's perspective that sees all of Torah (including seemingly non-normative sections) in halachic terms. Certain Chassidic thinkers likewise stressed the duty to bring *mashiach*, albeit for different reasons. Most notable among them is R. Menachem Mendel Schneerson.<sup>13</sup> Either way, like Ramban, the Rav and the Rebbe assume that it is our role to advance G-d's plan in history.<sup>14</sup>

1 This question is not identical to his more general question in chapter five of *Hilchot Teshuva* concerning the seeming contradiction between divine foreknowledge and free will. *Ohr Samei'ach* offers a simple distinction. Rambam's solution to the problem of foreknowledge rests in the distinction between divine foreknowledge, which is intrinsic and therefore non-deterministic, and human foreknowledge, which is extrinsic and therefore deterministic. Thus, G-d's knowledge of the enslavement does not compel the Egyptians; but when Avraham was informed of this fact, his knowledge (human foreknowledge) indeed precludes freedom. There is another way to understand the difference between Rambam's questions in chapter 5 and chapter 6. In chapter 5, Rambam asked an epistemological question – how is foreknowledge compatible with the indeterminism of free will? To this, he offered the philosophical distinction between human knowledge and divine knowledge. In chapter 6, Rambam asks a different question – if G-d decreed (*gazar*) on the Egyptians that they would persecute the Jews, how could they be punished? This question is not epistemological, but rather relates to an issue we raised earlier (in Ramban's discussion of Pharaoh's free will): how can G-d's plans in history relate to free will and justice?

2 Rambam might respond that certain events are predictable on a macro level even while individual actors retain freedom. This has many parallels in the physical universe; while we cannot predict the path of a particular electron on a quantum level, we can accurately predict the movements of larger bodies made up of these electrons. The same can be true, argues Rambam, concerning human behavior. For example, government statisticians (or cooks in cafeterias) can very accurately predict certain general behavioral patterns that free actors will follow. And if humans are capable of such predictions, certainly G-d can make such forecasts.

3 Including Rasag (*Emunot v-Deot* 4:5), R. Bachya ibn Pakuda (*Sha'ar Bitachot* 7), *Sefer ha-Chinuch* (241), Abrabanel (*Bereishit* 37), and Gra (*Mishlei* 11:19).

4 The problem with this answer is that there is no indication that the Egyptians knew of Avraham's prophecy that the Jews would be enslaved. Perhaps Ra'avad means that even if Pharaoh was aware of the prophecy, he still would have been punished because of his malicious intentions.

5 He writes: "Know and understand that G-d will not exonerate the murderer of a person who was written and inscribed on Rosh Hashana for death just because he carried out G-d's decree; he (the

victim) was wicked and was killed because of his sins, yet his blood will be demanded from his murderer. But when the decree is articulated by a prophet, then it depends: if a person listened in order to carry out the will of his Creator, there is no sin, but rather a merit. As it says concerning Yeihu: “Since you did well by executing what was proper in My eyes – according to all that was in My heart you have done to the house of Achav – your descendants of the fourth generation shall occupy the throne of Israel.” But if he listened to the divine command and murdered out of hatred or to undercut him, then he will be punished because he intended to sin, and it is considered a sin.”

Ramban later illustrates this point by noting that Nevuchadnetzar was punished even though he knew of the prophecy to destroy the temple because of his ulterior motives and because he went beyond the divine decree. Ramban implies that these prophecies concerning Nevuchadnetzar were so concrete that he likely had no free will about whether to attack. His freedom lay in his motivation, and in that respect he failed (his motive was wicked). Thus, even if a prophet’s prediction limits freedom, it never limits a person’s intention; a person’s mind always remains free, and it is in this realm that a person ultimately is judged.

6 Ra’avad alludes to the motivational factor when he says that Ashur was punished for its arrogance. In other words, its motivation for conquering the Jews was self-aggrandizement and not the fulfillment of the divine will; accordingly, it was punished.

7 There are many cases where we maintain that a person should seek to carry out the divine will even in the absence of a specific command. In these cases we see the actions as right, even absent a divine command. Ramban goes one step further in claiming that they are right simply because one knows that they are part of G-d’s plan.

8 Likewise, the Vilna Gaon (*Aderet Eliyahu Bereishit* 42:9) stresses the immense value of this sort of behavior: “And for this reason the Torah prefaced [it’s account of Yosef’s actions] with “*And Yosef remembered the dreams*” in order to make known that all that he did was only out of his righteousness, in order that the dreams be

fulfilled and G-d’s decree not be subverted. **And this is an important precept throughout the Torah.”**

9 Some (see Abrabanel and aforementioned Gra) have argued that because he received this information via prophesy then failure to do what he could do to carry out the dreams would be tantamount to *kovesh nevuato*.

10 This approach to Ramban was developed together with R. Dani Zuckerman.

11 Another place where Ramban presumes that knowledge of the divine will is equated with a command is *Ramban Bereishis 49-10*, who writes concerning non-Davidic kings: “And when Bnei Yisrael continued to appoint kings from the other tribes, and did not revert to the tribe of Yehuda, they transgressed on the command of the Divine Will and were punished for it.” While there was no formal mitzvah to anoint only Davidic kings doing otherwise is considered sinful insofar as it contradicts the divine will. Kudos to R. Dani Zuckerman for this insight. (Rambam in disagreement with Ramban on this point might also be *lshitato*. R. Elchanan in *Kuntrus Divrei Sofrim* p. 90 (published in vol. 2 of *Koveitz Shiurim*) argues that the entire basis is rabbinic legislation according to Ramban is the presumption that the laws reflect the divine will.

12 R. Yitzchak Arama rejects Ramban’s understanding of Yosef’s actions, claiming that this was not Yosef’s responsibility and does not justify immoral behavior. But as we see from his comments here, Ramban maintains that anytime a person knows of a divine plan, he should hasten to carry it out, with or without an actual commandment.

13 See, for example, *Torat Menachem*, 5742, pp 1292. Kudos to R. Yosef Bronstein for pointing this fascinating connection out to me.

14 However, they do not advocate doing so through otherwise immoral actions. Thus, they need not agree to Ramban’s far reaching application of this principle.

## Remembering the Redemption from Egypt

RABBI EPHRAIM METH

What is the difference between the daily *mitzvah* to remember our redemption from Egypt and the annual *mitzvah*, which we observe on the evening of the 15th of *Nissan*? *Acharonim* offer a range of answers. We will survey a few of them.

R. Chaim Soloveitchik argues that the daily *mitzvah* is a subcategory of reciting *shema*, while the annual *mitzvah* is its own independent *mitzvah*. He bases this approach on the Rambam’s omission of the daily *mitzvah* from his *Sefer haMitzvos* and from the headings of *Yad haChazakah*. This omission indicates that the daily obligation is

not an independent category. Additionally, R. Chaim bases his approach on the Rambam’s codification of the daily *mitzvah* within the laws of *Shema*, which further indicates that it is a subcategory of *Shema*.

Based on this, the Rav (*Harerei Kedem*, 80) argues that the daily *mitzvah* may focus on any aspect of the redemption that relates to *kabbalas ol malchus shomayim* – and can even be fulfilled by reciting the *Shiras haYam*, “*Az Yashir*,” that ends with the words “*Hashem yimloch leOlam va’ed*” – while the annual *mitzvah* must focus on events that historically transpired on the fifteenth of Nis-

san, which is to the exclusion of *Az Yashir*.

R. Aharon Soloveitchik (*Parach Mateh Aharon, Krias Shema* 1,3) interpreted R. Chaim's position differently. According to him, one can only fulfill the daily *mitzvah* by reciting the third section of *Shema*, whereas the annual *mitzvah* can be fulfilled by recalling the redemption in any way. R. Aharon Soloveitchik acknowledges that some opinions in the *Talmud* permit us to fulfill the daily *mitzvah* with prayers other than the third section of *Shema*, but R. Aharon opines that the Rambam deemed these opinions as non-normative.

In contradistinction, the *Shut Binyan Shlomo* suggests that the daily *mitzvah* may be fulfilled in any language, while the annual *mitzvah* may only be fulfilled by recalling the redemption in Hebrew, and perhaps only by reciting the passage of *Arami oved avi*. The *Binyan Shlomo* bases his idea on the Ramo's ruling that we should read the *haggadah* to people who don't understand Hebrew in a language that they understand, or should explain the Hebrew *haggadah* to them. The word "or" can mean one

of two things. It could mean that both options are acceptable, and that we should tailor our conduct according to the best option we are presented with, based on the situation that we are in. However, *Binyan Shlomo* suggests that "or" means that it is insufficient to read the *haggadah* in a foreign language, rather we must read it in Hebrew, and help our audience understand by translating or explaining. While the *Binyan Shlomo's* approach is unique, it is nonetheless consistent with the spirit of the *Seder* night. Speaking in a uniquely Jewish tongue is an expression of freedom, and we merited the redemption partially because we never abandoned *Lashon haKodesh*.

Interestingly, R. Chaim's students quote an alternate explanation of the difference between the daily *mitzvah* and the annual *mitzvah*. The daily *mitzvah* does not require dialogue, while the annual *mitzvah* can only be fulfilled via conversation. Moreover, the daily *mitzvah* can be fulfilled with a brief remembrance, while the annual *mitzvah* requires a more lengthy discourse.

## Thoughts on Shmirah for Matzah

NISSAN HOLZER

"*U'shmartem es hamatzos*" (Shemos 12:17) teaches that there is a requirement for *matzah* to be guarded/watched (Pesachim 38b). Rashi (ibid.) explains that this watching (*shmirah*) has two parts. First, one must watch the *matzah* to ensure that it does not become *chometz*. Second, the *shmirah* itself needs to be for the sake of *matzah shel mitzvah*. I would like to elaborate on these two elements.

Regarding the first element, although there is a general principle to guard oneself from sinning, such as guarding one's tongue from speaking *lashon harah*, there is a specific *halacha* that *matzah* must be watched so that it does not become *chometz*. Based on this *halacha*, Rabbi Eliezer forbids eating *matzah* made by a *Kusi* (those who converted in a questionable manner in the times of the King of Ashur.) *Kusim* are not aware of the *halachah* that *matzah* must be guarded from becoming *chometz*. Thus, their *matzah* are not suitable for *Pesach* (Chulin 4a).

Regarding the second element, does one require explicit intent that he is watching the watching or baking these *matzos* for the sake of *matzah shel mitzvah*? Rabbi Yechezkel Levenson (Chazon Yechezkel, Tosefta Pesachim 2:12) says that within thirty days of *Pesach*, there is an implicit *lishmah*. In other words, it is clear that the watching and baking is being done for the sake of *matzah shel mitzvah*. However, if one is baking *matzos* thirty days before

*Pesach*, one requires explicit intent that its watching and baking is for the sake of *matzah shel mitzvah*, since it is not clear that the *matzah* is being processed specifically for the *mitzvah*; it is possible that it is being made from some other occasion.

A similar idea is found in Rashi in *Sukkah* (9a). Rashi writes that even Beis Shammai who requires that a *sukkah* be built for the sake of the *mitzvah* agrees that within thirty days of *Sukkos* there is no need to build it with explicit intent. It is clear why the *sukkah* is being built – thirty days before a *chag*, one's mindset is tuned towards the holiday, so that any preparations made have an implicit intent for the upcoming *mitzvah*. Thirty days before the *chag*, one must have explicit intent that the *sukkah* is being built *l'shem mitzvah*.

# A Package Deal: Ein Osin Mitzvos Chavilos Chavilos

MEIR GOODMAN

The Gemara in Pesachim (102a-b), amidst a lengthy discussion of the various laws of *Kiddush* and *Berachos*, quotes the following Beraissa: Our Rabbis taught, members of a group who were reclining and Shabbos began while they were still involved in their meal — Rebi Yehudah says, we bring a cup of wine and say *Kiddush* over it. Rebi Yosi says, the group may continue eating after dark. When they finish, they should say *Birchas HaMazon* on one cup of wine, and then *Kedushas HaYom* on another. The Gemara asks, why is it necessary to make *Birchas HaMazon* and *Kiddush* on two separate cups of wine? Let the *mevareich* say both on one! Rav Sheishes cryptically responds, because we do not say two *kedushos* on one cup. The Gemara asks, what is the reason, to which Rav Nachman responds: *ein osin mitzvos chavilos chavilos* — we do not make *mitzvos* into bundles.

The Gemara in Sotah (8a) quotes a *beraissa* as the source for this principle: We don't make two *Sotos* drink the *mei sotah* at once; we don't purify two *metzora'im* at once; we don't pierce the ears of two *avadim* at once; nor do we break the neck of two calves at once, since we don't make *mitzvos chavilos chavilos*.

Rashi and the Rashbam in each respective Gemara explain that the problem with making *mitzvos* into “bundles” is that it appears as though the *mitzvos* are burdensome to the performer. By “killing two birds with one stone,” as it were, and making two *sotos* drink from the same cup of *mei sotah*, or reciting both *Birchas HaMazon* and *Kiddush* on one cup of wine, one makes it seem as though the performance of these *mitzvos* are so burdensome to him that he will not expend the extra effort to prepare a second cup of wine or *mei sotah*.

The Gemara in Pesachim continues to ask on the premise that we do not make two *kedushos* on one cup of wine by quoting statements from Abaye and Rava. When *Yom Tov Rishon* falls out on *Motzoai Shabbos*, Abaye holds that the correct order of the *berachos* said during *Kiddush HaYom* is *yayin, Kiddush, zman, neir, Havdalah*; whereas Rava holds the correct order is *yayin, Kiddush, neir, Havdalah, zman*. Despite their disagreement, both Abaye and Rava agree that we recite *Havdalah* and *Kiddush* over one cup of wine. Why is this not a problem of saying two *kedushos*? The Gemara answers that *Havdalah* and *Kiddush* are basically one *inyan* — both profess to *kedushas hayom*, and the *Havdalah* itself makes mention of

*kedushas Yom Tov* with the phrase *hamavdil bein kodesh l'kodesh* (see Rashi and Rashbam).

The conclusion of the Gemara in Pesachim yields an important limitation on the problem of *ein osin mitzvos chavilos chavilos*. Generally, two separate *mitzvos* cannot be performed simultaneously over one cup of wine, or any other *cheftza*. The *beraissa* in Sotah, the source for this prohibition, teaches that *ein osin mitzvos chavilos chavilos* is problematic even when the two *mitzvos* being performed are the same *mitzvah*. Since they are nonetheless distinct insofar as they are two separate fulfillments of said *mitzvah*, whether it be making a *sotah* drink *mei sotah* or piercing the ear of an *eved* who wishes to stay on with his master, they cannot be “bundled” together. However, *Havdalah* and *Kiddush*, despite being separate obligations, may be recited together, as they are connected.

It is interesting that the intrinsic connection between *Havdalah* and *Kiddush* is sufficient to alleviate the issue of *chavilos*, whereas multiples of the same *mitzvah*, despite their complete similarity, does not. In light of Rashi and the Rashbam's understand of the issue at hand, this distinction can be easily explained. Two separate performances of the same *mitzvah* are still two separate actions, irrespective of the fact that they are the same action, and simultaneously performing them may arouse the suspicion of onlookers who see this “bundling” as indicative that the performer considers their performance to be burdensome. Reciting *Havdalah* and *Kiddush* on the same cup of wine, however, cannot be seen as burdensome, as their intrinsic connection makes it logical that they should be performed together, and thus does not incite suspicion.

Later in *Arvei Pesachim*, Tosafos (115a s.v. *v'hadar achil chasa belo beracha*) quotes an opinion which, in light of the above discussion, is significantly problematic. The Mishna (114a) teaches that at the beginning of the *Seder*, a vegetable is taken and dipped — what it is dipped into is the subject of a *machlokes Rishonim*. The Gemara (114b) states that *karpas*, as this step in the *Seder* is colloquially called, is intended to serve as a *hekeirah*, an anomaly that piques the interest of the children at the table and causes them to question and take heed to the events of the night. The Gemara then quotes a dispute between Rav Huna and Rav Chisda regarding when the *beracha* of *al achilas maror* should be said if one uses a vegetable suitable

for *maror*, such as lettuce, for *karpas*. Rav Huna says, one should first make a *borei pri hadamah* on the *maror* being used for the *hekeirah*, and later say *al achilas maror* on the *maror* being used to fulfill the actual *mitzvah*. Rav Chisdah, on the other hand, holds that both *al achilas maror* and *borei pri hadamah* should be made on the *maror* for *hekeirah*, and no *beracha* should be made on the *maror* for the *mitzvah*.

Both Rav Chisdah and Rav Huna indicate that no additional *borei pri hadamah* needs to be said over the *maror shel mitzvah*. Tosafos explains that this is because the *maror* is considered to be amongst the food items that are *ba'im besoch haseudah* and whose *berachos* are exempted by *hamotzi*. Thus, the *hamotzi* made on the *matzah* prior to the eating of the *maror* exempts the recitation of a *borei pri hadamah*.

Tosafos quotes a dissenting opinion from Rav Yosef Tuv Elem, who implies that the *hamotzi* does not exempt the *maror*. Rav Yosef Tuv Elem says, “Why do other vegetables come at the beginning of the *seudah*? In order to exempt the *chazeres (maror)* from its appropriate *beracha*.” Rav Yosef Tuv Elem seems to be saying the Chazal instituted *karpas* in order to make a *borei pri hadamah* for the *maror*. This claim is highly problematic; if the *maror's beracha* is not exempted by the *hamotzi*, why can't the *borei pri hadamah* be said on the *maror* itself? Why necessitate another *achilah* earlier on in the *Seder*? Further, Tosafos himself asks, how could Rav Yosef Tuv Elem say that the purpose of *karpas* is to exempt the *maror* when the Gemara clearly says that it exists to serve as a *hekeirah*?

Tosafos' next two questions shed considerable light on Rav Yosef Tuv Elem's intent. Tosafos first asks, “and further, *ein osin mitzvos chavilos chavilos* does not apply here.” Tosafos' sudden introduction of the concept *ein osin mitzvos chavilos chavilos* suggests that Rav Yosef Tuv Elem thinks that it is necessary to make a separate *borei pri hadamah* on the *karpas* precisely because *chavilos* prevents making both a *borei pri hadamah* and an *al achilas maror* on one piece of vegetable. To this Tosafos asks, what does this have to do with *chavilos*? These two *berachos* are not separate *mitzvos*; in order to eat the *maror*, one needs to make the appropriate *birchas hanehenin*. They are intrinsically linked, and surely would not incite an onlooker to suspect that the performer feels that these *mitzvos* are burdensome in any way! To buttress his claim that *birchos hanehenin* do not pose an issue of *chavilos*, Tosafos points to Rav Chisda himself, who clearly permits making both *berachos* on the first *achilah*!

Tosafos in Berachos (39b s.v. *hakol modim*) uses the

same *sevara* as Rav Yosef Tuv Elem to justify another practice at the *Seder*. The Gemara says that one of the pieces of *matzah* needs to be *perusah* in order to fulfill the implication of *lechem ani* — poor man's bread. Tosafos writes that the broken piece of *matzah* should be placed under the complete piece, and the *mevareich* should make *hamotzi* on the complete piece and *al achilas matzah* on the broken piece. One should not, however, make both *berachos* on the broken *matzah* as this would be a problem of *ein osin mitzvos chavilos chavilos*. Tosafos interjects and says that this doesn't make sense: *birchos hanehenin* do not pose an issue of *chavilos*. Tosafos brings proof from *Kiddush*, where *birchas Kiddush* and *borei pri hagafen* are said simultaneously on one cup!

The totality of Tosafos' questions on both Rav Yosef Tuv Elem and the opinion cited in Tosafos in Berachos clearly point in one direction. Normally, *birchos hanehenin* do not pose a problem of *chavilos*, as evidenced by Rav Chisdah and *Kiddush*. However, a small *diyuk* in Tosafos in Berachos reveals that sometimes the issue applies outside of the norm. Tosafos writes that one should not make two *berachos* on the broken *matzah* because it is “like making *mitzvos chavilos*.” Tosafos' language suggests that the issue here is not precisely an issue of *chavilos*, but runs close to it. (This phraseology stands in contrast to other cases where the Gemara and Rishonim simply state that the situation is *osin mitzvos chavilos*, and do not add the modifier “like.”) I think the intent of Rav Yosef Tuv Elem and Tosafos in Berachos is as follows: While it is true that *chavilos* does not necessarily pose an issue when it comes to *birchos hanehenin*, nonetheless, in situations when it is convenient to arrange the *mitzvos* in a fashion where even a semblance of *chavilos* is abrogated, it is preferable. Thus, when you have two *matzos* in front of you, since it is possible to separate the two *berachos* on each piece of *matzah*, one should. Likewise, since Chazal already instituted *karpas* to serve as an *hekeirah*, we might as well use its *borei pri hadamah* to exempt the *maror*. The general principle that emerges is that while these situations are not real issues of *chavilos*, since they are like making *mitzvos chavilos*, it is preferable to separate the two *berachos* when convenient.

It is hard to imagine, however, that our current conception of the reason behind the issue of *ein osin mitzvos chavilos chavilos* works alongside Rav Yosef Tuv Elem and Tosafos in Berachos. If the problem is that “killing two birds with one stone” looks as if one finds the *mitzvos* to be burdensome, *birchos hanehenin* certainly do not create such an issue. It is clear to any onlooker that the *beracha*

is being said in order to facilitate the performance of the *mitzvah* of *achilas matzah* or *achilas maror*. How could we say that semblance of *chavilos* warrants a separation of the *berachos* when convenient if there is simply no semblance of the issue in the first place?

It seems, then, that these two approaches argue in the very reason why *ein osin mitzvos chavilos chavilos*. If Tosafos understands like Rashi and the Rashbam cited above, we can understand the full thrust of his difficulties. There is simply no *sevara* within such a framework that would justify extra *hakpadah* for *chavilos* outside the normative situations discussed by the Gemara. On the other hand, Tosafos in Moed Katan (8b s.v. *lefi she'ein*) suggests a different explanation. Tosafos contends that the principle *ein marvin simcha b'simcha* is similar to the reason why we don't make *mitzvos chavilos*: it is necessary for the performer of the *mitzvah* to focus his full attention on it. Whereas Rashi and the Rashbam see the issue as one of appearances, Tosafos sees it as a basic tool to ensure that each *mitzvah* is accorded proper concentration.

Simultaneous performance of two *mitzvos* confuses the performer and makes it more difficult to focus on each separate obligation. By bifurcating their performances and demanding, for example, two cups of wine for *Kiddush* and *Havdalah*, the individual is able to focus better on each action.

If Rav Yosef Tuv Elem and Tosafos in Berachos subscribe to this approach, and *ein osin mitzvos chavilos chavilos* is primarily an issue of *kavanah*, then we can understand how even *birchos hanehenin* can pose an issue. Despite the fact that *birchos hanehenin* are necessary in order to perform the actual obligation, separating the two *berachos* and relegating each to a different *cheftza* helps the performer focus more fully on each duty: that of *achilas maror* or *matzah*, and that of reciting a *birchas hanehenin*. It is not a real issue of *ein osin mitzvos chavilos chavilos* because the two *berachos* are not inherently distinct. Nonetheless, if convenient, Rav Yosef Tuv Elem and Tosafos in Berachos suggest *hakpadah* for *chavilos* can benefit the *mevareich's* overall concentration and intent.

## Halacha

### Kiddush in Shul: Friend or Foe?

CHAIM WEBER

The *minhag* of reciting *Kiddush* in *shul* on Friday night is subject to much dispute. There are many *poskim* who strongly support it, while others vehemently oppose it. In this article, I would like to present the arguments for both sides by going back to the original sources.

The *Gemara* (*Pesachim* 100b) presents a *machlokes* as to whether or not *Kiddush* needs to be made in the presence of a meal (*bemakom se'uda*). Rav is of the opinion that *Kiddush* does not need to be said in the presence of a meal, while Shmuel argues that *Kiddush* must be said *bemakom se'uda*. The *Gemara* continues to present stories about many *Amoraim* who all acted like Shmuel, which led most of the *Rishonim* to rule like Shmuel that *Kiddush* must be said *bemakom se'uda*, and that is also the ruling of the *Shulchan Aruch* (*Orach Chaim* 273).

The *Gemara* asks: according to Shmuel, who requires *Kiddush bemakom se'uda*, why would the custom in Bavel be to make *Kiddush* in *shul*? In Bavel, everyone would go home to make *Kiddush* and eat their meal, so making *Kiddush* in *shul* is pointless—it is not *bemakom se'uda*! The *Gemara* explains that according to Shmuel, *Kiddush* was made for guests who would eat meals provided by the

community charity in *shul*.

*Tosafos* (*ibid.*) contends that since we rule like Shmuel, if there is no one eating in *shul*, the *Kiddush* would be unnecessary because it is not *bemakom se'uda*. Moreover, *Tosafos* goes so far as to prohibit making *Kiddush* in *shul* because the *berachos* would be *berachos levatalah*! Hence, *Tosafos* concludes that nowadays *Kiddush* should not be made in *shul*, and this is the opinion of many other *Rishonim*.

The *Ran* (*Pesachim* 19b) defends the practice of making *Kiddush* in *shul* with a very simple suggestion. He argues that even though the reason for making *Kiddush* in *shul* no longer applies, as people rarely eat meals in the *shul* itself, we still do it. This is because of the fact that the institutions that the *Rabanan* made stand permanently, even when the reason no longer applies (see *Gemara Beitza* 5a). The *Ran* proves this from another part of the Friday night *davening*: *Bircas Me'ein Sheva* (nowadays known as *Magen Avos*), which was recited at a time when Jews would pray in the fields, and it was only said in order to prolong *davening* for latecomers. Yet, we say it anyway, even though we do not pray in the fields. The reason is because once

*Bircas Me'ein Sheva* was instituted, it continues to stand, even when the reason disappears. Thus, the *Ran* argues that the same should apply to *Kiddush in shul*; although the reason for it no longer applies, we should still recite it.

The question now turns to *Tosafos*: The *Ran* has a very good proof from *Bircas Me'ein Sheva*; why does *Tosafos* disagree? Why would we say the *beracha* of *Me'ein Sheva*, but not make *Kiddush in shul*? Why are they different?

*Tosafos* might differentiate between these two institutions as follows: *Bircas Me'ein Sheva* was instituted as a part of *davening*, and therefore, even when the reason disappeared, the institution still stood. However, making

*Kiddush in shul* was never instituted as an integral part of *davening*; it was just said in *shul* for the guests that were present, for the sake of their convenience. It was never an integral part of the *tefillah* service. Therefore, once the reason no longer applies, it should no longer be said.

To summarize: Making *Kiddush in shul* on Friday night is a *machlokes* between *Tosafos* and the *Ran*: *Tosafos* contends that it is a *beracha levatalah*, while the *Ran* argues that it is not. Some *shuls* do make *Kiddush in shul*, relying on the *Ran*, while others do not, assuming like *Tosafos*. Both customs have a basis to rely on.

## Friendship, Favor, or Felony? Taking from a Friend Without Permission

RABBI ELCHANAN POUPKO

While living among friends is something that has many benefits, it can present challenges too. One of the most common questions, if not the most common of all, that comes up in dorms and other close knit living arrangements is the question of using something that belongs to a friend without permission. We have all been in this situation: a bag of potato chips, an interesting book, or something as simple as a can opener, that belongs to a friend, who, however close he may be, happens to not be there at the time you need to use it. The burning question becomes, to use or not to use? Should I assume that since my friend would definitely give me permission, I can use it; or, since I did not receive explicit permission, I can't use it.

Needless to say, this is only a question if it is clear and obvious that the owner would grant permission to use the desired item. If there is any doubt about that, it would be surely prohibited to use the object, just as using anything against a person's will is the equivalent of theft.

On the one hand, it would seem obvious that using something under such circumstances should be absolutely permitted. The principle of *umdena* tells us that we may rely on any iron-clad assumption. Hence, in this case we should rely on the assumption that the person permits us to use his property, without any more concrete evidence.

At the same time, we have the conflicting principle of *ye'ush shelo midaat*. This principle tells us that despite the permission to take something whose owner gave up on, if the owner does not know that the object is lost, one may not take that object. If, for example, there is permission to take something that was swept away into the sea because the owner must have given up on it, nevertheless, if that

same owner does not know that his object was swept away by the sea, one may not take it. Even if we know with certainty that had the owner known about this misfortune he would have certainly given up hope on his item. Following this logic, clearly, even if one knows that their friend would permit the use of a belonging, he may not use it until such permission and acknowledgement are granted.

In a widely known and revolutionary ruling (CM 358:1), Rabbi Shabtai Cohen, also known as the *Shach*, takes a different position on this matter and permits using another person's objects, even without the knowledge or consent of the owner, as long as we can be sure that had the owner known, he would have permitted the desired use. There is a distinction between this case and the case of the lost object, argues the *Shach*. In the case of borrowing, the latent permission can be assumed from the first moment the object is being used. In the case of a lost item, on the other hand, the rightful owner of the object never intended for the object to end up in the finder's hands. That being the case, the finder should not have picked it up to begin with. When the finder finds the lost object, the owner still has his hopes fixed on finding and possessing that object. When the borrowed item is being used, the potential permission is already in place. Had the owner just known about this, he would grant his explicit permission, in which case the usage is permitted from the first moment the item was taken.<sup>1</sup>

This fundamental explanation contains a profound conceptual understanding. When a person has an object, they take into consideration different possibilities. The possibility that someone else might want to use it has been taken into consideration by the owner, and that pos-

sibility is one that the owner entertained and agreed to—consciously or subconsciously. If however, a person's item was swept away by the sea, or other highly unexpected misfortune, one cannot assume the owner's mental acknowledgment, as this option was not part of the owner's schema of things; in no way did the owner grant permission.

There is a great deal of discussion about how to understand this *Shach*. Some argue the *Shach* means to say that there is a distinction between usage and transfer of ownership. If one is just going to use another person's object, then latent permission may be relied on. If, however, one wants to transfer ownership, like in the case of a found object, then one cannot rely on latent concession, and needs to have an active, and conscious consent. Others, however, take the position that this *Shach* means that even in a case when ownership is being completely transferred, one may rely on the latent and precognitive permission from the owner. Moreover, there are those who disagree entirely with the *Shach*'s unique approach to the matter.<sup>2</sup>

Practically speaking, may one rely on this position of the *Shach*? Rabbi S.Z. Auerbach<sup>3</sup> takes the position that one may rely on the position of the *Shach* only in a case in which the item being used is not being consumed: when using a hammer, a book, and the like. In the case of food, drinks, and other items that get consumed in a non-replaceable way, one may not rely on the *Shach*.

Not taking the position of the *Shach*, however, does not exclude any use of something that belongs to another with no explicit permission. There are several clear examples in which one is permitted to make use of something without permission. If a person wants to take something from someone that is so small that no one in that place would mind if it is taken from them, such as taking a small piece of wood for a toothpick from a tree, or a small straw from a cart, one may take it, unless he knows that the owner would be upset or unless the owner is available and can grant explicit permission.<sup>4</sup>

Another example of being able to take something without explicit permission is if one will be using the object for the sake of fulfilling a *mitzvah*. For example, if one did not don *tefillin* yet or shake a *lulav* and *etrog* he may use these items without explicit permission from the owner. The logic underlying these two examples is that even if one does not rely on presumed permission, one can be certain that the owner consents to his object being used for *mitzvah*. This is not the same as the *Shach*'s case; here the owner's conscious consent was given before the use. The moment he put down the object we assume that he

consciously assented to others using it for a *mitzvah*.

Respecting the ownership and rights of each and every individual to their property is the epicenter and foundation of any civil society. Being able to do so while finding common ground for cooperation, generosity, and mutual agreement makes society all the more successful and prosperous.

1 *Shach*'s opinion goes against the position of the Tosafot (Bava Metzia 22a s.v. Mar), Hagahot Osheri (ibid, siman 3) and the Hagahot Mordechai (ibid, letter 424). Of the Achronim noted for taking a position that strongly prohibits any unauthorized use -- in opposition to the *Shach* -- is Rabbi S.Z. of Liadi (SA Harav Hilkhoh Metzia 1).

2 See She'elot U'teshuvot Oneg Yom Tov 111 and a diametrically opposite position in Birkat Shmuel (Bava Metzia Siman 21:5). See also Ktzot Hachoshen, 262:1 and Netivot Hamishpat 195:1. Cf. Rabbi Eliezer Y. Waldinburg, Tzitz Eliezer, Vol 10, siman 39:6.

3 Quoted in Halichot Shlomo, Hilchot Tefillah, chapter 19 footnote 13.

4 Aruch Hashulchan (CM 359:1)

# From the Massechta

## Where's the Wedding? The Nature of Nisuin

MATT LUBIN

While the first Mishnah in Kiddushin, as one would expect, teaches exactly how the act of *kiddushin* is accomplished (in three ways: by money, contract, or by marital relations), and it is clear from the Gemara's discussion that the act of *kiddushin* is a *kinyan*, the second stage of the marriage – *nisuin* – is much less clear. Is *nisuin* an acquisition, like *kiddushin*, the completion/application of an acquisition, or something else entirely? Is it the second part of a two-step process, or does it begin a completely different type of relationship than the one created by *kiddushin*? This lack of an explicit definition or description of *nisuin* (or *chuppah*, as it is sometimes called) gives rise to a wealth of various opinions in halakhic literature, ranging from requiring the couple to live together, to the groom covering his bride with a veil (see Even HaEzer 61), but how do all of those opinions relate to what *nisuin* represents, or what it is supposed to accomplish?

Even if we are to come to a conclusion regarding what *nisuin* is and how it is accomplished, the question remains as to why it is shrouded in such mystery in the first place. *Nisuin* is a fundamental aspect of every single Jewish wedding; how could the Mishnah have left us in the dark as to how such a procedure is to be done? Shouldn't Maseches Kesuvos begin with “*Nisuin* is done in the following manner...” parallel to the way that Maseches Kiddushin begins?

If we take a step back, we will find that even the Written Torah never describes *nisuin* directly, and instead merely hinting to it by discussing laws regarding women who are betrothed but not fully married. Why is this so?

To begin to answer these questions, each opinion has to be analyzed carefully, but here we will suffice in mentioning only a couple of aspects of the Rambam's opinion. The Rambam discusses *nisuin* in the tenth chapter of Hilchos Ishus, and provides the following explanation of how it is to be accomplished:

“This seclusion [of the bride and groom alone] is called ‘entering the *chuppah*,’ and this is what is elsewhere referred to as ‘*nisuin*.’ One who has relations with his betrothed fiancé for the purpose of marriage/*nisuin* after the betrothal, from the beginning of relations he has acquired her and she becomes married, and she is his wife in all matters. Once the betrothed woman has entered ‘*chup-*

*pah*,’ her husband may be with her and she is entirely his wife in all matters. And once she has entered the *chuppah* she is referred to as a ‘*nesuah*’ even if she didn't have relations, as long as she was able to have done so. But if she were a *niddah*, then even though her [husband] brought her to the *chuppah* and was secluded with her, the *nisuin* has not been completed and she is still like a betrothed [woman].”

The above passage teaches us that (1) *nisuin* / *chuppah* is accomplished by seclusion of the bride and groom, (2) it can also be accomplished by relations for the purpose of consummating the marriage, and (3) such consummation is not necessary, but it has to be *possible*, and therefore a *niddah* cannot be married by being alone with her groom. To conceptualize the Rambam's requirement, *nisuin* is an act which expresses the intimacy-relationship between a husband and a wife.

The Rambam could have summed this up in one sentence: *Nisuin* is *yichud haraui lebiah*, seclusion which would allow for intercourse, but he does not. Furthermore, the Rambam seems to equivocate somewhat, as he continually emphasizes that proper *nisuin* makes the woman “his wife in all matters.” What else could we have thought? Apparently, this is meant to be contrasted to a *chuppah* with a *niddah*, in which the Rambam says that the *nisuin* has not been *completed*. The implication, though, seems to be that while it has not been finished, it has been *started*.

The Rambam seems to be saying that there are either different types of *nisuin*, or that it can be accomplished in different stages. Further support for such an interpretation of the Rambam can be drawn from another law, where he states that the marriage *berachos* must be made before the *nisuin*, and therefore should not be made before the marriage of a woman who is a *niddah* because she cannot have proper *chuppah*, as discussed. However, if the *berachos* were said and the couple did enter *chuppah*, despite the fact that the woman was a *niddah*, the *brachos* should not be recited again (Ishus 10:6). Why would we think that the *brachos* would have had any validity if *chuppah niddah* is itself invalid? Therefore it would appear that *chuppah niddah* is at least *partially* valid, because if the Rambam wanted to say that the *berachos* are valid if

they are done entirely before the *nisuin*, he need not have given the example of a *chuppas niddah*. How are we to understand this?

There are several laws which are dependent on a woman being “in the domain of her husband,” and it is clear from several laws that this status is not conferred upon her betrothal. Thus, Rashi writes (Kesuvos *daf* 48) that a woman is considered to be “in the domain of her husband” not after betrothal, but after marriage – *nisuin*. The problem is that the Mishnah there is referring to a girl being sent off with the messengers of the husband, not to *yichud harau lebiah* (which is how the Rambam defines *nisuin*). Furthermore, if we are to understand *nisuin* as an expression of marital intimacy, how could such a thing ever be accomplished through a messenger of the husband? Shouldn't it require participation of the husband himself?

Due to this problem, R. Naftoli Tropp suggests that according to the Rambam, there are two independent aspects of *nisuin*: the marital aspect and the money-related aspects. The financial aspects of the marriage, such as the husband's obligation to honor his wife's *kesuvah*, can be applied as if the woman is fully married merely by “entering her husband's domain.” However, the marital aspects of *nisuin* can only be accomplished by the *chuppah* of the bride and groom being together in private.

R. Naftoli Trop split the *nisuin* into two parts, but based on our reading of the Rambam in Hilchos Ishus, it seems necessary to subdivide it even further. As mentioned earlier, it would appear that the Rambam believes that seclusion which cannot lead to marital consummation – a *chuppas niddah* – still seems to accomplish something in the realm of the husband and wife's relationship. Could *nisuin* really be so fragile a concept that it can be broken into so many more pieces?

If *chuppah* is a formal act of *kinyan*, then it would indeed be hard to imagine that different aspects of the marriage consummation can be accomplished at different times and through different venues. However, R. Yosef Dov Soloveitchik, in a *hesped* for his uncle, the Brisker Rov, (Divrei Haga'os V'ha'aracha, pg. 78) said that, unlike *kiddushin*, *nisuin* is not a *kinyan* at all, but rather the realization of a reality that the man and woman are actually living together as a married couple. Thus, there is no formal act of a *kinyan*, and perhaps no need for any formalized act at all, as the status of a woman as a *nesuah* is dependent on the reality of whether or not she is actually living with her husband, and not due to a specific legal procedure. (It should be noted that certain passages in the

Gemara and the Rambam do seem to refer to *chuppah/nisuin* as a *kinyan*, but those might not be meant to be taken literally.)

This *chiddush* echoes the words of the Aruch Hashulchan (Even HaEzer 61:14), who states that the many opinions regarding how *nisuin* is to be accomplished are actually all in agreement. *Nisuin* is something that best symbolizes husband and wife living together as such, which could have different physical expression depending on the cultural realities of various times and countries.

If *nisuin* is not a formal procedure, but rather dependent on an actual change, then the otherwise strange aspects of *nisuin* fall into place. While the Rambam states that a person who spends time privately with his wife when he is able to have relations with her is fully married, several other “marriage-like” activities could likewise give the couple marriage status for certain other rules, that are dependent on those very activities, such as the obligation upon the man to financially support his wife as soon as she joins his messengers. This also explains the mysterious absence of a definition for *nisuin* in the Torah or Mishnah. *Nisuin* is by definition something without procedural formality; even if full *nisuin* is accomplished by *yichud harau lebiah*, that is only by virtue of it being an expression of the amorphous concept of marital intimacy.