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Chanukah: Publicizing the Miracle

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In the recital of *Al HaNissim* on Chanukah we thank Hashem for the many miracles in the military victory of the *Chashmonaim* over the Greek Syrians who had persecuted the Jews. Rashi's comment on the question of the Talmud in (Shabbat 21b), *mai Chanukah*, on which miracle was the celebration of Chanukah based, clearly assumes a focus on only one specific miracle. Our obligation to publicize the miracle is restricted to the miracle of the crucible of oil that lasted for eight days.

Rabbi Soloveitchik explains that when thanking Hashem for the miracles He has done for us, we are required to be expansive. In both the *Amida* and *Birchas haMazon*, *Al HaNissim* is recited within the framework of the blessing thanking Hashem. If one accepts the textual version of this prayer that adds the connective *vav* in *u'vezman hazeh*, this expansion is extended to our own times. This concept is demonstrated as well in the Seder night in the later part of the *Haggadah*.

The historical background for the observance of Chanukah is summarized by Maimonides in the introductory paragraph of his *Hilchos Chanukah*. The persecution of the Jews by the Greeks is described as both spiritual and physical, and the victory of the *Chashmonaim* as having military, political and religious significance. Yet it is clear that the lighting of the candles memorializes the miracle of the oil. Maimonides (*Hilchos Chanukah* 4:12)

describes how beloved the *mitzvah* of lighting the Chanukah candles and spreading the miracle is, even for the impoverished. Placing the candles in the outer courtyard where non-Jews also will see the lit candles reflects its public nature. The unique obligation for one who sees the candles to recite a blessing even when one does not perform the *mitzvah* is also indicative of this message. A miracle that enhanced religious observance in the Temple is to be proclaimed to all, leaving out celebrating a miraculous military victory.

Strikingly, Maimonides ends the laws of Chanukah by pointing out that there is a different lighting of candles that reflects a value that is greater than publicizing the miracle. Lighting the Shabbat candles which symbolizes harmony within the home has priority. It is possible that this conclusion sheds light on what is missing from Maimonides' historical summary. The struggle of the *Chashmonaim* was an internal one against Hellenized Jews as well as fight against the external enemy. Maimonides does not mention this, but the critical value of peace and harmony is not only necessary in the family but amongst the Jewish people as a whole. This is indicated in Maimonides' concluding comment, "Great is peace. The entire Torah was given to make peace, as it is written, "Its ways are pleasant and its paths lead to peace".

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Of Blessings and Miracles: The *Beracha* on *Hadlakas Neiros Chanukah* as a Function of *Pirsumei Nisa*

MEIR GOODMAN

The ubiquitous practice of lighting Chanukah *neiros* in *shul* between *mincha* and *ma'ariv* finds its source in the Rishonim and is codified in Shulchan Aruch (Orach Chaim 671:7). The Mechaber, in the middle of a discussion regarding the correct placement of the Menorah in, or outside, of one's house, states, "And in the *Beis HaKnesses*, one places it by the southern wall, and we light and bless on it for *pirsumei nisa*." Elaborating on this *minhag*, the Rema adds that one does not fulfill his obligation to light Chanukah *neiros* through this *hadlakah*; one must return home and light again.

In the *Beis Yosef* (ibid.) the Mechaber brings two sources for this practice. He first suggests that lighting Chanukah *neiros* in *shul* was instituted for the sake of guests who do not have a house to light in, just as Chazal instituted *Kiddush* in *shul* on Friday night to accommodate the guests who eat, drink, and sleep there. The *Beis Yosef* states that the *Kol Bo* (Siman 44) offers such an approach. There are a few questions here: If the *Beis Yosef* means to refer to guests who do not sleep in the *shul*, they should light wherever they are spending the night, alongside their hosts, not in the *shul*. If the guests are sleeping in the *shul*, why do they not light the Menorah themselves? Furthermore, the *Kol Bo* himself does not actually say that the practice was instituted for the sake of guests. Instead, he writes that the *neiros* are lit to be *motzi* those who are not *baki* or *zariz*, which raises an obvious and serious issue: how can the obligation to light be fulfilled by those who are either not *baki* or *zariz* outside the auspices of a home, when the Halacha clearly mandates lighting in a *bayis*?

The *Beis Yosef* suggests a second approach, which can also be found in the aforementioned passage in the *Kol Bo* and in *Teshuvos HaRivash* (Siman 111): the lighting of Chanukah *neiros* in *shul* serves as a way of publicizing the miracle in a very public fashion, especially in light of the fact that nowadays we do not place our personal *menoros* outside. The *Rivash* adds, we make a *beracha* on this lighting just like we make a *beracha* on *Hallel* of Rosh Chodesh even though it is only a *minhag*, and one does not fulfill his obligation through this lighting. This *Rivash* is the source for the Mechaber's ruling that we make a *beracha* on lighting in *shul*, for his statement that the lighting itself is for the sake of *pirsumei nisa*, and for the Rema's ruling

that one does not fulfill his obligation with it.

When the *Rivash* contends that one is allowed to make a *beracha* despite the fact that the *hadlakah* is a *minhag*, just like we make a *beracha* over *Hallel* on Rosh Chodesh, he is taking a definitive position in what is really a dispute amongst the Rishonim. The Gemara in Sukkah (44b), while discussing *chibut aravos*, quotes the following story: Aivu says, I was before Rebi Elazar bar Tzadok, and a man came and brought him an *aravah*. He took it, shook it, and did not make a *beracha* on it, for he thought it was a *minhag* from the *Nevi'im*. The Gemara implies that we do not make *berachos* over *minhagim*. As such, one would assume that we likewise do not make a *beracha* over the *Hallel* of Rosh Chodesh, which the Gemara in Ta'anis (28b) says is a *minhag*, and indeed the Rambam rules accordingly (Hilchos Megillah v'Chanukah 3:7). Rabbeinu Tam, however, disagrees and maintains that a *beracha* is recited, and the Gemara in Sukkah poses no difficulty to this practice. The *minhag* of *chibut aravos* is different than the *minhag* of *kriyas haHallel*: *chibut aravos* involves nothing more than a simple act of waving the *aravah*; therefore one does not recite a *beracha*. *Kriyas haHallel* is more a significant act, which does warrant a *beracha*. Rabbeinu Tam brings proof that we make *berachos* on *minhagim* from *Yom Tov Sheini*, whose observance is referred to as a *minhag* and yet we recite the various *berachos* associated with *kedushas hayom*. (See Tosafos Berachos 14a, Sukkah 44b)

This discussion has great relevance to our *sugya* since, as a well-known Teshuva of the Chacham Tzvi (88) points out, the Mechaber seems to contradict himself. In *hilchos Rosh Chodesh* the Mechaber rules like the Rambam—one does not say a *beracha* on the *Hallel* of Rosh Chodesh (422:2). How, then, could the Mechaber in *hilchos Chanukah* allow for the recitation of a *beracha* on the *minhag* of lighting Chanukah *neiros* in *shul* when the Mechaber simultaneously rules like the Rambam who disallows *berachos* on *minhagim*?

The Magen Avraham (672:6) points to a second instance where the Mechaber contradicts himself within the scope of *hilchos Chanukah*. The Gemara in Shabbos (21a) quotes a *beraisa* that teaches, the *mitzvah* of *neiros Chanukah* is from *shkiyas hachamah* until *shetekaleh regel min hashuk*. The Gemara explains this *beraisa* to mean

one of two things: either it is providing the actually time-frame within one must light their *neiros*, or it is providing a *shiur* for how much oil must be placed into the *neiros* (enough to last the same amount of time between *shkiyas hachamah* until *shetekaleh regel min hashuk*.). According to the first approach, one is not obligated in lighting after *shetekaleh regel min hashuk* whereas according to the second, one is obligated.

The Tur (672) rules that if one does not light within half an hour of the end of *shkiyah*, he is still obligated to light the rest of the night, and adds, “this is not like the Rambam who writes that if one forgets or purposefully does not light with *shkiyas hachamah*, he may light until *shetekaleh regel min hashuk*. Once that time has passed, he no longer lights.” Seemingly, the Tur rules like the first explanation in the Gemara while the Rambam rules like the second. The Beis Yosef quotes the Rosh who rules, like the Tur, that one may light all night, but stresses the fact that the obligation to do so is due to a *safek*, since the Gemara had two approaches to understanding the *beraisa*, and only one obligated lighting after *shetekaleh regel min hashuk*. On the basis of this Rosh, the Beis Yosef objects to the Tur and writes that the Tur should not have written, “and not like the Rambam,” because even those Poskim who do obligate lighting only obligate lighting out of *safek*, whereas the language of the Tur suggests that the dispute is *m’ikar hadin*. It is important to notice that the Beis Yosef does not object outright to the ruling of the Tur, only to the language he used, indicating that the Tur also holds that the obligation to light is only on account of a *safek*. Indeed, were this not the Tur’s intent, we would be faced with a glaring issue: how could the Tur rule that there is a clear obligation to light after *shetekaleh regel min hashuk* when the Gemara itself has a *safek*. Rather, it is more likely that the Tur and Beis Yosef are on the same page in this regard.

The Magen Avraham points out that since the Beis Yosef concludes that the obligation to light is on account of *safek*, one would not make a *beracha*. This yields a problem, for in the Shulchan Aruch (672:2) the Beis Yosef writes that one may light all night long and does not mention whether or not a *beracha* is recited, implying that a *beracha* is indeed recited, no differently than if one were to light earlier in the evening. If the obligation to light is out of *safek*, how can one make a *beracha*? Alongside the Magen Avraham’s difficulty with the Beis Yosef, we can pose the same question to the Tur: If the Tur agrees with the Beis Yosef, why didn’t the Tur himself write than one does not make a *beracha* later at night?

Rav Yaakov Emden in his *Mor u’Ketziyah* suggests a very straightforward *yesod* that answers all of these difficulties. Whereas by all other *birchos hamitzvah* the *beracha* is a separate obligation from the *mitzvah* itself, the *beracha* on *hadlakas neiros Chanukah* is fundamentally different in that the *beracha* itself helps facilitate the goal of the *mitzvah*. Since *neiros Chanukah* are essentially a method of *pirsumei nisa*, it is necessary to accompany the *hadlakah* with a *beracha*. If you don’t, how would anyone know that you are lighting for the sake of the *mitzvah* of *pirsumei nisa*? Perhaps you’re lighting a candelabra for your own benefit. As such, any *hadlakah* of *neiros Chanukah* requires a *beracha*. The *beracha* indicates publicly that the lighting of these particular *neiros* is a remembrance of the *neis* of Chanukah.

With this in mind, we can very well understand how both the Beis Yosef and the Tur can, at the same time, indicate that one makes a *beracha* on *neiros Chanukah* even if he lights late at night, and yet maintain that the obligation to light is only out of *safek*. Despite the fact that normally we do not permit the recitation of *berachos* in situations of *safek*, the *beracha* on *neiros Chanukah* is an exception, because without the *berachos* there would be no clear expression of the fact that the *hadlakah* is for the sake of *pirsumei nisa*, which would impinge upon the *pirsum* of the *neis* itself. Similarly, despite the fact that the Mechaber rules that we do not make *berachos* on *minhagim* such as over *Hallel* on Rosh Chodesh, the Mechaber does obligate a *beracha* over the *hadlakas neiros* in *shul* because the *beracha* itself it necessary for the sake of *pirsumei nisa*.

Two *diyukim*, both in the words of the Mechaber, support R’ Yaakov Emden’s *yesod*. In the Beis Yosef, the Mechaber writes that the purpose of lighting in the *shul* is in order to “publicize the miracle before the people and to organize the *berachos* before them in order that there should be a great *pirsum* for G-d,” indicating that the *berachos* themselves facilitate the *pirsumei nisa*. Likewise, in Shulchan Aruch, the Mechaber writes, “we light and bless for the sake of *pirsumei nisa*.” One would expect the Mechaber to have written, “we light for the sake of *pirsumei nisa* and bless.” The actual words of the Mechaber indicate that both the lighting and the blessing are for the sake of *pirsumei nisa*, as Rav Yaakov Emden suggests.

They Breached the Walls of My Towers: Gentiles on the Temple Mount

ETM

“The Greeks gathered against me, back then, in the *Chashmonaim* days, and they breached the walls of my towers...” (Ma’oz Tzur). The Mishnah (Middos 2:3) writes that gentiles may not enter the innermost parts of the *Beis haMikdash*. A barrier, called the *soreig*, was erected to delineate the threshold beyond which gentiles could not pass. When the Greeks entered the Temple, in indignation over this law of ours, they cut thirteen breaches in the *soreig*. When the *Chashmonaim* retook the Temple, they enacted a law that anyone who passed one of the breaches should bow to Hashem in thanks for our victory over the Greeks.

Is the law forbidding gentiles from entering the inner recesses of the Temple still in force nowadays? Although the Rambam and the Ra’avad (Beis haBechirah 6:14-15) seem to disagree about whether the Temple Mount retained its sanctity after the Temple’s destruction, the Mishnah Berurah (561:5) rules that it did indeed retain its sanctity. Along similar lines, R. Kook (Mishpat Kohlen 96) writes that, absent a clear consensus on the issue, as far as biblical laws are concerned, we must follow the stringent opinion, namely, that the Temple Mount’s sanctity is still in force. R. Ovadiah Yosef (Yabia Omer 6, YD 26) cogently notes that the Temple Mount still has some sanctity, but not the same level of sanctity as it had in the Temple eras. Finally, the Tzitz Eliezer (vol. 10, no. 1, ch. 9) suggests, based on a Biblical verse, that in the Ra’avad’s times, the gentiles’ dominion over *Eretz Yisrael* had temporarily removed the Temple Mount’s sanctity and the laws associated therewith. However, now that Jews once again own *Eretz Yisrael*, the sanctity and its attendant laws have returned to their former force.

R. Ovadiah Yosef (ibid.) cites an interesting dispute concerning gentiles’ permission to ascend Temple Mount. Some authorities maintain that Jews must prevent gentiles from entering the consecrated spaces of Temple Mount, but, should the gentiles defy the Jews’ authority, the gentiles do not transgress and are not punished. Based on this, the Tzitz Eliezer (ibid. ch. 10) writes that Jews may have a responsibility to persuade gentiles to leave the Temple Mount, such as by offering financial incentives if funds are available. In contrast, other authorities believe that Jews have no responsibility to prevent gentiles from ascending; rather, the gentiles have a responsibility, each

one to himself, to avoid transgression and divine retribution by refraining from entering the Temple Mount’s consecrated spaces. Based on this, Jews need not expend any energy to dissuade gentiles from ascending.

All agree, however, that we may not encourage gentiles to enter the consecrated spaces, either because this would constitute neglect of our own responsibility, or because this would run afoul of *lifnei iver*, the prohibition against encouraging others to transgress.

Furthermore, all agree that gentiles are only rabbinically forbidden from ascending the Temple Mount. This, however, begs the question: if gentiles were not adjured as part of their seven *mitzvos* to heed rabbinic legislation, how can they be bound by such legislation from entering inwards of the *soreig*? Indeed, it is this very question that compelled the afore-referenced authorities to conclude that the prohibition devolves not on the gentiles, but on us. R. Elchanan Wasserman (Kovetz Shiurim, vol. 2, Kuntres Divrei Sofrim), though, notes that the Talmud in many places accepts without challenge the premise that rabbinic legislation binds gentiles as firmly as it does Jews. Hence, R. Elchanan writes that natural law demands that all people, Jews and gentiles alike, heed rabbinic legislation. Jews, therefore, have no responsibility to prevent gentiles from ascending Temple Mount, despite the Mishnah Berurah’s ruling that the Temple Mount’s sanctity is still in effect.

From the Massechta

Why Denying the Resurrection Warrants Loss of Olam ha-Ba

RABBI NETANEL WIEDERBLANK

The final chapter in Sanhedrin opens with the following Mishna:

Every Jew has a share in *olam ha-ba*, as it says, “And your people are all righteous; **they will inherit the land forever**; they are the branch of My planting, My handiwork, in which to take pride.” **And the following people do not have a share in *olam ha-ba*: one who says that the resurrection is not stated in the Torah...**

Of all the heresies that warrant a loss of *olam ha-ba* why would the Mishna specify denial of the resurrection? While part of the answer may be historical -- denial of the resurrection may have been pervasive at the time -- the Gemara indicates that the answer alludes to a more fundamental principal.

The Talmud wonders why the repercussions of denying the future resurrection are so severe.¹ The Talmud responds, “He denied it [*techiyat ha-meitim*], and therefore, he has no portion in it [*olam ha-ba*].”² How are we to understand the nature of this measure for measure punishment and how has the Gemara answered why denial of *techiyat ha-meitim* warrant loss of *olam ha-ba*.

One way to understand this is that if a person denies *techiyat ha-meitim*, he is not just questioning a miracle; he is denying divine justice (as there is no justice in this world) and divine goodness (since *olam ha-ba* is the ultimate expression of God’s beneficence³). R. Meir Abulafia (Ramah) highlights this theme:

The concept of *olam ha-ba* is among the fundamental principles of Torah, as can be seen from the fact that one who denies it has no share in *olam ha-ba*, even if he studied Torah and did other good deeds... Moreover, divine justice is dependent on the concept of *olam ha-ba*, because only through it does a person get what he deserves. Therefore, we must explain its nature based on the tradition we received from our fathers and teachers.

Ramah explains that without belief in the afterlife, there can be no justice. Indeed, Rambam lists belief in reward and punishment among the thirteen principles of faith.⁴ He specifically highlights *olam ha-ba* in this context.

Beyond justice, there is an even more fundamental point that a person misses when he denies *olam ha-ba*.

This lesson can be discerned from the way Chazal discuss an episode from the book of *Bereishit*. When Yaakov asked Eisav to sell the birthright, Eisav responded, “Behold, I am going to die, so why do I need the birthright” (*Bereishit* 26:32). According to the Talmud (*Bava Batra* 16b), Eisav meant that death is final, that there is nothing besides our meager existence in this world: “Eisav denied the resurrection, as it says, ‘Behold, I am going to die.’”

Ramban (*Bereishit* 25:34) explains that this attitude was why Eisav disparaged the birthright: “This is the reason he disparaged the birthright: because fools desire nothing other than to eat, drink, and fulfill their cravings when they wish, thinking not of tomorrow.” Essentially the attitude of Eisav was “eat, drink, and be merry, for tomorrow we shall die.” To him, giving up on eternity for a good meal seemed like a fair deal. Yaakov disagreed. He argued that there is purpose in existence and direction to history. Thus, it is not surprising that according to Chazal, the central debate between Yaakov and Eisav concerned the existence and value of *olam ha-ba*. One expression of this sentiment is *Yalkut Shimoni* 111:

“Sell me your birthright *ka-yom*.” When Yaakov and Eisav were in their mother’s womb, Yaakov said to Eisav, “My brother, there are two worlds before us, *olam ha-zeh* (this world) and *olam ha-ba*. *Olam ha-zeh* has eating, drinking, commerce, marriage, and the bearing of children. *Olam ha-ba* has none of these. **If you would like, take *olam ha-zeh*, and I will take *olam ha-ba***, as it says, “**Sell me your birthright *ka-yom*,” [meaning] like the days we were in the womb.**⁵ **With this, Eisav denied *techiyat ha-meitim*, as it says “Behold I am going to die, and why do I need the birthright?”** At that moment, Eisav took [Yaakov’s] portion in this world, and Yaakov took Eisav’s reward in *olam ha-ba*.

This Midrash informs us that Eisav sees only the here and the now, while Yaakov glimpses an eternal reality beyond our own.⁶

This is not to say that Yaakov is motivated by reward in the afterlife. For example, Rambam (*Hilchot Teshuva* 8:7) notes that David ha-Melech longed for *olam ha-ba*, even as he maintains that he was not motivated by reward in *olam ha-ba* (*Hilchot Teshuva* ch. 10). Rather, we are ar-

guing that awareness of the realness of *olam ha-ba* is a central aspect of Jewish faith. As such, its denial warrants loss of *olam ha-ba*.

1 Many sources indicate that this should not be seen as a punishment as much as a natural outgrowth of this heresy.

2 Ramban in Sha'ar Ha-Gemul and Yad Ramah note that this passage implies that by denying *techiyat ha-meitim*, one has denied *olam ha-ba*, which supports the notion that we will have a physical body in *olam ha-ba*. According to Ramban when a person dies, his soul and body separate, with the soul continuing to exist in the *olam ha-neshamot*, the world of the souls. This includes Gan Eden and Gehinnom. Gan Eden and Gehinnom exist now, while *olam ha-ba* will be created following the conclusion of the messianic era. At that point, the body will reunite with the soul (*techiyat ha-meitim*) and enjoy the ultimate spiritual existence. It must be stressed that despite our physical body our existence in *olam ha-ba* is entirely spiritual.

3 See the opening chapter of *Messilat Yesharim*.

4 The thirteen principles of faith appear in Rambam's commentary on the Mishnah (*Sanhedrin* chapter 10).

5 The Midrash understands that the word *ka-yom* is superfluous and teaches us that when Yaakov asks to buy the birthright, he is referring to the conversation they had in the womb.

6 The aforementioned Talmudic passage notes that on the day Eisav transferred the *bechora*, he committed five cardinal sins, each of which reflected his worldview. For example, why does the Talmud state that that Eisav slept with a betrothed maiden, *naarah meurasa* instead of saying that he committed adultery? After all, the concept of *naarah meurasa* did not even exist at the time (see the beginning of *Hilchot Ishut* in *Mishneh Torah*). R. Ahron Lopiansky explains that the concept of *eirusin* highlights an orientation towards the future. Even though the maiden is now in her father's house, she already is considered an *eishet ish* based on her future status. Eisav's worldview denied the idea that tomorrow's reality should affect today's activity.

Courting Disaster: Why Some Kings Can Judge and Others Can't

CHEZKIE GLATT

The Mishna in the beginning of the second *perek* of *Sanhedrin*¹ teaches us that a king is not allowed to judge or be judged. The Gemara² limits this rule to apply only to *Malchei Yisrael*, but not kings from *Malchei Beis Dovid*. The inability of *Malchei Yisrael* to judge or to be judged is based off a tragic story recorded there which involved the judging of King Yanai — a king not from *Malchei Beis Dovid* — and the untimely death of many of the sages. His insolence led to their deaths, and a *takanah* was instated with the apparent goal of preventing any further such incidents.

Despite the particular details of the story which prompted the *takanah* in the first place, it seems fair to ask why the *takanah* would be limited to *Malchei Yisrael* alone and not *Malchei Beis Dovid*. Surely it would have been more appropriate to disallow *all* kings (powerful and potentially dangerous as they are) from being judged in the future, even ones from the line of *Malchei Beis Dovid*! Yet the Gemara explicitly says the enactment is limited to *Malchei Yisrael* alone. Why?

In *Mishnah Torah*,³ Rambam seems to offer one answer. For some reason, it is taken as a given that *Malchei Yisrael* are less submissive to Torah law than their *Malchei Beis Dovid* counterparts. As such, the *takanah* was only necessary to enact regarding them, for there wouldn't be such a concern of a potential calamity sprouting from a case where a king from *Malchei Beis Dovid* was the defendant.

At first glance, this answer seems somewhat strange to our modern sensibilities. Can one's degree of adherence to the laws of the Torah really be assumed based on one's ancestry? Certainly, the number of G-d fearing kings of the southern kingdom during the era of the first *Beis HaMikdash* greatly outnumbered those of the northern one. But is it really true that *Malchei Beis Dovid* have this as some sort of inborn inclination? Possibly. We can't just dismiss ideas like spiritual legacy just because we don't understand them; they may still be true. But to avoid that messier explanation, it's worth noting that an alternative understanding seems quite tenable in the words of Rambam as well.

It might be that Rambam really means to say that the reason there is this assumption about *Malchei Yisrael* has nothing to do with their genes; rather, it has to do with the de facto precarious position their authority is perched upon. *Malchei Beis Dovid* cannot truly lose their kingship; no matter what his offspring might do, Dovid HaMelech has already acquired the crown of *malchus* for himself and his descendants as an everlasting heritage. A king from the *Malchei Yisrael*, however, automatically has reason to be more distrustful of the Torah and its laws, for the throne they claim (sometimes with the Torah's blessing, sometimes without) can always be usurped from their control. Therefore, there is always an additional factor at play to make a king from the *Malchei Yisrael* feel insecure.

This reality paved the way for the *takanah* to be enacted only with regards to the *Malchei Yisrael*.

Such an interpretation isn't conjecture. In the *Peirush HaMishnayos*, Rambam sounds like he means this explicitly.⁴ He writes that the kingship of the *Malchei Yisrael* is against the Torah, whereas the reign of *Malchei Beis Dovid* is not, and it is for this reason that we must assume the *Malchei Yisrael* are less willing to submit to proper justice.⁵

Kesef Mishna⁶ raises a series of questions similar to the one I raised above, and offers a different explanation for why this *takanah* wasn't made on *Malchei Beis Dovid*. The Gemara itself⁷ gives a reason why we must allow *Malchei Beis Dovid* to judge: it brings a *pasuk* from Yirmiyahu which talks about *Malchei Beis Dovid* judging righteously. And because of the principle of "*Hiskoshishu V'Koshu*," we know by default that they had to be able to be judged as well.

The Kesef Mishna understands the Gemara to mean, through its quoting of the above *pasuk*, that despite the fact that indeed, there *is* reason — the same reason as *Malchei Yisrael*⁸ — to worry about *Malchei Beis Dovid* being judged, *Chazal* didn't want to enact a *takanah* which would inevitably end up "in disagreement" with a *pasuk*. The *pasuk* says *Malchei Beis Dovid* can judge. *Chazal* would effectively be saying they cannot. To avoid that issue, *Chazal* left *Malchei Beis Dovid* out of the *takanah*.⁹

It isn't entirely clear to me, but I'm pretty sure that Kesef Mishna considers this line in the Gemara to be at odds with Rambam and his offered explanation. He therefore rejects Rambam's suggestion and gives his own reason for why the *takanah* only applies to *Malchei Yisrael*.

However, I think a slightly altered version of Kesef Mishna's answer can fit into both the words of the Gemara and Rambam. I'll suggest it, even though I don't think Kesef Mishna meant to say it. It could be that instead of reading the *pasuk* as saying *Malchei Beis Dovid* can judge, Rambam understood the way the Gemara used it a bit more ambitiously: that *Malchei Beis Dovid* should judge. The *pasuk* was saying they are assumed to be righteous kings¹⁰ who will enact righteous judgement. Therefore, the Gemara figured that we should specifically desire them to be our judges, and therefore didn't want to make them unable to be judged (which would thereby remove their ability to judge through the idea of "*Hiskoshishu v'koshu*"). According to this, Rambam is exactly like the Gemara — he quoted the reasons they are good kings, which we know from the *pasuk*, as the basis for the Gemara's reluctance for having the *takanah* apply to *Malchei*

Beis Dovid.

Not only does this explanation remove any issues between Rambam and the Gemara, it also seems to fit better in his words. In *Peirush HaMishnayos*, Rambam ends off his explanation by cryptically quoting the same *pasuk* the Gemara uses. Clearly he was coming to connect his understanding with the way the Gemara presents the reason why the *takanah* didn't apply to the *Malchei Beis Dovid*. The *pasuk* teaches us they have these traits and would be fantastic judges, and therefore we wanted them to still be able to judge.

Aside from the above explanations for why the *takanah* wasn't made to include *Malchei Beis Dovid*, it seems that another one can be found in the words of Ran.¹¹ He writes that it is impossible for us to have another king from *Malchei Beis Dovid* until *Moshiach* comes. Accordingly, we can say that there was no need for *Chazal* to institute any such *takanah* by *Malchei Beis Dovid* — by the time we have another king from that line, we know he'll be a good one (and we might not have to worry about other bad kings after that).

This explanation was not available to Rambam. Later in *Mishna Torah* (in the context of how we can discern if a potential *Moshiach* is the real one or not),¹² Rambam clearly recognizes the possibility that there might be other kings who will arise from *Malchei Beis Dovid* before the true *Moshiach* comes.¹³

One more possible explanation:¹⁴ perhaps the reason this *takanah* wasn't made by *Malchei Beis Dovid* was simply by dint of the fact that the story prompting the initial institution was about a *melech* from *Malchei Yisrael*. Despite the question I started off, it might just be that *Chazal* made a *takanah* because of a specific story, and limited it to the details of that first story for whatever reason.

A possible precedent for such an idea might be the story recorded in Bava Kamma about the cessation of the *korban tamid*,¹⁵ where because of one particular incident a *takanah* was instated to disallow the raising of pigs everywhere. Why make such a far-reaching *takanah* without any additional qualifications or considerations, or without any expansion (such as engineering the *issur* to include other sorts of not-fit-for-*hakravah* animals)? I don't rightly know, but this may have been the manner through which *Chazal* enacted this type of *takanah*: "*mi-shum ma'aseh shehaya*," and precisely in the same exact way "*shehaya*."

1 Sanhedrin 18a

2 Sanhedrin 19a

3 *Hilchos Sanhedrin* 2:5. See also *Hilchos Eidus* 11:6 for a slightly more elaborate formulation, as well as *Hilchos Melachim U'Milchamos* 3:7.

4 *Peirush HaMishnayos*, Sanhedrin 2:2

5 To be more precise, Rambam really sounds like the negative traits – very similar ones to those he brought in *Mishna Torah* – they are assumed to possess stem from this undeserved sovereignty, and those harmful attributes in turn lead them away from following the judgements of *Beis Din*. As opposed to what I just wrote (that the reason they aren't allowed to be judged is because their natural feeling of instability causes them to distrust the Torah, the source of that instability) Rambam in *Peirush HaMishnayos* more accurately seems to be saying that a general attitude of disobedience to the Torah's laws itself engenders ignoble traits, and these traits in turn cause people to be unwilling to submit to justice. A slight distinction, but a distinction nonetheless.

6 *Kesef Mishna*, *Hilchos Melachim U'Milchamos* 3:7

7 Sanhedrin 19a

8 Namely, causing trouble because of a position of great power.

9 Tosfos HaRosh (Sanhedrin 19a) appears to have understood similarly, albeit a bit more intensely. Instead of just saying that the *pasuk* said they could judge, he says that the *pasuk* was saying they are *commanded* to judge; at which point, *Chazal* wouldn't go ahead and violate the spirit of the *pasuk* for a *gezeirah*.

Tosfos HaRosh notes a parallel idea alluded to in Bava Meztia (70b), in a discussion concerning the permissibility of lending with interest to a non-Jew.

Regardless of this caveat, I think Tosfos HaRosh is closer to the explanation of *Kesef Mishna* than the one I'm about to suggest in Rambam.

10 Which can be understood either as some sort of in-born trait, or else as stemming from their rightful sovereignty, as I explained above.

11 *Chiddushei HaRan*, Sanhedrin 18b

12 *Hilchos Melachim U'Milchamos* 11:4

13 Like Rambam, Tosfos HaRosh (Sanhedrin 19a) clearly believed there could be other *Malchei Beis Dovid* before *Moshiach* as well.

Moreover, he also recognizes the possibility that "*Malchei Beis Dovid*" might refer to the *Reish Galusa* or *Nasi*. This may be important; if we are willing to interpret the term "*Malchei Beis Dovid*" somewhat inaccurately, then maybe we could do the same to the other term here, "*Malchei Yisrael*" – at which point, maybe a leader of a community of comparable stature to the *Reish Galusa* or *Nasi* could be considered a "*melech*" in this sense, and would be unable to judge or be judged.

14 This one isn't found explicitly in any *rishonim* I saw, but might be what some may have meant; see *Yad Ramah* on Sanhedrin (19a), for example.

15 Bava Kamma 82b

A Life for a Life: Understanding the Concept of *Rodef*

MATT LUBIN

The laws of murder appear to contain a tension of sorts with regards to killing one person in order to save another person's life. On the one hand, there is an obligation to save the life of a potential murder victim, even if that involves killing the murderer, which is known in halakhic literature as the rule of a *rodef*, a pursuer. However, there is a general rule of *ein dochin nefesh bifnei nefesh*, we do not shed one life to save another. Thus, a woman in a difficult childbirth cannot have the baby killed once it extrudes its head, even to save her life (*Mishnah Oholos* 7:6). Why should the murderer's life, therefore, be eliminated in order to save the victim? Additionally, is the concept of *ein dochin nefesh mipnei nefesh* identical to the reasoning that the Gemara provides for why one cannot kill someone to save himself: "who is to say that your blood is redder"?

R' Chaim Halevi Soloveitchik in his commentary to Rambam *Hilchos Rotzeach* 1:9 uses the Rambam there to explain the concept of *rodef*. In theory, one life would

never overvalue any other life (*ein dochin* etc.), and even an assassin would not be permitted to be killed to save his would-be victim. However, as the Rambam writes, this rule is overruled by the verse "not to pity him," which the Rambam tells us is an independent commandment, a *gezairas ha-kasuv* teaching us that in this singular case, *dochin nefesh mipnei nefesh*. Thus, there is no contradiction between two principles, but a general principle that no life is taken for another, and a specific law overrunning this principle for a *rodef*.

The nature of this *halakha* that allows one to kill a *rodef*, however, remains to be seen: is this a completely independent *mitzvah*, or is this *mitzvah* an extension of the general commandment to save a Jew's life even at the expense of violating the Torah? In other words, even though most laws are pushed aside for the sake of *pikuch nefesh*, saving someone's life, this is not true regarding the prohibition of murder: one cannot commit murder to save another's life. Once the Torah has told us that in the case of *rodef*,

one is allowed to kill to save someone, should we assume that to be an extension of *pikuach nefesh* or a completely independent dispensation?

Reb Chaim suggests that the *mitzvah* to kill the *rodef* is unconnected to the rules of *pikuach nefesh*, because, he writes, we see from the Gemara (*Sanhdrin* 57b) that the permissibility (or, more correctly, obligation) to kill the *rodef* is equally applicable to a *Ben Noach*, despite the fact that a *Ben Noach* is not included in the more general dispensation of *pikuach nefesh*.

To better understand why this would be the case, it's helpful to look at how Reb Chaim understands the concept of how *pikuach nefesh* relates to the prohibition of murder in general. It is well known that murder is one of the three prohibitions that one is never allowed to violate, even if one's life is threatened. Why does *pikuach nefesh* not allow someone to kill his fellow Jew to save his own life? The Gemara explains, *mai chazis de-dama didach sumak tefei, dilma dama didei sumak tefei* – “what makes you think that your blood is redder?” In other words, a person cannot assume that his own life is more valuable than the life of his friend. This is considered by the Gemara to be a *sevara*, reasoning so sound that we need no other source to tell us this *halakha*.

What exactly is the reasoning of *mai chazis*? Couldn't the Gemara have just as easily said *ein dochin nefesh mipnei nefesh*? By asking rhetorically, “whose blood is redder,” the Gemara might mean that because nobody can put relative values on different people's lives, a person must be passive and not do anything at all. This would indeed be very similar, perhaps even identical, to the con-

cept of *ein dochin nefesh mipnei nefesh* – because we cannot kill one person to save another, we must do nothing at all. However, Reb Chaim (in his comments to *Hilchos Yesodei haTorah* Ch. 5) posits another explanation: perhaps the reasoning of *mai chazis* teaches us that the entire concept of *pikuach nefesh* is inapplicable to the prohibition of murder. Because murder itself is not merely violation a prohibition, but a violation that results in the loss of a life anyway, then the fact that a prohibition is normally pushed-off for the sake of saving someone's life is completely irrelevant when it comes to the prohibition of murder.

This second explanation of Reb Chaim sheds further light on how Reb Chaim explains the concept of *rodef*. While one might have thought that the allowance to kill a would-be murderer is an extension of *pikuach nefesh*, once we know that the entire concept of *pikuach nefesh* is inapplicable to the prohibition of taking someone's life, the Torah's command regarding a *rodef* must be an independent *mitzvah*. Furthermore, this would explain the difference between *mai chazis* and *ein dochin* and why both concepts were needed (even if both are based upon *sevara*). Even if it is true that there is no applicability of *pikuach nefesh* when it comes to murder, one could conceivably have thought that if two people are endangering each other's lives, then a third person would be able to arbitrarily save any one of them at the expense of the other – not by violating the sin of murder to save a life, but saving a single life, which, indirectly and unfortunately causes the loss of another. However, the concept of *ein dochin nefesh mipnei nefesh* teaches us that this, too, is prohibited.

Pieces of A Whole: The Bilga Family's Punishment

ARYEH SKLAR

The last *mishna* in *Meseches Sukkah* (5:8) states: “Those who entered shared [their portion] on the North side; and those who went out, on the South side [of the Temple court]. The order of Bilga always divided [their share] on the South side; their ring was fixed and their window locked.”

Why was the family of Bilga different? One answer the *gemara* gives (*Sukkah* 56b) is that Miriam, a daughter of the Bilga family, married a Greek soldier in the period preceding the Chanukah story, when the Greeks sought to destroy the *Beis haMikdash*. The *Chachamim* therefore decreed that the Bilga family would have this difference listed in the *mishna*, apparently so that the family would be embarrassed by it during their service in the *Beis*

haMikdash. Though it was just one girl in one family of the Bilga clan who married out, the *gemara* says that she reflected her parent's values and her parents represented the values of their extended family. Therefore, everyone in the Bilga family was punished for the actions of just one person - *oy l'rasha, oy l'shcheino*.

In an essay I wrote last year for Kol Hamevasser, I examined this piece of *aggada* and focused on why the punishment for the Bilga family was, *lechorah*, to pain them for generations. I answered that the *Chachamim* were trying to fix the culture within the Bilga family by getting them to interact with other Jewish families, which would be necessary if the family couldn't use their own materials for the *avoda* in the *Beis haMikdash*¹.

In this essay I would like to present a *machlokes* between Rashi and the Rambam regarding the details of the punishments, as explained by the late Lubavitcher Rebbe, which adds to and deepens this point.

The last two punishments stated in the *mishna* are that “their ring was fixed and their window locked.” What was the purpose of both the ring and window? Rashi explains that there were 24 rings for each family of *Kohanim*, which were used to secure the head of the *korban* to be able to assist proper *shechita*. Bilga’s ring was closed up so they had to use a different family’s ring. The window, says Rashi, was a cubby that held the family’s slaughtering knives. However, the Rambam, in his commentary to the *mishna*, explains that the ring was not for the slaughter itself but for the flaying of the skin of the *korban*, and that the window was not for knives but for *bigdei kehuna*.

The Lubavitcher Rebbe explains the *machlokes* to revolve around the essence of what it means to be neighbors -- a *machlokes* in the *din* of *shcheinus*. Does *shcheinus* create an internal relationship between individuals, such that one person’s actions change the essence of the group, or is *shcheinus* an external definition of the group, nothing more than individuals being grouped together?

According to Rashi, the punishments of the ring and window applied to women as much as it did to men, as women are technically allowed to slaughter *korbanos*, and the ring and knives were used for slaughtering. He appears to see *shcheinus* as being external. Miriam’s actions did not affect the essence of the *shcheinus* itself, and the punishment only came to the entire group because they were all externally within the *geder* of *shcheinuse*. Therefore, Miriam herself had to be effected by the punishment for it to make sense.

According to the Rambam, however, the ring and win-

dow were only for processes of the *korbanos* that women could not take part in, i.e. flaying of the skin and wearing of the *bigdei kehuna* for the *avoda*. He apparently sees *shcheinus* as an internal relationship; a change to a part is a change to the essence of the whole group. A punishment for the group would be appropriate, therefore, regardless of the fact that it could not impact Miriam herself, since it was the group as a whole that sinned by the actions of one. The whole group was responsible for that.²

It could be that really Rashi and Rambam agree that there are these two ways of looking at *shcheinus*, but they differ on how the *Chachamim* approached the problem of the Bilga family practically. According to Rashi, the punishment was meant to broadcast the individual cause of the sin, Miriam, and this would keep the rest of the group from doing this in the future. Miriam needed to be included in the punishment for the full message to be expressed. According to the Rambam, however, their solution was to clean the culture of the group as a whole, since the whole group was infected, and Miriam was just one symptom of this. The inner essence of the group needed to be changed, far beyond just Miriam herself.

As a *mussar haskel*, though sometimes we feel like individual Jews grouped together at YU, we are also a collective with an inner essence that should be cultivated for holiness.

1 If the reader is interested in this topic, see <http://www.kolhamevaser.com/2014/12/bilga-and-synthesis-an-ancient-response-to-the-clash-of-universalism-and-particularism/>

2 See HaMaor, Vol. 34 No. 6 Av 5742. The Rebbe applied this *chiluk* to the *din* of *bar metzra* as well as *tosefes Shabbos* and *tosefes Yom HaKippurim*, which have *nafka minos* based on this.

Ethics

INSIDE OUT: JUSTICE AND EQUALITY FOR NON-JEWS IN JEWISH LAW

RABBI ELCHANAN POUPKO

Anti-Semitic incidents, even in the relatively benign USA, have gone up more than 20% in the year 2014.

As an ancient people, we are well aware of the side effects of anti-Semitism. One of them is the allegation that Jews and Judaism treat non-Jews “differently” and should therefore not be surprised when Jews are treated differently. Before addressing the content of this argument, it is important to note that with this very allegation, the dis-

criminatory treatment has already begun.

The fact that every religion treats believers in one way and non-believers in another is a well-established one. The thoroughness with which this aspect of Judaism is examined, relative to other religions, is unparalleled and highly disproportionate. To scrutinize Judaism on its treatment of those who aren’t members is not only odd, but is out of place and astonishing.

It is astonishing, since no religion in the world treats non-members as well as Judaism does.

Judaism is the first - *and last* - religion to believe that people who are not members of its religion have a share in the world to come and the afterworld (Sanhedrin 10:2). Judaism is the first - and last - religion to *mandate* extending charity (*tzedaka*) and acts of lovingkindness (*chesed*) to non-members (Vayikra 25:35). Judaism was the first to teach that *all* of humankind are “beloved, for they have been created in the image of God” (Avot 3:14). Judaism is the first - and last - religion to mandate that its judiciary system intervene and act on behalf of non-Jewish minority, should any injustice, small and petty thought it may be, be inflicted on it (Vayikra 25:50).

Judaism is the only religion in the world that does not encourage proselytizing and conversion, and even goes as far as discouraging it (Talmud Yevamot 47a, Shulchan Aruch YD 268:2). Judaism is comfortable enough with tolerating others whose perspectives differ from its own.

Considering all of the above - and much more - Judaism's scorecard of tolerance and diversity is unquestionably excellent.

This does not change the fact that there are several passages in Jewish literature and law which treat Jews and non-Jews differently, something that poses no moral challenge for several reasons:

First, it is widely known that in whatever country Jews live they are required by Jewish law to follow the laws of the land (“*dina de'malchuta dina*” - Bava Kama 113a). What this means is, in any country Jews live, they will do for society what society expects them to do - and more.

In addition to following the laws and expectations of local governments, Jews are expected to show non-Jews kindness and care. Rules requiring loving-kindness, charity, and fairness towards *all* human beings have prompted Jews throughout the centuries to treat non-Jews with great respect and dignity.

Second, it is important to note that many early statements that were made about non-Jews in Judaism were written at a time when there was not one nation in the world that had treated Jews with decency and equality. Later Jewish leaders and halachic deciders - from the front line of Jewish scholarship and authority - have made it unequivocally clear that with increasing fair treatment of Jews by non-Jews, we must make sure that utmost fairness and reciprocity are expressed towards non-Jews. This is no secret, and is well known to anyone familiar with Jewish law¹.

Lastly and most importantly, we must look at track

records. Jews have been accused for centuries of thinking less of non-Jews, treating them differently, and of not regarding them as equal. This has been shown time and again to be untrue: Jews have acted, and continue to interact with their non-Jewish neighbors, with exemplary fairness, equality, and kindness. The most obvious modern day example is the State of Israel - a sovereign, proud, Jewish state with a Jewish majority. After two millennia of persecution the Jewish people have become exemplars of how to treat minorities, giving non-Jewish minorities full protection and equality anchored in law and practice. Contrary to the expectations of so many who wish us ill and would like to see us succumb to the low moral standards they succumbed to in their own countries, the Jewish people have shown themselves to be exemplars of tolerance, minority rights, and the ideal of treating a minority resident (similar to the Torah's *Ger Toshav*) with fairness.

Does this mean that there are no passages whatsoever that downplay the Jewish theme of recognizing God's image in every human being? Of course not! But then, every body of literature has difficult outlying passages that clash with its main themes.

Should we apologize for these exceptions? Absolutely not. Ashkenazic Jewry has been apologizing for these passages, explaining them, and elaborating on them for close to one thousand years. What did these apologies get us? More hatred, more violence, more misinterpretation, and more scrutiny of our texts. Jews in Arab countries, on the other hand, who have never apologized for our sacred texts, have experienced far less persecution and violence, lived in more dignity, and maintained far more religious independence than their Ashkenazi counterparts.

Religious tolerance is not founded in scrutinizing the texts and beliefs of others; it is founded in testing and measuring coexistence and commitment to mutual respect. The Jewish people have shown an unparalleled commitment and unprecedented regard for the dignity of all human beings. As Jews we should feel nothing other than pride for our pioneering role in this field, and should never apologize for our sacred texts. When questioned and scrutinized about our texts we must always remember: the haters will always hate.

¹ Cf Rambam Peirush Hamishnayot Keilim 12:7. See more sources on the matter at <http://www.daat.ac.il/mishpativri/skirot/207-2.htm>