

תורה מציון Torah MiTzion

RELIGIOUS ZIONIST KOLLELS כוללים ציוניים בתפוצות

Shabbat shalom from Torah MiTzion

Issue 108: Parshat Nitzavim

1 October 2005, 27 Elul 5765

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**Parshat Nitzavim: "From the dust - Arise"
Rav Dror Brama, former Rosh Kollel, London**

Our parsha opens with the declaration of a covenant. Moshe once again emphasizes Israel's covenant with God and His land, highlighting the choices of honoring the covenant or violating it:

"Life and death I set before you, the blessing and the curse; choose life, in order that you and your descendants will live" (Devarim 30).

But the more we read, the more uncomfortable we become about the way in which the choice is presented. The respective options of preserving and violating the covenant are not given equal treatment. In the previous parsha, the Torah elaborated on the Divine rebuke and punishment at much greater length than on the consolation, and in our parsha, too, it seems that the consequences of violating the covenant are given ever-increasing emphasis. Not only that, but as Moshe's speech progresses, the expressions of threat and condition are replaced by the language of prophecy concerning the future: "If there be." becomes "It will be, when all of these things come upon you"; "All the nations will say: for what reason has God done this to this land?"

Is failure then assured in advance? Is Moshe going to leave this world with a sense of disappointment and frustration?

The Sages address this problem in the climactic verse of this grim prophecy at the point where God tells Moshe:

"Behold, you will lie with your forefathers and this nation will arise and go astray after the foreign gods of the land into the midst of which it is coming; they will abandon Me and violate My covenant which I have forged with them. And My anger will burn against them on that day; I will abandon them and hide My face from them, and they will be left for devouring. And many evils and troubles will befall them.."

Indeed, looking at the nation and assessing the challenges awaiting it in the confrontation with the nations of the land, and its ability to continue serving God without the leadership of Moshe and Yehoshua, there is no escaping the harsh conclusion - it cannot work; the future holds a tragic end to their possession of the land.

It is specifically on this verse that the Sages teach (Mekhilta Beshalah) that this is one of the instances where the text has no unequivocal meaning; i.e., it can be read in two ways, both of which are true:

One reading places a comma after "with your forefathers": "Behold - you will lie with your forefathers, and this nation will arise and go astray."

The other reading places a comma after the word "arise": "Behold - you will sleep with your forefathers and arise, ." - this being the biblical source for the principle of resurrection.

From a grammatical point of view, if we adopt the second possibility it is difficult to understand the remainder of the verse. Our Sages saw fit to emphasize here the principle of resurrection: Moshe will lie with his forefathers, and is destined to arise once again. But what is the connection between the resurrection and the subject of all the problems that will overtake the nation?

The resurrection is the answer to the question that we posed above. Death - the necessity of the body undergoing a stage of destruction when it parts from the soul - is a reality that comes about in the world as a result of the sin of Adam. On the graph representing the ascent and repair of man and of the world, the continuity was broken. The soul of the individual can no longer achieve its full repair and perfection without a stage of destruction and rebirth. On the communal and national level, too, it sometimes happens that our path of repair passes through scenes of exile and destruction on the way to redemption.

The Sages are emphasizing to us: Indeed, Moshe dies at the gateway to the land. Moshe leaves this world knowing that the nation will not hold out in the land; it will fail in its mission and will be punished with exile. But Moshe also knows that this tragedy is not the end of the story. In contrast to the classical Greek tragedy, our parshot also speak of return, of teshuva. After the many evils and troubles, after the descriptions of exile and the terrible curses, we will be revived and will live again.

During this period of teshuva, let us remember that twice already our nation has arisen from the dust. Let us engage in profound teshuva and pray that we will need no further suffering on the road to repair, and let us try to appreciate the full meaning of the blessing, "You are faithful to resurrect the dead".

***Kofin Al Midat Sedom* in Modern Israeli Court Judgments
Simon M. Jackson, Legal Advisor to Torah MiTzion**

Mazaltov to Simon & Elana Jackson on the birth of a daughter!

A 3 year old girl suffers from an incurable disease. The doctors estimate that she is likely to die very soon and the only cure for her is to transplant bone marrow from her 8.5 year old sister. The transplant process is almost harmless to the donor but may hasten the death of the donee in the event of it not being successful. The Attorney General and the parents petition the Court in 1983 to order the doctors who had recommended a transplant to carry it out.

Should the Court apply the principle of *Kofin Al Midat Sedom* to compel the bone marrow donation?

In reaching its judgment, the Jerusalem District Court (Justice Tal) considered the position of the Halacha in a case such as this.

"We are commanded by the Torah to save a person in a perilous situation: 'From where do we know that a person who sees another drowning in a river, or mauled by wild animals or attacked by robbers, must save him?' [asks the Gemara in Sanhedrin 73b] From the verse: You shall not stand idly by the blood of your neighbor (Vayikra 19:16).' Apart from the negative command not to stand idly by, there is also a positive command to rescue a person who is in danger, derived from the duty to restore something that another person has lost [hashavat aveida - see Devarim 22:2], which the Rabbis interpreted as meaning that even his life you must restore to him.

The same applies to rescue from a possible peril (Chidushei HaRan, Sanhedrin 73b), even if that involves discomfort to the rescuer (Magen Avraham 156:2). Since the obligation to rescue is a positive commandment, it is clear that according to the Halacha the rescuer may be compelled to act on pain of death - "until his soul departs" (Ketubot 96a-b) **and not to follow in the manner of Sodom** (Bava Batra 12), for this is the case with all positive commandments.

The authorities are, however, divided over whether the rescuer must place himself in danger or [even] potential danger in order to save his neighbor even from certain peril (Hagahot Maimuni to M.T. Rotzeach 1:14). As against this, there is the view that to go so far is an act of piety but is not obligatory (Radbaz 3:2052). [See my article, "The Duty to Rescue v. Self-Jeopardy," which expands on these differing viewpoints (<http://www.torahmitzion.org/eng/resources/showLaw.asp?id=417>).]

In the present case, even under the Halacha there is no occasion to compel the young sister to donate bone marrow. First of all, since she has not reached the age of majority, she is not bound at all by the commandments. Secondly, since the bone marrow will be taken under general anaesthetic, she faces potential danger, even though it is remote, and those who think that no obligation to rescue arises where there is potential danger do not differentiate between immediate and remote danger. (One of the reasons given by Radbaz citing an actual case that he knew of is that potential remote risk may become a real risk.)"

Notwithstanding the above considerations, the Court permitted the mother to consent in place of the daughter, primarily on the basis that if the sister did not donate her bone marrow to save her younger sister she would be forced to perpetually live with the guilt -

guilt which would only intensify as she got older - that she did not do all she possibly could to save her sister's life.

***Kofin Al Midat Sedom* - Guiding Principle in the Modern State of Israel**

In 1959, the Jerusalem District Court was asked to rule in a case concerning the dissolution of a partnership. A plan was produced by an appraiser under which the partnership assets were divided into three parts. The parties did not claim that this division was defective or that the shares suggested by the appraiser were not completely equal. The sole dispute between the parties related to whether the shares should be transferred to the parties by lot or whether one or other of them should be given a right to choose which share he would prefer - and if the latter, whether he should have to pay for the privilege.

The question that arose, according to the Court, is whether in a country like Israel it would be just to leave it to blind fate to prevent a person who has worked in an enterprise from using the property he desires.

The presiding judge, Justice Lamm, decided not to follow the English precedent which would have disintitiled any partner from his right to choose certain parts. Instead, he inquired into Jewish Law "to examine if that law makes it possible to adjudicate the matter without drawing lots."

Justice Lamm first cited the Gemara in Bava Batra 12b which discusses the case of a certain individual (Reuven) who bought land on the boundary of his father's property. When he and his brothers were dividing up their father's estate, Reuven said to his brothers: "Award me a tract of land that borders on my boundary." The brothers refused. Rabba ruled: "In an instance such as this we coerce people not to emulate the traits of the inhabitants of Sodom (*Kofin Al Midat Sedom*)" - for it costs the brothers nothing to honor Reuven's request.

The Court then cited the ruling of the Rambam (M.T. Shechenim 12:1), based on the above Gemara, which succinctly states: "When brothers or partners come to divide land, each to take his share, if it is entirely good or bad, and the entire field is uniform, they share according to measurement alone, and if one of them asks that his share should be adjacent to his own land to form one tract, his wish is granted and the other is compelled to agree, since to prevent such a division is to act in the manner of Sodom."

By contrast, the Court noted the ruling of the Tur (Choshen Mishpat 174). There the Tur requires a partner who wishes to enjoy a particular parcel of property to pay the other partners consideration for this privilege: "Brothers who come to partition and the shares are valued one against the other, and then when they come to cast lots, one of them desires one particular parcel and values it and says: 'I will give for it so much more than it was appraised at or you take it for that amount,' he is listened to, and if the others do not want it at the increased price he takes it without lot."

Justice Lamm summed up the different approaches. "We see that in Jewish Law as well there were differences of opinion and some of the Rabbis did not permit a partner to enjoy - without paying extra for the privilege - something that did not make the other poorer, and even those who agreed to a right of preference restricted it to adjoining owners alone."

"In the meantime, however," Justice Lamm concluded, "the movement of national renaissance has grown and the Jewish People have reclaimed the soil, and it does not seem to me that division should be so effected that a person who has contributed to the growth of an enterprise and its profitability should be prevented from selecting what he wishes when

there is no dispute that all the shares are equal in value. The sentiment that a person has for a thing which he tended and nursed over many years is a worthy consideration to be taken into account no less than actual economic interest"!

Next Column: Reuven illegally extends his apartment on common property. Can he rely on the principle of *Kofin Al Midat Sedom* to prevent his neighbors from demolishing it?

**Family Learning: Parashat Nitzavim
Bluma Zalzman**

- 1) What is the date of the speech Moshe starts in Nitzavim? What else happens on that day?
- 2) Moshe asks Bnei Yisrael to make a treaty, a brit, with HaShem. Can you give one reason Moshe asked them too?
- 3) What did Moshe ask from Bnei Yisrael as part of the brit?
- 4) What does HaShem promise as a result of Bnei Yisrael keeping up their end of the brit?
- 5) Which kind of sins of another person are Bnei Yisrael responsible for, even if they themselves didn't commit it?

Looking Back: Three Eras - One Rabbi

"You claim that we should not prevent the exchange of foreign currency for the import of non-kosher meat and pork into our country's markets, because there should be no restriction on the freedom of conscience of any resident of the country. First of all, let us remark that it would be completely wrong to call this "freedom of conscience."

The hand holding the pen halted for a moment. The Rabbi listened to the tumult rising from Havatzelet Street to his window. "Am Yisrael is out shopping," Rabbi Ben-Tzion Meir Hai Uziel smiled to himself, returning his gaze to the pages in front of him and completing the final section of his tough speech.

A month later, in Tevet 5709 (1949), the first general election was to be held in Israel. Perversions needed to be pointed out, and support drummed up for the united religious party, whose list of candidates included M.H. Shapira and Rav Fishman of the Mizrahi, and Rabbi A.M. Levin of Agudat Yisarel.

"We are most deeply bitter that we have reached the point of having to demonstrate and protest against the import of non-kosher meat. we recall and note favorably the important work of the Prime Minister and Minister of Defense, Mr. David Ben-Gurion, who courageously and determinedly decreed that the kitchens of the Israeli army would be kosher. and we believed wholeheartedly in the legislation for kosher butcheries for Jews in our country.". The audience in the Yeshurun synagogue listened eagerly to the words of the "Rishon le-Tzion". "And we hereby call upon the Prime Minister, the ministers and leaders and all the members of the Provisional Council of State - Desist!"

"Rav Uziel's Hebrew is pure and fluent - a pleasure to listen to," commented one journalist to a colleague. "Even his harsh criticism sounds like a melody!" His older colleague replied, "Have you heard him speak Arabic? I'm in the middle of writing an article on the period when Rav Uziel represented the Jews before the Ottoman Sultan."

In the year 5671 (1911), Rav Uziel had been asked by the Rabbi of Jaffa, Rav Avraham Yitzhak ha-Kohen Kook, and by the heads of the Jewish organizations in Eretz Yisrael, to

serve as the official representative of the Jews before the Turks, who insisted that the representative be an Ottoman citizen "going back at least three generations". The 30-year old Rabbi was known for his phenomenal memory, his broad knowledge of Jewish sources, and his sharp intellect. Zealous in his protection of the honor of Torah while gentle and humble in his personality, he was the descendant of a dynasty of Torah sages that had lived in Jerusalem for more than 150 years. With Rav Kook's blessing he set off for Turkey and met with the Sultan, who was deeply impressed and appointed him the "Hakham Bashi" for Jaffa-Tel Aviv.

During the First World War, with the expulsion of Jews who were not Turkish subjects, Rav Uziel was the sole address for their pleas (Rav Kook at that time was abroad.) With wisdom and determination he prevented the soldiers and local rulers from maltreating the Jews who were forced to leave. In return for his support for the exiles, he himself was exiled to Damascus.

In the year 5678 (1918), Rav Uziel represented the Jewish community in the official welcome extended to Allenby at the Jaffa Gate. In 1939 he was appointed "Rishon le-Tzion" - Sefardi Chief Rabbi - in the Rabban Yohanan ben Zakkai synagogue, alongside Rav Herzog, his Ashkenazi counterpart.

His vast knowledge on every subject, the majesty of his manner, his popularity and availability to all who sought him out, all made him a faithful bedrock during the era of Turkish "despotism", British "enlightenment", and onwards towards Israeli "democracy".

"Peace and unity are the eternal foundations of the sovereign existence of the House of Israel." he wrote while in hospital in his will to the nation, just prior to his death at the age of 51.

Rav Uziel's writings, as well as a documentary film about him - "Ha-Ro'eh le-Merahok" - are available at the Renanot Institute for Jewish Music, 02-6248761.

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Answers, Family Learning

- 1) 7th of Adar- Moshe dies that day.
- 2) Because they were the children of the people who stood at har Sinai and therefore did not participate in that brit.
- 3) That each Jew takes responsibility for one another. (also- not to pray to idols)
- 4) HaShem will be good to them, their crops will grow and they will be victorious against their enemies.
- 5) Ones that someone commits openly, and Bnei Yisrael had the ability to stop it.