

# תורה מציון Torah MiTzion

RELIGIOUS ZIONIST KOLLELS כוללים ציוניים בתפוצות

## Shabbat Shalom from Torah MiTzion

### Issue 129: Parshat Mishpatim

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### A Witch Shall not Live

Rav Dror Brama, former Rosh Kollel, London

For many years, witches were mysterious figures, frightening and hated. In many societies they were the ultimate "other." In modern times, with the emergence of enlightenment and tolerance towards the "other," witches are receiving a place of honor in our culture and its creative works. Witches are portrayed in literature and films as fully human -- some are good and some are bad, and they deal with difficulties and sorrows just like the rest of us. They are forced to cope with the vicissitudes of life in their own way. The cloak of mystery and hatred is progressively disappearing.

This week's Torah portion declares absolutely (*Shemot* 22:17), "Do not allow a witch to live!"

I sense the surprise of our readers who follow the adventures of Harry Potter and his friends. Can't we allow that sweet girl Hermione to live? Shouldn't we distinguish between the evil witches who serve the powers of darkness and the helpful ones who contribute to society? Haven't we progressed beyond the dark ages when anything which was not understood was burned in the town square?

The commentators are divided about the nature of this *halakhah*. According to the Rambam, there is no such thing as magic. Witches are liars who use sleight of hand. The prohibitions on magic in the Torah are meant to call attention to the worthlessness of magic, and to purge from people's minds the belief in those who deal in illusions and delusions. The masses are liable to fall into the trap of believing these fantasies. Society has a responsibility to protect its vulnerable members, who may be weak in spirit and character and as such are likely to seek escape and salvation in false promises and magical solutions. Therefore, the presence of witches is negative -- it is too attractive a lie to allow

it free play in the cultural marketplace. Just as market forces on their own will not destroy the phenomenon of drugs, so too they will not be able to overcome those who sell magical solutions to people in distress. (*Guide for the Perplexed*, 3:37.)

According to Chazal and other commentators including the Ramban, magic is not a false representation of reality. The Torah prohibitions relating to it are not to prevent delusions but rather to limit the use of actual spiritual powers. The Creator of the world formed both material and spiritual entities in the world -- physical forces and spiritual forces. The Torah wishes to establish guidelines for what is permitted and what is prohibited in the metaphysical and parapsychological realms.

Chazal (*Yevamot* 4a) see the verse, "Do not allow a witch to live" (*Shemot* 22:17) as linked to the verse following it, "Whoever lies with an animal shall be put to death" (verse 18). One who lies with an animal defines the notion of humanity downwards. He takes the physicality which is shared by man and animal, and uses it to debase that which makes him human and to lower himself to the level of the animal. Magic takes the spirituality which is shared by man and that which is beyond him -- his ability to rule over spiritual forces -- and uses it to debase the image of the Divine in him and to serve very human needs.

In both cases, the severity of the sin is because man is perverting and misdirecting powers which God gave him to fulfill his purpose in the world. Man received a body and a biology in order to live and to perpetuate life, raising descendants who will serve God. Using the body to couple with an animal is the absolute antithesis of that. Man received tremendous spiritual powers and, to a limited degree, control over the powers of nature as well. Joshua, during the battle with Canaan, says, "Sun, stand still at Givon; and moon, in the valley of Ayalon" (*Yehoshua* 10:12). The poet of Psalms says, "You have made Man little less than divine . . . . You have made him master over Your handiwork" (*Tehillim* 8:6-7). These powers were given to man within a very well-defined framework -- the service of God as defined in the Torah. Deviating from this framework negates the fundamental realization that these powers are Divine gifts, on loan to man for the purpose of serving God. They are prone to lead man to conceit and to self-worship (*avodah zarah atzmit*), as has happened more than once in history.

Our Sages disagree as to whether or not the prohibition on magic is included in the seven Noachide laws (*Sanhedrin* 60a). Those who claim that Noachides are included in the prohibition support their position with the juxtaposition of the two verses we quoted earlier: "Whoever is prohibited from sleeping with an animal is also prohibited from using magic." We see once again that magic is defined as something which blurs boundaries and interferes with the very definition of humanity.

At the time of the writing of these lines, no one yet knows how the adventures of Harry Potter and other literary heroes will end. Based on our sources, we can say that if a person attempts to use the gift of spiritual powers to oppose God's will, it can only lead to the triumph of evil and the lust for self-deification.

When all is said and done, a person cannot succeed in using God's power against Him. Rather, as happened in the case of Bilam, God will convert his curse to a blessing.

## Yom Tov Sheni, Part 2

### Rav Nehemya Taylor, Torani Advisor to Torah MiTzion

In our first article, we presented a historic overview of the halakhic development of Yom Tov Sheni (the second day of Yom Tov in the Diaspora). In this article we will attempt to clarify the halakhic parameters of Yom Tov Sheni. We observe many *mitzvot* on Yom Tov Sheni which invoke the name of God (a practice which would be prohibited if it were not in the context of a *mitzvah*). These include making *kiddush* and *havdalah*, making the blessing of "*al achilat matzah*" at the second *seder*, and many additional blessings. On Yom Tov Sheni, we also disregard the positive commandment of putting on *tefillin*, and we do not allow mourning to begin even though many decisors feel that the first day of mourning is mandated by Torah law, and so on.

We need, then, to understand the halakhic framework of Yom Tov Sheni, and to define it clearly.

The Rambam writes, "The two-day celebration of Yom Tov which takes place in the diaspora is a custom. Yom Tov Sheni is rabbinic (*midivrei sofrim*), and is among the things which were innovated in the exile" (*Hilkhot Yom Tov* 1:21). He begins by saying that the binding nature of the second day is because of custom, but ends by saying that it is a rabbinic requirement.

Elsewhere, the Rambam writes, "Nowadays when there is no Sanhedrin or Beit Din in the Land of Israel, we determine the months based on mathematical calculations. It would then make sense that everyone, even those living in the farthest reaches of the diaspora, would celebrate only one day of Yom Tov as those living in Israel do, since everyone relies upon the same calculations. However, there is a *takkanah* (rabbinic enactment) demanding that we be careful to observe this custom of our ancestors which has come down to us" (*Hilkhot Kiddush HaChodesh* 5:5).

In yet a third place, the Rambam writes, "There are twenty-four offenses for which a person, male or female, is excommunicated (*niddui*). . . . Number eleven is someone who desecrates Yom Tov Sheni, even though it is a custom" (*Hilkhot Talmud Torah* (6:14). He does not mention here that Yom Tov Sheni is a rabbinic enactment.

The *Lechem Mishneh* resolves the contradiction: "Even though it is rabbinic, it is primarily a custom." The Brisker Rav *zt"l* (also known as the Griz, Rav Yitzchak Zev Soloveitchik) adds, "The laws applying to Yom Tov Sheni, as well as its very existence, are primarily custom. Rabbinic authority requires us to follow the custom. This is similar to what the Rambam said in *Hilkhot Yom Tov* (the first quote above) -- the second day is fundamentally a custom, and rabbinic authority mandates following the custom" (*Novellae of the Griz, Arakhin* 10a).

What the *Lechem Mishneh* and the Griz are saying is that originally, the Jews accepted Yom Tov Sheni as a custom, and it remained fundamentally a custom, but the halakhic obligation to observe it is a rabbinic enactment. The Rivash writes similarly in his responsa:

Those living in the diaspora treat the second day as Yom Tov, on account of custom alone. The Gemara (*Beitzah* 4b) says that the Beit Din in Israel instructed, "Be careful to observe this custom of your ancestors which has come down to you," and this is a rabbinic requirement. When the months were sanctified on the basis of testimony, it was necessary for the far-flung places which the messengers were unable to reach to observe two days of Yom Tov. This was because they did not know which day was

declared Rosh Chodesh. Therefore, the Sages enacted that nowadays too, the people of the diaspora should continue to follow their custom and observe two days, even though we now rely on mathematical calculations to determine the months (*Responsa of Rivash*, 16).

Based on this, we can conclude that the binding nature of Yom Tov Sheni is the result of a rabbinic enactment which had its source in a custom of the Jewish people. Therefore, we make all the blessings and observe all of the relevant commandments. These fall under the rubric of "You shall not deviate (*Lo Tasur*) from the words of the Sages to the right or to the left" (*Devarim* 17:11). Since the force of Yom Tov Sheni derives from a rabbinic enactment, wearing *tefillin* then would show disrespect for this enactment. The Rashba elaborates:

One is prohibited from putting on *tefillin* [on Yom Tov Sheni], since we follow the opinion that *tefillin* is a time-bound positive commandment (as it is limited to weekdays). If on Shabbat or Yom Tov he put on *tefillin* intending to fulfill a *mitzvah*, he has transgressed *Bal Tosif* (the prohibition of adding to the Torah, *Devarim* 4:2). So too, we extend the prohibition from Torah-mandated holidays to rabbinically mandated holidays as well. This is because the Sages patterned their enactments after Torah laws. If they had not done so, people would not take their enactments seriously.

Besides, not putting on *tefillin* is only a passive transgression (*shev v'al ta'aseh*).

For further confirmation of the correctness of this decision, follow the principle, "Go out and see what the people do" (*Berakhot* 45a).

The treatment of a corpse is different, and we *are* more lenient on Yom Tov Sheni (and permit burial then, which is prohibited on the first day), because the additional factor of preserving human dignity comes into play (*Responsa of Rashba*, 1:61).

However, there is an opposing opinion which maintains that the force of Yom Tov Sheni is only that of custom. According to this opinion, the recitation of blessings is very problematic. *Tosafot* writes this in the name of Rabbeinu Tam:

Similarly, we find that we make blessings on Yom Tov Sheni even though it is just a custom, as we see in the first perek of *Beitzah* (4b) . . . On Yom Tov Sheni we do not say "Who commanded us." We simply acknowledge the holiness of the day in *shemoneh esrei* and *birkat hamazon*. It is true that on the second day of Rosh HaShanah we do make the blessing of "Who commanded us to blow the *shofar*," but this is because the status of Rosh HaShanah is more stringent, and the two days are seen as one unit (*Tosafot, Sukkah* 44b, s.v. *kan*).

(The question of the recitation of "Who commanded us" on Yom Tov Sheni arises regarding the blessings on *matzah* and *maror* as well. The *Gilyon HaShas* discusses this question, which was first raised by the Ran. See too the *Arukh LaNer*.)

The opinion of Rabbeinu Tam that the force of Yom Tov Sheni is due to custom is also followed by the Rosh (*Berakhot*, chapter 2 and in *Sukkah*) as well as other early Germanic authorities such as the *Or Zarua*. The Ran in *Sukkah* disagrees with Rabbeinu Tam and maintains that the basis of the practice is a rabbinic enactment, as we wrote above.

We will conclude this discussion with the *Chatam Sofer*, who, as is well known, was one of those who led the crusade against the Reformers who wished to get rid of Yom Tov Sheni. He writes:

How great is the power of custom! We go so far as to declare Yom Tov Sheni a holiday with *kiddush*, and to include the sanctification of the day in *shemoneh esrei* . . . . If our Sages were not certain that God approves of whatever the Sages decide, they would not have permitted such behavior. They did so in order to assure that their words would not be taken lightly or disregarded. We see how serious this is.

The words of *Tosafot* (Sukkah 44b) are a bit problematic. They write that we do not say "Who commanded us" on Yom Tov Sheni, but simply declare the sanctity of the day during *kiddush*. This is problematic, since we do say "Who commanded us" when we eat the rabbinically required *maror* on the first night of Pesach, and we repeat the blessing the second night. Furthermore, we must object to *Tosafot's* implication that saying *kiddush* is not a serious matter (since it does not contain the phrase "Who commanded us"). Were the Tosafists not disturbed by what would be a lying and false proclamation of Yom Tov if not for the force and strength of this custom?

It seems to me likely that Yom Tov Sheni is considered a Torah commandment in the Torah, because it is a practice which was accepted by the entire Jewish nation as an oath (*neder*). This would explain both how we can be lenient then (regarding *tefillin*, mourning, and the like), and how we can be stringent in treating its desecration as grounds for excommunication, as the Ran points out. Originally Yom Tov Sheni was accepted as a rabbinic enactment, but the way in which the people accepted it moved it into the category of an oath. A person who violates an oath has transgressed *Bal Yachel*, which is a Torah prohibition. The oath is entered into via acceptance of a practice. (See the Ran in *Nedarim* 8a s.v. *alav lehashkim* for more on oaths.)

I have dealt with this at some length because, on account of our many sins, there are many wanton people in our nation who are making false and mocking claims regarding Yom Tov Sheni and who claim that it is just an insignificant custom. They do not wish to follow in the footsteps of the Sages of Israel. They lose their souls (*Melakhim Alef* 2:23); they neither know nor understand; they walk in darkness (*Tehillim* 82:5) (*Responsa Chatam Sofer, Orach Chayim* 145.).

The *Chatam Sofer* accepts the basic position that Yom Tov Sheni is a custom. However, in order to resolve some of the difficulties *Tosafot* raises regarding this position, he suggests a novel idea. Originally Yom Tov Sheni was a custom, which was then accepted by all in the framework of a rabbinic enactment. Still later, this universal custom was accepted as a binding oath whose violators would be guilty of transgressing the Biblical prohibition of *Bal Yachel*.

To summarize the three positions:

- 1) The Rambam, as understood by the *Lechem Mishneh*, the Griz, and other early decisors, says that what was originally a custom became a rabbinic enactment, so one who desecrates Yom Tov Sheni transgresses *Lo Tasur*.
- 2) Rabbeinu Tam and other early Germanic decisors say that its force is of custom, and there are certain customs over which we do recite blessings.
- 3) The *Chatam Sofer* says that it is a custom which the nation accepted upon itself as a binding oath. Therefore, one who desecrates Yom Tov Sheni transgresses *Bal Yachel*.

In our next article, we will discuss the unique problems of *shlichim* who are living in the diaspora.

## Family Learning: Parshat Mishpatim

- 1) How does a Jew become a slave? (Rashi, 21:2)
- 2) Does a person really have to pay "an eye for an eye"? (21: 24)
- 3) What is the difference between killing a thief found sneaking in to killing a thief who comes in boldly? (22: 1-2)
- 4) Why is a Jew not allowed to abuse a ger? (22:20)
- 5) What is the famous saying Bnei Yisrael said when Moshe asked them if they wanted to accept the Torah?

*Answers follow below*

## Looking Back: Rechavam (Gandhi) Ze'evi

Rechav'am Zeevi was an Israeli general, a politician and an historian who founded the right-wing nationalist Moledet party. He was assassinated by the Popular Front for the Liberation of Palestine (PFLP), becoming the only Israeli politician to be assassinated during the Al-Aqsa intifada.

Rechavam Ze'evi was born in 1926 in Jerusalem. He joined the Palmach in 1942, and served in the Israeli Defence Forces after the creation of Israel. From 1964 to 1968 he carried out the duties of the Chief of the Department of Staff in the Israeli General staff. For the next 5 years afterwards he served as the Commander of the Central Military District. He retired in September 1973, only to rejoin the army at the beginning of the Yom Kippur War about a month later. He then served for several more months as the Chief of the Department of Staff. He finally retired, with the rank of major-general in 1974.

As a soldier, Ze'evi's name was connected to the era in the 1960's-70's known as HaMerdafim (The Incursions/Pursuances). As Commander of the Central Military District, Ze'evi was tasked with defending the new Jordan Valley settlements from PLO guerrilla actions and pacifying the newly occupied Arab-Palestinian population. Ze'evi formed the elite Sayeret Kharuv in the late 1960's, an anti-terror company sized battalion. The success of the effort earned Zeevi widespread praise. At the time IDF Chief of Staff Chaim Bar-Lev had begun to focus IDF manpower and budget on armoured tank units, a factor that made Zeevi's achievement all the more extraordinary due to the massive cutbacks in infantry forces.

After his retirement in 1974, he became Prime Minister Yitzhak Rabin's consultant on combatting terrorism. The following year, 1975, he was appointed as the prime minister's adviser on matters of intelligence. Ze'evi resigned from this position in 1977, when Likud's Menachem Begin became prime minister. In 1981, Zeevi was appointed the director of the Israel Museum in Tel-Aviv. In 1987, he co-edited a series of books describing various aspects of the Land of Israel, based on artifacts from the museum.

In 1988, Ze'evi established Moledet. His movement's platform consisted mainly in the transfer of Palestinian Arabs to the neighboring Arab countries. Ze'evi was greatly disappointed by the Madrid Conference of 1991, and consequently withdrew from the Likud government of Yitzhak Shamir. He stayed in opposition for the following ten years. He

disagreed strongly with the Avoda (Labor) governments of 1992-1996 (led by Yitzhak Rabin and Shimon Peres) and 1999-2001 (Ehud Barak), however, he looked favorably on the Netanyahu government of 1996-1999 and supported it from the outside.

Ze'evi made it quite clear that he supported forced transfer. He famously compared Palestinians to "lice" and "cancer". On different occasions, Ze'evi also called for the invasion and conquest of Jordan and the resettlement of Palestinians into it. More often than not, other Moledet party members had to follow up on these declarations with apologetic explanations that he was misunderstood and in fact Moledet supports only voluntary transfer.

In 1999, his Moledet movement united with Herut and Tkuma into a single fraction — the National Union (HaIchud HaLeumi). Following the election of Prime Minister Ariel Sharon in February 2001, Zeevi joined the governing coalition and was made the minister of tourism on March 7, 2001. On October 14, Ze'evi declared that his party would quit the government following the withdrawal of the Israeli Defence Forces from the Abu-Sneina neighborhood in Hebron. His resignation was to become active on October 17, 2001, at 11 a.m.

Ze'evi was shot on Wednesday, October 17, 2001 by four Palestinian gunmen. He was rushed to the Hadassah hospital where he died several minutes before 10 a.m. The Popular Front for the Liberation of Palestine took responsibility for the killing and stated that it was in revenge for the assassination by Israel of Abu Ali Mustafa, killed by Israel in August that year.

Ze'evi's political views have, since the 1980s, overshadowed both his military career and personality. One of the most bizarre tidbits was the fact that he once arrived in a toga with a lion to a party during his military service for the festival of Purim, earning his nickname since then, Ghandi.

To this day, Ze'evi is viewed as controversial, and efforts to define him to young history students are the subject of fierce arguments in the educational establishment. His critics call him a bigoted military strongman who deserved to be vilified. Apologists argue that unlike most soldiers turned politicians in Israel across the spectrum, Ze'evi was able to remain uncorrupted, and legal processes proved so. Complicating the argument is the fact that he was murdered while still serving as a minister and legislator. Ghandi's Road highway in the Jordan Valley is named after him in honour of his service to the region, an honour resented by Palestinian and Bedouin residents of the Valley.

**Torah MiTzion** establishes Religious Zionist Kollels (centers of Jewish learning and outreach) in Diaspora Jewish communities to strengthen the study of Torah, Jewish identity, the unity of the Jewish people, and the connection between Torah study and Israel.

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**Answers:Family Learning**

- 1) He sells himself because he is too poor, or he stole something from a man and as a payback he becomes his slave.
- 2) NO!!! It means that whatever damages you cause you have to pay back the equal amount in money.
- 3) If a thief is sneaking in, you won't be punished for killing him, but if a thief came in boldly then you will be punished.
- 4) Because Jews were once strangers in a strange land.
- 5) Na'aseh v'Nishma