**S.A.L.T. – PARASHAT BO**

**By Rav David Silverberg**

Motzaei Shabbat

The Torah in Parashat Bo presents the basic laws relevant to the Pesach celebration, including the command to observe the first and seventh days of the holiday as Yom Tov, when constructive work is forbidden: “On the first day [of Pesach] there shall be a sacred occasion, and on the seventh day there shall be for you a sacred occasion; no *melakha* shall be performed on them” (12:16).

The *Mekhilta*, cited by Rashi, notes the passive form used by the Torah in issuing this command: “no *melakha* shall be performed.” The implication, the *Mekhilta* explains, is that not only is it forbidden for one to actually perform *melakha* (work) on Yom Tov, but one may also not instruct somebody else to perform *melakha*.

This comment by the *Mekhilta* led the *Semag* (*lo ta’aseh* 75) to the conclusion that *amira le-nokhri* – instructing a gentile to perform *melakha* on one’s behalf on Shabbat or Yom Tov – constitutes a Torah prohibition. Whereas it is generally assumed that this prohibition was enacted by the Sages, and asking a gentile to perform *melakha* does not violate Torah law, the *Semag* draws proof from the *Mekhilta* that this indeed constitutes a Torah violation.

Later authorities questioned this view, noting the Gemara’s explicit comment in Masekhet Shabbat (150a) classifying this prohibition as “*shevut*” – a Shabbat prohibition enacted by the Sages. Indeed, the clear consensus among the halakhic authorities is that *amira le-nokhri* is forbidden only on the level of rabbinic enactment, and is therefore subject to certain leniencies (*Mishna Berura* 243:5).

Different approaches have been taken among the *Acharonim* to reconcile the view of the *Semag* with the Gemara’s explicit characterization of *amira le-nokhri* as a rabbinic prohibition. One possibility is suggested by the Maharam Shick, in one of his published responsa (O.C. 100), where he notes the debate among the *Tanna’im* as to whether one may indirectly extinguish a fire on Shabbat. The Mishna in Masekhet Shabbat (120a) cites the view of Rabbi Shimon ben Nanas allowing one to place utensils with water in the path of a fire in order to indirectly extinguish it. Rabbi Yossi, however, forbids doing so. Earlier in Masekhet Shabbat (47b), the Gemara comments that this debate revolves around the question of “*geram kibui*” – indirectly extinguishing a fire on Shabbat. Rabbi Yossi maintains that the Torah prohibition of extinguishing on Shabbat makes no distinction between direct and indirect extinguishing, whereas Shimon ben Nanas maintains that indirect extinguishing is not forbidden on the level of Torah law, and is therefore allowed for the sake of avoiding significant damage to property. The *Shulchan Arukh* (O.C. 334:22) codifies the view that “*geram kibui*” is permissible on Shabbat (and the Rama adds that this is allowed only when necessary to prevent a significant financial loss; there is considerable discussion among the *poskim* as to whether the *Shulchan Arukh* also accepts this limitation).

The Maharam Shick suggests that the status of *amira le-nokhri* would depend upon this debate regarding “*geram kibui*.” According to Rabbi Yossi’s view, that even indirectly extinguishing a fire on Shabbat constitutes a Torah violation, any form of indirect *melakha* would likewise be forbidden on the level of Torah law. Conceivably, then, Rabbi Yossi would view *amira le-nokhri* – performing a *melakha* by proxy, so-to-speak, by asking a non-Jew to perform the act in question – as a Torah prohibition. The Maharam Shick thus explains that the *Mekhilta*, which characterizes *amira le-nokhri* as a Torah violation, expresses the view of Rabbi Yossi, and the *Semag*, evidently, followed this opinion. When the Gemara classifies *amira le-nokhri* as a rabbinic prohibition, it expresses the view of Rabbi Shimon ben Nanas, according to whom only direct acts of *melakha* are forbidden on the level of Torah law. As mentioned, this is the view accepted as normative *Halakha*, and thus the consensus among the halakhic authorities is that *amira le-nokhri* is forbidden only by force of rabbinic enactment.

Sunday

Yesterday, we noted the surprising comment of the *Mekhilta* in Parashat Bo (12:6) which seems to cast the prohibition of *amira le-nokhri* – asking a non-Jew to perform an act forbidden on Shabbat or Yom Tov – as a Biblical prohibition. The Torah formulates the prohibition of *melakha* (constructive work) on Yom Tov in passive terms – “no *melakha* shall be performed” – and the *Mekhilta* explains this to mean that one may not even ask others to perform *melakha* on his behalf. The question becomes how this comment of the *Mekhilta* may be reconciled with the Gemara’s explicit remark (Shabbat 150a) that *amira le-nokhri* is forbidden by force of rabbinic enactment.

A number of *Acharonim* suggested answering this question by distinguishing between asking a non-Jewish employee to perform *melakha* and asking others. Perhaps, the *Mekhilta* speaks specifically of the case of a non-Jew who is hired by a Jew – such as a housekeeper – and who thus acts as the Jewish employer’s representative. If a Jew asks his employee to perform on Shabbat an action which is forbidden for the Jew, the action is attributable to the Jew, and thus constitutes a Torah violation. When the Gemara speaks of *amira le-nokhri* as a prohibition enacted by the Sages, it refers to all other cases besides that of a non-Jew in the employ of a Jew.

The basis for this distinction is the position taken by the *Machaneh Efrayim* (*Hilkhot Sheluchin*, 11) which draws a similar distinction with regard to the halakhic concept of *shelichut* (agency). Generally speaking, only a Jewish agent has the halakhic status as a legally empowered *shali’ach* (“agent”) whose actions on behalf of his dispatcher are binding. However, the *Machaneh Efrayim* asserts that this rule does not include non-Jewish employees. A non-Jew who is hired by a Jew can serve as his halakhic *shali’ach*, and any legal action he takes on the Jewish employer’s behalf is effective. Accordingly, some *Acharonim* suggest applying this distinction to the laws of Shabbat and Yom Tov, such that a *melakha* performed by a non-Jew at the behest of his Jewish employer is directly attributable to the employer, who is thus guilty of desecrating Shabbat. Although asking a gentile to perform *melakha* on one’s behalf on Shabbat is generally forbidden only on the level of rabbinic enactment, in the case of a hired worker, it constitutes a Torah violation.

The Maharam Shick, in the responsum noted yesterday (O.C. 100), dismisses this approach. He argues that a non-Jewish employee’s status vis-à-vis the legal institution of *shelichut* has no bearing on his status vis-à-vis Shabbat violations. The Maharim Shick draws proof from the Gemara’s discussion in Masekhet Kiddushin (41b) regarding the provision that a Jew cannot appoint a non-Jew to separate *teruma* (the mandatory gift to the *kohen*) from his produce on his behalf. The Gemara cites Rabbi Yannai as inferring from a Biblical source (“*gam atem*” – Bamidbar 18:28) for this law, and the Gemara then wonders why a source is necessary. This restriction follows logically, the Gemara argues, from the fact that an agent is capable of representing his dispatcher only if he is included in the relevant laws. As a non-Jew is not required to separate *teruma* from his own produce, he cannot serve as an agent to separate *teruma* for a Jew. The Maharam Shick notes that the Gemara could have perhaps answered this question by suggesting that Rabbi Yannai referred to the case of a non-Jewish employee. If an employee is treated differently than other gentiles, and can serve as the legal arm of his Jewish employer, than conceivably, the inference from the verse is necessary to instruct that even a non-Jewish worker cannot separate his employer’s *teruma*, despite the fact that generally, non-Jewish employees can serve as agents for their Jewish employers. The fact that the Gemara did not suggest this answer, the Maharam Shick claims, indicates that it saw no distinction between employees and others as far as the fulfillment of *mitzvot* is concerned. Even if we accept the *Machaneh Efrayim*’s premise that a non-Jewish employee can serve as a halakhic *shali’ach*, this applies only to legal actions, not to religious acts. Hence, with regard to actions such as designating *teruma*, or desecrating Shabbat, *Halakha* treats non-Jewish employees no differently than other non-Jews, who do not attain the status as a halakhic *shali’ach*.

Monday

Yesterday, we examined the theory advanced by some scholars that one who asks his or her non-Jewish employee to perform an act on Shabbat that is forbidden for a Jew, the Jew transgresses a Torah violation. Whereas it is generally assumed that *amira le-nokhri* (asking a non-Jew to perform an act forbidden on Shabbat) is forbidden only by force of rabbinic enactment (as stated by the Gemara in Masekhet Shabbat 150a), the *Mekhilta* in Parashat Bo (12:6) appears to take the position that this is prohibited by the Torah itself. Some have suggested that the *Mekhilta* – and the *Semag*, who follows this view – refer specifically to the case of a request made to a non-Jewish employee. As the non-Jew works for the Jew, the employee’s actions done at the employer’s behest are attributable to the employer, such that an act of *melakha* (activity forbidden on Shabbat) is considered as having been performed by the employer.

This theory is developed at length in a fascinating [responsum](http://hebrewbooks.org/pdfpager.aspx?req=15079&st=&pgnum=208) written by the Klausenberger Rebbe, in *Divrei Yatziv* (1:105). The Rebbe notes the Gemara’s comment in Masekhet Shabbat (119b) that “*dibbur ke-ma’aseh*” – “speech is like action.” The Gemara derives this notion from the verse in Tehillim (33:6), “The heavens were made with the speech of the Lord.” As this brief remark is made in the context of the Gemara’s discussion of Shabbat, the Rebbe observes, we may reasonably conclude that the concept of speech being equivalent to action has specific relevance to the laws of Shabbat. The Rebbe explains based on the comment of the Talmud Yerushalmi (Shabbat 15:3) that when the Torah describes Shabbat as “the Sabbath for the Lord your God” (“*Shabbat le-Hashem Elokekha*” – Shemot 20:10), it means that “just as the Almighty ‘rested’ from speech, so shall you ‘rest’ from speech.” Meaning, our abstention from work on Shabbat commemorates the Almighty’s cessation of work after the six days of creation, and it thus follows that since God created the universe through speech, by making proclamations, we must likewise abstain from creative speech on Shabbat. On Shabbat we must refrain not only from constructive activity, but also from constructive speech – the kind of “work” which God ceased on Shabbat.

The Rebbe explains this to mean that when it is possible to perform *melakha* through speech, such speech is forbidden. The practical application of this theory is a non-Jewish employee, who is obligated by force of his contractual agreement with his employer to fulfill his wishes. Under such an arrangement, instructing the employee to perform a *melakha* on Shabbat amounts to performing *melakha* through speech, and is thus forbidden on the level of Torah law. Since the employer knows with near certainty that the employee will oblige, performing *melakha* by instructing the employee constitutes a *melakha* performed through speech. And it is precisely this type of performance of *melakha*, the Rebbe suggests, that the *Mekhilta* claims is forbidden on the level of Torah law. Whereas generally asking a gentile to perform *melakha* on one’s behalf is forbidden only by force of rabbinic enactment, instructing an employee to perform *melakha* on Shabbat resembles God’s creating the world through the utterance of proclamations, and is thus forbidden on the level of Torah law.

Tuesday

In the beginning of Parashat Bo, God tells Moshe that He brought the plagues upon Pharaoh and Egypt so that *Benei Yisrael* will tell of God’s unlimited might to their children: “…and in order that you tell unto your son and grandson of how I made a mockery of Egypt and of My wonders which I performed among them, and you shall know that I am the Lord.”

Rav Yehoshua Rokeach of Belz (the second Belzer Rebbe) found it significant that after God expressed His wish that *Benei Yisrael* tell their children and grandchildren of His wonders, He then added, “and you shall know that I am the Lord.” God told Moshe that His objective is not only for the people to tell their offspring about these miracles, but also to reinforce their own faith in the Almighty and His control over the world. The simple explanation, seemingly, is that this concluding phrase – “and you shall know that I am the Lord” – describes the end of result of parents teaching their children and grandchildren about the miracles of the Exodus. If every parent assumes this responsibility, then this will result in *Benei Yisrael* collectively “knowing” about God’s power. God wanted every parent to tell his or her children about the miracles of the Exodus so that *Am Yisrael* as a whole will live with firm and unwavering faith in the Almighty. (It should be noted that the concluding phrase is written in the plural form – “*vi-ydatem*” – whereas the verse opens in the singular form – “*tesaper…binkha u-ven binkha*.” This might imply that, as we explained, the beginning of the verse addresses individual parents, whereas the end of the verse speaks of the nation as a whole.)

The Rebbe of Belz, however, suggested that the phrase “and you shall know that I am the Lord” was added as a precondition to the instruction to “tell unto your son and grandson.” In order for us to inspire the next generation and teach them the principles of faith, we must first strengthen our own knowledge and commitment. Our success in the effort to teach, guide and uplift others requires that we also make an effort to uplift ourselves. Bolstering our own devotion to God is a necessary prerequisite for our desire to bolster that of others by exerting a positive influence and teaching and inspiring the next generation. And thus as God commands us to teach our children about the Exodus, He emphasizes that “you shall know that I am the Lord” – that we must constantly work to raise and uplift ourselves, even as we work to raise and uplift our children and everyone around us.

Wednesday

We read in Parashat Bo that after Moshe warned Pharaoh of the eighth plague, the plague of locusts, Pharaoh’s advisors succeeded in convincing the king to reconsider his obstinate refusal to allow *Benei Yisrael* to leave and sacrifice to God as Moshe demanded. Pharaoh summoned Moshe and Aharon back to the palace and asked which members of the nation they wished to bring with them to the wilderness for this sacrifice. Moshe responded, “We will go with our young and with our old; with our sons and with our daughters; we will go with our sheep and with our cattle, for this is for us a festival to the Lord” (10:9). Upon hearing Moshe and Aharon’s insistence that the entire nation be given permission to leave, Pharaoh angrily expelled them from the palace, insisting that he would allow only the adult males to go to serve God.

Rav Elimelech of Lizhensk, in *Noam Elimelekh*, suggests reading Moshe and Aharon’s response to Pharaoh’s question as establishing a general principle relevant to religious observance. Namely, our commitment to God applies at all different stages of life, and to all different areas of life. We serve God “with our young and with our old” – both in our youth, and in our older years. Our religious devotion lies at the heart of the work we do “with our sons and with our daughters” – in family life and the education of our children. And, we serve God even “with our sheep and with our cattle” – as we engage in our mundane pursuits. We must never compartmentalize our lives, allocating time for religious observance and then feeling free to conduct ourselves as we wish at all other times. Our service of God encompasses the totality of our life, and is directly relevant even to our “sheep” and “cattle” – our professional pursuits and the way we tend to our physical and material needs.

Rav Elimelech adds that we are able to live with this kind of all-encompassing devotion because “*chag le-Hashem lanu*” – “this is for us a festival to the Lord.” We are to relate to our service of God as a “*chag*,” as a source of joy and excitement. *Avodat Hashem* is to be our passion, our greatest love, which brings us happiness and fulfillment. When we make serving God our passion, then it will affect us and guide us at every station in life, and in everything we do.

Of course, the actual meaning of the verse is that all of *Benei Yisrael*, and all their property, must be included in the service of God which Moshe demanded that Pharaoh allow. Moshe was emphasizing that each and every member of *Am Yisrael* has an important place in our covenant with the Almighty and is bound by its terms and obligations, and that all our possessions are likewise to be used and channeled towards this objective. However, Rav Elimelech sought to remind us that just as our religious obligations include each and every individual, they also include each and every stage, setting and circumstance. They apply to young and old – and thus they are relevant both in youth and in adulthood, and they must guide our behavior throughout our lives and whatever we are involved in at any given moment.

Thursday

One of the *mitzvot* which God issued to *Benei Yisrael* after the Exodus to commemorate the plague of the firstborn brought upon the Egyptians is *peter chamor* – the obligation to either redeem or kill a firstborn donkey. The Torah (13:13) writes that a firstborn donkey must be redeemed by giving a sheep to a *kohen* in its place, and if one does not give the sheep, then he must kill the donkey.

The nature of *arifa* – the requirement to kill the donkey if it is not redeemed – is subject to a debate between the Rambam and the Ra’avad. The Rambam, in his *Sefer Ha-mitzvot* (*asei* 81-82), and in *Hilkhot Bikkurim* (12:1) counts the obligation of *peter chamor* as two separate *mitzvot* in his listing of the Torah’s commands. He lists one command to redeem the donkey with a sheep, and then a second to kill the donkey if one chooses not to redeem it. The Ra’avad disputes the Rambam’s classification, claiming that *arifa* is not a *mitzva*, but rather a penalty. As the Gemara comments in Masekhet Bekhorot (10b), the Torah penalizes one who refuses to give a *kohen* a sheep for the redemption of his firstborn donkey, by forcing him to kill the donkey. Accordingly, the Ra’avad argues, *arifa* is not a *mitzva* which one fulfills, but rather a punitive measure against one who refuses to fulfill the *mitzva* of redeeming his firstborn donkey. The *Minchat Chinukh* (23) cites the Maharit Algazi as observing that the *Mekhilta* appears to present two different views on this issue, as to whether *arifa* constitutes a *mitzva* or a penalty. The Rambam, apparently, chose to follow the view which considers *arifa* a *mitzva*, one of two perfectly valid options, and not as a penalty, whereas the Ra’avad followed the view cited in the Gemara, which sees *arifa* as a punitive measure.

The *Minchat Chinukh*, however, suggests that these two perspectives are not mutually exclusive. He notes that the *Sefer Ha-chinukh* cites the Gemara’s comment that *arifa* serves to penalize the individual for denying the *kohen* a sheep, even though the *Sefer Ha-chinukh* – following the Rambam, as always – counts *arifa* as one of the 613 *mitzvot*. Clearly, then, the *Sefer Ha-chinukh* saw no contradiction at all between regarding *arifa* as a *mitzva* and also as a penalty. The *Minchat Chinukh* explains that even if the reason underlying *arifa* is to penalize the donkey’s owner, it may nevertheless be counted as a *mitzva*. After all, one who prefers not to relinquish a sheep is bound by Torah law to kill his donkey, and thus killing the donkey may be viewed as a *mitzva*, even if its purpose is to penalize the owner. The *Minchat Chinukh* draws a comparison to *chalitza* – the special ritual performed by a childless widow and the deceased’s brother if the brother refuses to marry the widow. *Chalitza* is counted as one of the Torah’s 613 *mitzvot* (*Sefer Ha-mitzvot*, *asei* 217), yet the *Behag* (cited in the *Beit Shemuel* commentary to *Even Ha-ezer* 169:82) describes *chalitza* as a form of punishment against the brother-in-law for his refusal to marry the widow. This demonstrates that at least in the Rambam’s view, even commands which must be fulfilled due to one’s refusal to do what he should can be counted among the 613 *mitzvot*. (It is likely that the Ra’avad disputed this very point, as to whether requirements imposed as punitive measures should be counted as Biblical commands.)

Intuitively, we might assume that the practical halakhic difference between these two views relates to the recitation of a *berakha* before performing the *arifa*. If, as the Rambam maintains, killing the donkey when one chooses not to give a sheep to the *kohen* fulfills a *mitzva*, then it should, seemingly, be preceded by the recitation of a *berakha*, as are other *mitzva* acts. The Ra’avad, by contrast, who does not view *arifa* as a *mitzva*, would certainly not require the recitation of a *berakha* before the *arifa*.

The *Minchat Chinukh*, however, asserts that even the Rambam would not require a *berakha* over *arifa*, since a *berakha* is not recited over the performance of a *mitzva* which is the less preferred option. Returning to his analogy to *chalitza*, the *Minchat Chinukh* observes that the *Tur* (E.H. 166) cites the *Ba’al Ha-ittur* as ruling that the brother-in-law recites a special *berakha* before marrying the widow, as he fulfills the *mitzva* of *yibum*, yet the *Tur* makes no mention of a *berakha* over *chalitza*. The reason, seemingly, is because it is inappropriate to recite a *berakha* over a *mitzva* that ideally should not be observed, and was necessitated by a decision not to choose the preferred option. By the same token, the *Minchat Chinukh* writes, it stands to reason that no *berakha* should be recited over *arifa*. Indeed, the *Minchat Chinukh* notes that the *Shulchan Arukh* (Y.D. 321:6) mentions a *berakha* to be recited when redeeming a firstborn donkey with a sheep, but makes no mention of a *berakha* in discussing *arifa*, implying that no *berakha* is recited if one chooses the less preferred option of killing the donkey.

Friday

Yesterday, we discussed the Torah’s command toward the end of Parashat Bo (13:13) that a *peter chamor* – a male firstborn donkey – must be either redeemed, through the payment of a sheep to a *kohen*, or killed. The Mishna in Masekhet Bekhorot (9a) addresses the case of a donkey whose status is uncertain, as it may or may not be its mother’s firstborn. (The case described by the Mishna is one of a female donkey whose first offspring are twins, a male and female, and it is uncertain whether the male was born first, and is thus subject to the law of *peter chamor*, or was born second.) In such a case, the Mishna rules, the owner must designate a sheep for the “redemption” of the donkey, in case it is a firstborn, but he does not have to give the sheep to a *kohen*.

The Gemara (9a) explains that the designation of a sheep is required in order for the donkey to be permitted for use. According to Rabbi Yehuda, whose position is accepted as *Halakha*, a *peter chamor* is considered sacred and thus forbidden for personal use until it is redeemed through a sheep. Therefore, if a donkey’s status is uncertain, one must refrain from using the animal until it is redeemed, in case it is in fact a *peter chamor* and thus forbidden for use. However, once a sheep has been designated for the donkey’s redemption, the owner is not required to give the sheep to a *kohen*, since it is questionable whether the *kohen* in fact deserves the sheep. The famous principle of “*ha-motzi mei-chaveiro alav ha-re’aya*” (the rough halakhic equivalent of the modern-day principle of “possession is nine-tenths of the law”) establishes that whenever there is some question surrounding the rights to money or property, the one who currently has the money or property in his possession may keep it until the plaintiff can prove that it belongs to him. In the case of a questionable *peter chamor*, the *kohen* has no way of proving that he has rights to the sheep designated for redemption, given the donkey’s uncertain status, and thus the owner may keep the sheep even though it has been declared the “redemption” for the donkey.

Rabbi Shimon, as the Gemara cites, disputes Rabbi Yehuda’s position, and maintains that a firstborn donkey is not forbidden for use before its redemption. Although the Torah commands that it must be redeemed, this obligation has no bearing upon the donkey’s status in the interim. The owner bears a religious obligation to redeem his donkey, but the donkey is entirely permissible for use even before this requirement is fulfilled. The Gemara comments that the Mishna’s ruling, requiring the designation of a sheep for the redemption of a questionable *peter chamor*, follows Rabbi Yehuda’s opinion. According to Rabbi Shimon, there is no need to even designate a sheep in such a case. In his view, the redemption of a *peter chamor* entails nothing more than giving a sheep to a *kohen*; it has no other halakhic significance, since the donkey is entirely permissible even without redemption. Therefore, since the owner of a questionable *peter chamor* cannot be forced to pay a sheep to the *kohen* until it is proven that the donkey is indeed a firstborn, there is no need to do anything, and he does not even have to designate a sheep.

The question arises as to why, according to Rabbi Shimon, the owner would not be required to designate a sheep to avoid having to kill the donkey. After all, the Torah explicitly commands that one must either redeem or kill a firstborn donkey. Seemingly, then, in the case of a questionable *peter chamor*, the owner should be required to designate a sheep for the donkey’s redemption to be absolved of the alternative – killing the donkey.

The *Minchat Chinukh* (23) offers a clever explanation for why the Gemara assumed that Rabbi Shimon would not require redeeming the donkey in such a case. Throughout the Talmud, the Gemara attributes to the Rabbi Shimon the position of “*darshinan ta’ama di-kra*” – the reasons underlying *mitzvot* affect their halakhic parameters. According to Rabbi Shimon, when determining the details and particulars of a given *mitzva*, its intended purpose needs to be taken into account. If so, the *Minchat Chinukh* writes, then we can easily understand why the owner of a questionable *peter chamor* would not be required to kill the donkey if he does not designate a sheep for its redemption. As we saw yesterday, the Gemara (Bekhorot 10b) explains the requirement to kill a *peter chamor* as a penalty levied against the owner for refusing to redeem it by paying a sheep to a *kohen*. In the case of a questionable *peter chamor*, the *Minchat Chinukh* notes, the owner has no legal requirement to make this payment to a *kohen*, as his financial obligation is uncertain. As such, he should not be penalized by being required to kill the donkey. Since the requirement to kill the donkey is rooted in the Torah’s desire to penalize the owner, and this purpose, in Rabbi Shimon’s view, affects the practical halakhic details of the *mitzva*, the requirement does not apply when the owner has a valid reason for not paying a sheep for the donkey’s redemption.

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