YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PARASHAT HASHAVUA**

**Rav Yishai Jeselsohn**

**PARASHAT LEKH LEKHA**

**The Banishment of Hagar in Light of Patriarchal Torah Observance (According to the Rabbis)**

**I. "The abuse I suffer is your fault"**

 This week we will learn an amazing explanation from the *Or Ha-Chaim*, which combines a fundamental topic regarding the book of *Bereishit* – *Were the patriarchs subject to the Torah and Halakha?* – with impressive Torah scholarship, halakhic knowledge, and fascinating philosophical questions.

 We will open our discussion with a question the *Or Ha-Chaim* raises about the matriarch Sara, and her discussion with Avraham:

We must understand why Sara appealed to God for judgment against Avraham and added, "The abuse I suffer is your fault," which suggests that she meant to exclude another person – and if she was referring to Hagar, her words seem to be unjust, for it was Hagar who was disrespectful to her mistress, and her complaint should have been against her, not against Avraham.

We must also understand what Avraham meant to say when he answered: "Your maid is in your own hands; [do with her whatever you think best"], from which it appears that he accepted Sarai's[[1]](#footnote-1) complaint [against him] and that he wanted to rectify the matter from then on, and if he did nothing wrong, he should have said: "Why do you quarrel with me?" (*Or Ha-Chaim* 16:5)

 The *Or Ha-Chaim* is expressing surprise about the fact that Sara's complaint just before Hagar is sent away is directed specifically against Avraham, not against Hagar:

And Sarai said to Avram: "**The abuse I suffer is your fault.** I gave my servant in your arms, and now she sees she is pregnant and she looks upon me with contempt. Let the Lord **judge** **between me and you**!**"** (*Bereishit* 16:5)

 Even though it was Hagar who hurt Sara ("she looks upon me with contempt"), Sara twice points an accusing finger at Avraham: 1) in the words "The abuse I suffer is *your*fault; and 2) at the conclusion of her words that God should “judge between me and *you*."

 Avraham's response is also interesting, especially when we compare it to his answer later on, in *Parashat Vayera*, when Sara asks that Hagar and Yishmael be sent away (*Bereishit* 21:0-12). Whereas there, the idea of expelling the servant caused him distress, and a Divine command was needed in order to motivate him to obey Sara, here Avraham answers Sara immediately:

And Avram said to Sarai: Your maid is in your own hands; do with her whatever you think best." (*Bereishit* 16:6)

 It seems that Avram accepts Sara's words, acknowledging that he did something wrong.

 These two points lead the *Or Ha-Chaim* to present the story in a way that is completely different from the simple reading of the text.

 According to the simple reading, the argument here seems to be over Avraham's heart and the designation of "main wife" in the household. While this designation unequivocally belonged to Sara, when Hagar became pregnant from Avraham, the situation changed – at least in Hagar's eyes. If this is the case, however, there is no reason for Sara to complain against Avraham, for it was at Sara's own suggestion that he married Hagar in the first place (*Bereishit* 16:2). Hagar should be the subject of the complaint, for it was she who abused her role of building a family for Sara, and who assumed for herself the role of "main wife" while treating Sara with disrespect. Why, then, does Sara direct her complaint specifically toward Avraham?

 Before we dive into the explanation proposed by the *Or Ha-Chaim*, we must discuss an important issue upon which the *Or Ha-Chaim* bases his explanation.

**II. Did the patriarchs keep the whole Torah?**

 According to a simple reading of the Torah, the patriarchs were not commanded, at least not directly and explicitly, to observe the Torah's *mitzvot* – and they were certainly not bound by the words of *Chazal* brought much later in the Gemara and in the *midrashim*. The simple assumption should thus be that they did not observe the *mitzvot* – certainly not as we know and observe them today.

 Nevertheless, we find the opposite assumption in the words of *Chazal*:

Rav said: Our father Avraham kept the whole Torah, as it is stated: "Because Avraham hearkened to My voice, and [kept My charge, My commandments, My statutes, and My laws]" (*Bereishit* 26:5). Rav Shimi bar Chiya said to Rav: Say, perhaps, that this refers to the seven [Noachide] laws? Surely there was also that of circumcision! Then say that it refers to the seven laws *and* circumcision [but not to the whole Torah]? If that were so, why does Scripture say: "My commandments and My laws"? Rava or Rav Ashi said: Avraham, our father, kept even the law concerning the *eiruv* of the dishes, as it is stated: "My laws [in plural]": one being the Written Law, the other the Oral Law. (*Yoma* 28b)[[2]](#footnote-2)

 This position is also brought in *Avot de-Rabbi Natan*, in a passage that also explains from where Avraham learned the (later) words of *Chazal*:

There were ten generations from Noach to Avraham. And why was it necessary to bring all those people into the world? This comes to teach us that all those generations continued to anger God, and there was not one among them who walked in the ways of the Holy One, blessed be He, until our father Avraham came along, and he walked in the ways of the Holy One, blessed be He, as it is stated: "Because Avraham hearkened to My voice, and kept My charge, My commandments, My statutes, and My laws" (*Bereishit* 26:5). It is not written [that he kept] one law, but rather many laws. This teaches that the Holy One, blessed be He, summoned Avraham's two kidneys and made them like two sages, and they made him understand and counseled him and taught him wisdom all night, as it is stated: "I will bless the Lord, who has given me counsel; in the night seasons my kidneys instruct me" (*Tehillim* 16:7). (*Avot de-Rabbi Natan*, chap. 33)

 It was Avraham's kidneys that taught him all the details of the laws! According to this midrashic explanation, Avraham did not need to engage with the generations after him in order to understand the will of God as reflected in Halakha. It was all clear to him based on his great closeness to and recognition of God.

 The idea that the patriarchs kept the whole Torah raises many difficulties with regard to many of the Torah's stories. The Ramban cites some famous examples in his commentary to *Parashat Toldot*:

The question presents itself: If it be the case [that the patriarchs kept the whole Torah], how did Yaakov erect a pillar and marry two sisters, and, in the opinion of our Rabbis (*Bereishit Rabba* 11), four sisters? Also, Amram married his aunt (*Shemot* 6:20), and Moshe our teacher erected twelve pillars (*Shemot* 24:4). How then was it possible that they should be permissive in matters of Torah which Avraham their ancestor had prohibited on himself, and for which God appointed him reward, when he [Avraham] was wont to command his children and his household after him to walk in His ways? (Ramban, *Bereishit* 26:5)

 The Ramban offers his own answer to this question, arguing that the need to observe the entire Torah applied only in the Land of Israel:

Now it appears to me from a study of the opinions of our Rabbis that Avraham our father learned the entire Torah by way of the holy spirit and occupied himself with its study and the reasons for its commandments and its secrets, and he observed it in its entirety as “one who is not commanded but nevertheless observes,” and his observance of the Torah was only in the Land of Israel… (ibid.)

 One could delve more deeply into the Ramban's position, as well as answers offered by other scholars.[[3]](#footnote-3) For our purposes, we will focus on how the *Or Ha-Chaim* relates to this question. Toward the end of the book of *Bereishit*, Yaakov gives blessings to his sons and transfers the birthright from Reuven to Yosef against an explicit verse: "He may not make the son of the beloved the firstborn before the son of the hated, who is the firstborn" (*Devarim* 21:16). The *Or Ha-Chaim* offers two explanations, which do not contradict each other and may even be seen as complementing one another:

What is correct in my eyes is that the patriarchs received the Torah from Shem, who in turn received it from Noach, who received it from Chanokh, who received it from Adam, who learned it from the mouth of God… But they were only commanded about seven *mitzvot*, that if one transgresses them, he will be put to death. But as for the rest of the Torah, he is close to reward if he keeps it, but far from loss if he does not keep it. This is like what we have even after the giving of the Torah, for there are *mitzvot* for which, if a person keeps them, he will accumulate reward, but if not, he is not punished for them. Thus it was from the day that God created Adam regarding the entire Torah, with the exception of the seven [Noachide] laws. The patriarchs kept them all as an expression of their love for God… But where they saw a benefit [that could be achieved by not observing one of the commandments]… Yaakov, when he felt he marrying two sisters would lead to success, ignored the benefit that would follow from keeping that *mitzva*, since he would not be subject to punishment for failing to keep it, as long as the Torah had not been given.

We might also say that they acted on the basis of God's word, for the patriarchs were prophets and God told them to act as they did. This is similar to what the Rambam writes in *Hilkhot Yesodei ha-Torah* (chap. 9), that if a prophet tells you to temporarily violate a Torah prohibition, you should listen to him, as with Eliyahu on Mount Carmel. (*Or Ha-Chaim*, *Bereishit* 49:3)

 The *Or Ha-Chaim* suggests that before the giving of the Torah, the patriarchs were only obligated to keep the seven Noachide commandments, but because they desired to be close to God, they kept all of the Torah's *mitzvot*, like the halakhic category of one who performs a *mitzva* even though he is not obligated to do so, and is rewarded for doing so.

 In the wake of this understanding, the *Or Ha-Chaim* offers two explanations for those instances where the patriarchs appear to have violated Torah commandments: 1. When spiritual benefit could be derived from the violation of a commandment, then, since the *mitzva* was not obligatory, it could be violated for the sake of that benefit. 2. A prophet is permitted to abrogate a Torah law as a temporary measure. As mentioned, these two explanations are not contradictory, and they may even complement each other.

**III. What did Avraham and Sara argue about?**

 With this introduction, let us return to Sara's complaint against Avraham. The *Or Ha-Chaim* describes a halakhic dispute that arose between Avraham and Sara regarding Hagar’s standing. In order to understand this dispute, the *Or Ha-Chaim* prefaces with a scholarly examination of several issues in the laws governing slaves.

 *Midrash Bereishit Rabba* explains that Hagar was a maidservant of usufruct [*melog*] property brought into the marriage by Sara:

"And she had an Egyptian maidservant, and her name was Hagar." She was a maidservant of usufruct [*melog*] property; he was obligated to pay for her sustenance but was not permitted to sell her. (*Bereishit Rabba* 45)

 The *midrash* clarifies the halakhic status of such a maidservant: she belongs to the wife (Sara) and the husband (Avraham) is not permitted to sell her, but he is obligated in her sustenance. In halakhic terms, this is called the right to usufruct (*kinyan peirot*) without full-fledged ownership (*kinyan ha-guf*) of the property.

 The Gemara in *Gittin* states:

Rav Zeira said in the name of Rabbi Chanina who said in the name of Rav Ashi: Rabbi [Yehuda Ha-Nasi] said: If a slave marries a free woman in the presence of his master, he automatically becomes a free man… when the master provides a wife for him. (*Gittin* 40a)

 Similarly, when the master marries off his maidservant to a free man, she goes free – as is the case with a male slave. This ruling was codified by the *Tur* and in the *Shulchan Arukh* (*Yoreh De'a* 267:70). The Rema adds to the *Shulchan Arukh*’s statement, echoing the *Tur*:

And all the more so if *he* marries his maidservant. (Rema, *Yoreh De'a* 267:70)

 When a man has relations with his maidservant, the *Tur* assumes it is not his intention to violate a prohibition (intercourse with a maidservant); presumably, he intends to set her free with this act of intercourse. The *Shakh* (no. 92) limits this ruling to a case where the master engaged in relations with his maidservant for the purpose of marriage; if he had relations with her purely for fornication, it is evident that he has no problem violating a prohibition, so we cannot infer that he intended to free her and she remains a maidservant.

 The *Rishonim* disagree about the law in a case where the master had relations with his maidservant without making his intentions (marriage or simple lust) clear. The Rambam (*Hilkhot Avadim* 9:1) implies that she does not go free, whereas the words of the Rif (*Yevamot* 5a) imply that even in such a case, the master's intention is presumably for the purpose of marriage and the maidservant goes free.

 To summarize: Halakhically, if a master has relations with his maidservant for the purpose of marriage, the maidservant goes free. According to the Rif, this is true even in a case where the purpose was not clear.

 The *Or Ha-Chaim* explains the conversation between Avraham and Sara based on these passages and the halakhic conclusion – as usual, with impressive attention to detail regarding the words of the text.

 First, he explains why Sara directs her complaint against Avraham and not against Hagar:

She discussed with him two halakhic issues: The first, that Avraham explicitly revealed that he had relations with Hagar for the purpose of marriage – or even if he had relations with her with no clear intention, Hagar thinks, like the Rif’s opinion, that she is a free woman. The second, that Hagar thinks she was set free based on the law stated in *Gittin* that we wrote above: If a slave marries a free woman in the presence of his master, he automatically becomes a free man. And similarly in the reverse case, if a maidservant marries a free man, her mistress makes her a free woman, and with that Hagar's status as a slave was removed.

And therefore she shouted at Avraham, because her complaint was against him, and not against Hagar. For Hagar, based on what she thinks is the law, cannot be blamed. But my abuse is your fault, for you agree with her, not in accordance with the law. (*Or Ha-Chaim* 16:5)

 Hagar behaved in accordance with the law, according to her understanding, because Avraham had relations with her for the purpose of marriage – and according to the Gemara in *Gittin* and the ruling of the *Shulchan Arukh*, that makes her a free woman. No longer Sara's maidservant, and she no longer had to show her the same respect. Therefore, there are no grounds for complaint against Hagar – only against Avraham, who led Hagar to her error. For, as we saw above, Hagar was a maidservant of *melog* property, i.e., the usufruct belonged to Avraham, but she herself belonged to Sara. Therefore, Avraham would be unable to set Hagar free even by giving her a bill of emancipation.

 In his usual manner, the *Or Ha-Chaim* deduces this argument from a precise reading of the verses:

This is the meaning of what she said: "I gave *my* servant in your arms," that is, this maidservant is mine, and all that you have in her is the usufruct, and even if you have relations with her explicitly for the purpose of marriage, she does not go free thereby, for she is not your maidservant to set free, even if you say so explicitly. (Ibid.)

 But Avraham could argue against Sara: Surely, you handed over your maidservant to a free man, and therefore she became free! But this claim is also countered in Sara's words to Avraham:

And if because of the argument that if one marries off his maidservant to a free man, [she goes free], and I gave her to you as a wife, you being a free man – that is only if I gave her to you without specification… But I did not leave the matter unspecified, but rather I stated explicitly that I was not freeing her, and she is still my maidservant, even if she is in your arms.

So you will also find in her original words that she said: "Come now to *my maidservant*" –that is, after you have relations with her, she will still be my maidservant, for [otherwise] she should have said: "Come now to Hagar." (Ibid.)

 Based on an amazingly precise reading of the verses, the *Or Ha-Chaim* understands that the entire discussion here between Avraham and Sara relates to the Talmudic passages dealing with the laws of slaves, the status of Hagar, and Avraham's ability to free her.

 Later, the *Or Ha-Chaim* explains that this was also the reason Hagar fled:

And when Sara understood that there was no refutation of her argument, and [Hagar] was still her maidservant, she treated her harshly, and Hagar fled. This means that Hagar did not accept the judgment, and she thought that she was a free woman because her mistress had given her to a free man, the great man, our father Avraham, and she certainly became free, and she did not hear the condition set by Sara, and therefore she fled, and angels met her and informed her that she was Sarai's maidservant, and she accepted the judgment and said: "[I am running away] from my mistress Sarai." (Ibid.)

**IV. An esoteric purpose**

 After an in-depth account of the halakhic dialogue between Sara and Avraham, the *Or Ha-Chaim* arrives at the essence of the matter. We go back now to the fundamental issue with which we opened this *shiur*: If indeed Hagar did not go free when Avraham engaged in relations with her, why did Avraham have relations with her? Surely this contradicts the clear *halakha* that a Jewish man is forbidden to have relations with a maidservant. Even if we say Avraham simply erred, thinking that he had the authority to free Hagar by engaging in relations with her, why did Sara let him do so?

 The *Or Ha-Chaim* follows his fundamental position regarding the matter of the patriarchs' keeping the Torah and explains that here too, it was a temporary ruling, towards a particular purpose. The *Or Ha-Chaim* explains the ruling and its necessity with the help of kabbalistic concepts which, though they are difficult for us to grasp, fill in the explanation in a beautiful way:

It was necessary for this to happen, because through her being her maidservant, the despicable element that had adhered to Avraham from ancient times became clarified in her, and the *zuhama* (contamination) came out in Yishmael, and the whole and true light remained in Yitzchak. Had Hagar been freed, the *zuhama* would not have all come out alone without some good coming out with it, and it would have caused a great breach, and God, blessed be He, performed His wonders for us. (Ibid.)

 In his commentary to *Parashat Vayechi*, the *Or Ha-Chaim* asks why it is that the patriarchs Avraham and Yitzchak were blessed also with children who went astray. Wouldn't it have been more appropriate that everything should have gone smoothly and even the first child born to each of them would have become a righteous man who followed in his father’s footsteps? His answer there is surprising:

Should you ask how it is that Avraham begat Yishmael and Yitzchak begat Esav, you should know that they are the parts of the evil that the father sowed in them. Terach, the father of Avraham, was an idolater, and when the soul of Avraham emerged, an element of evil adhered to it, but the lovingkindness of Avraham overcame and forced the separation of that evil element and passed it to Yishmael. But sparks of the evil still adhered, until Yitzchak came and separated them with the heat of holiness. This is what they said: "Yaakov emerged clear and clean" (*Bereishit Rabba*, 63). (*Or Ha-Chaim*, *Bereishit* 49:3)

 Avraham and Yitzchak descended from Terach, who was attached to idol worship. This being the case, something of Terach’s evil persisted within Avraham and Yitzchak. The patriarchs clarified the good and the evil parts by dividing them between their children. Thus, in the end, Yaakov remained pure of all the evil, and "his bed was complete,”[[4]](#footnote-4) all of his children following in the good and righteous path.

 This distillation takes place here: a wicked son had to come from Avraham, but it was also necessary that that son be "under his hand." The evil element within Avraham could not be clarified through setting Hagar free; the only means available by which to refine his descendants was to have a child with Hagar while she was a maidservant – precisely as Sara arranged it.

 I do not fully understand the *Or Ha-Chaim*’s meaning in this explanation, but the beauty between his probing study of the Talmudic passage and the kabbalistic meaning that he introduces here is remarkable.

**V. Ownership of Yishmael**

 In conclusion, the *Or Ha-Chaim* deals with another issue that combines Talmudic scholarship and Kabbala – in the wake of Avraham's relations with Hagar, is her son Yishmael "owned" by Avraham, or not? This matter is the subject of a Talmudic dispute:

It was taught: The young of a *melog* animal belongs to the husband; the young of a *melog* maidservant belongs to the wife. Chananya the son of the brother of Yoshiya says: The young of a *melog* maidservant was given the same legal status as the young of a *melog* animal. (*Ketubot* 79b)

 According to the Sages (the anonymous first *Tanna*), the young belongs to the wife – to Sara – whereas according to Chananya, he belongs to the husband – to Avraham. Either way, the *Or Ha-Chaim* understands that this course of events led to Yishmael's being "owned" by Yitzchak, the heir. This being the case, not only did Sara in her wisdom succeed in refining the good in Avraham from the evil in him, but she also made sure that the good would always dominate the evil.

(Translated by David Strauss)

1. *Editor’s note*: At this point in the narrative, they are still Sarai and Avram. Though it is common to refer to them as Sara and Avraham in discussing even these earlier stories, the *Or Ha-Chaim*, like many others, sometimes refers to her as Sarai. We will maintain his language, as well as, of course, the language of the *pesukim*. [↑](#footnote-ref-1)
2. See also *Bereishit Rabba* 79,6 regarding Yaakov. [↑](#footnote-ref-2)
3. See, for example, *Responsa Rashba*, I, no 94 (end); *Responsa Rema*, no. 10; *Gur Aryeh Bereishit* 46:10; and others. [↑](#footnote-ref-3)
4. *Editor’s note*: see Rashi on *Bereishit* 47:31, second explanation. [↑](#footnote-ref-4)