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DIGGING FOR DIN:

May We Learn Halacha from Archeology?

TORAH AMID THE RUINS

The archeology world was recently excited by the discovery of a marked “Beka” (*Mahatzit HaShekel*) weight in a dig at the Kotel.

A small stone bearing an inscription that archeologists identified as the word “Beka”—written backwards—was unearthed in Kotel excavations at Robinson’s Arch five years ago. Nobody got excited at the time, because nobody noticed. A volunteer in the Ir David wet sifting project in Emek Tzurim National Park, sorting recently through that Kotel dirt, found the artifact.

The weight of a *Shekel* has contemporary *Halachic* implications. To determine how much silver the father of a *Bechor* must give a Kohen for *Pidyon HaBen*, can we simply multiply the weight of the found “Beka” stone by ten to reach the required (*BeMidbar* 18:16) five *Shekalim*? Can this find, and others like it, resolve *Halachic* debates about *Shiure HaMitzvah* – *Mitzvah* measurements?

This question is addressed by the *Gemara* (*Bava Batra* 73b) in the *Aggadot* of Rabba Bar Bar Hanna, who told of being led through the desert by an Arab merchant to see the *Mete Midbar* – the deceased generation of the desert. In order to resolve the disputes between *Bet Hillel* and *Bet Shamai* (*Menahot* 41b) regarding the configuration of *Tzitzit*, Rabba excised the corner of the *Tallit* from one of the bodies to bring it to the *Hachamim* for examination. Subsequently, Rabba’s animals were unable to walk, which the Arab explained was due to a tradition that one who takes any-

thing from the *Mete Midbar* gets stuck. Rabba returned the *Tzitzit* and the animals walked. When he told the story to the *Hachamim*, they rebuked him, saying that it had been unnecessary to take a sample when a verbal report would have sufficed.

While the *Mefarshim* debate whether Rabba Bar Bar Hanna meant that these stories actually occurred (see, for example, *Ritva* ad loc.), it would seem to be instructive nonetheless with regard to the fundamental question of whether *Halachic* conclusions can be derived from ancient finds.

R’ Hayim Kanievsky (*Ta’ama DiKra*, *Parashat Shelah*, p. 130 in the 4th ed.), however, sees in the fact that Rabba Bar Bar Hanna was prevented *Min HaShamayim* from taking the *Tzitzit*, and in the fact that it apparently didn’t occur to him to take the obvious step of counting the strings, that it is not the will of Hashem that we determine *Halacha* by means outside of Torah like rummaging through antiquities.

In discussing the debate between *Rashi* and *Rabbenu Tam* about the sequence of the *Parashiyot* in the *Tefillin*, the *Sma”g* (*Mitzvat Asse* 22) adduces evidence for *Rashi* from *Tefillin* that were found buried near the *Kever* of *Yehezkel HaNavi*—a clear support for the *Halachic* admissibility of archeological evidence. The *D’risha* (O.C. 34) rejects the proof on technical grounds: Perhaps the *Tefillin* were buried because the *Halacha* follows *Rabbenu Tam* so they were *Pasul*. The *Ba”h* rejects this argument because the *Tefillin* could easily have been fixed rather than interred.

The *Ramban* writes that he changed his mind about the weight of a *Shekel*—to side with *Rashi* over the *Rif*—after being shown an ancient *Shekel* coin in *Akko* (Acre) with an inscription that local Samaritans could read.

In discussing this issue, many *Poskim* have pointed to problems with the evidentiary value

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A Parasha & Halacha Shiur Summary, Parashat Vayikra by Rabbi Ariel Ovadia

A JOYOUS FEAST *Eating Bread in the Se’udat Purim*

The *Rambam* writes that the obligation of “*Mishte*” – a feast – on Purim is to eat meat and prepare a “proper *Se’uda* (meal)” according to what one can afford and drink wine etc. The expression “A proper *Se’uda*” would seem to imply that one must eat bread as in all other *Se’udot*. The reason for this may be that Purim is called a *Yom Tov* (although the *Gemara* says that regarding *Melacha*, Purim is clearly not a *Yom Tov*). According to the *Rosh* and others, one must eat a meal with bread on *Yom Tov*. Therefore, says the *Rosh*, if one forgets *Ya’aleh V’Yavo* in *Birkat HaMazon* on *Yom Tov*, according to the *Rosh*, one must repeat it. This would be problematic, however, because it would imply that on Purim, if one forgot to say *Al HaNissim* in *Birkat HaMazon* one would

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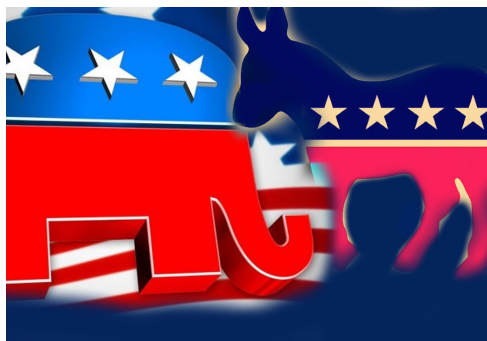
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GENERAL HALACHA

ONE DOLLAR, ONE VOTE?

The (Putative) Hegemony of the "Billionaire Class"

By: Rav Yitzhak Grossman, Dayan at the Bet HaVaad



The central theme of the presidential campaign of self-described "democratic socialist" Vermont Senator Bernie Sanders is a scathing denunciation of what he considers the outrageous influence of money in politics: "This great nation and its government belong to all of the people, and not to a handful of billionaires". His opponents, even those on the opposite end of the political spectrum, are generally not bold or foolish enough to bluntly contradict him and declare, as the Founding Fathers sometimes did, that "those who own the country ought to govern it". What is the Torah's view of the matter? Does it accept the modern principle of "one man, one vote", or does it accept the concerns of the Father of the Constitution that "[I]f elections were open to all classes of people, the property of the landed proprietors would be insecure ... Landholders ought to

have a share in the government, to support these invaluable interests"?

Despite the fact that the Torah clearly anticipates monarchy as the form of Jewish self-government, we find in the Halachic literature of medieval Ashkenaz an assumption that local government should follow democratic norms. As the Maharam of Rottenberg rules:

All the householders who pay taxes shall be assembled, and they shall accept upon themselves under penalty of anathema ("Beracha") that everyone shall express his opinion for the sake of Heaven and for the good of the city, and they shall follow the majority, whether to select leaders, to establish Hazanim, to institute a charity fund, to appoint Gabai'm, to build or to demolish the synagogue, to add and detract, to purchase a wedding hall and to build and demolish therein, to buy a bakery and to build and demolish therein.

The bottom line is, any communal need shall be addressed at their direction, according to whatever they say, and if the minority shall refuse and stand in opposition, ... the majority, or whomever the majority shall appoint as leaders, have the power to compel and force them via either Jewish law or the law of the nations, until they say "we desire [to comply]" ...

The Maharam apparently takes for granted that suffrage is limited to those "who pay taxes"; his student, the Rosh, propounds a similar view, at least in the context of financial matters:

A community that institutes an anathema ("Herem"), if it is in the context of financial affairs, we follow the majority of wealth ... and it cannot be that the majority of individuals who pay the minority of the taxes shall decree an anathema on the wealthy according to their views.

The Rema apparently understands the Rosh to mean that the wealthy minority can actually impose its will on the impecunious majority. The Sm"a, however, suggests that the Rosh may merely mean that the majority of individuals cannot impose its will upon the wealthy minority, but not that the latter faction is itself considered the majority. He additionally proposes that the desires of the two factions are given equal weight, and they must negotiate a modus vivendi. The Maharit, too, vehemently rejects the idea that a wealthy minority can overrule the will of the majority. He understands the Rosh to mean merely that those who do not pay taxes at all do not vote, but all those who do pay have an equal say in decision making.

"When you're rich, they think you really know!"

In addition to the foregoing Madisonian concern that if we were to "extend [the franchise] equally to all", then "the rights of property or the claims of justice may be overruled by a majority without property, or interested in measures of injustice", we find an additional argument for giving the rich a greater voice in governance than the masses: that their views are inherently deserving of greater consideration. The Maharashdam declares that "Has V'Shalom" that we should always follow the majority, even against the elites (the "distinguished", "respected" and "rich" - i.e., the proverbial one percent): this would be unfair (*lakta middat ha'din*) and a violation of the principle that "Her ways are ways of pleasantness". He explains that "five or ten important men are equivalent to a thousand, whether [their importance derives] from wisdom or from wealth, for wealth is near the virtue of wisdom, as it is written 'b'tzel ha'hochma b'tzel ha'kesef".

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have to repeat it - as the day requires a Se'uda with bread - yet, if

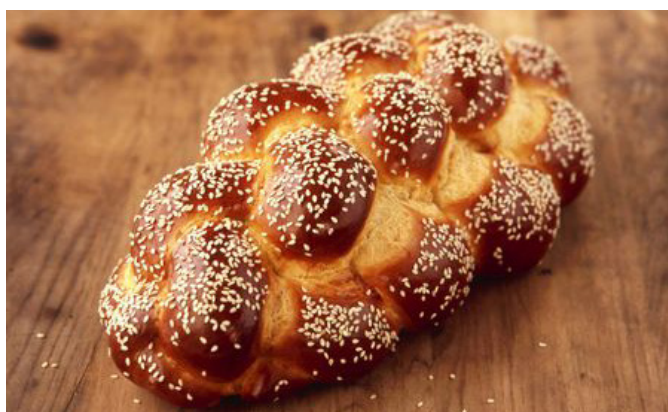
one forgets it in the *Amidah* one doesn't have to repeat the *Amida*. Can *Birkat HaMazon* be stricter in this regard than the *Amida*? The *Magen Avraham* and others write, that while there may be an obligation to eat bread on Purim, one would not have to go back to say *Al HaNissim* - unlike *Yom Tov* - as the recitation of *Al HaNissim* is only a *Minhag* and not as "serious" as having to say *Ya'aleh V'Yavo*.

Still, it seems from the *Rambam* elsewhere

(Hil. Berachot) that *Purim* is compared to *Hanukkah* and *Hol HaMo'ed* in which all agree there is no obligation to eat bread. R' Akiva Eiger explains that *Purim* only requires happiness and not bread. This too is the opinion of the *Hid"o* and others.

L'Halacha, one should preferably eat bread, however, it is not required

according to most *Poskim*. If one forgets *Al HaNissim*, whether in *Tefilla* or *Birkat HaM-*



azon one doesn't have to go back. The Purim meal must include meat and wine. Purim Sameah!

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIT AWARENESS INITIATIVE

CORPORATE GIFTS

Many startup businesses are created through an agreement in which an investor provides funding with a *Heter Iska* contract. May the business owner send the investor annual corporate gifts, or an extravagant *Mishloah Manot* on Purim?

Poskim disagree whether the restrictions of *Avak Ribbit* apply to parties of an *Iska* partnership. Some permit these gifts as dividends, while others consider them gratitude for the loan portion of the *Iska* agreement, and forbidden.

If one expects to encounter such situations,



it is better to structure the *Iska* contract as a *Kulo Pikadon* in which there is no loan taking place.

When a business is incorporated, Rav Moshe Feinstein z"l rules that they may borrow (though not lend) with *Ribbit*, and therefore in our case there would be no issue at all. Other *Poskim* are stringent however, and require a corporation to draft a *Heter Iska*, which in our case would be best serviced by a *Heter Iska Kulo Pikadon*, as mentioned above.

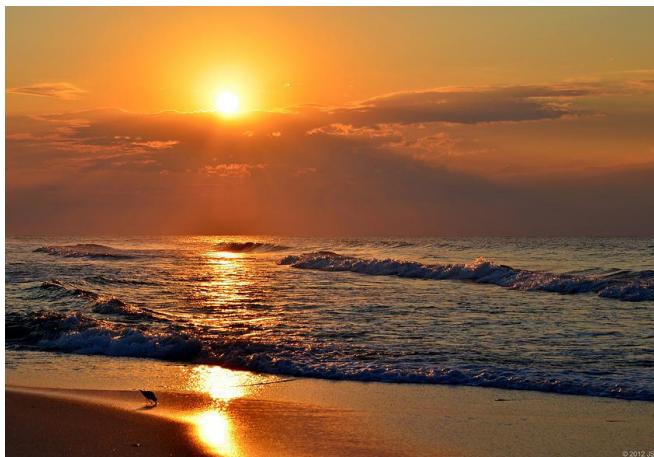
HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kasher Halacha Yomis

Laws related to Berachot

When does the day begin for the counting of one hundred Berachot? Does one begin counting from sunset, when the Halachic day begins, or does one begin counting from the morning?

Poskim, such as the *Mishna Berura* (46:14), include the *Beracha* of *HaMapil* (which is recited at night before going to sleep) as one of the beginning *Berachot* of the day, in the count of one hundred *Berachot*. This would indicate that the counting of *Berachot* begins at night, and like most other *Mitzvot*, the time-frame follows the *Halachic* day.



Interestingly, many *Poskim* write that if one prays *Arvit* on *Erev Shabbat* before sunset, or recites *Birkat HaMazon* at the conclusion of *Seudah Shelishit* after *Tzet HaKochavim*, these *Berachot* are counted toward the hundred *Berachot* of *Shabbat* (see *Yabia Omer* 10:7 and *Shevet HaLevi* 5:23). This is because the *Halachic* day of *Shabbat* can be extended both before and after *Shabbat* (*Tosefet Shabbat*), and *Berachot* recited anytime during *Shabbat* count toward that day.

Sefer B'Tzel HaHochma writes that on a regular week night, if one prays *Arvit* before sunset, these *Berachot* will count toward the earlier day.

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- דף ק"יג Cooking Basar B'Chalav
- דף ק"יד Sin & Consequence

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of many finds: the paucity of the archeological record and the lack of proof that whatever was exhumed is a valid representative of its kind.

The *Hazon Ish* (*Hilchot Shevi'it* 3:18) rejects the presumption that a town known today by a particular name shares the location of its historical counterpart, so the *Gemara's* statement (*Hullin* 6b) that *Bet She'an* is not subject to *Shemita* cannot be applied to the *Bet She'an* of today.

A similar uncertainty surrounds the city of *Lod*, which the *Gemara* (*Megilla* 4a) says was walled in *Yehoshua's* time and therefore celebrates *Purim* on the 15th of *Adar*. What about the *Lod* of today? Though others disagreed, *Dayan Weiss* (*Minhat Yitzhak* 8:61) felt that excavations in the 1980's that appeared to confirm that the new *Lod* is the old *Lod* helped create a *Safek*, and that residents should hear the *Megilla* again on the 15th without a *Beracha*.

It is important to distinguish between the ac-

tual evidence from a dig and the pronouncements of archeologists, some of whom are given to presenting assumptions and guesses as fact. Dead men tell no tales, so an imaginative archeologist is free to exploit the absence of evidence to improvise a story about his find. [Note that *Dayan Weiss* in *Lod* pointed not to the claims of the archeologists but to the knowledge of the *Atra Kadisha* organization, who examined graves that were uncovered.]

While demonstrating this trend is beyond the scope of this article, consider the license taken in our own *Beka* case by archeologist *Eli Shukron*, who directed the excavations on behalf of the *Israel Antiquities Authority*. To the question of why something intended to serve as a weight would be inscribed backwards, *Shukron* had an answer at the ready: This inscription was obviously made by an artisan who also inscribed seals—which are engraved in mir-

ror script—so he mixed up the two.

"Apparently, the seal craftsman got confused when he engraved the inscription on the weight and mistakenly used mirror script as he was used to doing," said *Shukron* in a press release. It gets worse: "From this mistake we can learn about the general rule: The artists who engraved weights during the First Temple period were the same artists who specialized in creating seals."

Obvious, isn't it?

EVENTS & HAPPENINGS AT THE BAIS HAVAAD



Zichron Gershon, the Bet HaVaad Kollel for Dayanim, recently had the privilege of hearing a shiur from *Dayan Yonatan Dovid Hool, shlit"a*, a renowned *Posek* and *Dayan* in England. *Dayan Hool*, is associated with the *Bet HaVaad* since its inception, and has contributed many articles and shiurim to various *Bet HaVaad* educational projects over the years.

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