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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 (*machat'zis hashekel*) weight in a dig at the Kosel.

A small stone bearing an inscription that archeologists identified as the word “*beka*”—written backwards—was unearthed in Kosel 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 Kosel 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 *shiurei hamitzvos*?

This question is addressed by the Gemara (Bava Basra 73b) in the *aggados* of Rabba Bar Bar Chana, who told of being led through the desert by an Arab merchant to see the *maisai midbar*. In order to resolve the disputes between Bais Hillel and Bais Shamai (Menachos 41b) regarding the configuration of tzitzis, Rabba excised the corner of the talis from one of the bodies to bring it to the Chachamim for examination. Subsequently, Rabba’s animals were unable to walk, which the Arab explained was due to a tradition that one who takes anything from the *maisai midbar* gets stuck. Rabba returned the tzitzis and the an-

imals walked. When he told the story to the *Chachamim*, 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 Chana 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.

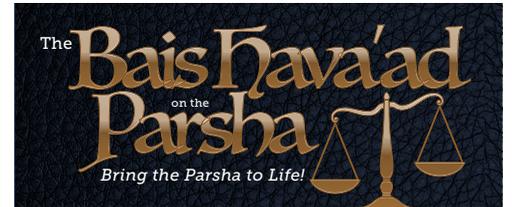
R’ Chaim Kanievsky (Ta’ama Dikra, Parashas Shelach, p. 130 in the 4th ed.), however, sees in the fact that Rabba Bar Bar Chana was prevented *min hashamayim* from taking the tzitzis, and in the fact that it apparently didn’t occur to him to take the obvious step of counting the strings, that it is not the will of Hashem that we determine Halacha by means outside of Torah like rummaging through antiquities.

In discussing the *machlokes* between Rashi and Rabbainu Tam about the sequence of the *parashios* in tefillin, the Smag (*Mitzvas Asei* 22) adduces evidence for Rashi from tefillin that were found buried near the *kever* of Yechezkel Hanavi—a clear support for the Halachic admissibility of archeological evidence. The Drisha (O.C. 34) rejects the proof on technical grounds: Perhaps the tefillin were buried because the Halacha follows Rabbainu Tam so they were *pasul*. The Bach 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 with an inscription that local Samaritans could read.

In discussing this issue, many *poskim* have pointed to problems with the evidenciary value of many finds: the paucity of the archeological record and the lack of proof that what-

(continued on back)



Adapted from a shiur by Rav Chaim Weg for Parshas Vayikra

The Berachos vs. Minyan for Megilla Reading: A Question of Priorities

Someone came to shul late on Purim and missed the *berachos* of the *Megilla* before the reading. His *safek* was: Is it better to hear *Megilla b'rov am* (in a large group) without *berachos*, or read it alone with *berachos*? So he made a *tnai*:

If it's better *b'rov am*, then he is *yotzei* with the *keria* now.

If it's better with *berachos*, he will be *yotzei* later by reading himself.

He then asked a “*gaon echad*,” who agreed with the *safek*, and said it is a *safek* if he is *yotzei* with the first reading, so he should read again without *berachos*.

Kuntres Yemei Purim, who brings this story, asks: What is the *safek*? *Berachos* is a *chiyuv*, while *rov am* is a *hidur*, since you can be *yotzei* alone.

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GENERAL HALACHA

ONE DOLLAR, ONE VOTE? The (Putative) Hegemony Of the “Billionaire Class”

By: Rav Yitzchak Crossman, Dayan at The Bais 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 Askenaz 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 (“*berachah*”) that every one 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 *chazanim*, 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 (“*cherem*”), 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 Sema, 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 “*chas ve’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 (*laksah midas 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 ‘*be’tzeil ha’chochmah be’tzeil ha’keseh*’”.

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fundamentally upon *pirsumei nisa* and *b’rov am*, so maybe it’s more important.

Proofs:

Megilla 3: We are *mevatel talmud Torah* for *Megilla*.

Possible answer based upon the Brisker Rav: *Megilla* is based

upon *pirsumei nisa* and *b’rov am*, so maybe it’s more important.

Proofs:

Megilla 3: We are *mevatel talmud Torah* for *Megilla*.

Ritva: Although *Megilla* itself is *talmud torah*, we are *mevatel talmud Torah* even to read it *b’tzibbur*. This is because the *yesod* of *Megilla* is *pirsumei nisa*.

Megilla 5: *Machlokes* if *Megilla* can be read alone.

Rashi: Issue is whether *pirsumei nisa* requires ten or whether it’s achieved by each person reading individually.

We see that *pirsumei nisa* (which is the basis for *b’rov am*) is key to the mitzvah.

Tosafos: Even a *yachid* makes a *beracha*. The *chiddush* is that although *pirsumei nisa* is crucial, we still recite a *beracha* here.

This all demonstrates that *b’rov am* and *pirsumei nisa* are the basis for *Kerias Megilla*, and hence the basis for the *safek* above of which is better: The *beracha* may be required, but *b’rov am* is the basis of *Kerias Megilla*.

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS 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 Shalach Manos on Purim?

Poskim disagree whether the restrictions of *avak ribbis* 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 *zatz"l* rules that they may borrow (though not lend) with *ribbis*, 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.

YOU DAILY LIVING

Weekly Questions

LAWS RELATED TO BRACHOS

When does the day begin for the counting of one hundred brachos? 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 *bracha* of *HaMapil* (which is recited at night before going to sleep) as one of the beginning *brachos* of the day, in the count of one hundred *brachos*. This would indicate that the counting of *brachos* begins at night, and like most other mitzvos, the time-frame follows the *halachic* day.



Interestingly, many *poskim* write that if one *davens Maariv* on *Erev Shabbos* before sunset, or *bentches* at the conclusion of *Shalosh Seudos* after *Tzeis Hakochavim*, these *brachos* are counted toward the hundred *brachos* of *Shabbos*. (See *Yabia Omer* 10:7 and *Shevet Halevi* 5:23). This is because the *halachic* day of *Shabbos* can be extended both before and after *Shabbos* (*tosofos Shabbos*), and *brachos* recited anytime during *Shabbos* count toward that day.

Sefer Betzeil Hachochma writes that on a regular week night, if one *davens Maariv* before sunset, these *brachos* will count toward the earlier day.

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

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ever was exhumed is a valid representative of its kind.

The Chazon Ish (*Hilchos Shevi'is* 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 (Chulin 6b) that Bais Sh'an is not subject to *shemita* cannot be applied to the Bais Sh'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 (Minchas Yitzchak 8:61) felt that excavations in the 1980s that appeared to confirm that the new Lod is the old Lod helped to create a *safeik*, and that residents should hear the Megilla again on the 15th without a *bracha*.

It is important to distinguish between the actual 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 experts from the Asra 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 mirror 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 Bais HaVaad Kollel for Dayanim, recently had the privilege of hearing a shiur from Dayan Yonasan Dovid Hool, shlit"a, a renowned Posek and Dayan in England. Dayan Hool, is associated with the Bais HaVaad since its inception, and has contributed many articles and shiurim to various Bais HaVaad educational projects over the years.

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