

Parsha Ponders

Shavuos | June 7, 2019 | 4 Sivan 5779

The escape clause¹

ויוצא משה את-העם לקראת האלקים מן-המחנה ויתיצבו בתחתית ההר

Moshe took the people out from the camp to greet Hashem, and they stood at the foot of the mountain²

The holiday of Shavuos celebrates the giving of the Torah to the Jewish people³. It's when the Ten Commandments were stated. Before the great revelation of the Divine, the Torah says that the Jews stood "at the foot" of the mountain. However, literally read, the verse says that they stood "under" the mountain. *Chazal* learn from here⁴ that this teaches us that Hashem picked up the mountain, and held it over their heads. He said to them: "If you accept the Torah, good. But if not, then this⁵ will be your burial place". Thankfully, the Jews accepted the Torah. In fact, they later accepted it anew in the days of Achashverosh, out of love. However, this shows us that initially it was only through coercion. The *gemarra* concludes that this created a לאורייתא רבה מודעא רבה, meaning they had an escape clause. If they ever failed to keep the Torah, they could always claim that they never accepted it willingly. They were never really obligated to keep it, since their acceptance was under duress. Only once they accepted it anew did they lose this claim.

There's a discussion in the *gemarra*⁶ about forced sales and gifts. If Reuven hangs Shimon from a tree and demands Shimon give him a field for free, even if Shimon agrees, Reuven's acquisition of the field is invalid⁷. This was because the gift was given under duress. We say that Shimon's plan was to later call the authorities and try to reclaim his stolen land⁸. However, if Reuven hangs Shimon from a tree and demands that Shimon sell him the field, the sale is valid⁹. This is because *Chazal* understood the psychology of people. The combination of the coercion and receiving money (which means there's no financial loss¹⁰) prompts the person being tortured to relinquish his rights to his field. We say he "willingly" sold it to the criminal. He therefore cannot reclaim it from him in court.

However, there are opinions¹¹ that if there's a threat of death, a person would even "willingly" relinquish their rights to their field for free. The transaction would be valid, and they wouldn't be able to back out of it later. This is because if their life is at stake, they feel they have nothing else to lose¹².

¹ Based on *Chasam Sofer* to *Gittin* 55b s.v. לא היה

² *Exodus* 19:17

³ See <http://parshaponders.com/shavuos-5777> for more on what Shavuos commemorates

⁴ *Shabbos* 88a; *Mechilta D'Rabbi Yishmael Masechta DeBeChodesh* § 3; *Mechilta D'Rashbi ad. loc.*; *Midrash Tanchuma Noach* § 3; *ibid Shoftim* § 8; *Otzar Midrashim Kisvei Yad* I pg. 96, which brings a *Sheiltah* to *parshas VeZos HaBeracha*. It's also mentioned in passing in *Avoda Zarah* 2b

⁵ שם תהא קבורתכם, literally: "there" will be your burial place. The commentators are bothered by this expression and have various approaches to explain why it is phrased this way. However, the version in *Mechilta D'Rashbi loc. cit.* says "here" will be your burial place

⁶ *Bava Basra* 47b – 48b

⁷ תליוהו ויהיב לא הוי זביניה זביני

⁸ *Rashbam ad. loc.* 47b s.v. לקח מסיקריקון

⁹ תליוהו וזבין זביניה זביני

¹⁰ *Rashbam ad. loc.* 48a s.v. אלא: דמתוך יסורים גמר בלבו ומקני הואיל ואיכא תרתי יסורים ומתן מעות דלא מפסיד מידי

¹¹ *Mordechai Gittin* § 395; *Beis Yosef Chosen Mishpat* 205:12

¹² *Rashba* to *Gittin* 55b. Cf. *Beis Yosef loc. cit.*

These opinions create a problem with the above teaching about the Jews' acceptance of the Torah¹³. When they accepted the Torah, they were obligating themselves to fulfill its *mitzvos*. This obligation was considered a gift that they gave Hashem¹⁴. As such, this gift was coerced, under pain of death. That would mean that it was a valid transaction, and couldn't be retracted later. How then could the *gemarra* teach that they could have claimed their acceptance wasn't valid, that they were "off the hook"¹⁵?

The Chasam Sofer has a fascinating approach to this question¹⁶. He brings an opinion¹⁷ that while a person would give up something for free under pain of death, that's only when it's their own death. If it was a parent or child whose life was on the line, they would only pretend to give away something to save their loved one's life. The transaction wouldn't be sincere¹⁸. The Chasam Sofer claims however that if money was received, even in such a case the transaction would be valid. He also brings an idea¹⁹ that

¹³ Mishneh LaMelech Hilchos Mechira 10:1

¹⁴ When we learned the *sugya* my *chavrusa* and I thought that it was more akin to a sale than a gift. Hashem gave us so much in this world and the next when he gave us the Torah. The Mishneh LaMelech doesn't seem to consider that gain. Our understanding would make this a question according to all opinions, as everyone agrees תליוהו וזבין זביניה זביני

¹⁵ The Ma'aseh Rokeach *ad. loc.* answers that ויהיב works with a threat of death only when the threat is definite. Hashem is compassionate and merciful, so the threat wasn't definite. What's hard to understand is this explanation implies Hashem's threat wasn't serious, which is hard to say

¹⁶ He addresses this question in four places: In Chiddushei Chasam Sofer to Gittin 55b s.v. לא היה he gives the explanation that follows. He gives another explanation there and in Bava Basra 47a s.v. ומשנה למלך, where he uses the Tashbetz that follows in combination with the fact that the souls of all future generations were at Mount Sinai (The Chasam Sofer says the source is Shevuos 39a, although I don't see it. Other sources for this are Midrash Tanchuma Yisro § 11 and Pekudei § 3). The souls of future generations, although their own physical lives weren't in danger, the lives of their ancestors were. This is like the case where someone's father's life is threatened. תליוהי won't work in such a case. Since accepting the Torah was considered a gift that they were giving Hashem, the future generation's acceptance wasn't binding. A couple of problems with this explanation is these coercion cases are where presumably the one threatening will back off if you comply. The acceptance of the souls of future generations doesn't affect if that living generation will survive or not, only their own personal acceptance would. As well, this doesn't fit with the Chasam Sofer's assumption (in the explanation which will be presented) that if that generation at Mount Sinai's lives are ended, it's considered endangering the lives of the **future** generations. With this explanation he's assuming that the lives of future generations are **not** in danger. In Shabbos 88a s.v. ויתיצבו he writes that they thought if they accepted the Torah they would be burned by the fiery mountain, so they thought no matter what they would do they would die. In such a case we don't say ויהיב works. In Teshuvos Chasam Sofer Even HaEzer I § 112 he writes that accepting the Torah wasn't a gift to Hashem. It was the opposite: Hashem gave us the gift of the Torah, as it says לקח טוב נתתי לכם (Proverbs 4:2. See Berachos 5a). Cf. note 14. Although a person will give up something for free if their life is threatened, they won't accept something they aren't interested in even under pain of death. Although, I would have said the opposite: if they'll give away something to save their life, surely they'll be willing to accept something. See also Chasam Sofer Al HaTorah to Genesis 27:40

¹⁷ Teshuvos Tashbetz 1:1

¹⁸ The Chasam Sofer sees from the Mordechai *loc. cit.* that he disagrees

¹⁹ The Chasam Sofer ascribes this idea to "a known letter" from the Rambam. However, the way he presents the idea, no such letter exists. It is understood that the Chasam Sofer probably is only referring to a particular phrase in a letter ascribed to the Rambam to his son (found in Kovetz Teshuvos Rambam Velgrosav p. 40 s.v. ודע בני, which says ואשריו למי שחתמו ימיו מהרה, which the Chasam Sofer uses as a springboard to give his own insight. This is evident because any time the Chasam Sofer quotes this passage, that's all he ascribes to the Rambam. For

each person is put in this world to complete a particular task. Once that task is complete, they move on to the next world. It would seem then that it would be preferable for one's life to end earlier, as that would be a sign that they completed their task quicker. However, if a person wants to continue serving Hashem, despite having completed their task, this is for sure praiseworthy²⁰.

We say at the Pesach Seder that if Hashem had taken us to Mount Sinai and not given us the Torah, it would have been enough. How could this be? What was the point of taking us to Mount Sinai, if not to receive the Torah? The Chasam Sofer says that the Jews reached their perfected state at that point in time. The simple Jewish maidservant reached such prophetic heights that she saw more at the Sea than Ezekiel the prophet ever saw²¹. They had completed their assigned task. As such, they no longer had any need to stay living in this world. Therefore, Hashem asked them: You've already completed your task. If you so desire you can accept the Torah and continue serving Me in this world, thereby receiving additional reward. If not, then you no longer need to live in this world, and this will be your burial place. Not as a punishment, Heaven forbid; just a natural consequence²².

The Jews wanted to accept the Torah, and continue serving Hashem, as they had said: נעשה ונשמע, "We will fulfill and we will listen"²³. Nevertheless, they still had an escape clause. How so? They could always claim that they didn't really want to continue serving Hashem. The reason why they accepted the Torah was purely so their future offspring would get a chance to live in this world. Had the Jewish people's lives ended at that moment, all the potential future generations wouldn't have had the opportunity to serve Hashem. This desire compelled them to accept the Torah, an acceptance that was under duress. Not because their own lives were in danger, but their future children's lives. This type of duress doesn't result in a valid transaction, without receiving something in return²⁴. Therefore, the Jews had this excuse at their disposal, until they fully accepted the Torah in the days of Achashverosh.

Good Shabbos and Chag Sameach!

example, see Toras Moshe to Deuteronomy 28:11 and 30:15. See as well Teshuvos Shoneh Halachos 13:210, 214. However, this letter is assumed to be a forgery. See Igros HaRambam (Rav Shilat ed.) p. 697 - 699

²⁰ The Chasam Sofer doesn't explain how a person can make this choice, as they don't know when they've completed their assigned task. The only thing I can suggest is that if a person's general attitude is that they want to serve Hashem, then Hashem will take that into account

²¹ Rashi to Exodus 15:2, quoting Mechilta ad. loc.

²² According to this I don't understand why Hashem put the mountain over their heads

²³ Exodus 24:7. This answers Tosafos' question (Shabbos loc. cit. s.v. כפה עליהן הר כגיגית) why Hashem threatened them with death in order to accept the Torah when they had already accepted it willingly. The Chasam Sofer is saying that the death they were being presented wasn't a punishment but simply informing them that they had completed their mission and could stop living at this point. For other answers to this question, see <http://parshaponders.com/shavuos-5778-part-one> and <http://parshaponders.com/shavuos-5778-part-two>

²⁴ However, according to the understanding mentioned in 14, this doesn't answer the question. Only his answer in Shabbos addresses תלוייה וזבין