

Parshas Bo

Logic and Beyond

The first mitzvah the Jewish people are given as a nation is the sanctification of the new month. This Sichra analyzes the centrality of this commandment and gives a fresh perspective to the concept of testimony.

This week’s Parsha recalls the first commandment that the Israelites received as a nation:

accepted even if the witnesses are related to one another.

Text 1

G-d spoke to Moshe and to Aharon in the land of Egypt, saying, “This month shall be for you the beginning of the months, it shall be for you the first of the months of the year.”

Shemos 12:1-2

Text 2

If a father and a son have seen the new moon, they should both go to [to Jerusalem], not that they can act as joint witnesses but so that if one of them is disqualified the other may join with some other witness. R. Shimon, however, says that a father and son and all relatives are eligible to testify to the appearance of the new moon... What is the reason of R. Shimon? — Because it is written, and the Lord spoke unto Moshe and Aharon in the land of Egypt, saying, “This month shall be for you the beginning of months,” which implies, “this testimony shall be valid [when given] by you”. And the Rabbis? — [It implies], this evidence shall be entrusted to you.

Talmud, Rosh HaShana 22a

From the above verse, the Sages learn the requirement of establishing a new month.

In order to establish the new month, witnesses must see the new moon, come to a Jewish court and give an account of what they saw.

According to the Torah, in general, for proper testimony to be in place, it must consist of two witnesses reporting the same evidence. These witnesses may not be relatives¹.

Concerning the verification of the new moon however, there is a discussion in the Talmud as to whether this scenario is different from all others.

There is a rabbinic opinion that believes that although, other testimony is not acceptable by relatives, in this case however, testimony is

The reasoning of the opinion of R. Shimon, is his analysis of the verse in which the Almighty told Moshe and Aharon about the sanctification of the new moon. He deduced from its language that this specific testimony is accepted even when the witnesses are relatives.

The verse² says: “G-d spoke to Moshe and to Aharon in the land of Egypt, saying, “This month shall be for you.” He was essentially telling

¹ Talmud, Bava Basra 159a.

² Shemos 12:1-2.

Moshe and Aharon that they, together, may sanctify the month.

This implies concerning all other cases of two brothers (or other relatives saying testimony) that regarding the verification of the new moon, the testimony of two brothers would be acceptable, although it is an unacceptable testimony in any other scenario.

The contending opinion views the words, “This month shall be to you,” not as a reference to *saying* testimony, but to *accepting* it.

G-d was not instructing Moshe and Aharon that they can both be witnesses in regards to sanctifying the new month, rather, He was informing them that testimony regarding a new moon must be accepted in a court.

Uniqueness of this testimony

The opinion of R. Shimon that for this testimony the witnesses may be brothers, is due to the manner in which he interprets the verse.

It is understood, however, that the reason the Torah differentiates between the testimony regarding the new moon and all other forms of testimony, is because of the inherent differences of each.

Due to this distinction, R. Shimon understands that the testimony for establishing the month should be accepted from relatives, although regarding other matters, relatives are prohibited from saying a joint testimony.

In other forms of testimonies, there is a concern that the witnesses may lie. The witnesses’ words establish the veracity of the situation that they claim had occurred.

With regards to the new moon however, the testimony is not *truly* needed to establish the veracity of the events that they are claiming.

Here, the courts already knew on which day the moon was possible to be seen. For, in addition to visual testimony, the Torah also required the Jewish court to perform an actual calculation regarding the exact date that the new moon would appear.

Hence, being that the courts were already aware of which day would be possible to see the new moon, the incentive for the witnesses to attest to an untruthful date would be mitigated, and therefore this type of testimony was believed by relatives as well.

Prohibition for relatives

R. Shimon’s opinion though, does not seem to be congruous with the general prohibition of accepting testimony from relatives.

The reason that the Torah prohibits relatives from testifying on the same matter is *not* because they may lie, but rather, “it is (purely) a decree of the King [G-d].³” Even when the relatives are completely trustworthy, their testimony is still not valid.

Text 3

The Torah did not disqualify the testimony of relatives because we assume that they love each other, for a relative may not testify either on his relative’s behalf or against his interests. Instead, this is a Scriptural decree.

For this reason people who love each other or who hate each other are acceptable as witnesses even though they are not acceptable as judges. For the Scriptural decree disqualifies only relatives as witnesses.

Rambam, Laws of Testimony 13:15

³ Talmud, Bava Basra 159a.

Any other pair of witnesses who may have a pre-existing relationship—such as two people who have a deep love for one another, or individuals who have an animosity toward each other—which would also cause the validity of their testimony to be questionable, are indeed permitted to stand together as witnesses!

It is therefore understood that the reason that relatives is not because they may lie but rather it is due to “a decree of the King” that is beyond human comprehension.

What then, is the reasoning for R’ Shimon’s view? What is the difference with this scenario, which causes R. Shimon to believe that two relatives can indeed testify, regarding the establishment of the new moon?

If the Torah’s prohibition of two family members testifying together is not based on a rational reason, but rather because it is the will of the Almighty, what difference is there in this regard, concerning establishing the new month, which causes the testimony of relatives to indeed be valid?

The essence of testimony

We can understand the reasoning of R. Shimon’s view through prefacing a general explanation of the legal structure of testimony.

The essential purpose of testimony according to the Torah is not only to *prove* information as obtaining the declaration of two witnesses will not necessarily guarantee that the claim is true.

Rather, the Torah’s system of testimony is simply a legal fiction. The Torah gives *absolute* weight to the testimony of the witnesses *as if* their words had been completely verified.

Text 4

We are commanded to render a [legal] judgment based on the testimony of two witnesses, even though we do not know if they are testifying truthfully or falsely.

Rambam, Principles of the Torah 8:2

The Torah says⁴: “By the mouth of two witnesses...shall the matter be *confirmed*.” Even though for all intents and purposes the matter has not been verified, the Torah still considers it as if the matter has been confirmed.

Being that testimony is not a *proof* that what the witnesses are saying is true, and we are not accepting their words *because* they are trustworthy, but only because Torah says that their words should be accepted, the same is true on the opposite end of the spectrum.

Even when we *do* trust the words of two relatives, and do know that they are indeed telling the truth, we still cannot accept their testimony in a court. The strength of testimony that it is considered that the “matter had been *confirmed*” was not applied to relatives.

R. Shimon believes though, that we only need testimony in the manner in which it is considered that to be confirmed when we *cannot* confirm the matter *ourselves*.

Being that the Jewish court had already made a mathematical calculation, and the day of the new month is clear from a mathematical calculation, we do not need their testimony to confirm the date of the new month.

The testimony of witnesses is merely to *verify* that not only is this date the beginning of the new moon, but that the moon was *seen* as well.

⁴ Devarim 19:15.

The testimony was therefore of a different nature, as it was not meant to *establish* a fact, but to *verify* something that had previously been clear.

Being that we do not need the classification of testimony to *establish* a fact, the testimony of witnesses who are related are accepted according to R. Shimon.

Converts

According to the above understanding of the essential difference between the testimony in regards to the new month and other forms of testimony, an additional question concerning R. Shimon's view can be explained as well.

The law is, that although relatives may not testify concerning each other, two brothers who converted may indeed testify concerning the other. The reason for this law is that converts do not have the halachic status of relatives.

Text 5

Converts are not considered as relatives. Even two twin brothers who convert may testify on each other's behalf. For a convert is considered as a newborn child.

Rambam, Laws of Testimony 13:2

At the exodus from Egypt, the Israelites had the status of proselytes, and therefore Moshe and Aharon, though blood brothers were technically not related⁵.

If so, how can R. Shimon base his opinion that brothers are permitted to testify regarding the

new month on the fact that Moshe and Aharon were permitted to testify?

The reason that Moshe and Aharon would be permitted to testify is seemingly because they did not have the *halachic* status of brothers, not because relatives may testify in this instance.

According to the above, however, this is understood, as the reason that the testimony of brothers is permitted is because we do not need the authentic concept of *testimony* but rather a *verification* by two trustworthy individuals.

The reason why, in general, converts can say testimony concerning the other, is because the prohibition of relatives saying testimony about each other is *not* because of a closeness that they may feel for the other person, but, as was explained, is rather only because the Torah decreed as such—not because of a rational reason.

If they are technically not related, they may say testimony concerning the other.

The Torah created the concept that “by the mouth of two witnesses...shall the matter be confirmed,” even though it is possible that they may not be telling the truth.

The Torah likewise established, that relatives do not have the ability to cause this degree of verification.

However, concerning the testimony of a new month, the *focal* point of their testimony is *not* that the “matter shall be confirmed,” but is merely to *verify* to the courts something that they have already mathematically confirmed.

This is not the regular Torah concept of testimony, but rather a clarification of

⁵ See, however, Gur Aryeh, Vayigash 46:10 that this law did not apply concerning the conversion at the time of the exodus from Egypt.

something based on a trustworthy statement that can be verified.

Although Moshe and Aaron may not have had the *halachic* status of brothers, they still had the natural connection that two brothers have.

Therefore, once the verse brought out that we are not worried about a natural affinity, this law applies to all testimony concerning the new moon, (which is not the essential concept of testimony).

The Halacha

The accepted ruling though, is like the contending opinion: that relatives cannot say testimony concerning the sanctification of the new moon.

Text 6

The only testimony that is acceptable with regard to [the sighting of] the new [moon] is that of two adult males who are fit to testify regarding all matters...

When a father and a son both see the new moon, they should both go the court to testify. Not because testimony regarding the [the sighting of] the new [moon] is acceptable [from witnesses who are] related, but because one of them may be disqualified because he is a thief or for other reasons, and the other will be able to join with another person and give testimony.

Rambam, Laws of Sanctifying the Month 2:1

The law is that although we already know when the date for the new month is according to mathematical calculation, one must still have the

testimony of two proper witnesses to establish the day of Rosh Chodesh.

The Torah wished that there be the standard testimony that causes that “the matter shall be *confirmed*,” and not merely an account of two trustworthy individuals.

We see this expressed in the following Talmudic statement.

Text 7

[The verse states⁶] “This month is for you the head of months”, [which implies], See [the moon] like this and then sanctify.

Talmud, Rosh HaShana 20a

In order to sanctify the new moon, it is not enough merely to know the proper date of the new month, one must also witness it and bring that testimony to a court through the process of authentic testimony.

The Rabbi’s understood from this that although they knew the date, the Torah still necessitated authentic testimony to establish the day of the new month.

The purpose of Torah

In order to establish the new month it necessitated two things: A) the calculations of the court, and B) the account of authentic testimony.

This seems curious though. Why would the Torah demand both a calculation as well as a testimony?

This can be explained according to a deeper dimension of the Torah.

⁶ Shemos 12:2.

The first *mitzvah* that the Jewish people were given was to sanctify the new month.

It is self-understood that the reason that this was the first *mitzvah*, as opposed to something that seems more central—such as accepting the yoke of the Almighty—is because this *mitzvah* is of utmost importance.

Embedded in this *mitzvah* is the goal of all the *mitzvos* and it was therefore placed before the other *mitzvos*.

It is because setting up the new month is of utmost importance, that it must have the advantages of both testimony and calculation.

Making things new

The word for the month in Hebrew is *chodesh*, which shares the etymology as the word *chadash*, which means new.

The purpose of Torah and *mitzvos* is to bring something new and novel into the world.

Text 8

Bar-Kappara expounded: The work of the righteous is greater than the work of heaven and earth, for in [regard to] the creation of heaven and earth it is written, Yea, My hand has laid the foundation, of the earth, and My right hand has spread out the heavens, while in [regard to] the work of the hands of the righteous it is written, The place which Thou hast made for Thee to dwell in, O Lord, the sanctuary, O Lord, which Thy hands have established.

Talmud, Kesuvos 5a

G-d created the world to have an ego. Man, through his work in this world, and personal recognition of the Almighty, reverses that and

brings the world to a state in which it identifies with the Almighty.

Thus, essentially the idea of “chodesh” in the deeper dimension of the Torah, is to transform the world from its natural state to a state that the world recognizes G-d.

It is therefore understood why this *mitzvah* was placed before all others as it expresses the purpose of all the *mitzvos*.

A dwelling place for G-d

Text 9

The purpose of the creation of this world is that the Holy One, blessed be He, desired to have an abode in the lower worlds.

Tanya, Chapter 36

In creating a dwelling place for the Almighty there are two important aspects:

- 1) The lower world being a proper receptacle to be an abode for G-d.
- 2) The abode is that G-d should be expressive in this world in a similar manner that a person is comfortable in their home.

Both of these aspects are revolutionary.

- 1) In order that the world be a receptacle for the Almighty, the world must rid itself of its ego which defies man’s basic nature.
- 2) Making the world into a dwelling place for the Almighty, means that the essence of G-dliness should be expressed in a world which is intrinsically insignificant.

The Jewish people

Just as transforming the world is expressed in the idea of the new moon, so too are the Jewish people compared to the moon.

Just as the moon is referred to as the small luminary so too are the Jewish people referred to as small.

Text 10

Who shall arise [with] Jacob, for he is small?"

Amos 7:2

Just as the world must be refined so too must the Jewish people refine themselves as well.

This is expressed in the concept of calculation and testimony.

- 1) A person must serve G-d with their rational and calculated mind. When a person serves G-d with their rational mind, they transform their own identity to serve G-d. This is expressed in calculation.
- 2) A person must serve G-d with their supra-rational. It is not enough to serve G-d with one's mind, a person must serve G-d with their soul as well. This is expressed in testimony which is not rational.

May we internalize these two aspects of our G-dly service, and from there, raise the entire world to a state in which G-d's presence is felt throughout!

(Based on Likutei Sichos 22, Bo 2, reworked by Rabbi Dovid Markel.

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