**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**THE LAWS OF THE BERAKHOT**

**Rav David Brofsky**

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This week’s shiurim are dedicated in commemoration of the yarhzeit of
Rabbi Lipman Z. Rabinowitz, by his family

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***Shiur* #68: *Birkot Ha-Mitzvot* (4)**

***Birkat Ha-Mitzva* over a *Minhag***

Last week, we continued our study of the *birkot ha-mitzvot*, blessings recited before performing *mitzvot*. We questioned whether or not one may say a blessing before an act that one in not obligated to perform, and we began by studying the topic of time-bound *mitzvot*.

The *mishna* (*Kiddushin* 1:7) teaches that women are exempt from time-bound *mitzvot*, *mitzvot aseh she-hazeman gerama*. Some *Rishonim* maintain that women should not say the *birkat ha-mitzvot* before performing a time-bound *mitzva*. Some imply that women do not say the blessing because there is no actual fulfillment of the *mitzva* (see, for example, Rambam, *Hilkhot* *Tzitzit* 3:9 and *Hilkhot Ma’aseh Ha-Korbanot* 3:5). Others imply that the problem is technical; a woman cannot say the text of the blessing, “*asher kideshanu be-mitzvotav ve-tzivanu al*…” (“Who has sanctified us with His commandments and commanded us regarding…”), as they were not actually commanded to fulfill the *mitzva* (*Hagahot Maimoniot*, ibid., 40; see also Rosh, *Kiddushin* 1:49, and Ran, *Rosh Hashana* 9b, s.v. *u-le’inyan*). Other *Rishonim* disagree and insist that women may say a blessing before fulfilling a time-bound commandment (Rabbenu Tam, as cited by Rosh, *Kiddushin* 1:49, and Tosafot, *Rosh Hashana* 33. s.v. *ha*). They clearly maintain that the phrase “*asher kideshanu*” should be understood as referring to the Jewish People as a whole.

The Shulchan Arukh (ibid.) rules that “although women are permitted to blow [the *shofar*] … they do not say the blessing.” Based upon this ruling, R. Ovadia Yosef (*Yabia Omer* OC 1:40) insists that Sephardi women should not say *birkot ha-mitzvot*. Other Sephardi authorities, such as R. Chaim Yosef David Azulai (*Birkei Yosef*, OC 654:2; see also *Kaf Ha-Chaim* 589:23), record that the custom of some Sephardi women in the land of Israel was to say the blessing before fulfilling time-bound *mitzvot*. The Rema (OC 589:6) records that it is customary for women say to the blessing before fulfilling time-bound *mitzvot*. This is the practice of Ashkenazi women.

This week, we will expand our discussion and question whether one may say a blessing before performing a *minhag* (custom).

**The Halakhic Status of *Minhagim***

 Before we address this question, we must first relate to the halakhic status of *minhagim*. This topic is far beyond the scope of this *shiur*, but a brief summary is important.

 There are many types of “*minhagim*.” Some *minhagim* refer to a custom to refrain from certain practices or behaviors, at times to avoid violating a prohibition (see *Pesachim* 50b) and at times for other reasons (such as *kitniyot*, *cherem* *de-Rabbeinu Gershom*, etc.). At times, the term “*minhag*” may simply refer to the common practice regarding a specific halakhic, or even non-halakhic, question. The term may refer to the practices and customs of a given geographical area regarding prayers and other ritual matters. The term “*minhag*” may also refer to new practices instituted by the prophets, *Chazal*, or more recent Rabbinic or communal leadership. Examples include taking (and hitting) the *arava* on Hoshana Rabba (*Sukka* 44a), *Yom Tov Sheni* (*Beitza* 4b), and reciting *Hallel* on Rosh Chodesh (*Ta’anit* 28b).

 The *Rishonim* debate the status of certain customs, as well as the obligation to observe them. The Rambam (*Hilkhot Mamrim* 1:1-2) writes:

The members of the Supreme *Sanhedrin* in Jerusalem are the essence of the Oral Law. They are the pillars of instruction from which statutes and judgments issue forth for the entire Jewish People. Concerning them, the Torah commands: "You shall do according to the laws which they shall instruct you” (*Devarim* 17:11). This is a positive commandment…

Any person who does not carry out their directives transgresses a negative commandment, as [the verse] continues: "Do not deviate from any of the statements they relate to you, neither right nor left."

We are obligated to heed their words whether they are learned them from the Oral Tradition, i.e., the Oral Law, derived on the basis of their own knowledge through one of the attributes of Biblical exegesis and it appeared to them that this is the correct interpretation of the matter, or instituted the matter as a safeguard for the Torah, as was necessary at a specific time. These are the decrees, edicts, and customs instituted by the Sages. It is a positive commandment to heed the court with regard to each of these three matters. A person who transgresses any of these types of directives transgresses a negative commandment.

This is derived from the continuation of the above verse in the following manner: "According to the laws which they shall instruct you" - this refers to the edicts, decrees, and customs which they instruct people at large to observe to strengthen the faith and perfect the world…

The Rambam implies that one who does not observe certain customs violates a biblical commandment. The Ramban, however, disagrees in his comments to the first “*shoresh*” of the Rambam’s *Sefer Ha-Mitzvot*. The *Acharonim* discuss this debate at great length.

**Blessing Over a Custom**

 The Talmud (*Sukka* 44a) discusses the practice of taking and hitting the *arava* branch on the seventh day of Sukkot, known as Hoshana Rabba. The *gemara* cites a debate regarding the origin of this practice.

It was stated: R. Yochanan and R. Yehoshua b. Levi differ. One holds that the rite of the willow-branch is a “*yesod nevi’im*” (an enactment of the prophets) and the other holds that the willow-branch is a “*minhag nevi’im*" (a custom of the prophets). It can be concluded that it was R. Yochanan who said that it is a “*yesod nevi’im*," since R. Abbahu stated in the name of R. Yochanan: The rite of the willow-branch is a “*yesod nevi’im*." This is conclusive….

Further on (ibid. 44b) the Talmud relates:

Aibu related: I was once standing in the presence of R. Elazar b. Tzadok when a man brought a willow-branch before him, and he took it and shook it over and over again without reciting any blessing, for he was of the opinion that it was merely a usage of the prophets.

The Talmud concludes that since the practice of taking the *arava* on Hoshana Rabba is a “*minhag nevi’im*,” a custom from the prophets, no blessing is recited.

 The *Rishonim* debate whether one should derive from this passage that a blessing is never said before performing a *minhag*. For example, Rambam (*Hilkhot Berakhot* 11:16) writes:

[A blessing is not recited over] all practices that are customs. [This applies] even to a custom established by the prophets – for example, taking the willow branches on the seventh day of Sukkot. Needless to say, a blessing is not recited over customs established by the Sages – such as reading *Hallel* on Rosh Chodesh and on the intermediate days of Pesach.

The Rambam refers to the ancient custom of reciting *Hallel* on Rosh Chodesh, as recorded by the Talmud (*Ta’anit* 28b):

Rav once came to Babylonia and he noticed that they recited the *Hallel* on Rosh Chodesh. At first, he thought of stopping them, but when he saw that they omitted parts of it he remarked: It is clearly evident that it is an old ancestral custom with them.

The Rambam rules that since the recitation of *Hallel* on Rosh Chodesh is merely a custom, one does not say a *birkat ha-mitzva* before its recitation (see also *Hilkhot Chanuka* 3:7).

 Why should one not say a blessing upon performing a custom, such as taking the *arava* or saying *Hallel* on Rosh Chodesh? There are a number of possible explanations.

Some (see, for example, Rashi, *Sukka* 44a) explain that since one does not violate the Biblical prohibition of “*lo tasur*” if he fails to perform the action, he cannot say the formula “*ve-tzivanu*” (“[regarding which] we have been commanded”). This somewhat technical explanation assumes that the Biblical prohibition of “*lo tasur*” does not include Rabbinic customs. According to the Rambam cited above, however, we may need to search for a different explanation.

R. Yitzchak Ze’ev Soloveitchik (1886 – 1959), R. Yosef Dov Soloveitchik’s uncle, known as the Griz, offers a different explanation:

According to the Rambam, the reason that one does not say a blessing over a custom is not because one cannot say “*ve-tzivanu*” (as we have been commanded), as in truth, according to the Rambam, the status of custom is akin to all Rabbinic enactments … Rather, the reason [we do not] say the blessing over a custom relates to their legal title, as they are not considered to be *mitzvot*, and one only says blessings over *mitzvot*… Blessings were only instituted for *mitzvot*, and these have a different status, that of a custom, and not a *mitzva*… even though their levels of obligation are identical.

The Griz maintains that while the prohibition of *la tasur* applies equally to both enactments and customs, including the ones under discussion, the is a still a fundamental difference between an enactment, which was endowed with the qualities of a *mitzva*, and a custom, which the Rabbis embraced but which remains precisely that – a custom.

Interestingly, the Griz’s nephew, R. Yosef Dov Soloveitchik (1903 – 1993), disagrees. He explains that according to the Rambam in *Hilkhot Mamrim*, one only violates “*lo tasur*” if he rejects Rabbinic enactments and customs. In that sense, there is no difference between a *takana* (enactment) and a *minhag* (custom). However, regarding their actual obligation, there is certainly a difference. At times, the Rabbis enacted a *takana* or *mitzva*, a full obligation, upon which they instituted a blessing. A *minhag*, however, refers to situation in which the Rabbis accepted an established custom and recognized it as obligatory, but its level and status is still lower than that of a *takana*. It therefore is not worthy of a blessing.

According to the Rambam, he explains, one only says a blessing over an obligation (*chiyuv*). This, of course, is similar to the Rambam’s view regarding time-bound *mitzvot* (*Hilkhot Tzitzit* 3:9), regarding which he rules that women do not say a blessing before performing a *mitzva* from which they are exempt.

Interestingly, R. Soloveitchik suggests that this may not be the proper understanding of the Rambam. Indeed, the Rambam may actually agree with the explanation of Rashi, cited above. The Rambam (*Hilkhot Mamrim* 1:1) implies that “*lo tasur*” only applies to those customs instituted as a “safeguard for the Torah.” Therefore, it would not apply to the custom of taking the *arava* on Hoshana Rabba. If so, the Rambam may agree with Rashi that one cannot say a blessing over a custom, as the formula “*ve-tzivanu*” cannot be said.

 Other *Rishonim* disagree and maintain that one may say a blessing over a custom, such as *Hallel* on Rosh Chodesh. This is the view of Rabbeinu Tam in numerous places (*Sukka* 44b, s.v. *kan*; *Arakhin* 10a, s.v. *shemona asar*; *Berakhot* 14a, s.v. *yamim*; *Ta’anit* 28b, s.v. *amar*). He explains that while taking the *arava* is viewed as “*tiltul*” (picking up, taking), saying *Hallel* on Rosh Chodesh is a more significant act.

 Tosafot (*Sukka* 44b) explains that *Hallel* on Rosh Chodesh “is no worse than reading from the Torah.” In other words, as R. Soloveitchik explains (ibid.), Rabbeinu Tam maintains that one says a blessing over a “*kiyum ha-mitzva,*” the fulfillment of a *mitzva*, and not necessarily over an obligation (*chiyuv*). Therefore, as we learned last week, he also believes that women should say the *birkot ha-mitzva* before fulfilling a time-bound *mitzva*, from which they are exempt. In this case, reading *Hallel* is a fulfillment of the *mitzva* of “*keri’at kitvei kodesh,*” similar to *keri’at ha-Torah*, and therefore one may say a blessing. The Ra’avad (ibid.) agrees but explains that one says a blessing before saying *Hallel* because it is an act of “*shevach ve-hoda’ah*,” praise and thanksgiving.

 Interestingly, the Shulchan Arukh (OC 422) cites two opinions. He first cites a view that an individual does not say a blessing over *Hallel* on Rosh Chodesh, but a *tzibbur* does. He then cites the Rambam, who maintains that even a community does not say the blessing. The Rema records that the custom in Ashkenaz is that even individuals say *Hallel* on Rosh Chodesh with a blessing.

The *Rishonim* discuss whether one says a blessing when saying *Hallel* on *Chol Ha-Mo’ed* Pesach. The Kesef Mishna (*Hilkhot Berakhot* 11:16) cites the Ramban, who maintains that one should say the blessing when reciting *Hallel* on *Chol Ha-Mo’ed* Pesach, but not on Rosh Chodesh. The Ramban apparently maintained that saying Hallel on *Chol Ha-Mo’ed* is a fulfillment, a *kiyum*, of the *mitzva* of *simchat ha-chag*. This is consistent with the Ramban’s view cited elsewhere (end of *shoresh* 1 of *Sefer Ha-Mtizvot*), according to which *Hallel* on the festival is *mi-de’oraita* due to the *simchat ha-chag*.

The Ra’avad maintains that while saying *Hallel* on Rosh Chodesh is a fulfillment of the *mitzva* of *Kiddush Ha-Chodesh*, one should not say the blessing on Rosh Chodesh. He subsequently records that it is customary to say the blessing on both Rosh Chodesh and *Chol Ha-Moed* as an expression of *shevach* and *hoda’ah*, noting the sanctity of the day.

It is customary in Ashkenazic communities to say the blessing on both Rosh Chodesh and *Chol Ha-Mo’ed*.

This debate regarding whether one says a blessing over a *minhag* appears in other contexts as well. For example, the Talmud (*Pesachim* 53b) relates that it is customary (not obligatory) to light candles for Yom Kippur. The Rosh (*Yoma* 8:27) rules that one should say a blessing, like on Shabbat, as one lights for “*shalom bayit*.” The Mordekhai (*Pesachim* 609) disagrees and rules that one should only say the blessing when Yom Kippur occurs on Shabbat.

Similarly, some *Rishonim* (see *Rivash* 111) rule that a blessing is said before lighting Chanuka lights in the *beit kenesset*, as it is customary to light in the synagogue.

Interestingly, while the Shulchan Arukh rules that one does not say a blessing over *Hallel* on Rosh Chodesh, he writes that one says a blessing before lighting on Yom Kippur (610:2) and on Chanuka in the synagogue (671:7). The *Acharonim* (see, for example, Chakham Tzvi 88; Sha’arei Teshuva, ibid. 10) note this apparent contradiction in the Shulchan Arukh and offer numerous suggestions (not always compelling) to reconcile this contradiction.

One might suggest, as we noted above, that the Shulchan Arukh does not categorically reject saying a blessing over a custom. Rather, he maintains that one may only say a blessing before a proper “*kiyum,*” fulfillment of a *mitzva*. Although *Hallel* on Rosh Chodesh and *Chol Ha-Mo’ed* is merely an additional prayer, lighting candles on Yom Kippur – a fulfillment of *shalom bayit* – and in a *beit kenesset* on Chanuka – a fulfillment of *pirusmei nissa* – are considered to be significant enough acts relating to the nature of the day, and are deserving of a blessing.

In summary, some object to saying a blessing over a custom, either due to the formula “*asher kideshani be-mitzvotav ve-tzivanu*” or because blessings were only instituted for obligations or acts defined as *mitzvot*. Others justify saying a blessing, which raises a secondary question: which customs are significant enough and what are the criteria in determining whether a *mitzva* achieves that level?

Next week, we will discuss interruptions during the *birkot ha-mitzva*.