



The Story of Yehuda and Tamar  
By David Silverberg

Towards the middle of Parashat Vayeshev we come upon one of the more perplexing episodes narrated in the Torah: the story of Yehuda, his three sons, and his daughter-in-law Tamar. The Torah (Bereishit, chapter 38) tells that Yehuda, the fourth son of Yaakov, begot three sons, named Er, Onan and Sheila. Er, the eldest son, married a woman named Tamar and died childless soon thereafter. Yehuda then instructed the second son, Onan, to marry his widowed sister-in-law, seemingly in fulfillment of the *mitzva* of *yibum*, or the levirate marriage, introduced much later in the Torah, in the Book of Devarim (25:5-10). This *mitzva* obligates one to marry his deceased brother's wife if the deceased bore her no children, and forbids the widow from marrying anyone else. (In practice, in such circumstances the brother performs a ceremony called *chalitza* absolving both the brother and the widow from this obligation.) Accordingly, Onan married Tamar, but he, too, died without children. Yehuda feared that his third son, Sheila, would suffer the same fate as his two older brothers, and therefore refused to allow his marriage to Tamar, despite the levirate obligation. Tamar, fearful that she would never bear children, posed as a prostitute and stood along the road as Yehuda traveled, so that he would hire her services and she would conceive from him. Yehuda indeed engaged in relations with Tamar, completely unaware of her identity, and gave her several personal items as collateral to be returned when he delivers payment. After returning home, Yehuda sent the due payment, but, of course, the "prostitute" was not to be found, as Tamar had returned home immediately after her encounter with Yehuda. Later Yehuda learns of Tamar's pregnancy, and immediately sentences her to execution for infidelity. Before her execution, Tamar produces Yehuda's items and indicates that the child's father is the owner of these possessions. Yehuda acknowledges that he fathered the child in Tamar's womb, and cancels the execution. Tamar ultimately delivered twin boys, Peretz and Chetzron, and, ironically enough, Peretz became the progenitor of the royal dynasty of King David (see Rut, 4:18-22).

Several difficult questions arise from this narrative. For one thing, one might wish to reconcile the traditional perception of Yaakov's sons as righteous, holy men with Yehuda's engagement of a prostitute. Secondly, why does Yehuda reverse his ruling upon discovering that he had fathered the child? If, indeed, Tamar was in some sense "betrothed" to Sheila by virtue of the levirate obligation, then how does the fact that she slept specifically with Sheila's father absolve her from guilt? More generally, perhaps, one might question the purpose behind this narrative altogether. What message or information does the Torah seek to convey through this story, which disrupts the otherwise natural narrative flow telling the story of Yosef's sale and experiences in Egypt?

In this week's *shiur* we will discuss Maimonides' comments on this episode, some of which appear in his writings, whereas others were transmitted to us by his son, Rabbi Avraham.

### **Prostitution Before *Matan Torah***

In addressing the propriety of Yehuda's solicitation of a prostitute's services, let us first examine Maimonides' remarks in *Mishneh Torah* where he introduces the laws of marriage (Hilkhot Ishut 1:4):

Before *Matan Torah* [the giving of the Torah at Sinai], a person would meet a woman in the public square; if he and she consented, he would give her payment and

engage in relations with her along the road and then leave. This [woman] is what is called a *kedeisha*. Once the Torah was given, a *kedeisha* was forbidden, as it says (Devarim 23:18), "There shall not be a *kedeisha* from among the daughters of Israel."

Maimonides thus maintains that prostitution – and any sexual relations conducted outside the framework of marriage – is outright forbidden by the Torah, but was permissible before *Matan Torah*. He emphasizes that the Biblical term *kedeisha*, with which the Torah refers to Tamar as she disguised as a prostitute (38:21-22), refers to a woman engaging in this type of relationship, which became forbidden only with the giving of the Torah. Hence, we can easily justify Yehuda's actions in light of the fact that this incident occurred before *Matan Torah*.

In his *Guide for the Perplexed* (3:49), Maimonides explicitly sanctions Yehuda's relationship with Tamar on these grounds:

In the action of Judah we may perhaps notice an example of a noble conduct, and uprightness in judgment. He said: "Let her take it [the collateral] to her, lest we be shamed..." (Bereishit 38:23). For before the Lawgiving, the intercourse with a harlot was as lawful as cohabitation of husband and wife since the Lawgiving; it was perfectly permitted, nobody considered it wrong. The hire which was in those days paid to the harlot in accordance with a previous agreement, corresponds to the *ketubah* which in our days the husband pays to his wife when he divorces her. The words of Judah, "Let her take it to her, lest we be shamed," etc., show that conversation about sexual intercourse, even of that which is permitted, brings shame upon us; it is proper to be silent about it, to keep it secret, even if the silence would lead to loss of money. In this sense Judah said: It is better for us to lose property, and to let her keep what she has, than to make our affair public by inquiring after her, and bring still more shame upon us.

Maimonides likens the status of prostitution before *Matan Torah* to marital relationships after *Matan Torah*; before the Torah was given, any relationship conducted with the mutual consent of both parties was permitted. In light of this, Maimonides lauds Yehuda for ending his search for the woman to retrieve his costly collateral. Yehuda decided it was best to stop the search so as to avoid further discussion of this entire matter, despite the fact that it entailed no impropriety whatsoever, because "conversation about sexual intercourse, even of that which is permitted, brings shame upon us." These matters should not be spoken of excessively, and Yehuda therefore made no further attempts to find the woman, despite the financial loss he incurred as a result. In any event, Maimonides attributes no guilt to Yehuda whatsoever in engaging a prostitute, since before the Torah was given such relationships were perfectly lawful.

### ***Yibum Before Matan Torah***

Earlier in this paragraph in the *Guide*, Maimonides writes about the obligation of *yibum*, "It was a custom in force before the Law was given, and the Law perpetuated it." Presumably, he refers to the incident of Yehuda and Tamar, upon which he elaborates later in this paragraph, as discussed above, and thus Tamar's remarriage to Onan, and then the expectation of her subsequent marriage to Sheila, were due to a custom that had been accepted in ancient times, which later became "perpetuated" in the form of the Biblical command of *yibum*.

Interestingly enough, Maimonides' son, Rabbenu Avraham Ben Ha-Rambam, enlists *yibum* as a precedent for other instances of a Torah law that originated in the conventional practices in the ancient world. In his commentary to Bereishit 31:39, Rabbi Avraham writes that Yaakov accused his father-in-law and employer, Lavan, for violating the conventional laws of *shomrim* (watchmen). Halakha exempts a hired shepherd from liability for animals stolen in the dark of night, and yet

Lavan charged Yaakov compensation for his sheep that were stolen from the flocks during Yaakov's night shift. Rabbi Avraham notes that this provision appears to have been accepted as standard procedure among shepherds in the ancient world, and was then incorporated into the Torah's system of property liability. As proof to the underlying assumption that Torah law could be predicated upon ancient practices in the pre-*Matan Torah* world, Rabbi Avraham draws proof from the *mitzva* of *yibum*, which, as his father wrote in the *Guide*, was practiced by the ancients and later incorporated into the Torah. (Rabbi Avraham returns to this notion in two other contexts in his commentary – in Bereishit 35:2 and Shemot 10:11.)

In the *Guide*, Maimonides does not address the question of why, according to the laws of *yibum*, Tamar incurred no guilt by engaging in relations with Yehuda, whereas relations with another man (other than Sheila) would have rendered her liable to punishment. But Rabbi Avraham, in his commentary to the Torah (here in Parashat Vayeshev), cites his father as explaining, very simply, that *yibum* in the ancient world was practiced differently than the *yibum* obligation presented in the Torah. Whereas Torah law mandates that only a brother of the deceased marry the widow, the ancient practice of *yibum* called for her marriage to any male relative, including the father. Thus, Tamar's encounter with Yehuda effectively amounted to a levirate relationship and was perfectly consistent with the moral norms of that time. This approach is adopted by other writers, as well, including Nachmanides and Chizkuni, in their respective commentaries to this narrative.

### **"Noble Conduct, and Uprightness in Judgment"**

As for the broader question as to the overall purpose and underlying message of this narrative, we already cited Maimonides' assertion in the *Guide* that Yehuda's conduct provides "an example of a noble conduct, and uprightiness in judgment." As mentioned, Yehuda demonstrated his preparedness to forfeit property rather than speak excessively in matters that ought to remain private and discreet. Maimonides then proceeds to identify another laudable quality of Yehuda as manifest in this episode:

As to the uprightiness to be learned therefrom, it is contained in the words of Judah when he wanted to show that he had not robbed her, that he has not in the least departed from his agreement with her. For he said, "Behold, I sent this kid, and thou hast not found her." The kid was probably very good, therefore he points to it, saying, "this kid." This is the uprightiness which he had inherited from Abraham, Isaac, and Jacob: that man must not depart from his given word, nor deviate from what he agreed upon; but he must give to others all that is due to them. It makes no difference whether he holds a portion of his neighbor's property as a loan or a trust, or whether he is in any other way his neighbor's debtor, owing him wages or the like. The sum which the husband settles upon his wife (*ketubah*) is to be treated in the same way as the wages of a hired servant. There is no difference whether a master withholds the wages of a hired servant, or deprives his wife of that which is due to her; whether a master wrongs a hired servant, and brings charges against him with the intention to send him away without payment, or a husband treats his wife in a manner that would enable him to send her away without the payment of the promised sum.

Maimonides here builds upon a subtle, syntactical nuance in Yehuda's remark to his colleague whom he had sent to deliver payment to the prostitute. Yehuda tells him, "Look, I sent *this kid* [*ha-gedi ha-zeh*] and you did not find her," seemingly emphasizing the specific young goat that he had sent as payment. Maimonides explains that Yehuda had promised Tamar a goat of the highest quality, and Yehuda here stresses the point that he lived up to his commitment in full, by sending "this kid" – a goat of superb quality. The lesson that emerges is that of honesty and fulfilling one's word. Yehuda scrupulously ensured to follow through on his commitments to a harlot,

demonstrating that regardless of context, one must abide by his word and keep all promises that he makes to others.

### **"It is Preferable for a Person to Cast Himself in a Furnace of Fire"**

The Talmud, in three instances (Berakhot 43b, Bava Metzia 59a, Sota 10b), takes note of the fact that Tamar only produced Yehuda's possessions as a subtle indication of the identity of her child's father, without explicitly identifying Yehuda. According to the Talmud, Tamar was prepared to suffer execution rather than subject Yehuda to humiliation by explicitly identifying him as the father. On this basis the Gemara famously concludes, "It is preferable for a person to cast himself in a furnace of fire rather than publicly humiliate his fellow."

Maimonides includes the prohibition against humiliating one's fellow in his listing of the 613 *mitzvot* (*Sefer Ha-mitzvot, lo ta'aseh* 303), and discusses the prohibition on several occasions in *Mishneh Torah* (Hilkhhot Dei'ot 6:8; Hilkhhot Teshuva 3:5; Hilkhhot Chovel U-mazik 3:7). Nowhere, however, does he cite this Talmudic passage which seemingly mandates – or at least sanctions – sacrificing one's life to avoid humiliating another person. Indeed, amidst his discussion of the situations requiring martyrdom (Hilkhhot Yesodei Ha-Torah, chapter 5), Maimonides mentions only the three transgressions of murder, idolatry and adultery as sins that one must surrender his life to avoid. This would implicitly suggest that one should, in fact, humiliate another person in public if this is necessary to save his – or even somebody else's – life.

Maimonides most likely approached the Gemara's comment as an exaggerated aggadic passage intended to underscore the severity of publicly humiliating one's fellow. Indeed, the Medieval commentator Rabbi Menachem Meiri, in his commentary to Masekhet Sota, describes the Talmud's statement as *derekh he'ara*, a pedagogic means of impressing upon us the importance of avoiding causing others embarrassment. Likewise, commenting to Masekhet Berakhot, the Meiri refers to this passage as *derekh tzachut* – a non-literal, poetic means of expression. We might assume that Maimonides similarly accepted the non-literal reading of this Talmudic passage, and therefore did not codify an obligation to surrender one's life to avoid causing another to suffer humiliation. Maimonides' position would thus run in opposition to the view of Tosefot (Masekhet Sota 10b), Rabbenu Yona (*Sha'arei Teshuva*, 3:137,139) and the Rashbatz (Rabbi Shimon Ben Tzemach Duran, 14<sup>th</sup> century, in his commentary to Avot 3:11), all of whom appear to accept the straightforward reading of the Gemara, and demand surrendering one's life rather than humiliate a fellow Jew.

According to Maimonides' view, the question remains, why was Tamar prepared to surrender her life rather than cause Yehuda embarrassment? Knowing that she could have spared her life by coming forth and identifying Yehuda as the one responsible for her pregnancy, why did she run the risk of Yehuda's refusal to confess to fathering the child? After all, Maimonides rules (Hilkhhot Yesodei Ha-Torah 5:4) that it is forbidden to sacrifice one's life to avoid committing a transgression, except in those rare instances where Halakha demands martyrdom. Whereas Tosefot and the Rosh (Avoda Zara 27a) allow voluntarily sacrificing one's life to avoid sin, Maimonides forbids doing so in no uncertain terms. It would thus appear that Tamar acted improperly by refusing to explicitly identify Yehuda as the father. What more, in Hilkhhot Melakhim (10:2), Maimonides writes explicitly that the obligation of *kiddush Hashem* (martyrdom) does not apply to non-Jews, and they thus bear no obligation to sacrifice their lives to avoid even grave transgressions, such as idolatry. Why, then, was Tamar prepared to die to avoid humiliating Yehuda?

One answer, suggested by Rabbi Meir Simcha Ha-kohen of Dvinsk, in a parenthetical remark in his work *Meshekh Chokhma* (Parashat Vezot Haberakha), distinguishes between Jews and gentiles with regard to this issue. In his view, Maimonides forbids unwarranted martyrdom because a Jew belongs to the collective whole of the Jewish people. As an individual, it may indeed be laudable to risk or sacrifice one's life to defend the Almighty's honor. Once, however, *Benei Yisrael* stood at Sinai and joined together to forge a covenant with God, their lives are bound to one another, and

therefore no Jew has the right to voluntarily surrender his life in defense of God's honor, as this impacts upon the rest of the Jewish people. A gentile, however, may, indeed, volunteer to sacrifice his life to avoid committing a transgression, and therefore Tamar acted admirably when she refused to divulge the father's identity even at the risk of her own life.

A different approach was taken by Rabbi Neriya Gotel, writing in the Israeli journal *Shema'atin* (Sivan, 5740). The Medieval commentary *Nimukei Yosef* (cited in the *Kesef Mishneh* commentary to *Mishneh Torah*, Hilkhoh Yesodei Ha-Torah 5:4) asserts that even Maimonides would permit unwarranted martyrdom under unique circumstances. A pious Torah leader who finds it necessary to set an example for his delinquent or lax generation may, even in Maimonides' view, surrender his life to avoid violating Torah law and thereby impress upon his contemporaries the importance of obedience to God's commands. Quite possibly, then, Tamar, in her piety, felt that her unique circumstances warranted sacrificing her life to avoid putting Yehuda to shame.

However, Rabbi Asher Zelig Weiss, in his work *Minchat Asher* (Bereishit), raises an argument that effectively negates both these answers. Tamar sacrificed not only her own life, but the lives of her two fetuses, as well. And not only does Jewish law forbid killing unborn children, Maimonides rules that for non-Jews killing fetuses constitutes a capital crime (Hilkhoh Melakhim 9:4). Therefore, even assuming we could justify Tamar's decision to voluntarily end her own life to avoid Yehuda's humiliation, we would have to explain how she allowed herself to subject her unborn infants to execution. It should be noted that this argument renders the question equally applicable to the view of Tosefot and the Rosh, who allow voluntary martyrdom. Even if one reserves the right to give his own life to defend God's honor, this privilege should seemingly not extend to subjecting others – including the unborn – to death.

Rabbi Weiss therefore suggests that Tamar belonged to the unique class of righteous men and women who are entitled to rely on the Almighty, and put themselves – and, in this instance, their unborn children – at risk with the faith that God will save them. Indeed, *Targum Yonatan ben Uziel* tells of Tamar's heartfelt prayer to the Almighty as she was being led to her execution. According to this approach, the story of Tamar cannot serve as a model for normative practice, and marks an exceptional case where a righteous person is permitted to endanger himself with the confidence that God will deliver him from harm.