

HALOCHOSCOPE



This week's question:

Someone realized as soon as he woke up in the morning, that he had not counted *sefiras haomer* the preceding night. May he count before he washes his hands?

May one count without a *brocha* when he is not wearing a head-covering?

May one count while not dressed appropriately, in the presence of others, men or women, who are not dressed appropriately, in a *mikveh*, or in the vicinity of waste matter?

The issues:

A) Covering the head, particularly for a *brocha*

B) *Lo yir'eh becha ervas davar*, not reciting *brochos* in the presence of uncleanness

C) Being presentable when performing *mitzvos*

D) Avoiding delay when performing *mitzvos*

A) Covering the head

Indirect speculative sources for the '*yarmulka*' are found in the Talmud and related texts. Clearly this practice is uniquely Jewish and has existed for a long time. It is presumed to be founded in *halacha* or in practices that are uniquely Jewish.

The standard reason given is that covering the head engenders a sense of awe of Heaven. One source simply states "The *Shechinah*, divine Presence, is above my head". Philosophically the following reasons are offered: The human body is made up of two elements, the animal parts and the human parts. The hands and face perform human functions not performed by animals. Therefore, they are exposed. The rest of the body functions identically to the animal. Therefore, it is covered due to shame. The top of the head is the limit of human ability. Above it is G-d's domain. The *yarmulka* is a sign of this partition. In addition, covering the head is a sign of submission and modesty. During *tefillah*, in the presence of the King, one must dress appropriately. The head contains the holy elements of the body. It is as though it is constantly in the presence of Hashem.

In a Talmudic passage, astrologers warn the mother of a future scholar that he is destined to steal. If she covers his head constantly, he will be reminded to fear Hashem, and will overcome the temptation. Once, while sitting under an apple tree belonging to someone else, his head-covering fell off. Immediately, he reached up to take an apple. This implies that it was not so common to cover the head, or that it was a common but lax practice. The astrologers advised vigilant adherence in this instance. The word '*yarmulka*' is reputed to be a contraction of the Aramaic *yara malka*, fear of the King.

In another source, three sages watched a boy pass by bare-headed. They commented on his arrogance and linked it to dubious ancestry, which was later confirmed. This indicates a common practice to cover the head. Absence of a head-covering arouses suspicion and indicates arrogance. Another source refers to a special expensive covering worn

by distinguished men. Some mandate a scholar's covering his head at all times. In another passage a sage leaves home with an unsuitable head-covering. Apparently, it was not worn all the time. Some derive from here a practice to wear it outdoors but not indoors.

In the primary source cited by the poskim, a certain sage is reputed never to have walked more than four cubits bareheaded. This indicates that it was considered *midas chasudus*, piety above and beyond what is required, and only when walking four cubits or more. Other versions of the text omit the 'four cubits'. Nonetheless, some point out that the reference specifies walking about. Sitting down does not seem to be included in the practice. In a similar source, a sage uses terminology clearly referring to *midas chasidus*, claiming to have covered his head when walking. Further Talmudic and Midrashic sources also indicate a *midas chasidus* that was not widespread.

Accordingly, most poskim attribute the sources for the original practice to *midas chasidus*. However, once it was adopted by the masses, the practice became *minhag Yisroel*, a custom of Jews. This places it in the category of *neder*, undertaking by utterance, which is difficult to suspend. Some also consider going about bareheaded *chukas hagoy*, a custom of the prevailing gentile culture. When such practices have little rational explanation or are rooted in superstition, they are forbidden to Jews. If a local society does not emphasize such a custom, it is considered abandoned, and no longer forbidden to Jews. Apparently, in former times, gentiles emphasized an ideal to uncover the head, particularly indoors. By default, Jews had to cover their heads, to avoid *chukas hagoy*. Since nowadays the custom has been abandoned, some poskim maintain that this aspect of the practice is no longer in force, particularly in times of pressing need to go bareheaded.

Some add that since this has become a Jewish custom, flouting it breaks with tradition, and demonstrates arrogance immodesty and insensitivity to Jewish values.

For *azkarah*, mention of Hashem's Name, *tefilah*, or a *brocha*, there is stronger basis to require covering the head. Some apply this whenever entering a *shul*. A minority consider it *midas chasidus*. Most consider it compulsory. The basis is respect when addressing Hashem. There is a *midas chasidus* to place a second covering on the head when reciting these things. For this more serious requirement, the poskim debate whether the hand is sufficient. In difficult circumstances, such as in the dark, one may rely on the lenient view. [See Shabbos 118b 156b Kidushin 8a 30a 31a 39b Sofrim 14:15 Kalah Rabasi 2:2, Poskim. Rambam Dai'os 5:6. Sefer Chasidim 53, Mekor Chesed 14. Terumas Hadeshen 10. Tur, Bach, Sh Ar OC 2:6 (Ar Hash 10) 8:2 (BY DM TZ 3 GR) 91:3-5 206:3, commentaries. Chorev 14:4. IgM OC I:1 IV:2 CM I:93.]

B) Lo yir'eh becha ervas davar

Two *mitzvos* preclude uttering holy things in the presence of uncleanness or indecency: *Vehaya machnecha kadosh*, your encampment shall be holy; *Velo yir'eh becha ervas davar*, [Hashem] shall not see in you[r midst] a nakedness. These refer to special attention to conduct while praying. This includes all *tefilos* and *brochos*, and also audible Torah study. Even a greeting using Hashem's name may not be uttered in the vicinity of certain types of indecency. The word “*Shalom*” is a sub-name of Hashem.

Reciting *brochos* while relieving oneself is forbidden Scripturally. Likewise, in the

presence of unclad people or of solid waste or its receptacle, it is Scripturally forbidden to recite holy matters. Rabbinically this applies to a receptacle for liquid waste. Many poskim distinguish between a rest room, where it is forbidden, and a *mikveh*, where it is permitted. Some say that as long as there are no undressed people present, the water is clean due to the preparations made before immersion. Mundane matters may be spoken in a *mikveh*, even in Hebrew. Torah ideas may not be communicated in a *mikveh*, even in other languages. Before praying or blessing, one must be clean of any adhering waste matter. Smells can also be considered indecent or unclean. If one recited a *brocha* or the like in a Scripturally forbidden situation, he must repeat the *brocha*. If the indecency was Rabbinical, the ruling varies.

In addition, one must wash his hands upon waking up in the morning. One reason for this is that he might have touched a part of his body that deems his hands ritually contaminated. A similar rule applies to one who touched such areas at other times. Some say that this is only a requirement for *tefilah*. Others include all *brochos*. The consensus is to permit saying things that do not include Hashem's Name before washing the hands.

The Talmud also says that while for *shema* it is necessary to cover the private parts, for *tefilah* one must also cover the heart. *Halachically*, if one left his heart uncovered, or if circumstances make covering it impossible, he fulfills his obligation bare-breasted as well. [See Ki Saitzai 23:15 Brochos 22b-26a 62a-b Terumos 1:6 Chalah 2:3 Shabbos 40b Chulin 110b, Poskim. Tur Sh Ar OC 4:1 18 23, 38:43: 44: 73:-87: 91:1 92: 103: YD 328:1 331:72, commentaries.]

C) Being presentable for a mitzvah

Generally, one should take care to be presentable for the performance of a *mitzvah*. There are obviously situations where this is impossible, such as during immersion. Thus, each *mitzvah* has its own set of circumstances. For *sefiras ha'omer*, the poskim cite Scriptural support for a requirement to stand, ideally. Actually, for many *birchos hamitzvah* one should stand. [For those that are said when eating, such as for *matzo*, *maror*, the *sukah* and the like, one should sit.] For *sefiras ha'omer* there is a special link to a term used in the Torah that indicates the ideal to stand. If one counted sitting or reclining, he fulfilled his obligation. Our question is whether the aforementioned issues apply to one counting *sefiras ha'omer*. There is no mention of Hashem's name, yet it touches on the respect and how one presents himself for a *mitzvah*.

The poskim discuss whether one may fulfill the *mitzvah* of *shofar* while urinating. [He is covered, but feels the wetness on his legs.] It is simply an act, like wearing *tzitzis*, which is permitted while urinating. The reason to restrict it is that when thinking of the *mitzvah* one is also occupied, somewhat, in thinking Torah thoughts. Perhaps, in our case, since words are said, it is closer to mouthing the Torah ideas. In addition, some suggest that *mitzvah* performance is like *avodah*, service. Performing the *mitzvah* in this state would be like serving in a demeaning way, *bizuy mitzvah*. *Sefiras ha'omer* involves saying the words, though not necessarily in Hebrew.

An unclad man may not tithe, because he cannot recite the *brocha*. This implies that if he were not reciting a *brocha*, he could do the actual *mitzvah* in this state. An unclad

woman may tithe *teruma* and *challah* and recite the *brocha*. She must sit in a way that her nakedness is concealed. The *Yerushalmi* says 'we do not bother her, even in her home'. According to one explanation, this means that we do not bother her to go and get clothing. This implies that clothing would enhance, but is not required. This refers to a *brocha*, but could also mean that the basic *mitzvah* is enhanced with clothing. Both *terumah* and *challah* require uttering words, though not necessarily in Hebrew. Evidently, a *mitzvah* with words may be performed unclad, though the ideal could be to wear clothing. [See Terumos 1:6 Challah 2:3 (Yerushalmi), Poskim. Tur BY Sh Ar OC 8:1 (MA Yeshuos Yaakov) 489:1 588:2 (BHal) YD 328:1, commentaries.]

D) Performing mitzvos immediately

This concept appears in various forms in the Talmud. It is derived from Scriptural references, but it might be considered Rabbinical, linked to Scripture for support. Generally, one should perform the *mitzvah* at the first opportunity. The exceptions would be cases where delaying performance will enable one to enhance it. In our case, the person could easily wait until he is able to perform the *mitzvah* in a preferred manner. Is the present situation really problematic? Our case has the additional factor of forgetting, and thereby breaking the continuity. *Peshia*, forgetting is often a factor in forbidding a delay.

The Talmud discusses one who is in a *mikveh* to immerse and remembers that he has not yet recited *shema*. If he waits until he gets out of the water and covers himself, he will miss the cut-off time. He should recite it in the water, provided it is either cloudy enough to conceal his nakedness, or his heart is above the water line. He should rather perform it in this way than miss it totally. In our case, the person counting will not miss out totally, unless he forgets to count later on. This is his responsibility, and might not serve to mitigate the circumstances. However, our case does not involve reciting the Names of Hashem. Therefore, perhaps it is preferable to count right now, albeit in an unideal way, than risk forgetting to count later. If the person counts with proper respect for the *mitzvah*, albeit in a questionable situation, his counting should be acceptable. [See Brochos 22b 24b Psachim 4a Yuma 33a Menachos 72a, Poskim. Teshuvos Radvaz 589.]

In conclusion, in the presence of waste matter or totally unclad people, one should avoid counting. If the other people are partially clad, or the person has no head-covering or has not washed his hands, he should count immediately.

On the Parsha ... *If you .. guard my mitzvos .. I will give your rain in its time .. [26:3-4]* The commentaries find different ways to explain the usage of *shmirah*, to guard a *mitzvah*, in this context. Perhaps this may be compared to the verse *ushmartem es hamatzos*, guard the matzos, which is interpreted as watch the *mitzvos*. If a *mitzvah* comes your way do not let it leaven, i.e., do not delay its performance. [*Mechilta Bo 12:13 (63)*] If we perform the *mitzvos* at their right time, their first opportunity, our reward will be that our rains come in their right time.

Sponsored by Joshua Sinder in memory of Dyna bas Lazar Ublooma Szlepek a”h,

whose *yahrzeit* is on the 22nd of Iyar. ׀

© Rabbi Shimon Silver, May 2011.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com