

**Potomac Torah Study Center**  
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**NOTE: Devrei Torah presented weekly in Loving Memory of Rabbi Leonard S. Cahan z"l, Rabbi Emeritus of Congregation Har Shalom, who started me on my road to learning more than 50 years ago and was our family Rebbe and close friend until his untimely death.**

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**Devrei Torah are now Available for Download (normally by noon on Fridays) from [www.PotomacTorah.org](http://www.PotomacTorah.org). Thanks to Bill Landau for hosting the Devrei Torah archives.**

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**NOTE: We have annual meetings next week on the West Coast and another obligation late the following week in Pennsylvania. I shall be unable to prepare and post an issue for Ki Tetzei, and probably not for Ki Tavo. I hope to post for Nitzavim-Vayeilech. Meanwhile, see above for the web site for archives that cover these materials from recent years. Thank you.**

Shoftim focuses heavily on issues of a Jew in society. Here are a few famous examples: "*Righteousness, righteousness shall you pursue*" – a condition for possessing and living in Hashem's land (16:20). Criminal prosecution requires the testimony of a minimum of two independent witnesses (17:6). One may not deviate in any way from the decision of a Beit Din (religious court) (17:11).

Moshe received the Torah from God more than 3300 years ago and presented it to the Jews of that generation. Rabbi David Fohrman and his scholars at alephbeta.org have demonstrated that many laws in the Torah implement legal decisions based on events earlier in Jewish (and sometimes pre-Jewish) history. This pattern persists in Shoftim. Are legal principles based on events from 5000 or more years ago still relevant to us in our modern world? When conditions change sufficiently, does the Torah provide a process to update halacha in a way that we can be certain is consistent with the Torah?

Rabbi Fohrman analyzes Kayin's killing of his brother Hevel, the first story in the Torah. Was this event murder or manslaughter? As Rabbi Fohrman observes, no human had died previous to this event. How could Kayin have known that his attack on his brother would kill him? What punishment does God give to Kayin? He exiles him and forces him to wander for the rest of his life. However, God gives Kayin a sign warning others not to kill him. (Rashi observes that there are no other people, so the warning must be to animals.) The punishment is more consistent with manslaughter than murder, and this incident returns in the provision to establish cities of refuge, places where someone responsible for an inadvertent death of another person can go and be safe from revenge.

Rabbi Fohrman also demonstrates that the Torah requirement of a minimum of two eye witnesses goes back to Yosef's interpretation of the dreams of Paro and his servants while in jail in Egypt. The dreams of two servants provide Yosef with two independent witnesses to demonstrate that the dreams are prophecy rather than coincidence. Paro's two dreams – one before and the second after a period of being awake – also show Yosef that the dreams come from Hashem. (I have previously discussed Rabbi Fohrman's additional evidence – that Paro's dreams mirror Yosef's life in reverse and therefore give Yosef the key to enable him to understand the dreams.)

Rabbi Yitz Etshalom has discussed the understanding from Yosef's family history that one dream could be a false signal but that two dreams indicate prophecy. Yosef when young shares two dreams with his brothers but only relates the

second dream to his father. His brothers are angry after the first dream but quiet after the second. Yaakov is angry when Yosef relates his second dream – because he is unaware of the first dream. Yaakov and his sons understand that two dreams indicate a message from Hashem, so they only protest after hearing one dream but accept a second dream as meaningful evidence. This family history returns in Shoftim as a requirement for a minimum of two independent witnesses to establish guilt in a criminal matter (17:6).

These examples demonstrate that Torah laws date far back, some back to the first family in human history. How relevant are laws from 3300 plus years ago, some based in incidents in history from more than 5000 years ago? The Torah in Shoftim provides a method to modify or extend halacha based on new situations or changes in circumstances based on unanticipated events. For example, how does modern technology affect halacha? During the time of the Torah, all Jews lived in close proximity to each other. Since the destruction of the Temples and subsequent exiles, Jews have dispersed all over the planet. Jews living far from Israel may not have convenient access to bring halachic issues to the place that Hashem selects.

Shoftim establishes a procedure to resolve new issues as they arrive. Those seeking a solution to a dispute are to bring the matter to the judge or Beit Din of the generation, and the court's decision shall be binding (17:8-12). Pirkei Avot (1:1) discusses the validity of this process. Hashem presented the law to Moshe at Har Sinai. Moshe transmitted the law to Yehoshua, then to the elders, next the prophets, then to the Rabbis of the Talmud, to their students, and down to the Rabbis of the current generation. The key is that this process ties halachic decisions back to Har Sinai. We are to accept the decisions of a valid Beit Din and not to deviate from its decisions. For further discussion, see the analysis of Rosh Yeshiva Dov Linzer (below).

The halachic process can be uncertain, as Cantor/Mohel Philip Sherman, z"l, discusses with respect to metzitzah b'peh (mouth to mouth contact as part of a bris). Cantor Sherman reviews the halachic literature and shows that health concerns led to authorities adopting metzitzah b'peh. Later medical knowledge has demonstrated that mohels with undiscovered disease have infected baby boys and led to some deaths. Numerous distinguished rabbis have adopted and recommended medically safe procedures to draw out blood from the bris without risking the danger of cross contamination between the mohel and infant. Cantor Sherman argues that improved medical knowledge is a valid reason for raising halachic issues involved in bris and other medical issues – a subject valid to bring to a beit din of the time. (Many very traditional Orthodox communities still follow metzitzah b'peh.)

Rabbi Haim Ovadia agrees that halacha must connect with the people and understanding of the time. He agrees that halacha must keep up with technology. Rabbi Ovadia raises this issue in connection with discussing the accomplishments of his distinguished great grandfather, Hakham Yehudah Moshe Yeshua Fetaya, z"l. Rabbi Ovadia's essay on his great grandfather discusses seven generations of his distinguished family. This essay is so informative and important that I am attaching it to the E-mail version of this compilation. Many Ashkenaz Jews are familiar with some of the Torah giants we lost during the Holocaust. Ashkenaz Jews tend to be much less familiar with the losses of our people from wars against the Sephardic community. Rabbi Ovadia has done much to bring this history and culture to a wider audience.

My beloved Rebbe, Rabbi Leonard Cahan, z"l, always found a way to make halachic discussions from the Torah interesting. Justice, especially for disadvantaged individuals and groups, was a favorite topic for many years. Rabbi Cahan led a protest of Rabbis in front of the Soviet Embassy to raise the issue of Russian treatment of Jews approximately 40 years ago and chose to spend two weeks in jail rather than pay a very modest fine. (Public protest in front of an embassy was illegal in those days.) He tied inhumane treatment of disadvantaged individuals and groups to many Torah portions. His focus on social justice fit in with Shoftim, but also with the Haftorah messages during most of the weeks during the weeks since the fast of 17 Tammuz. In this sense, his focus mirrored much of the social commentary in the Torah and Navi.

Travel and other obligations will prevent me from posting for the next couple of weeks. During this period, you may wish to see my previous compilations since early 2000 at [PotomacTorah.org](http://PotomacTorah.org).

Shabbat Shalom; Hodesh Tov,

Alan Fisher

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**Much of the inspiration for my weekly Dvar Torah message comes from the insights of Rabbi David Fohrman and his team of scholars at [www.alephbeta.org](http://www.alephbeta.org). Please join me in supporting this wonderful organization, which has increased its scholarly work during and since the pandemic, despite many of its supporters having to cut back on their donations.**

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**Please daven for a Refuah Shlema for Arye Don ben Tzivia, Reuven ben Basha Chaya Zlata Lana, Yoram Ben Shoshana, Leib Dovid ben Etel, Asher Shlomo ben Ettie, Avraham ben Gavriela, Mordechai ben Chaya, Hershel Tzvi ben Chana, Uzi Yehuda ben Mirda Behla, David Moshe ben Raizel; Zvi ben Sara Chaya, Eliav Yerachmiel ben Sara Dina, Reuven ben Masha, Meir ben Sara, Oscar ben Simcha; Leah bas Gussie Tovah, Sarah Feige bat Chaya, Sharon bat Sarah, Noa Shachar bat Avigael, Kayla bat Ester, and Malka bat Simcha, who need our prayers.** Please contact me for any additions or subtractions. Thank you.

Shabbat Shalom; Hodesh Tov,

Hannah & Alan

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### **Shoftim: What Makes Us Holy**

By Rabbi Label Lam \* © 5767

*If a matter eludes you in judgment, between blood and blood, between judgment and judgment, or between lesion and lesion, words of dispute in your cities, then you shall rise and go up to the place HASHEM your G-d chooses. And you shall come to the Kohanim, the Levim, and to the judge who will be in those days, and you shall inquire, and they will tell you the words of judgment. And you shall do according to the word they tell you, from the place HASHEM will choose, and you shall observe to do according to all they instruct you. According to the law they instruct you and according to the judgment they say to you, you shall do; you shall not divert from the word they tell you, either right or left. (Devarim 17:8-11)*

*and to the judge who will be in those days: Although this judge may not be [of the same stature] as other judges who preceded him, you must listen to him, for you have only the judge [who lives] in your time. — [Rashi]*

It's a big wonder. In many instances we make a blessing before the performance of a Mitzvah reciting the words, "...Who has sanctified us with His Mitzvos, and commanded us to..." That would be all and well if we were only talking about Torah Commandments. However, in many instances this is the same intro to a Brocho, for example on lighting Chanukah Candles or Shabbos Candles, or washing our hands. The big wonder is that those who would otherwise dispute or belittle the Oral Torah find themselves making that very declaration, "and commanded us" when they light candle on Chanukah. Where were we commanded in the Written Torah to light Chanukah Candles or to wash our hands before eating bread? Who says?

We are asked and mandated by the verses above to follow the sages and not to depart from whatever they tell you. This is the source in the Torah lending power and credence to Rabbinical authority.

It was the sages who instituted Takanas and Gezeiros. Takanas are the equivalent of positive or the "do" -- active Mitzvos, like lighting Shabbos Candles. Gezeiros align with what's called the negative or "don't do" -- refraining Mitzvos, like Mukzah on Shabbos. It was Rabbinical Law that took the proverbial hammer out of our hands on Shabbos. Therefore, every Rabbinical Law is really, in fact, a Torah Commandment. We are commanded by the Written Torah to be obedient

to the directives of the Rabbis. How is it then that they are allowed to add or subtract from the Torah? Didn't Adam create a great problem himself by telling Chava not to touch the tree when the caution was only with regard to eating?!

Let us go to Paris and visit the Louvre. There you will find some of the most prized and priceless paintings in the world. As we approach, for example the Mona Lisa, we begin to realize that she is placed out of reach. Her value is so high that a thick glass veil has been placed before her, and electric beams signal when someone has encroached on her space. However, when you stand at the proper distance you can enjoy the authentic article as the artist, Leonard De Vinci had intended. The heavy glass is there to protect the integrity of the original painting. The electronic beams establish protective boundaries. It's all there, not to add to or alter the artist's intention, but to preserve it.

So it is with the Mitzvos generated by the Rabbinical authority. Also, when Adam told Chava not to touch the tree, he did not tell her that it was an additional boundary. It was that misunderstanding that opened the door to a tragic error. Therefore since either right or left,: Even if this judge tells you that right is left, and that left is right. How much more so, if he tells you that right is right, and left is left! -- [Sifrei] they are established by sages whose primary concern was preserving the integrity of the Torah, they are therefore an extension of Mitzvos. It makes perfect sense then that we say, "*Who has sanctified us with His Mitzvos, and commanded us...*" This is **what makes us holy**.

<https://torah.org/torah-portion/dvartorah-5774-shoftim/>

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## What is the Basis for Rabbinic Authority?

by Rabbi Dov Linzer, Rosh HaYeshiva, Yeshivat Chovevei Torah © 2016, 2023

What is the basis for Rabbinic authority? Why do we follow the Talmud? Why is the Rabbis' interpretation of Torah mitzvot binding on us? The Talmud tells us that the answer to some of these questions can be found in our parasha. Much of Parashat Shoftim is devoted to institutions of authority: the court system, the king, the prophet, and those whose job it is to interpret the true meaning of the mitzvot of the Torah. The Torah states that if something is hidden from you, "*You shall arise, and get thee up into the place which the Lord thy God shall choose.*" It continues:

*And you shall come unto the priests, the Levites, and unto the judge that shall be in those days and enquire; and they shall tell you the sentence of judgment. And you shall do according to the sentence, which they shall tell you from that place which the Lord shall choose, and you shall observe to do according to all that they inform thee. According to the sentence of the law which they shall teach you, and according to the judgment which they shall tell you, you shall do. You shall not deviate from the sentence which they shall tell you to the right, nor to the left (Devarim 17:8–11).*

The Torah is investing this body with the power to interpret a law whose meaning is unclear. One who deviates from their interpretation violates both the positive mitzvah to follow the law that they shall teach, and the mitzvah to not deviate from it, to the right or to the left. This, then, would seem to serve as a basis for Rabbinic authority, if not in their capacity to legislate, at least in matters of interpretation. But the matter is far from clear.

First, in this case, the court is not analyzing the meaning of a law for its own sake. Rather, it is responding to a case brought before them. Just as the Supreme Court of the United States cannot rule on a law until a case is brought before it, there is nothing in the Torah giving this body any authority to initiate a ruling on their own accord. Moreover, the Torah does not describe an individual bringing a question to the court, say, on the scope of a melakha on Shabbat, but rather, a case of litigants, "*a matter of dispute in your gates.*" Because each side is demanding justice, they must turn to a higher court for an authoritative decision. This is how a court that oversees the law of the land operates; it does not make proactive rulings or respond to inquiries of individuals. But this is not how the Talmud operates. The Talmud's ruling regarding Shabbat, kashrut, prayer, torts, and even murder all emerged from a group of rabbis discussing the issues among themselves — a far cry from "*a matter of dispute in your gates.*"

Even if we were to assert that the court could initiate such rulings and decisions, we would still have a long way to go to

connect the body described in these verses to the Rabbis of the Talmud. According to these verses, this body consists of a single judge and kohanim. The “judge” may refer to a sage or to someone knowledgeable in the law, but it may also refer to a political leader, typically referred to as judges in the book of Judges. Thus, the Talmud comments on the phrase, “*the judge that you will have at that time*”: “*Yiftach in his generation was like Shmuel in his generation*” (Rosh HaShannah 25b). While Shmuel did indeed judge the people (Shmuel 1, 7:15–16), Yiftach was only a political leader, and yet the Rabbis see this verse as referring to him as well. More significantly, the kohanim are not sages. They seem to be playing the role of God’s representatives, hence the location of this body on Temple grounds. It is true that, later in Devarim, the kohanim are entrusted with the responsibility of teaching Torah to the people (33:10), but there is no indication that this is the role they are playing here, or that a sage who is not a kohen could serve equally on this body.

Finally, as this body is the supreme judicial authority of the land, this court is singular, and it is located in a central location. While there did exist a single, central Sanhedrin in the time of the Second Temple, only a tiny fraction of the rulings of the Sages comes from that body. The vast majority of the rulings in the Talmud come from the post-Temple, post-Sanhedrin period, when there was no single authoritative body. What, then, is the basis for the authority of the Rabbis of the Talmud?

Of course, it could be argued that none of these details matter, that after the Temple’s destruction the Sages replaced the kohanim as the religious leaders of the people, and that the verse applies to them as well. Similarly, implicit in these verses is the idea that a local body can have authority for those who turn to it in the absence of a central body. While it is possible to interpret the verses in this way, it will not solve our problem, for what makes such a reading correct? The answer cannot be that the Talmud says it is so, for this is obviously circular: How do we know that the Rabbis have the right to interpret the Torah? Because they interpret the Torah to say that they have that right!

While this is clearly begging the question, it is worth noting that we find a similar instance in the history of the Supreme Court of the United States. Although the right of the court to determine if a law is constitutional is not explicitly granted in the Constitution, in *Marbury v. Madison* (1803), Chief Justice John Marshall maintained that this power was implicit in the Court’s duty to uphold the Constitution. While a somewhat circular argument, there was at least never any question as to which body had the right to make the final legal decisions of the land. In contrast, there is nothing that obviously leads from the verses in the Torah to identifying the Talmudic Rabbis as such a body.

So we are back where we started. What is the basis for Rabbinic authority to interpret Torah law? Ultimately, an explicit answer cannot be found in the Torah, as history makes clear. Going back to the time of the Second Temple, there were sects that rejected Rabbinic authority while fully accepting the authority of the Torah: the Essenes, the Sadducees, the Karaites. So much of what distinguished these groups lay in who they believed held the ultimate authority to interpret and apply Torah law. Their answers were not found in verses; they were found in the practitioners’ beliefs. A Rabbinic Jew believed in Rabbinic authority. This was an a priori belief; it was his point of departure.

In a way, this is no different than belief in the Torah itself. Why does a person believe that the Torah is from God? The answer can’t be that the Torah says so. That’s circular! (An old yeshiva joke: “*How do you know that God exists? Rambam says so, and Ra’avad doesn’t argue.*” So much for yeshiva humor...) If one steps outside the system, there is no objective evidence which proves a person’s beliefs. One is a Torah Jew because she believes that the Torah comes from God and is binding on us. And one is a Rabbinic Jew because she believes that the Rabbis were invested with the authority to interpret the Torah.

Our parasha is devoted largely to laying the foundations for a system of authority — the king, the courts, the judges, and the prophet — and to severely punishing those who would challenge it. Of all these, the one that remains today, the authority to interpret the Torah, that is, rabbinic authority, is the one rooted in those who believe in it and accept it upon themselves. This parallels our contemporary condition: We live in a world in which, for the majority, religious practice is not imposed by the state but is fully voluntary. We live in a world in which, in practice, the only power that rabbis have is given to them by the people who turn to them and those who employ them. Some may bemoan this state of affairs, but for many, it is the ideal. It helps prevent — to some degree and in most, but not all, cases — gross abuses of power. It also helps create a dynamic wherein rabbis must be attuned to the needs of the populace if they hope to have people turn to them for their rulings and leadership. Such is the nature of an authority that emerges from belief, acceptance, and choice.

Who says the Rabbis have this authority? I do.

Shabbat shalom!

<https://library.yctorah.org/2016/09/says-who-what-is-the-basis-for-rabbinic-authority/>

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## **Scammers and Their Victims: Thoughts for Parashat Shofetim**

By Rabbi Marc D. Angel \*

Like a great many people these days, my wife and I have been victims of a scam. Unscrupulous doctors have reported to Medicare that they've sent us covid tests, and Medicare has paid them. We don't know these doctors; we never ordered covid tests; and most of the doctors who were reimbursed for the covid tests never even sent us the tests.

I reported the fraud to Medicare and was told by the agent that many people throughout the country are also reporting the same kind of fraud. Once the government stopped providing free covid tests, individual doctors figured they could cash in by billing Medicare.

If we would ask these doctors: are you honest? Would you hold me up at gunpoint? I assume that all would think of themselves as being reasonably honest, and none would hold me up by gunpoint face to face. Why do they commit fraud? Because they don't think they are robbing me directly, they are "only" robbing the system. Everything is done impersonally. They submit bills to a great bureaucracy that deals with billions of dollars of claims. The bureaucracy doesn't have time or resources to investigate every claim...so they pay. Those, like us, who receive reports from Medicare are not charged anything out of pocket so it's Medicare's problem! The system is bilked of huge sums of money, all perpetrated impersonally from doctors' offices to Medicare claims departments.

So many scams are committed by people who have no personal contact with their victims. Everything is done via technology. The criminals don't see their victims; they only funnel money out of their bank accounts. People who would not think of robbing someone in person find it much easier to rob them electronically.

When robbery is committed impersonally, people somehow don't feel guilty of being thieves. They justify themselves: we're only taking money from the government or banks or credit card companies, overblown bureaucracies with lots of money available for anyone who can outsmart the system.

The depersonalization of finances warps the general morality of society. One of the words the Torah uses for money is "damim" — blood. The Torah recognizes that money isn't an impersonal entity but is the result of personal labor, literally one's blood. To steal money is to steal part of a person's life. Each dollar represents the time it took for the person to earn it.

But in our days, we are accustomed to hearing astronomical numbers that are not connected to a person's actual labor. We read of billionaires; athletes and entertainers who are paid millions and hundreds of millions of dollars; lawyers who bring lawsuits for millions of dollars; lottery drawings for massive amounts. We read of government budgets and debts in the trillions of dollars. Who is keeping an eye on each of these dollars? Who even connects these dollars to real human beings whose "blood" has gone into creating those dollars?

This week's Torah reading gives instructions on appointing and operating a societal bureaucracy — judges, police, civil servants in various roles. Significantly, the instructions are all presented in the singular — not plural. The onus of responsibility is on each person to oversee the bureaucracy, and on each civil servant to pursue justice to the fullest extent possible. The "bureaucracy" is not a nameless, faceless entity: it is composed of real human beings. Society is not a nameless, faceless entity: it is a collection of very individual people with very individual needs and responsibilities.

Throughout the Torah, we are reminded of the vital importance of keeping the human element central to our thinking and our conduct. Depersonalization leads to a breakdown in societal wellbeing and morality.

When doctors cheat Medicare, they are cheating every American taxpayer who pays into the Medicare system. When people cheat on their taxes, they aren't robbing an anonymous government; they are robbing all honest taxpayers. When scammers swindle banks and credit card agencies, they aren't stealing from a neutral pot of money; they are stealing from real people.

The Torah teaches: tsedek, tsedek tirdof — you shall surely pursue justice. This isn't just sermonic advice; it is at the very essence of what constitutes good people...and a good society.

\* Founder and Director, Institute for Jewish Ideas and Ideals.

**The Institute for Jewish Ideas and Ideals has experienced a significant drop in donations during the pandemic. The Institute needs our help to maintain and strengthen our Institute. Each gift, large or small, is a vote for an intellectually vibrant, compassionate, inclusive Orthodox Judaism. You may contribute on our website [jewishideas.org](https://www.jewishideas.org) or you may send your check to Institute for Jewish Ideas and Ideals, 2 West 70th Street, New York, NY 10023. Ed.: Please join me in helping the Institute for Jewish Ideas and Ideals at this time.**

<https://www.jewishideas.org/node/3148>

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### **Metzitzah B'Peh – Oral Law?**

By Cantor Philip L. Sherman z"l \*

Recently I attended a Hassidic wedding and was seated next to one of my Hareidi co-religionists. During the course of the evening, it became known that I was a mohel. The question of metzitzah came up. I explained that I was a "modern" mohel and that I did not perform metzitzah b'peh (i.e. direct mouth-to-wound contact to perform metzitzah.) I used either a sterile plastic tube or a gauze pad to perform metzitzah. Having been in this situation before, I began to ask a few gentle, probing questions. "What if we know that a baby could possibly transmit a disease to a mohel or the reverse?" "What if the mohel and baby both appear healthy, yet there was something which could cause illness in either one of them?" The responses were typical. "If the baby is ill, we don't perform the Bris." "If the mohel is ill, we get a different mohel." "We've been doing metzitzah b'peh on thousands of babies, and they didn't get sick." I pressed on. "But what if it could be shown that there is the possibility that even one child could become ill or, God forbid, die from something transmitted by the mohel?" There were two responses. "You'll never get them to give up doing metzitzah b'peh;" and "Today, there is no possibility of change," accompanied by a look which I can only describe as "It does not compute." In other words, in this gentleman's mind, these two concepts could not be reconciled. In all fairness, I should point out that this gentleman is a former Rosh Yeshiva and would qualify as a talmid hakham, a very learned individual. He insisted, however, that he was not a posek, a religious decisor.

What is metzitzah? What is its origin? What is its purpose? What is the controversy?

There are three steps to performing a Berit Milah. Milah, the excision of the foreskin; periah, the drawing back (or removal) of the secondary layer of skin, the mucosal membrane; and metzitzah. Metzitzah is the drawing of the blood from the wound following the ritual circumcision. The source is found in the Mishnah, Shabbat 19:2. "One performs all the necessary steps for the milah on Shabbat: One circumcises, draws back (or tears) the secondary layer of skin (the mucosal membrane, periah), suctions, and bandages the wound with cumin powder." It was believed at that time that there was a positive health benefit to the child.

The basic understanding of the Talmud is that metzitzah is not part of the actual mitzvah of Berit Milah. It is performed to prevent any health hazard to the child after the circumcision. In the Talmud, Shabbat 133b, Rav Papa states: "Any mohel who does not perform metzitzah creates a danger, and therefore should be removed from his post." The reason the mohel is removed from his post is not because he failed to perform metzitzah, but because he endangered the life of a child. The Talmud states very clearly: "Mal v'lo para, k'ilu shelo mal." "Someone who was circumcised but for whom periah was not performed, it's as if he was never circumcised." Metzitzah is not mentioned. Referring back to Rav Papa's statement, he said the mohel should be removed from his post. Rav Papa didn't say that the milah was invalid. In Nedarim 32a, we read

that if the mohel forgot to perform metzitzah, the milah was valid. Maimonides reinforces this aspect of the Gemara by stating: "After [milah and periah], the mohel suctions the area until blood flows from the far places (away from the wound). He does this so that the (health of the) child will not be endangered."

The key question is: How does one perform metzitzah? There is no description or explanation of how metzitzah was performed. It is implicit that metzitzah was performed orally. In the Shulhan Arukh, Yoreh Deah 265:10, the Rama offers the following commentary: "We spit the blood into the earth." It seems that the mohel had sucked the blood into his mouth.

There were several incidents in Europe during the nineteenth century related to metzitzah b'peh. In 1837, Rabbi Eliezer Horowitz, the Chief Rabbi of Vienna, was consulted regarding a number of children who had become ill (infected) following their circumcisions. Some of the children had died. Dr. Wertheim of Vienna asked Rabbi Horowitz if instead of using oral suction to perform metzitzah, a s'fog (a sponge, or what today we would call a gauze pad) could be used to squeeze the blood from the circumcision site. Rabbi Horowitz, before rendering a final pesak, consulted his teacher, Rabbi Moshe Sofer, the Hatam Sofer who wrote:

*Metzitzah b'peh is a requirement of a few of the mekubalim (the kabbalists). Therefore, as long as we can draw the blood out from the faraway places, it may be done in any way. We should rely on the experts regarding which technique is as effective as metzitzah b'peh...Even if the Talmud had stated that one must perform metzitzah with the mouth, metzitzah is not part of the mitzvah of milah, i.e. it is done to prevent danger to the child. According to the halakha, if one circumcises and does periah but neglects to perform metzitzah, he has completely fulfilled the mitzvah." (The letter of the Hatam Sofer was first printed in 1845 by Menachem Mendel Stern in the periodical Kokhvei Yitzhak. The ruling is also quoted in Rabbi Moshe Bunim Pirutinsky's book, Sefer haBerit.)*

The Hatam Sofer continued by saying that applying cumin powder is also listed in the Mishnah, yet no one argues that only cumin must be used. Since talmudic times we have found more effective ways of bandaging and achieving hemostasis. This is why there is no halakhic requirement to use cumin powder. The Hatam Sofer argued that based on the Mishnah, no one could say that the mouth alone had to be used to draw the blood out. (The background to these events is the religious battle between the Orthodox and the Reform movements in Germany. During this time, the Reformists were attempting to change and or abolish certain religious practices. Milah, or anything related to it, was high on their agenda.)

In 1888, Rabbi Samson Raphael Hirsch and Rabbi Azriel Hildesheimer, the chief rabbis of Frankfurt and Berlin respectively, publicized a halakhic ruling that metzitzah could be performed using a new instrument, a glass tube. It could be placed over the circumcision site and the mohel could use the tube to suction the blood with his mouth without any direct physical contact. This method seemed superior to the Hatam Sofer's suggestion of a cotton sponge. It protected the health of infant and the mohel. When I was trained as a mohel, my teacher, the former Chief Mohel of Jerusalem, Rabbi Yosef Hakohen Halperin of blessed memory, set up his instruments, which included a glass tube for metzitzah. He took a small wad of cotton and inserted it in the tube to prevent the blood from flowing up the tube and entering the mouth.

Rav Yosef Dov Soloveitchik reported that his father, Rav Moshe Soloveitchik, would not permit a mohel to perform metzitzah b'peh with direct oral contact, and that his grandfather, Rav Chaim Soloveitchik, instructed mohalim in Brisk not to do metzitzah b'peh with direct oral contact, either.

Another element of concern is the elevation of metzitzah b'peh from an ancillary step not even considered part of the mitzvah, to a "halakha l'Moshe miSinai," a law transmitted by Moses on Mount Sinai. The goal is to put metzitzah b'peh out of reach of any change. I have spoken to several ultra-Orthodox individuals, mohels and non-mohels, who have told me that a number of their rabbis have issued rabbinic responsa indicating that if metzitzah b'peh is not performed, the berit milah is invalid!

Five years ago, there was a public controversy related to metzitzah b'peh. An Orthodox mohel had allegedly transmitted the herpes simplex virus to a number of infants resulting in illness and death. The New York City Department of Health ordered the mohel to stop performing metzitzah b'peh. The Department of Health also recommended that metzitzah b'peh

not be performed. Needless to say, the outcry from the Hareidi community was great. This was a religious matter in which the Department of Health had no business getting involved! They also disputed the data connecting herpes simplex to metzitzah b'peh. Finally, there were non-religious Jews in the Department of Health who, according to the Hareidi response, wanted to stop metzitzah b'peh and ultimately ban Berit Milah altogether.

This adverse publicity had an unintended affect in the non-religious Jewish community and in the non-Jewish world. Non-religious Jews now associated Berit Milah with illness and death, and instead of having a berit performed by a mohel, they opted to have their children circumcised in the hospital. As for the non-Jewish world, explaining metzitzah b'peh and not have it sound like child abuse was virtually impossible. This was publicity that we did not need.

The prime directive of the mohel is to safeguard the health of the child. If there is the slightest suspicion that the child is not well, we delay the berit. A mohel must also follow the strictest aseptic techniques. His instruments must be autoclaved (heat steam sterilized). Gloves must be worn, the mohel should use disposable blades and so on. I have been told by several of my Hassidic colleagues that they can't wear surgical gloves because it would be looked down upon by the people in their communities. How many times have I seen the mohel place his instruments in a stainless steel tray and pour alcohol on them to soak them prior to the milah; yet certain viruses won't be killed with alcohol alone. I even saw a mohel wearing the izmel (knife) around his neck on a chain! It wasn't until the mid- to late eighteenth century that it was discovered that washing one's hands could prevent the spread of diseases. And at the time, this concept was met with great hostility. Today, this is common knowledge and common sense. There are many ways that a mohel can spread illness to an infant, such as by using dirty or improperly cleaned instruments or not wearing gloves. And now, by performing metzitzah b'peh, we are placing the mouth, the most contaminated part of the human body, on an open wound.

Another very prominent issue related to Berit Milah is jaundice. Jaundice is a yellowish discoloration of the skin caused by increased levels of bilirubin. In the time of the Talmud (and still today), diagnoses were made by using visual methods. If the tint of baby's skin was blue or green or yellow, it indicated that the child had a particular health condition often resulting in the postponement of the berit. Today, we know that jaundice in newborns is normal. We have ways of measuring the bilirubin levels to determine if the jaundice is physiological (normal) or pathological (abnormal). Therefore, if the jaundice is normal, there is no need to postpone the berit. The baby is healthy and the berit may proceed. If a physician determines that the jaundice level is too high and recommends that the berit be delayed, the mohel must follow the directive of the physician. Conversely, the physician may opine that the berit may proceed, but the mohel may overrule the doctor on grounds and delay the berit. Again, every precaution is taken to safeguard the health of the child but we now know that jaundice is normal and should not prevent the berit from taking place. This concept is generally not accepted in the Hareidi community. If the baby is jaundiced, the berit is delayed until the jaundice clears up. Period.

In my opinion, the greatest difficulty as it relates to some in the Hareidi community is to convince them that bacteria and viruses exist, that they cannot be seen and they can cause illness or death. It is possible that a mohel (or baby) can carry a virus (herpes simplex, HIV, etc.), be asymptomatic and still transmit a disease that could result in illness or death. Both individuals appear healthy, yet one can infect and therefore, harm the other. This is clearly a matter of sakanat nefashot, danger to life. Knowing what we know today about the transmission of diseases, a mohel who performs metzitzah b'peh (i.e. direct oral contact) is potentially endangering his health, the health of the child, and the health of the other babies with whom the mohel will have contact that day or that week.

The other element of this discussion is that the Hareidi community does not recognize the opinions of secular individuals or government authority in relation to religious matters. Not long after the metzitzah scandal in 2005, I was a guest on a radio program pitting me, a modern mohel, against a representative of the Hareidi community. The topic was metzitzah. Certain things became very clear to me as a result of that radio program. The Hareidi community does not recognize the opinion or authority of anyone who is not part of their community. When I asked what would happen if it could be shown that a child could become ill, or God forbid, die as a result of a mohel transmitting a communicable disease, the response was that "The people in our communities don't get those diseases. Our people are holy;" and "We have been performing metzitzah b'peh on thousands of babies. How come they did not get sick?" Change, in this case, has been rendered virtually impossible.

For those who demand, insist, or require metzitzah b'peh, it can be performed orally by using a sterile glass or plastic

tube. One uses the mouth, yet there is no direct contact. One may also follow the ruling of the Hatam Sofer and use a gauze pad. Metzitzah is performed and the health of the mohel and baby is protected. The custom is fulfilled.

Maimonides wrote "*It is impossible to restore the lost life of a Jewish child*" (*Hilkhot Milah* 1:18). This was written to allow the delaying of a berit on a child who is not considered healthy. Similarly, nothing done during a berit should allow the possibility that harm will come to the child, whether it is by unclean hands, improperly sterilized instruments or direct oral contact through metzitzah. Today, Rav Papa's statement might be modified to read, "*Any mohel who performs metzitzah b'peh creates a danger, and therefore should be removed from his post.*" Knowing what we know today about the transmission of diseases, every precaution must be taken to safeguard the health of the child and the mohel.

\* Trained as a mohel by Rabbi Yosef Hakohen Halperin in 1977 in Jerusalem, Israel, Cantor Philip L. Sherman served as a cantor and mohel for many years. He This article appeared in issue 6 of *Conversations*, the journal of the Institute for Jewish Ideas and Ideals. We re-post it today (August 10, 2023) in his memory.

<https://www.jewishideas.org/article/metzitzah-bpeh-oral-law>

## Matzeiva -- The Process of Torah Living

By Rabbi Mordechai Rhine \*

Serving Hashem is an awesome experience. A basic teaching of Judaism is that as great as Hashem is, He cares and pays attention to the service of the individual. This applies to all Mitzvos that we do, including a very unique, high-level service known as Korbanos (sacrifices).

In Biblical times and throughout the years of the Beis Hamikdash, there was a service in which a person could bring an animal sacrifice on an altar. The Torah draws a distinction as to what type of altar may be used. In earlier times a Matzeiva, a monument made of one stone, could have been used. This was commonly done before the Torah was given. In this week's Parsha the Torah forbids it. Instead, only a Mizbeiach, made of many stones, may be used once the Torah was given. We wonder, what changed? What does a Matzeiva style service represent that it was beloved in the time of our ancestors, but was forbidden once the Torah was given?

Rav Moshe Feinstein (Kol Rom) explains that a Matzeiva represents a great moment, a spurt of positive energy. The one stone altar was the appropriate imagery for an act of service that was momentous but did not have a process of growth leading up to it or continuing after it. In contrast, the Mizbeiach, built of many stones, represents the ongoing process of growth, one stone today and another tomorrow. This is what builds the character of a Jew and forms the spiritual bond of the Jew with Hashem.

Before the Torah was given, much of observance was voluntary. The Matzeiva memorialized a type of service in which a person experienced a great moment. For its time, this was noteworthy and praiseworthy. In contrast, after the Torah was given, there are laws and expectations. When a person is obligated in a Mitzva, it may sometimes take lead time to strive to fulfill the Mitzva. It doesn't always come instantly. Likewise, after a particular Mitzva is done, we may not rest on our laurels — just remembering the isolated great moment. We continue to build on the success and strive to reach greater heights and even more consistency.

While the Matzeiva was the appropriate symbol for service before the Torah was given, once the Torah was given it is the Mizbeiach fashioned of different stones that properly represents our service. Just as the Mizbeiach is fashioned of many stones and created through a process, so is the ongoing devotion that is expected of us, a process which guides us both before and after a Mitzva.

About 20 years ago, when I was presenting outreach classes in a JCC, a middle-aged gentleman was intrigued by the topic of Teffilin. He was struck by how meaningful the Mitzva is and felt badly that he did not own a pair of his own. I pointed out that for about \$500 he could buy a pair of Teffilin. He replied that \$500 was just too much money for him. Standing with him, I thoughtfully suggested that he save \$5 a week for one year, and that I could arrange for him to get a pair of Teffilin for a down payment of \$250. He could then simply continue his \$5 a week savings plan for a second year

and complete the payment. Unfortunately, the plan and the process were not something he was prepared to do.

Imagine, had he been willing to work towards this Mitzva. In one year's time; he would have had his own pair of Teffilin and could have been observing the Mitzva since then for decades. That is the symbolism of a Mizbeach. It takes one stone after another to reach the point of the actual service.

A Jew must live with vision. We strive and we yearn; we are up to the task. The Torah does not allow us to see Mitzvos as all-or-nothing. We do not have the right to judge our ability to do a Mitzva in the Matzeiva style of thinking. We cannot simply ask ourselves, "Can I do this now or not?" expecting nothing of ourselves but one burst of inspirational energy. It could take months, but once the Torah was given, we know where we need to be, and we try to get there one step at a time.

Likewise, after a Mitzva, we cannot simply admire the spurt of energy and consider our mission complete. Like the Mizbeach, life is a process. Following one success we strive for additional success — To fulfill the message of the verse )Tehillim 84(, "*They will go from strength to strength.*"

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Interestingly, there is another commandment associated with the Mizbeach: That we should fashion a ramp to ascend to it. There is a Torah prohibition telling us that steps may not be used. The basic reason is that it would be improper for the Kohain who was doing the service to spread his legs as he climbed the steps, making his private area less discreet. Symbolically, however, the commentaries suggest another reason. Most of the time when we ascend in the service of Torah, we must walk gradually upwards, and not in the spurts that climbing steps would require.

An interesting fact that is related to the law of the Mizbeach's ramp is that there was a time that the Kohanim would race each other up the ramp. The winner was awarded the privilege of doing the service that morning in the Beis Hamikdash. The commentaries ask, "*If the Kohanim were not allowed to spread their legs while ascending the Mizbeach (as learned from the prohibition against steps and the requirement of a ramp) then what kind of race could they possibly have?*"

The answer given is that the Kohanim would indeed take baby steps, without spreading their legs too much. The race was all about taking those baby steps very quickly. This unique and dignified race is symbolic of the way the Jew grows in Torah. We constantly take steps forward. Often the steps are baby steps, but they are taken in such quick succession that awesome growth is soon evident.

This is the concept that our sages referenced when they said, "*Study two Halachos a day.*" They talked of just two Halachos, out of many millions of Halachos. But when we study two and then another two, the cumulative result is truly awesome.

As we begin our new season and prepare for Rosh Hashana, I invite you to join our SHAI program which encourages the study of Halacha each day. Three days a week we provide a class of about 10 minutes and encourage review and self-study on the other days. In this way we can each build our own personal Mizbeach, one day at a time. For more information, please visit our website [teach613.org](http://teach613.org) and explore the Shulchan Aruch Initiative by TEACH613.

With best wishes for a wonderful Shabbos!

\* Rabbi Mordechai Rhine is a certified mediator and coach with Rabbinic experience of more than 20 years. Based in Maryland, he provides services internationally via Zoom. He is the Director of TEACH613: Building Torah Communities, One family at a Time, and the founder of CARE Mediation, focused on Marriage/ Shalom Bayis and personal coaching. To reach Rabbi Rhine, his websites are [www.care-mediation.com](http://www.care-mediation.com) and [www.teach613.org](http://www.teach613.org); his email is [RMRhine@gmail.com](mailto:RMRhine@gmail.com). For information or to join any Torah613 classes, contact Rabbi Rhine.

## Shoftim – G-d's Relationship With Us

by Rabbi Yehoshua Singer \* © 2022

There is a mitzvah in this week's parsha which sounds beautiful but can be very difficult to define. It is difficult both because of its wording and because of the context in which it is given. We are commanded, "*Tamim tih'yeh im Hashem Elokecha*" – "You shall be tamim with Hashem, your G-d." (Devarim 18:13) The word tamim can mean complete or simple. On its surface, this mitzvah seems to be instructing us in our relationship with Hashem. However, either definition – "be complete with Hashem" or "be simple with Hashem" – is difficult to define. How do we measure the completeness or simplicity of a relationship?

This mitzvah is further complicated by its context. It is given in the middle of the prohibition against necromancy and soothsaying. Moshe warns us that when we enter the land of Canaan we should not follow in their idolatrous ways. He explains that this includes necromancy and soothsaying. It is here that we are commanded, "be tamim with Hashem, your G-d." Moshe then continues to discuss necromancy and soothsaying, explaining that we are different than the nations of Canaan. They would turn to these methods and ideologies, but this is not the portion Hashem has given us. Hashem has promised to guide us directly through prophecy. (Devarim 18:9-15) The context indicates that this mitzvah is somehow specifically connected with avoiding necromancy and soothsaying. Why are these idolatrous practices singled out?

The Sforno teaches that the meaning of this mitzvah is that our reliance on G-d must be complete. He explains that one question answers the other. It is the context which helps us to understand the meaning and parameters of this mitzvah. He explains that necromancy and soothsaying are both forms of idolatry used for learning about the future. The mitzvah is that our relationship with Hashem should be so complete that it involves every area of our lives. "*Even for seeking out the future, we shouldn't seek help from anyone else.*" We should see Hashem as the ultimate Guiding Force in our lives. We must develop within ourselves the understanding that Hashem is, was and will always be there for us. If there is anything we need, we should turn to Hashem and the Torah which He gave us. All the moral and spiritual guidance we need is already there for us. We must place our trust solely in Him. In fact, the Sforno continues and says that Hashem so greatly desires to be there for us that He has created us in a way where necromancy and soothsaying won't work for us. This is the meaning of the final verses – "*this is not the portion Hashem has given to you.*"

(The Sforno is referring to seeking out spiritual sources for supernatural and moral guidance. It goes without saying that Hashem wants us to study the physical world and follow scientific, medical, and financial guidance from those who have studied His world and understand how it works.)

Rash"i takes this concept even further and says that the mitzvah is to be "simple" in our relationship with Hashem. He explains that this means we must rely on Hashem's involvement and protection of our lives with simple faith that He will take care of us. The prohibition against necromancy and soothsaying is because they are used to determine if a wise course of action will or will not succeed. Even wise decisions contain an element of risk, and they are seeking to avoid any risk. A Jew, however, must understand that Hashem is always with us and will lead us where we need to be. As long as we are making wise decisions, there is never any risk. Hashem will always guide us to the best situation for us.

This mitzvah can give us a new perspective as we prepare for the High Holidays. Hashem is commanding us to appreciate the depth of His commitment to us. We must live with that faith and understanding that He loves us and is with us. We must recognize that our relationship with G-d is a two-way street. Only then can we ask ourselves, how have I lived up to my side of the relationship?

\* Rosh Kollel, Savannah Kollel; Congregation B'Brith Jacob, Savannah, GA. Until recently, Rabbi, Am HaTorah Congregation, Bethesda, MD. Note: Has just moved from Bethesda to Savannah and may not yet have Internet service. In the meantime, I am running a Dvar Torah from his archives.

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## Shoftim

By Rabbi Herzl Heftner \*

[Rabbi Heftner did not send a Devar Torah this week. Watch for future Devrei Torah from Rabbi Heftner in this spot.]

\* Founder and dean of the Har'el Beit Midrash in Jerusalem. Rabbi Heftor is a graduate of Yeshiva University and was ordained at Yeshivat Har Etzion. For more of his writings, see [www.har-el.org](http://www.har-el.org). To support the Beit Midrash, as we do, send donations to America Friends of Beit Midrash Har'el, 66 Cherry Lane, Teaneck, NJ 07666.

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## **Shoftim: Judges and Halacha for Each Generation**

By Rabbi Haim Ovadia \*

]Editor's note: Rabbi Ovadia's focus on the theme in Shoftim that a judge from the current generation must decide issues in halacha relates to an outstanding essay he shared recently about his great grandfather, Hakham Yehudah Moshe Yeshua Fetaya, z"l. This essay also includes some background about seven generations of his distinguished ancestors. I am attaching this essay by E-mail, and I recommend that everyone read and learn from this story.[

### **The Place**

The Torah uses unique language in Sefer Devarim when speaking about the sacred place, which is never mentioned by name. Rabbi Heschel makes an illuminating distinction in his book *The Sabbath*. He explains that Judaism, unlike other religions, sanctifies time, rather than places and objects.

### **Judge of the Day**

The Torah instructs us )Deut. 17:9( to present our questions to the judge who will preside in our time. The meaning of this instruction is that only a contemporary judge can fully understand the question and empathize with the person presenting it. This instruction should be a guiding light when we think and write about Halakha, and for me it is a personal legacy. My grandfather, Hakham Shaul Fetaya, who was my first and principal mentor, fought for many years for the rights of the oppressed and neglected in the State of Israel. He clearly saw that one of the main reasons of the socio-economic problems in Israel was a disconnect between the people and their representatives. Here is an excerpt from a letter he wrote on January 31<sup>st</sup>, 1966, to President Yitzhak Navon, who was then a Knesset member:

*...after the dust cloud of the elections settles down, and all who are important have gotten their seats, the flock is abandoned... the shepherds, be they ministers, Knesset members, or municipal servants, must give each individual the feeling that they are a link of a long chain to which they should feel connected. They must boost the self-confidence, dignity, and moral values of those individuals... I suggest... hold small and large gatherings to get to know the public face to face and to let the public know you... do not disengage from the public. Give people the sense that you are theirs and they are yours. Receive the individuals who seek your help with open arms and a welcoming attitude...*

In an earlier letter )from 1962(, addressed to all Knesset members, he concludes:

*Dear Knesset members and distinguished leaders, please go down to the nation, as our ancient leaders did, and witness their suffering. Then you will see that we are not dealing with Victor Hugo's one loaf of bread but with much more than that.*

### **Contemporary Halakha**

As I have shown in several articles, one of the major faults of the Halakhic system today is that the people who author Halakhic decisions live in self-contained societies and are not familiar with the needs and difficulties of their followers. Another major problem is that Poskim keep referring to precedents, even when the facts and circumstances are completely novel. The advances in technology, science, and medicine, and the societal changes, along with instant communication and ease of transportation, present new challenges, and also wonderful solutions to past problems. The

Poskim must familiarize themselves with the full scope of each problem question, and challenge, and ask whether the authors of the precedents they want to rely on would have ruled the same if that information were available to them.

## The King

Verses 14-20 in chapter 17 seem to suggest that monarchy is a viable option for the Israelite nation, but the subliminal message of the paragraph is exactly the opposite. The king must remain monogamous, he should not accumulate great wealth or many horses, he should constantly consult the Torah, and heed the advice of the Cohanim and the Levites. If you still have any doubts, please read chapter 12 of I Samuel, where Shmuel describes with great detail the disastrous nature of monarchy. If this does not convince you, go on to read I and II Kings, Isaiah, Jeremiah, Amos, and Hoshea, and ask yourself why we haven't had a king for more than two thousand years.

## Zoom Weddings?

I turn now briefly to another question in Halacha for our times. Can a wedding be officiated virtually? Can a Beth Din preside over a conversion or a divorce without physically being at the Mikveh or the room where the Get is handed to the woman?

Halakha is still playing catch with technology. There is obviously great reluctance to accept virtual presence as valid because of the "slippery slope" (a favorite argument, though no one knows where the slope actually leads). Another reason is the fear that many roles in the Kashrut and Batei Din system will become obsolete. Meanwhile, the Supreme Court of Israel has ruled that Israeli citizens who married online with an officiant from Utah are legally married in the State of Israel.

\* Torah VeAhava. Rabbi, Beth Sholom Sephardic Minyan (Potomac, MD) and faculty member, AJRCA non-denominational rabbinical school. **New: Many of Rabbi Ovadia's Devrei Torah are now available on Sefaria:** <https://www.sefaria.org/profile/haim-ovadia?tab=sheets>. The Sefaria articles usually include Hebrew text, which I must delete because of issues changing software formats.

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## Shavuon Shoftim

by Rabbi Moshe Rube\*

Wearing crocs in the snow is underrated. It's good for the feet to feel a little bit of cold after being stuck in a heated car on a four hour ride to snowboard at Mount Doom.

However, I didn't anticipate the guest services line at Whakapapa would be an hour long. There was only one human at the window working with the guests who were having trouble navigating the online system (which from personal experience takes some getting used to and has a few glitches). So my feet had a little extra time in the cold than they anticipated before wrapping themselves into some warm snowboard boots.

Our Parsha tells us that we need judges and policemen at our gates. In other words, human people for us to deal with as we navigate through the systems of life whether in a community centre, country or ski field. It reminds me of a story of a rabbi who would specifically drive through a toll booth with a person in it so he could maximize human contact. It definitely helps to have more humans manning the fortress especially if you're a newbie to the show.

But that was just a minor hiccup. My cold feet did not give me cold feet about getting onto the snowboard. And I did meet some other great humans who had managed to get through the system and have a great time on the white powder.

Because New Zealand is beautiful and no amount of tech at the gates can take that away.

Shabbat Shalom,

Rabbi Rube

\* Senior Rabbi of Auckland Hebrew Congregation, Remuera )Auckland(, New Zealand. Formerly Rabbi, Congregation Knesseth Israel )Birmingham, AL(.

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## **Rav Kook Torah Shoftim: The Jerusalem Police Officer**

*“Appoint judges and police in all of your cities...” )Deut. 16:18(*

Rav Kook was overjoyed with the good news: David Tidhar, a Jewish officer serving in the British Mandatory police force, had announced that he was engaged to be married. The rabbi insisted that the wedding be held in his own residence and that he would provide the wedding meal. Rav Kook even invited students from the yeshiva to join in the festivities.

Many people were surprised. Why was Rav Kook so fond of this particular policeman?

Rav Kook explained that David Tidhar had zekhut avot — ancestral merits. His father, Reb Moshe Betzalel Todrosovich, was a wealthy Jaffa philanthropist who had been instrumental in bringing Rav Kook to serve as rabbi of Jaffa. Reb Moshe Betzalel supported numerous religious projects in Jaffa, especially anything related to Jewish education and assisting those in need. This fine man, Rav Kook declared, is certainly deserving of our thanks and gratitude.

### **The Run-Away Husband**

But Rav Kook's appreciation of David Tidhar was also based on his appreciation for the young man's own character and deeds. Their close ties took on greater importance when Tidhar became an officer in the Jerusalem police force. The Chief Rabbi would often turn to him for assistance in releasing a prisoner or to ameliorate a prisoner's conditions in jail.

On one unusual occasion, however, Rav Kook requested Tidhar's help in placing a man under arrest.

A certain resident of Jerusalem had decided to abandon his family, intending on leaving his wife without a proper divorce. Lacking an official bill of divorce )a get(, the poor woman would become an agunah, trapped in her marriage and unable to remarry.

The scoundrel intended to flee Jerusalem on the early morning train. Legally, there was no way to stop him. The request to detain him had been submitted to the regional court, but the order could only be approved after the judge arrived at ten o'clock mid-morning.

Hearing of the situation, Rav Kook turned to Tidhar. The resourceful police officer came up with an unconventional solution to deal with the case. He dispatched an undercover detective to the train station. The detective found an excuse to start a fight with the man. The altercation began with harsh words and quickly progressed to fisticuffs.

Policemen instantly appeared and arrested the two brawlers, hauling them in to the Me'ah She'arim police station. At that point, Tidhar arrived at the station. He detained the man until Rav Kook sent word that the court order had been obtained. He was then able to officially place the man under arrest.

### **The Would-Be Expulsion**

In another incident, Tidhar sought to prevent the deportation of Jewish immigrants — a deportation that he himself had been detailed to carry out.

The British passport office sent Tidhar a long list of illegal immigrants. The list included many details: names, addresses, ages, and so on. Tidhar was astounded. How had the British obtained so much information about the immigrants?

The answer was not long in coming. British immigration officials had posed as Jewish aid workers, going from house to house in the Jerusalem neighborhoods. Using this ploy, they tricked the immigrants into divulging their identifying details.

As police commander, Tidhar was the officer ordered to expel forty hapless families — on the day before Yom Kippur! It would have been a heart-breaking sight. Tidhar met with the Jewish city council. He requested that the refugees be provided with food and clothing, and he gave them a twelve-hour reprieve before executing the deportation.

The council's immigration department agreed. They provided for the immigrants' immediate needs and secretly transferred them to distant neighborhoods, thus forestalling the deportation orders.

In order to assist the refugees, Tidhar needed to work on Yom Kippur. Following Rav Kook's advice, he dressed as an Arab. This way, the Jewish immigrants would not be disturbed by the sight of a Jew desecrating the holiest day of the year — even if his labors were for their own benefit.

"There are two men," Rav Kook would say, "who assist me in maintaining order in religious affairs in Jerusalem. The first is the British High Commissioner, Herbert Samuel. And the second is police officer David Tidhar."

"However, there is a difference between the two," the rabbi observed. "The commissioner always confers first with his legal advisor, so his assistance is often delayed. Officer Tidhar, on the other hand, is diligent and energetic. He does whatever he promises, quickly overcoming all obstacles."

David Tidhar admitted, "The British officers thought that they were my commanding officers. But my true commanding officer was Rav Kook. For me, any request of the rabbi was an order, which I tried to discharge to the best of my ability. I considered it a great privilege to fulfill the Chief Rabbi's wishes."

)*Stories from the Land of Israel*. Adapted from *Hayei HaRe'iyah*, pp. 303-304; *Malachim Kivnei Adam*, p. 151.(

<https://www.ravkooktorah.org/REEH-76.htm>

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## **Shoftim: The Consent of the Governed )5770, 5777(**

By Lord Rabbi Jonathan Sacks, z"l, Former Chief Rabbi of the U.K.\*

The contribution of Tanach, the Hebrew Bible, to political thought is fundamental, but not well known. In this study I want to look at the institution of monarchy. What does it tell us about the nature of government as the Torah understands it?

The command relating to a king opens with these words:

*"When you enter the land the Lord your God is giving you and have taken possession of it and settled in it, and you say, "Let us set a king over us like all the nations around us," be sure to appoint over you the king the Lord your God chooses..."* Deut 17:14-15

It continues by warning against a king acquiring "great numbers of horses for himself." He "must not take many wives," nor may he "accumulate large amounts of silver and gold." He must write a Sefer Torah, and "he is to read it all the days of his life so that he may learn to revere the Lord his God and . . . not consider himself better than his brothers, or turn from the law to the right or to the left."

The entire passage is fraught with ambivalence. The dangers are clearly spelled out. There is a risk that a king will exploit his power, using it to acquire wealth, or wives, or horses (one of the status symbols of the ancient world). This is exactly what Solomon is described as doing in the Book of Kings. His "heart may be led astray." He may be tempted to lord it over the people, considering himself "better" than everyone else.

The most resonant warning note is struck at the outset. Rather than commanding the appointment of a king, the Torah envisages the people asking for one so that they can be "like all the nations around us." This is contrary to the whole spirit

of the Torah. The Israelites were commanded to be different, set apart, counter-cultural. To want to be like everyone else is not, for the Torah, a noble wish but a failure of imagination and nerve. Small wonder then that a number of medieval commentators held that the creation of a monarchy is not a biblical imperative. Ibn Ezra held that the Torah did not command it but merely permitted it. Abarbanel – who favoured republican government over monarchy – regarded it as a concession to popular sentiment.

However, the key passage is not here but in I Samuel 8.]1[ As predicted in Deuteronomy, the people do eventually request a king. They come to Samuel, the prophet-judge, and say: “*You are old, and your sons do not walk in your ways; now appoint a king to lead us, such as all the other nations have.*”

Samuel is displeased. God then tells him: “*Listen to all that the people are saying to you; it is not you they have rejected, but they have rejected Me as their king.*” This seems to be the heart of the matter. Ideally, Israel should be under no other sovereign but God.

Yet God does not reject the request. To the contrary, God had already signalled, through Moses, that such a request would be granted. So He says to Samuel: “*Listen to them; but warn them solemnly and let them know what the king who will reign over them will do.*” The people may appoint a king, but not without having been forewarned as to what are the likely consequences. Samuel gives the warning in these words:

*“This is what the king who will reign over you will do: He will take your sons and make them serve with his chariots and horses, and they will run in front of his chariots . . . He will take your daughters to be perfumers and cooks and bakers. He will take the best of your fields and vineyards and olive groves and give them to his attendants. He will take a tenth of your grain and of your vintage and give it to his officials and attendants . . . and you yourselves will become his slaves. When that day comes, you will cry out for relief from the king you have chosen, and the Lord will not answer you in that day.”*

Despite the warning, the people are undeterred.

*“No!” they said. ‘We want a king over us. Then we will be like all the other nations, with a king to lead us and to go out before us and fight our battles.’ When Samuel heard all that the people said, he repeated it before the Lord. The Lord answered, ‘Listen to them and give them a king.’”*

What is going on here? The Sages were divided as to whether Samuel was setting out the powers of the king, or whether he was merely trying to dissuade them from the whole project )Sanhedrin 20b(. The entire passage, like the one in Deuteronomy, is profoundly ambivalent. Is God in favour of monarchy or against? If He is in favour, why did He say that the people’s request was tantamount to rejecting Him? If He is against, why did He not simply command Samuel to say no?

The best analysis of the subject was given by one of the great rabbis of the 19th century, R. Zvi Hirsch Chajes, in his *Torat Nevi'im*. His thesis is that the institution of monarchy in the days of Samuel took the form of a social contract – as set out in the writings of Locke and Rousseau, and especially Hobbes. The people recognise that they cannot function as individuals without someone having the power to ensure the rule of law and the defence of the nation. Without this, they are in what Hobbes calls a “*state of nature*.” There is anarchy, chaos. No one is safe. Instead, in Hobbes’ famous phrase, there is “*continual fear, and danger of violent death; and the life of man solitary, poor, nasty, brutish and short*” )Hobbes was writing in the wake of England’s civil war(. This is the Hobbesian equivalent of the last line of the Book of Judges:

*“In those days Israel had no king; everyone did as he saw fit.”*

The only way to escape from anarchy is by everyone agreeing to transfer some of their rights – especially the use of coercive force – to a human sovereign. Government comes at a high price. It means transferring to a ruler rights over one’s own property and person. The king is entitled to seize property, impose taxes, and conscript people into an army if these are necessary to ensure the rule of law and national security. People agree to this because they calculate that the price of not doing so will be higher still – total anarchy or conquest by a foreign power.

That, according to Chajes, is what Samuel was doing, at God's command: proposing a social contract and spelling out what the results would be. If this is so, many things follow. The first is that Ibn Ezra and Abarbanel were right. God gave the people the choice as to whether or not to appoint a king. It was not compulsory but optional. The second – and this is the fundamental feature of social contract theories – is that power is ultimately vested in the people. To be sure, there are moral limits to power. Even a human king is under the sovereignty of God. God gives us the rules that are eternal.

Politics is about the laws that are temporary, for this time, this place, these circumstances. What makes the politics of social contract distinctive is its insistence that government is the free choice of a free nation. This was given its most famous expression in the American Declaration of Independence: *"to secure these rights )life, liberty and the pursuit of happiness( Governments are instituted among Men, deriving their just powers from the consent of the governed."* That is what God was telling Samuel. If the people want a king, give them a king.

Israel is empowered to choose the form of government it desires, within the parameters set by Torah law. Something else follows – spelled out by R. Avraham Yitzhak haCohen Kook (*Responsa Mishpat Cohen*, no. 143-4, pp. 336-337): *"Since the laws of monarchy pertain to the general situation of the people, these legal rights revert [in the absence of a king] to the people as a whole. Specifically it would seem that any leader [shofet] who arises in Israel has the status of a king [jin melech yesh lo] in many respects, especially when it concerns the conduct of the people . . . Whoever leads the people may rule in accordance with the laws of kingship, since these encompass the needs of the people at that time and in that situation."*

In other words, in the absence of a king of Davidic descent, the people may choose to be ruled by a non-Davidic king, as they did in the age of the Hasmoneans, or to be ruled instead by a democratically elected Parliament, as in the current State of Israel.

The real issue, as the Torah sees it, is not between monarchy and democracy, but between government that is, or is not, freely chosen by the governed. To be sure, the Torah is systematically skeptical about politics. In an ideal world, Israel would be governed by God alone. Given, however, that this is not an ideal world, there must be some human power with the authority to ensure that laws are kept and enemies repelled. But that power is never unlimited. It comes with two constraints: first, it is subject to the overarching authority of God and His law; second, it is confined to the genuine pursuit of the people's interests. Any attempt by a ruler to use power for personal advantage (as in the case of King Ahab and Naboth's vineyard: 1 Kings 21) is illegitimate.

The free society has its birth in the Hebrew Bible. Far from mandating a retreat from society, the Torah is the blueprint of a society – a society built on freedom and human dignity, whose high ideals remain compelling today.

#### **FOOTNOTE:**

[1] For a brilliant recent study, though one that does not touch on the issues raised here, see Moshe Halbertal and Stephen Holmes, *The Beginning of Politics: Power in the Biblical Book of Samuel*, Princeton University Press, 2017.

<https://www.rabbisacks.org/covenant-conversation/shoftim/the-consent-of-the-governed/>

Note: because Likutei Torah and the Internet Parsha Sheet, both attached by E-mail, normally include the two most recent Devrei Torah by Rabbi Sacks, I have selected an earlier Dvar.

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## **The Unsolved Murder**

By Yossy Goldman \* © Chabad 2023

There is a rather bizarre law at the end of Parshat Shoftim:1 the case of a murder victim discovered lying in a field, where no one knows what happened to him or who the perpetrator was. The Torah mandates an elaborate procedure in which the senior rabbinic judges must go out and measure which is the nearest town to where the victim was found. The distinguished elders of that town must take a calf and kill it as an atonement for the death of this innocent victim, while

declaring:

*“Our hands did not spill this blood, nor did our eyes see this crime.”* 2

Why such a strange ceremony?

Maimonides explains that the Torah deliberately wanted the court to do something unusual to create a news item that people would talk about far and wide. If news of the murder spread, it might lead to the eventual apprehension of the murderer and subsequent justice.3

Abarbanel4 argues that by designing such an elaborate ritual, the Torah intended to create an uproar. We dare not allow murder to go unnoticed; this shocking act of bloodshed must create a stir in the community. People must be outraged. G d forbid that the killing of innocent people should become commonplace.

The Talmud5 asks why the elders of the closest town must declare, *“Our hands did not spill this blood.”* Would we even imagine in our wildest nightmares that the senior rabbis were a gang of murderers?

But the Talmud explains that if the elders and city leaders had not provided food, shelter, or safe escort for the individual, they may have indirectly allowed this terrible crime to occur.

I can't help but think about how commonplace bloodshed has become in our own society. Every week there is another shooting spree with so many innocent lives being lost to wanton carnage. Nowhere feels safe. Not our schools, malls, or public spaces.

In my own community in South Africa, violent crime, while perhaps not as bad as it once was, is still unacceptably high. For years now, the Jewish community has mobilized sophisticated security organizations to protect our shuls and schools, our public events, and our neighbourhoods, from opportunistic criminals and political extremists. The sad reality is that in the broader country murder has become commonplace. It hardly makes the headlines. This is precisely what Abarbanel meant.

### **Saving Spiritual Lives**

And what about spiritual loss of life? What about the Jewish lives and futures that are lost every time a young person marries outside the faith or simply deems his or her Jewishness irrelevant?

Can we state with confidence that *“our hands have not shed this blood?”* Have we done everything in our power to stem the tide of young Jews giving up their birthright and heritage? Have we fed them, nourished them, and shared the elixir of life, our Torah way of life? Do they even know what they are giving up?

Did we give them shelter? A warm, loving home, school, or shul environment? And if they did step into shul, were they welcomed and made comfortable enough to feel that they belonged? Or were they told, *“Sorry, you’re sitting in my seat.”* Or, *“Is this how you come dressed to shul?!”*

Our son Nissen and his wife Ariella are the directors of Chabad on Campus in Cape Town.

Not long ago, a Cape Town business and community leader told us that Nissen is “the most important rabbi in the whole city!” We were quite surprised to hear this. I mean, he doesn’t even have a shul yet.

He explained: “He is fighting on the front lines of the battle against assimilation.”

How true. Who knows how many thousands of young Jews have been lost to Judaism and attracted to other movements and causes on college campuses around the world.

Indeed, a very important part of the work of our rabbis and rebbetzins on campus is feeding the students. The delicious,

hot Shabbat dinners served at the Chabad House on Friday nights attract many young people and, inevitably, they are warmed, fed, and inspired spiritually as well.

I think, too, of the cultural conflicts that arise in Israel, and I wonder: Instead of fighting, wouldn't it be a better idea to invite a family for Shabbat dinner? Surely, that would break down the barriers and reveal the truth behind the false facades and nasty caricatures that we've developed over the years. Wouldn't that be a better way to bring people together and to show them that we are all human, all Jews, and all part of the same sacred people?

Let us be hospitable, physically and spiritually. Please G-d, we will experience no more losses, and our children will come home safely.

#### **FOOTNOTES:**

1. Deuteronomy 21:1-9.
2. Ibid verse 7.
3. *Guide for the Perplexed* 3:40.
4. Don Isaac Abarbanel, 15th century Spanish-Portuguese scholar and activist.
5. Sotah 45b.

\* Founding Director of the first Chabad House in South Africa; now Life Rabbi Emeritus of the Sydenham Shul in Johannesburg.

[https://www.chabad.org/parshah/article\\_cdo/aid/5611600/jewish/The-Unsolved-Murder.htm](https://www.chabad.org/parshah/article_cdo/aid/5611600/jewish/The-Unsolved-Murder.htm)

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### **Shoftim: Why Justice Twice?**

by Rabbi Moshe Wisnfsky \*

#### **Why Justice Twice?**

*Justice, justice, must you pursue, in order that you live and take possession of the land that G-d, your G-d, is giving you. )Deut. 16:20(*

When we see something amiss in the behavior of other people, we are naturally inclined to help those similar to us, whether in intelligence, shared values, or socio-economic standing. In contrast, when it comes to people higher on these ladders than we are, we tend to imagine that we have nothing to offer them. Conversely, when confronted with people lower on these ladders than we are, we might think that they are beyond help, that it is a waste of time to try to improve their lot.

The Torah therefore tells us to pursue justice twice, in order to emphasize that in addition to helping those similar to us, we must also help those who seem "higher" or "lower" than us – even though it may seem irrelevant or even a waste of time.

Each of us possesses unique talents and gifts, and on account of these unique gifts, we all have something to offer everyone. The fact that Divine providence has presented us with the opportunity to help another person is the surest proof that we possess the means to do so effectively.

— from *Daily Wisdom 3*

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#### Covenant and Conversation

**Rabbi Jonathan Sacks, z"l**

#### Environmental Responsibility

Some commands in the Torah were understood so narrowly by the Sages that they were rendered almost inapplicable. One example is the *ir ha-nidchat*, the city led astray into idolatry, about which the Torah states that “you shall put the inhabitants of that town to the sword.” (Deut. 13:16) Another is the *ben soror umoreh*, the stubborn and rebellious child, brought by his parents to the court and, if found guilty, put to death. (Deut. 21:18-21)

In both of these cases some Sages then interpreted the law so restrictively that they said “there never was and never will be” a case in which the law was applied. (Sanhedrin 71a) As for the condemned city, Rabbi Eliezer said that if it contained a single mezuzah, the law was not enforced (*ibid.*). In the case of the rebellious child, R. Yehuda taught that if the mother and father did not sound or look alike, the law did not apply (*ibid.*). According to these interpretations, the two laws were never meant to be put into practice, but were written solely “so that we should expound them and receive reward.”[1] They had only an educational – not a legal – function.

In the opposite direction, some laws were held to be far more extensive than they seemed at first sight. One striking example occurs in this week’s parsha. It refers to the conduct of a siege during wartime. The Torah states:

When you lay siege to a town and wage war against it for a long time to capture it, do not destroy its trees; do not wield an axe against them. You may eat from them; you must not cut them down. Are trees of the field human beings, that you should besiege them too? Only trees that you know do not produce food may you cut down for use building siege works until the town that has made war against you falls. Deut. 20:19-20

This prohibition against destroying fruit-bearing trees was known as the rule of *bal tashchit*, “do not destroy”. On the face of it, it is highly limited in scope. It does no more than forbid a “scorched earth” policy in the conduct of war. It seems to have no peacetime application. However, the Sages understood it very broadly to include any act of needless destruction. Maimonides states the law thus: “Not only does this apply to trees, but also whoever breaks vessels or tears garments, destroys a building, blocks a wellspring of water, or destructively wastes food transgresses the command of *bal tashchit*

This is the halachic basis of an ethic of environmental responsibility.

Why did the Oral Tradition, or at least some of its exponents, narrow the scope of the law in some cases, and broaden it in others? The short answer is: we do not know. The rabbinic literature does not tell us. But we can speculate. A posek, seeking to interpret Divine law in specific cases, will endeavour to do so in a way consistent with the total structure of biblical teaching. If a text seems to conflict with a basic principle of Jewish law, it will be understood restrictively, at least by some. If it exemplifies such a principle, it will be understood broadly.

The law of the condemned city, where all the inhabitants were sentenced to death, seems to conflict with the principle of individual justice. When Sodom was threatened with such a fate, Abraham argued that if there were only ten innocent people, the destruction of the entire population would be manifestly unfair: “Shall the Judge of all the earth not do justice?” Gen. 18:25

The law of the stubborn and rebellious son was explained in the Talmud by R. Jose the Galilean on the grounds that: “The Torah foresaw his ultimate destiny.” He had begun with theft. The likelihood was that he would go on to violence and then to murder.

“Therefore the Torah ordained: Let him die innocent rather than die guilty.”[3]

This is pre-emptive punishment. The child is punished less for what he has done than for what he may go on to do. Rabbi Shimon bar Yochai, who said the law never was or would be applied, may have believed that in Judaism there is a contrary principle, that people are only judged for what they have done, not for what they will do. Retributive punishment is justice; pre-emptive punishment is not.

To repeat: this is speculative. There may have been other reasons at work. But it makes sense to suppose that the Sages sought as far as possible to make their individual rulings consistent with the value-structure of Jewish law as they understood it. On this view, the law of the condemned city exists to teach us that idolatry, once accepted in public, is contagious, as we see from the history of Israel’s kings. The law of the stubborn and rebellious child is there to teach us how steep is the downward slope from juvenile delinquency to adult crime. Law exists not just to regulate but also to educate.

In the case of *bal tashchit*, however, there is an obvious fit with much else in Jewish law and thought. The Torah is concerned with what we would nowadays call ‘sustainability.’ This is particularly true of the three commands ordaining periodic rest: the Sabbath, the Sabbatical year, and the Jubilee year.

On the Sabbath all agricultural work is forbidden, “so that your ox and your donkey may rest.” (Ex. 23:12) It sets a limit to our intervention in nature and the pursuit of economic growth. We become conscious that we are creations, not just creators. The earth is not ours but God’s. For six days it is handed over to us, but on the seventh we symbolically abdicate that power. We may perform no ‘work’, which is to say, an act that alters the state of something for human purposes. The Sabbath is a weekly reminder of the integrity of nature and the boundaries of human striving.

What the Sabbath does for humans and animals, the Sabbatical and Jubilee years do for the land. The earth, too, is entitled to its periodic rest. The Torah warns that if the Israelites do not respect this, they will suffer exile, “then shall the land make appeasement for its Sabbaths, for as long as it lies desolate and you are in your enemies’ lands. Then the land will rest and make appeasement for its Sabbaths.” (Lev. 26:34)

Behind this are two concerns. One is environmental. As Maimonides points out, land which is overexploited eventually erodes and loses its fertility. The Israelites were therefore commanded to conserve the soil by giving it periodic fallow years, not pursuing short-term gain at the cost of long-term desolation.[4] The second, no less significant, is theological. “The land,” says God, “is Mine; you are merely migrants and visitors to Me.” (Lev. 25:23)

We are guests on earth.

There is another group of commands which directs us against over-interference with nature. The Torah forbids crossbreeding livestock, planting a field with mixed seeds, and wearing a garment of mixed wool and linen. These rules are called *chukim* or ‘statutes’. Nahmanides understood this term to mean laws that respect the integrity of nature. To mix different species, he argued, was to presume to be able to improve on creation, and

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is thus an affront to the Creator. Each species has its own internal laws of development and reproduction, and these must not be tampered with: “One who combines two different species thereby changes and defies the work of creation, as if he believes that the Holy One, blessed be He, has not completely perfected the world and he now wishes to improve it by adding new kinds of creatures.”[5]

Deuteronomy also contains a law forbidding taking a young bird together with its mother. Nahmanides sees this as having the same underlying concern, namely of protecting species. Though the Bible permits us to use some animals for food, we must not cull them to extinction.

Samson Raphael Hirsch in the nineteenth century gave the most forcible interpretation of biblical law. The statutes relating to environmental protection, he said, represent the principle that “the same regard which you show to humanity you must also demonstrate to every lower creature, to the earth which bears and sustains all, and to the world of plants and animals.” They are a kind of social justice applied to the natural world: “They ask you to regard all living things as God’s property. Destroy none; abuse none; waste nothing; employ all things wisely … Look upon all creatures as servants in the household of creation.”[6]

Hirsch also gave a novel interpretation to the phrase in Genesis 1, “Let Us make man in Our image after Our own likeness.” (Gen. 1:26) The passage is puzzling, for at that stage, prior to the creation of man, God was alone. The ‘Us’, says Hirsch, refers to the rest of creation. Because man alone would develop the capacity to change and possibly endanger the natural world, nature itself was consulted as to whether it approved of such a being. The implied condition is that humans may use nature only in such a way as to enhance it, not put it at risk. Anything else is ultra vires, outside the remit of our stewardship of the planet.

In this context, a phrase in Genesis 2 is decisive. Man was set in the Garden of Eden “to work it and safeguard it.” (Gen. 2:15) The two Hebrew verbs are significant. The first – *le’ovdah* – literally means ‘to serve it’. Man is not just a master but also a servant of nature. The second – *leshomrah* – means ‘to guard it’. This is the verb used in later Torah legislation to describe the responsibilities of a guardian of property that does not belong to him. He must exercise vigilance in its protection and is liable for loss through negligence. This is perhaps the best short definition of humanity’s responsibility for nature as the Bible conceives it.

Man’s dominion over nature is thus limited by the requirement to serve and conserve. The famous story of Genesis 2-3 – eating the forbidden fruit, and the subsequent exile from Eden – makes just this point. Not everything

we can do, may we do. Transgress the limits, and disaster follows. All of this is summed up by a simple Midrash:

“When God made man, He showed him the panoply of creation and said to him: ‘See all My works, how beautiful they are. All I have made, I have made for you. Take care, therefore, that you do not destroy My world, for if you do, there will be no one left to mend what you have destroyed.”[7]

We know much more than we once did about the dangers to the earth’s ecology by the ceaseless pursuit of economic gain. The guidance of the Oral tradition in interpreting “do not destroy” expansively, not restrictively, should inspire us now. We should expand our horizons of environmental responsibility for the sake of generations not yet born, and for the sake of God, whose guests on earth we are.

[1] Tosefta Sanhedrin 11:6, 14:1.

[2] Hilchot Melachim 6:10.

[3] Mishnah Sanhedrin 8:5.

[4] Rambam, The Guide for the Perplexed, III:39.

[5] Ramban, Commentary to Lev. 19:19.

[6] S. R. Hirsch, The Nineteen Letters, Letter 11.

[7] Kohelet Rabbah 7:13.

### Shabbat Shalom: Rabbi Shlomo Riskin

“You shall appoint judges…[who] will not pervert justice. … Justice, justice shall you pursue… You shall not plant for yourselves an Asheira [tree used for purposes of idolatry, according to Rashi and Ibn Ezra] near the altar of the Lord your God.” (Deuteronomy 16:18–21)

The juxtaposition of these verses – the demand for honorable and righteous judges, the concern for an impartial legal system which is a “no bribe zone,” immediately followed by the prohibition of idolatry – seems to mix two completely different areas of religious concern. It combines the moral and ethical laws of interpersonal conduct together with the ritual laws of divine service. Each of these two realms holds a respected place in the Bible, but why group them so closely together without any kind of segue between them?

Second, which of these two crimes is more grievous? Is it a corrupt judicial system which undermines the very infrastructure of an ethical society? Or is it a mistaken religious notion which calls for the worship of a tree instead of the worship of the Creator of the tree? Certainly the injurious implications emanating from the first seem far more damaging than those emanating from the second.

Indeed, the Bible itself adds a rider to the command to pursue justice: “in order that you may live and inherit the land which the Lord your God gives you.” A just society is a necessary prerequisite for the continued life of historic Israel and for Israel’s ability to retain sovereignty over her homeland. No such caveats or conditions appear pursuant to the prohibition of the Asheira.

### Likutei Divrei Torah

Moreover, the Bible has already expressed its displeasure at those who worship trees or stones, which can neither see nor hear nor eat nor smell (Deuteronomy 4:28). Why prohibit worshipping the Asheira tree specifically if it is planted near the sacrificial altar? Is it not equally forbidden to serve a free-standing Asheira tree even if it is nowhere near the sanctuary (Mishkan) or Temple?

The Talmud (Avoda Zara 52a) makes a startling comparison, which begins to provide the solution to our questions:

Resh Lakish said, “Anyone who appoints an unworthy judge is considered like someone who plants an Asheira tree in Israel, as it is written: ‘You shall appoint judges and executors in all your gates’ and it is written right next to it, ‘You shall not plant for yourselves an Asheira tree.’” And R. Ashi added, “And if it is in a place where pious scholars are found, it is as if he planted the Asheira next to the sacrificial altar.”

What I believe the sages are deriving from this juxtaposition of the biblical verses is that the real sin of idolatry lies in the perversion of justice perpetrated by the idolaters. This was found in their lack of morality and ethical conscience, in the orgiastic Dionysian rites, which included eating the limbs and drinking the blood of living animals and in the drunken trysts with temple prostitutes.

Idolaters paid no heed to “Thou shalt not murder” when they sacrificed innocent children to Molekh! And worst of all was when the immorality of idolatry invaded the hallowed gates of the Holy Temple. At that point, the entire reason for Israel’s nationhood ceased to exist, so that God was forced to leave His House and see to it that it be destroyed.

The truth is that almost every time the Bible forbids idolatry, it is within the context of the immoral behavior which characterized it:

Do not bow down to their gods, do not worship them and do not act according to their practices. (Exodus 23:24)

Guard yourself lest you seek out their gods. … They burn their sons and daughters in fire to their gods. (Deuteronomy 12:30–31)

You shall destroy the Hittites…in order that they not teach you to act according to all their abominations. (Deuteronomy 20:17–18)

Remember that God chose Abraham because he was committed to compassionate righteousness and moral justice (Genesis 18:18–19); on Tisha B’Av, the memorial day of our Temples’ destruction, we read publicly the verse, “But let him who glories glory in this: Understand and know Me, that I am God who exercises loving-kindness, moral justice, and righteous compassion on the earth, for in

“these things do I delight,’ says the Lord” (Jeremiah 9:23).

Although Maimonides consistently defines idolatry in pure and absolute theological and metaphysical terms, Rabbi Menahem HaMeiri (13th and 14th century, Provence) defined idolatry in terms of the “disgusting immoral acts of the idolaters,” whose paganism prevented them from accepting the universal moral laws of the Noahide Covenant. For the Meiri, anyone who was moral was ipso facto not to be considered an idolater. In the final analysis, he understood that to know God is to pursue justice and righteousness; idolatry is not so much a sin of incorrect theological opinions as it is a sin of social corruption and immorality!

### The Person in the Parsha

#### Rabbi Dr. Tzvi Hersh Weinreb

##### Darwin and the Mussar Movement

Ethics is a subject about which we all have many questions. What makes an ethical personality? How do we make ethical decisions in complicated circumstances?

Personally, there are two specific questions that have always been of concern to me. One is, “How does one get started upon the process of becoming a more ethical person?” This question is especially relevant at this time of year when many of us begin to think about the upcoming High Holidays and the requirement that we embark upon a process of introspection, of repentance, of teshuvah.

There is a second type of question that I pose to myself: “Where do we look to for guidance in ethical matters?” Are we restricted only to sacred sources? Or do secular sources also hold wisdom with regard to ethical behavior and to self-improvement in the ethical sphere?

In my personal reflections on the subject of universal ethics, I have long been guided by a passage in the writings of Rabbi Abraham Isaac HaCohen Kook, the first chief Rabbi of the land of Israel. He speaks of two sources for ethical guidance. The first is *yir’at shamayim*, fear of heaven, which is a religious source. The second is *hamussar hativ’i*, natural ethics, by which he means the knowledge of right and wrong, which is available to all mankind, no matter what their religion is, if any. Rav Kook asserts that these two sources go hand-in-hand and must be consistent with one another.

More recently, I have been reading a book by the psychiatrist Maurice Levine, entitled *Psychiatry and Ethics*. Levine begins the first chapter his work with a quotation from Charles Darwin’s autobiography:

“I had... followed a golden rule, namely that whenever a published fact, a new observation or thought came across me, which was opposed to my general results, to make a memorandum of it without fail and at once; for I had found by experience that such facts and

thoughts were far more apt to escape from the memory than favorable areas. Owing to this habit, very few objections were raised against my views, which I had not at least noticed and attempted to answer.”

Levine uses this interesting habit of the father of the theory of evolution to illustrate what he considers to be a fundamental process in the development a truly ethical person. He calls this the process of “self-scrutiny”. He writes, “A good part of a man’s ethics consists of the ways in which he copes with his temptations.” Darwin was aware of his own temptation to only recognize evidence that supported his theories and to conveniently ignore or forget facts that would undermine them. And he acted to control that temptation.

Darwin was certainly not unique in this weakness, although the manner in which he dealt with it was exemplary. We all have ideas about our projects, or about ourselves, and we all tend to pay careful attention to everything that would confirm our opinions. And we all excel at ignoring, suppressing, forgetting, or discounting all information that might force us to reevaluate our theories or, heaven forbid, re-examine our opinions about ourselves.

As Levine puts it, one of the fundamentals of sound ethical character is “the need to know oneself, the need to be as honest with oneself as possible, the need to avoid self-kidding.”

This week’s Torah portion, Parshat Shoftim, we encounter a mitzvah which seems to be given only to judges: “You shall not judge unfairly... you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just.” (Deuteronomy 16:19)

In the mid-19th century, a rabbi named Israel Salanter began a movement designed to educate people about the importance of ethics in the Jewish tradition. That movement was known as the “Mussar Movement,” “mussar” being the Hebrew word for ethics. This movement had many leaders over the generations and continues to have a significant contemporary influence.

One of the greatest representatives of the Mussar Movement was a man named Rabbi Abraham Grodzinski, who was murdered by the Nazis in the ghetto of Kovno during the Holocaust.

Rabbi Grodzinski had a problem with the text of the above verse in this week’s Torah portion. He wondered what those of us who are not judges can learn from the injunction against taking bribes. What lesson is there for every man in the observation that “bribery blinds the eyes of the discerning?”

The martyred Rabbi had an answer that is strikingly similar to the observation about ethics that Dr. Levine was able to learn from Darwin’s autobiographical note. “We all have personal interests,” writes Rabbi Grodzinski,

#### Likutei Divrei Torah

“personal inclinations that result in misperceptions, misjudgments, and tragic moral errors. These personal prejudices are the equivalent of bribery. Our own self-interest often blinds us and distorts our judgment as to what is right and what is wrong.”

The great ethical teachers in our tradition consistently point out that in a sense, we are all “judges,” and we are constantly acting as judges in all of the decisions that we make throughout even the most mundane day. And we are always subject to “bribes,” that is, to the temptations to ignore information that is uncomfortable to us, that threatens our pre-existing assumptions, or that forces us to re-examine the question of whom we really are.

Charles Darwin and Rabbi Israel Salanter, who were almost exact contemporaries of each other, had very different worldviews. Had they had the opportunity, they would have debated fiercely about the origins of the universe and of the nature of humanity. But on this one point, they would have thoroughly agreed: we are all subject to the temptation of distorting reality to fit our own selfish interests. And we all need to be vigilant against such temptation.

This brief excursion into the posthumously published writings of a saintly Holocaust victim, Torat Avraham Grodzinski, and the collection of a Jewish American psychiatrist’s lectures, *Psychiatry and Ethics*, helped me answer both of my questions.

Firstly, are we restricted only to sacred writings in our search for ethical guidance? No, we can even find such guidance in the autobiography of a man whose writings were considered to be the greatest threat to traditional religion.

And secondly, what is the first step for those of us who wish to initiate a process of teshuvah, of ethical self-improvement. It may very well be what our ancient scholars referred to as “cheshbon hanefesh,” and what a contemporary thinker has aptly termed “self-scrutiny.”

#### Torah.Org: Rabbi Yissocher Frand

##### The Dual Personality of the Jewish Monarch

In Parshas Shoftim, the Torah speaks of the mitzvah of appointing a king. Apparently, a monarchy can be an optimal type of government – assuming, of course, that the right type of king is in place. The king must not be corrupt. He must be G-d fearing. Even though in the history of Klal Yisrael there were kings who were terrible, in theory, if it can be done properly, the Torah advocates the appointment of a king.

Even though every Jew has an independent mitzvah to write his own Sefer Torah, the king has a special mitzvah to write a second Sefer Torah (in addition to his first Sefer Torah). The Gemara (Sanhedrin 21b) says that the king

kept one of his Sifrei Torah in his personal treasure house (i.e. – his palace) and his other Sefer Torah accompanied him at all times. Many Torah commentaries discuss why the king needed to have this second Sefer Torah that accompanied him whenever he appeared in public.

In past years, we mentioned a very beautiful dvar Torah that appears in a sefer called Ner Uziel from Rav Uziel Milevsky, z”l, (among other places): Normally, the rule of thumb that every Jew should try to live by is “a person’s insides should be like his outsides.” A person should not live one way in private and another way in public. Obviously, there is a certain casualness that we allow ourselves at home. People don’t always need to wear their jacket and tie at home, just because they appear that way in public. But in terms of a person’s midos (character traits), his personality, his frumkeit (religiosity) and his hashkafa (outlook on life) — these must be uniform inside and outside the home. This is the default rule for every Jew EXCEPT the king.

The king needs to have a different type of conduct and behavior outside the palace than he does inside. Inside the palace, like every other Jew, he needs to practice humility. He needs to be forgoing and forgiving. But the public king cannot play that role. He must assert his authority and project a certain awe and reverence to the public at large. He must maintain a certain demeanor outside the home, which may be totally different than his natural demeanor when no one is around.

The Jewish king thus has a dual personality – one for the king in the palace and another for the king who is the public figure. That is why he needs two Sifrei Torah. He needs a Sefer Torah b’Chutz (outside) and a Sefer Torah b’fnim (inside). The Sefer Torah that he keeps in his private treasury teaches him how to have humility and to be forgoing – all the things that the mussar sefarim instruct us. But when he goes outside, he needs that second Torah which reminds him to conduct his actions with a certain presence, a kind of haughtiness, and a certain unforgiving-ness when the situation demands it.

In Parshas VaYelech, when Moshe hands over the leadership of Klal Yisrael to Yehoshua, the pasuk says: “And Moshe called out to Yehoshua and said to him in the eyes of all of Israel: Be Strong and Mighty! ...” (Devorim 31:7). There is some ambiguity as to how to punctuate this opening pasuk. I believe most people assume that the comma comes after “in the eyes of all of Israel”. In other words, the body of the message is a blanket statement – “Chazak V’Ematz!” However, the trop (cantillation notes) on the words “l’Eunei kol Yisrael Chazak V’Ematz” are munach zarka munach segol. Therefore, the proper way to read the pasuk is “In the eyes of all of Israel be strong and mighty” – which means that the comma follows the words “Vayomer Ailav! Thus, the instruction “Be strong and mighty” is

qualified by the antecedent clause. Only in front of the eyes of all of Israel are you (the king) to act strong and mighty. Yehoshua, now that you are the leader, you can no longer act as the humble Yehoshua who cleaned out the Beis Medrash and swept the floor there! To the eyes of all Israel, you may only show strength and valor. That is the job of the Jewish king.

This is a very difficult balance to achieve. Most people who act on the outside with strength and arrogance think that they are also the king when they walk in the front door to their personal living quarters (until “the Queen” tells him “No such thing!”).

I saw a beautiful comment from the Chasam Sofer: When Dovid HaMelech gave over the kingship to his son Shlomo, how did he signify the passing of the torch, so to speak? The pasuk in Melachim I (1:33) says as follows: “The king said to them, ‘take with you your master’s servants and mount my son Shlomo upon my mule...’” The servants are to take the king’s personal mule and allow Shlomo to ride upon it. The general protocol of royalty is that no one uses the king’s scepter and no one uses the king’s mode of transportation. Air Force One, l’havdil elef havdolas, is uniquely reserved for use by the President of the United States. No one else uses it. If you are president, you get Air Force One. In Biblical times, the king’s mule was the equivalent of Air Force One.

This never struck me when reading the pasuk, but the Chasam Sofer notes that the king should be riding on a horse, not a mule! A horse is a beautiful animal, especially a kingly horse like a thoroughbred. It is a beautiful animal. The Torah talks about “the horse of Pharaoh and his chariot.” Pharaoh did not ride around on a donkey. He rode around on a horse!

However, what was Avraham Avinu’s mode of transportation? What will the Moshiach’s mode of transportation be? A donkey! A donkey does not have the glamor and status of a horse. This however is the Jewish vision of Moshiach – a poor man riding upon a donkey!

What is a mule? A mule is the product of the mating of a horse and a donkey. That is why King David used a mule. The Jewish king needs to have the haughtiness of the horse, but the haughtiness needs to be tempered with the humility of a donkey. How does he achieve that? He rides on the synthesis of a horse and a donkey. That, the Chasam Sofer says, was why Dovid picked a mule to ride upon and also to be the vehicle of transfer of power to the next Jewish king – his son Shlomo. The mule testifies to the duality, the synthesis of personalities that a Jewish king must possess. He needs to know when to be the Baal Gaivah and when to be the Ani. Therefore, the proper mode of transportation is “the mule that belongs to me.”

## Likutei Divrei Torah

### Hopelessness Is the Worst Curse

Parshas Shoftim also contains within it the mitzvah of the Arei Miklat – the cities of refuge – for people who kill unintentionally. Such a refugee remains in the “Ir Miklat” until the death of the Kohen Gadol.

The Halacha is that even though Moshe established three Arei Miklat in Aver Hayarden (TransJordan), they were not functioning as “Arei Miklat” until Yehoshua later established the three Arei Miklat in Eretz Yisrael proper. In today’s parlance, we would say that Moshe’s Arei Miklat did not “come online” until Yehoshua established his Arei Miklat in Eretz Yisrael, to the west of the Yarden.

That process took an additional 14 years. What happened if someone unintentionally killed from the time Bnei Yisroel crossed the Yarden until Yehoshua established the three Arei Miklat in Eretz Yisrael proper? The answer is that the Rotzeach B’Shogeg (unintentional murderer) did not need to go to the Ir Miklat. The following anomaly emerges: For 14 years, a person could literally get away with murder! He would not be killed because his killing was unintentional and he would not need to go into exile in the Ir Miklat because none of the Arei Miklat were yet functioning.

We can assume that even the Rotzeach B’Shogeg needs some type of atonement (which is normally provided by his exile), but for some reason, during these 14 years, he did not receive such Kaparah. What is the meaning of this?

The Meshech Chochmah in Parshas Massei makes a beautiful observation. When a person goes to the Arei Miklat, he remains there until the death of the Kohen Gadol. In other words, he knows he can get out whenever the Kohen Gadol dies. He thinks: Any day could be my time to get out of here! Any day, the Kohen Gadol could pass on. Aye – the Kohen Gadol is now 32 years old and I am twice his age? Unfortunately, we see that people who are 32 years old also die. Anything is possible.

So, every single day the Rotzeach B’Shogeg wakes up and thinks “Maybe today is my lucky day! Maybe by the end of today, I will be a free man.” In fact, the Talmud in Makkos says that those confined to the Arei Miklat used to pray that the Kohen Gadol should die. That is why the mothers of the High Priests used to bring the refugees cookies so that they would not pray for the death of their sons. Every day there was hope.

When Klal Yisrael entered Eretz Yisrael, Yehosua was involved in the process of dividing the land between the different tribes. But who was helping him divide the land? It was Elazar the Kohen Gadol! They were jointly tasked in dividing the Land and until that task was completed, neither Elazar nor Yehoshua would die. It thus comes out that this “unintentional murderer” would have had nothing to look forward to on a daily basis. He

could only conclude “I am in here for a minimum of fourteen years. I have no hope. I cannot say ‘today might be my last day of exile.’” That, says the Meshech Chochmah, would have been cruel and unusual punishment. Taking away someone’s hope is the worst type of punishment.

Therefore, in order to avoid this situation, there was no institution of Arei Miklat for 14 years. Better let this fellow “get away with murder” than impose such a harsh sentence.

With this idea, Rav Shlomo Zalman Auerbach made a beautiful observation about davening. The “nineteenth blessing” that was added to the “Eighteen Blessings” (Shmoneh Esrei) is called Birkas HaMinim – the “blessing” of the heretics. One of the worst types of people is a person who is a “Malshin” (someone who slanders a fellow Jew to the anti-Semitic Government). The Talmud says that Shmuel HaKatan was commissioned to compose this “blessing,” cursing those people who perennially caused trouble for their brethren. So, he composed a curse for these people. What was this curse – the worst thing that could befall them? “LaMalshinim al te’hi Sikvah” (let there be no hope for the slanderers).

That is why the Rotzeach B’Shogeg could not go into an Ir Miklat during the 14 years of Conquest and Division, because in such a situation he would have no hope (of getting out prior to the end of the 14 years).

## Dvar Torah Chief Rabbi Ephraim Mirvis

If you were blessed to have a Sefer Torah, which room in your house would you keep it in?

In Parshat Shoftim (Devarim 17:18), the Torah gives us a commandment relating to the king. “Vehaya keshivto al kisei mamlachto,” – “And it shall come to pass when he sits on his throne and rules the people.”

“Vechatav lo et mishne hatorah hazot al sefer.” – “He must write two Sifrei Torah.”

The Torah goes on to say, “Vekaravo kol yemei chayav,” – “And he must read from the Sefer Torah on every day of his life.”

The Chatam Sofer explains that from here we learn that the king would need to consult with the Sefer Torah each and every day to guarantee that Torah law would guide and inspire him while he ruled the people. Now Rashi tells us what the king did with the two Sifrei Torah: he writes that one of them was to accompany him wherever he would go and the other he was to keep in his treasury, where all his money and his jewellery was. We see that the Torah resided in that part of the palace which stood for materialism in order to guarantee that when the king would consult with the Torah on every day of his reign, spirituality would triumph over materialism

and ultimately the word of Hashem would guide the king in all ways.

This was the way in which Joseph ruled Egypt as is described to us in the book of Bereishit. The Torah tells us how, immediately after revealing his true identity to his brothers, Joseph charged them with the responsibility of going back to Canaan to tell their father Yaakov that Joseph had said in Bereishit 45:9, “Samani Elokim lehaadon lekol Mitzrayim.” – “God has made me the lord over all Egypt.”

The Kotzker Rebbe beautifully interprets it a different way: Samani Elokim is not ‘God has made me’ but rather ‘I have made God’ – I have made God to be ‘adon lechol Mitzrayim,’ the Lord over all Egypt, meaning that in every decision that Joseph took, for every policy that he made for Egypt he was inspired by one single consideration – what would Hashem want me to do? In this way, he guaranteed that it was actually Hashem who was ruling Egypt.

Just like the ancient kings of Israel, let us guarantee that in every decision we take, in all the policies we have in our homes and in our workplaces, we will be guided and inspired by what Hashem wants us to do. In addition, bearing in mind where the Sefer Torah was kept in the king’s palace, let’s always ensure that our ruchaniut, our spirituality, will be the priority of our lives.

## Rabbi Dr. Nachum Amsel Encyclopedia of Jewish Values\*

### Gun Control in Judaism

In our Torah Portion of Shoftim, we find the unusual Jewish law where someone who kills another person “accidentally,” i.e., without intention, is given “protection” from the relatives of the victim, by escaping and living in an *Ir Miklat*-City of Refuge (Deuteronomy 19:1-7). Otherwise, an angry relative, filled with rage, is not held liable for killing that accidental murderer. The Rabbis even have to ensure the man’s speedy traverse to the City of Refuge, by making special signs guiding him to the city, to make his journey quicker (Sefer HaChinuch, Mitzvah 422). Thus, we see the concept in Judaism, established here in the Torah, which protects a person from undeserved death, who might or is likely to be killed, is legitimate, legal, and required. Although this system of City of Refuge is no longer functioning, in the 21<sup>st</sup> century, many people claim the same legal right to protect themselves from harm and death. Today, they say that this kind of safeguard from murder and crime is translated into the right to have a gun in one’s home for protection. Others argue and claim that having a deadly weapon in one’s home is no guarantee of safety if a person breaks into that home, and the chances of death in such a confrontation go up for both parties. What is the Jewish view? Can or should an observant Jew have a gun to protect himself or herself today? Is there even a Jewish view on gun control and gun possession, given that guns did not exist in the

## Likutei Divrei Torah

time of the Talmud or for many years thereafter? Let us examine the sources and see what they reveal.

**Protection and Safety** - Self-protection and survival are basic instincts and needs for every species. It is certainly part of human nature as well. But this idea is also one of the 613 commandments in the Torah. There is a general Torah command for a Jew to protect himself or herself (Deuteronomy 4:9) and repeats this warning a few verses later (Deuteronomy 4:16). Specifically, when it comes to saving oneself from danger, the Talmud is very sensitive to this requirement, as it states that danger sometimes even supersedes Jewish law (Chulin 10a). Amazingly, this concept is quoted in the essential book of Jewish law, written by Rabbi Yosef Caro (Shulchan Aruch, Orach Chaim 183:2). But it also states that God also promises to protect man from all evil (possibly referring only to the very righteous) (Psalms 121:7). How does this promise reconcile with the requirement for each Jew to protect himself or herself? Since Judaism is about actions, laws, and details, and not just concepts and thoughts, let us explore how Judaism, in another Torah law, puts these ideas into practice.

The Torah mandates that a Jew protect his or her home – not with guns, but with a fence that must be placed surrounding a (straight) roof which will prevent family members and strangers from accidentally falling off and killing themselves (Deuteronomy 22:8). Thus, just as a gun is bought to protect one’s home and family, like the fence, the owner of the home must be careful to also protect others in his home, even sinners, from coming to unnecessary harm. Rabbeinu Bechaye expands this concept to mandate that each person must guard himself and others in his home from any type of danger that may come. While this may allow for the purchase of a gun as protection in the 21<sup>st</sup> century, it also places responsibility for the safety of that gun upon any homeowner who owns one – i.e., that it does not accidentally harm anyone in the house (Rabbeinu Bechaye commentary to Deuteronomy 22:8). The Talmud says that it is forbidden for a Jew to leave around the house a dangerous dog or a faulty ladder, unprotected, as a possible danger (Bava Kama 15b). This would be analogous to leaving a gun lying around the house and not in a special safe (under lock and key). Judaism also prohibits endangering others even outside the home, as it forbids placing a stumbling block before a blind person (Leviticus 19:14), which is interpreted by all the commentaries not only in the physical sense but also metaphorically. Therefore, it is forbidden to endanger anyone else, and maximum safety must be ensured. Shulchan Aruch codifies this idea into law, requiring anyone who owns a home to minimize danger within, and maximize safety on the premises, including putting a fence around a pit with or without water in it, or

covering it, to prevent accidents (Shulchan Aruch, Choshen Mishpat 427:7).

**The Right of Self-Protection in Judaism -** The greatest fear of people who purchase guns is that classic case is that of the intruder, the thief who attempts to rob one's home at night. In that situation, there is usually not enough time to call the police before the thief robs the house, or worse, harms the occupants. May a Jew prepare for this situation by purchasing a weapon? May a Jew take preventative action to eliminate the danger by using this gun against the intruder?

The Torah describes just such a case. If the thief is found breaking into a home at night, the Torah says that if a Jew kills that thief, he or she is blameless (Exodus 22:1). This seems to give legal authority for purchasing a weapon in advance to kill an intruder who may break into a home. But why is this so? By what legal authority can the owner of the home become judge and executioner in one fell swoop and kill this thief, without the legal system first determining that this man is a (potential) murderer who may be stopped with a gun? Rashi, in his commentary on this verse, gives us a clear explanation. Killing this intruder, says Rashi, is not considered murder because the Torah creates a special ruling in this case: this person, intent on murdering the occupants of the house, already has the legal status of a "dead man" that may legally be killed, since he will certainly kill the occupants if he is confronted. Thus, it is lawful to kill such a person by any means necessary (Rashi commentary to Exodus 22:1). But how do we know that this person is indeed a murderer, even in potential? Maybe he came only to steal some objects, but if he were challenged by the residents of the home, he would run away? The Talmud responds to this question by explaining that a typical thief knows that most homeowners, if confronted, will not simply give up their possessions. Thus, the thief who knows this in advance generally comes armed and is prepared to kill the inhabitants if confronted (Sanhedrin 72a).

Based on this verse and the Talmudic discussion, the Talmud establishes the legality of the principle of self-defense – if someone is coming to kill you, you may kill him first (Yoma 85b). In addition, God's command to the Jews to attack the Midianites who attacked the Jewish people in the desert (Numbers 25:16-18) is also a basis for the concept of self-defense (Midrash Tanchuma, Pinchas 3).

**Jewish Gun Control in Ancient Times and Today -** Although there were no handguns in ancient times, people (including Jews) used other means and other "weapons" as a way of protecting their homes. Certain wild animals were used and kept in one's home, as a means of scaring and warding off trespassers, robbers, or even murderers. The Mishna has disagrees about the lion, the bear, the leopard, and the panther. The majority opinion is that these animals are always dangerous and cannot be

controlled, so they cannot be kept in a home as a "weapon" of protection, while Rabbi Eliezer says that these animals can be tamed in certain situations (Mishna Bava Kama 1:4). If they are indeed untamable, these animals are unacceptable as "pets" in a home and any damage they cause to an outsider or attacker would be the responsibility of the homeowner. Rabbi Eliezer believes that these animals can be tamed, as they are in the circus, and are able to protect one's home. All agree that a snake can never be tamed and would be a liability, forbidden to be kept in any home. How do the Sages rule? Both Maimonides and Shulchan Aruch rule that these animals may not be used in a home as a weapon as they are too dangerous for home protection (Maimonides, Hilchot Nizkei Mammon 1:6, Shulchan Aruch, Choshen Mishpat 389:8). Therefore, we see that Judaism believes that some weapons have too great a risk factor to be used as home protection. While it is anyone's guess precisely how this translates into which weapons of today are similarly perilous, undoubtedly assault rifles and machine guns would be considered inherently hazardous, like these wild animals, and for that reason be unsuited for home protection.

Which weapons are acceptable for home protection? In the City of Refuge referred to in our Parsha, apparently, there was a proclivity for using weapons. The majority of inhabitants in these cities were Levites and were not murderers and no one even knew who the accidental murderers were. There were mostly regular, upstanding, law-abiding Levites, as well as elderly people, for the accidental murderers to live in and blend into a society of "regular" people (think witness protection).

Regarding the laws while in Cities of Refuge, there was an argument about which weapons were permitted for a person to have and which were forbidden. Rabbi Nechuniah said no weapons at all were permitted in these cities to avoid tempting these accidental killers to use weapons and possibly kill again. The Rabbis understood that a total ban on weapons was not feasible or practical since weapons could always be smuggled in (as in today's societies). Thus, the Rabbis permitted some weapons. However, both the Rabbis and Rabbi Nechuniah agreed that weapons that were traps for animals, using ropes should not be left about and openly displayed in the city itself. Why? The relatives of the accidental murderers were always on the lookout to kill these people who murdered accidentally, to give them some sense of revenge and closure, and, indeed, they were legally permitted to kill these murderers if these people left the City of Refuge. But both the Rabbis and Rabbi Nechuniah feared that if traps were left open in this city, this would attract the relatives to enter the city surreptitiously and use them against the accidental murderers (Makkot 10a). These relatives would not be so brazen as to bring in their weapons to these cities and kill the accidental murderers, but if they saw weapons of opportunity lying around, they would not

**Likutei Divrei Torah**  
hesitate to use them against those that had killed their relatives.

Thus, we see that when weapons of opportunity are left around, they add to the potential dangers of society and increase killings. One commentary adds that the reason that other kinds of weapons were not a threat in the Cities of Refuge is that the relatives would never kill these people inside the city limits with regular weapons. But with ropes and traps left around in public areas, these relatives might try to kill these people in a way that would look like an accidental death, so that the relatives would never be caught and charged with murder (Siach Yitzchak on Makkot 10a). The lesson learned from this law is that in situations where murder is more likely to take place, no weapons should be left around, and that, wherever possible, weapons should never get into the hands of those who are more likely to use them.

Although no handguns were around then to use for protection, the equivalent to the guns at the time were wild dogs, used as protection from home invaders. People kept wild dogs on their property to scare away thieves and murderers. Much can be learned and derived about gun control today from how Jews were permitted or forbidden to keep wild dogs then (as well as today). The Talmud says that wild dogs could be kept in one's home near the frontier (to bite and harm thieves and murderers in areas where their intrusion is more likely), on the condition that they were tied up securely during the day and only let out at night on the property when people were sleeping (Bava Kama 79b with Rashi commentary). This indicates to us today that even when a weapon of protection is permitted, it must be safeguarded and eliminated as a danger to others, except at times when theft is more likely. The same Talmudic passage also informs us that tame animals such as domesticated dogs, cats, and tamed monkeys were permitted in the home to keep the house clean from rodents and other small animals. Domesticated livestock was forbidden to be kept in homes in cities in the Land of Israel because of limited living space but was permitted outside of Israel or in the deserts of the Land of Israel.

Another passage shows that some feared wild dogs even if they were chained (like today) since they scared people even when tied down, and once such a dog barked so loudly that it caused a pregnant woman to miscarry (Bava Kama 83a). Even secured weapons had their detractors then. *When ruling in normative Jewish law, Shulchan Aruch follows the basic rulings of the Talmud, but not only demands that a wild dog, the equivalent of a gun, be tied down but it must be tied down with a metal chain and can never be untied except in frontier areas where there is a real danger of theft and murder* (Shulchan Aruch, Choshen Mishpat 409:1,3). The implications for the 21st century are that a gun must be kept in a very secure place, and it is only permitted where the chance of theft and murder is very likely. This

is not the standard law concerning where and when a gun is permitted in the United States and most Western countries today.

Rabbi Meir Eisenstadt (1670-1744) limited the permissibility of weapons even further, by writing that wild dogs are allowed for protection from intruders only in areas where large groups of Jews lived and needed protection. But in areas where only a few Jews lived, wild dogs would be forbidden (Responsa Panim Meirot 2:133). In the 18<sup>th</sup> century, Rabbi Yaakov Emden only permitted such wild dogs in areas where the danger was real, and further limited the use of these dogs to one per household (Responsa Shei-lat Yaavetz 1:17). The implication for today is clear: if there is no real danger of break-in or theft, guns for protection would not be permitted, and even in dangerous areas, only one gun per household is allowed. The contemporary Rabbi Pinchas Zvichi rules that if a person legitimately fears burglary, then the chained dog should be visible by day, and a clear sign must be posted about a vicious dog on the premises. Then the dog can be let out into the courtyard at night. But if there is fear of a terrorist attack, then the dog can be kept unchained at all times, provided that safeguards are taken to prevent it from harming innocent people (Responsa Ateret Paz 1:3, Choshen Mishpat 8).

\* This column has been adapted from a series of volumes written by Rabbi Dr. Nachum Amsel "The Encyclopedia of Jewish Values" available from Urim and Amazon. For the full article or to review all the footnotes in the original, contact the author at [nachum@jewishdestiny.com](mailto:nachum@jewishdestiny.com)

### Ohr Torah Stone Dvar Torah

#### Our Responsibility to Pursue Justice

##### Pinna Omer

The portion of Shoftim opens with the words "Judges and officers shall you appoint for you in all your gates... and they shall judge the people with righteous judgement." The section ends with the timeless expression, "Justice, justice shall you pursue!"

The term "justice" represents an action or a judgement that is performed in accordance with standards of integrity, truthfulness and morality. However, this is a very subjective definition. What one person considers to be an act of justice may be regarded by another as an injustice. These discrepancies do not only stem from personal worldviews, but from cultural differences as well.

I am particularly fond of the definition given by the English philosopher Thomas Hobbes, who claimed that one who acts justly, is one who abides by the social contract of the society in which s/he lives. By defining the exercise of justice in this manner, Hobbes takes out the concept of justice from the private realm; purifies the discourse, as it were, from all individual biases, and ultimately contends that "the majority decides."

Immanuel Kant claimed that one of the prerequisites for establishing social laws is that such laws should be able to exist universally. Kant expands the definition of "the majority" to include humanity in its entirety.

In the aforementioned verses there is a distinction between the opening verse – which addresses the entire nation, tasking the people with the appointment of judges – and the verse which follows it, which elaborates upon the ethical code and addresses the judges. In contrast to both, the verse "Justice, justice shall you pursue" is somewhat enigmatic in this sequence of verses, leaving us wondering as to whether it is a continuation of the ethical code explicated right before, or whether it is part of the earlier tasks with which the entire nation is charged.

Our Sages in the tractate of Sanhedrin (32:2), offer a few commentaries on the words "Justice, justice shall you pursue".

Reish Lakish and Rav Ashi claim that this is a direct instruction to the judges. Reish Lakish believes that the verse is an instruction the judges to follow their "good reason," so much so that they should think "outside of the box of law" in order to ensure that the case in question does not involve some form of deception or misuse of the law. Sometimes, by using halakhic/legal reasoning one might come to legitimize a deed which is morally unjust, much like the case of a "naval birshut haTorah" – a degenerate within the framework of the Torah.

Rav Ashi claims that any ruling which is based on Midat HaDin, strict justice, may end up hurting both parties; he therefore urges the judges to find a compromise. In a sense, Rav Ashi erases the supposed exclamation mark after the words "Justice, justice(!)" with the aim of toning down the commandment somewhat. Thus, the repetition of the word – "Justice, justice" – creates a softer tone, much like the expression "slowly, slowly." It may happen that in our fight for justice, we land up creating injustices. It is the role of the judge to ensure that the justice that is served is also just.

This is actually reminiscent of Restorative Justice, which is currently exercised in criminal law, and which places greater emphasis on meeting the needs of both the victims as well as the offenders, instead of applying the law in its most literal and harshest sense. Rather, Restorative Justice recognizes the fact that the victim, as well as his/her family and community are also involved parties in the case, and are, therefore, impacted by the process and its outcomes. Consequently, it attempts to find a solution which would be beneficial to all the stakeholders.

Both Reish Lakish and Rav Ashi are of the opinion that the verse is a special instruction to the judge. The Mishnaic scholars, on the other hand, explain that this is a directive to the disputed parties, who have an obligation to do

### Likutei Divrei Torah

all in their power to make sure justice is served, even if this means travelling far to find a judge who is able to give a just ruling.

This is how the Talmud puts it:

"Our Sages explain: Justice, justice shall you pursue – go and seek a good Beit Din. Follow Rabi Eliezer to Lod; follow Rabban Yochanan ben Zakai to Bror Hayil.... follow Rabi Yehoshua to the Diaspora; follow Rabi to Beit She'arim; follow the Sages to Lishkat HaGazit ("Hall of Hewn Stone" where the Sanhedrin convened)."

The notion of wandering between Rabbinical Courts until such a one is found that will serve justice is not an unfamiliar one at Yad La'isha. We are often compelled to go from one Rabbinical Court to another with the aim of ultimately finding one which will free agunot from the chains of marriage.

The Ramban combines both approaches and claims that the verse addresses both the judges and the litigating parties, hence the "double language." I think the Ramban's approach is the golden mean – everybody should seek justice. At all times. We must never expect somebody else – be it a friend/rabbinical judge/lawyer/spouse – to do the job for us. No matter what position we are in, or what role we may play, the commandment to pursue justice is incumbent on all Jews, and we do not have the prerogative to evade it.

I began by quoting the verse "Judges and officers shall you appoint for you in all your gates" in its most literal sense. It is known that in ancient times the city gate was a hub of activity – the city's administrative, financial and even religious center. It was the place where the judges themselves convened. The commandment is straightforward: one must appoint judges in every single city so that they judge the people in accordance with the law; and one must appoint officers to enforce the rulings of these judges.

But the appointment of these officials, which is carried out by the entire community, is referred to, quite surprisingly, in the singular form – Shoftim ve'shotrim titen lecha [the singular "you" in Hebrew] – even though it is a decision taken by the public.

This particular choice of words is surprising, and connects to the question raised earlier, who is God turning to when He commands us to pursue justice? Here too, one might ask: Who is God instructing to appoint judges and officers? Is it possible that this is not only an instruction relating to the city's gates?

In his book Netivot Shalom, Rabbi Sholom Noach Berezovsky, who was one of the Slonimer Rebbe's, offers a Hassidic interpretation to the commandment in question:

"A person has numerous "gates": the gate of hearing; the gate of smell; the gate of speech and the gate of touch. And every person must appoint himself as judge of all his affairs and keep his eyes open. For this reason, it is written "titen lecha" in the singular form – to instruct each and every one of Israel to put up safeguards around all of his personal gates..." (Netivot Olam, Parshat Shoftim, Discussion 1).

In other words, beyond the commandment to society in general, the literal phrasing of the verse hints to the fact that every individual must appoint judges and officers to guard his "personal gates." Rabbi Berezovsky speaks of human weaknesses stemming from our senses, as well as temptations and lusts.

I would add two more "gates" to the list: the gate of the heart and the gate of the mind. It seems that the "double wording" implies that we must set uniform standards on two spheres rather than one – the personal and the public.

The philosopher John Locke claimed that there are two types of human needs, both of which are filled by two separate institutions – the family (personal) and the state (public). However, this distinction seems to me to be somewhat superficial. I wish to use the phrase coined by the radical feminist, Carol Hanisch – "The personal is political" – which refutes the notion that the private and public spheres must exist separately, and proposes that life be viewed holistically, meaning that everything is affected as much as it affects.

Connecting all this to the portion of Shoftim, I would like to suggest that we shouldn't expect our public figures and position holders to live up to behavioral codes and standards that are not in keeping with our own code of behavior.

Yes, it is the obligation of the judge and the dayan to "pursue justice"; however, it is our obligation no less. Personal responsibility is the leverage to a moral society – "so that you may live and conquer the Land which the Lord your God gives to you."

#### Dvar Torah: TorahWeb.Org

**Rabbi Michael Rosensweig**

**Zaken Mamrei: Integrity and the Pursuit of Truth in Halachic Life**

In the context of delineating and amplifying the indispensable process of halachic decision-making (Devarim 17:8-11, "Ki yipalei mimcha davar la-mishpat... bein dam le-dam bein din la-din...divrei ribot bishearecha ve-kamta ve-alita el ha-makom...ve-asita al pi hadavar asher yagidu lecha...ve-shamarta laasot kekol asher yorucha...lo tasur min hadavar asher yagidu lecha yamin u-semol"), Parshat Shoftim introduces the intriguing, enigmatic figure of the zaken mamrei (17:12- "ve-haish asher yaaseh be-zadon levli shemoa...u-meit ha-ish hahu' uviarta hara mikirbecha."), a maverick halachic decisor, who relentlessly refuses to acquiesce to the majority ruling of the beit din ha-gadol (Jewish supreme court) that

determines normative halachic conduct. The Torah is unequivocal about the fate of this apparently sincere, principled scholar. He is subject to the death penalty because of the danger he poses to the unity and integrity of Jewish society; his status and punishment are broadcast as a cautionary tale (17:13): "ve kol ha-am yishmeu ve-yirau v-lo yezidun od."

The Talmud (Sanhedrin 89a), noting that parallel terminology is invoked in three other parshiyot, concludes that four infractions are publicized in this manner (arbaah tzerichin hachrazah)- the meiisit, eid zomem, and ben sorer u-moreh in addition to the zaken mamrei. While Ramban (Devarim 21:18, see also Radvaz, Hilchos Mamrim 3:8) explains the need for extra publicity and the common denominator shared by the four violations by emphasizing the discrepancy between the substance of these actions and the severe consequences they engender, the inclusion of zaken mamrei in this group of otherwise unequivocally wicked actors, calls for further clarification. [Ramban accentuates the deterrent factor, as well as the potential actual consequences of these infractions to justify the harsh punishments, perhaps mitigating this difficulty, but other indications that zaken mamrei constitutes an egregious halachic persona cannot so readily be dismissed.] Incitement to idolatry (meiisit) is obviously a particularly heinous spiritual crime completely antithetical to halachic life, even if unheeded. The wayward child (ben soreh) is incorrigible, bereft of any modicum of hakkarat ha-tov (kibud av va-em), contemptuous of any and all authority (hence located in Rambam's Hilchos Mamrim), and poses an imminent danger to others, even if he is yet a minor and is being assessed predictively (nidon al shem sofo). The ed zomem cynically, evilly exploits the halachic ideal of chezkat kashrut, trust in the testimony of witnesses that underpins and stabilizes the entire judicial system, in order to bear false witness against an innocent man, notwithstanding the fact that his deception is discovered and neutralized and his crime is merely verbal. Does the scholarly seeker of truth qualify for membership among this cadre of despicable transgressors? Why is this seemingly idealistic purist adjudged so critically and severely?

Certainly, the Torah's very depiction of this intransigent judge as a "rebellious elder" rather than as a tragic conscientious objector reinforces the classification. The zaken mamrei's sentence is rendered without ambivalence. He is not, alas, only the unfortunate though necessary victim of the potential fragmentation of halachic unity (shelo yihiyeh ke-shetei torot). Rather, his penalty is perceived as facilitating justice, as an expression of "u-biarta ha-ra mikirbecha"! To better comprehend this hyper-critical assessment, we should briefly examine the principle of normative halachic unity, the crucial importance of halachic process particularly as it relates to decisive decision making, and we should revisit the very

#### **Likutei Divrei Torah**

concepts of truth and integrity as it relates to the pursuit of halachic policy and the persona of halachic leaders.

Halachic unity and even uniformity- "mishpat echad yihyeh lachem" is hardly only a convenience or preference. The concern that zaken mamrei's intransigence will produce the fragmentation of nothing less than "shetei torot" demonstrates that his posture is perceived to imperil the very existential identity of Am Yisrael, defined by the embrace of halachic life. Mattan Torah, the precedent and paradigm of halachic commitment forged Am Yisrael by virtue of this very motif of halachic unity- "keish echad be-lev echad". The telos of revelation was to bind the nation into an integrated corporate entity by virtue of that uniform and unified commitment, the primary source of avodat Hashem, and the foundation of Torah values embedded in norms that would define kedushat Yisrael. Moreover, the spiritual quest to achieve personal holistic halachic fulfillment is, in part, contingent upon the common or shared commitment of other segments of Klal Yisrael. As the Shelah (introduction) and others note, the total complement of taryag (613) mitzvot, which symbolically represent spiritual homeostasis (the full range of 248 eivarim and 365 gidin...), elude any one individual or group. Thus, while each individual at mattan Torah experienced this defining episode personally and singularly (which, according to Yam Shel Shlomo, in his introduction to Bava Kamma, is the foundation of the crucial principle of elu ve-eliu divrei Elokim chayim!), the shared and uniform normative commitment defined Am Yisrael for all time. More than convenience, or a formula for minimizing strife and creating a collective identity, "mishpat echad yihyeh lachem" underscores the core principle that uniform halachic commitment defines kedushat Yisrael collectively and individually. By ignoring or minimizing this core truth, the zaken truly established himself as a "mamrei", one who undermined the required authority to facilitate the required unity.

Moreover, beyond promoting common purpose and unified commitment with all their attendant ramifications, a decisive mechanism to resolve halachic controversy and produce normative conclusions that enjoys the confidence of Am Yisrael is an essential prerequisite to the halachah's continued relevance and dynamism, to its ability to respond to changing realities and challenging circumstances. Absent an authoritative system of decision making, halachah's enduring and eternally binding character would be compromised. Furthermore, the process of "ve-kamta ve-alita...ve-asita al pi hadavar asher yagidu lecha... lo tasur min hadavar asher yagidu lecha yamin u-semol" that is implicitly challenged, even undercut by the zaken mamrei under the guise of conscience, conviction, and the pursuit of truth is the foundation for Am Yisrael's singular (junior) halachic partnership with Hashem. The principles of "lo bashamayim hi" and "ein navi

rashai lechadash davar me-atah" etc. are rooted in the capacity and responsibility of chakmei ha-mesorah to effectively and authoritatively implement the mechanisms the Torah itself establishes to determine the normative halachah. Ramban (Devarim 17:11) explains the comment of the Sifrei (also cited in Rashi) that even when "right is said to be left" it is incumbent to follow these procedures and to support the rulings that emerge from the rigors of the halachic processes in dual fashion. It refers to the initial and default confidence that even apparently problematic authoritative rulings are likely valid and authentic. In addition, it dictates that decisions that issue from proper halachic methodology are normatively binding, validated by the process itself irrespective of one's ultimate assessment of the specific merits of the ruling! The zaken mamrei abdicates his authenticity when he rejects this pillar of the halachic system, even if he projects, even if he sincerely believes that he is motivated exclusively by the quest to precisely identify and formulate authentic devar Hashem.

By ignoring the internal core truths of the halachic system that he purports and aspires to support and protect, the zaken mamrei betrays the principles of truth, authenticity and especially integrity. Invoking a narrower truth and weaponizing it against the accepted methodology of the broader system constitutes an egregious breach of integrity, even hypocrisy. The fact that he cloaks his corrosive conduct in the mantle of idealism and conviction, only increases the offense. Far from a heroic, noble advocacy, or a manifestation of imatatio Dei (lehidamot - chotamo shel Hakadosh Baruch Hu emet), the zaken mamrei's campaign is in fact an egregious exercise in corruption and manipulation.

The halachah provides ample genuine outlets for personal conviction and the pursuit of principled policies. Indeed, controversy and debate is much admired and encouraged in the framework of halachic discourse. The milchamah shel Torah (Kiddushin 30a) is perceived as both productive and constructive. As previously noted, eilu ve-eilu divrei Elokim chayim, the acknowledgement, even embrace of alternative halachic convictions, is a core principle, albeit one that does not preclude decisive halachic decision making on a policy level (Eruvin 13b - eilu ve-eilu divrei Elokim chayim, ve-halachah ke-beit Hillel!). By the same token, while he is prohibited from practically implementing or ruling for others contrary to the consensus view of the beit din ha-gadol, the principled, impassioned elder has full license to vigorously argue the merits of his conclusions, he may proudly cling to his theoretical convictions, and he may continue to relentlessly campaign for the adoption of his version of truth and principle.

Indeed, a principled zaken is halachically obligated, certainly initially, to undertake the effort to advocate and lobby for what he

believes is a more authentic perspective on devar Hashem. It is noteworthy that while the Sifrei emphasizes capitulation to the normative conclusion of the beit din ha-gadol ("al yemin she-hu semol"), the Yerushalmi (Horayot 1:1) conveys that one who is convinced that an authoritative conclusion is in error is not permitted to violate his own halachic conviction ("ad she-yomru lecha al yamin shehu yamin"). Ramban (Sefer Hamitzvos shoresh 1, supported by Horayot 2a) resolves the apparent discrepancy by suggesting that the personal pursuit of truth demands an effort to persuade other authorities. Absent that process, one cannot compromise personal halachic standards by adopting the lenient ruling of the authoritative beit din. Only upon the failure of vigorous advocacy to alter the authoritative ruling, does the broader commitment to halachic methodology and process prevail in the realm of normative conduct and communal decision making, requiring even personal acquiescence. This dialectical posture - impassioned tenacity that gives way to appropriate humility and acquiescence to the demands of the larger system - reflects an ideal and constitutes a sharp contrast to the zaken mamrei. In the final analysis, his inability to support the halacha's foundational mechanisms reflect not conviction and noble principle, but arrogance and self-aggrandizement!

Against this background, zaken mamrei may in fact, emerge as the most egregious transgressor among the four violators whose infraction is publicized, notwithstanding superficial impressions to the contrary. He is certainly the most confusing and dangerous of the group. His cultivated image as an idealistic martyr, a warrior for halachic truth masks a deeply flawed and fundamentally corrupt ideology that is absolutely antithetical to the broader principle of halachic integrity. In this respect, he poses an existential threat to halachic unity, uniformity, and especially halachic integrity, triggering a response of "u-biarta hara mi-kirbecha". Even as we bemoan the cynicism and corruption of the zaken mamrei persona, we celebrate the aspiration of halachic uniformity, unity, and the scrupulous methodology of human halachic decision making that is the foundation of a vibrant and enduring halachic life.

#### **Torah.Org Dvar Torah by Rabbi Label Lam**

##### **The Tzedek Needs to Be with Tzedek**

I think my mind has been playing tricks on me all these years. I am looking at the verse, "Tzedek Tzedek Tirdof" as if for the first time. "Justice – Justice you shall pursue, and I am realizing now that the double emphasis is not on the verb pursuing but rather on the quality of that which is being sought, "Tzedek Tzedek". What is "Tzedek Tzedek"? Rashi explains that one should seek out a good court. Why is a standard, regular court not good enough? What makes a good court and what makes a good court Tzedek Tzedek?

#### **Likutei Divrei Torah**

More than 37 years ago my wife and I were just engaged and we were enjoying our first Shabbos together in Monsey. Now please forgive the poor analogy, but if you are in Manhattan you should go to the Empire State Building, and when you are in Paris you need to attend the Louvre, and if you are in Jerusalem should definitely find your way to the Kossel. While in Monsey I suggested to my bride that we go pay a visit to Rabbi Mordechai Schwab, the Tzadik of Monsey. We took the long walk on Shabbos afternoon.

As we were approaching his home, we noticed Rabbi Schwab just exiting his house and about to cross the street on the way to the Beis Midrash. We immediately adjusted our direction and we were able to head him off at the pass on the other side of the street. We wished him "Good Shabbos" and I told him the good news that I was engaged and I introduced my Kallah.

He lit up with indescribable joy and with his eyes darting upward to the heavens, he wished a hearty Mazel Tov and then uttered a few seemingly simple but incredible words that his son later shared with me was his signature Brocho. He said, "The Simcha should be with Simcha!" Then he repeated, "The Simcha should be with Simcha!", and then he carried on his way.

We stood there in stunned silence just from having stood in his presence and then when we finally spoke again, we were left wondering what he meant by that phrase, "The simcha should be with simcha!" We were taught in school never to define a word by a word. What could he have meant? What was he telling us? When eventually we figured it out, it became the theme of the entire wedding process and everything ever since. When producing a Simcha there is all the stuff of the Simcha, the invitations, the band, the booze, the gowns, and all the other nouns. Then there is the authentic feeling of Simcha. He was telling us that all those details big and small should not overwhelm and eclipse the true and lasting inner joy. What a beautiful Brocho, filled with profound wisdom and enormous practicality.

The Kotzker Rebbe commented on these words which are found in Pirke Avos, "All of your deeds should be for the sake of Heaven!" The Kotzker said, "Even your "for the sake of Heaven" should be for the sake of Heaven". What does that mean? One of my Rebbeim, who is a very great man, once told me during the month Elul when we were learning Musar together, "The problem with the Musar Movement is that it became a movement!" Mussar and Chassidus and any other manifestation of spiritual idealism will tend to become institutionalized over time. In the process of becoming uniform and regimented it can happen that some part or even much of the essential and original idealism will have evaporated. It's a constant and ever-present risk from one moment to the next! Spirituality cannot be bottled!

Setting up courts in every city gate and having good judges is a worthy practice but conventional associations have their own set of systemized and bureaucratic habits. Even the best and most idealistic institutions can become stale in their approach. When someone is seeking a legitimate decision then all the details of the case need to be looked at with fresh and open eyes. We used to have a sign in school, "Every child in your class is somebody's entire world!" Every case is unique and each individual and litigant is profoundly invested in this process of discovering the Torah's truth. Therefore, the right answer cannot just be an administrative and ceremonious response. The Tzedek needs to be with Tzedek!

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**Torah.Org Dvar Torah**  
**by Rabbi Label Lam**

**We Are Sanctified**

If a matter eludes you in judgment, between blood and blood, between judgment and judgment, or between lesion and lesion, words of dispute in your cities, then you shall rise and go up to the place HASHEM, your G-d, chooses. And you shall come to the Levitic kohanim and to the judge who will be in those days, and you shall inquire, and they will tell you the words of judgment. And you shall do according to the word they tell you, from the place HASHEM will choose, and you shall observe to do according to all they instruct you. According to the law they instruct you and according to the judgment they say to you, you shall do; you shall not divert from the word they tell you, either right or left. (Devarim 17:8-11)

Here's a real riddle! Why, when we light a Chanukah Menorah, for example, do we make a Brocho, "ASHER KIDISHANU B'MITZVOSAV" – "That You have sanctified us with your Commandments"? Where in the Torah were we, all of us non-Kohanim, commanded to light the Chanukah Menorah? Chanukah post dates the sealing of TANACH. There is no address! So why do we make a Brocho with a seemingly misleading statement?

It's not only with lighting a Chanukah Menorah. We make a similar Brocho when lighting Shabbos Candles and when making an Eiruv. Each of these and many more share the same problem. There is no Torah Commandment to do so. Hmmmm!

We find an important instruction in last week's Torah Portion, not to add or take away from the Torah, and we also find there a direct Commandment not to cook a goat in its mother's milk. Now anyone familiar with the basics of Kashrus will find a problem here. Can we have a glass of milk immediately after eating chicken wings? NO! There is a required waiting period between eating meat and milk. Now remember what the verse stated, "You shall not cook a goat in its mother's milk".

That eating is included in that prohibition is because it is mentioned three times in Chumash there are three levels of prohibition; 1) Don't cook 2) Don't Eat and 3) Don't benefit from meat and milk cooked together.

What's the question? Here's a hint; "The goat in its mother's milk". Since when is chicken included in this prohibition!? Chickens lay eggs but they don't give milk. They are not mammals. What's going on here!? The answer is that this is Rabbinical Law. It's standard of stringency is equal to Torah Law.

If you want to tell me that later sages added on then how could they do so? This is in direct conflict with the mandate not to add or take away from the Torah! By adding on to HASHEM's commandment not to eat from the tree of Knowledge of Good and Evil and saying it was not to be touched, Chava came to eat from it and Adam too, and that brought ruination to the world. Now it looks like the sages are up to the same business. Say it ain't so!

There are a few important differences here. Let us say you go to Paris and you visit the famous art museum, the Louvre. There are some of the world's most famous and expensive pieces of art. Amongst them is the Mona Lisa. How much is the Mona Lisa worth? It's safe to say billion and billion and perhaps more. The museum keepers are charged with maintaining the integrity and safety of that priceless portrait. As you pass by to view the Mona Lisa you will realize that she is securely placed behind a bullet proof plexiglass window. None can just go up and touch her with their soiled fingers. There is an election beam that sets off alarm bells and launches armed security officers into action if anyone even comes too close. No one here is saying that those extra features are actually the Mona Lisa. It allows the Mona Lisa to be experienced without being compromised. That's what these guards do.

The same is true with Shabbos and Kashrus. The sages created fences to protect the integrity of these sacred, priceless ideals. These are called Gezeiros, like prohibitive Mitzvos in the Torah. The sages also decreed Takanos which are like positive or action requirements of the Torah, things to do! Where did they get the authority to do so? From the Torah! Every Mitzvoh, D'Rabanan is really also a Mitzvoh D'Oraisa. Therefore, by following these laws as well, we are sanctified.

## Hakham Yehudah Moshe Yeshua Fetaya (1860-1942)

The rabbinic roots of the Fetaya family can be traced back to Hakham Reuven David Nawi (1770-1821). Hakham Reuven was disciple of Hakham Moshe Haim, the father of the Ben Ish Hai, and was described by the latter as: **הרב הגדול אביר בתורה מורהנו הרב רבי ראוון דוד** - “the great scholar, master of the Torah, our master...” Hakham Reuven passed away at a young age and only one of his halakhic works, Yehi Reuven, has been published. His grandson Hakham Moshe Yeshua Yehezkel Fetaya (1830-1905) was a mystic and a poet. He founded one of the first printing houses in Baghdad, in 1866, with his brother Aharon and their partner Rahamim ben Reuven. Fifty-five books were printed by the printing house until 1882, but Hakham Moshe’s own poems, covering a range of themes from mysticism to stories of personal miracles and prayers for redemption, were printed only in 1909 by his son, my great grandfather, Hakham Yehudah.

I have heard the following story from my grandfather, Hakham Shaul Fetaya, regarding the initiation of his father into the wisdom of Kabbalah. Hakham Yosef Haim, better known as the Ben Ish Hai who was twenty-five years Hakham Yehudah’s senior, used to deliver a sermon on Shabbat afternoon at the great synagogue of Baghdad, Midrash bet Zilkha, also known as Slat il-Kbiri. The Ben Ish Hai was a mesmerizing orator, and his sermons lasted several hours and included halakha, Torah commentary, ethical teachings, and Kabbalah.

In 1869, when Hakham Yehudah Fetaya was only nine years old, he came home crying one Shabbat afternoon. To his father’s inquiry he answered that he attended the Ben Ish Hai’s sermon and felt frustrated that he could not understand the Kabbalah part of it. His father was moved by his son’s genuine interest and promised him that he would teach him Kabbalah. He did so until his son Yehudah turned twelve, at which point his father told him that he had taught him all that he knows and that the time has come to search for a greater master. Young Yehudah duly enrolled in the Rabbinic Seminary of Hakham Abdallah Somekh (1813-1889), the most prominent of Baghdad’s rabbis in the 19<sup>th</sup> century.

In 1876, four years into his studies with Hakham Abdallah Somekh, the Hakham asked 16-year-old Yehudah to be the Hazzan for Minha at the Rabbinic Seminary. One of the older rabbis who was present protested, claiming that a Hazzan must be a married man with a full beard, but

Hakham Abdallah Somekh insisted that the teenager he chose will be the Hazzan. “I cannot make his beard grow”, he said, “or marry him off right now, but since everyone agrees that a rabbi can serve as a Hazzan, I will now ordain him,” and so young Yehudah Fetaya was ordained, as a rabbi, at the age of sixteen.

The honor bestowed upon Hakham Yehudah by his great master did not quench his thirst for knowledge. Alongside his studies of Talmud and Halakha under Hakham Abdallah, he learned Kabbalah under Hakham Shimon Agassi and the Ben Ish Hai, eventually becoming their colleague.

Hakham Yehudah was a prolific author, who wrote his first commentary on Kabbalah at the age of twenty-three. The book, which he called Afiquei Mayim, is a commentary on Rabbi Haim Vital’s Etz Hayim, and was only published in a facsimile edition. He later expanded the commentary to what has become his magnus opus, the two-volume commentary on Etz Haim known as Beth Lehem Yehuda. This commentary was praised when first published and is still considered by leading scholars in the field as “The Rashi” on Etz Haim. Hakham Yehudah also wrote commentaries on portions of the Zohar, Yain HaReqah on the portions known as Idera Raba and Idera Zuta, and Matoq LaNefesh on the Zohar of Parashat Mishpatim. He chose to write a commentary on those portions because they were widely studied during Yahrzeits, or anniversaries for the deceased, and he wanted people to better understand what they are reading.

In general, one could say that despite his lofty field of study, Hakham Yehudah was very much down to earth and involved with the people. His house for open for all and he addressed questions and counseled people constantly. In his private diary, which is kept by my family, he describes a period in his life in which he experienced great closeness to God, a meditative state known as Devekut. He writes how his legs would carry him to his destination, while his mind and soul were elsewhere, but when he got to the Yeshivah to deliver a class on Talmud, he reconnected with reality. I find that story intriguing not only because of the meditative state it describes, but for the ability of Hakham Yehudah to detach himself from this state of spiritual bliss for the sake of his students.

Among the many books of Hakham Yehudah there are anthologies of commentaries on the Torah and Pirke Avot, original prayers, and mystical writings, but the most popular of his works is no doubt the one he calls a notebook. That book, Minhat Yehudah, is basically a Kabbalistic

commentary on the bible, but in several places the author segues to discuss the interpretation of dreams and issues related to reincarnation. In the introduction to the book he writes that his main purpose in writing the book was to inform people of the full spiritual scope of their life in this world and the world to come and to encourage them to repent.

Among the many disciples in the field of Kabbalah were H. Sasson Mizrahi, H. Yitzhak Khadouri, H. Slaman Moutzafi, and H. Salman Eliyahu, father of H. Mordecahi Eliyahu, Chief Rabbi of Israel and a very close friend of my grandfather and my family, but though his printed works focus on Kabbalah, H. Yehudah's activism and teachings were not limited to the esoteric. In one of his few Halakhic responses which were preserved, he uses harsh words to criticize men who take advantage of women desperate to get married. He calls on the other judges to amend the situation where all the power was in the man's hand, saying that women should not need to suffer by being summoned to court, or by feeling that they are tied to a man against their will.

He was also concerned with the physical and mental health of the people who came to him for a blessing or to seek help. My mother, who was eight years old when her grandfather passed away, told me that people used to say about him in Arabic "idou khudhra" – his hands are green, meaning that they felt special spiritual energy when he blessed them. She herself felt it, and I experienced it as a kid when my grandfather, H. Shaul, took care of me after I was frightened by a dog and could not sleep several nights. He sat me on his lap, placed his hand on my chest and recited verses, and I felt a pleasant warmth spreading through my body and soul. Years later, when my own children went through similar experiences, I tried to do the same, thinking that it might have been a placebo effect, but I failed.

There are many stories about H. Yehudah as a miracle worker, but the one which is truly close to my heart is one which can be emulated by all of us and does not require an expertise in Kabbalah and the ineffable name of God. The story is about one of his students in Baghdad, whose wife was expecting. H. Yehudah was concerned that the due date has passed, and asked the man about his wife's health and whether she gave birth already, but his student dodged the question. The Hakham understood the something was wrong and kept pressing, until finally the man admitted that his wife was acting in a strange manner after she gave birth, and so she was sent by the embarrassed family to live with a Muslim foster family in a village outside the city. H. Yehudah asked for the name of the family and their whereabouts, and then immediately left the Rabbinic

Seminary and went home. He asked his daughter Lulu, who was 17 at the time to join him, and together they traveled several hours until they arrived at the foster family's house. They found the woman, who suffered from what today is known as postpartum depression, in a miserable condition. Besides the shock of being rejected by her family and separated from her young daughter, she was weak and emaciated, since she refused to eat non-Kosher food.

H. Yehudah promised the woman that he will help her and asked her to hold on for just a little while. He then traveled with his daughter Lulu to the nearest Jewish settlement and went directly to the local Rabbi's house. The rabbi was amazed to see the great Hakham at his door and asked with excitement what he can to do for him. H. Yehudah explained that he was traveling with his daughter to Baghdad and that they were very hungry, and asked if the rabbi can offer them a hearty meal. Once the meal was ready, however, Hakham Yehudah said that he cannot delay and ask the perplexed host to pack the food "to go". The Hakham and his daughter returned to the woman's bedside where they fed and took care of her until she was strong enough to travel back to the city of Baghdad. When they arrived there, the women in H. Yehudah's household took care of the woman for several months until she recovered physically and mentally. H. Yehudah then called the husband and reintroduced him to his wife, not before rebuking him for abandoning her at her darkest hour.

This story, which I heard at a very young age, is engraved in my mind in a way which overshadows all the other stories about miracles attributed to H. Yehudah Fetaya. It is important because it teaches something that we are all capable of doing, even if we are not prodigies or great mystics. The Hakham's great sensitivity and understanding of human nature shines through this story.

First, he was concerned not only with the learning of his students, but with the well-being of their families, and when he heard of the crisis, he dropped everything and rushed to the woman's help, but did not rebuke the husband yet, knowing that he would not listen to him. He traveled with his daughter, because he wanted the woman to feel comfortable with Lulu taking care of her. When visiting the rabbi's house, he did not reveal the real reason he was asking for food, and would rather cast himself in a negative light, barging into a home and asking for food to go, in order not to embarrass the woman who needed the food. Finally, after returning to Baghdad,

he made sure that the woman has fully recovered and then orchestrated her reunion with her husband and daughter.

The many Halakhot which can be gleaned from this story, cannot be found in any Halakhic compilation, and they should be for us a guiding light in our dealings with others. This is but one example of his tireless work for the people of Baghdad and Israel.

Hakham Yehudah's fame reached the Iraqi diaspora in India, and he was offered a position with that thriving Iraqi community, an offer which he rejected, since his aspiration was to migrate to the Land of Israel. He settled in Israel in 1905 but returned to Baghdad after several years. He made a second attempt in 1923, and finally fulfilled his wish in 1934, at the age of 74. He initially lived in Ramat Gan, where there was a concentration of Iraqi Jews, but eventually moved to Jerusalem, where he was actively involved in the study circles of the Kabbalist school Beth El, as well as Shoshanim LeDavid and Ohel Rahel, not far from Mahane Yehudah.

## Bound by Hope

Hakham Yehudah Fetaya passed away this day, the 27<sup>th</sup> of Menahem Av, 74 years ago. My grandfather told me that during the funeral the sky was covered with dark clouds and heavy rain started pouring. Being that this is very atypical to the Israeli summer, people felt that the heavens were weeping for his death. Since then, each year on his yahrzeit (except between 1948-1967), hundreds of people ascend to his grave on Har HaZetim (Mt. Olives), to read the special prayers he composed for tumultuous times, and specifically the holocaust. He kept abreast of the news from Europe and conducted prayers for the Jews of Germany years before the Holocaust. When the war started, Hakham Yehudah's efforts intensified. Besides running with his son, Hakham Shaul, a center for distributing basic food staples to poor families, he wrote and published special prayers in a booklet he titled אסירי התקווה - Bound by Hope<sup>1</sup>, a name which conveys the message that despite all the difficulties we are going through, we are still bound to God by our faith and hope.

The introduction to the first edition, printed in 1940, reads:

סדר האמור במחברת זו הוא מה שעשינו לדאבור נפשנו בעיר הקודש ירושלים בשנת תקע בשופר גדול לחרותנו, אשר הייתה עת  
צרא ליעקב ובאו מים עד נפש. והוכרחנו להדפיסו כדי שהיא מצוีย בידי הכל, וכולנו נתהבר כאחד להרבות בתפילה ובתהנונים  
לפני המקומ ברוך הוא, אולי יחנן ה' צבאות על שארית עמו וצאן מרעיתו שלא יהיה דם נשפך כמים...

*The order of prayers in this booklet is what we had to do, with great sorrow, in the holy city of Jerusalem, in the year 1940 (corresponding to the Hebrew date alluded to in the verse: Sound a great shofar and bring forth our freedom), as we were drowning in the tidal waves of disaster [in Europe]. We had to publish it to make it available for all, so we can join together, with one heart, to plead with prayer and supplications in front of God, and hope that He will have mercy for the remnant of his flock and will not let their blood spill like water...*

Those special prayers, which Hakham Yehudah conducted almost daily at Rahel's Tomb and many other sites, were not his only effort in trying to help the Jewish People, and at one point procured an airplane from the RAF, and with a minyan of kabbalists performed a service of Kapparot over the Land of Israel.<sup>2</sup>

One of the dramatic stories I heard from my grandfather was of the time his father summoned God to trial. Hakham Yehudah gathered all the sages and Kabbalists of the famed Beth El and Ohel Rahel academies in Jerusalem, and summoned God to a Din Torah, a trial, with the specific purpose of acquitting the Jews and proving that God must stop the massacre in Germany. In order to have a fair trial, he appointed both a prosecutor and a defense attorney [himself, obviously] for the Jews. My grandfather told me emphatically of the warning his father issued to the prosecutor: "Speak briefly. Do not cast the Jews in a negative light. After all, they all are good people." The trial came to an abrupt stop when the prosecutor went on a blaming rampage against the Jewish People and would not stop despite threats and supplications. My mother added to that story that the man lost his sanity afterwards. The message of that story guided my grandfather, and since he was my master, guides also me till this very day in dealing with questions of Halakha, education, and working with the community. This unique event is typical of Hakham Yehudah, as well of his son, Hakham Shaul, who did not shy away from confrontations with God Himself.

The booklet Bound by Hope offers an example of his unabated love for the Jewish People, his deep pain for their suffering, and his willingness to argue with God. Every year since his passing in 1942, with the exception of 1948-1967 in which Mount Olives was inaccessible, his grave was visited on his anniversary, the 27<sup>th</sup> of Av, by hundreds who would ascend the narrow paths leading to his burial site. These gatherings did not include dancing, eating, or lighting candles at

the graves, and were meant to remind people of his greatness and emulate him. Appropriately for that purpose, the prayers he composed were read by the public in what was an awe-inspiring event which left a very deep impression on me as a young child. My grandfather, Hakham Shaul, our cantor, Gurji Yair, and many elders of the Iraqi community would go around the grave seven times, reading the prayers Hakham Yehudah composed during the holocaust, as he was trying frantically to do whatever he could to help Jews in Europe.

Even though the Holocaust was already thirty years behind us when I first attended those prayers, my grandfather's voice reverberated with such intensity, leaving no room for doubt that the world we live in is far from being perfect. Hakham Shaul, following in the pathways of his great father, felt the pain of the needy and the poor, the holocaust survivors whose spirit was broken, and those who felt imperfect, whether spiritually or physically, and his prayers echoed his pain.

The pinnacle of the prayers of Hakham Yehudah's gravesite were the special poems he composed in honor of our mothers, Sarah, Rivka, Rahel, and Leah. He wrote these poems in the early 1900's as an addition to the traditional Haqqafot which mention only men, and one might say that he wrote the first modern feminist Midrash. Hakham Yehudah wrote four poems, one for each one of the mothers, but Rahel received special treatment. Her poem, *Zekhut Rahel*, is three times as long as all the others combined. The special affinity of Hakham Yehudah for Rahel was a product of his Kabbalistic background, and of the special attention given to her by the prophet Jeremiah and the Midrashic literature, but it also had a personal element. His wife's name was Rahel (affectionately, in Iraqi Arabic: Chahla), and they have lost several children in their infancy. They have also suffered the blow of losing their married daughter Simha and her husband Shimon during the plague of 1914, and have taken the couple's little orphaned daughter, Haviva, under their wing. The tragic life of אמא רחל – Our Mother Rahel, was for him much more than a biblical image and a mystical metaphor for the Shekhina, it was the real-life story of a bereaved father sharing the pain with his beloved wife Rahel.

In the poem, he pleads with God but also argues bitterly with Him, demanding a better treatment for the nation and the individual. Here is the full text of the poem with my translation:

## זכות רחל – For Rachel's Sake

זכות רחל זכור קאל לבעניך פנדודים,  
 שהכניתה את אַרְתָּה לְחוֹפְּתָה בְּלִיל שְׁמֹרִים, וְהִיא נַחֲבָתָה מִסְתָּה וְעַנְתָּה מִשְׁמָם דְּבָרִים.  
 את קול שְׁעוֹנְתָה וְעַזְקָתָה הַקּוֹשִׁיבָה נָא מְשֻׁחָקִים, קול בְּרָמָה מְפִיל חֹמָה כְּנֶשֶׁמָה לְעַרְקִים.  
*Recall, God, the merit of Rachel, for her wandering children.*  
*She who has brought her adversary under her own bridal canopy in a sleepless night.*  
*She hid under the bed and responded from there [instead of her sister].*  
*Please, from your seat on high, hear her bewail and lament.*  
*Her thundering voice, shattering walls, can be heard from great distances.*

מיילֶת וְשׁוֹאָלָת כְּנַקְּבָרָת בְּפִרְשָׁת קָרְכִּים, אֵיה יוֹסֵף? אֵיה חֹזֶק? אֵיה לֵי עַל בָּן גְּנוּרִים!  
 אֵיה בָּן אָוְנִי? לֹא רָאָנִי וְלֹא גַּנְקָמְנִים!  
*She who was buried at the crossroads, is wailing and asking:*  
*"Where is Joseph, where is the one who hugged me? Woe to me for my sweet child!*  
*Where is Ben Oni, who never saw me, who never rested on my chest?"*

הַלְּכָה לְשֹׁאָל מְאֹבּוֹת פֶּל, אִיֵּה בָּנִי הַיּוֹקָרִים? לְכִי שָׁאָלִי לְבָן עַמְּרִם, קְבוּר בְּהַר הַעֲבָרִים.  
 בָּנִי מֹשֶׁה אֶל פְּתַחְתָּה, אָוּ נַטְשָׁתָה הַעֲדָרִים? אֶקְוֹל מַקְבָּרָה גְּשָׁמָע מַדְבֵּר בְּנָהִי וְקָוָל פְּמָרוֹרִים.  
 לְפָה דָּזָה אָתְּ נַזְקָה לְטַפְּשָׁ בְּהָרִים? אָנָּי חֹזֶקָה לְגַדּוֹר פְּרָצָה לֹא עַת כְּרָבּוֹת קָבְרִים!  
 מְשֻׁשָּׁה עֲנָה בְּמַגְנָה, לְיהוֹשֻׁעָ בְּנָה מְסֻרָּהִים.  
*She went and asked the Patriarchs: "Where are my dear children?"*  
*[They said:] "Go ask ben Amram, who is buried on Mount Avarim!"*  
*"My son Moshe, please speak up, where have you abandoned the flocks?"*  
*From the grave, speaking to her, rose a mournful, lamenting voice:*  
*"Why are you wandering on the mountains, what are you searching for, dear aunt?"*  
*[She answered:] "Now is not a time for idle talk, as I have to mend the broken wall."*  
*Moshe, in deep sorrow, answered: "I have handed them to your son, Yehoshua."*

יהוֹשֻׁעָ בְּנִי עֲנָנִי, אָנָה הַמָּה הַשְׁבָּטִים?  
 לְמוֹל בְּכִיתָה וְצַעֲקָתָה בְּכָה גַם הָוָא לְעַמְתָה, וְקָוָל בְּכִינָם וְשְׁעוּנָם עַלְתָה לְשְׁמֵי מְרוֹזָמִים.  
 דָּוְמִי אֲמִי מַעַט רְגָע פָּוּ אֲמֹת וְאֲגֹעַ, אָנִי מְסֻרָּהִים לְזָקִים וְלְמַלְכִי דָּוְדָרָזִים.  
*[She told him:] "Yehoshua my son, please answer me, where are the tribes?"*

*Faced with her agony and lament, he responded with his own tears  
 And the voice of their crying and wailing rose to the heavens.  
 “Please mother” [cried Yehoshua], “please stop, before I die and perish;”  
 “I have handed them to the elders and to the shepherd kings of the House of David.”*

הַלְכָה מִשֵּׁם בְּחִפּוֹזָן וּבָאָה לְקַבְּרֵי עִיר צִיּוֹן, וְאָמְרוּ לָהּ בְּמַקְדֵּשׁ מִכּוֹן שֶׁם תְּבֻקְשִׁים וְשֶׁם תִּמְצָאִים.  
 וְכָרָאוֹת רָחֵל כִּי אֵין חֹמוֹת נִתְחַל וְאַבְנֵי מַקְדֵּשׁ הֵם שְׁרוֹפִים, וְאֵין פְּהַנִּים וְלוּיִם וְאֵין אַרְון וְכָרוֹבִים.  
 אֲצַעַקָּה מִרְתְּמַרְמָר, וְחַלְצָה מַרְגֵּלָה מַגְעָלִים, וְקַרְעָה אֶת כְּתֻזּוֹת פְּסִים וְהַצְעִיר וְהַמְּעִילִים.  
 וְשַׁקְתָּרָה עַלְיִ בְּשָׂרָה וְנַחֲגַלָּה בֵּין סְלָעִים, וְטַפְחָה יָד עַל בֵּן גְּכָבָד אֲשֶׁר גְּאָבָד בֵּין הַעֲמִים,  
 וְקַשְׁרָה חָבֵל עַל עַם חָבֵל, וְעַשְׂתָּה מִסְפֵּד פְּתַנִּים.

*She left him and rushed to the grave sites of the city of Zion.  
 [The kings] told her: “On the Temple Mount, there they shall be sought and found.”  
 Alas, when Rachel saw that there are no walls nor fences,  
 And the Temple has been burnt to the ground,  
 And that there are no priests nor Levites, and no Ark nor Cherubim,  
 She shrieked in agony, and cast away her shoes.  
 She tore the striped robe, and her scarf, and her dresses.  
 She wore sackcloth and rolled on the rocks,  
 Slapping her flesh to mourn her lost son.  
 Clad in sorrow for God’s people, she was howling in grief.*

קָפְצָה בְּחִפּוֹזָן לְאָל עַלְיָוֹן, וּבָקָעָה אֶת פֶּל הַרְקִיעִים, וּעַלְתָּה לְמַעַן לְרוּם חַבְיוֹן וְעַמְדָה לְפָנֵי צָר עֲזָלָמִים.  
 וּמְבָעָה עַלְבָּוֹן שֶׁל עַם צִיּוֹן בְּשָׁק וּבְכִי וּבְמַחְנָנוֹנִים, אָנָא אָבִי! לְקוֹל כָּאָבִי, תִּפְנַה אָלִי בְּרַחָמִים.

*Hurriedly she leapt above, towards God, sitting on high,  
 Speaking for the People of Zion, and raising her voice with tears, [she demanded:]  
 “Please Father, see my pain, and heed my plea with mercy!*

צָר תְּעוּזָה הָאָם עַזָּה תְּהִנָּה אֲבוֹזָה לְעוֹלָמִים? וְאֵיךְ כֹּלֶה מְסִיק בְּעַלְהָ תְּגַרְשֵׁשׁ אָוֹתָה לְמַרְסִקִּים?  
 וְאֵיךְ שְׁלַחַת הָאָם מַקְוֹן וְלֹא לְקַחַת כְּבָנִים? וְאֵיךְ נִטְשַׁת הַצָּאן תֹּועֵם בֵּין אֲרִיוֹת וּלְבָאִים?

*My Rock, My Hope, will Your people be forever lost?  
 How could You tear a bride from her husband lap and send her into exile?*

*How could You shoo the nesting mother, but not take care of the fledglings?  
How could You abandon Your sheep among devouring lions?*

איך תדום לבני אֹדום הַמִּקְרִיבִים מֵהֶם זְבַחִים? אם לא פָּעָן פְּשָׁעָם בַּיִדִּים קְדוּמִים?  
אם מֵאָרֶר לְפִנֵּיךְ אֶלְף שָׁנִים בְּעִינֵיכְ? וְאֶלְף שָׁנִים לְעַרְבָּה וְלֹא חֶדֶל הַמְּכָאָבָב.  
ואיך אָזְהָר כְּפָלָאֹת וְקַשְׁבָּן מַעֲזִים? מַמְּתִי מַרְסָם? מַמְּתִי תְּנַמֵּם? וְאַתָּה דָּזְחָה מִים לִמְים!  
אל אַיּוֹם תְּנַהֵ פְּקִיּוֹם וְלֹא תְּקַחֵה עוֹד בְּקָרִים!

*How can you remain quiet while the People of Edom [Germany] turn them into sacrifices?*

*Were they not punished enough, were they not engulfed by vicious waters?*

*Are a thousand years not enough for You?*

*The sun is already setting on the second millennium, and the pain is not letting.*

*Where is the miraculous sign? When is the Time of Times?*

*When will you have mercy? When will you console us?*

*You keep putting us away, day after day!*

*Almighty God, redeem us already! Do not soothe us with words!"*

קול יוצא מעל כסא, דומי בתי בלת אִתְּנִים! מַנְעִי דְמָעָה מַעֲינָךְ וְאֵת חַכָּה מַתְּחַנוּנִים!  
כִּי מַרְבָּ שִׁיחָק וּבְכִינְתָּה נְדָדו כָּל הָעָלִיּוֹנִים, וְהוּא עָלָה עד מַעַלָּה וְגַמָּרוּ קְרַחְמִים.

*A voice was then heard from the Divine Throne: "Hush my daughter, oh bride of the mighty!"*

*Let your eyes stop crying; Let your voice rest from supplications.*

*Because of your tears and lament, the heavenly worlds are now in exile.*

*And He rose up above, and mercy has been invoked.*

ולא אֹדום עָדִי אֲקוֹם זְמִי עֲבָדִי נְגַשְּׁפִים, וּבָזְמָן קָאָר אֲהַיָּה קֹאָר וּבָאָר כָּל קְרַשְׁעִים.  
אֲגֹזָר אֲבָנָה מִמְּחֵי צְלָמָא וְמִדֵּק יִמְהָה לְרָסִיסִים, וְאַפְתָּח פִּבְתּוֹת הַסְּתָוֹמוֹת, שֶׁל נְשָׂמוֹת הַבְּלֹעִים.

*I shall not rest until I revenge the spilled blood of my servants,*

*And shortly I will sever and destroy the wicked.*

*I will cut the stone, smash the idol, breaking it to shards.*

*I will open the sealed coffers and release the swallowed souls.*

קומי אורי התנערן ולבשי בגדי פיקרים, גם קול עמי ולאמי הם מתחדים ואומרים:

אם עונינו ענו בנו עשה נא למן שחק  
זכרנו ה' ברצון ענף

*Rise up, shake away your sorrow, and wear your precious clothes.”*

*I hear the voice of my nation saying:*

*“Though we are sinners, do for Your great name’s sake!”*

## The Midrashic Origin of Rahel’s Merit

This poem, in which Hakham Yehudah Fetaya casts Rahel as a defense attorney for her children, is based on two Midrashic sources, which are in turn inter-connected. The first Midrash<sup>3</sup> has been made famous by Rashi, who included it in his commentary on Genesis<sup>4</sup>, in order to explain the mystery of how Yaakov was tricked into marrying Leah instead of Rahel. According to that Midrash, Yaakov and Rahel suspected that Lavan will attempt a deception, and so decided on a secret password to enable Yaakov to identify his bride. At the last moment, however, when Rachel realized that her father is determined to lead her sister down the aisle, she felt sorry for her and gave her the password as so not to shame her.

The second, less-known Midrash, is found in the introduction to Eikha Rabbah,<sup>5</sup> the Midrashic commentary on the Book of Lamentations, and is based on a verse from Jeremiah<sup>6</sup> which describes Rahel’s agony after the destruction of the Temple:

קול בראה נשמע נהי בכי ממרלים רחל מבכה על-בנינה מאנה להנעם על-בנינה כי איננו

*A voice is heard in Ramah [also: a strong voice is heard]. It is the sound of wailing and bitter tears. It is the voice of Rahel, mourning her children, refuses to be consoled for her sons who are now gone!*

In the dramatic narrative of the Midrash, Abraham, Yitzhak, Yaakov, and Moshe are pleading with God on behalf of the Jewish people. Each of the men steps forward and asks God that as a reward for his many sacrifices and dedication to God, the Jewish People will be forgiven and redeemed, but none of them is answered. Rahel then jumps the line, apparently uninvited, and

speaks to God about her own experience with her sister. She describes how despite her great love for Yaakov she was willing to let her sister Leah take her place because she did not want her to suffer disgrace, and then levels this question at God:

קָפְצָה רָחֵל אָמַנו לִפְנֵי הַקָּדוֹשׁ בָּרוּךְ הוּא וְאָמַרְתָּה: ... אַנְּיָ שָׁאַנְיָ בָּשָׂר וְדָם עֲפָר וְאֲפָר לֹא קָנָתִי לְצָרָה שְׁלִי וְלֹא הַוְצָאתִיה  
לְבּוּשָׁה וְלְחַרְפָּה! וְאַתָּה מֶלֶךְ הָיָי וְקִים רַחֲמָן, מִפְנֵי מָה קָנָתָ לְעִבּוֹדָת כּוֹכְבִים שָׁאוֹן בָּה מִמֶּשׁ? וְהַגְּלִיתָ בְּנֵי וְנִהְרְגוּ בְּחֶרֶב  
וְעָשָׂו אֹיְבִים בָּם כְּרָצֹןְם

*I am but flesh and blood, dust and ashes, yet I was not jealous of my rival [Leah] and did not cause her shame and disgrace! You, Eternal and Merciful King, why were You jealous of idolatry which has no value? How could you send my sons go in exile, be killed by the sword, and handed over to their enemies to do with them as they wish?*

Unlike God's treatment of the men who spoke before Rahel, He hears her request and promises redemption, using the subsequent verses in Jeremiah<sup>7</sup>:

מִנְנִי קָוְלָק מִבְּכִי וְעַיְנִיהִ מִדְמַעָה כִּי גַּיְשׁ שָׁבָר לְפָעַלְתָּךְ... וְשָׁבָו מִאָרֶץ אָוֶב, וַיִּשְׁתַּקְעָה לְאַקְרִיבָה... וְשָׁבָו בָּנִים לְגִבְעָהִים

*Let your voice mourn no more, let your eyes shed no more tears, for your deeds are rewarded... they shall return from enemy lands... your destiny is filled with hope... as the exiled sons will come back home...*

## Feminine and Masculine perspectives

At first glance it seems that Rahel's argument follows the same pattern of the men, and that the only reason the Midrashic author makes God answer her and not the others, is that Jeremiah spoke of the dialog between Rahel and God. A more thorough and comparative reading, however, will reveal deep insights on the nature of men and women and on our understanding of Divine justice.

Abraham, Yitzhak, Yaakov, and Moshe, appear before God as if they were in court. They maintain decorum, and each one presents a similar argument: "I did this and that, so I deserve a reward." Each one of them is ignored, and they interpret it as a sign that their request is turned down, and do not argue any more. Rahel, the bereaved mother, breaks the rules. Like a wounded lioness, she pushes her way past the men and speaks uninvited, as if rebuking them for giving up and retreating.

Rachel is not asking for a reward, but rather lectures God., telling Him that He should learn from her. She suggests that she, a mortal woman, was able to overcome her natural selfishness and jealousy, and that God should follow her example and not be jealous of the “second wife” of the Israelites – the idols.

The audacity of the author of this Midrash is shocking. He questions one of the fundamental prohibitions of the Torah, arguing that God should not punish His children so harshly for worshipping idols. The author speaks more as a loving mother than as a disciplinary leader we know from the stories of the judges and the prophets. I am certain that my great grandfather understood the pain of all mothers, and of course of his own wife Rachel, and that he took the role of defender of the Jewish people to new levels.

## **Mother Rachel = Hakham Yehudah**

Hakham Yehudah uses the Midrashic Rachel to present his theological dispute. From behind Rachel’s mask we can hear the voice of Hakham Yehudah, who conveys both his personal pain and his shock at the terrible massacre of Jews in Europe, while emphasizing the different approach of the forefathers and the one mother.

The poet uses Rachel as a symbol for the nation, and in a few lines, sketches Rachel’s tragic life. He speaks of her grief for her lost descendants, and simultaneously of the grief of her immediate sons Joseph and Benjamin. Joseph is described as a toddler who is very close to his mother. In the original Hebrew, he is said to be **נִפְחָד**, which literally means hovering or covering with the body, a word which conjures the image of a mother and child huddling together, deriving comfort and joy from each other’s company. Benjamin is referred to here as Ben Oni, the name given to him by Rachel at birth. The name has a double entendre – it could mean the son of my sorrow, or the son of my [last] strength. Rachel is lamenting not being able to breastfeed her son, depriving him, as if it were, of the important role of the mother for the child, that of a nurturer and giver of life. Finally, as if to add insult to pain, she is buried at the crossroads, as if she was not important enough to be have proper burial.<sup>8</sup>

After her initial shock and mourning, she rises from the dust and takes action, going from one male leader to another to inquire about her children. In the original Midrash there is no interaction between the men and Rachel, but Hakham Yehudah creates a dialog which intensifies

the image of Rahel the bereaved mother. She uses terms of endearment when talking of her children, and includes not only her direct descendants, Joseph, and Benjamin, but all twelve tribes. She uses harsh words when talking to Moshe, first accusing him that he has abandoned his people, and then telling him that he is wasting his time in trying to calm her.

In Rahel's encounter with Yehoshua there is a new element. Not only does she exchange words with him, but her tears and mourning affect him so powerfully that he pleads for his life, even though the readers are aware that he speaks from the grave. The protagonists address each other as direct relatives: aunt, mother, son, showing that a true leader cares for the people the way relatives care for each other, with unconditional love. The poem shows gradual progress as Rahel moves from one man to another. The patriarchs shake away the responsibility and refer her to Moshe. Moshe tried to talk her out of worrying but she would not hear it. Finally, Yehoshua is influenced by her emotions, but it is too much for him to bear and he pleads with her to stop.

Rahel finally arrives to the Temple Mount and witnesses the destruction and desolation. Her spirit broken, she expresses her grief by slapping her flesh, a practice mentioned in the bible<sup>9</sup> and still common in the Middle East. She tears her striped robe, a reference to Joseph, as well as the attack on Tamar by her brother Amnon.<sup>10</sup> The robe embodies the suffering of Rahel as a mother whose son was torn from her arms, as well as one whose most sacred and intimate place has been compromised.

The following stanza is a turning point in the poem, and it is based on the line in the Midrash which describes Rahel as “jumping” and speaking out of turn.

*Hurriedly she leapt... she demanded... Father, see my pain, and heed my plea with mercy... How could You tear a bride from her husband lap and send her into exile? How could You shoo the nesting mother, but not take care of the fledglings?*

Unlike the men, who remain passive in their grief, Rahel is able to rise from the crushing pain and act. She approaches God with very harsh words which are, of course, the words of Hakham Yehudah Fetaya. He again uses the language of blood relations, as he makes Rahel call address God as “Father” and speak of the Jewish People as a bride who is driven away. Of all the arguments presented here, the boldest is the analogy Hakham Yehudah draws between the people in exile and the nesting bird. This analogy refers to the commandment of sending away a nesting

bird while taking its eggs or fledglings.<sup>11</sup> Obviously, the Torah did not mean to say that one is obligated to separate the mother from its offspring, but rather that if one needs the eggs or fledglings, he should spare the mother. The analogy Hakham Yehudah makes is bold and daring because the Talmudic sages specifically said about this commandment that one is not allowed to use it to invoke divine mercy:<sup>12</sup>

האומר על קן צפור יגיעו רחמיך... משתקין אותו

*If [the one leading the services] says: may You show mercy to us as toy did to the nesting bird... he must be silenced.*

The Talmud offers two explanations which seem to suggest that the rabbis feared that such statements will encourage a discussion of theodicy, or divine justice, which was a very sensitive issue for post-destruction Judaism. Not only does Hakham Yehudah Fetaya not shy away from this issue, practically accusing God of treating Jews unfairly and of abandoning them, he very cleverly changes the dynamics of the analogy, making it more dramatic.

Whereas the commandment calls for releasing the mother and taking the eggs or fledglings for consumption, in the analogy the mother is sent into exile and the fledglings become the responsibility of the hunter, which in this case is God.

Here, the evolution of Hakham Yehudah's Rahel is complete. She first transitioned from a bereaved mother to a wandering mourner, and she now becomes a fierce advocate for the Jewish people, firing a rapid succession of fourteen arguments against God's treatment of her children. Through Rahel, Hakham Yehudah speaks of his deep pain over the Holocaust, using Midrashic Edom to refer to Germany. He pleads with God but does not hesitate to use an accusatory tone, saying that God has abandoned us and that He does not keep His promises.

The poem concludes with a promise of redemption with many mystical elements, but its essence is a replay of what has transpired between Rahel and Yehoshua. Just as Yehoshua begs Rahel to calm down because he is overwhelmed by the emotions she stirred in him, God now tells Rahel to stop crying, using the verse from Jeremiah. The reason for that request, according to Hakham Yehudah, is that her powerful prayers caused the Divine worlds to commiserate with her suffering and as a result they are now in exile. Using Rahel as a mask, Hakham Yehudah issues a call to all Jews to be relentless in their efforts to usher in the redemption.

The way to do it, as he signaled in his poem about Rahel, as well as in his teachings and leadership, is to be active and not sink into depression, indifference, and apathy. He taught us that we cannot keep quiet when people suffer and that we must constantly challenge ourselves, and God, until we have a perfect world.

## **Halakha and Kabbalah**

Hakham Yehudah Fetaya, as I have previously mentioned, is considered one of the leading Kabbalists of the 20<sup>th</sup> century, both in terms of his outstanding disciples and colleagues, and his very important commentaries on *ע"ז חיים* and *אדרא רבא וזוṭṭא*. It is therefore extremely important to hear his view on the role of Kabbalah in Jewish law, as was conveyed to us by his son, Hakham Shaul Fetaya. My grandfather explained that halakhot influenced by or instituted by Kabbalah were never meant for the public, but rather only for the true Kabbalists. That is because the idea at the basis of these laws and practices is that by performing a certain act in this world, one impacts and changes the divine worlds. Let us consider a famous example of a practice stemming from this Kabbalistic approach.

## **Sweetening the Harsh Judgment**

The Talmud says in the name of Rava that one must add water to the wine of the Kiddush, or else it will be undrinkable and undeserving of being called wine.<sup>13</sup> Rava's rationale is that without adding water the wine is too strong. Rava's opinion was not accepted as binding but rather as a recommendation, and Rabbi Yosef Karo writes that one is allowed to make Kiddush with a very strong wine. He does add that it is preferable to dilute the wine, as long as it is done properly, meaning that the final product is better than the original. Rabbi Moshe Iserels, the Rema, comments on that: "our wines are better without diluting."<sup>14</sup>

According to both Rabbi Karo and the Rema, the practice of diluting wine with water should have all but disappeared in the modern age, as most wines are perfect, or at least drinkable, without any additions. This is indeed the case for most Ashkenazim, but the Sephardic world, under the influence of Kabbalah, took a different course. The practice of adding water to wine was explained by Kabbalists as an act which weakens, or sweetens, the harsh judgment, as water represents mercy and wine represents rigor.<sup>15</sup> To avoid extreme dilution of the wine, the

Kabbalists recommended adding three droplets of water to the Kiddush cup, a practice kept in many Sephardic households.

The idea that a person can change God's mind by adding three droplets of water to the Kiddush cup could be deeply disturbing to anyone who is familiar with Maimonides' principles of faith, and specifically the one which states that God is immutable, unchanging – *בל' שינוי ותמורה*.

There are several ways to reconcile this contradiction. One is to reject all Kabbalah-influenced practices, while another is to find deeper symbolism and meditative tools in the Kabbalistic principles. In the case of water and wine, for example, when one adds the water to the wine, he should contemplate his behavior and decide to make a special effort to override his anger and be kinder and more sensitive.

The third approach, that of Hakham Yehudah Fetaya, is that there might be a way in which humans induce change in God's world. However, this is a role reserved for people with a very high spiritual level, namely the true kabbalists. Hakham Shaul, faithful to his father's teachings, taught us not to add water to wine and not to wash our hands with Last Water, another practice which would have disappeared if not for Kabbalah. In general, Hakham Shaul was uncomfortable with the popularization of Kabbalah study, as he felt that the study is technical and superficial, and that no attention is paid to spiritual growth and interpersonal relationships. He was also opposed to the phenomenon of seeking blessing from "kabbalists" and rabbis who charge for their services. He told me that Hakham Yehudah Fetaya had a very clear opinion on this issue, which is that one is not allowed to seek advice, guidance, blessings, or prayers, from anyone who expects something in return for those services.

He explained that God does not need middlemen, and if there exists a person who was invested by God with special powers or access to Him, that person should care enough for others as to offer prayers and blessings without asking for a penny. My grandfather added that even if the rabbi does not ask for a payment but says that he will bless a couple with a child on the condition that he will serve as the Sandak, one should decline the offer.

My grandfather, Hakham Shaul Fetaya (1910-1982), refused to serve as a rabbi, and instead dedicated his life to help people from all walks of life. He was a member of the Etzel underground and helped organize caravans to Jerusalem during the War of Independence. He

fought for the inclusion of Iraqi and Sephardic Jews in the administrative offices of the newly born State of Israel and continued his father's tradition of helping the poor and needy.

He took care not only of material needs, by personally delivered supplies to immigrant families, but also of spiritual needs, counseling and advising thousand in his little store-office near Mahane Yehuda. His method of dream interpretation was studied by Dr. Yoram Bilu, who was astounded to discover a whole world of symbolism in the mystical teachings of Hakham Shaul and his father.

In the late 1970's Hakham Shaul launched a new initiative with his daughter Simha, my mother, and Dr. Hannah and Israel Oppenheimer, who were Holocaust survivors. That initiative was an occupational habilitation center in which people with physical and mental disabilities learned new skills or revived old ones, in order to integrate into the regular work market. My grandfather's motto was the verse from Job (31:15): His maker made me as well, and we were formed on one womb. Hakham Shaul extended his belief in equality to the religious realm as well and taught his disciples and grandchildren not to use words such as religious and secular to describe factions in Israeli society, as was customary. To our question what term to use, he replied that all Jews are observant, but each one chooses to observe different mitzvot. He taught us that religiosity is not judged by external elements, and that there is much we need to learn about others. In the spirit of equality, he also encouraged my older sisters to have a Bat Mitzvah, as early as 1969, when this was not a popular practice among observant Sephardim in Israel.

My grandfather was the epitome of a Sephardic Hakham. He knew the bible by heart, read and wrote poetry, and was an activist, a philanthropist, and a philosopher. He did not believe in leading from above, and preached for loving, learning to know, and respecting each other. His approach to Halakha was accommodating and understanding. He never forced anyone to drink wine or eat matzah on Seder night, he tried to avoid Kabbalah influenced practices, and I remember very well how on Yom Kippur, when I was seven years old, when speaking about Shabbat observance, he said that he knows that many people watch TV on Shabbat, and that he just asks them not to switch channels or play with the volume. His approach of understanding and respect has guided me in my Halakhic writings and my community work, and I wish more rabbis and educators would have adopted it.

Here is a passage from his book *Hirhurim* (Musings), in which he addresses the religious elected officials and Knesset members, whom he viewed as enslaved to their seats – נרצעי הכסאות:

“...enough PR, arguments, and animosity... instead of the noise and storms come down to the people, walk with the people. It will not take away from your honor, it will only augment it. Didn’t God Himself come down on Mount Sinai, and doesn’t it say that Moshe came down to the people? But you... you rest on the comfortable chairs in your offices and never come down... and when you do you go to synagogues and study halls, but not to the “commoners” ...

Please, if you ever decide to come down to the nation, don’t go only to those who know the values and principles, who apparently do not keep them, and who despite all this are called holy people... go to those who know and skip, and those who do not know our tradition and history...

Because this nation is wise, intelligent and willing to listen, they will understand you, they are thirsty for knowledge, especially the youth, the knowledge of Jewish insight, the principles, values, and Israeli tradition. Speak to the youth. Speak to their heart. Explain gently, with love, sensitivity, and attention, and they will listen...

Teach the rabbis, the newly minted and the veterans, to be wise and not use the Torah as a tool to aggrandize themselves, so people will learn from them noble and worthy values.

Talk to the rock – it will give forth water... do not cause pain...”

These words epitomize my grandfather, Hakham Shaul Fetaya, and he lived by them. My grandfather’s love for scholarship, bible, poetry, and music, as well his activism has deeply influenced me and my siblings, who all continued aspects of his legacy in one way or another. My oldest sister Haviva Pedaya is a professor of Jewish Philosophy and Kabbalah and a poet, and the second, Hannah, is the founder and manager of the Firqat al-Nur orchestra, and she spearheads the revival of Sephardic music and liturgy in Israel. My brother Yehudah is the rabbi of my grandfather’s synagogue in Jerusalem, Minhat Yehudah, and he teaches and maintains the unique Baghdadi tradition of Hakham Shaul, and my sister Ayyala is an activist, a playwright, and a poet.

As a family, we feel now that there is an awakening, a thirst and longing for the legacy of Sephardic and Mediterranean Jews, and we hope that this legacy will contribute to the creation of bridges of understanding and mutual respect.

Haim Ovadia

נין ונכד לḥכם יהודה פטיה זצ"ל

<sup>1</sup> [ed.:] The cover of the booklet's recent edition is in the full edition.

<sup>2</sup> The story was documented in The Jerusalem Post, August 14<sup>th</sup> 1987, under the title "Circle of Blood", as it was told by the British pilot of said airplane.

<sup>3</sup> בבל, מגילה, יג:ב: אמרה ליה... אבא רמאה הוא, ולא יכולת ליה... מסר לה סימנים. כי מטא ליליא, אמרה: השטא מיכספה אהתא, מסרטינהו נינהלה. והיינו דכתיב ויהי בברק והנה היא לאה... מתוך סימני שמסרה רחל לאה לא הוה ידע עד השטא.

<sup>4</sup> 29:25

<sup>5</sup> איך רבה פתיחות, כד

<sup>6</sup> 31:14

<sup>7</sup> 31:15-16

<sup>8</sup> While the reason for Yaakov's decision to bury Rachel there is not clear from the text, the Midrash, quoted by Rashi on Genesis 48:7, says that he apologized to Yosef and explained why he acted in that manner.

<sup>9</sup> Num. 24:10; Jer. 31:18; Ez. 21:17; Job 27:23; Lam. 2:15.

<sup>10</sup> II Sam. 13:19.

<sup>11</sup> Deut. 22:6-7.

<sup>12</sup> משנה, ברכות, ה:ג, ועיין בבלוי שם, לג:ב

<sup>13</sup> בבלוי, שבת, עז:א: ... אמר רבא: כל חمرا דלא דרי על חד תלת מיא - לאו חمرا הוא

<sup>14</sup> שולחן ערוך אורח חיים הלכות שבת סימן רעב:ה: יין חי אפילו אם הוא חזק... מקדשים עלייו, ומכל מקום יותר טוב למזגו ובלבד שהוא מזוג כראוי. הaga: ווינוט שלנו יותר טובים הם بلا מזגה

<sup>15</sup> רבינו רפאל עמנואל חי ריקי, (איטליה, 1688-1743), הון עשיר, מסכת סוכה פרק ב: מזיגת הכווס של יין במים, מורה המתתקת הגבורה בהתעוררות החסדים



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### Rabbi Yaakov Neuburger – Pondering Our Unique Mission

I often found it seemingly juvenile, and yet the Torah obviously sees it sufficiently substantial to warrant a military exemption: "Let him go back to his home, lest he die in battle and another dedicate it...Let him go back to his home, lest he die in battle and another harvest it....Let him go back to his home, lest he die in battle and another take her [into his household as his wife]" (Devarim 20:5-7).

To be sure, starting a family, a home, and an orchard business all require focus and the investment of one's greatest energies. The uncertainty of whether one's early investments in some of the defining enterprises of life will bear fruit can spark anxiety that will hamper the necessary focus of any soldier. In turn, his value as a soldier is diminished and his participation in military exercises can be bettered by someone else. That is how Rav Boruch Epstein, author of the Torah Temima, justifies the exemptions. Certainly, ruminating over one's personal dreams could reduce his ability to be totally in for the team, something that may be necessary in military maneuvers, and that I am able to grasp. However, the Torah predicates this military deferral on the fear that someone else will take over one's dream rather than the fear of losing it entirely. Rashi quotes the Gemara that explains that it is human nature to be particularly tormented when someone else waltzes in and gains control over our efforts and our investment is consequently ignored. Nevertheless, should the fruitlessness of the investment and attendant instability inflicted on family seem secondary to the aggravation of feeling cast aside and irrelevant? Isn't the priority recorded born out of a self-absorption that is inconsistent with the ideal Torah character we are training ourselves to become?

Perhaps the Torah is not highlighting jealousy and self-centeredness at all, but rather encouraging each person to reflect on what makes their home, family, and business unique. Possibly the Torah challenges us to consider how each of these things could not be done in the same way by anyone else? What G-d given talents and what divinely ordained encounters characterize my accomplishments? Perhaps my business and profession could model integrity, caring, humility and the patience of providing opportunities to

others, in a way that others don't? Given the "potentials" in place, should our home be bustling with goodness and expectations, or should our home prioritize peacefulness and acceptance and emotional safety? With all the givens of life, should I focus on legacies or on relationships?

Through the troubling and very real mind games of the soldier, we are all asked to wonder whether we will do justice to the avoda that we may be destined to accomplish. This is certainly a good kri'as ha'Torah with which to welcome the month of Elul!

More divrei Torah and shiurim from Rabbi Neuburger  
More divrei Torah on Parshas Shoftim

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from: **Rabbi YY Jacobson** <[rabbiiy@theyeshiva.net](mailto:rabbiiy@theyeshiva.net)> reply-to: [info@theyeshiva.net](mailto:info@theyeshiva.net) date: Aug 17, 2023, 7:08 PM subject: If Judaism Is Immutable, How Can It Be Relevant? - Essay by Rabbi YY

If Judaism Is Immutable, How Can It Be Relevant? A Tale of Two Torah's: The Timeless and the Timely

The King's Torah's

In this week's Torah portion, Shoftim, the Torah teaches us a fascinating mitzvah concerning every Jewish King:

18 And it will be, when he sits upon his royal throne, that he shall write for himself a copy of this Torah on a scroll from [that Torah which is] before the Levitic kohanim.

19 And it shall be with him, and he shall read it all the days of his life, so that he may learn to fear the Lord, his G-d, to keep all the words of this Torah and these statutes, to perform them.

Asks the Talmud:[1]

סנהדרין כא, ב: מלך אין, הדירות לא? לא צריכה לשטי תורה וכדתניא וכותב לו את משנה וגוי כותב לשמו שתי תורה, אחת שהוא יוציאה וכוכנתה עמו ואחת שמונחת לו בבית גנוזו.

Every Jew is obligated to write a Torah Scroll (Sefer Torah), as the Torah states explicitly[2] ("And now, write for yourselves this song, and teach it to the Children of Israel. Place it into their mouths, in order that this song will be for Me as a witness for the children of Israel." The Talmud[3] understands it as an obligation to write the entire Torah).[4] If so, why does the Torah give a separate mitzvah for the king to do this?

The Talmud explains that the Torah is instructing the Jewish leader to write not one, but two Torah Scrolls. One travels with him wherever he goes, and one remains permanently at home, in his private treasury.

But why? What's the point of the king having two Sifrei Torah?[5] Timeless and Timely

There is, perhaps, a profound message here.[6] The Leader must hold on to two Torah's, as it were. One remains in his treasure chest; the other travels with him wherever he goes, in the words of the Mishnah:[7] "He goes to battle, and it goes with him; he enters the palace and it enters with him; he sits in judgement, and it sits with him. He sits down to eat, and the Torah is there with him."

There are two elements to Torah: On one hand Torah represents the unwavering truth that remains unchangeable, unbendable, un-phased by the flux of time, space and history. Shabbos never changes. Tefilin, matzah, shofar, sukkah, mikvah, mezuzah, the text of Torah, the bris milah—these are eternal, unchangeable, Divine laws and truths. The same delicious or horrible "stale" matzah we ate 3300 years ago in the desert we still eat in the 21st century in New York, Miami, and Los Angeles. The same ram's horn we blew two millennia ago is still blown today the world over. The same tzitzis, the same Shabbos, the same Yom Kippur, the same kosher laws, the same conversion laws, the same Torah.

But there is another element to Torah—its ability to give perspective and

guidance to each generation according to its unique needs, challenges, struggles and experiences. Each generation is different. The issues that plagued us a half-century ago are not the issues we confront today, and conversely: today we have dilemmas never experienced before in history. Our bodies, psyches, souls, sensitivities, and environments are different. Our world has changed in significant ways. Torah must also be a blueprint and luminary to the unique journeys of each milieu, to the climate of each generation, to the ambiance of every era, to the sensitivities of each age, to the yearnings of every epoch.

The prophet Isaiah says:

My Lord has granted me a tongue for teaching, to understand the need of the times, to give knowledge to those who thirst for knowledge.

A Jewish leader—and every one of us is a leader in our own individual way—must have two Torah's. One Torah remains immune to change. One pristine Torah Scroll never leaves the ivory tower of the king's treasury house. It speaks of truths of life and of G-d that are timeless. It transcends borders of time, geography, and people.

The Kilogram

There was a recent report concerning 'The Kilogram' in Paris. 'The Kilogram' is a calibrated weight by which all other kilograms in the entire world are measured. It is kept in triple layered glass casing, to ensure that it is in no way influenced by the elements. Unfortunately, scientists are afraid that this standard kilogram has been losing some mass over the years. This, at least theoretically, -has ramifications for all types of commerce throughout the world. The pure kilogram standard must never become corrupted!

The famous Maggid of Dubno once told the story of a country boy whose fame as an archer had spread far and wide. A delegation of the finest archers traveled to his farm estate in order to see for themselves if the rumors were true. As they approached the estate, they observed hundreds upon hundreds of trees, each one painted with a target, and in the center of each bullseye there was a single arrow. Amazed at the sight, they asked the lad how it was that he had become such a fine shooter. He replied plainly that he would shoot the arrow first and then paint the target around it.

This is the error some make with Torah. You can't just keep on adjusting Torah to your predefined positions and desires. If Torah is truth, it is true in all times and in all places. If it is not true, who needs it all together?

But it is not enough to just teach a timeless Torah. A leader must also find in Torah the language of G-d to this particular generation, to this individual person, to this unique situation, to this singular struggle, to this mindset and weltanschauung. Torah has the capacity to speak to the timely as much as to the timeless, to the modern as much as to the ancient, to the future as much as to the past, to the things that are always in flux as much as to those that remain unchangeable.

To Find Your Bio in Torah

This is also the deeper meaning of the Torah's words: "And it shall be with him and he should read it all the days of his life in order that he learn to fear G-d, to observe all the words of this Torah..."

The Torah is telling us more than just the fact that the king has to read the Torah throughout the days of his life. The actual literal translation reads: "He should read in it all the days of his life." This means that the Jewish leader must be able to see in Torah a perspective for "all the days of his life," for everything that transpires in his life and in the life of his people. He has to read in it (v'kara bo) his entire biography (kol yemei chayav), all the events of his life. Every new situation has a perspective from Torah, guidance from G-d's blueprint for life.[8]

The Balance

It is not always an easy balance. How can the same Torah address both the timeless and the timely? If it was relevant 3000 years ago how can it still be relevant today?

The answer is: Since the Torah comes from the Creator of the world, He embedded into the Torah all the changes, developments and fluctuations of history. The Torah is the Divine blueprint not only for timeless truths, but also for timely issues and questions—it speaks to each generation addressing

its dilemmas and concerns.

The late Israel Shenker, a New York Times reporter, interviewed the Lubavitcher Rebbe for his 70th birthday. Here are his words published in April 1972, in The Times:

"To the suggestion that his orthodoxy marks him as a conservative he [the Rebbe] objected, saying: 'I don't believe that Reform Judaism is liberal and Orthodox is conservative. My explanation of conservative is someone who is so petrified, he cannot accept something new. For me, Judaism, or halacha [Jewish religious law], or Torah, encompasses all the universe, and it encompasses every new invention, every new theory, every new piece of knowledge or thought or action.'

"Everything that happens in 1972 has a place in the Torah, and it must be interpreted, it must be explained, it must be evaluated from the point of view of Torah even if it happened for the first time in March of 1972."

These are the "Two Torah's" a Jewish king—and by extension every Jewish teacher and leader—must possess.

[1] Sanhedrin 21b

[2] Deuteronomy 31:19

[3] Nedarim 38a

[4] The Rosh (Rabbi Asher ben Yechiel, c.1250-1328) writes (Laws of Sefer Torah 7:1) that in previous eras, the Torah scroll was the only text that Jews could use for study, since it was forbidden to write down the Oral Law. Nowadays, however, when it is permissible to write down the Oral Law, and the Torah scroll is stored in the synagogue for public readings rather than used as a study text, the obligation to write a Torah scroll encompasses the obligation to purchase other holy books (seforim) which can be used for study. Some halachic authorities understand this to mean that there is no longer an obligation to own or write a Torah scroll and that the obligation is fulfilled in its entirety by owning other holy books, e.g., a Chumash, Mishnah, Talmud, Code of Jewish Law, etc. Other authorities say that the Rosh meant that the obligation to write a Torah scroll still exists, but that in addition to this, one must also purchase other holy books. The Lubavitcher Rebbe once explained a fascinating insight. We don't find any record that upon receiving this mitzvah the Jews en masse wrote hundreds of thousands of Torah scrolls! Nor do we find historically that many people commissioned the writing of their own scrolls. Why not? The Rebbe concluded, that since the main purpose of the Torah Scroll is to read from it, one can fulfill one's obligation through the Torah scroll that is owned by the community. In addition to the fact that as a member of the community, he owns a part of the Torah scroll, the Rebbe proved from various sources that he can also be considered a full owner during the time that he actually reads from it – that is, when he receives an Aliya. It is an unspoken agreement that whenever anybody is called to the Torah, all of the community members temporarily give that person full ownership of the Torah for the duration of that aliyah. When the Aliya is over, he then "returns" the ownership to the entire community. Although ownership of a Torah scroll is not enough to fulfill the mitzvah, but rather the person must commission a scribe to write it for him or write it himself, in the case of scrolls written for the community, we consider the scribe an agent of the entire community. In addition, if the Torah needs to be corrected – something which is a frequent occurrence – the scribe who does the corrections is seen as an agent of the entire community. Thus, even those who were not yet born when the Torah was written have a part in the writing. This answers the above questions and also explains how we can all fulfill this mitzvah today—even according to the opinions that one must actually write one's own Torah scroll and not simply be a partner. (For all the sources, see Likkutei Sichos vol. 23, p. 24, and all references noted there.) In addition, the Lubavitcher Rebbe initiated campaigns to unite all of Jewry in this mitzvah by having as many Jews as possible purchase letters in Torah scrolls. Separate scrolls are written specifically to unite Jewish children.

[5] Rabbi Shlomo Kluger (1785-1869), the famed chief Rabbi of Brody, Galicia, and other Rabbis, offer the following insight into these two Sefer Torahs. The Torah describing the appointment of the King uses the double

language of "Som Ta'sim," You shall surely place upon yourselves. The Rabbis infer from here that the fear of the King must be upon the people. On the other hand, at the end of the section dealing with the monarchy, the Torah emphasizes concern "That his heart not become haughty over his brethren and that he does not turn from the commandment right or left" (Deut. 17:20). This almost seems to contradict the earlier language. Should the king be humble or powerful? Power corrupts and absolute power corrupts absolutely. The Jewish Monarch must act like a king when he is in front of the people, but he is not allowed to let his heart get carried away. He must remember who he is and remember who the Only real King is. Rabbi Shlomo Kluger says that this is what is meant by the fact that the King writes two Torah scrolls for himself - one with which he goes out and one which remains at home. When he goes out, he must wear the Torah of "You shall surely place upon yourselves a King," he must act like a King and instill awe like a King. But when he returns home and settles down into the privacy of his own abode, he must be aware of the Torah that is hidden away at home. That is the Torah of "Lest his heart be lifted above that of his brethren."

[6] The following explanation is based on the Lubavitcher Rebbe's explanation on the difference between the Torah of Moshe and the Torah of Aaron, between "Emes" and "Chesed," Sichas 13 Nissan, Parshas Shmini, 5748 (1988), published in Sefer Hasichos 5748 vol. 2, and in Likkutei Sichos Parshiyos Shmini.

[7] Sanhedrin 21b

[8] This is the interpretation of the Chasam Sofer Parshas Shoftim.

from: **Ira Zlotowitz** <Iraz@klalgovoah.org> date: Aug 17, 2023, 7:00 PM  
subject: **Tidbits for Parshas Shoftim In Memory of Rav Meir Zlotowitz ZTL**

#### Reminders

The first opportunity for Kiddush Levana is Motzaei Shabbos, August 19th. The final opportunity is Wednesday night, August 30th.

Pirkei Avos: Chapter 6.

Daf Yomi - Friday: Bavli: Kiddushin 5 • Yerushalmi: Kilayim 34 • Mishnah Yomis: Rosh Hashanah 2:7-8 • Oraysa: Rosh Hashanah 30a & 30b. The siyum on Masechta Rosh Hashanah is this Monday, Mazal Tov! Next is Masechta Yoma.

Make sure to call your parents, in-laws, grandparents and Rabbi to wish them a good Shabbos. If you didn't speak to your kids today, make sure to connect with them as well!

Next on Calendar Rosh Hashanah begins on Friday evening, September 15th.

Yom Kippur begins on Sunday evening, September 24th.

Succos begins on Friday evening, September 29th.

#### Parsha in a Paragraph

**SHOFTIM:** Establishing local courts • Penalties for idolatry • The Sanhedrin • The laws of Kings • Levi'im to receive no portion in the land, as Hashem is their portion • A Cohen or Levi's right to serve in the Beis Hamikdash at all times • Do not engage in sorcery like the gentiles; Hashem has granted you access to prophecy • Laws of witnesses • Preparation and laws of war • Take captives only from distant cities • See Taryag Weekly for the various mitzvos.

**Haftarah:** The Haftarah (Yeshaya 51:12-52:12) brings Hashem's promise that "I myself will bring you consolation", which will occur at the final redemption. Although the time of the arrival of Mashiach is unknown, it is a fact that he will arrive. Belief in this tenet brings a measure of consolation and spurs one to anticipate Mashiach's arrival, and the salvation and relief that the redemption will bring.

Taryag Weekly Parshas Shoftim: 97 Pesukim • 14 Obligations • 27

#### Prohibitions

1) Appoint judges and officers. 2) Do not plant trees in the courtyard of the Beis Hamikdash. 3) Do not create an altar from a single stone. 4) Do not sacrifice a blemished animal. 5-6) Heed the Beis Din Hagadol; do not disobey them. 7) Appoint a king. 8) Do not appoint a non-Jewish born king.

9) A king may not possess too many horses. 10) Do not return to settle in Egypt. 11-12) A king must not have too many wives, nor amass treasures beyond his needs. 13) A king should write a Sefer Torah and carry it with him. 14-15) Shevet Levi should not get a portion of the land nor share in the booty of war. 16-18) Give a Cohen specific portions of a slaughtered animal, Terumah from crops and the first shearing of wool. 19) Kohanim and Levi'im families should serve in the Beis Hamikdash in weekly shifts. 20-25) Do not engage in clairvoyance, magic, casting spells, Ov v'Yidoni, or speak with spirits of the deceased. 26) Heed true nevi'im. 27-28) Do not prophesy falsely, or in the name of avodah zarah. 29) Do not be fearful to execute a false navi. 30) Establish Arei Miklat for accidental murderers. 31) Beis Din shall not be merciful to a murderer. 32) Do not infringe on the boundaries of another's property. 33) Do not render judgment based on the testimony of a single witness. 34) Punish false witnesses with the punishment they tried to inflict. 35) Do not fear opposing nations. 36) Anoint a Cohen for wartime purposes. 37) Attempt peaceful outreach before attacking the nations. 38) Do not allow survivors in war with the 7 nations. 39) Do not needlessly cut down a fruit tree. 40) Perform the rite of Eglah Arufah. 41) Do not utilize the area where the Eglah Arufah rite was performed.

#### FOR THE SHABBOS TABLE

כל זקני העיר הכהן הכהן לא-הכהן

"All the elders of the city nearest to the corpse" (Devarim 21:6)

When a corpse is found outside a city the Torah requires that the closest city perform the ritual of eglah arufah. This seems to indicate a degree of responsibility on the nearby city. Why does the Torah impose this atonement despite there being nothing to prove that the nearby city was at fault?

The Ibn Ezra explains that for such an occurrence to take place near a city, it must be that the city has done certain sins that allowed such a tragedy to have occurred in its vicinity. Therefore the city must take part in atoning for the death. There once was a tragic accident on the Lower East Side of Manhattan where a young boy was struck by a car. Seeing a yarmulke on the ground near the child an onlooker assumed that it was a Jewish boy who was struck. The onlooker went into nearby Mesivta Tiferes Yerushalayim and advised the Rosh Yeshivah of the tragic event. Rav Moshe Feinstein responded that it's impossible for a Jewish boy to have been killed so close to a yeshivah where so many were learning Torah. The Rosh Yeshivah was confident that the merit of Torah study could not have allowed something like this to occur. Sure enough, it came to light that the yarmulke was there by chance and in fact it was not a Jewish boy that was struck.

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from: **The Rabbi Sacks Legacy** <info@rabbisacks.org> reply-to: The Rabbi Sacks Legacy <info@rabbisacks.org> date: Aug 17, 2023, 11:15 AM subject: The Greatness of Humility (Shoftim)

#### The Greatness of Humility

#### SHOFTIM

With thanks to the Schimmel Family for their generous sponsorship of Covenant & Conversation, dedicated in loving memory of Harry (Chaim) Schimmel.

An extraordinary couple who have moved me beyond measure by the example of their lives. "I have loved the Torah of R' Chaim Schimmel ever since I first encountered it. It strives to be not just about truth on the surface but also its connection to a deeper truth beneath. Together with Anna, his remarkable wife of 60 years, they built a life dedicated to love of family, community, and Torah." – Rabbi Sacks

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At a dinner to celebrate the work of a communal leader, the guest speaker

paid tribute to his many qualities: his dedication, hard work, and foresight. As he sat down, the leader leaned over and said, "You forgot to mention one thing." "What was that?" asked the speaker. The leader replied, "My humility."

Quite so. Great leaders have many qualities, but humility is usually not one of them. With rare exceptions they tend to be ambitious, with a high measure of self-regard. They expect to be obeyed, honoured, respected, even feared. They may wear their superiority effortlessly – Eleanor Roosevelt called this "wearing an invisible crown" – but there is a difference between this and humility.

This makes one provision in our parsha unexpected and powerful. The Torah is speaking about a king. Knowing, as Lord Acton put it, that power tends to corrupt and absolute power corrupts absolutely,"[1] it specifies three temptations to which a king in ancient times was exposed. A king, it says, should not accumulate many horses or wives or wealth – the three traps into which, centuries later, King Solomon eventually fell. Then it adds:

When [the king] is established on his royal throne, he is to write for himself on a scroll a copy of this Torah ... It is to be with him, and he is to read it all the days of his life so that he may learn to be in awe of the Lord his God and follow carefully all the words of this law and these decrees and not feel superior to his brethren or turn from the law to the right or to the left. Then he and his descendants will reign a long time in the midst of Israel.

Deut. 17:18-20 If a king, whom all are bound to honour, is commanded to be humble – "not feel superior to his brethren" – how much more so the rest of us. Moses, the greatest leader the Jewish people ever had, was "very humble, more so than anyone on the face of the earth" (Num. 12:3). Was it that he was great because he was humble, or humble because he was great? Either way, as R. Johanan said of God Himself, "Wherever you find His greatness, there you find His humility." [2]

This is one of the genuine revolutions Judaism brought about in the history of spirituality. The idea that a king in the ancient world should be humble would have seemed farcical. We can still today see, in the ruins and relics of Mesopotamia and Egypt, an almost endless series of vanity projects created by rulers in honour of themselves. Ramses II had four statues of himself and two of Queen Nefertiti placed on the front of the Temple at Abu Simbel. At 33 feet high, they are almost twice the height of Lincoln's statue in Washington.

Aristotle would not have understood the idea that humility is a virtue. For him the megalopsychos, the great-souled man, was an aristocrat, conscious of his superiority to the mass of humankind. Humility, along with obedience, servitude, and self-abasement, was for the lower orders, those who had been born not to rule but to be ruled. The idea that a king should be humble was a radically new idea introduced by Judaism and later adopted by Christianity. This is a clear example of how spirituality makes a difference to the way we act, feel, and think. Believing that there is a God in whose presence we stand means that we are not the centre of our world. God is. "I am dust and ashes," said Abraham, the father of faith. "Who am I?" said Moses, the greatest of the prophets. This did not render them servile or sycophantic. It was precisely at the moment Abraham called himself dust and ashes that he challenged God on the justice of His proposed punishment of Sodom and the cities of the plain. It was Moses, the humblest of men, who urged God to forgive the people, and if not, "Blot me out of the book You have written." These were among the boldest spirits humanity has ever produced.

There is a fundamental difference between two words in Hebrew: anava, "humility", and shiflut, "self-abasement". So different are they that Maimonides defined humility as the middle path between shiflut and pride.[3] Humility is not low self-regard. That is shiflut. Humility means that you are secure enough not to need to be reassured by others. It means that you don't feel you have to prove yourself by showing that you are cleverer, smarter, more gifted, or more successful than others. You are secure because you live in God's love. He has faith in you even if you do not. You do not need to compare yourself to others. You have your task, they have theirs, and that leads you to co-operate, not compete.

This means that you can see other people and value them for what they are. They are not just a series of mirrors at which you look only to see your own reflection. Secure in yourself you can value others. Confident in your identity you can value the people not like you. Humility is the self turned outward. It is the understanding that "It's not about you."

Already in 1979, the late Christopher Lasch published a book entitled *The Culture of Narcissism*, subtitled, *American Life in an Age of Diminished Expectations*. It was a prophetic work. In it he argued that the breakdown of family, community, and faith had left us fundamentally insecure, deprived of the traditional supports of identity and worth. He did not live to see the age of the selfie, the Facebook profile, designer labels worn on the outside, and the many other forms of "advertisements for myself", but he would not have been surprised. Narcissism, he argued, is a form of insecurity, needing constant reassurance and regular injections of self-esteem. It is, quite simply, not the best way to live.

I sometimes think that narcissism and the loss of religious faith go hand in hand. When we lose faith in God, what is left at the centre of consciousness is the self. It is no coincidence that the greatest of modern atheists, Nietzsche, was the man who saw humility as a vice, not a virtue. He described it as the revenge of the weak against the strong. Nor is it accidental that one of his last works was entitled, "Why I am So Clever." [4] Shortly after writing it he descended into the madness that enveloped him for the last eleven years of his life.

You do not have to be religious to understand the importance of humility. In 2014 the Harvard Business Review published the results of a survey that showed that "The best leaders are humble leaders." [5] They learn from criticism. They are confident enough to empower others and praise their contributions. They take personal risks for the sake of the greater good. They inspire loyalty and strong team spirit. And what applies to leaders applies to each of us as marriage partners, parents, fellow-workers, members of communities, and friends.

One of the most humble people I ever met was the late Lubavitcher Rebbe, Rabbi Menachem Mendel Schneerson. There was nothing self-abasing about him. He carried himself with quiet dignity. He was self-confident and had an almost regal bearing. But when you were alone with him, he made you feel you were the most important person in the room. It was an extraordinary gift. It was "royalty without a crown." It was "greatness in plain clothes." It taught me that humility is not thinking you are small. It is thinking that other people have greatness within them.

Ezra Taft Benson said that "pride is concerned with who is right; humility is concerned with what is right." To serve God in love, said Maimonides, is to do what is truly right because it is truly right and for no other reason. [6] Love is selfless. Forgiveness is selfless. So is altruism. When we place the self at the centre of our universe, we eventually turn everyone and everything into a means to our ends. That diminishes them, which diminishes us. Humility means living by the light of that-which-is-greater-than-me. When God is at the centre of our lives, we open ourselves up to the glory of creation and the beauty of other people. The smaller the self, the wider the radius of our world.

[1] Transcript of Letter to Bishop Mandell Creighton, April 5, 1887, published in *Historical Essays and Studies*, edited by J. N. Figgis and R. V. Laurence (London: Macmillan, 1907).

[2] Pesikta Zutrata, Eikev.

[3] Maimonides, *Eight Chapters*, ch. 4; *Commentary to Avot 4:4*. In *Hilchot Teshuvah 9:1*, Maimonides defines shiflut as the opposite of malchut, sovereignty.

[4] Part of the work published as *Ecce Homo*.

[5] Jeanine Prime and Elizabeth Salib, 'The Best Leaders are Humble Leaders', *Harvard Business Review*, 12 May 2014.

[6] Maimonides, *Hilchot Teshuvah 10:2*.

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from: **Esplanade Capital** <jeisenstadt@esplanadecap.com> date: Aug 18, 2023, 12:39 AM subject: **Rabbi Reisman's Weekly Chumash Shiur**

## Rabbi Reisman – Parshas Shoftim 5783

### Topic – Elul & Eretz Yisrael

As I speak to you on this first day of Rosh Chodesh Elul as we prepare for Shabbos Parshas Shoftim. On Tuesday I was still in Eretz Yisrael, and I was talking to one of the Bochurim there. In Eretz Yisrael there is a stronger Hergish of Rosh Chodesh Elul, of the Zman of Elul beginning. I told him that in America Rosh Chodesh Elul doesn't start until Erev Rosh Hashana. He looked at me incredulously. This Bochur told me that he is in Chevron Yeshiva. He said Elul is too tense and it gets him so nervous. Every day one of the Roshei Yeshiva speaks about the meaning of Elul. I explained to him that here people because of the calendar are still vacationing, making BBQ's, wearing polo shirts and caps, and Elul just doesn't get started. But as a thinking person though, we have to start to realize that it is Elul. Elul is really a time of growth, a time of opportunity for everybody. We don't want to really be left behind.

How does a person know if his Elul is meaningful, how does a person know in life whether what he is accomplishing is meaningful? The Chovos Halevavos in the Shaar Yichud Hamaiseh, Perek Hei, writes a rule. Kol Me She'ain Lo Tosafos Ain Lo Ikkar. Someone who doesn't add to his Avodas Hashem has no root. Rooted things grow. Things that are rooted in something that gives it sustenance grow from what they are.

A wooden bench on the ground doesn't grow. A tree on the same ground which is also made of wood, grows because it is rooted. In Elul we have to look to grow, to do more, to add in a pleasant way to our Avodas Hashem. In this week's Parsha, Parshas Shoftim, the Posuk says in 17:10 (עַל-פִּי הַכֹּהֵן אֲשֶׁר גִּזְדוֹ לְךָ). This is the source for the idea of Daas Torah, of a person who is Paskening in Klal Yisrael and taking responsibility for the things that he says and Klal Yisrael being able to accept and follow the Psak of the Sanhedrin and the Batei Dinim, of those who are also responsible for Psak in Klal Yisrael. (עַל-פִּי הַכֹּהֵן אֲשֶׁר גִּזְדוֹ לְךָ, מִן-הַמְּקוֹם הַהוּא, אֲשֶׁר בַּכְּרָר יְרוּחָם, וְשָׁרֶךָ לְעַשּׂוֹת, כָּל אֲשֶׁר יָרוֹךְ).

In the Hakdama of the Shev Shmaitsa, he writes that this was the Taina of the Malachim to HKB" H. Why are You giving Torah to Bnei Adam. They knew that the Mitzvas Hatorah are connected to people. But the idea that people could issue a Psak in Halacha and that becomes Torah, to them that was an incredible Chiddush.

Zag the Shev Shmaitsa that is what we have. We have the ability to devote ourselves totally to Torah, to spending years and have the Shimush to be able to know how to deal with the Halacha L'mayseh of Torah and to be able to Pasken.

The Gemara says in Avodah Zorah 28b (11 lines from the bottom) that there was a dispute. (רַב יְהוֹדָה שָׁרָא לְמִיכָּח עִינָּא בְשַׁבְּתָה). Rav Yehuda permitted putting certain medication into the eye on Shabbos. He said this disease is a danger, a Sakana of Pikuach Nefashos. (רַב שְׁמֹאֵל בֶּן יְהוֹדָה) said Assur. He disagreed. He said it is not a Sakana. The Gemara brings an incident where (רַב יְהוֹדָה) became ill with this very eye disease. He sent a message to (רַב יְהוֹדָה) asking can I put on this medication on Shabbos? (רַב יְהוֹדָה) replied to him that (שְׁלָח לִיה לְכ"ע שְׁרָא) for the whole world it is Muttar because I hold that you are allowed to put on this medication. (לְדִין אַסְרָה) You Paskened that it is not a Sakana, so for you it is Assur.

The question is, what are you talking about? Rav Yehuda holds that it is a Sakana because of Pikuach Nefashos. He is punishing somebody for disagreeing with him? If his Shittah is that it is Pikuach Nefashos, then he has to tell (רַב שְׁמֹאֵל בֶּן יְהוֹדָה) for you it is Muttar.

From here we see a Chiddush says the Steipler. That the Halacha is Paskened (עַל-פִּי הַתּוֹרָה אֲשֶׁר יָרוֹךְ), for everyone else it is a Sakana. You are a Posek in Klal Yisrael and you Paskened that it is not a Sakana, for you it is not a Sakana. HKB" H runs the world according to the Psak of the individual Poskei Halacha.

It is known that Rav Chaim Volozhiner told someone with a lung disease to stay in his city and never move out. Why? Because that particular lung disease is a Machlokes in Hilchos Treifos if it is something that causes death or not. The Shaagas Aryeh Paskened that it is not a Treifa. This man lived in

the city of the Shaagas Aryeh. As long as you stay there in your city the Psak is that it is not a Treifa and by a human being too it is not something that will kill. But don't move away.

Rav Chaim Kanievsky brings that he once asked the Steipler the following question and this is the most incredible application of this Yesod. He said there is a Machlokes in Rosh Hashana 16a when people are judged. The Mishna there says (בְּפִסְחָה עַל הַתּוֹבָה). That on Pesach the world is judged L'gabei the wheat. There are others who disagree. There are those who say (אָדָם נִזְון בְּכָל שָׁעָה). There are those who say that the Psak on everything is on Rosh Hashana. It is a Machlokes.

The Gemara brings in Berachos 18b (18 lines from the top) (אָדָם נִזְון בְּכָל שָׁעָה). An individual who for whatever reason had run from someone chasing him (happened to be his wife), and hid in the (בֵּית הַקְּבָרָה). While he was there, he heard the Neshama of two young girls speaking. They said, let us go up to the Kisei Hakavod and hear what the judgement is on this coming year's wheat. So we see that there is a Psak on Rosh Hashana. Especially it says over there that it was on Rosh Hashana but certainly not (אָדָם נִזְון בְּכָל שָׁעָה). We see that there is one judgment for the year on Rosh Hashana. So why don't we Pasken based on that? This is what Rav Chaim said was asked of the Steipler.

The Steipler answered that it says there in the Meforshei HaGemara that that Man D'amara held like Rav Yehuda in the version that the Chosid was himself Rav Yehuda. He held like Rav Yehuda. Therefore, Rav Yehuda held that the Psak was on that day.

Freigt Rav Chaim, there is only one Psak in Shamayim, what is the difference who it is. We see the facts that this is the Psak? The Steipler told him no. Even in Shamayim, somehow it is like an alternative universe. There is a place where the Psak is once a year and there is a place where the Psak is every day. Because (עַל-פִּי הַתּוֹרָה אֲשֶׁר יוֹרֶךְ) is a Psak Halacha. A Psak Halacha which you follow of a person who is Ro'i L'hora'a, then you are safe. That is the Chiddush here in Parshas Shoftim of (עַל-פִּי הַתּוֹרָה אֲשֶׁר יוֹרֶךְ).

As we know from Michah 4:2 (כִּי מִצְּיָּהוּ תְּצִיא אֶת-תּוֹרָה). The seat of Torah from the time of the Beis Hamikdash was in Eretz Yisrael, the Poskei Hatorah are in Eretz Yisrael and it is returning to Eretz Yisrael.

I would like to share with you an insight, a Hergish that I had when I left Eretz Yisrael. I was on the plane leaving and this is the thought that came to me. It seems to me that Yerushalayim the holy city is elusive. What do I mean that it is elusive?

It is an incredible history of Yerushalayim. When Avraham Avinu is sent to Har Hamorah he was not told the place 22:2 (וְלֹא-אָלַץ כָּמְרוֹת; וְנִצְלָח, עַל אֶסְדָּקָה, עַל עַלְלָה, עַל אֶסְדָּקָה, אֲשֶׁר אָמַר אֶלְעָזֶר). He wasn't sure where it was until he saw it with his own eyes. As Rashi says on (קָרְבָּן אֶת-הַמְּקוֹם-מִנְחָקָה). (רָאָה עַזְּנָן קָשָׁר עַל הַהָּר)

When Yaakov Avinu left his father's house, he slept on Har Hamorah, what was to be Yerushalayim. He didn't even realize it. He didn't even see an (עַזְּנָן קָשָׁר עַל הַהָּר). It was like Yerushalayim was hiding from people. An incredible thing.

When Klal Yisrael entered Eretz Yisrael, for the first 400 years they knew there is a place (אֲלָא), (אֲשֶׁר בַּכְּרָר יְרוּחָם). They didn't know where it was. For some reason they didn't know that Yerushalayim is the chosen city.

Incredible. They had the greatest Gedolim and it was not revealed to them (עַזְּנָן קָשָׁר עַל הַהָּר), where the mountain is.

Finally Shlomo Hamelech builds a Beis Hamidash. Dovid and Shmuel reveal its location and a generation later 10 of the 12 Shevatim are cut away from visiting Yerushalayim. Again it is elusive to the overwhelming majority of Jews, of Klal Yisrael. It is an incredible thing. It has been that way throughout our history. Yerushalayim has been inaccessible for so much of the time that Klal Yisrael was there.

The Ramban as you know, when he arrived, said there was no Minyan in Yerushalayim. Rav Ovadia Bartenura who visited the city in 1488, said he found 70 Jews in Yerushalayim. It is incredible that even after the Shoah, even after the Churban Europe when Yidden returned to Eretz Yisrael from 1948 – 1967 Yerushalayim was inaccessible. The Kosel was not accessible.

Again, the same pattern that we see.

Even from 1967 until today, we are proud to be in Yerushalayim. However, the majority of the geography of the old city and the immediate area around the old city is still not accessible, it is not a place where Jews go. Jews can go there, but for the most part Jews don't go there. So much of Yerushalayim is cut off from us. Certainly those of us in Galus, it seems could it be that the answer to the mystery of Yerushalayim is that HKB" H wants Hishtokekus, he wants the desire. When we Daven (לִילְיוֹשָׁלִים עִירָק בְּרִכּוּמִים תָּשַׁבֵּ) we should not settle for half prizes. We shouldn't settle for compromises.

Today, Baruch Hashem we have much of Yerushalayim, but look at the map of the old city, the Arab Quarter Jews sometimes go but for the most part is not a place of Jewish habitation, not a place of Torah. It is still cut away from us, it is still not accessible, it is still not a place the majority of the old city. Are we going to take and settle to be happy with what HKB" H has given us, we are happy with what HKB" H has given us. But the Hishtokekus when we Daven (לִילְיוֹשָׁלִים עִירָק בְּרִכּוּמִים תָּשַׁבֵּ) has to be a strong desire, bearing in mind that this is the way it has always been that the Hishtokekus, the desire for Artzeinu Hakedosha is something which is very basic to our Neshamos, basic to our desire, basic to our Ratzon to be able to be in the Makom Hakodesh. The whole Galus of Klal Yisrael, the whole exile of Klal Yisrael, it is all a desire to be there, to be Mishtokek to be there.

And so, we are not there. We aren't there for whatever reason, but the Hishtokekus has to be a strong Hishtokekus. A certain desire, a Ratzon to be there and a Ratzon to be able to feel the Kedusha of Eretz Yisrael.

There is a Malbim in the beginning of Sefer Ezra. In the beginning of Sefer Ezra it says that when Klal Yisrael returned to Eretz Yisrael they went to Yerushalayim and as it says in 2:1 (וְשׁוּבוּ לְיוֹשָׁלָם וְיָהוָה, אִישׁ לְשִׁירָה). The Jews didn't settle in Yerushalayim in the time of Ezra and Nechemiah. In Nechemiah we find that they did a Gorel to get people to live in Yerushalayim. Why? Because everyone had free land. They had the land that was their Cheilek Nachala in Eretz Yisrael. They didn't go necessarily to Yerushalayim.

But the Posuk says (וְיָשְׁבוּ) when they returned they went (אִישׁ לְשִׁירָה). So what does it mean (וְיָהוָה)? Rashi has a hard time with this. Secondly, what does it mean, they went (אִישׁ לְשִׁירָה)? The Malbim says everyone who went to Eretz Yisrael went Derech Yerushalayim. Everyone understood that the Shefa of Ruchnos is in the Ir Hakodesh. When people came to Eretz Yisrael after being away for 70 years, they first went there to feel a Hishtokekus.

Getting back to that with which we began. The Chovos Halevavos said how do you know if your Avoda is a real Avoda. It says somebody who has no addition, no Hosafa in his Avodas Hashem Ain Lo Ikkar, is not rooted there. He is missing something. Somebody who comes to Yerushalayim and doesn't have a Tosafa, doesn't have some addition, Ain Lo Ikkar, something is missing.

That is our Avoda in this special Zman which is Elul and Tishrei. In our special Makom which is Artzeinu Hakedosha. In Makom and Zman we have to put it together and be able to seek, to grow in the days that come. Let's try to connect to the month of Elul. Take a moment, something special, something you didn't do until now.

If you run out of Shul in the morning, stop and learn one Mishna every day. Or come early and learn a Mishna. Or Daven Vasikin. Many people Daven at the 6 or 6:30 Minyan every day. If you Daven a quarter to six or ten to six for most of Elul you will be able to Daven Vasikin. It is worth it. But something extra. Mi She'ain Bo Hoasafos Ain Bo Ikkar.

How do you know the plant is dead maybe it is alive? If it is not blooming, it is not blossoming, it is not giving forth leaves or flowers it is dead. The same thing with people. Let's be Zoche to an extraordinary Chodesh Elul with a connection to Kedusha and a Hishtokekus, a desire to see Mekomos Hakedoshim in the Zmanim of Kedusha and to let them influence us. Wishing everybody a wonderful Shabbos!

From: Torah Musings <newsletter@torahmusings.com> via

sendingservice.net reply-to: Torah Musings

<Newsletter@torahmusings.com> date: Aug 17, 2023, 11:02 AM

Subject: Torah Musings Daily Digest for 08/17/2023

Murder, War, and a King to Lead It All

by R. Gidon Rothstein

### Parshat Shofetim

The end of Parshat Shofetim describes the eglah arufah ceremony, where someone is found murdered between cities (as portrayed in Murderer in the Mikdash, for those who have not yet read it). To atone for the insufficiently safe roads, the nearest city enacts breaks a heifer's neck in a riverbed, what the Torah prescribed. Among the many questions one could raise, Abarbanel had wondered about its placement here, in the middle of a series of discussions of war.

#### People and Trees

Unsatisfied with Abarbanel's or others' answers, Kli Yakar draws our attention to Sotah 46a, where R. Yochanan b. Sha'ul links the eglah, which has not had offspring, the place, a riverbed that has never been plowed or sown, and the victim, who will not again be able to have children.

Were that the whole story, there should be no eglah arufah for someone too old or unable to have children, yet no such distinction is made. The Gemara therefore reads it in terms of mitzvot, the victim will no longer be able to produce those kinds of fruit.

Either of those fortunately connects this passage with the one just before, the prohibition against cutting down fruit trees as part of a siege. In 20:19, the Torah justifies the rule by saying 'ki ha-adam etz ha-sadeh, for is a tree of the field a man,' to be able to flee the battlefield/ siege? Were our eglah arufah about ending the person's bearing children, it would belong here, right after the Torah prohibited cutting down fruit trees, because we are supposed to preserve productivity, of fruits and of babies.

Of course, we don't end up thinking it is about biological offspring.

Fortunately, Ta'anit 7a read the verses about fruit trees in terms of Torah scholars, those Torah scholars who have good "fruit" are worth attending, those whom we know do not have edible fruit we can cut off, not study with. If the Torah was concerned about our making sure not to cut off a Torah scholar who is a source of wisdom, it then wants us to know the same is true of all who produce mitzvot, shown in the eglah arufah ceremony.

He closes with wonder that other commentators had not seen something so obvious, the Torah inserts the eglah arufah ceremony here, in the middle of discussions of war, because it amplifies a point the siege rules had made: we are to protect that which bears fruit, of valuable Torah knowledge as well as of mitzvot, both in war and by keeping our roads free of murderers.

#### The Mandatory Call to Peace

One of the war rules earlier in the series, 20:10, required Jews to call for peace before attacking a city [it wasn't a peace many would accept, since—if they weren't Canaanite cities—they had to agree to keep the Noahide laws and offer physical and financial service, or flee. But it was something]. Chatam Sofer is reminded of II Shemuel 20:19, where Yo'av lays siege to Avel Beit Ha-Ma'acha for harboring Sheva b. Bikhri, a rebel. In the text, a wise woman comes to the walls to convince him not to destroy the city.

Bereshit Rabbah 99:9 identifies her as Serach the daughter of Asher, and thinks she challenged his failure to offer them a peace option (I think the Midrash infers it from her calling herself shelomei emunei Yisra'el, the peaceful believers of Israel, the idea of peace her way of telling off Yoav for not offering peace). Were the Midrash correct, however, we should have seen some answer by Yo'av, which we do not.

Chatam Sofer offers one. The call for peace comes only in a state of war, an army attacking a city in order to conquer it. That is what Yoav means when he tells her he has no interest in the city only in Sheva b. Bikhri. He does not need to call out for peace, because he hasn't come for war.

[A subtle distinction, because had the city refused to hand over Sheva, it seems Yo'av would in fact have conquered it. Since it wasn't his goal, he wasn't required to call out for peace. He doesn't explain why that would be; I think it might be that when it's part of a war and conquest, the victor will

take over the city and impose himself on it. Here, even had Yoav conquered the city, he would have taken Sheva and left, so there were no long term consequences for which he had to offer an alternative.]

#### The Impossibility of a Specific Mitzvah Demand to Appoint a King

I had heard people quote Netziv's reading of 17:14 before I ever saw it, and it bothered me. People would say he said the mitzvah to appoint a king is voluntary, similar to the mitzvah to kill animals a certain way if we want to eat their meat. When I finally read it, I found that's not what he said [although, full disclosure, I have made this point to others and they have insisted their original reading of Netziv is the correct one. I guess you'll have to check me on this yourselves.]

The verse speaks of appointing a king only after the people ask for one, giving some readers the sense that it was voluntary, that if the Jews never ask, there is no mitzvah. If so, it would like shechitah, killing animals a certain way to make them kosher, where it's only a mitzvah if we want meat. But, says Netziv, it's well known there's a mitzvah to appoint a king, Chazal are clear it is not like shechitah.

Here's his explanation: monarchies differ greatly from representative democracies, and some societies cannot tolerate a king, where others are rudderless without one. The force of a mitzvah aseh cannot turn a society from one kind into another, because how the society works at a whole quickly affects issues of life and death, and saving lives pushes aside Torah obligations.

Before I summarize the next bit, I want to stress I am close to translation here; it is so easy to reject my reading as the reading I want, I am doing my best to put in all his points. He says it is therefore impossible to command us to appoint a king, as long as the people are unwilling or unable to agree to bear the yoke of a king, especially if they see societies around them functioning well or better with a democracy.

Only when the people realize they want a king can the Sanhedrin then appoint one.

#### A Mitzvah We Must Be Ready For

I think he's making a remarkably subtle point, that gets lost in people's rush to find a rabbi who will tell them they need not contemplate a monarchy. When the Torah tells us to shake a lulav on Sukkot, our mental state mostly does not matter, as is true for many mitzvot. Sure, we may not feel like putting on tefillin on a particular morning, but it's not going to destroy our lives to submit and listen, so we just have to do it.

Not so with forms of government, Netziv is saying; there, if we try to impose it on our society—even if we all kind of think we should—it won't work until we're ready. You might think—as many have—he's really saying we never need to get ready, except he goes on to say it is impossible to relegate this mitzvah to shechitah status, because then why did the Torah say we should appoint this king after we conquer the Land? We're allowed to have a king before, such as Yehoshua, whom Rambam assumed had the status of a king.

Then he says: "Rather, you must say it is a mitzvah, just not one incumbent on the Sanhedrin until the people say they want one." It's why there was no king the whole time the Mishkan was in Shiloh, because the people were not moved to ask for one.

The response I get from people is that, sure, but there's also no need for the people to want one, in Netziv's view. To which I say, that's not what a mitzvah is. He emphasizes there is a mitzvah, just not one we can fulfill until we are ready. I think we know this idea from other mitzvot, like the mitzvah to fear God. While there is a higher level of the mitzvah, it's impossible to command, because people aren't ready for it. But we're supposed to do our best to get ready. Here, too, I understand Netziv saying that as well: you can't get a king—a mitzvah to have—until you're ready for one.

Killing a person, making war on many, how to have a king to lead those wars, in our comments for Parshat Shofetim.

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from: **Rav Immanuel Bernstein** <ravbernstein@journeysintorah.com>  
date: Aug 17, 2023, 8:35 AM subject: Pshuto Shel Mikra in Shoftim

PSHUTO SHEL MIKRA From the Teachings of Rav Yehuda Copperman zt"l PARSHAT SHOFTIM "Right and Left" – Following the Rulings of the Sanhedrin

לَا תַּסְוֵר מִן כִּזְבָּר אֲשֶׁר גַּדֵּו לְכָמִין וְשָׁמָאל

You shall not deviate from the matter which they will tell you, right or left (Devarim 17:11)

The beginning of Parshat Shoftim discusses the mitzvah of establishing a Sanhedrin, which has supreme authority in matters of halachah, and concerning whose words the Torah requires full adherence, as set forth in our pasuk.

The Drashah of the Sifrei With regards to the concluding phrase, "מִן וְשָׁמָאל"—right or left," there is a well-known drashah of Chazal in the Sifrei (siman 154), quoted by Rashi, which states:

אַפְּלִו הָוָא אָמֵר לְכָמִין שָׁהָוָא שְׁמָאֵל וְעַל שְׁמָאֵל כְּשָׁהָוָא יְמִין, וְכָל שְׁכָן כְּשָׁהָוָא אָמֵר לְכָמִין שָׁהָוָא יְמִין וְעַל שְׁמָאֵל

Even if it (the Sanhedrin) tells you that right is left and left is right; and this is certainly the case if it tells you that right is right and left is left.[1]

Interestingly, Rashi himself does not elaborate on this drashah. Nonetheless, as we will see, numerous mefarshim — including mefarshim Rashi — discuss the matter at quite some length.

Understanding "Right and Left" The obligation to follow the Sanhedrin "even if they say that right is left" is certainly something that requires understanding. What is the nature of the requirement to follow their rulings even under such circumstances?

This matter as well is discussed by the Ramban in his peirush to our pasuk. As we will see, he begins by presenting one approach, and then concludes by introducing an additional idea which may result in adopting a different approach altogether:

The understanding of this mitzvah is as follows. Even if you may think in your heart that they are in error, and the matter is as clear to you as is the difference between right and left, nonetheless act in accordance with their ruling, and do not say, "How can I eat this fat which is completely forbidden or kill this person who is innocent?" Rather, you should say, "Thus have I been commanded by my Master who has commanded that I perform all His mitzvot in accordance with the rulings of those who stand before Him in the place that He has chosen;[2] and it is based on their understanding He has given me the Torah, even if they should err." This is similar to the episode with R' Yehoshua and Raban Gamliel on the day which Yom Kippur fell according to the calculation of R' Yehoshua.[3]

The necessity for this mitzvah is very great indeed, for the Torah was given to us in written form, and it is well-known that not all opinions will be in concurrence regarding new questions that arise, so that disputes will proliferate and the Torah will become like many Torahs. Thus, the pasuk states that we will heed the instructions of the supreme Beit Din which stands before Hashem in the place that He chooses, with regards to anything they state as an interpretation of the words of the Torah; whether it is an interpretation they received as an unbroken transmission all the way back to Moshe who received it from Hashem, or whether it is their own interpretation of the intent of the pasuk. For the Torah has been given contingent on their understanding, even if in your estimation they have mistaken right for left.

[The requirement to heed their words is] all the more incumbent since you should consider that in reality what they say is "right" is actually "right," for "the spirit of Hashem rests on those who serve in His Mikdash,"[4] and "he will not abandon His pious ones, they will always be protected"[5] from error and mishap.

The Ramban has presented two approaches to understanding the requirement of full compliance with the rulings of the Sanhedrin, even if they appear to be in error:

The Torah has been given based on their understanding; even if it is in error, it is Hashem's Will that we follow them. The Sanhedrin has special siyata dishmaya (Heavenly assistance) which protects them against erroneous rulings; rather, it is the individual, who feels they have mistaken right for

left, who is actually in error.

In Mefarshei Rashi Both of these approaches presented by the Ramban find expression in the classic mefarshei Rashi on our pasuk. Rabbeinu Eliyahu Mizrachi explains the idea in accordance with the second approach of the Ramban, i.e. that in reality the Sanhedrin are not in error, that is simply the way it seems to the onlooker; indeed, his words are practically a verbatim quote from that section of the Ramban.

Conversely, the Maharal in the Gur Aryeh explains this idea in a manner similar to the first approach of the Ramban. First, Maharal explains the expression “right is left and left is right”:

The meaning is, concerning something which is permitted to do (“right”), they have stated that it is forbidden (“left”); and similarly, something which is “left” i.e. forbidden to do, they have declared “right” i.e. permitted.

With regards to the obligation itself to follow them even under such circumstances, Maharal writes:

For even if they are mistaken in a matter of halachah and have declared something tamei when it is actually tahor, or something tahor when it is actually tamei, you are permitted to follow them and you are fulfilling a mitzvah of Hashem by doing so ... as the Gemara explains (Sanhedrin 88a), “in order that machloket should not proliferate in Israel.”

Actually, if we look a little more carefully, we will see that it is possible that the Gur Aryeh and the Ramban are not necessarily saying exactly the same thing: On the one hand, it is clear from the words of the Maharal that in his understanding, should the Sanhedrin confuse “right” and “left,” that is a mistake and remains as such even as we are told to follow it. The mitzvah of the Torah to follow them in such a situation is based on an overriding consideration, namely, of not increasing machloket in Yisrael.

In contrast to this, it is possible to understand the Ramban’s (first) explanation as saying that in order not to increase machloket, the Torah was given at the outset on the understanding that the halachah by definition is what the Sanhedrin say it is, based on their discussions and investigations.

As we shall now see, another of the Rishonim explains the words of the Sifrei in a way which is much closer to the explanation of the Maharal.

**Derashot HaRan** In one of his classic Derashot, Rabbeinu Nissim (the Ran) discusses the idea of following the Sanhedrin even when they say “right” is “left” etc. (Drush 11):

The explanation of the matter is that mitzvot and the laws of the Torah are analogous to the laws of nature. In the same way that natural law exists in order to benefit man, and indeed, for the most part these laws are beneficial, nonetheless, there are certain exceptional times when these laws themselves can be the cause of damage and loss. In this respect, nature is not absolutely protected against harmful effects, for it is impossible for something to be beneficial more than the majority of the time. For example, the faculty of digestion is part of man’s natural make-up, enabling him to digest his food, and is something without which he could not survive. Yet this very faculty can sometimes be the source of harm,[6] and natural law will not make allowances for those cases. For Hashem’s primary intent is for the general benefit which derives from these laws ....

The same is true when it comes to this mitzvah (of not deviating from the Sanhedrin). The Torah’s primary concern is to avoid the potential damage that exists as an ongoing concern, namely, divisiveness and machloket which could lead the Torah to become as two Torahs. The way the Torah protected against this ongoing danger was by entrusting the arbitration of doubtful cases to the Chachamim of the generation, which in most cases will lead to a beneficial outcome, as their judgment will be correct for the most part. For the mistakes made by great chachamim will be fewer than those made by people of lesser wisdom; all the more so when it comes to the Sanhedrin who stand before Hashem in His Mikdash, that the Shechinah will be with them (and help protect them from error). Even though it is possible that they will err on occasion, the Torah did not concern itself with a loss that is marginal in scope, for such a loss is worthwhile bearing when set against the ongoing benefit, and it is impossible to ensure benefit to a degree greater than this, as is the case with the laws of nature.

The Ran is reminding us of the correlation between “**חוקות שמים ואرض**,” i.e. natural law, and “**ברית ים ויללה**,” i.e. Torah law. Chazal themselves told us (Zohar Parshat Terumah) that “**אסתכל בארכיתא וברא עלמא**” — (Hashem) looked into the Torah and created the world.” A balanced diet is of great benefit for most people. Yet there are some for whom it is not appropriate, and a competent physician will know when to recommend avoiding certain foods or consuming higher quantities of others. Milk is a basic necessity for most babies, yet for some it provokes an allergic reaction. The same is true when it comes to the laws of Torah. We follow rules that are beneficial in most cases,[7] even though there might be occasions where that rule itself is the source of mishap.[8] [9]

**Abarbanel’s Approach** The final approach we will consider to the question of the Sanhedrin saying “right is left,” is that of the Abarbanel in his peirush to our pasuk. As we will see, this approach differs significantly from all those we have mentioned so far in terms of its understanding of the scope of this idea:

It appears to me that the correct understanding of this matter is that the laws of the Torah are general in nature and it is not possible for them to address each particular situation that could exist at any time. It is therefore clear that whereas the general laws of the Torah are righteous and just in themselves, a specific situation could arise where applying the general rule is not appropriate.

For example, the Torah sets general guidelines as the basis upon which to execute a murderer, which are quite restrictive in nature. If these guidelines will be followed in all cases, no murderer will ever be executed, and murderers will abound! It is with this in mind Chazal (Bava Metzia 30b) said “*Yerushalayim was destroyed because they adjudicated based on Torah law.*” The meaning is, they only ever applied the general law, without considering that a particular case might require an exceptional ruling. Therefore, the Torah states that if a local Beit Din should be in doubt as to whether they should be following general Torah law regarding a particular case that comes before them which may require a contingency response ... for this is something which the Torah empowers the Sanhedrin to do if they feel the circumstances warrant it. It is with regards to this type of ruling the Torah commands that we shall not deviate from their words right or left. As if to say, even in a situation where the general rule would dictate that we go to “the left,” while the Sanhedrin ruled that in this particular case we should go to “the right,” and vice versa, we may not deviate from their words. For although in terms of the general rule, they may have said that what is “left” is “right,” in terms of this particular case, they have actually stated that “right is right,” for this is the correct response to this particular case, and any other course of action would be incorrect! And through these means, the Torah has ultimately given the Sanhedrin the wherewithal to deal with every case that may come before them, applying the general rule to most cases, and the contingency rule to cases which they assess warrant such an approach.

The well-known legal maxim states: “*Suma jure Suma injure*” — extreme justice is extreme injustice. This means that the more a law encompasses, the greater is its potential for harm. In terms of our discussion, the Abarbanel is stating that is impossible for a single uniform law to fit each and every specific circumstance. The nitzchiyyut (eternity) of the Torah requires that means should exist within the Torah itself through which the correct ruling can be applied in all situations. According to the Abarbanel, this is the background to the flexibility given by the Torah to the Sanhedrin. When they say that “left is right,” they are saying that the general response to this situation would be “left” — and that remains true as a general rule! — but this particular situation requires a “right” verdict. This ensures that no case is ever without an appropriate response from the Torah.

אשרנו מה טוב חילקו מה נעים גורלו ומה יפה רושנו!

**Summary:** We have seen four approaches among the mefarshim regarding how to understand the obligation to follow the Sanhedrin even when they say that “left is right and right is left.” Ramban (first approach): The Torah has been given on the understanding that whatever the Sanhedrin rules to be the halachah is by definition the halachah. Thus, the Torah entrusts them with

the definitions of “right” and “left.”

Ramban (second approach, and the Mizrachi): The individual should consider that although it seems to him that the Sanhedrin have confused right and left, in truth it is he who is in error, for they have special siyata dishmaya in arriving at the correct halachic ruling.

Ran (and Gur Aryeh): Even if the Sanhedrin did in fact confuse right and left, it is worth following them in order to avoid the greater peril of increased machloket and the Torah becoming “two (or more) Torahs”

Abarbanel: This obligation is stated specifically in a case where the Sanhedrin judges that circumstances warrant an exceptional response (e.g. “left”), even though the general halachic response would be different (e.g. “right”).

[1] It should be noted that Rashi’s concluding words, “and this is certainly the case etc.,” are not found in the Sifrei, but are rather Rashi’s own additional comment. [2] [The Sanhedrin was located on the premises of the Beit Hamikdash in a place known as the Lishkat HaGazit (Chamber of Hewn Stone).] [3] Rabban Gamliel commanded R’ Yehoshua to come before him on that day with his walking stick and bundle, see Rosh Hashanah 25a. [4] Based on Yechezkel 45:4. [5] Based on Tehilim 37:28. [6] [E.g. if he swallows something harmful.] [7] [Such as following the Sanhedrin.] [8] [If the Sanhedrin should make an erroneous decision.] [9] Developing the idea further, the Ran proceeds to state that even in the event that the Sanhedrin made a mistake, the spiritual harm which would be caused by doing that act will be countered by the overwhelming spiritual benefit that comes from the mitzvah of following the Sanhedrin. In this regard, too, the Ran presents an analogous case as found in the laws of nature. Copyright © 2023 Journeys in Torah, All rights reserved. You’re receiving this email either because you signed up on the website or you requested to be added. <http://www.journeysintorah.com>

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from: **Rabbi Chanan Morrison** <chanan@ravkooktorah.org> via sendersrv.com date: Aug 17, 2023, 3:59 AM subject: Rav Kook on Shoftim: The Wisdom in Civil Law

Shoftim: The Wisdom in Civil Law

Three Types of Courts The Torah commands that a system of courts and police be established in every town. The Torah’s judicial system contains three levels of courts:

Regular courts of three judges who deal with matters of civil law — litigation and other monetary cases (in Hebrew, dinei mamonot). Higher courts made up of 23 judges who hear cases relating to capital crimes (in Hebrew, dinei nefashot). These courts were called ‘Minor Sanhedrins.’ A supreme court consisting of 71 judges, called the ‘Great Sanhedrin.’ Located in the Temple complex in Jerusalem, this high court had two functions: (a) to clarify the law in new or unclear cases, and (b) to promulgate new decrees. The Complexity of Civil Law Acceptance to the bench of the Great Sanhedrin was certainly most prestigious. All judges are required to be wise and humble, to love truth and hate bribery, to be well-liked and respected. Members of the Supreme Court were expected to be among the greatest scholars of the generation. They needed to be proficient in many of the sciences, such as medicine and astronomy.

We would similarly expect that membership in a Minor Sanhedrin court would demand a greater level of scholarship than participation in a humble three-member court. However, the Talmud indicates that cases of civil law require greater expertise and wisdom than the capital crimes that are judged in the Minor Sanhedrins.

“A student who has humbly accepted his teacher’s rebuke on two occasions will be worthy to distinguish between civil law and laws of capital crimes. As Rabbi Ishmael taught: One who wishes to be wise should study civil law, for no other area of Torah study is as intricate; it is like a flowing wellspring.” (Berachot 63b)

This Talmudic statement raises a number of questions. What sort of reward

is this for a suffering student? And why is civil law more complex than other areas of Torah?

**Civil versus Criminal Law** For some students, proficiency in their studies comes easily and quickly. Other students must struggle in order to master the material. The student who perseveres in his studies, despite blunders in class, will be compensated for his efforts. As a reward for his diligence and determination, he will not only grasp the particulars of the law, but will also gain insight into its underlying principles. This insight goes beyond the actual details, which are taught directly. It reflects a much more profound understanding of the subject matter.

Civil and capital crimes are both areas of law, yet they differ fundamentally in their objectives. The primary goal of civil law is to resolve monetary disputes between individuals and restore property to its rightful owner. It is only as a secondary goal that current or future benefits to society as a whole are taken into consideration. Capital crimes, on the other hand, are usually cases where there is nothing that can be rectified or returned. Here the primary goal is to protect society from future offenses.

Because of this fundamental difference, monetary law is intrinsically more complicated. Since the judge must decide between conflicting claims of ownership in all of the numerous situations of interpersonal relations, this type of law inherently deals with many more intricate details and complex issues. Study of civil law is therefore one of the most challenging areas of Torah study. True mastery of this subject requires a profound understanding of the underlying issues — an understanding that can be attained only by the most diligent and persevering students.

(Sapphire from the Land of Israel. Adapted from Ein Eyah vol. II, p. 391.

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## **PARSHAT SHOFTIM**

What is the ideal form of leadership for Am Yisrael:

- a NAVI [a prophet];
- a SHOFET [a judge];
- a KOHEN [a priest];
- a MELECH [a king]?

As Parshat Shoftim mentions each of these four 'models', in this week's shiur we discuss this important question.

### **INTRODUCTION**

It is not by chance that Parshat Shoftim discusses different forms of national leadership. Recall how the main speech of Sefer Devarim (chapters 5-26) contains the mitzvot that Bnei Yisrael must observe upon their entry into the Land. Considering that Parshat Shoftim is part of that speech, it only makes sense that this speech would contain a set of laws relating to the establishment of national leadership. With this in mind, we begin our shiur with an analysis of the logical flow of topic from Parshat Re'ay to Parshat Shoftim.

Recall from our previous shiurim how Parshat Re'ay began the important "chukim u'mishpatim" section of the main speech (i.e. chapters 12-26). This section opened with the topic of "ha'makom asher yivchar Hashem" - the site of the Bet Ha'Mikdash – which was to become the National and Religious Center. That discussion continued with topics relating the establishment of other laws that would facilitate the creation of an "am kadosh" [a holy nation], such as special dietary laws, and a unique economic system protecting the 'poor from the rich'.

Parshat Shoftim continues this theme in its opening discussion of a comprehensive judicial system (see 16:18-17:13). That topic, concluding with the establishment of a 'supreme court', is followed by laws relating to the appointment of a king (see 17:14-20); laws relating to shevet Levi (see 18:1-8) and some guidelines relating to proper and improper 'guidance councillors' (see 18:9-22).

As all of these mitzvot pertain to the political and religious leadership of the people, this would also facilitate the realization of God's goal for Am Yisrael to become His 'model' nation (see Breishit 12:1-3). The nation's character will be crystallized not only by the special mitzvot that each individual must follow, but also by its national establishments.

### **"OR LA'GOYIM"**

Our introductory remarks are based on not only our analysis of these mitzvot, but also Moshe Rabeinu's own remarks at the conclusion his first speech (i.e. chapters 1-4). Moshe here explains WHY Bnei Yisrael should keep all these mitzvot which he is about to teach them:

"See I am teaching you CHUKIM & MISHPATIM...for you to abide in the LAND that you are about to conquer. Observe them faithfully:  
\* For that will be PROOF of your wisdom in the EYES OF THE NATIONS, who will say upon hearing all these laws: Surely, THIS GREAT NATION is a wise people.  
\* For what great nation is there that has GOD SO CLOSE to them...  
\* and what great nation has laws as perfect as THIS TORAH which I set before you today!"

(see Devarim 4:5-8).

These psukim inform us that the CHUKIM & MISHPATIM section of Sefer Devarim will contain mitzvot that Bnei Yisrael must keep IN ORDER to achieve this divine goal - to become an "or la'goyim" - a shining light for all nations. This requires the

establishment of national institutions to mold its unique character. These institutions are to facilitate not only the spiritual growth of each individual citizen, but also the creation of a 'model nation' that will bring God's Name to all mankind.

### **THE NATIONAL INSTITUTIONS**

The first commandment of the CHUKIM & MISHPATIM section is the establishment of a National Center - BA'MAKOM ASHER YIVCHAR HASHEM. It is here where Bnei Yisrael are to gather on joyous occasions while offering their "korbanot" (see chapter 12), eat their "ma'aser sheni" (see chapter 14), and gather on the "shalosh regalim" (the three pilgrimage holidays/ see chapter 16).

However, the establishment of this center is just one of the many mitzvot which are to facilitate the formation of God's model nation. Recall that Parshat Re'ay contains several other mitzvot which help create this "am kadosh" (holy nation):

- \* the special dietary laws (see 14:2-21);
- \* the laws of the seven year "shmitah" cycle (15:1-18), a national economic policy which helps guarantee social justice;
- \* warnings against 'bad influences' which could thwart the development of God's special nation (12:29-13:19).

This theme continues in Parshat Shoftim, which describes several institutions of national LEADERSHIP:

- 1) the SHOFET - a judicial system
- 2) the LEVI - religious leadership & civil servants
- 3) the NAVI - religious guidance & national direction
- 4) the MELECH - political leadership

We begin our discussion with the first topic addressed in our parsha, the SHOFET - the establishment of a nationwide judicial system:

"You shall appoint Shoftim v'shotrim" (judges and officers) at ALL YOUR GATES (i.e. in every city) that God is giving you, and they shall govern the people with due justice... JUSTICE, JUSTICE, you must pursue, IN ORDER that you thrive and inherit the LAND... (16:18-20).

Several psukim later (an explanation of the interim psukim 16:21-17:6 is beyond the scope of the shiur), Parshat Shoftim continues this theme with the commandment to establish a SUPREME COURT at the NATIONAL CENTER:

"If there is a case too baffling for you to decide...matters of dispute in your courts - YOU SHALL GO UP to HAMAKOM ASHER YIVCHAR HASHEM, before the KOHANIM, LEVIIM, or SHOFET, and present your case..." (17:8-11).

This institution serves as the HIGHEST authority for both civil disputes and halachic questions. Both TORAH and JUSTICE must emanate specifically from the site of the Temple, the National Center. Once again, this mitzvah reflects the primary purpose for God's choice of a special nation, as God had already explained in Sefer Breishit:

"For Avraham is to become a great NATION, and the nations of the world shall be blessed by him; for I have designated him IN ORDER that he command his children and his posterity to follow the WAY OF THE LORD by keeping TZDAKA & MISHPAT..."

(see Breishit 18:17-19 and its context!).

### **SHEVET LEVI**

Not only does the Torah require the appointment of judges, it also commissions an entire tribe - SHEVET LEVI - to become 'civil servants' for this purpose. The Leviim are not only to officiate in the Temple, but they must also serve as judges. Additionally, they are responsible for the teaching of Torah and the instruction of the halacha (Jewish Law).

This educational responsibility, which may only be implicit in Parshat Shoftim (see 17:9), is later stated explicitly by Moshe Rabeinu in his final blessing to Shevet Levi:

"They shall TEACH Your LAWS to Yaakov and Your TORAH to Yisrael" (Dvarim 33:9).

In fact, Parshat Shoftim identifies this tribal obligation as the reason why Shevet Levi does not receive a portion in the land: "The KOHANIM & LEVIIM - the entire tribe of Levi - shall have no territorial portion within Israel. [Instead] they shall receive their portion from God's offerings... for God is their portion... You shall also give them the first portion of your grain, wine and oil, and the first shearing of your sheep. For God has chosen him [Levi] and his descendants from out of all your tribes TO SERVE IN THE NAME OF THE LORD for all time" (see 18:1-5).

Not only does the Torah define their duty as civil servants, but it also details their 'compensation' for this service (see also 18:6-8).

## THE NAVI

This section, which deals with shevet Levi, is immediately followed by a discussion of to WHOM Bnei Yisrael should [and should not] turn for guidance:

"When you ENTER THE LAND which God is giving you, DO NOT learn to imitate the abhorrent practices of those nations. Let no one become...a soothsayer, a sorcerer, one who casts spells, or one who consults ghosts and spirits, or inquires of the dead. For anyone who does such things is abhorrent to the Lord... [INSTEAD] God will raise up for you a NAVI - a Prophet, like myself (Moshe Rabeinu). To HIM you shall listen...I will put My words in his mouth, and he will speak to them all that I command him..." (8:9-22).

These psukim prohibit the consultation of any of a wide variety of popular 'soothsayers,' as was the practice of the nations of Canaan. Bnei Yisrael should rather seek guidance from the NAVI, who is to serve as a national 'advisor' through whom God will communicate His message.

## SO WHO'S IN CHARGE?

Thus far, we have encountered a court system, judges, the tribe of Levi (the Torah instructors), and the NAVI (who offers spiritual guidance). However, are any one of these leaders expected to provide political leadership as well?

- \* Whose responsibility is it to actually oversee the CONSTRUCTION of the Bet HaMikdash, BAMAOKOM ASHER YIVCHAR?
- \* Whose duty is it to organize a standing army and lead the nation in battle?
- \* Who will determine foreign and domestic policy?
- \* Who will conduct and supervise the collection of taxes, the building of roads, the minting of coins, etc.?
- \* Basically, who will run the country?

Neither from Parshat Shoftim or anywhere else in Chumash does it appear that these tasks are the responsibility of the kohanim, leviim, or the shoftim. Are they the responsibility of the NAVI - the Prophet?

The NAVI may, and probably should, serve as an ADVISOR to the political leadership, representing 'God's opinion' on important issues. Nevertheless, Parshat Shoftim clearly does not present him as a political leader.

Neither does the "shofet," presented at the beginning of the Parsha, emerge from the psukim as a 'political leader.' Although he must ensure the execution of justice (16:20), he is not portrayed as a political leader.

[Note: The use of the name "shofet" in Sefer Shoftim to define the ad-hoc political leadership of that time is a fascinating topic unto itself, but requires independent treatment, beyond our scope in this context.]

## THE "MELECH"

The answer to this question lies in one last category of national leadership discussed in Parshat Shoftim - the "melech" (king):

"When you have entered the land... and you will say: 'I want to have a KING, as do all the nations surrounding me,' appoint a KING over yourself, ONE CHOSEN BY GOD..."

- \* He must NOT keep too many horses...;
- \* He must NOT have too many wives...;
- \* He must NOT amass too much silver and gold.

When he is seated on his royal throne

\* He must WRITE down this MISHNEH TORAH (the laws of Sefer Devarim) from in front of the Kohanim and Leviim;

\* He must KEEP IT with him and READ IT every day of his life IN ORDER that he learn to FEAR GOD....

\* Thus, he will not act haughtily...or deviate from the Torah...IN ORDER that he and his children may continue to reign over Am Yisrael... (see Devarim 17:14-20).

From the above psukim alone, it is unclear whether the Torah OBLIGATES or merely ALLOWS for the appointment of a king. [See Sanhedrin 20b and all the classic commentaries.]

However, it appears from the CONTEXT of these psukim, especially in their relation to the other types of national leadership presented in Parshat Shoftim, that specifically the king is expected to provide political leadership. After all, who else will 'run the show'?

Even though Moshe Rabeinu himself acted as BOTH the "navi" and king (i.e. the political leader), it seems that this 'double duty' is the exception rather than the norm. [Later in Jewish History, certain situations may arise [e.g. Shmuel] when the national leader may also serve as NAVI, but this is not the standard procedure.]

## THE MAKING OF A NATION

Given God's desire that Bnei Yisrael become His 'model nation,' it is quite understandable why some form of central government is necessary. After all, in order to become a prosperous nation, at least some form of political leadership is needed to coordinate and administer its development.

One could suggest that when the Torah speaks of a king, it may be referring to any type of political leadership with central authority, regardless of the political system by which he is elected (be it a democracy, a monarchy, theocracy, etc.). The Torah speaks specifically of a 'kingdom,' for at the time of Matan Torah, that form of government was the most common. However, these laws regarding 'the king' would apply equally to any form of political leadership.

## "K'CHOL HA'GOYIM"

This interpretation may help us understand the phrase "melech k'chol ha'goyim" - a king like the other nations (see 17:14 and pirush of the Netziv in Emek Davar). The Torah is not encouraging Bnei Yisrael to request a king who ACTS like the kings of neighboring countries. Rather, they will request a FORM OF GOVERNMENT similar to that of the neighboring countries.

This observation may very well relate to the very concept of the singularity of the Jewish Nation. Although we must remain different from other nations, we must still be a nation, in the full sense of the term. Hence, Am Yisrael does not need to be different from other nations with regard to the FORM of its political leadership, rather in the MANNER by which its political leadership acts!

Once a specific leader is chosen, the Torah must guarantee that he does not grow too proud of his stature (see 17:16-17,20). Instead, he should use his invested powers to lead Am Yisrael towards becoming an "am kadosh." To this end, he must review the mitzvot of Sefer Devarim - MISHNEH TORAH - on a daily basis (see 17:19!). This is how we can become a 'model nation.'

Basically, "parshat ha'Melech" in Sefer Devarim sets the 'guidelines' for the behavior of the political leadership of Am Yisrael so that they fulfill God's destiny. Whereas this constitutes a primary theme of the main speech of Sefer Devarim, it is only appropriate that Parshat Shoftim deals specifically with this aspect of political leadership.

## A CHALLENGE

Undoubtedly, an inherent danger exists once political power is invested in a strong central government. But without a stable, authoritative body, a country cannot prosper and develop to its maximum potential.

It is the Torah's challenge to Am Yisrael to become a nation that resembles all other nations with regard to the establishment of a sovereign political entity. However, at the same time, it is the Torah's challenge to Am Yisrael that they be DIFFERENT from all other nations in the manner by which that leadership behaves and governs; for we are to become God's 'model nation.'

This form of national government will not diminish the Kingdom of Heaven, but will rather promote the universal recognition of God's Kingdom and further the glorification and sanctification of His Name.

shabbat shalom,  
menachem

=====

### FOR FURTHER IYUN

1. Based on Parshat Ha'Melech, would you define this ideal monarchy as constitutional or divine?

See Kings II- 11:17

2. Was Moshe Rabeinu a melech, a navi, or both?  
What was Yehoshua? See Rambam Hilchot M'lachim perek I.

What was Shmuel? (Was he an exception or the ideal?)

Is a dynasty necessary to be considered a king?  
How does this question relate to the above shiur?

3. Read Rambam Hilchot Trumot I:1-3.

Which type of melech is the Rambam referring to?  
See also the Rambam in Hilchot Melachim perek I.

See also the first Rambam in Hilchot Chanuka, where he discusses the historical background to this holiday. Note his remark, "v'he'emidu MELECH min ha'KOHANIM... and MALCHUT returned to Israel for more than two hundred years..." What type of MALCHUT is Rambam referring to?  
How would this relate to the above shiur?

4. Which of the 'shoftim' in Sefer Shoftim are actually referred to as such in Tanach? Why?

In what way is Gideon different from all the other Shoftim (in relation to his leadership /see Shoftim 8:22-25)?

5. Later in the Parsha, we are told that the "Kohen" addresses the army prior to battle (20:1-4). Here, his primary function is to boost the soldiers' morale, promising God's assistance in the campaign against our enemies.

Does it appear from the Torah that it is also the Kohen's task to lead the army in battle?

6. Based on this week's shiur, explain the difference between Kings Shaul, David, and Shlomo, and the "shoftim."

- Who forms the first standing army?
- Who first decides to construct the Bet HaMikdash?
- Who is the first to levy taxes?
- Who establishes a strong central government?

7. Try to classify all the "chukim u'mishpatim" from Parshat Re'ay through Parshat Ki-Tetze into different groups, each of which focuses on a specific topic. See if you can relate these topics to the order of the Ten Commandments.

### 'What defines what's right?' For Parshat Shoftim

What's considered 'doing what is right in the eyes of God' [ "ha'yashar beinei Hashem"]?

Sefer Devarim mentions this phrase several times, and assumes that we'll understand what it means; yet the classic commentators can't seem to agree on its precise interpretation.

To illustrate this problem, our shiur begins with the final pasuk in Parshat Shoftim - to show how it forms a rather meaningful conclusion for its opening line!

### INTRODUCTION

The last nine psukim on Parshat Shoftim (21:1-9) discuss the laws of "eglah arufa" – when the leaders of a community must perform a special ceremony in the case of an unsolved homicide.

Even though the first eight psukim describe the various stages of this 'ritual' – the final pasuk is not its last stage, rather – it appears to be some type of summary, or possibly even an additional commandment.

To verify this, review 21:1-9 – noting how the final pasuk is different, and how it relates to the previous eight psukim. [Make not as well of how you translated the word "ki" in 21:9!]

### SUMMARY – OR NOT?

Let's begin with the JPS translation of 21:9, noting how it understands this pasuk as a summary for the previous eight (by adding the word 'thus'):

**"Thus** you will remove from your midst guilt for the blood of the innocent, **for** you will be doing what is right in the sight of the Lord." (21:9 / JPS)

[Note similar translation in Rav Aryeh Kaplan's Living Torah, and in the Jerusalem Bible ['so' instead of 'thus' - but all view this pasuk as a summary.]

In other words, after explaining all the various stages of this ritual – the Torah concludes by informing us that it will work! However, this explanation forces us to accept two conclusions:

1) That this "dam naki" [innocent blood] refers to the blood of the "chalah" [the slain person/ see 21:1] – which requires some sort of atonement, ideally with the blood of his murderer, but otherwise with the blood of the "eglah arufa". Without either, it seems that there would be terrible consequences.

2) The phrase "ha'yashar beinei Hashem" refers to these specific procedures of "eglah arufa" (as described in 21:2-8). Hence, when you have done them, the "dam naki" will be atoned.

The second conclusion is rather difficult to accept, for why would this ritual of "eglah arufa" fall under the category of doing 'what is correct in the eyes of God'? Usually, this phrase of "ha'yashar b'chein Hashem" refers to something in the realm of moral behavior, but rarely ever to ritual. [See Shmot 15:26, Devarim 6:18, 12:28 and 13:19.]

But even the first conclusion is rather difficult to accept, for the pasuk seems to imply some sort of new command – "v'ata t'veayr" [You must get rid of...] – in contrast to summary. Furthermore, the last phrase of 21:8 – "v'nikaper la'hem ha'dam" [and (thus) they will be atoned for the blood/ see Rashi] – in itself seems to be a summary, and hence, there doesn't seem to be a need for an additional summary in 21:9.

### THE CASE ISN'T CLOSED!

Most probably for either one or both of these reasons, Rashi offers a very different interpretation, understanding the pasuk as an additional command (and not a summary):

"[This pasuk] tells us that should they afterward find the murderer – that he must still be put to death; and THAT is [what the Torah refers to] as 'yashar b'chein Hashem'." (see Rashi on 21:9)

Rashi's commentary solves both problems, for it understands this pasuk as an additional command – i.e. to continue to look for the murderer – EVEN THOUGH the "eglah arufa" ceremony was performed; while this 'continued search for

the murderer' is referred to (and rightly so) as 'what is correct is the eyes of God'.

To summarize Rashi's approach, this additional pasuk is basically coming to teach us that just because we have performed the ritual – the case is not closed! Instead, we must continue to pursue justice – for that is what is 'correct in the eyes of God'.

[See English translation of 21:9 in Stone Chumash, which reflects (as usual) Rashi's commentary, and how it differs from the other English translations.]

### PARTICULAR or GENERAL

One small problem remains with Rashi's approach, in relation to our understanding of the phrase "ha'yashar b'einei Hashem". If we consider the other times in the Torah where we find this phrase, we find that it usually refers to a very general category of behavior – more like a 'way of life' - in contrast to something specific. For example, after Bnei Yisrael cross the Red Sea and arrive at Mara, God challenges the nation to follow him as follows:

"If you obey God, and **do what is upright in His eyes** [v'ha'yashar beinav taaseh], and listen to all of His mitzvot and keep all of His decrees..." (see Shmot 15:26)

Earlier in Sefer Devarim as well, we find how this phrase is used in a very general manner:

"Keep God's commandments, His 'eidot' & 'chukim' as He commanded you – and **do what is upright and good in God's eyes...**" (See Devarim 6:17-18)

[See also Devarim 12:28 and 13:19.]

Therefore, if we follow the more general usage of this phrase elsewhere in Chumash, especially in Sefer Devarim, it would make more sense if "ha'yashar beinei Hashem" related to a wider range of mitzvot, relating to general moral behavior.

### PREVENTIVE MEASURES!

Most likely, it is this question that caused Ibn Ezra to offer an alternate, and rather creative interpretation. After mentioning the two approaches that we discussed above (i.e. either a summary or a command to pursue the murderer), Ibn Ezra continues:

"But what seems correct in my eyes ['v'hanachon b'einei' – note his clever choice of words!], this relates to what I mentioned in my commentary (i.e. in 21:7) that no murder at all would have taken place in the land if [beforehand Bnei Yisrael had] acted in a manner that is upright in the eyes of God'. – following the principle of:

'schar aveira aveira u'schar mitzvah mitzvah' – the penalty for a transgression is another transgression, and the reward of a mitzvah is another mitzvah."

(see Ibn Ezra 21:9 / & 21:7)

Note how according to this interpretation, the phrase "ha'yashar beinei Hashem" describes good behavior in general, and not any particular commandment, just as it does earlier in Sefer Devarim (6:18, 12:28 and 13:19).

Hence, there is no longer a need to explain this pasuk either as a summary or as an additional commandment; rather Ibn Ezra understands this pasuk as the Torah providing us with some 'good advice' – to prevent this type of situation (that would require an "eglal arufa") from occurring in the first place.

### A GOOD TEACHER

If we follow Ibn Ezra's approach, this finale pasuk to the laws of "eglal arufa" follows a pattern that emerges throughout Moshe Rabeinu's speech in Sefer Devarim. Quite often, when Moshe Rabeinu is teaching specific laws, he'll take a quick break to provide a reminder, or some good advice – that relates to good behavior in general, in relation to that specific mitzvah.

[If you'd like some examples, see 12:19, 12:28, 13:19, 14:2, 15:11, 16:12, 16:20, 19:10, not to mention all of chapter 8 thru

10 – note also 24:9, according to Rashi! I'm sure you can find many more.]

### HOW DO WE KNOW WHAT'S 'RIGHT IN GOD'S EYES'

Before we conclude our short shiur, it is highly recommended that you read the Ramban on Devarim 6:18, where he solves the problem of how we are supposed to figure out what is considered "yashar b'einei Hashem". [Note how (and why) he brings so many examples from Parshat Kedoshim!]

It is also recommended that you see the Ramban on Devarim 21:5-8, where he quotes the Rambam's explanation how the laws of "eglal arufa" are not quite ritual, but rather a set of very wise steps to increase the chances that the true murderer will be found!

In conclusion, note how the opening psukim of the Parsha command Bnei Yisrael not only to appoint judges, but also insists that their primary goal is to pursue justice and set a personal example of moral behavior (see 16:18-20!). With this in consideration, the final pasuk of Parshat Shoftim (according to Ibn Ezra's interpretation) serves not only as an appropriate finale for the laws of "eglal arufa", but also for all of Parshat Shoftim!

shabbat shalom,

menachem

## The Judges and the 'Eglah Arufah

By Rabbi Yitzchak Etshalom

### I. THE CEREMONY

At the end of this week's Parashah, we are instructed regarding a rather odd ceremony:

If, in the land that Hashem your God is giving you to possess, a body is found lying in open country, and it is not known who struck the person down, then your elders and your judges shall come out to measure the distances to the towns that are near the body. The elders of the town nearest the body shall take a heifer that has never been worked, one that has not pulled in the yoke; the elders of that town shall bring the heifer down to a wadi with running water, which is neither plowed nor sown, and shall break the heifer's neck there in the wadi. Then the priests, the sons of Levi, shall come forward, for Hashem your God has chosen them to minister to him and to pronounce blessings in the name of Hashem, and by their decision all cases of dispute and assault shall be settled. All the elders of that town nearest the body shall wash their hands over the heifer whose neck was broken in the wadi, and they shall declare: "Our hands did not shed this blood, nor were we witnesses to it. Absolve your people Israel, whom you redeemed, Hashem; do not let the guilt of innocent blood remain in the midst of your people Israel." Then they will be absolved of bloodguilt. So you shall purge the guilt of innocent blood from your midst, because you must do what is right in the sight of Hashem. (D'varim 21:1-9)

In the case of a "found victim" of a homicide, the elders (=judges) of the nearest town are charged with the responsibility of declaring their own innocence – what a strange demand! Would we have thought that these sage and saintly leaders are common murderers? What is the gist of their declaration?

I would like to share two unrelated insights regarding the Eglah Arufah and then combine them to (hopefully) deepen our understanding of this declaration.

### II. THE GEMARA'S EXPLANATION

The Gemara (Sotah 38b) explains:

R. Yehoshua' ben Levi says: the 'Eglah 'Arufah only comes on account of inhospitality, as it says: "they shall declare: 'Our hands did not shed this blood...' " – would we have thought that the elders of the court are murderers [that they need to declare their innocence]? Rather, [what they are saying is]: "He did not come to us that we left him without food, he did not come to us for us to leave him without escort." (See the Sifri, where only "escorting" is mentioned).

In other words, the elders of the court are declaring that they did whatever they could to treat this poor victim correctly while passing through their town (or that they really weren't aware of his presence – both the Gemara and the Sifri could be read both ways).

Rabbi Yoel Sperka (who taught and inspired many of us here in Los Angeles during our high school years) asked an insightful question about this explanation:

What does hospitality have to do with homicide? Why would a declaration stating that "We did not kill this man" imply anything about the way the elders (or townspeople) treated him?

### III. A PSYCHOLOGICAL INSIGHT

Rabbi Sperka gave an insightful psychologically-driven explanation, as follows:

An individual who passes through a town is an outsider, a stranger. He is out of his element and, as such, is subject to a great deal of isolation – social isolation which can easily lead to existential isolation.

If someone comes through town and is virtually ignored by the townspeople – he comes to "Mincha/Ma'ariv" at shul and no one greets him, asks him home for a meal etc. – his sense of isolation is increased. Along with this, his sense of self-worth and self-esteem are threatened; he simply doesn't "make a difference" here.

If, at the end of this disappointing visit, he isn't even "escorted" out of town (this "escort" could come in the form of a ride to the edge of town, a request that he grace the presence of his hosts one more day, etc.) he leaves with a lowered sense of self and of his own significance.

Someone in this state of mind who is set upon by a highway robber has much less "fight" in him with which to defend himself. He is easily overpowered by the thug who jumps him outside of city limits.

Take, on the other hand, someone who has the opposite experience. He comes to town and is immediately the subject of a fight between families who are vying for the opportunity to host him, to wine and dine him. When he must take his leave, his hosts beg him to stay one more day and, when he finally does leave, they escort him to the edge of the town and a few steps further, just to delay their parting.

Someone who has had this type of experience sets out on his inter-village journey with a stout heart and an increased (and, we hope, realistic) sense of his own worth and importance. Someone like this who is "jumped" outside of town has a real "fighting chance" (pun intended) to defend himself.

If we found such a person to be the victim of this type of crime, we can be assured that the attacker was, indeed, too strong for him – nothing that was in our power to do, short of staying with him the whole time, could have prevented this crime.

This is what the elders are declaring: If we saw this man, we did everything possible to enhance and maintain his sense of self-worth, such that any chance he had of defending himself was enhanced by his visit through our town.

(If, as the second half of the declaration implies, they did not see him, then they certainly did as much as they could...)

Thus far, Rabbi Sperka's explanation.

I would like to ask a question about this wonderful insight – in that something seems to be missing here.

Hospitality is generally understood to be a subset of the command: Love your fellow as yourself (see MT Evel 14:1). This is a Mitzvah which is incumbent on everyone, not just the court. Why is the court making this declaration – shouldn't every resident of the town state: "Our hands did not shed this blood...?"

(One could argue that the court is acting on behalf of the town; but if that were the case, the declaration should be "The hands..." not "our hands".)

Before addressing this question, here is a second observation about the "Eglah 'Arufah".

#### **IV. YOSEF, YA'AKOV AND THE "AGALOT"**

Subsequent to the dramatic and tense moment when Yoseph revealed his identity to his brothers, he sent them back to K'na'an to bring father Ya'akov down to Egypt. The Torah relates Ya'akov's reaction to the news of Yoseph's survival and position as follows:

So [Yoseph] sent his brothers away, and they departed; and he said to them, "See that you fall not out by the way." And they went up from Egypt, and came to the land of K'na'an to Ya'akov their father, And told him, saying, "Yoseph is yet alive, and he is governor over all the land of Egypt." And Ya'akov's heart fainted, for he believed them not. And they told him all the words of Yoseph, which he had said to them; and when he saw the wagons (\*Agalot\*) which Yoseph had sent to carry him, the spirit of Ya'akov their father revived; And Yisra'el said, "It is enough; Yoseph my son is yet alive; I will go and see him before I die." (B'resheet 45:24-28)

Hazal were bothered by a seeming incongruity of the report here. When the brothers told Ya'akov that Yoseph was still alive – indeed, very much alive – he did not believe them. Yet, when he saw the \*Agalot\* which accompanied the brothers, his spirit was revived and he affirmed that Yoseph was alive. If he didn't believe the brothers' announcement about Yoseph, what was there about the wagons that was more convincing? After all, if the brothers were trying to deceive him (yet again! – see B'resheet 37:31-33), couldn't they have also brought some wagons to bolster their story?

The Midrash (B'resheet Rabbah 94:3) explains as follows: R. Levi said in the name of R. Yohanan b. Sha'ul: [Yoseph]

said to [his brothers]: If [Ya'akov] believes you, fine; if not, tell him as follows: "When I departed from you, were we not engaged in the parashah of *"Egla Arufah"*? – hence it says: "when he saw the wagons... the spirit of Ya'akov their father revived".

The play on words is obvious: Even though *\*Agalah\** (wagon) and *\*Eglah\** (calf) have the same root, they are unrelated words. Nevertheless, the close morphological association creates the possibility of a Midrashic connection. The wagons which Yoseph sent served as a secret communiquÈ; only Yoseph and Ya'akov knew what area of Halakhah they had last discussed, as they took leave from each other near Hevron, twenty-two years earlier.

This Midrash is accomplishing more than merely making a "stretched" word- play. If that were the entire purpose of this exegesis, R. Yohanan b. Sha'ul could have associated Ya'akov's revival with Korbanot (the bringing of an *\*Egel\**, e.g. at the dedication of the Mishkan) or, better yet, with the wagons which the tribes dedicated to the Mishkan (Bamidbar 7). Why did the Midrash pick up on the *\*Eglah Arufah\** ceremony as the clue which verified the brothers' report?

## V. THE ROLE OF THE JUDGES

In order to solve both of our questions, we need to take a look at the overall theme of the Parashah.

Parashat Shoftim is essentially about the various components of national leadership. It begins with the Mitzvah to appoint judges and officers and then details some of their duties. After that, we are introduced to the Melekh (king) and his restrictions/obligations. At the beginning of Chapter 18, the Torah teaches us a special Halakhah regarding the "tribe of leadership" (Levi) – and then we are (re)introduced to the office of "Navi" (prophet) and his tasks.

Within each privileged position, the Torah stakes out very clear limitations which are designed to maintain the leader's association and identification with the nation. The king is commanded to write a Sefer Torah and read it every day in order that "his heart should not become haughty relative to his fellows"; both the Kohanim and the Navi have similarly-geared Halakhot, unique to their offices.

In much the same way, the Torah simultaneously elevates the Shoftim (judges) to an almost divine-like position of power (note that we are obligated by Torah law to follow their dictates – see BT Shabbat 23 in re: the blessing over Hanukkah lights) while instituting this ritual which insures that they will maintain a close relationship with the people they are meant to lead.

When the judges declare that they have not spilled this blood (= guarantee that this victim was treated hospitably), they are owning up to more than the treatment of this poor victim. They can only make this declaration if they are fully doing their job – leading the people of their city beyond the legal dimension of Torah – to the fully enhanced ethic of lovingkindness and concern for a fellow's welfare. Their declaration admits of a great responsibility not only towards visitors – but, ultimately, towards their townsfolk. The level of hospitality and kindness which is the norm in their town rests on their shoulders – if they can make this declaration, then they are indeed fulfilling their job. This means that the power invested in them by Torah law has not separated them from their "constituents" (as so often happens in any power position); rather, they have maintained a close relationship with the people and continue to keep their finger on the pulse of their community, which they are leading towards a full commitment to the ideals embodied in Torah.

With this approach in hand, we can now reevaluate the *\*Agalot\*-Eglah Arufah\** connection made by the Midrash. When the brothers told Ya'akov that Yoseph was now the governor of Egypt, he didn't believe them. What didn't he believe? That Yoseph was alive – or that Yoseph was indeed the leader of Egypt? Consider this: What motivation would the brothers have to lie about such a matter? If Yoseph really was dead, what did they stand to gain by generating a rumor about his being alive?

Perhaps what Ya'akov didn't believe was – that "Yoseph" ruled in Egypt. In other words, Ya'akov may have been willing to grant that his son had somehow survived whatever terrors the past twenty-two years held for him – and had, through his brilliance, insight and charm, risen to a position of power in Egypt. As hard as this may have been to accept, it paled in significance next to the incredulous report that this governor of Egypt was still "Yoseph". Who ever heard of the vizier of a major world-power maintaining his youthful idealism and tender righteousness?

When the brothers reported: "Yoseph is yet alive, and he is governor over all the land of Egypt", Ya'akov did not believe them. When he saw the wagons, those *\*Agalot\** which were a reminder of their last Halakhic discussion, he realized that

Yoseph had never relinquished the values taught by his father. Leadership carries with it the burden of responsibility for all members of the nation – their physical welfare as well as their moral growth and ethical conscience. This is the lesson of the \*Eglah Arufah\* – a lesson Yoseph had never forgotten.

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## Parshat Shoftim: Rabbinic Authority

by Rabbi Eitan Mayer

### HALAKHIC AUTHORITY:

This week, we will be doing something a little different than usual. Instead of trying to extract the peshat (plain-sense) meaning of the Torah and examine the themes of the parasha, we will be looking at a halakhic issue. This means that we will be looking for the \*halakhic\* interpretation of the text, not the peshat meaning (though they often coincide), and also that we will be paying more attention than usual to post-biblical halakhic sources. Given that we are knee-deep in the halakhic section of Sefer Devarim (Deuteronomy), it seems appropriate for us to move beyond the text itself and focus on halakha.

The topic we will examine is one of great concern to the many Jews who take their Judaism seriously and are looking for guidance about one of the most pressing issues in Jewish life. That issue is halakhic authority: who is qualified to make halakhic decisions? Where does this authority come from? Are the decisions of any individual or any constituted body binding on communities or on the Jewish people as a whole? Do halakhic authorities have power also in non-halakhic areas?

Our parasha is the address for all of these questions, as it contains the brief section from which we derive the most significant rules of halakhic authority. It goes almost without saying that there are many points of view other than those which will appear in this discussion. (And to anyone who attended the course I gave on halakhic authority awhile back, I hope the review does you some good.)

First we will take a look at the relevant section of the parasha. I urge you to look at the original text and not to rely on my (or anyone else's) translation:

### DEVARIM 17:8-13 --

If a matter of judgment ["mishpat"] should escape you, between blood and blood, between law and law, and between lesion and lesion ["nega"], matters of strife in your gates, you shall arise and go up to the place that Y-HVH, your God, shall choose. You shall come to the priests, the levites, and to the judge who shall be in those days, and you shall seek ["ve-darasha"], and they shall tell you the matter of judgment. You shall do according to the thing that they tell you from that place, which Y-HVH shall choose; you shall guard ["ve-shamarta"] to do as all they instruct you ["yorukha"]. According to the instruction ["torah"] that they instruct you ["yorukha"], and according to the judgment which they say to you, you shall do; do not turn aside from the thing they tell you, right or left. But the man who shall act brazenly, to not listen to the priest who stands to serve there Y-HVH, your God, or to the judge -- that man shall die; you shall clear out the evil from Yisrael. The entire nation should hear and see, and not act brazenly any further.

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### QUESTIONS:

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1. (a) Why is the high court located in the Chosen Place, where Hashem's 'home' is also located -- what does resolving a legal issue have to do with the Beit HaMikdash (Temple)?

(b) What do the "priests and levites" have to do with judgment? It makes sense to bring matters of judgment to a judge, but what are these religious functionaries doing in the picture?

(c) The Torah places great emphasis on the fact that the priests-levites/judge sit in the Chosen Place, repeating that this is the place chosen by Hashem and that "you shall do according to the thing that they tell you FROM THAT PLACE." Why is this so important? After all, the point is not the courtroom or the address of the courthouse, it's the answer the judge gives you -- right?

2. Why does the Torah command that we execute (!) anyone who disagrees with the verdict handed down by the court? Why should it be a capital crime to have a different opinion? Does the Torah allow no room for people to see an issue

from different perspectives?

3. Does all of this apply only to the specific circumstances described by the Torah -- i.e., are we required to obey the instructions of this priest-levite/judge halakhic authority only if he sits in the Chosen Place? What if the Beit HaMikdash is destroyed -- does halakhic authority perish along with it?

4. What if you think that the court (or other halakhic authority) is wrong -- do you have to listen anyway? If so, why? What sense does it make to listen to a court if the court is telling you to do something you think is against the Torah?

5. Does a court, or any other religious or halakhic authority, have any sort of authority in non-halakhic areas, or are we on our own in the non-halakhic realm?

#### **INTRODUCTION:**

Imagine it's 2,500 years ago, and you're living in a small town three hours' donkey ride from Jerusalem. A halakhic question comes up at the farm, so you ask your local Orthodox rabbi, but he doesn't know the answer. What are you supposed to do?

#### **RAMBAM, LAWS OF REBELS, 1:4 --**

[Whenever] any law became the subject of doubt for a Jew, he would ask the court in his city. If they knew, they would tell him; if not, then the questioner, along with the court or its emissaries, would ascend to Jerusalem and ask the court at [entrance to] the Temple Mount. If they knew, they would tell them; if not, then all of them would come to the court at the opening of the Sanctuary. If they knew, they would tell them; if not, then all of them would come to the "Hewn Chamber," to the Great Court, and ask. If this matter -- about which everyone was in doubt -- was known to the Great Court . . . they would tell them immediately, but if the matter was not clear to the Great Court, they would consider it at that time and discuss it until they all agreed, or they would vote and follow the majority. Then they would tell the questioners, "Such is the halakha" . . . .

Once the Great Court delivers its response, the questioners are required to accept the answer and behave accordingly. This is not just advice -- it is a positive command (mitzvah asei) to obey the Great Court, and a negative command (mitzvah lo ta'aseh) to disobey the Court:

#### **RAMBAM, LAWS OF REBELS, CHAPTER 1 --**

LAW 1: The Supreme Court in Jerusalem are the root of the Oral Torah and the pillars of instruction; from them do law and judgment go out to all Israel, and the Torah places trust in them, as it says, "According to the instruction that they instruct you" -- this is a POSITIVE OBLIGATION. All who believe in Moshe, our teacher, and in his Torah, are bound to rely on them in religious activities and to depend on them.

LAW 2: Anyone who does not act in accordance with their teaching violates a NEGATIVE COMMAND, as it says, "Do not turn from what they tell you, right or left" . . . Any sage who rebels against their words, his death is through strangulation . . . whether [the issue in dispute is] 1) a matter known by oral tradition, or 2) a matter derived by the Court itself using one of the hermeneutic rules of interpreting the Torah, and which seems correct to them, or 3) a "fence" in the law which they created in order to protect Torah law or because there was a need for it -- these are the gezerot and takkanot and minhagot -- in all three categories, it is a POSITIVE OBLIGATION to obey them. One who violates any of these laws violates a NEGATIVE COMMAND . . . .

Let us neither overcomplicate nor oversimplify the matter: the scope of authority granted by these mitzvot is a matter of significant debate. The sources to be presented here are only those I find both particularly important, as well as presentable over e-mail.

#### **WHAT IF I THINK THE COURT IS WRONG?**

It is all very well and good to have one central clearing-house for halakha, where all decisions are finalized, but what if it seems to me that the decision handed down is incorrect? How am I supposed to react? Hazal and many Rishonim (medieval authorities) address this possibility in many places:

**SIFREI, DEVARIM, SECTION 154:11 --**

"[Do not turn aside from the thing they tell you,] right or left": Even if they show to your own eyes that right is left and left is right, listen to them.

This midrash halakha seems to answer our question quite clearly: even if they tell you something you think is wrong, even if it's so obvious to you that it's as if they are standing in front of you and telling you left is right and right is left, you must listen to them. However, it is a bit more complex than that, because the language of this midrash is tricky and ambiguous:

"Afilu mar'im be-einekha al yemin she-hu semol ve-al semol she-hu yemin, shema la-hem."

While I believe that this is best translated as above, it is also possible to translate as follows:

"Even if it seems to you that they are telling you right is left and left is right, listen to them."

The difference between these two translations is that the first translation makes it sound like the court truly has made a mistake -- they tell you that right is left and left is right; still, you must listen to them. On the other hand, the second translation makes it sound more like the court has not necessarily made a mistake, just that \*you\* believe they have -- it "seems to you" that they are telling you something which is obviously wrong; still, you must listen to them. This second translation leaves room for the possibility that if the court truly is wrong, you are not supposed to follow its verdict; only if it seems to \*you\* that it is wrong are you required to follow it.

The first possibility -- that we are bound to follow the court even if it errs -- is reflected in another midrash:

**MIDRASH TANNA'IM, DEVARIM 17:10 --**

How do we know that if they tell you that left is right and right is left, [that you must] listen to their words? The Torah tells us, "According to ALL that they instruct you."

According to this view, we are commanded by Hashem to follow the court no matter what it tells us, no matter how ridiculous it seems, even if it declares that right is left and left is right. To put it another way, you could never commit an aveira (sin) by following the court. Hashem always wants you to do what the court tells you to do.

The second possibility -- that we are bound to follow the court even if it seems wrong to us, but only if it is truly correct in its verdict -- is reflected in a passage in the Yerushalmi (Jerusalem Talmud):

**YERUSHALMI, HORAYOT 1:1 --**

I might think that if they tell you that right is left and left is right, that you must listen to them -- therefore the Torah tells us, "to go right and left" -- that they must tell you that right is right and left is left.

If we stop to think about it, though, it seems not to make much difference which possibility is the correct one. In both cases, you think the court is dead wrong. It's as obvious to you as right and left. But you don't have access to the absolute truth of whether they are indeed right or wrong. So even if it were true that you are commanded to follow the court only when its verdict is correct, how are you supposed to know when the court is truly correct and when not?

One possible solution (and one which I believe is reflected by the context of some of the above sources) is that the different sources are referring to people with varying degrees of halakhic expertise. If you are, with all do respect, Joe Nobody in terms of halakhic expertise, then even if it seems to you that you are being told your hands are screwed on backwards, you ought to suspend your disbelief and accept the word of the Big Experts. But if you are a person of such halakhic stature that you would be qualified to sit on the Great Court, you not only can hold your ground, but perhaps you

\*must\* -- unlike the non-experts, who are compelled to rely on the Court due to their halakhic non-expertise, you are a Big Expert in your own right. In your expert view, it is not just that the Court \*seems\* to have erred, it is a certainty.

The fact that a Big Expert is in a different category than others when it comes to disagreeing with the Great Court is something reflected in the first Mishna in Tractate Horayot:

**MISHNA HORAYOT, 1:1 --**

If the Court [mistakenly] ruled that one may violate one of the commandments in the Torah . . . and one of them [i.e., one of the judges] knew that they had erred, or a student who is fit to be a judge [knew that they had erred], and he [nevertheless] went and acted according to their word [i.e., the word of the Court] . . . he is held responsible, for he did not [truly] rely on them [since he knew they were wrong] . . .

Now that we have seen some of what Hazal have to say, we turn to the Rishonim to see how they understood these pesukim. The first view we will consider is that of Rashi:

**RASHI, DEVARIM 17:11 --**

"[Do not turn aside from the thing they tell you,] right or left": even if they tell you right is left and left is right, and certainly if they tell you right is right and left is left.

Rashi leaves us with no doubt that he believes that even when the Court is truly mistaken, even when it tells you that right is left and left is right, you are bound to obey it. He is absolutely clear: we are to follow the Court whether they tell us right is left and left is right, or right is right and left is left.

Or maybe not! Perhaps Rashi, like the midrashim above which command obedience even to an ostensibly wrong verdict, is talking to the non-expert. Whether it looks to you like the Court is wrong (right=left, left=right) or right (right=right, left=left), you must obey its verdict. Since you are not a Big Expert, a potential member of the Court, you are not qualified to say whether the verdict is \*truly\* correct, so no matter what you think, you should follow its judgment. [In the middle of writing this shiur, I consulted Rabbi Herschel Schachter, Rosh Kollel at RIETS, and R. Schachter told me that the Tzeida La-Derekh, a commentary on the Torah, suggests the same resolution as I have suggested above.]

The Ramban's interpretation of Rashi seems to accord with the above suggestion -- that Rashi is addressing someone who \*believes\* that the Court has erred, not someone who is qualified enough to \*know\* that they have, in fact, erred:

**RAMBAN, DEVARIM 17:11 --**

"[Do not turn aside from the thing they tell you,] right or left"-- "Even if they tell you right is left and left is right," so is the language of Rashi. The meaning is that even if you BELIEVE in your heart that they are mistaken, and it is AS OBVIOUS TO YOU as your knowledge of the difference between your right and left hands, still, you shall do as they command, and do not say, "How can I eat this [non-kosher] fat or kill this innocent person?!"

The Ramban, along with Rashi, is telling the non-expert (if it's not obvious already, just about all Jews, including most rabbis, are considered "non-experts" in this context) to suspend his or her judgment and rely on the Great Court. Even though we may consider the Court mistaken, we have no accurate way of telling.

But then the Ramban goes further -- not only are we required to obey the Court because we cannot judge when it is correct and when mistaken, but we are required to obey it even when it truly is mistaken! The Ramban continues:

**RAMBAN --**

. . . Instead, you should say, "The Master, who commanded the commandments, commanded that I should behave -- in regard to all of His commandments -- as I am taught by those who stand before Him in the place He shall choose, and according to their interpretations has He given me the Torah, EVEN IF THEY ARE MISTAKEN."

Here the Ramban gives the Great Court much broader power than before; until now, we could have assumed that the Ramban is telling us to submit our will to the Court's because the Court has infinitely greater halakhic expertise. But now

he is telling us that the issue is not expertise, but authority. The Court is always right -- even when it's wrong! Hashem prefers that I follow the Court's wrong verdict to my own correct judgment! The Ramban goes on to explain the rationale for the command to obey and the command not to disobey the Court:

**RAMBAN --**

The need for this commandment is very great, because the Torah is given to us as a text, and everyone knows that opinions will differ in the details and in new situations; the result will be that disagreement will increase, and the Torah will become several Torot! So Scripture lays down the law, that we should listen to the Great Court -- which stands before God in the place He shall choose -- in all that they say in interpreting the Torah, whether they accepted it as testimony from earlier authorities, and they from Moses, and he from God, or if it is their own opinion about the meaning or intent of the Torah. **THIS IS BECAUSE THE TORAH WAS GIVEN TO FUNCTION ACCORDING THEIR OPINIONS**, even if it seems to you that they mistake right for left . . . for the Spirit of God rests on the servants of His Temple, and does not abandon His righteous ones; they are forever protected from error and stumbling. The Sifrei says: "Even if it seems to you that they say that the right is left and the left right."

**If you read the above Ramban carefully, you should now be totally confused.** Let's just review.

1) First, the Ramban quotes Rashi and says that the Torah is commanding us to obey the Court although WE BELIEVE it is mistaken. This makes it sound like the Ramban believes that we must obey the Court because we are usually wrong in our view of the halakha, and the Court is right.

2) But then the Ramban says that we are commanded to obey the Court even if it IS mistaken -- so even if we are right that the Court has told us that right is left and left is right, we must accept.

3) The Ramban then tells us that the Torah is given to us to function as the Court sees it, so that there will be unity in the nation and so that the Torah will not become multiple Torot. This makes it sound like the Ramban believes that the Court can indeed err, but that we are commanded to obey anyway for practical reasons: we have to stick together as a religious community and a nation.

4) But then the Ramban switches back again and tells us that special divine inspiration assures that the Court will NEVER make a mistake. He then quotes the midrash which reads, "Even if it seems to you . . .", implying that the Court is truly correct and that it is only our ignorance which makes us believe otherwise.

Will the real Ramban please stand up? Do we laypeople accept the Court's verdict simply for the sake of unity, or because we can't claim to know any better ourselves, or because they are simply always correct?

First let us consider one simple question: is it really true that the Great Court is "forever protected from error and stumbling?" Is there any solid evidence that the Great Court can indeed make a mistake?

If you've been paying attention so far, your answer should be yes -- much of the first perek (chapter) of Tractate Horayot (including the first Mishna, which was quoted above) deals with exactly this topic. But there is more solid evidence than that. Let us briefly take a look at two sections of the Torah:

**VAYIKRA 4:13-14 --**

If the entire congregation of Yisrael shall sin in error, and a matter is hidden from the "eyes of the congregation" [a term understood by Hazal to refer to the Great Court], and they do one of the mitzvot of Y-HVH which is not supposed to be done [i.e., a negative command] . . . they shall bring a bull of the flock for a sin-offering . . .

**BEMIDBAR 15:24 --**

It shall be, that if from before the "eyes of the congregation" [see above] it is done inadvertently, then the entire congregation shall bring a bull of the flock for a burnt-offering . . . and one goat for a sin-offering . . .

These two sections prescribe the procedure to follow in case the Great Court rules mistakenly and the entire nation (or a

significant part of it) follows that ruling. A special korban (sacrifice) or set of korbanot is to be brought. In any event, these passages confirm that the Court can indeed make mistakes.

**If you remember the Yerushalmi passage above, you will see that it, too, assumes that the Court can err.**

With all this in mind, let us return to the Ramban. Surely, the Ramban is aware of all this; therefore, when he says that "the Spirit of God rests on the servants of His Temple, and does not abandon His righteous ones; they are forever protected from error and stumbling," we must interpret his words in light of the evidence we have just seen. The Ramban's position is certainly complex, to say the least, but perhaps the following summary will help us to understand his words:

1) The Court is almost always correct in its verdicts. Non-experts are therefore required to obey it, because they have no expertise based on which to disagree with the Court. Even if it seems to their untutored senses that the Court is obviously wrong, they must submit to its expertise and its divine guidance.

2) Sometimes, the Court is indeed wrong. But non-experts are still required to obey it because

- a) they have no way of knowing with any reliability when the Court is halakhically wrong.
- b) it is necessary for the unity of the community for there to be one source of authority, and for it not to be OK for everyone to follow his or her own instincts in serving Hashem.

3) Now for the Big Expert who \*knows\* the Court is wrong: the expert is supposed to stick to his guns; eventually, the Court will consider his opinion. If they reject it, he is no longer allowed to tell people they can follow his ruling. (It is a matter of disagreement whether he is supposed to continue to follow his own ruling in private, but it is certain that he can no longer publicly follow his own ruling). If he refuses to knuckle under, it is "curtains" for him.

The Ran, Rabbi Nissim of Gerondi, relates to this last point in his Derashot (a fascinating sefer, which everyone should read; yes, I know that the Ran's authorship of it is at issue, but whoever wrote it, it is an important work). He assumes that the Torah's command to swerve neither "right nor left" refers to the Big Expert, not just to all of us Joe Nobodys:

**DERASHOT HA-RAN, DERUSH 11 --**

... "Even if they tell you right is left and left is right," even if it is clear to you that the truth is not like the words of the ruling of the Sanhedrin [Great Court], nevertheless, obey them, for so commanded Hashem, that we should behave with regard to the laws of the Torah and its mitzvot according to what they [the Court members] decide, whether they coincide with the truth or not! This is like the matter of Rabbi Yehoshua and Rabban Gamliel, that Rabban Gamliel commanded him to come to him, with his walking-stick and his money, on the day that he [Rabbi Yehoshua] believed was truly Yom Kippur -- and so he did! Since Hashem gave over decision-making power to them, WHATEVER THEY DECIDE IS WHAT HASHEM COMMANDS about that thing. On this do we rely in the mitzvot and judgments of the Torah, that we fulfill the will of Hashem in doing them [the mitzvot] so long as we rely on whatever the gedolei ha-dor [sages of the generation] agree upon.

Once Rabban Gamliel had heard Rabbi Yehoshua's opinion and rejected it, Rabbi Yehoshua was bound, like the Big Expert whose opinion has been heard by the Great Court and rejected, to accept the opinion of Rabban Gamliel, who was in a position of greater authority than he. The Ran, you may have noticed, appears to expand the authority of the Great Court beyond the Court itself, extending it to Rabban Gamliel and to the "gedolim" of each generation. According to the Ran, the section of Humash we have been studying is not history about a Court that once was, it is law which applies here and now. Whatever the great sages of the generation rule, we are commanded to obey them and forbidden from disobeying. The Ran makes this a bit clearer later on in his sefer:

**DERASHOT HA-RAN, DERUSH 12 --**

We are commanded to obey . . . the sages of the generations who come after the [Sanhedrin] . . . in whatever they explain in the laws of the Torah . . . But the 'fences' and rabbinic enactments they make . . . rely on the verse, "You shall not turn aside [from what they tell you, right or left]." Just as He gave this power to the Sanhedrin, since they are the teachers and great sages of Torah, so is it appropriate that this power be given to all sages of Israel . . .

The great sages of this generation, for instance, are empowered by "Lo tasur," "Do not turn aside," according to the Ran. Who the sages of this generation are . . . is not for me to say.

The final source we will see on this issue is also probably the most expansive. The Sefer Ha-Hinukh (author unknown, although some conjecture that it was written by the Ra'ah) extends the authority of the Court to the sages of all generations, even when there is no Court -- like the Ran above -- but he also may extend their authority beyond what is defined as strictly halakhic:

#### **SEFER HA-HINUHKH, MITZVAH 495 --**

It is an obligation to obey the voice of the Great Court and to do whatever they command in matters of Torah -- the forbidden and permitted, the impure and pure, the guilty and the innocent, and in ANY THING THEY BELIEVE STRENGTHENS AND IS CONSTRUCTIVE FOR OUR RELIGION . . . Included in this obligation is to obey -- in all ages -- the command of the judge ["shofet"]; that is, the greatest sage among us IN OUR DAYS; as they [Hazal] interpreted, may their memory be blessed, "Yiftah in his generation is as Samuel in his generation."

[It is worth mentioning that the Hinukh's language here is similar to that of the Rambam in Sefer HaMitzvot, Positive Mitzvah #174.]

#### **SEFER HA-HINUHKH, MITZVAH 496 --**

. . . And in every generation also, that we listen to the CONTEMPORARY SAGES, who have received their [the earlier sages'] words by tradition and have drunk water [=Torah] from their books . . . Even if they tell you right is left and left is right, do not stray from their command. In other words, even if they are wrong about a particular thing, it is not worthwhile to argue with them, and instead, we should follow their error. It is better to suffer one error and still have everyone under their good guidance than to have everyone do as he pleases, for this would cause the destruction of the religion, the splitting of the heart of the people, and the total destruction of the nation.

#### **AUTHORITY IN NON-HALAKHIC AREAS --**

As long as we have mentioned that the Sefer Ha-Hinukh may feel that the sages are empowered also in non-halakhic areas, let us briefly consider several statements made by great sages over the generations about rabbinic authority in non-halakhic areas. I will not comment on these statements; I put them forward for you to consider. I consider it too controversial a topic for me to comment on in this forum:

##### **1) THE HAFETZ HAYYIM** [From "Hafetz Hayyim on the Torah," p. 30]:

(Note that this is not the Hafetz Hayyim writing, it is a student of his.)

"He used to say, 'One whose opinion (da'at) is the opinion of the Torah (da'at Torah) can solve ALL OF THE PROBLEMS OF THE WORLD, IN GENERAL AND IN PARTICULAR.' But he added a condition: "The Da'at Torah must be pure, without any ulterior motive and any leaning. If you have a person who has Da'at Torah, but it is mixed even a little with other opinions from the marketplace or the newspapers (press), his Da'at Torah is clouded, mixed with refuse, and it is unable to descend to the depths of the matter."

##### **2) RABBI ELIYAHU DESSLER**, "Mikhtav me-Eliyahu," ["A Letter from Eliyahu"], vol I, pp. 75-76:

(The following is an "Editor's note" in a footnote in "Mikhtav me-Eliyahu"; it explains the context of Rabbi Dessler's words:)

"The one who asked the question [to Rabbi Dessler] was influenced by those who have already forgotten that the Land of Israel was saved from German attack from Africa only by a miracle which shocked the strategists. These people have argued that if all the Jews of Europe, may God avenge their blood, had come to Israel before the war, they would have been saved, and they blamed the gedolei ha-dor for this [as if they had the power to convince the people to move!]."

(So much for the editor's note. Anyway, the following are Rabbi Dessler's words:)

"From your words I can see that you think that all of the gedolim of Israel -- whose actions were for the sake of Heaven, the geniuses of intellect and pillars of righteousness at once, about whom, there is no doubt, that in all of their judgments and rulings, God was with them . . . --that all of them made a complete mistake. Heaven forbid! It is forbidden to hear such things, let alone to say them!"

"First of all, I will say that I knew some of these gedolim personally, and I saw them at assemblies dealing with matters of national significance . . . and I can tell you with certainty that even to pygmies like us, their brilliance was astounding, the depth of their intelligence penetrated into the deep itself. It is impossible for someone like us to measure the full degree of their understanding . . . and anyone who had the privilege of standing before them at these times, was sure that the Divine Presence was among their dealings, and the Holy Spirit rested on their gathering . . . Hazal have already told us to obey the wise ones even when they tell us left is right, and not to say, God forbid, that they have surely erred, for even tiny I can see their error. Instead, our own senses must be totally nullified, like the dust of the earth, before their brilliance and the divine assistance they receive . . . This is the Da'at Torah about emunat hakhamim."

**3) RABBI SHNEUR ZALMAN OF LIADI (first Lubavitcher Rebbe), "Holy Letters," Letter 22:**

"My beloved, my brothers, and my friends -- 'from a hidden love comes an open rebuke'; 'come now and let us judge.' 'Remember the days of old, consider the years of each generation.' Was it ever like this, from days of old? Where, indeed, did you find this custom in even one of the books of the sages of Israel, whether the early ones or the later ones, that it be a custom and an established way of life to ask for advice on the physical -- i.e., how to behave with regard to matters of this physical world -- to even the greatest of the first sages of Israel, like the Tanna'im and Ammora'im, from whom 'no secret is hidden' and for whom 'the paths of Heaven are clear'? Only to actual prophets, who once existed among Israel, like Samuel the Seer, to whom Saul went to seek God about his father's lost donkeys. For in truth, all human matters besides the words of the Torah and the fear of Heaven are available only through prophecy, and 'the wise do not have the bread'; as our sages say, "All is in the hands of Heaven except the fear of Heaven," and "Seven things are hidden . . . man does not know from what he will make money . . . and when the Kingdom of David will be re-established" -- notice that these things are compared to one another. And what it says in Isaiah, "A counselor and a wise one . . .", and also what the sages have said, "And one benefits from him [the Torah sage] advice and counsel" -- this all refers to the words of the Torah, which are called "counsel," as the sages have said, "A counselor is one who knows how to intercalate the years and to set the months . . .", for the principles of intercalation are called "counsel" and "secret" in the terminology of the Torah, as it says in Sanhedrin 87[a], see there the commentary of Rashi.

AND, last but not least, just to end with a surprise,

**4) RABBI YOSEF DOV HALEVI SOLOVEITCHIK ("The Rav"):**

(From The Jewish Observer, May 1992. Note that while The Jewish Observer claims that the following text is printed in the journal HaPardes (14:7, 1940), the text is actually only a paraphrase of a Hebrew text in HaPardes. If you check the HaPardes version, you will find that the JO edition just extracts the gist of the Rav's words but is not actually the words themselves. Be that as it may, I think the general point made is the same.)

Two of the garments worn by the Kohen Gadol (High Priest) are given special emphasis by the Torah: the Tzitz and the Hoshen.

Each of these vestments represents a different function that the Kohen Gadol fulfilled. The Tzitz was "holy to Hashem" and was worn upon the head, for it represented the Kohen Gadol as decisor of questions relating to individual holiness and purity. The Kohen Gadol would rule on matters of defilement and marriage, kashrut and monetary disputes and all individual concerns.

The Hoshen rested upon the heart and it contained the names of every one of the shevatim (tribes). With the Urim veTumim, which was an integral part of the Hoshen, the Kohen Gadol gave guidance for the issues facing the nation as a whole: to go to war or not; to react to an enemy's taunts or to be silent; to call public meetings or to remain still. These are

the questions that only the heart that felt the pain of the nation could decide. These are the issues that only the sensitive soul of the Kohen Gadol could address.

For millennia, the rule was clear. The same Kohen who wore the Tzitz, who decided upon mikvah and nidah, the laws of Shabbat and Yoreh De'ah, also wore the Hoshen and answered the questions of the nation as a whole. He decided the matters of war and peace, our relations with out neighbors, and set the national agenda and tone.

Only the Kohen, whose mind was saturated with the holy Torah of Rabbi Akiva and Rabbi Eliezer, Abaye and Rava, the Rambam and the Ra'avad, the Beit Yosef and the Rama, could also solve the political and national dilemmas of the nation. That very Kohen was the one to stand before kings, who knew when to speak softly and when to make demands, when to bend and when to be willing to give up life and limb.

In the last generation, a wedge has been driven, for the first time, between the Tzitz and the Hoshen, between the Gaon of the generation and its national leader. Gedolei Yisrael have been shoved into the corner to render judgments on "their" areas of expertise while self-professed "experts" lead the nation on matters of global concern.

This cannot be. There can be no heart devoted to the nation without the holiness of the Tzitz. And there can be no holiness without the overflowing and loving heart of the Kohen Gadol. The Tzitz cannot be severed from the Hoshen. The Hoshen must be carried on the same body that is crowned by the Tzitz.

\*\*\*\*\*END\*\*\*\*\*

I am well aware that this statement of the Rav's is a very early one in his career, made while he was part of Agudat Yisrael (and in fact the statement was made at an Aguda convention), before he had broken with Aguda. I am also well aware that many other statements of the Rav exist on this matter (some of them contradictory!).

I suppose you will have what to think about over Shabbat!

Shabbat shalom