

# Toras Aish

## Thoughts From Across the Torah Spectrum

**RABBI LORD JONATHAN SACKS ZT"l**

### Covenant & Conversation

**T**his summer, we've seen riots on the streets of London and Manchester on the one hand, Tripoli on the other. On the face of it there was nothing in common between them. In London the rioters were holding rocks. In Tripoli they were holding machine guns. In Libya they were rioting to remove a tyrant. In London they were rioting for clothes and flatscreen televisions. There was only one thing in common, namely that they were riots. They reminded us, as John Maynard Keynes once said, that civilization is a thin and precarious crust. It can crumble easily and quickly.

The riots in both places, in their different ways, should make us think in a new way about the unique political project Moses was engaged in the parsha of Shoftim and in the book of Deuteronomy as a whole.

Why do crowds riot? The short answer is, because they can. This year we have seen the extraordinary impact of smartphones, messaging systems and social network software: the last things, one might have thought, to bring about political change, but they have done so in one country after another in the Middle East - first Tunisia, then Egypt, then Libya, then Syria, and the reverberations will be with us for years to come. Similarly in Britain, though for quite different reasons, they have led to the worst, and strangest, riots in a generation.

What the technology has made possible is instant crowds. Crowd behaviour is notoriously volatile and sweeps up many kinds of people in its vortex. The result has been that for a while, chaos has prevailed, because the police or the army has been caught unawares. The Torah describes a similar situation after the sin of the golden calf: "Moses saw that the people were running wild and that Aaron had let them get out of control . . ." (Ex. 32: 25). Crowds create chaos.

How then do you deal with crowds? In England, by more police, zero tolerance, and tougher sentencing. In the Middle East, we do not yet know whether we are seeing the birth of free societies or a replacement of the tyranny of a minority by the tyranny of the majority. However, it seems to be a shared assumption that the only way you stop people robbing one another or killing one another is by the use of force. That has been the nature of politics since the birth of civilisation.

The argument was stated most clearly by Thomas Hobbes in the 17th century in his political classic, Leviathan. Without the use of force, Hobbes said, we would be in a state of nature, a war of all against all in which life would be "nasty, brutish and short." What we have witnessed in both Britain and the Middle East has been a vivid tutorial in Hobbesian politics. We have seen what a state of nature looks like.

What Moses was proposing in Devarim was fundamentally different. He assembled the people and told them, in so many words, that there would be social order in the new land they were about to inherit. But who would achieve it? Not Moses. Not Joshua. Not a government. Not a tyrant. Not a charismatic leader. Not the army. Not the police. Who would do it. "You," said Moses. The maintenance of order in Deuteronomy is the responsibility of the entire people. That is what the covenant was about. That is what the sages meant when they said Kol Yisrael arevin zeh bazeh, "All Israel are responsible for one another." Responsibility in Judaism belongs to all of us and it cannot be delegated away.

We see this most clearly in this week's parsha in the law of the king. When you enter the land the Lord your G-d 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 a king the Lord your G-d chooses . . . The king must not acquire great numbers of horses for himself . . . He must not take many wives . . . He must not accumulate large amounts of silver and gold. (Deut. 17: 14-17)

Note the strange way the command is phrased. "When you say . . ." Is this an obligation or a permission? "Like all the nations around us" - but the entire thrust of the Torah is that the Israelites were not to be like the nations around them. To be holy means to be different, set apart. "The king must not . . . must not . . . must not." The accumulation of prohibitions is a clear signal that the Torah sees the institution as fraught with danger. And so it was. The wisest of men, Solomon, fell into all three traps and broke all three laws. But that is not the end of the Torah's warning. Even stronger words are to follow:

When he takes the throne of his kingdom, he is to write for himself on a scroll a copy of this law . . . It is to be with him, and he is to read it all the days of his life so that he may learn to fear the Lord his G-d and follow carefully all the words of this law and these decrees and not consider himself better than his fellow Israelites . . . (17: 18-20)

Only one man is commanded in the Torah to be humble: the king. This is not the place to go into the famous disagreement among the commentators as to whether appointing a king is a command or not. [1] Maimonides says it is an obligation. [2] Ibn Ezra says it is a permission. [3] Abrabanel says it is a concession. [4] Rabbenu Bahya says it is a punishment. The Israelites, a nation under the sovereignty of G-d, should never have sought a human leader. In the words of Avinu malkenu, Ein lanu melekh ela atah, "We have no other king but You."

The point is, however, that the Torah is as far removed as possible from the world of Hobbes, in which it is Leviathan - his name for absolute monarchy, the central power - who is responsible for keeping order. In a Hobbesian world, without strong government there is chaos. Kings or their equivalent are absolutely necessary.

Moses is articulating a quite different view of politics. Virtually every other thinker has defined politics as the use of power. Moses defines politics as the use of self-restraint. Politics, for Moses, is about the voice of G-d within the human heart. It is about the ability to hear the words, "Thou shalt not." Politics is not about the fear of the government but about the fear of G-d.

So radical is this political programme that it gave rise to a phenomenon unique in history. Not only did Jews keep Jewish law when they were in Israel, a sovereign state with government and power. They also kept Jewish law in exile for 2000 years, when they had no land, no power, no government, no army, and no police.

Rabbi Levi Yitzhak of Berdichev once said: "Master of the universe, in Russia there is a Czar, an army and a police force, but still in Russian houses you can find contraband goods. The Jewish people has no Czar, no army and no police force, but try finding bread in a Jewish home on Pesach!"

What Moses understood in a way that has no parallel elsewhere is that there are only two ways of creating order: either by power from the outside or self-restraint from within; either by the use of external force or by internalised knowledge of and commitment to the law.

How do you create such knowledge? By strong families and strong communities and schools that teach children the law, and by parents teaching their children "when you sit in your house or when you walk by the way, when you live down and when you rise up."

The result was that by the first century Josephus could write, "Should any one of our nation be asked about our laws, he will repeat them as readily as his own name. The result of our thorough education in our laws from the very dawn of intelligence is that they are, as it were, engraved on our souls."

This is a view of politics we are in danger of losing, at least in Europe, as it loses its Judeo-Christian

heritage. I have argued, in many of these essays and several of my books, that the only country today that retains a covenantal view of politics is the United States. It was there, in one of the great speeches of the nineteenth century, that Abraham Lincoln articulated the fundamental idea of covenant, that when there is "government of the people, by the people, for the people," there is a new birth of freedom.

When only police or armies stand between order and riots, freedom itself is at risk. *Covenant and Conversation is kindly sponsored by the Schimmel Family in loving memory of Harry (Chaim) Schimmel zt"l* © 2024 The Rabbi Sacks Legacy Trust [rabbisacks.org](http://rabbisacks.org)

### RABBI SHLOMO RISKIN

## Shabbat Shalom

“**J**udges and Executors of Justice shall you establish for yourselves in all of your gates....

Justice, justice shall you pursue in order that you may live and inherit the land which the Lord your God is giving to you.” (Deuteronomy 16:18–20) In this opening passage of our weekly portion, the Bible conditions our ability to remain as inhabitants of the Land of Israel upon the appointment of righteous judges, who will not prevent justice, or show favoritism before the law or take bribes of any kind (Deut. 16:19).

The Bible also reiterates, “Justice, justice shall you pursue,” a commandment with a number of important interpretations. First of all, seek or appoint another judicial court if the local court is not deemed adequate for the needs of the litigants (Rashi, ad loc.). Secondly, in the words of Rabbi Menachem Mendel of Kotzk, make certain that you pursue justice by means of justice; that your goals as well as your means are just. I would add to this the stipulation that the “administration” aspect of court-room management be just: begin on time without keeping the litigants waiting, conclude each case with as much dispatch as possible, and listen sympathetically to the claims of each party, so that everyone feels that he/she has received a fair hearing.

Further on in our portion, the Bible adds another critical criterion for true justice: “When there will arise a matter for judgment, which is hidden from you [a case which is not cut-and-dry, which requires extra consideration on the part of the judges]... you shall come to... the judge who shall be in those days” (Deut. 17:8–9). Rashi makes it clear, basing himself on the words of our Talmudic sages, that we must rely on the sages of the particular era for the judgment at hand, that “Yiftach in his generation is as good as Samuel in his generation.” This notion is further elucidated by Rabbi Levi Yitzhak of Berdichev in his masterful *Kedushat Levi*, under the rubric “teiku,” a Talmudic term, which appears after an un-adjudicated dispute and means that the contested object is returned to its original owner. The term is commonly explained, however, to be a mnemonic: t-y-k-u – Tishbi Yetaretz Kushyot Veba’abayot, or “Elijah the

Prophet will answer questions and ponderings" in the Messianic Age.

"Why Elijah?" asks Rabbi Levi Yitzhak. After all, there will be a resurrection of the dead in the Messianic Age, wherein Moses will be resurrected; since Moses was a greater halakhic authority than Elijah, since Moses studied directly with God Himself, why not have him answer the questions rather than Elijah?

Rabbi Levi Yitzhak answers his seemingly naïve question with a most sophisticated response. Moses died close to four thousand years ago; Elijah, according to the biblical account, was "transferred" live into heaven, and regularly returns to earth, appearing at every circumcision and at every Passover Seder. Since Elijah understands the travail and the angst, the hopes and the complexities, of the generation of the redemption, only he can answer the questions for that generation; a judge must be sensitive to the specific needs and cries of his particular generation.

Then what are the most important criteria for a righteous judge? We have seen that he must clearly be a scholar in Jewish legal literature and must be an aware, intelligent, and sensitive observer of the times and places in which he lives, a judge of and for the period and place of adjudication.

But there is more. In the book of Exodus, when Yitro, the Midianite priest, first suggests to his son-in-law Moses that he set up a judicial court system of district judges, we find more qualifications for our judges: "You shall choose from the entire nation men of valor (chayil), God fearers, men of probity who hate dishonest profit" (Ex. 18:21).

Our great twelfth-century legalist-theologian, Maimonides, defines men of valor (chayil), a Hebrew word which connotes the courage of a soldier in battle as follows:

"Men of valor" refers to those who are valiantly mighty with regard to the commandments, punctilious in their own observance.... And under the rubric of "men and valor" is the stipulation that they have a courageous heart to rescue the oppressed from the hands of the oppressor, as in the matter of which it is scripturally written, "And Moses rose up, and saved [the shepherdesses] from the hands of the more powerful shepherds..." And just as Moses was humble, so must every judge be humble. (Mishneh Torah, Laws of Sanhedrin 2:7)

Rabbi Shlomo Daichovsky, one of the most learned and incisive judges who ever occupied a seat on the Religious High Court in Jerusalem queries (in an "Epistle to my Fellow Judges," dated 25 Shevat 5768, and published in *Techumin*, Winter 5768) how it is possible for a judge to be a valiant fighter on behalf of the oppressed, which requires the recognition of one's power to exercise one's strength against the guilty party, and at the same time for him to be humble, which requires self-abnegation and nullification before every

person? These seem to be two conflicting and contrasting characteristics!

Rabbi Daichovsky concludes that humility is an important characteristic only when the judge is not sitting in judgment; when the judge is seated on the throne of judgment, he must be a valiant and self-conscious fighter, fearlessly struggling against injustice as though "a sword is resting against his neck and hell is opened up under his feet" (Sanhedrin 7). "The Judge must be ready to enter Gehenna and to face a murderous sword in defense of his legal decision.... He must take responsibility and take risks, just like a soldier at war, who dare not worry about saving his own skin" (Maimonides, *Mishneh Torah*, Laws of Sanhedrin 23:8). The chief concern of a judge must be for the justice and well-being of the litigants before him and not for his own security and reputation in walking on the "safe" (and more stringent) halakhic ground.

This is reminiscent of the Talmudic story of R. Zechariah b. Avkulis (Gittin 53a), who refused to sanction the sacrificial blemished lamb of the Roman Emperor sent to the Temple because those on the right would accuse him of acting too leniently regarding Temple sacrifices, and who refused to sanction the death penalty for the spy who had blemished the sacrifice, because of those on the left, who would accuse him of acting too harshly in his punitive measures. The Talmud concludes, "The humility of R. Zechariah b. Avkulis destroyed our Temple, burnt our Sanctuary, and exiled us from our homeland." R. Zechariah wanted to be "safe"; he did not want those on the right to say he was too lenient, or those on the left to say he was too stringent. As a result of his lack of courage, the Holy Temple was destroyed.

Finally, Rabbi Daichovsky exhorts his fellow judges not to fear any human being when they render a decision, not even great halakhic authorities, because these illustrious scholars did not hear the case, did not look into the eyes of the woman refused a divorce, and therefore are not vouchsafed the same heavenly aid as the judges who were involved with the litigants eye-to-eye and heart-to-heart (see Maimonides, *Mishneh Torah*, Laws of Sanhedrin 23:9).

Tragically, the majority of the judges of the Religious High Court in Israel today are not heeding the wise counsel of Rabbi Daichovsky. They are not hearing the cries of the oppressed women, refused divorces by recalcitrant and greedy husbands. They are not being sensitive to the crying national need to find appropriate ways to convert the close to 400,000 gentiles today living as Israeli citizens, often risking and losing their lives in the wars being fought for our national survival, and then being refused burial in a Jewish cemetery.

There are manifold solutions within the Talmud and its commentaries to free "chained" women, and to bring the gentiles living as Israeli Jews among us under the wings of the Divine Presence. Instead, our judges

choose to take the safe way out, to rule in accordance with every stringency, to deafen their ears to the cries of the aguna in favor of the ultra-orthodox anti-Talmudic insistence on “purity of Israel,” to refuse to nullify sham and shameful marriages but hasten to nullify conversions performed by respected religious authorities, nullifications of conversions clearly forbidden by Maimonides, nullifications which wreak havoc on numerous Jewish families. I am confident that by the time this volume is published, there will be a significant change in the personnel of the Religious High Court of the Chief Rabbinate of Israel. © 2024 *Ohr Torah Institutions & Rabbi S. Riskin*

#### **RABBI BEREL WEIN**

### **Wein Online**

**L**aw and order are the hallmarks of a functioning democratic society. The concept that one can receive fair redress for damages and hurts through an equitable system of established justice is central to the concept of a free society that provides individual rights to its citizens. However, dictatorships also provide law and order for those who live under their rule - a little too much law and order. And therein is the eternal contest, between an ordered and properly functioning society and an individual's inherent freedoms and rights.

There is a great deal of space and latitude between anarchy and dictatorial rule. The Torah speaks to this issue but allows for a great deal of human and national choice in the matter. The general tenor of Jewish tradition is to be wary of big and powerful government. Avot teaches us not to be known to government and that the nature of government is to demand, albeit apparently lovingly, much from the individual when it is for its own benefit but to be unavailable to help the individual when one is hard pressed and in need of outside help. Yet Avot also stresses the necessity for government and the requirement to pray for its success and welfare, for otherwise society would be unlivable. As in all matters of human existence, the Torah here demands from us a good sense of proportion, wisdom and sophistication in dealing with government and society. The Torah does not deal with us in absolute specific terms but rather establishes general parameters of righteous judicial systems and equitable standards of law enforcement.

The Torah is clear in its condemnation of corruption and bias, especially in judicial and legal matters. The poor and the wealthy, the scholar and the unlettered, the well-connected and the unknown, all are to be equal before the eyes of judges and the law. The Torah defines true justice as being the pursuit of righteousness and fairness by just means. No unjust means can be condoned even in the pursuit of apparently righteous causes.

The Torah abhors corruption in all forms and methods. The premise of the Torah is that corruption is

a natural state of being for humans. We are all somehow corrupted by our past experiences and our preset worldviews. It is interesting to note that, for example, the results of many cases brought before the United States Supreme Court are almost always predictable because of the previous strongly held views of the individual justices. They are certainly not corrupt in the criminal sense of the word, but in the world of the Torah they are certainly not freed from the taint of corruption. The Torah demands an open mind, a listening ear, flexibility of thought and an understanding of human nature and of the ways of the world from those who would serve as judges of other humans. These qualities are not found in abundance, but they are to be searched for and respected in Jewish life and law. True and absolute justice may be unattainable in this world. But the concept of true justice must always be present in all matters of Jewish law and society. © 2024 *Rabbi Berel Wein - Jewish historian, author and international lecturer offers a complete selection of CDs, audio tapes, video tapes, DVDs, and books on Jewish history at [www.rabbiwein.com](http://www.rabbiwein.com). For more information on these and other products visit [www.rabbiwein.com](http://www.rabbiwein.com)*

#### **RABBI AVI WEISS**

### **Shabbat Forshpeis**

**T**he Torah's sympathetic attitude toward ecology surfaces in a law legislating conduct during war. “When you besiege a city for many days to wage war against it, to seize it, do not destroy its trees by swinging an axe against them, for from it you will eat and you shall not cut it down.” The Torah then offers a deeper rationale explaining why the tree should not be cut down: “Ki ha'adam etz hasadeh” (Deuteronomy 20:19). What do these words mean?

Ibn Ezra offers a simple answer. Don't fell trees because human beings depend upon trees to live. We eat their produce. Cutting down a tree is, therefore, forbidden, as it would deny the human being food, which is essential for life. For Ibn Ezra, the explanation should be read as a declarative statement. Don't cut down the fruit tree as people depend upon it for sustenance.

Rashi understands the rationale differently. For Rashi, “Ki ha'adam etz hasadeh” should be read as a rhetorical question. “Is a tree a person with the ability to protect itself, so that it should suffer famine and thirst like the inhabitants of the city?” In other words, since the tree cannot protect itself, why harm it?

A fundamental difference emerges. For Ibn Ezra, the tree is saved because of the human being. But for Rashi, the tree is saved for the tree's sake alone. Human beings can protect themselves; trees cannot. The Torah, therefore, aims to protect the tree.

More broadly, the Torah at its outset speaks of environmental concerns. To Adam and Eve, God says, “Be fruitful and multiply and fill the earth and conquer it [v'kivshuha]” (Genesis 1:28). After the deluge, God uses similar terminology when telling Noah, “Be fruitful and

multiply and fill the earth" (Genesis 9:1).

Notably, the word v'kivshuha is missing, as it may have initially been misunderstood to mean that humans can do with the earth what they wish – and this, of course, is not the case.

The environmental focus coheres with the Torah's glorious depiction of God's placing Adam in the Garden of Eden to "serve it and protect it" (Genesis 2:15). While the ground produces food for our benefit, we have the sacred responsibility of guarding and caring for its welfare.

From my perspective, one of the most pressing issues we face today is the degradation of the environment. If this colossal challenge is not addressed, other issues will be forever unaddressed as the world will no longer exist.

On a microcosmic level, the Torah's love for trees is reflected in numerous rabbinic parables. One is the story of a weary traveler in the desert. Walking for days, he's utterly exhausted, when suddenly he comes upon a tree. He eats from its fruit, rests in its shade, and drinks from the small brook at its roots.

When rising the next day, the traveler turns to the tree to offer thanks. "Ilan, ilan, tree, oh tree, how can I bless you? With fruit that gives sustenance? With branches that give shade? With water that quenches thirst? You have all of this!"

In a tender moment, the traveler looks to the tree and states, "I have only one blessing. May that which comes from you be as beautiful as you are" (Ta'anit 5b).

This story has become a classic in blessing others with all that is good. Indeed, as our daughter Elana stood under her chuppah with Michael, I quoted this parable, calling out emotionally, "Elana, Elana, with what can I bless you?"

Not surprisingly, our liturgy includes the classic Talmudic phrase "These are the precepts whose fruits a person enjoys in this world" (Shabbat 127a). Thus, trees provide us with metaphors that teach us so much about life. Of course, they must also be protected because they are God's loving creation. As Joyce Kilmer wrote: "Poems are made by fools like me, but only God can make a tree."

To those who disparage the environment, our Torah sends a counter-message. Trees must be protected, not only for our sake, but for theirs – and for the message they teach about life.

A sweet anecdote: one Shabbat, as I walked with my eldest granddaughter Ariella – then a little girl – greeting everyone with Shabbat shalom, she saw a tree, embraced it, and said, "Shabbat shalom, tree." Ariella had internalized the message of the importance of the tree – the importance of protecting the environment. May we all be blessed with living this lesson as well. ©2024 Hebrew Institute of Riverdale & CJC-AMCHA. Rabbi Avi Weiss is Founder and Dean of Yeshivat Chovevei Torah, the Open Orthodox Rabbinical School, and Senior Rabbi of the Hebrew Institute of Riverdale

**RABBI JONATHAN GEWIRTZ**

## Migdal Ohr

"Portion for portion shall they eat, except for what was transacted by the forefathers." (Devarim 18: 8) The Torah tells us the Kohanim were entitled to certain items from the sacrifices, such as the animal hides. If a Kohain from another area came to the Bais HaMikdash, he shares equally in the work and in the gifts given to the Kohanim.

The exception would be, "that which was transacted by the forefathers." Some explain this to mean that a Kohain who sold a home left to him by his father, and thus had money, could not be told by the other Kohanim that since he didn't need it, he should not partake of the priestly gifts. Rather, if he performed the avoda, he was entitled to get his reward.

This is not the primary understanding though. The Gemara in Sukkah says that these words refer to an actual arrangement made by previous generations of Kohanim in the times of Dovid and Shmuel. At that time, the Kohanim established specific watches, when groups of Kohanim would work in the Temple in rotation. Though all kohanim were entitled to a share in the offerings of the Bais HaMikdash, they "traded" with each other and said, "I'll give you my share in the offerings of your week, and you give me your share in the offerings of mine."

The Gemara says, "I would think these Kohanim who came from other areas for the holiday would also share in the non-Festival-related korbanos, offered by the Jews taking advantage of their presence in Jerusalem to fulfill their outstanding obligations for other sacrifices, but the Torah states, "aside from what the fathers transacted." Those sacrifices remain part of the week of the mishmar on duty, and the visiting Kohain has no share.

It is striking how casually Moshe discussed future events as if they had already taken place. He mentions the arrangements the Kohanim would not make for another 400 years. Yet, it was clear that this was going to happen and, therefore, the visiting Kohanim were not entitled to the additional portions.

The fact that this comment could easily be missed speaks to the awesome timelessness of Torah. As the father of prophecy, Moshe could refer to what would occur in the future, and the Jews accepted it as fact. It did not even need to come to fruition for us to learn halacha from it. It simply was a fact.

The Torah is above time. Its laws are applicable and appropriate in every generation, regardless of what society is thinking or feeling at that moment. Nothing "new" develops that the Torah didn't already take into consideration. This is a message we can use as we renew our devotion to Hashem and His mitzvos in approaching the new year ahead.

*The Bais HaLevi, R' Yosef Dov Soloveitchik, once met with a Russian judge. The judge said to Rav*

*Soloveitchik, "Our laws are superior to your laws. For example, we have a law against bribery. According to this law, if a judge is caught accepting a bribe, the judge is punished as well as the person who bribed him. According to the laws of your Torah, however, it is forbidden only to accept a bribe, and the one who offers the bribe does not transgress any laws.*

*The Bais HaLevi answered, "On the contrary – it is precisely due to this law that the Torah is superior at protecting justice. According to your laws, the judge will not hesitate at all to accept a bribe, because he is positive that the one who offered him the bribe will not reveal this to anyone. He knows that if the matter is revealed, he will also be punished.*

*The Rav concluded, "However, according to the laws of the Torah, each judge is wary of accepting a bribe, lest the one who offered it will reveal what he did. © 2024 Rabbi J. Gewirtz & Migdal Ohr*

### RABBI AVI SHAFRAN

## Cross-Currents

In the U.S., offering, giving, receiving, or soliciting something of value in exchange for influencing a judge's or other public official's actions is illegal (U.S. Code, Title 18, Section 201).

The Torah's prohibition of bribery differs in two surprising ways. Firstly, the prohibition is on a judge alone, for taking a bribe, not on a litigant offering one. (Though, in the latter case, the offerer is nevertheless responsible for "putting an obstacle before the blind" - causing the judge to sin - Shulchan Aruch, Choshen Mishpat 9:1)

And, secondly, a judge is forbidden to take a bribe not only to influence his decision in a particular direction but even to execute his judgment properly. Even, according to the Derisha (ibid), if both litigants offer the same bribe for that purpose alone.

It seems that the Torah's law against bribery isn't aimed at preventing quid pro quo per se (forgive all the Latin). It's not, in other words, a law about wrongdoers but, rather, about maintaining a purity of justice. Anything superfluous at all, whether or not it actually affects a verdict, that is injected into the holy mission of judging a case contaminates the enterprise.

Because a Jewish court isn't a simple adjudication of a dispute between individuals; it is the performance of a holy act.

That might seem a slight distinction, but it really isn't. So momentous is the undertaking to judge a case that the Talmud says it is as if the judge has partnered with Hashem in the act of Creation (Shabbos 10a). And that a judge who misjudges "causes the Divine Presence to withdraw from Klal Yisrael" (Sanhedrin 7a).

Which is why the Shulchan Aruch considers a compromise reached between litigants to be preferable to an actual court hearing and law-based ruling (Choshen Mishpat 12). Judgment, it seems, is so

daunting, so charged an endeavor, it is best resorted to only when necessary. The stakes, no matter how small the financial impact may be to the litigants, are just too high. © 2024 Rabbi A. Shafran and torah.org

### ENCYCLOPEDIA TALMUDIT

## Home Dedication

*Translated by Rabbi Mordechai Weiss*

Dedicating a home in Israel is a mitzva. This becomes clear in the following verse, which addresses the question of who goes out to fight in wartime and who is sent home: "Is there anyone who has built a new house but has not dedicated it (*chanacho*)? Let him go back to his home" (*Devarim* 20:5). Commentators explain that the verse is referring to a home that there is a mitzva to dedicate, and this must be in a place where there is a mitzva to live, namely the Land of Israel.

Dedicating something (*chinuch*) is usually associated with a beginning. So, when the verse says that the person "has not dedicated it," this means he has not started living there. More specifically, according to *Targum Yonatan*, it means he has not yet put up a *mezuzah*, while the Radak says that it means he has not yet had a meal there.

Some believe that a meal served at a home dedication or house-warming is not considered a *seudat mitzva* unless there are *divrei Torah* (words of Torah). Others maintain that in Israel, the meal of a home dedication is automatically a *seudat mitzva*, even without accompanying *divrei Torah*. It is only in the Diaspora that *divrei Torah* are required in order to transform the meal into a *seudat mitzva*.

Since buying a new item of clothing requires reciting the blessing of *Shehecheyanu*, it would certainly seem that buying a new home should require it as well. However, *Shehecheyanu* is recited only when the person is the only beneficiary of the new item. In general, a person buys a home for himself and his family. Therefore, *Shehecheyanu* is not recited. © 2017 Rabbi M. Weiss and Encyclopedia Talmudit

### RABBI DAVID LEVIN

## Whose Justice is Just?

The giving of testimony by witnesses is discussed in Parashat Shoftim. The Torah informs us, "The testimony of one witness will not stand against a man for any crime or any lapse in any sin that he may have committed, on the testimony of two witnesses or on the testimony of three witnesses will the thing become established. If a false witness stands against a man to testify a fabrication against him. Then these two men who have the dispute will stand before Hashem, before the Kohanim and the judges who will be in those days. The judges shall inquire well, and behold, the witness is a false witness, he testified falsely against his brother. You shall do to him as he conspired to do to his brother,

and you shall destroy the evil from your midst.”

The Torah insists on the testimony of two witnesses in the case of an intentional sin (avon) or an inadvertent sin (chatat). This type of testimony would require the guilty person to pay money or to receive corporal or capital punishment. HaRav Shimshon Raphael Hirsch explains that this section follows the laws of arei miklat, the cities of refuge, where an inadvertent murderer was shielded from the revenge of the victim's family, and masig g'vul, the laws of encroachment on someone else's property whether by moving a physical boarder or by endangering his livelihood with unfair competition. The Torah views life and property as “the two chief valuables of earthly existence the inviolability of which are placed under the guarantee of the state legal authorities, and which can only be assailed by a verdict of these authorities.” In order to remove life or property from an individual, a court must determine the guilt of that defendant for a particular crime. The testimony that is given at any trial is the only means by which our judges can determine the guilt or the innocence of the accused.

Our Rabbis explain the need for two witnesses rather than one. One witness is insufficient for corporal or capital punishment and for monetary punishment, but a single witness can obligate the accused to take an oath of innocence. When two witnesses give testimony about the same case, they are examined carefully and fully by the judges and their testimony is sufficient to obligate the accused to receive the full punishment. Still, the Chachamim present a problem with obligating a person even when facing the testimony of two witnesses. Hirsch explains: Let us say that two witnesses testify that a man ate dairy together with meat. The accused can counter this argument: “I did not eat the milk product in a way that would entail a korban chatat, a sin offering. I knew quite well what I was eating and I did not eat unintentionally but intentionally.” The accused disputes the actual facts of their testimony. They saw him eat meat and milk but maybe this was done with permission of the Rabbis because of a medical condition. The Chachamim were also reluctant to obligate a person to a korban even on the testimony of a hundred witnesses because a person should be believed in testimony about himself even more than one hundred witnesses.

The Torah continues with the case of two witnesses who give false testimony. These witnesses are called eidim zom'min, conspiring witnesses. These men present themselves to have witnessed a crime or an obligation for which a punishment or a fulfillment of that obligation is required. The false witnesses will be punished with the same punishment that they tried to inflict on the accused. The normally occurs if two other witnesses come and declare that these first witnesses could not have given testimony about that particular event because they were not present at that time. The second set of witnesses does not contradict the

testimony of the first, but insists that the testimony cannot be true because the witnesses could not have been there. Had witnesses come and disputed the details of the first witnesses, all that would prove would be that the facts were in doubt. It would not claim that the witnesses were fabricating a story. The Gemara also insists that the group of witnesses had to lie as a group. If only one lied they are not called eidim zom'min. HaRav Zalman Sorotzkin explains that throughout the discussion of the eidim zom'min the Torah speaks in the singular though we know the witnesses must appear in groups of two or three. The singular is used to indicate that the group must be acting as a whole or there is no conspiracy. Eidim zom'min must be a conspiracy or they are not considered to be the same category of liars and they do not receive the same punishment that they wished to place on the accused.

It is difficult to understand the thought-process of these eidim zom'min. Let us propose a scenario using an example of a loan. A man lends money to another man which must be repaid by a certain day. Two witnesses signed the deal but then both witnesses disappeared. The lender also somehow misplaced the document so that there is no proof of the loan. The borrower forgot about the loan and claims that no loan was made so he is under no obligation. These eidim come now to testify that on the day that the loan was made, they saw the whole transaction. Their desire is not a bad one as they are trying to help a friend collect a real loan. These eidim zom'min presume that Hashem somehow needs our help to act justly. But Divine justice can deprive one of money when a loss is necessary. Maybe the lender did not give his appropriate donation to tzedakah and Hashem might readjust the thinking of the lender to be more careful in this mitzvah by having him lose the loan in this case. Perhaps the borrower was deserving of assistance and Hashem arranged that the original loan would not need to be repaid as it came from someone who was obligated to assist others with his wealth but did not do so. Our witnesses are unwilling to let Hashem's perfect judicial system work.

Man is often uneasy with Divine Justice. One must maintain a fundamental belief that the perfect system of reward and punishment is not possible here on Earth. We see the inequities of our lives and cringe when we see a person who is righteous and is suffering. Our system of justice is a test in itself. Our emotions and our faith are tested regularly. We are comforted by knowing that Hashem is with us in our courts and He will bring Divine Justice in its right time. Our most difficult task is to trust in that Justice and in Hashem's compassion. © 2024 Rabbi D. Levin

**RABBI DOV KRAMER**

## Jewish Geography

**M**oshe designated three cities on the eastern side of the Jordan River as Cities of Refuge (Devarim



4:41-43), and commanded the nation to designate three more on the western side after they conquer Canaan (19:1-7), adding that if/when we keep the Torah properly, and G-d expands the borders as He promised our ancestors, they should add another three (19:8-9). The commentators (e.g. Rashi, Rashbam and Ramban) explain that this expansion refers to G-d's promise to Avraham (Bereishis 15:18-21), whereby the land of all 10 nations mentioned there would become part of the Land of Israel, and not just the land of the seven nations of Canaan.

Although the Euphrates River is one of the boundaries of the Promised Land mentioned to Avraham and at Sinai (Shemos 23:31 and Devarim 1:7), as well as in the instructions to conquer the land (Devarim 11:24 and Yehoshua 1:4), it isn't included in the specific boundaries in Bamidbar (34:1-15). Malbim (Bamidbar 34:1) explains that the boundaries in Bamidbar delineate the initial area to be conquered, while the other descriptions refer to expanded boundaries, to be added after the nation's population grows and there's no longer a concern about wildlife overtaking sections meant to eventually become part of the Promised Land. Yoel Elitzur (Places in the Parasha, Mishpatim) echoes this suggestion, and includes a map showing what was included in the initial boundaries and what was supposed to be added (although I'm not sure it's fully accurate).

The expansion referred to by Malbim is not the same expansion that triggers additional Cities of Refuge. The final three Cities of Refuge are supposed to be added after Moshiach comes, when the land of the additional three nations included in the promise to Avraham become part of the Land of Israel, whereas the expanded borders the Malbim refers to apply after the area within the borders specified in Bamidbar has been conquered, and the population grows enough to warrant conquering the rest of the land of the seven Canaanite nations. Therefore, there are three stages: (1) the land to be conquered by Yehoshua right away – i.e. the specific borders described in Bamidbar; (2) the expanded borders – i.e. those mentioned in Devarim 11:24 and Yehoshua 1:4 – which are to be conquered after the population grows and there's no longer a concern that uninhabited land will be taken over by wildlife; and (3) after Moshiach comes, when the lands of the Keini, Kenizi and Kadmoni are added – i.e. the land referred to in Bereishis and at Sinai. [I have included both descriptions at Sinai in the third stage based on the assumption that had Moshe entered the land, the Messianic era would have begun. Although

Chizkuni (Devarim 1:7) equates the two descriptions at Sinai, the one in Shemos was given before the sin of the golden calf, while the one in Devarim was given afterward, so it's theoretically possible that things changed after the golden calf, even though the sin



of the scouts hadn't occurred yet. Although Malbim includes the descriptions given at Sinai in the second stage, they most likely refer to the third stage.]

The northern border doesn't seem to change between the second and third stages, but it does change between the first and second stages (which is why the Euphrates isn't mentioned in Bamidbar, but is included in the others). How much the southern border changes depends on which "desert" is being referred to, as well as what the three additional nations are (see Bava Basra 56a). This also impacts how (and if) the eastern boundary changes.

In Bamidbar, the northern border starts at the Mediterranean Sea (34:7), goes to the northern Hor HaHar (not to be confused with the Hor HaHar near Edom), continues to Levo Chamus (34:8), followed by three additional boundary markers (34:8-9), without reaching the Euphrates. The locations of Hor HaHar and Levo Chamus are a matter of discussion; some have them parallel to the southern edge of Cyprus, while others have them close to the northernmost part of the Mediterranean coastline, well north of Cyprus. Either way, they weren't conquered in Yehoshua's lifetime (see Yehoshua 13:5), and may have never been conquered, despite Divray Hayamim I 13:5 implying that they were (see page 136/140 of Atlas Daat Mikra).

The Euphrates, which starts in Turkey and – for most of its length – flows southeast before emptying into the Persian Gulf, actually flows southwest for a stretch before reaching a point almost parallel to the northeastern tip of the Mediterranean coastline. It then bends, and flows (basically) south until it reaches a point parallel to the northeastern tip of Cyprus, when it bends again (in the opposite direction) and starts the long stretch of its southeastern flow into the Persian Gulf. When the Torah gives the Euphrates as the northern border of the Promised Land (Bereishis 15:18, Shemos 23:31 and Devarim 1:7), it would seem to be referring to one of these two bends (depending on where Hor HaHar is). Since Avraham was promised "this land," the Mediterranean Sea was obviously the western boundary, and there was no need to point this out. How far north along the Mediterranean did "this land" extend? Until this part of the Euphrates River.

As mentioned, the instructions for Yehoshua (Devarim 11:24) include the boundaries of the second stage. Like the third stage, the Euphrates is the northeastern point of the northernmost section, a section that either stretches from the Mediterranean to the southern-flowing section of the Euphrates (between the two bends), or whose northern border goes from the Mediterranean to the second bend (before the river starts flowing southeast). After giving the south-north boundaries of the second stage (the desert and the Levanon), the extent of the northern section is given – from the Mediterranean Sea to the Euphrates River.

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