

Parshas Shoftim

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1. The Truthfulness of Justice

The Torah states, **“Judges and officers shall you appoint in all your cities...”** Every community is obliged to establish for itself a court of qualified judges and appoint law enforcers (officers) to carry out the decision of the court. The Torah then states, **“By the testimony of two witnesses or three witnesses shall the condemned person be put to death...”** Unlike the secular judicial system, it is only through the testimony of witnesses that evidence is established as fact. No other form of evidence is acceptable.

The Torah tells us that if an individual claims to be a prophet and establishes himself as such by performing a miracle and predicting the future, he is established as a true prophet unless he tells the Jewish people to engage in idolatry. If a prophet were to communicate this in the Name of G'd, the Torah states, “he is a false prophet.” Rambam asks, “How is one to know for certain that the miracle that was performed by the individual came about as a result of Divine intervention? Perhaps it was through sorcery/witchcraft?” Rambam answers that the process to establish a true prophet is no different than establishing credible evidence in court. The Torah tells us the testimony of two witnesses is admitted as evidence only after they have been thoroughly interrogated. Although there is a possibility that the witnesses had rehearsed for the interrogation and therefore there was no discrepancy between their responses; nevertheless, the Torah states that their testimony is credible and must be accepted. Similarly it is possible that the miracle that was performed by the prophet could have been an act of sorcery; nevertheless, the Torah states that if he meets the criteria that are prescribed, he is established as a true prophet.

It is possible that the witnesses' testimony may be false or the (so called) prophet's supernatural act may be a result of witchcraft; however, since the Torah established the criteria one must not be concerned. Nothing in this existence can occur unless it is the Will of G'd. Even if an innocent person is put to death as a result of false testimony, despite the witnesses meeting all the criteria, it was decreed by G'd that the person should be put to death.

The Torah states that a judge may not take bribery. Rashi explains that even if the judge who was bribed was to render a true judgment, he is nonetheless disqualified and his verdict is invalid. A human being, regardless of his dimension of person and integrity, is nevertheless not infallible. If so, how does the Torah allow man's judgment to dictate life and death? King David writes in Psalms (Tehillim), “Elokim netzav ba'adas keil – G'd associates Himself with the congregation of G'd.” Meaning, if the judges meet the criteria which determine the credibility of the court, then G'd associates Himself with that judgment. The judges come upon the verdict with Divine Assistance- it was through G'd's eyes that the information was processed. Thus, there is no concern that they may have been mistaken. Even if the defendant was indeed innocent, it was decreed by G'd that he should be put to death.

The Gemara in Tractate Shabbos states, “One's yearly stipend is designated from Rosh Hashanah to Rosh Hashanah.” If one lives within the context of Torah then he will receive what was designated for him. However, if one does not live a life as prescribed by

the Torah, then this individual has set his own standards of right and wrong. The consequences of his choices may not be within the context of what was initially designated for him to receive.

One's reality is determined by his level of involvement in Torah. If one wishes to advance himself spiritually, G'd will assist him in that effort. However if one wishes to deviate from the path of Torah, then G'd allows him to do as he chooses – without being deterred. As the Gemara in Tractate Shabbos states, “One, who attempts to purify himself, will be assisted. One who attempts to contaminate himself – they open the way before him (allow him to do so).”

2. The Context in Which the Word of G'd is Understood

The Torah states, **“According to the teaching that they will teach you and according to the judgment that they will say to you, shall you do; you shall not deviate from the word that they will tell you (*yagidu lecha*), right or left.”** The Torah uses the expression “*yagidu*” (tell) rather than the more common term “*yomru*” (tell). What is the significance of this? Malbim explains in his commentary on Tehillim that the term “*hagadah*” (tell) is used to communicate a new/novel concept. Within the context of the verse, “*yagidu*” is coming to tell us that although the court/Torah Sages may render a judgment that is new/novel (that may even be contrary to one's logic and rational understanding) one must accept it. Rashi cites Chazal who explain that one must accept their judgment/ruling to such a degree that even if they were to say “your right is your left and your left is your right” and even more so if they say “right is the right and left is the left.” If one does not follow the dictates of the Sages one is in violation of a Negative Commandment. The commandment to adhere to the words of the Sages applies not only to the ordinary Jew but also to the Torah Sage.

The Gemara in Tractate Eruvin tells us that regarding the arguments between Bais Shamai and Bais Hillel concerning Jewish law we rule according to Bais Hillel. The Gemara states, “These (Bais Hillel) and these (Bais Shamai) are the words of G'd.” Ritva, in his commentary on that passage in the Gemara, cites the Rabanei Tzarfes who ask, “If Bais Hillel rules that something is permitted and Bais Shamai rules that it is forbidden, how then could both of their words be that correct?” The Rabanei Tzarfes cite a Midrash which states, “When Moshe ascended to heaven to receive the Torah it was revealed to him that there are 49 ways to see every issue in the Torah in a permitted context and 49 ways to see the same issue within a forbidden context. Moshe asked G'd. “How is it possible that the same thing can be permitted and forbidden?” G'd answered, “Whatever the Torah Sages and courts of the Jewish people decide throughout the generations will be the law.” Meaning, the responsibility for determining the law was given to the Rabbis to determine which position is more cogent within the context of the human mind.

When Bais Hillel rules that a child is illegitimate (because the union is forbidden) and Bais Shamai rules that the child is legitimate (because the relationship was permitted), the child is considered to be illegitimate because the law dictates that we follow the position of Bais Hillel. One is not permitted to marry that child and if one were to marry that child, he would be in violation of a Negative Commandment. Both Bais Shamai and Bais Hillel had a basis for their opinion that was rooted in Torah and conformed with the 13 principles of interpretation (of the Torah).

The Gemara tells us that a heavenly voice called out and declared, “The law is according to Bais Hillel.” There is an established principle that Torah law is not to be determined by heaven; but rather, it was given to man to understand and establish its

laws. When the Torah was given at Sinai it was determined by G'd that it is the Jewish court that rules on Torah issues (Sanhedrin). Thus, the heavenly voice is not to be considered. Tosfos asks, "If this is the case, then why did the Gemara state that we rule according to the position of Bais Hillel because a Heavenly Voice had declared so?"

The Torah states, "**After the majority you shall go...**" Meaning, the majority opinion supercedes the minority opinion regarding Jewish law; however, this principle is applied only if the opinions are individuals of equal caliber. For example, if the leading Torah Sage of the generation put forth a ruling and the masses disagreed, although they are in the majority, one would not follow the opinion of the masses because they are not on the same level as the Torah Sage- they are not qualified to argue. Although Bais Hillel was the majority opinion, Bais Shamai had keener minds. Their genius was on another level – and thus one could think that Bais Hillel may not be qualified to argue with them. If this were to be the case, then the principle of "majority rules" would not apply and the law would be determined by Bais Shamai. The heavenly voice only communicated that Bais Hillel was in fact in the same classification as Bais Shamai – and thus subject to the principle of "majority rules."

Halacha (Jewish Law) is not determined by what seems to be most logical or rational (within the context of intelligence) because there could be many conflicting opinions that are logical and rational within another context. It is based on the decision of the *bais din* (court). The Torah vests the Sages who are qualified to be the Sanhedrin with the authority to determine the Torah law, which transcends ordinary logic. Therefore the Torah states, "You may not deviate from their words – to the right or to the left."

3. The Days of Favor

The Shulchan Aruch (Code of Jewish Laws- authored by Yosef Karo, which is the basis for Sephardic tradition) in the beginning of the Laws of Rosh Hashanah writes, "There is a custom that one rises early in the morning to recite *selichos* (*prayers of supplication*) and *tachnunim* (*prayers of repentance*) to beseech G'd from the beginning of the month of Elul through Yom Kippur." Rama (the basis for Ashkenazic tradition) writes, "This is not the Ashkenazic custom. We begin reciting *selichos* from the first day of the week preceding Rosh Hashanah through Yom Kippur. One must have a minimum of four days of recitation of *selichos* prior to Rosh Hashanah." It is explained that just as one must inspect an offering for four days prior to bringing it as a sacrifice to ensure that it is not blemished, so too does one need to introspect/ examine oneself, before Rosh Hashanah to prepare for the Day of Judgment.

The Commentators explain that the 40-day period which begins on the first day of Elul through Yom Kippur is special. During this time Moshe had ascended to heaven for 40 days after the Sin of the Golden Calf in order to beseech G'd to forgive the Jewish people. Moshe's prayers were accepted by G'd and he returned with the second set of Luchos (Tablets) on the 40th day of his ascent- indicating that the Jewish people were fully reinstated. Thus, establishing this period of 40 days as a time (for eternity) as the "days of favor – *y'mai ratzon*." The Mishna Brurah states, "During this period of time one has a greater sensitivity to spirituality and thus has a capacity to appreciate the wrong that he had done – causing him to have greater relevance to teshuvah (repentance)."

Rambam in the Laws of Teshuvah states, "One may be distant/separated from G'd. When he calls out to G'd He does not respond. As the verse states, 'One may do mitzvos but G'd rejects them and casts them back to the individual. As G'd says, "Why are you trampling My courtyard?"' However, after one does teshuvah he will call out in prayer and

G'd will respond immediately. As the verse states, 'We perform mitzvos and G'd receives them with pleasantness and joy. He has a desire and love for them. As it states, "G'd desires the offerings in Jerusalem as in the days of old."

It is true that G'd "hears" our prayers throughout the year. However, He may not respond because of one's unworthiness. Rambam explains in another location in the Laws of Teshuvah that in order for one to be able to do teshuvah G'd must give him clarity to be able to appreciate the wrong that he had done. The ability to do teshuvah is a gift from G'd. The ability to do teshuvah was taken away from Pharaoh – as the verse states, "G'd hardened the heart of Pharaoh..." Pharaoh had the opportunity to understand the awesomeness of G'd but he chose to reject it. Since he deliberately denied G'd's existence, the gift of teshuvah was taken from him.

We are given continuously multiple opportunities to advance our spiritually and become closer to G'd; however, very often one chooses to gloss over them. As a result, a separation/distance is created between ourselves and G'd. As the Gemara in Tractate Berachos tells us that there is "an iron curtain" between ourselves and G'd- therefore our tefillos (prayers) cannot ascend.

We pray that G'd gives us the sensitivity and understanding to do teshuvah. Throughout the year we may not be worthy of meriting such Assistance; however, during this special 40-day period (which are days of favor) G'd is willing to assist the Jew by giving him greater sensitivity to be able to do teshuvah. One needs to have the interest to do teshuvah in order to merit that His Assistance which is not available during other times of the year.

Every day in the blessings of mitzvos which precede their performance we say, "G'd sanctified us through His mitzvos." On Shabbos, we beseech Him, "G'd sanctify us through Your mitzvos." How does one understand this? Seemingly, when one does a mitzvah one should naturally be sanctified because of his participation in the mitzvah act. Nevertheless, we beseech G'd to sanctify us through His mitzvos. Rambam explains that prior to teshuvah, even when one does the mitzvah, they may be rejected and cast back to the individual because of his unworthiness– thus having minimal value. Consequently, one is not sanctified by the mitzvah. When we beseech G'd to sanctify us through the mitzvos, we are asking Him to accept our mitzvos. Despite our failings, we ask G'd to not reject our mitzvos – thus allowing us to be sanctified through them. During this special 40-day period, although we may not be worthy, the consequence of performing mitzvos have greater value than other times of the year because G'd is more receptive and favorable to the Jew.

4. Truth – The Basis for All Blessing

The Torah States, **"When you go out to the battle against your enemy, and you see horse and chariot- a people more numerous than you- you shall not fear them, for Hashem, your G'd, is with you, Who brought you up from the land of Egypt."** Rashi cites Chazal who ask, "Why is this portion (of going out to battle) juxtaposed to the previous portion, which discusses the laws concerning the courts and instituting justice?" Chazal answer, "To teach us that if the courts render righteous judgments, the Jewish people will be victorious when they go out to battle. As King David writes in Tehillim, 'Because I have done justice and acted righteously, do not subject me to the victimizers.'" We see from this that one who acts with integrity and truth will merit Divine Protection.

The Gemara states, "The Signet of G'd is Truth." G'd will only associate Himself

with truth. If one does not conduct himself within this context, G'd will divorce Himself from that individual. Thus, the only one guaranteed to have that special level of relationship with G'd is the one who lives a life of truth (as defined by the Torah).

The Torah states, **"...and you increase silver and gold for yourselves, and everything that you have will increase- and your heart will become haughty...And you may say in your heart, 'My strength and the might of my hand made me all this wealth!'"** When one experiences great prosperity, there is a tendency for one to feel and believe that his success is a result of his own actions and abilities. However, this view is baseless and false. One's predicament in life (for good (success/prosperity) or for bad) is solely based on G'd Willing that particular predicament. G'd provides every aspect of one's existence, unrelated to one's ability. Thus, if one attributes his success to himself, he is living a life of falsehood. The individual who lives within the context of truth is the one who understands and internalizes the fact that everything he has is a gift of G'd. G'd associates Himself with that individual and affords him Assistance and Protection.

The individual whose priority is his material needs and his spirituality is secondary (thus willing to sacrifice his proper performance of mitzvos) is one who lives within the context of falsehood. As it states in the Gemara in Tractate Shabbos, "One's yearly stipend is set (by G'd) from Rosh Hashanah to Rosh Hashanah." Since this is the reality of one's existence, to behave as if one is responsible for his own fate, is a breach of truth. Thus, in order to merit what has been destined, one must live within the context of truth by understanding that one's success is a gift of G'd.

We recite in our daily prayers the verse from Tehillim, "Some with chariots, and some with horses, but we- in the Name of Hashem, our G'd we call out." While others rely on their own strengths and abilities, the Jew relies on G'd. King David states, in *Ashrei*, "Hashem is close to all who call upon Him with Truth." Again, we see clearly that not only does G'd associate Himself with one who lives a life of truth, but He is also close/intimate with that individual. This is what the Torah is communicating through the juxtaposition of going to battle to the portion of the judges rendering righteous and equitable justice.

When one studies Torah with an ulterior motive (*shelo l'shmah*) it is a diminishment of truth. One must understand and appreciate the privilege of serving G'd through His Commandments. If one's motivation to fulfill the Torah is for self-interest he is acting without integrity because outwardly it seems he is fully committed to G'd but actually he is committed only to himself. One only merits special Assistance to understand and internalize the Torah only when one studies it within the context of Truth.

5. The Value of Accountability

The Torah tells us that every community must establish a court - a Sanhedrin Ketana. A Sanhedrin Ketana is comprised of twenty-three judges (*Shoftim*) who have been ordained by individuals whose ordination can be traced through an unbroken chain going back to Moshe Rabbeinu. These judges were proficient in every aspect of halacha (Jewish Law) and are qualified to adjudicate any dispute. They were also qualified to render verdicts that carry the death penalty. Additionally, the community must have *Shoatrim*, a body of law enforcement individuals who were responsible for enforcing the decisions of the court.

In the Book of Bereishis (Genesis) we are told that Man was created in "the image and form of G'd". We know that G'd is infinite and has no form or image. The Sforno in

his commentary explains that “in G’d’s form” means that just as G’d has the power to choose as He wishes (which is always Good) so too does Man have the power of choice. Rambam explains in *Hilchos Teshuvah*, it is only because man has free choice that he is culpable for his failings and rewarded for his good deeds.

If the purpose of man is to function within a setting of being able to continuously choose between right and wrong, then one would think that establishing such a pervasive judicial and law enforcement system of Shoetim and Shoatrim, would greatly limit free choice. With such effective systems, one would not consider transgressing because of the obvious consequences. The Gemara in Tractate Berachos states that everything is predestined, except for the fear of heaven. This means that the only aspect of one’s life that one exercises control over is our fear of G’d. If free choice is the fundamental principle of existence, seemingly the dictate to establish a legal and enforcement system seriously curtails one’s ability to choose.

In order for us to fully appreciate the meaning of “free choice” we must first understand the parameter and context within which G’d wants us to choose. The options to be a heathen or an angel exist within man’s reach. However G’d wants to create a setting where this choice is not even a consideration (because of its consequences) G’d does not want us to choose between abiding by or violating the Torah, but between performing mitzvos to a greater or lesser degree. In other words, G’d wants to establish a setting for us to always do the right thing. The choice is only within the context of qualitative performance. Do I behave on a more advanced level or on a deficient level? Therefore, establishing a judicial and law enforcement system in every community, as prescribed by the Torah, creates a setting that guarantees that one will do the right thing. The issue of choice is only to perform in a more perfect manner.

Rabbi Moshe Chaim Luzzato z’tl in his work *Mesillas Yesharim* explains a passage in the Gemara in Tractate Eruvin that addresses the issue of how one must approach life. Choice in life is similar to identifying whether something is made of fabric and then determining its quality. For example, if one chooses to act in a certain manner – one must first determine whether the action is permitted or not and then how one can perform to the best of his ability.

We read in *Pirkei Avos* (the Ethics of Our Fathers) that one should pray for the welfare of government because if it were not for the fear of government (law and order), people would swallow one another alive. Things would deteriorate to such a point, that people would not even take the time to first kill the other individual but rather would swallow the other alive. The state of anarchy would bring about a level of savagery that would be so great that people would literally lose every trace of their humanity.

Are our Rabbis telling us that the only reason cultured, educated, sophisticated, and civilized people behave as they do and refrain from violating the law is because of their fear of punishment? Of course that is not the case. If there is an understanding of accountability in society, then a person is able to recognize and appreciate the worth of proper behavior and values. However, if a person loses that sense, because there is no law and order, he will lose his clarity and will resort to uncivilized behavior. He will become a predator, as described by *Pirkei Avos*.

Therefore the Torah prescribes a Sanhedrin Ketana and a law enforcement system even for a community of 120 individuals. In the midst of such a presence one would not consider violating the Shabbos or any of the laws of the Torah. Within such a setting, one will do the right thing; however, the quality of his actions is left to choice.

The Gemara in Tractate Yomah tells us that after passing away we will be asked by the heavenly court, "Did you set aside time to study Torah?" The rich man will answer, "How could I have had time to study Torah when you endowed me with so much wealth which carries with it so much responsibility?" The heavenly court will answer, "Were you wealthier than Reb Elazar Ben Charsum who was one of the wealthiest people and owned a thousand cities on land and a thousand ships at sea and still found time to study Torah?" The poor man will respond to the heavenly court by saying, "How could I have had time to study when I was so poor? I was busy trying just to make ends meet." To this the heavenly court will respond, "Were you poorer than Hillel the Elder? Hillel was able to study while earning only two cents a day."

The Gemara explains that Hillel, as a young man, earned his livelihood as a woodcutter and every day he would cut two cents worth of wood. One cent was given to his wife to support the family and the other cent was used to pay the entry fee to be admitted into the Bais Ha'Medrash (Study Hall). One must understand why did Hillel only chop two cents worth of wood every day when he could have chopped enough wood on one day to support his needs for the entire week? Hillel's material needs were only so minimal because at no time did he have more than what was needed to maintain his existence. Hillel understood that if he had more than he needed at that particular moment, then his interests and needs would expand to meet what he could afford. The moment a person has greater freedom and flexibility, he will see his choices within the parameters of that degree of freedom. When one understands that he has limited possibilities, then his choices are limited to the context of those possibilities.

With this we understand that the importance of establishing a court and a law enforcement system in every community is to create a setting where man's considerations and alternatives occur within a limited context- thus causing man to choose to do mitzvos in a more perfect manner, rather than struggle with the question of whether to do right or do wrong.