

Parshat Shoftim:

Judicial Warnings

Our Parsha is a study of four modes of leadership within the Jewish nation state. They are: the judge, the king, the prophet and the priest. Our parsha describes their specific roles and duties, and outlines the careful limits to power and authority set by the Torah.

For certain of these public figures, **the Torah would seem to be interested less in the RIGHTS and the powers of the authority figure, and concerned more with their LIMITATIONS AND RESTRICTIONS - what they may not do!** Within the very sentence in which a certain authority position is created, that figure is given severe limitations. With the king:

"... He shall not keep many horses... and he shall not have too many wives ... nor shall he amass silver and gold to excess. ... he will not act haughtily to his fellows nor deviate from the instruction (of God).."
(17:16-20)

With the priest:

"The levitical priests, the whole tribe of Levi, shall have no territorial portion within Israel ... the Lord is their portion, as He promised them." (18:1-2)

In our class this week, we shall concern ourselves with the opening lines of our Parsha. They deal with the establishment of a national system of courts and law enforcement.

Once again, our verses follow the pattern of outlining the limits and the pit-falls rather than the benefits and powers of the Judiciary. In these verses which establish a system of law, we are immediately given the warnings as to the abuse of high office. Let us read the text itself:

THE JUDICIARY

"(18) Appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice. (19) You shall not judge unfairly, you shall show no partiality, you shall not take bribes, for bribes blind the eyes of the discerning and falsify the word of the just. (20) Justice, justice, shall you pursue, that you may thrive and occupy the land that the Lord your God is giving you." (16:18-20)

"IN ALL THE SETTLEMENTS"

This is the Bekhor Shor's reading of the opening verse:

"Magistrates and officials: This refers to the "Great Sanhedrin" (The "supreme court") which is the source of teaching for all Israel (see 17:7-8) ... thus the primary legal centre is in Jerusalem. **In all your settlements:** Smaller court of 23 must be appointed in every town. For your tribes: a particular tribe must judge its own tribe"

Maimonides details the incremental levels of the law-courts in his legal code; the Mishne Torah:

"It is a Torah injunction to appoint judges and law enforcement officers in every district and every town, as it states *"Appoint magistrates and officials for your tribes, in all the settlements"* ... How many full-time law courts must Israel have, and with what number of judges? First the High Court in Jerusalem is established. It convenes in the Temple and numbers 71 Judges. ... There are two other courts of twenty-three judges at the entrance to the Temple Mount and to the Temple compound. In addition, any town with over 120 people a minor court, or 'Sanhedrin, with 23 judges ... and if the town has less than 120 inhabitants, one appoints a court of three judges"
(Laws of Sanhedrin Ch.1)

Maimonides here outlines an entire court system; from the Supreme Court in Jerusalem to even the smallest hamlet having a law court of three judges. The Supreme Court, which will hear the cutting-edge cases, has seventy-one of the greatest legal minds in the land. Only this court can rule on national issues. However even, the court of twenty three members is licensed to try even capital cases. A simple monetary dispute will be settled by a three man judiciary.

But, we may well ask as to the need for this vast number of judges and their function. Why does every place need its own judges? Why can people not just travel to the next town on the rare occasion that they need to go to court?

Maybe the Bekhor Shor gives us a clue. He mentions the insistence that each tribe be tried in a court of their own. Why is this necessary? It would seem that a court which belongs to one's own tribe, is a place that will give the fairest of trials. Any cultural nuance, every family or sectarian issue, will be understood and more readily accepted in a court belonging to your particular tribe. The tribal court will ensure an environment that is less distanced and more open. Maybe this approach explains the precise text of the verse: " ... for your tribes, in all the settlements.... and they shall judge the people with due justice." Only if a court is in the towns themselves will it be able to judge with "due justice". This is because the person who is judged will be clearly understood; the socio-economic conditions, the tribal politics etc. It is good for judges to be close to the people. It ensures the involvement of the court in the daily living of the people. But the reverse is true as well. From the people's perspective, the presence of a law-court in their midst, both as an address for questions and arguments, and as a source of Torah learning, is something which raises the standard of the town. It changes the mindset on the street; giving the public a constant awareness of Torah standards and sensitivities. In the words of the 13th century work, the Sefer Hachinuch:

"The value of the function of judges and officers is that they compel people to observe the precepts of the Torah, turning back those who deviate from the true path, commanding what is

supposed to be done and preventing unworthy deeds..."

So, the notion of the courts "in every settlement" assures "due justice" and more! It benefits the judges and it benefits the public.

VERSE 19 - COMPLETE IMPARTIALITY

Verse 18 would seem to be directed at the nation as a whole. The nation are to see to it that a Judiciary is established. But verse 19 would seem to be talking to the judges only!

19)"You shall not judge unfairly, you shall show no partiality, you shall not take bribes, for bribes blind the eyes of the discerning and falsify the word of the just."

Is this verse addressed exclusively to the Judiciary, in which case, the Torah switches its audience rather silently! or is there another possibility? And if we are on the topic, to whom is verse 20 directed:

(20)Justice, justice, shall you pursue, that you may thrive and occupy the land that the Lord your God is giving you."

Is it for the Judges or the nation?

Let us add a further query as regards verse 19. Look at the verse. There are three laws or command statements. Are the three phrases not simply repeating themselves? - if we judge fairly, then it must be an objective, impartial verdict. In the pursuit of fair justice, bribery is also a non-option. So do these three injunctions add anything to each other? Nechama Leibowitz points out that these laws have been mentioned in other places in Torah (Exodus Ch.23, Deut 1:17) so what is the thrust of this verse?

Rashi reads this verse in the following way.

"DO NOT PERVERT JUDGEMENT: literally. AND SHOW NO PARTIALITY: Even at the stage of hearing evidence. A warning to the judge that he should not be gentle to one plaintiff and harsh to another, letting one sit and the other stand. When one party sees that the judge is favouring his rival, he begins to lose confidence in presenting his argument. AND DO NOT TAKE BRIBES: Even to deal out justice. FOR BRIBES BLIND: Once he has taken the bribe it is an impossibility that he will not, in some way, be predisposed towards him to influence the case in some manner, his favour. THE WORDS OF THE JUST: The just words - the true verdict."

Rashi interprets this entire verse as directed towards judges. He explains that this verse is ordered with three clauses, each representing increasingly subtle temptations which might present themselves to the legal practitioner.

How so? The first warning is the obvious one. The judge must not "fix" the verdict. This would be a perversion of justice. The role of the judge is to weigh up the evidence before him in respect to the law and to judge on that basis and nothing else.

The second warning relates to court procedure. Here, even a slight gesture to one of the litigants in court can create an environment that will induce one of the parties to lose confidence. The judge must show absolute impartiality even in his administration of the courtroom.

The third warning is subtler still. A judge can decide the verdict in his mind, and know that he will give a verdict in favour of one of the litigants. It just happens that at this point, that very litigant offers a bribe. The judge might say, 'Well, I have decided objectively, what is wrong with a little extra money? After all, the problem with bribery is that it influences a person's thought process, but as for me, I am totally objective!'

Rashi is basing himself in the Sifrei, a Tannaitic Midrash:

"Do not take bribes: Obviously this applies to (a bribe) to clear the guilty and convict the innocent, but it even applies to Bribery that will) clear the innocent and convict the guilty!"

So Rashi has demonstrated that the verse here is a series of warnings of increasing subtlety, directed at the court Judges.

NEPOTISM, AND POLITICAL APPOINTMENTS.

Rabbi Samson Raphael Hirsch, on the other hand, reads the verse as directed to the same address as the previous verse 18. He sees both verses as addressed to the "whole nation who already had their representation in the Sanhedrin of 71." This Supreme Court were the appointers of Judges and law officers. It is the Supreme Court as the legal guardians of the nation who are instructed to create law courts in every settlement and hamlet. It is they who are instructed with the warnings of verse 19. Hirsch also quotes the Sifrei.

"Do not pervert Justice: This injunction is directed at the person invested with the office of appointing judges. Lest you should say , 'So and So is distinguished looking, I shall appoint him as judge; so and so is a warrior, I shall appoint him as judge, this man is my relative ... this man assisted me financially, I shall appoint him as judge' ... he will come out acquitting the guilty and convicting the innocent, not because he is evil but because he is uneducated in Law! For those who appoint judges in this way, I regard them as if they had "demonstrated partiality in the matter of the court."

This reading of these verse is novel The Sifrei here reads the entire passage as related to the APPOINTERS of judges. It reads verse 19 as ruling out irregularities in the process of judicial appointments. "Do not pervert justice (by making inappropriate individuals judges) and do not show partiality (lit. recognise faces - ie. favouring certain candidates because they have done you favours in the past) and do not take bribes ..."

Here is Hirsch's own words:

"According to this way of taking it, the sentences would not be speaking so much of the duties of the judges, but rather of the duty of the national authorities who are entrusted with the appointment of judges. To appoint such men as judges through whom justice, pure unadulterated justice, would be achieved; and at making such appointments, next to honesty and uprightness of character, to be guided solely by knowledge of the law and insight into the law. For these traits, no other qualifications, personal, social or of scholarly attainments may be substituted ... The warning here, equally addressed to the national representatives - "Do not pervert justice" - makes them, the Sanhedrin who appoint judges, responsible for any twisting of the law, partiality

shown, or bribery accepted at any court in the land ... you are not to twist the law through the judges who you appoint."

The Sanhedrin who appoint judges, are responsible for any twisting of the law, partiality shown, or bribery accepted at any court in the land! Hirsch's harsh words hold a clear message. The values begin at the top. If judges are appointed because of family ties or other insider deals, then the process of corruption, bribery and partiality have already entered the system. To this end, the Supreme Court holds the key to this entire Pandora's box. They are entrusted to uphold the standards of honesty and impartiality.

JUSTICE, JUSTICE - PURSUE!

Verse 20 is a little strange. What does it want from us? We clearly have an orientation of justice having read the previous two verses. What might this verse be adding? Also, the doubled phrase - Tzedek Tzedek - must be indicative of something. What is it?

The Talmud states :

"Justice, Justice pursue! - One ("Justice") for Law and another for out of court (compromise) settlement." (Sanhedrin 32b)

The indication being that at times the best way of achieving justice is to circumvent the legal details and come up with a mutually agreed resolution that supercedes the letter of the law. It is interesting that the Torah, so replete with legal detail, understands that even Law has its limits, and sometimes, mediation, and compromise are the correct approach. Not every issue in society should be settled in court, and sometimes Justice is served better outside the courtroom.¹

But maybe the simple explanation is the truest. To achieve Justice in society you need to pursue it fanatically, to persist in a devoted mission to uphold Justice, compassion and fairness, accessibility and impartiality, to chase and hunt bribe takers and corrupt officials. Chase fervently, Hunt, Justice!

LAND AND JUSTICE

"Justice, justice, shall you pursue, **that you may live, and occupy the land that the Lord your God is giving you.**"

Our concluding verse associates Justice with the rights of the nation to the Land of Israel. It is interesting that in the concluding passage of the parsha, the theme returns again. Over there, there is an unsolved murder. An unknown stranger has been assaulted and killed on the highway. The elders of the nearest city are summoned to proclaim:

"We did not spill this blood and our eyes did not witness it. Forgive your people Israel who you redeemed, God, and do not let guilt for the blood

¹ The Ibn Ezra has an interesting reading here:

"This verse is talking to the litigants. The doubling of the word "justice" comes to teach you to pursue justice - whether you win the case or whether you lose!"

Both of these approaches suggest that this verse is talking to the litigants themselves. If this is the case, we could have an interesting situation here whereby verse 18 talks to the appointers of judges, verse 19 talks to the judges themselves, and verse 20 talks to the litigants!

of the innocent remain among your people Israel." (21:8)

The holy land is spiritually sensitive. It is justice and compassion that give us the keys to survival in our land of promise.

Shabbat Shalom