

פרשת שופטים

OVERVIEW

The country's judicial system is built on legislative and executive authority and is divided in three types of courts. Our Sidrah deals with the highest appointed officials, the king, high priest and the members of the supreme court. Among the main topics in this portion are the procedures of the tribunal, the king's privileges and duties, military service and exemptions.

COMMENTARY

"Justice, justice, shall you pursue, so that you may live and take possession of the land which G-d, your G-d, is giving you" (16:20). Israel's physical existence, its social and political activities, shall be marked by respect for the law and its representatives whose authority equals that of the temple. In the words of our sages: "He who appoints an unworthy judge is compared to him who erects an idol near G-d's sanctuary". (Note the proximity of verse 20 and 21 in Chapter 16). Social justice as the most elementary duty of the Jewish community shall serve as an example and guide for the nations of the world.

The Torah cites a grave offense, if not the gravest, as an illustration of the way in which justice would be practiced in Israel. This is "avodah zara", idolatry. "If there is found in your midst... a man or a woman who do that which is evil in the eyes of G-d, your G-d, to transgress His covenant"; "and he went and served others gods and cast himself down before them..." (17:2-3). Evidence of the facts must be obtained through visual observation by two witnesses, thus excluding any chance of an error.

(Having quoted the first part of verse 3, it is opportune to offer an interpretation of the second part: "and he went to serve the sun or the moon or all the host of the heaven which I have not commanded". What is the meaning of "which I have not commanded"? Could one surmise even for a moment that G-d would condone or even "command" such an action? Does it say "which I have not commanded" at the prohibition of murder or theft? Obviously there must be another interpretation: here we deal with a man who advocates and practices idol worship but does

not necessary deny that G-d created the world. His offence consists of the claim that nature's (and man's) fate is no longer controlled by G-d, thus denying one of the basic axioms of Torah Judaism: "hasgacha pratis", G-d's direct guidance of and intervention in the daily workings of nature and mankind). It is not "Asher - אשר - which I have not commanded" but "asher" that I am no longer in command". This is the content of his treasonous message).

The examination of the witnesses will be strict (V. 4). It is the only way to obtain a clear picture of the crime. Circumstantial evidence in the form of fingerprints or written statements is inadmissible, only a visual testimony. According to Jewish law even a confession by the accused has no judicial value (in contrast to current laws). Close relatives of the accused cannot appear as witnesses for the prosecution nor for the defense; As the accused is his own closest relative and thus is least objective in matters involving himself, his testimony, negative or positive, is worthless.

After sentence by the court, the witnesses themselves must execute the judgment (V. 7). This is the most effective way of helping to eliminate false witnesses, for it is far easier to testify and have the judgment be carried out by the court officers than to be a participant in a judicial tragedy caused by their web of lies. In fact, the divine law recommends that the court delay or even suspend sentence rather than commit a possible miscarriage of justice. This explains why so many obstacles are placed in the path of the witnesses and why the court seeks to acquit rather than to convict. The slightest doubt will induce the court to suspend judgment and to refer the matter to a higher authority - G-d. (This approach is incompatible with the modern secular judicial system).

Jewish law must be protected from those who plot to undermine its authority by refusing to comply with its decisions, causing unrest and rebellious activities among the people. Such a case is hinted at in V. 12-13 that, according to oral tradition, refers to a respected public official who is accused of committing acts that violate the Jewish law. His actions go beyond an individual "revolt"; they constitute a

"Korach-like" incitement of the people to rise up against their leaders. While the death penalty for such treasonous conduct is certainly warranted, it is not to be construed as a general rule for those who refuse to abide by the court's decisions. They receive heavy fines or corporal punishment. Thus Torah law protects its institutions that are instrumental in creating a society ruled by justice and truth, worthy of G-d and His law.

This idea is reflected in the position of the king, the highest official in the land. "When you will come to the land that G-d, your G-d, is giving you, and you have taken possession of it and you will dwell in it, and you will say "I will set a king over me, like all the nations that are around me...." (17:14). This last part needs an explanation: the choice of a king will only be opportune following the completed conquest of the land. At that time a need will be felt for a royal leader, and the satisfaction of this need will then not only be permitted but, according to the Halacha (Sanhedrin 20b), virtually commanded. It is obvious that the words "you shall then set a king over yourself...." (17:15), are in reaction to this awakening need among the people. The Torah wishes to make sure that the monarchy will not become a source of tyranny and despotism but is an initiative in response to the people's wishes, as a truly democratic institution.

"Like all the nations....": nations strive to concentrate all their resources under the direction of one leader in order to expand their sphere of influence and increase their political power. While the Jewish people also may require the guidance of a king, his activities must be exclusively concerned with the inner structure of the people's moral and ethical constitution. He may not pursue imperialistic goals, but must strive to achieve the spiritualization and consecration of his kingdom.

These verses clearly show that if there is any semblance between the Jewish king and the generally accepted concept of a monarch, it is one of form, not of content. He is to act as a true servant of G-d, a model of piety and loyalty to the Torah law. This also explains the difficulty facing us in the 8th chapter of Samuel I. One is puzzled by Samuel's violent opposition to the people's demand for the appointment of a king, which they expressed in the same words used in our chapter: "like all the nations". However, a

closer inspection of the chapter will reveal that at the time of Samuel the people indeed demanded a royal head in the image of the neighboring kings. They were adamant in their refusal to heed Samuel's warning couched in most explicit terms of foreboding and doom: "He (the king) will take your sons and use them for his chariots, to run in front of them.... he will take your daughters to serve as cooks and bakers.... he will take your choice fields and your olive trees and give them to his servants.... and the day will come when you will complain about the king whom you chose - but G-d will not respond to your complaint". The people refused to listen to Samuel's voice and they said: "No! A king shall rule over us and we shall be like all nations and our king shall judge and go before us and fight our war". Seen in this light we understand the conflict between the people and Samuel who lived up to his task as prophet and man of G-d.

#### Judges and municipal Counselors

Heading the entire judicial system of the Jewish state is the supreme court consisting of seventy-one members. Its sessions were held within the confines of the temple walls. Its functions include all matters of national concerns such as war and peace, ratifications of decisions made by the king, conflicts between tribes.

On a lower echelon are the regional courts consisting of twenty-three professional judges. Their competence covered all major crimes, particularly those that were punishable by death. Finally, there were the local courts of arbitration, limitless in number, consisting of three men, two of whom were chosen by the opposing parties who then elected a third person as chairman<sup>(1)</sup>. Their legal authority extended mainly to disputes of a commercial nature. Both higher courts were provided with officers whose task was the carrying out of sentences<sup>(2)</sup>. The Jewish judicial system served as a model for numerous systems in later periods.

#### The Witnesses

In comparing a modern court with the Torah's judicial system, one notices the absence in the latter of a public prosecutor and defense lawyers. The Jewish court considers the witnesses appearing against the accused to be prosecutors representing the people. While the court recognizes the justification for an

indictment, it also holds to the rule that the accused is innocent unless proven guilty. Thus the court, for all practical purposes, serves as lawyer for the defense until it finds sufficient proof to concur with the testimony of the witnesses.

"And you will come to the priests and judges that will in those days..." The priests and even the high priest himself did not possess any authority regarding the dissemination of the law except as qualified members of the Sanhedrin, the supreme court. The judges, recognized by the nation, had the absolute and unassailable authority for the authentic transmission and interpretation of the law and its proper observance and implementation. Whoever disregarded or defied their decision, bore the full brunt of the consequences, "...and you shall clear away the evil from Israel" (V. 12).

#### The Kingship

The King of Israel assumes a position of prime importance among the leaders of the people. He cannot take any initiative that is contrary to the Jewish constitution emanating from the written and oral law. His activities will be solely those of a leader who sets an example and supervises the organization and administration of the national and cultural institutions. The relatively few special instructions mentioned in the text (curtailing his personal and military power and confining royal trappings to a minimum) indicate the fundamental difference between the concept of the Jewish king and that of the accepted secular status of a monarch.

The king's first constitutional duty is to write in his own hand and in the presence of the people's leading representatives, a double copy of the Torah law as a true act of loyalty that will bind him to the Torah's spirit and precepts for the remainder of his life.

"So that his heart may not lift itself up above his brethren..." (V.20)

Despite his exalted position, the king finds himself on the same level as his fellow citizens – whom he serves as the enlightened leader and knowledgeable advisor. It is worthy of note that the Jewish king was designated following the conquest of the land. This is unlike

the custom prevalent in other countries that appoint their sovereign in order to lead them to victory over their adversaries<sup>(3)</sup>.

#### The Priest

The administration of justice is the realm of the judges, political matters and the economy the province of the king. The priest is responsible for education and the people's spiritual health. As the nation's servant, he is not allotted landed property, and the nation is enjoined to take care of his material needs. Actually, he devotes only a relatively brief period of time in the direct temple service. Most of his time is spent on educational matters and the instruction of the youth. (It should be noted that the designation "priest" in the Torah text refers to both Kohanim and Levites.)

The Kohanim were organized in twenty-four guard units ("mishmarot"), each serving for one week. The rotation took place on the Sabbath following the morning service after the morning sacrifice. The two "mishmarot" shared the "show bread" of that week. The outgoing unit greeted the incoming one with the words: "May He Whose name crowns this house spread among you love and brotherhood, peace and friendship". A Kohen who came to the temple at a time when he was not assigned to serve could be useful in two ways: if he came to the temple during one of the three pilgrim festivals he could offer his festive sacrifice on his own. Similarly, when he came for personal reasons he was able to offer the sacrifice that motivated his journey or bring the duty-offering required of anyone who came to Jerusalem. In both cases he kept the parts of the animal as prescribed by the law of the Kohanim.

#### The Prophet

Strictly speaking, the functions of the Jewish state were solely in the hands of the king, the judges and the priests. The function of the prophet was of an entirely different nature. He does not predict the future<sup>(4)</sup>. He is not an oracle as we know it from Greek history. He serves one purpose: to be the spokesman who communicates to the people the Word of G-d. Whenever necessary he transmits to the nation the commands and the Will of the All-High. This is expressed in unequivocal terms in Ch. 18:15: "To him shall you hearken". In the same verse

Moshe, for once seemingly putting aside his proverbial modesty, states: "A prophet from your midst, from among your brethren, like myself". However, these words are not spoken in arrogance. They make it very clear that every future prophet will deserve this title only when his actions and pronouncements accurately reflect the spiritual heritage as it was received by Moshe at Sinai and transmitted to the nation. G-d's messenger, spiritual mentor, brother among brethren – that, in the eyes of the Torah, is the true prophet.

#### Waging War

It is difficult to conceive of a state's constitution which would contain the following article: "In the case of a general mobilization the following recruits may return to their homes (Ch. 20: 5-8): "What man is there that has built a new house and has not yet dedicated it; what man is there that has planted a vineyard and has not yet enjoyed it; and what man is there that has betrothed a wife and not yet taken her to his home; what man is there who is afraid and fainthearted - let him go and return home".

Yet these are exactly the instructions listed by our text. They seem to fly in the face of logic as if designed to undermine the people's defensive capability. Here, the Torah demonstrates the fundamental difference between the Jewish concept of humane government and that of a pragmatic, materialistic policy. The Jewish nation introduces in its political relationship with other nations, an element that is entirely missing in the latter's concept of war and peace. It is an element of moral integrity, the awareness of the state's commitment to the Word of G-d. A war fought for the preservation of morality and human values can only be conducted in a spirit of calm confidence in Divine guidance and support. Such war will never deteriorate into the greedy monster that has too often decimated the world's population through murderous struggles for political and territorial supremacy.

Let us be aware that no Jewish war was ever fought for any purpose but self-preservation (with the exception of the conquest of the land). Any military action by the Jewish state was always inspired by the majestic pronouncement "Not by might and not by force but by My Spirit..... says G-d" (Zechariah 4:9).

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#### **Publisher's notes:**

(1) The Law provides for several types of lower courts: The one referred to here is generally called "זבל" which is an acronym for "זה בורר לו אחד" – "this side chooses one judge etc." as mentioned. There also exists the case where both sides in a dispute agree on a legal venue of a sitting court comprising of an odd number of judges (in order to avoid ties). In exile, there also exists the case of a "בית דין קבוע", a sitting lower court that has jurisdiction in a certain district by virtue of the inhabitants of that district having accepted its binding power in all cases.

(2) Except in the cases where the prosecuting witnesses had to carry out the sentence as mentioned above. This generally applied to sentences defined in the written Torah. Other cases of sentences could occur in the case of financial disputes or in the event of a discretionary court sentence – מרדות.

(3) That being their purpose. This does not preclude the duty of the Jewish king to protect the homeland against physical attacks by adversaries.

(4) In other words, that is not their main purpose that is rather as stated. (In fact, the Jewish King is obligated to hearken to the prophet's words, but the prophet must show proper deference to the King as his Monarch. This is very apparent from the dialogues between Prophet Samuel and King Saul at the beginning of his reign (Samuel 1) ). The Prophet will, however, sometimes predict the future when warranted.