



WEEKLY PARASHA

By Rabbi Dov Linzer

Norman and Tova Bulow Rosh HaYeshiva Chair

Parashat Shoftim | August 21, 2020 | 2 Elul 5780

Can We Tolerate Dissent? Can We Not?

One of the primary institutions needed for the well running of society is its legal system, both the laws proper, and the bodies to adjudicate and enforce those laws. For those about to enter the Land of Israel, the substance of the laws is no less than all the mitzvot of the Torah. As to the judicial system that will enforce these laws – that is that focus of the beginning sections of this week's *parasha*, named, fittingly, *Shoftim*, judges.

The Torah commands not only the appointment of judges and officers of the law throughout the land, it also sets up a High Court and takes serious measures to protect the authority of this court. We are told that when a matter cannot be resolved otherwise, we are to take it to the place that God has chosen – Jerusalem – and bring it before the “priests and the judge who will be at that time” (17:9). This body, understood to be the Sanhedrin or High Court, will issue a ruling, and that ruling must be followed without deviation. Dissent will not be tolerated: “And the person who acts presumptuously, and will not listen to the priest who stands there to serve before the Lord thy God, or unto the judge, that man shall die, and you shall eradicate the evil from Israel” (17:12). The court will act harshly and decisively to stamp out any threat to its authority.

We can understand the need to protect the court's role as the highest and ultimate authority empowered to interpret the law. If people could interpret and apply the law as they saw fit, general lawlessness would ensue. Nevertheless, it is hard to identify with the harshness of the response – the death penalty! – for any deviation. Moreover, such squelching of opposing and critical voices would see to give the court absolute, unchecked power. What, then, is to stop absolute power from corrupting absolutely?

As far as the death penalty is concerned, the Rabbis have significantly limited its scope. While making it clear that the duty to follow the rulings of the court is incumbent upon everyone,

the Rabbis have said that the death penalty of the verses is reserved for the *zaken mamre*, the rebellious elder. Only a great sage, a great legal scholar, can receive such a punishment. If he acts in opposition to the court, and not only acts, but – add the Rabbis – rules for others in this manner, then he has positioned himself as a competing legal authority. Theoretical debate is fine, but to rule in practice against the court is not fine. This can truly undermine the court, and must be stopped.

The Rabbis impose many more criteria that must be met before one can be considered a *zaken mamre*, effectively making this category moot. With the death penalty effectively removed, how would the court's authority be defended when there was real opposition? Well, there are other ways.

In a well-known story, we hear that Rabbi Eliezer ruled that a certain oven was ritually pure while all other rabbis ruled that it was impure. Rabbi Eliezer provides miraculous signs that he is correct: a carob tree is uprooted, a stream of water flows backwards, and the walls of the study house bend in. The punch line that we are all familiar with is when the rabbis say to God: “The Torah is not in Heaven! It is for us to decide!” The authority of the court is so great, this audacious story tells us, that it trumps even God's own claim as to the true meaning of the Torah!

But the story doesn't end there. For the court's authority has been challenged not only by God, who in the story chuckles and steps back, but also by a great rabbinic sage, someone who is not willing to step down and go quietly, some who acts in highly public and demonstrative ways to prove that he is right. This, the story tells us, is a serious threat.

Yeshivat Chovevei Torah Rabbinical School

This perhaps is the meaning of the carob, the stream, and the walls of the study house. These represent the societal structures and the natural order of things. For Rabbi Eliezer to push his position against the court, was an attempt to reverse the natural order, an act that could shake the foundations of society. And it must be stopped. And so: "On that day all that objects that R. Eliezer had declared to be ritually clean were brought in and burnt by fire." (Baba Mezia 59b). Without violence and without putting anyone to death, the rabbis demonstrated, firmly and decisively, that challenges to its authority would not and could not be tolerated.

All this is well and good. But with such absolute authority, who is to keep the court honest? What checks and balances exist over them? For this, we return to the beginning of the *parasha* – the appointment of judges. In the United States, the check that the other branches have over the Supreme Court is its ability to appoint and approve of the justices, and to create lower courts. This echoes the Torah's mandate that the people appoint the judges and also create regional courts: "Judges and officers you shall appoint in all your gates" – that is your cities – "and all your tribes" (16:18). Regional courts distribute the power somewhat – it is not all concentrated in the hands of the High Court. Beyond this, there is a mandate that the court not only represent the majority, but that they also work to protect the rights of the marginal and disempowered in society: "You shall not pervert judgment; you shall not respect persons... Justice, only justice, you shall pursue." (16:19-20). And the judges must protect themselves against outside influences: "You may not take a bribe" – even, say the Rabbis, if it is with the intent of judging correctly – "for a bribe blinds the eyes of the wise and corrupts the words of the righteous" (16:19).

Structurally, however, there is no one whose role it is to ensure that these mandates are being followed. The court must be its own watchdog. If they are found violating, they can be disqualified – a type of impeachment – but short of that, it is their own integrity which needs to keep them in check. It is for this reason that the Torah, in Yitro's advice to Moshe, describes the need for high personal character of the judges. This and only this is what will keep them honest.

But such men are hard to find, and – even when found – can be corrupted by power. A story is told that when Rav Maimon, the

first Minister of Religion in Israel, was looking to re-form the Sanhedrin, he was asked by Ben Gurion: "But where will you find people who are *sonei batzah*, (Shemot 18:21), despisers of unearned gain?" To which Rav Maimon responded, "With enough money, you can get anything, even *sonei batzah*."

In looking at this system and its challenges, it is clear that a lot rides on the appointment of judges – who is chosen, who does the choosing, who they represent, and the strength of their personal character and integrity. Outside of Israel, *halakhic* authority is distributed and adherence to it is volitional (as a matter of secular law), and by nature the rabbis and the *batei din* have to be more responsive to those who would come to them. In Israel, however, we have courts with real concentrated authority, as described in our *parasha*. For such a system to be just, to be free of corruption and non-oppressive, the right judges are needed. Without this, such authority can do more harm than good. If we are to have a rabbinic body such as this, then it is incumbent upon us to make sure that we are all – as a society – living up to the mandate of our *parasha* and ensuring that the judges we appoint are the judges who will truly embody "justice, only justice" for the people whom they serve. With this we will be deserving to merit the blessing of the verse: "So that you will live and possess the land with the Lord your God gives you" (16:20), which teaches us, says Rashi, "that the appointment of fit and proper judges is worthy of give life to the Jewish People and to cause them to dwell in their land."

Shabbat Shalom!

This parsha piece originally appeared August 29, 2014



For more of Rabbi Linzer on the parsha, tune in to Parsha in Progress, where he discusses and debates the parsha with noted author Abigail Pogrebin.

<https://library.yctorah.org>



Follow YCT on Facebook
www.facebook.com/YCTorah

Learn more about YCT:
www.yctorah.org

Yeshivat Chovevei Torah
ישיבת חובבי תורה
20 Years

To subscribe to this parasha sheet by email please send a request to office@yctorah.org