

This is a parsha about magistrates or judges administering justice. Let me define the word justice as the first half of my discourse focuses on the administration of justice. Justice is a concept of moral rightness based on ethics, rationality, natural law equity, and fairness, as well as the administration of the law, taking into account the inalienable rights of human beings and citizens, the right of all people and individuals to equal protection before the law.

Because of the importance of so much information in this Torah portion, I have divided my sermon into 2 separate portions. The first, I entitle *WHAT THE TORAH TEACHES ABOUT THE USE (AND ABUSE) OF POLITICAL POWER* and the second *THE THREE CROWNS* in which I shall endeavor to demonstrate how the Torah may actually be interpreted to be a precursor of the *DIVISION OF POWERS* as written by our founding Fathers in the United States Constitution.

The Parshah begins with one of the most critical and important ideas in all of human history:
"Justice, justice shall you pursue" (Deut. 16:20)

We find this famous biblical aspiration at the beginning of this week's Torah portion, which continues Moses' elaboration of the extensive set of laws that the Israelites are to follow, if they are to create a holy and just society.

The opening verses of *Shoftim*, which refer to the judges and officials, police in the Chasidic translation, that the Israelites are commanded to appoint in each tribe, turn our attention to law and justice. Their mandate is to "govern the people with due justice, *mishpat-tzedek* (Deut. 16:18), specifically not to take bribes, or show partiality (Deut. 16:19) and generally to establish a fair system of justice.

In addition to the administration of a judicial system, *Shoftim* covers a large range of topics, including the legal status of priests and Levites (Deut. 18:1-8), the danger of false prophets and idolatry (Deut. 18:9-22), provisions to create cities of refuge (Deut. 19: 1-13), and laws pertaining to war and battle (Deut. 20: 1-20).

Perhaps the most powerful set of these laws concern the appointment of a king:

If...you decide, "I will set a king over me, as do all the nations about me," you shall be free to set a king over yourself, one chosen by the Eternal your God. Be sure to set over yourself one of your own people; you must not set a foreigner over you, one who is not your kin. Moreover, he shall not keep many horses or send people back to Egypt to add to his horses.

And he shall not have many wives, lest his heart go astray; nor shall he amass silver and gold to excess. When he is seated on his royal throne, he shall have a copy of this Teaching written for him on a scroll by the Levitical priests. Let it remain with him and let him read it all his life, so that he may learn to revere the Eternal his God, to observe faithfully every word of this Teaching as well as these laws. Thus he will not act haughtily toward his fellows (Deut. 17: 14-20)

These verses emphasize that not even a duly appointed king of Israel is above the law. Also, a king must be *mikerev acheikha*, literally "from among your brothers or kin" (Deut. 17:14), which can be read as xenophobia or, more generously, as requiring that a king should be knowledgeable of his community and in touch with the general population and its needs.

The prohibition of horses, wives, and gold aim to prevent the king from using his position to amass personal wealth and power. (These restrictions did not prevent King Solomon from violating all three of

these restrictions, even though he apparently was brilliant and is responsible for the glorious First Temple), and is responsible for the writing of the Song of Songs, Ecclesiastes, and Book of Proverbs.

The requirement to keep with the king “this Teaching,” the Torah, serves as a reminder that he must comply with the laws and values therein. Following Torah and studying it, and trying to live by its values will ideally help to prevent the sovereign from abusing his power and “acting haughtily toward his fellows.”

In the ancient world, this kind of law was incredibly progressive. In other ancient Near Eastern texts, the king creates laws, and had no restrictions of his power to dominate his subjects.

The laws of kings warn against abuses of military and policy-making power as well as abuses for personal financial gain.

Concern about the proper and improper use of political power echo through the centuries to us today. While democracy has done much to shift some of the power from kings and single rulers to larger groups of people, we would be wise to hear the voice of our Torah in its warning. Leaders must be subject to the rule of Law.

We see this concern reflected in the U.S. Constitution in various ways. The Emolument Clause, for instance, addresses the use of public office for personal financial gain. Article I, Section 9, clause 8: “No person holding any office of profit or trust under them, shall without the consent of the Congress accept any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign state.” And, of course, section four of Article II of the Constitution allows a process of removal from office “on Impeachment for, and conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” This almost happened twice recently.

The laws in *Shoftim* are a timely reminder that all who hold positions of power over life and livelihood must be held accountable for their actions. We do that today at the ballot box, if we are allowed to. As our Torah reminds us, living a holy life requires us to pursue *JUSTICE*.

Now, the second portion of my sermon can be entitled THE THREE CROWNS. The following remarks come from my review of a commentary by Rabbi Jonathan Sacks in 2008.

THE SEDRA OF SHOFTIM COMES AS CLOSE AS ANYWHERE IN THE TORAH to articulating a Jewish theory of government. The people were about to enter the land. They brought with them an already ancient tradition, begun in the days of Abraham and Sarah and continued through their children. In Egypt they had become a people (am) and a nation (goi), forged by two experiences, their distinctive faith and their persecution and enslavement. They then underwent two experiences which have shaped Jewish identity ever since: exodus and revelation. Exodus meant liberation by God. Revelation meant legislation by God. In the words of the pagan prophet Bilaam: “It is a people dwelling alone, not counting itself among other nations.”

Despite their antiquity, however, there was one thing they had not experienced: self-government. They were individuals, an extended family, a clan, yet not a Nation.

A fundamental problem now had to be addressed. What form of government should they adopt? As Rabbi Sacks suggests, the Torah is a unique attempt to create a nation governed not by the pursuit of

power or the accumulation of wealth but by recognition of the worth of each person as the image of God.

The prophetic books are devoted to telling the story of how Israel fell short time and again. But it never lost the aspiration or the dream. At the end of the Book of Judges, there is a statement that tells us where the Jewish people were in regard to self-government. *Judges 21:25* "Thereupon the Israelites dispersed, each to its own tribe and clan; everyone departed to his own territory." And the famous line at the very end of the Book of Judges: *IN THOSE DAYS THERE WAS NO KING IN ISRAEL; EVERYONE DID AS HE PLEASSED.*

The Torah describes three types of leaders: the King, the priest and the prophet. First the King: I have previously described the idea that the King of Israel has to write for himself on a scroll a copy of the laws taken from that of the priests, who are Levites. He is to read it all the days of his life so that he may learn to revere the Lord his God and follow carefully all the words of this law and these decrees and not consider himself better than his brothers. Keep in mind that the entire text of Shoftim are the words of Moses, instructing the Israelites in the role of the King. The emphasis is on the limitation of Monarchy. We have already mentioned he is not to have many wives, many horses, and amass much wealth. But the emphasis that Moses gives is the King is to read his copy of the Laws given to him by the Levitical priests. Already we can see the Torah is suggesting not only limitation of power of the King but that there are other groups that take part in leading the Israelite nation.

The second institution, in this government is the priesthood. They shall have no inheritance among their brothers; the Lord is their inheritance for the Lord your God has chosen them and their descendants out of all your tribes to stand and minister in the Lord's name always. These are the words of Moses to the Israelites.

The third group is the prophets. Moses tells the Israelites that "God will raise up a prophet like me from among your own brothers; I will put my words into his mouth, and he will tell you everything I command him. If anyone does not listen to my words that the prophet speaks in my name, I myself will call him to account."

What is the significance of these three institutions?

We owe to the eighteenth century French thinker Montesquieu the principle of the "separation of powers."

He spoke of three branches of government: the legislature, the executive and the judiciary. In biblical times, Isaiah had already formulated a similar division in speaking of God. "For the Lord is our judge (=judiciary); the Lord is our Law giver (=legislature)

The Lord is our King (=executive). For Montesquieu, this separation was essential to a free society. As Rabbi Sacks suggests, liberty flourishes because power is so distributed and so organized that whoever is tempted to abuse it, finds legal restraints in his way. These ideas are implicit in the three-fold structure of King, Priest, and Prophet. And where do we find these ideas; in the Torah, in Parsha Shoftim.

According to the Torah and Moses' narrative in this Parsha, the best defense of liberty is to ensure that not all powers are concentrated in a single person or institution. An independent Priesthood was necessary to ensure that the service of God was never enlisted for purely political ends. Prophets were

necessary to “speak truth to power” and expose injustice and oppression. Hence the tripartite structure set out in Shoftim.

Perhaps the words of Rabbi Sacks summarizes his ideas with the following statement.

“Perhaps Judaism’s deepest political truth is that people do not exist to serve the state. The state exists to serve the people, whose true service is not to man but to God.”

My final comments from reviewing multiple commentaries and Rabbi Sacks’ ideas are the following: The Torah may have been the blueprint that the Founding Fathers of the American Constitution wrote. The King becomes the President, the Priesthood becomes the Congress and the Prophets become the Supreme Court. No nation has been more profoundly influenced by the Torah than America. Many of America’s early statesmen and educators were schooled in Hebraic civilization. I will end by a statement made by the second President of the United States, John Adams, a Harvard graduate. “The Jews have done more to civilize men than any other nation. They are the most glorious Nation that ever inhabited the earth. The Romans and their Empire were but a bauble in comparison to the Jews. They have given religion to three quarters of the Globe and have influenced the affairs of Mankind more, and more happily than any other Nation, ancient or modern.”

Shabbat Shalom