

Judicial Reform in Israel in Light of Torah

This week’s Torah portion, *Shoftim*, provides the equivalent of a constitution for the Israelites. It includes rules for judges, kings, Levites, cities of refuge, witnesses, war, and other matters. It ensures checks and balances for a healthy society. We will use it as a springboard for the currently debated and highly controversial plan for judicial reforms in Israel. Here are some excerpts: [Deut. 16:18-21:9]

Judges:

You shall appoint magistrates and officials for your tribes...and they shall govern the people with due justice. You shall not judge unfairly. You shall show no partiality. You shall not take bribes... Justice, justice shall you pursue, that you may thrive.

If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault—matters of dispute in your courts—you shall promptly...appear before the levitical priests, or the magistrate in charge at the time, and present your problem... You shall carry out their verdict... observing scrupulously all their instructions to you... You must not deviate from their verdict either to the right or to the left.

It says that here must be an independent judiciary, appointed by the people, who will defer to the priests for Torah interpretation.

King:

You shall be free to set a king over yourself, ... one of your own people... not a foreigner who is not your kin... He shall not keep many horses...and 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 Torah 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 Lord his God, to observe faithfully every word of this Teaching as well as these laws.

Thus he will not act haughtily toward his fellows or deviate from the Instruction to the right or to the left, so that he and his descendants may reign long in the midst of Israel.

It says that the king must not place himself far above the people; must not be out of touch with the people; and must always be guided by the Torah.

Levites:

The levitical priests, the whole tribe of Levi, shall have no territorial portion with Israel. They shall live only off the offerings to God, ... the first fruits of your new grain and wine and oil, and the first shearing of your sheep.

The priests were a kind of legislature, there to interpret the Torah, and were a precursor to the Talmudic Sanhedrin.

Cities of refuge:

You shall set aside three cities in the land... And when the Lord your God enlarges your territory, then you shall add three more [where people guilty of manslaughter can find refuge from the family of the victim]. Thus the blood of the innocent will not be shed.

Property rights:

You shall not move your neighbor's landmarks, set up by previous generations, in the property that will be allotted to you.

Witnesses:

A single witness may not validate against an [accused] party any guilt or blame for any offense that may be committed. A case can be valid only on the testimony of two witnesses or more... If the one who testified is a false witness, you shall do to him as he schemed to do to the accused... [In a capital case,] the hands of the witnesses must be the first to put [the condemned] to death, followed by the hands of the rest of the people...

Retribution:

[You must not ask more than] an eye for an eye and a tooth for a tooth.

This was interpreted to mean that victim must receive financial compensation of a value not higher than the value of the loss suffered.

War:

Before you go to battle, the priest shall come forward and address the troops...

Is there anyone who has built a new house but has not dedicated it? Let him go back to his home, lest he die in battle and another dedicate it.

Is there anyone who has planted a vineyard but has never harvested it? Let him go back to his home, lest he die in battle and another harvest it.

Is there anyone who is betrothed but not yet married? Let him go back to his home [and get married], lest he die in battle and another take his betrothed as his wife.

The officials shall address the troops and say, "Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his."

When you approach a town to attack it, you shall [first] offer it terms of peace.

When you have to besiege a city to capture it, you must not destroy its trees,

Thus, humanitarian matters must be considered when resorting to war.

Israel's proposed judicial reforms

How can we apply all this to the proposed judicial reforms in Israel? Here is a summary of them:

-Reasonableness

Now: The Israeli Supreme Court can reject any government action it deems "unreasonable". It alone determines the meaning of the term.

Change: Abolish "reasonableness" criterion. It is subjective.

This was passed by the Knesset, but the Supreme Court must approve it!

-Judicial selection

Now: A committee of 9 selects all judges. It includes 3 serving Supreme Court judges, 2 Israel Bar Association reps, 2 Knesset members and 2 government ministers. Majority must approve ordinary judges, but 7/9 must approve Supreme Court judges. This means that the 3 Supreme Court judges can block any Supreme Court candidate.

Change: A committee of 11, with 7 members being part of the government.

-Judicial review

Now: There is no limit on the power of the Supreme Court.

Change: The Supreme Court may not invalidate a Basic Law (it never has so far), and an 80% majority is required to invalidate legislation passed by Knesset.

-Knesset override

Now: Nobody can overrule the Supreme Court.

Change: The Knesset can overrule the Supreme Court with a simple majority.

-Legal advisers to government ministries

Now: They are independent authorities.

Change: Make them political appointees whose opinions are non-binding.

The proposal shifts the balance of power towards the legislature/executive branches and away from the courts. The right accuses the Supreme Court of judicial activism, because they strike down government actions, and do not base their rulings on a constitution since Israel does not have one. The left attack the judicial reform proposals as undermining democracy.

Comparisons

Let us compare the ancient Jewish Sanhedrin, the Israeli Supreme Court and the US Supreme Court.

Israel has its legislative and executive branches roughly mixed, but its judiciary is independent. In ancient Israel and the US, the three are independent.

The Sanhedrin based its rulings on the Torah. The US Supreme Court bases its rulings on the Constitution. Israel has no constitution, so the Israeli Supreme Court bases its rulings on a set of "Basic Laws", voted by the Knesset and which do not cover everything.

The Sanhedrin picked its own members to ensure continuity in Jewish law. The Israeli Supreme Court can effectively block any candidate member they do not approve. The US Supreme Court does not pick its members: They must be nominated by the President and approved by the Senate.

The Sanhedrin could not veto a government appointee. The US Supreme Court cannot either, but the Senate can. The Israeli Supreme Court, however, can veto a government appointee. For example, it rejected a minister on the grounds that he had been convicted of crimes. Here is the case:

Aryeh Deri, born and raised in Morocco, founded the (religious) Shas party in 1984 and became very influential in politics.

-In 2000, he was convicted of taking bribes while interior minister and served 2 years in jail. He kept getting elected to the Knesset and serving as minister.

-In 2018, he was accused of bribery, fraud, and breach of trust.

-In 2022, he accepted a plea bargain: resign from Knesset, admit only income tax evasion, and pay fine.

-In 2023, he was appointed a minister in the new government, but the Supreme Court ruled him ineligible due to his criminal convictions. The only law on which that decision was based was the subjective "reasonableness" criterion.

One can ask: Should law-breakers who have paid their debt to society (with jail, fines, community service or other penalties) be entitled to a clean slate, a second chance?

There is no real detailed guidance in Jewish law for resolving these matters. It will be interesting to see how these proposals will fare, because "justice, justice we must pursue". Justice is a very strong requirement in Judaism. Also, the only positive commandment in the Noahide laws, applicable to all mankind, is to establish courts of justice.

Shabbat shalom.