

INTERNET PARSHA SHEET
ON SHOFTIM - 5760

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From: RABBI YESSOCHOR FRAND ryfrand@torah.org
"RavFrand" List - Rabbi Frand on Parshas Shoftim -
Dedicated this year Le'eluy Nishmas Chaya Bracha Bas R. Yissocher
Dov In memory of Mrs. Adele Frand
Parshas Shoftim

The Following Words of Exhortation Apply to YOU!

In this week's Parsha we learn of the Command to appoint a King [Devarim 14:15-20]. This is one of 3 mitzvos that became incumbent upon the Jewish people when they entered the Land of Israel. The pasukim [verses] state: "You shall surely appoint upon yourself a King whom the L-rd your G-d will choose... only he should not accumulate a multitude of horses ...and he should not have too many wives in order that they not cause his heart to go astray; and he should not have too much silver and gold..."

The Medrash in Shmos Rabbah states that Shlomo HaMelech [King Solomon] rationalized regarding these laws. He tried to "outsmart" G-d, so to speak, in the application of these laws. Shlomo HaMelech asked himself, "Why did G-d command that a King should not have too many wives? Is it not because the Torah is concerned that they might cause his heart to go astray?" (After all, this is one of the few times where the Torah explicitly states the reason for a command.) "For me, however, this will not be a problem. I can marry many wives, without being affected. I can handle it!" Shlomo HaMelech, in fact, married 1000 wives.

The Medrash says that at that moment, the letter yud (which is the first letter in the word Yarbeh) came before G-d and asked, "Is it not true that You said that not even one letter of the Torah will ever be nullified, and here Shlomo has voided an entire verse!" ("Lo Yarbeh" is the phrase that means that the king should not marry too many wives. The word "lo" merely means no or not.)

G-d responded to the letter yud as follows: "Shlomo and a thousand others like him will become null and void but even the small point in your shape I will not allow to become nullified. You, letter Yud, and all of Torah is Eternal; the great King Shlomo and a thousand like him will be nullified."

In fact Shlomo's wives did lead him astray. They did end up having a detrimental effect upon him.

Regarding this Medrash, one might ask why the letter 'Yud' raised the issue. Why not the 'Reish'? Why not the whole word 'Yarbeh'? Why just the 'Yud'?

Rav Shimon Schwab zt"l (1980-1995) offers a beautiful insight into this Medrash. The grammatical translation of the expression "Lo Yarbeh lo nashim" is "HE should not have too many wives". Had the pasuk [verse] been written in the second person it would have said "Lo Sarbeh lecha nahsim" (YOU should not have too many wives).

Shlomo jumped at the fact that the pasuk was written in third person, and argued, "Yes. HE should not have too many wives. The other fellow - Dovid, Rechavam, etc. But ME? Shlomo argued that the pasuk did not apply to him. So specifically the Yud (indicating third person) came and complained that Shlomo's rationalization was a personal attack. By

B'S'Dhanipulating this 'Yud', so to speak, Shlomo twisted the simple meaning of the pasuk that applied to all Kings and claimed that it only applied to OTHER kings.

As we enter the Elul season and the entire period of the Yamim Nora'im [High Holidays], we will be hearing words of moral chastisement from our Rabbis. We will be hearing about how to improve OUR lives. We must recognize that the Rabbis are talking to us as well, not only to others. There was once a billboard that read "This Means YOU!" That is what mussar [ethical exhortation] is all about. It means YOU and ME and everyone else.

The Homiletic Meaning of the Two Torah Scrolls

The Torah teaches concerning Jewish Kings, "And it will be when he sits on the royal throne of his kingdom, he shall write for himself a copy of this Torah on a scroll before the Kohanim, the Levites" [Devarim 17:18]. Although this verse is telling us the command that the King must write a Sefer Torah, the law in fact is that every Jew is obligated to write a Sefer Torah. The Talmud [Sanhedrin 21a] tells us that the King writes two Torah scrolls, one that travels with him and one that remains permanently at home.

Rav Shlomo Kluger (1785-1869) offers the following insight into these two Sefer Torahs. The pasuk describing the appointment of the King uses the double language of Som Ta'sim - You shall surely place upon yourselves. The Rabbis infer from here that the fear of the King must be upon the people. We no longer have the ability to relate to this concept. We have not experienced an absolute monarchy in modern times. But when there was an absolute monarchy, if one looked at the king in the wrong way the result could be "Off with his head!" It was actually a mitzvah to appoint a king that the people would be afraid of. A king is not a friend or a pal. He is the ruler, with all the trappings of majesty.

On the other hand, at the end of the section dealing with the monarchy, the Torah emphasizes concern "That his heart not become haughty over his brethren and that he not turn from the commandment right or left" [17:20]. This almost seems to contradict the earlier language.

When the President of the United States goes anywhere to speak, the band plays "Hail to the Chief". Everyone snaps to attention. His every proclamation is accompanied by "Hail to the Chief". After a while, this can go to his head.

Certainly such treatment could also go to the head of a Jewish King, who by law is obligated to act in a manner that should inspire fear in his subjects. This can undoubtedly lead to lack of humility.

Therefore, the pasuk "Lest his heart become lifted above his brethren" serves as a counterbalance. Power corrupts and absolute power corrupts absolutely. The Jewish Monarch must act like a king when he is in front of the people, but he is not allowed to let his heart get carried away. He must remember who he is and remember who the Only King [G-d] is.

Rav Shlomo Kluger says that this is what is meant by the fact that the King writes two Torah scrolls for himself - one with which he goes out and one which remains at home. When he goes out he has to wear the Torah of "You shall surely place upon yourselves a King" - he must act like a King and instill awe like a King. But when he returns home and settles down into the privacy of his own abode, he must be aware of the Torah that is hidden away at home. That is the Torah of "Lest his heart be lifted above that of his brethren". The lesson is that power corrupts.

In the prayer announcing Rosh Chodesh [the beginning of the new Jewish month] which we said last Shabbos, we ask at the beginning for "life that contains Fear of Heaven" and then again at the end we repeat a request for "a life containing Fear of Heaven". What is the reason for the repetition? The answer given by many is that immediately preceding the second request for Fear of Heaven is a request for a life of wealth and

honor. When we earn a little money or receive a little honor -- all too often "Fear of Heaven" falls by the wayside.

The first request is for the "Fear of Heaven" that everyone should have when they are humble. The second request for "Fear of Heaven" serves a different purpose: Even after we have earned some money or received honor, we must not forget the source of all of our wealth and honor.

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This week's write-up is adapted from the hashkafa portion of Rabbi Yissochar Frand's Commuter Chavrusah Torah Tapes on the weekly Torah portion (#338). ...Tapes or a complete catalogue can be ordered from the Yad Yechiel Institute, PO Box 511, Owings Mills MD 21117-0511. Call (410) 358-0416 or e-mail tapes@yadyechiel.org or visit <http://www.yadyechiel.org/> for further information. Project Genesis: Torah on the Information Superhighway learn@torah.org 17 Warren Road, Suite 2B <http://www.torah.org/> Baltimore, MD 21208 (410) 602-1350 FAX: 510-1053

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PENINIM ON THE TORAH

BY RABBI A. LEIB SCHEINBAUM

Parshas Shoftim

According to the teaching that they will teach you and according to the judgement that they will say to you, shall you do: (17:11)

In the neighborhood in which the Gaon M'Vilna lived, a poor tailor also resided. He was a wholesome, G-d-fearing Jew whose life revolved around doing his work and returning to his study. It happened one Erev Shabbos that this tailor was able to scrounge together the necessary kopeks to purchase a chicken for Shabbos. Imagine the joy that permeated his home: his family would be able to honor the Shabbos in a manner becoming this special day. He quickly had the chicken slaughtered and prepared for cooking. In all of her rush and excitement, his wife accidentally dipped a dairy spoon into the pot in which the chicken was cooking. They now had a sheilah, halachic question, regarding the kashrus of the chicken.

The tailor immediately left for the home of the Av Beis Din, Head of the Rabbinical court, to ask his opinion regarding the kashrus of the chicken. The day was short, and the distance was far. It was getting late. Soon, it would be too late to finish preparing the meal. Therefore, the tailor's wife decided that she would go to her neighbor, the Gaon M'Vilna, to ask his opinion regarding the chicken. The poor woman arrived at his door Erev Shabbos with a sheilah. The Gaon immediately welcomed her. After listening to the circumstance, he rendered his judgement: the chicken was not to be eaten. In the meantime, the tailor had returned home with good news: The rav had rendered his judgement - the chicken was kosher. We can only begin to imagine the quandary he was in when his wife told him that she had asked the Gaon for his psak, decision, and it opposed the rav's psak.

There was nothing else to do but return to the home of the rav and notify him of the Gaon's decision. After listening to the tailor's story, the rav said, "Go home, and eat your meal. The Gaon and I will join you later to partake of your wife's delicacies. "

That night, after the rav had recited Kiddush and eaten part of his meal, he went to the home of the Gaon. After wishing him Gut Shabbos, he implored the Gaon, "Rebbe, my master; I am nothing before you. My learning is insignificant in contrast to yours. I am, however, the rav of this community. When I was asked a sheilah, I rendered a decision according to my understanding of the law. Regardless of the Gaon's decision, my psak must be upheld, or else the institution of rabbanus, rabbinate, will be impugned. I, therefore, respectfully ask that you join

me at the tailor's home for a taste of their Shabbos meal." The Gaon responded, "If the rav asks me to come, I have no alternative but to go. Come let us go."

The tailor and his wife were overwhelmed with delight. In fact, they were so excited that the tailor's wife, in all of her enthusiasm, tripped and bumped into the table, causing the candle made of non-kosher wax to fall into the pot of chicken. Suddenly, everyone became still - including the rav. It was evident that the Gaon's decision had been correct, and by Divine intervention they were being prevented from eating the chicken. The rav immediately went over to the Gaon and begged his forgiveness for imposing his decision on him. "Please Rebbe, forgive me; obviously Heaven is telling us that I was wrong in my psak," said the rav to the Gaon. "No," replied the Gaon, "the law is in accordance with your decision, and we are enjoined by the Torah, 'According to the teaching that they will teach you. And according to the judgement that they will say to you, shall you do.' You are the authority in this town; you are the rav, and your decision is the accepted decision to follow. Since I rendered judgement to the effect that the chicken was not kosher, however, I could no longer eat it. It is for this reason that I was prevented from Heaven from partaking of this meal." This story was related to demonstrate the level of a gadol b'Yisrael, Torah giant, one whose personality and character is molded through the medium of Torah. It also indicates how Torah life should be, how it was, and the level we should aspire to attain.

Who is the man who is fearful and fainthearted? Let him go and return to his house. (20:8)

The Torah does not seek to place a person in a situation that he cannot handle. A soldier who is afraid can harm himself and, by extension, the others who rely on him. Chazal teach us that this fainthearted person does not fear the battle per se'. He fears "because of the sins in his hand," which is a reference to such sins as diverting his attention between his Tefillin Shel Yad and Tefillin Shel Rosh. Placing Tefillin on one's hand and forehead is one mitzvah which is to be performed without any lapses in attention. One's mind must be completely focused on this mitzvah, in no way diverting his attention between the two Tefillin. One might think that this sin is not of such great significance. Chazal indicate the contrary. In fact, it is sufficient reason to return from the battlefield. Such an individual may be a liability to himself and other soldiers.

There is profound philosophical significance to this transgression. Horav Yaakov Beifus, Shlita, in his new volume, Yalkut Lekach Tov - Chaim Shel Torah, cites Horav Yaakov Galinsky, Shlita, who spoke about the significance of this sin while addressing a Bar-Mitzvah celebration. He began by questioning the fact that a boy who turns thirteen years old is called a "Bar"-Mitzvah, while one who sins is referred to as a "baal" aveirah. Indeed, we find throughout halachic literature the word "bar," -- which is the Aramaic rendition of "ben," meaning "son" -- and the word "baal," -- which is usually translated as "husband" or "owner" -- both used to denote "shaychus," relationship or connection, to something or someone. Is there some specific reason that "bar," son, is used in relation to mitzvah observance, while "baal" is employed in relation to sin?

There is an essential difference between these two words. A "ben"/"bar" is the son of someone - a relationship that can never be severed, regardless of how estranged one may have become. It is impossible to divorce oneself from one's parents. A "baal," husband, is connected to his wife via the kiddushin, marriage agreement, which can be severed through a get, divorce. In other words, a "baal" is a relationship that is not necessarily irrevocable. A "bar" is everlasting. One who becomes a Bar-Mitzvah establishes a permanent bond with mitzvos. He is literally like a "son" of the mitzvos. He is obligated to observe and execute Hashem's command, regardless of the circumstance.

Disregarding his responsibility, citing a lack of belief or whatever other excuse enters his mind, does not revoke his obligation. It is eternal.

On the other hand, one who sins is called a "baal" aveirah, denoting that the particular sin is a temporary lapse. While this "lapse" may last longer for some than for others, it is still not binding. A Jew who sins can sever his relationship with evil and return through teshuvah, repentance.

With this in mind, let us return to the sin of diverting one's attention between the Tefillin Shel Yad and Tefillin Shel Rosh. Chazal teach us that "chochmah ba'goyim taamin," wisdom is to be found among the gentiles, while Torah ba'goyim al taamin," Torah is not to be found among the gentiles. There is profound wisdom to be gleaned from Torah. There is an essential difference, however, between Torah and chochmah. Torah teaches a person how to live; it is the Jew's blueprint for life. While we find many wise gentiles whose intellectual accomplishments are profound, they do not have Torah. They do not have to live their lives in accordance with the wisdom they possess. It is an abstract wisdom which is not assimilated into their lifestyle. To learn Torah means to live Torah. One cannot study Torah Hashem and not live the life it dictates.

Aristotle was one of the wisest men who ever lived. It was known, however, that at times he would defer to his base nature and act in a manner acceptable for a creature of a lower order. When asked how he could do this, he responded, "Now I am not Aristotle!" This is chochmah ha'goyim, secular wisdom, which does not change the individual. Our Sages lived what they learned. Their total demeanor reflected the wisdom of Torah. Torah teaches; it shapes and molds a person in accordance with the amount of himself he puts into it.

The Tefillin Shel Rosh represent the thought process, the cognitive approach to life. The Tefillin Shel Yad denote action, observance, carrying out mitzvos. The prohibition against speaking or diverting any attention between these two Tefillin implies the importance of integrating the mind with the act. There cannot be any breach between what one thinks and what one does. They must be in sync with one another, unified in harmony, reflecting one's understanding and belief in the mitzvos he carries out. A Jew whose thoughts do not coincide with his actions, whose beliefs are not necessarily in harmony with his observance, is spiritually defective. He lacks the "Torah" element of his wisdom. He cannot represent Klal Yisrael in battle. When one looks at a ben Torah, the wisdom he possesses should be evident in his appearance, in the way he speaks, and in his relationship with people. As a representative of the Torah, he must mirror its image.

From: Shlomo Katz skatz@torah.org
Hamaayan / The Torah Spring Edited by Shlomo Katz Shoftim
Sponsored by Dr. and Mrs. Robert Klein in memory of father Dr. Ernst Shlomo Kaplowitz a"h Today's Learning: Rosh Hashanah 2:5-6
Orach Chaim 318:6-8 Daf Yomi (Bavli): Nedarim 45

At the beginning of the month of Elul, R' Chaim Halberstam of Sanz z"l (see page 4) would often relate the following parable to his chassidim:

A prince once sinned against his father the king, and was exiled from the palace. The prince began to wander, and, at first, he was shown great honor as befits royalty. However, as he went farther and farther from the palace, people no longer recognized him or paid any attention to him.

Eventually, the prince found himself on the verge of starvation, and he took a job as a shepherd. The job was easy and his needs were simple. However, the prince found that he was unable to construct a lean-to such as shepherds typically used to protect themselves from the rain.

One day, the prince heard that the king (his father) would be traveling through this distant province, and that anyone who had a request could toss a note into the king's carriage. The prince wrote a note asking for help in constructing a lean-to, and he threw it straight into the king's lap as the royal carriage passed by.

The king recognized his son's handwriting and was pained greatly. Had the king's son fallen so far that all he could ask for from his father was help in constructing a humble lean-to? Had the prince forgotten the closeness that he once had to the king, and had he given up hope of restoring that closeness?

"We, too," concluded R' Chaim, "have forgotten that we are the King's children. When Hashem comes to hear our prayers during these Days of Mercy leading to Rosh Hashanah and Yom Kippur come, we forget to ask Him to restore our former closeness to Him, and we instead focus on our relatively petty material needs." (Otzar Chaim: Minhagei Sanz p. 267) Project Genesis: Torah on the Information Superhighway learn@torah.org 17 Warren Road, Suite 2B
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Artscroll Parashah Talk

Parashas Shofetim

Excerpt from Living Each Week, by RABBI ABRAHAM J. TWERSKI

Judges and enforcing officers you shall give unto yourself... and you shall not take a bribe because a bribe will blind the eyes of the wise and pervert the words of the righteous [Deuteronomy 16:18-19].

The words for "you" and "yourself" in the Hebrew text are in the singular. This is therefore not only a communal mitzvah, i.e., to establish a judicial system, but also an order to each individual to develop a "judge" and an "enforcing officer" within himself. Every person has the obligation to sit in judgment on his own actions.

There are many laws that regulate the conduct of judges. first and foremost is that a judge may not take a bribe. Regardless of how great and learned a person may be, he is not only vulnerable to the perverting effects of a bribe, but the Torah says that such distortion of judgment is inevitable.

We constantly make judgments in our daily lives. Sometimes we ponder about whether to do something, and at other times we come to a conclusion to act or not to act without much deliberation. In either case we have made a judgment, and we must therefore ask ourselves, was this judgment made objectively, or were we "bribed"? Whenever there is a personal interest involved, there is the potential of a "bribe," since we would prefer that the judgment provide, or at least not obstruct, the gratification we seek.

One does not need to be a psychologist to recognize the powerful impact that personal desires have on our reasoning processes. It is common Knowledge that when a person has a desire for something he can produce many logical arguments that justify its acquisition. Such rationalizations are extremely common, and we must be eternally on our guard, because they are insidious. As the Torah says, personal desires literally blind our perception, so that we do not see that which we do not wish to see, and such misperceptions can lead us far astray from the truth.

The great sage of mussar [ethics], Rabbi Yisrael of Salant, stated that one must even be cautious not to be "bribed" by a mitzvah. Sometimes in pursuit of performance of a mitzvah, a person may be so carried away that he justifies everything he does in order to fulfill the mitzvah. He may be dishonest, inconsiderate of others' rights, and prone to speak disparagingly of others in order to achieve his goal. Whereas another who transgresses in this manner may at least recognize that he has

behaved improperly and do teshuvah, the person who does so in pursuit of a mitzvah may never become aware that he has done wrong. Rabbi Yisrael used to interpret the passage in Ethics of the Fathers [5:17] that "a controversy which is for the glory of G-d will persist," as Meaning that whereas other arguments may be more easily resolved, because each side may yield, an argument which is "for the glory of G-d" is less likely to be resolved, because each side will obstinate in its connection that it is defending the Divine honor.

How can a person escape the risk of being misled by personal interests? The Sages of the Talmud instructed us, "Provide yourself with a teacher, and acquire for yourself a trusted companion" [Ethics of the Fathers 1:6]. The objective opinions of people who sincerely care for us from being misled by ulterior motives into making decisions which are not truly just.

Excerpt from Living Each Week, by RABBI ABRAHAM J. TWERSKI

<http://www.ohr.org.il/thisweek.htm>

Ohr Somayach

YOU BE THE JUDGE "Judges and officers shall you appoint for yourselves..." (16:18).

The Torah could just as easily have written "Judges and officers shall you appoint." The words "for yourselves" seem superfluous. Yet, the Torah here hints that a person needs to appoint himself as judge over himself to adjudicate whether his actions are befitting. He needs to be his own "policeman" to ensure that he carries out that which he has judged fitting, and to "fine" himself if necessary if his behavior is not up to this standard. Rabbi Moshe Feinstein

WAYS AND MEANS "Righteousness, righteousness, you shall pursue" (16:20). This verse teaches us the opposite of the popular adage "The end justifies the means." The Torah insists that we pursue righteousness only with righteousness and not by any means and at all costs. Rabbi Bunim m'Pschische

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Parshat Shoftim

RABBI ELY M. BRAUN

The Talmud teaches that upon entering the Promised Land, The Bnei Yisrael were charged with three commands: to choose a king, to destroy Amalek and to build a Temple.

However, centuries later, when the people of Israel did in fact ask the prophet Shmuel to appoint for them a king, he responded with anger. Why would the navi be so angry when the people were simply following Hashem's mitzvah?

Because, the commentators point out, their exact words to Shmuel were, "Appoint for us a king to judge us, like all the nations." Like all the nations—the people were motivated by the behavior of the other nations rather than the command of the Torah.

This intent is reflected in the verse, Rabbi Naphtali Zvi Yehudah Berlin, the Netziv of Volozhin, explains. The Torah's words—"And you will say, 'I will set a king over me'"—implies that Hashem is simply granting permission for, rather than commanding, the appointment of a king.

How are we to understand this perspective in light of Chazal's view that kingship over Israel is a Biblical requirement?

Rabbi Yehuda Gershuni, zt"l, points out that there are nations that thrive under the rule of a king and nations that do not. It all depends upon the willingness of the people to be under the rule of the king.

For the Jewish nation, there is another factor. Their king was one "whom Hashem, your G-d, would choose." The king of the Jews was not

the ultimate national authority, but simply the handpicked representative of the King of kings, the Almighty Himself.

Perhaps for this reason, the king was required to have two copies of the Torah written for him. One was to be stored in private and the other was to accompany him at all times. Thus, the king of Israel was responsible to exemplify the Torah both in private and in public, both as a Jew personally and as the national leader of all Jews.

The success or, G-d forbid, failure of the Jewish nation would flow from their king. Historically, the Jewish people were steered toward good by good kings, and toward bad by evil kings. When they behaved "like all the nations," led by a king who was no different from foreign sovereigns, then the appointment of that king was diminished. Only when the king acted properly, as a servant of G-d and as an example to the nation, did this mitzvah manifest itself as a Divine command.

With no king of Israel today, each of us can still do his part by fulfilling the 613th commandment, as listed by the Sefer Hachinuch, to write a Torah Scroll for himself. More important, each of us must observe all the commands contained in that scroll, privately, in one's personal relationship with G-d, and publicly, as an example to others.

In this way, we will merit the coming of the final redemption and the leadership of the King Mashiach.

Rabbi Ely M. Braun

Rabbi Braun is rav of Congregation Beth Shalom in Ottawa, Manitoba.

This essay is dedicated to the memory of his teacher, Rabbi Yehuda Gershuni, "The Grodner Iluy," who was niftar on 9 Shevat of this year.

From: Yeshivat Har Etzion's Israel Koschitzky Virtual Beit Midrash [SMTP: yhe@vbm-torah.org]

YESHIVAT HAR ETZION ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM) STUDENT SUMMARIES OF SICHOT BY THE ROSHEI YESHIVA PARASHAT SHOFTIM

In honor of Yoav Ehrenhalt on the occasion of his becoming a Bar Mitzva. Dedicated by Adina Kolatch, Steven Ehrenhalt ('78-'79, '82-'84) and Aderet, Noa and Ruchama.

SICHA OF HARAV AHARON LICHTENSTEIN SHLIT" A

The Value of an Individual Summarized by Darren Lauber

Parshat Shoftim concludes with the fascinating ritual of the "egla arufa," the decapitated heifer. The Rishonim differ widely in their understanding of this extraordinary ceremony, which is practiced when a murder victim is found in the field and the perpetrator is unknown. Rambam in Moreh Nevuchim perceives the episode of egla arufa as a pragmatic exercise. The publicity engendered by the event (involving the Kohanim and Elders of the city) would greatly arouse the people, causing eye-witness testimony or other relevant information to emerge.

Ramban, on the other hand, views egla arufa as a chok, a law seemingly without rational explanation, placing it in the same category as the red heifer and the scapegoat. It is a procedure on the border of kodshim and chullin (sacred and profane), apparently designed to attain atonement on some level.

Ibn Ezra is more specific, explaining egla arufa as a procedure designed to achieve atonement not so much for the murder, as for the sins of the townspeople which, metaphysically, allowed a murder to take place in their vicinity.

Perhaps we can offer another understanding of the ritual of egla arufa. The Gemara in Yevamot states that despite the debate as to whether to expound juxtapositions in the rest of the Torah, it is generally agreed that we do expound juxtapositions in Sefer Devarim. The question that we must therefore ask ourselves is why the topic of egla arufa appears in the middle of the laws of war (sandwiched between the laws of siege and the laws of the captive

woman).

A war scenario is an extreme and trying situation in which certain perspectives can change. The unit of war is the nation, army, or battalion. In such circumstances, it is possible for the individual soldier to lose his sense of identity, personal worth and contribution. The individual becomes subsumed to the collective and loses his significance. Another danger is the development of a militant and aggressive character. It is imperative that these consequences do not emerge.

Inevitably, war entails the loss of many lives. Such bloodshed often leads to insensitivity to the value of human life. This is the reason for the placement of parashat eglarufah within the laws of war. A single corpse lies solitary in a field. The corpse is anonymous, the murderer is unknown, there are no known relatives or friends of the victim. Almost certainly, the solitary wanderer came from the lower strata of society. According to the Sfat Emet, it is not even known whether the corpse is that of a Jew or a non-Jew. Despite all these facts, the Torah mandates the whole procedure of the "eglarufah" - where the most senior and prominent members of the city closest to the corpse profess their innocence and pray for atonement.

In contrast to the tendency in wartime to denigrate the value of the individual and of human life in general, the parasha of eglarufah stands out to remind us of the exceptional value that Judaism places upon human life, and of the significance of each individual in the eyes of the Lord.

(Originally delivered on leil Shabbat Parashat Shoftim 5755 [1995].)

<http://www.kby.org/torah/parsha/shoftim.html>

Parshat Shoftim

Appoint a King

Rosh Hayeshiva HARAV MORDECHAI GREENBERG, shlita

When you will come to the Land that Hashem, your G-d, gives you, and possess it and settle in it, and you will say, "I will set a king over myself." ... You shall surely set over yourself a king. (Devarim 17:14-15) This instruction to appoint a king over Israel is not simply a concession made to appease the people, but rather it is a positive commandment. The Rambam writes, "Israel were commanded to fulfill three commandments upon entering the Land: to appoint for themselves a king as it is written, 'You shall surely set over yourself a king' ..." (Hil. Melachim 1:1) Nevertheless, when the Jews asked Shmuel to appoint a king after they entered the land -- "Appoint for us a king to judge us, like the other nations" (Shmuel I 8:5) -- Shmuel was incensed, and proved to them through miracles that they had sinned in requesting a king.

The Ran, in his Drashot (Drush #11), explains that there are two aspects to the Jewish judicial system. The first is that which is necessary for every society, to have legal rules and norms in order to prevent the eruption of total chaos. The second aspect is that of, "They shall judge the people with RIGHTEOUS judgment." (Devarim 17:18) This concept, unique to Jewish society, tells us that justice extends beyond societal need. Rather, it is to cause "the Divine Influence to dwell on our nation, and to cling to us." "In this way our Holy Torah is unique among the legal codes of the nations, who have no concern with this, only with societal improvement."

As such, the Sanhedrin (Supreme Court) is situated in the Lishkat Hagazit of the Temple, where they are subject to Divine Inspiration, and they are commanded to judge a "righteous" judgment. Many legal requirements, such as warning before the transgression, as well as the court proceedings and rules of testimony, are products of this special aspect of justice. Although the consequences of these laws sometimes make it difficult to carry out the verdict, they are critical to allow the Divine Influence to dwell.

The king is to serve as the counterbalance to this on the practical side, and he is legally allowed to circumvent these laws when necessary in order to correct the ills of society. The king is even permitted to judge and punish without the testimony of witnesses, as "the king has permission to kill and do whatever is necessary to right the world based on the needs of the moment." (Hil. Melachim 3:10)

This was Israel's sin in the time of Shmuel; they requested a king for the wrong reason. Had they desired a king as a military leader, there would not have been any sin to speak of. However, they wanted a king as a judge, "Appoint for us a king to JUDGE us." Their intention was to free themselves from the second aspect of justice, choosing instead to be judged like the other nations, with a societal, not a Divine, legal code.

Rav Shimshon Raphael Hirsch offers an understanding diametrically opposed to that of the Ran. He argues that Israel sinned precisely because their intention was to get someone to fight their wars for them, whereas the Torah does not see this as the primary function of the king. It says: When you will come to the Land that Hashem, your G-d, gives you, and possess it and settle in it, and you will say, "I will set a king over myself." The order of this pasuk clearly shows that the king is not supposed to conquer the Land of Israel and guarantee its inheritance, as a king is to be appointed only after capturing the land.

According to Rav Hirsch, the king's purpose is not develop himself in foreign affairs, such as conquest. For the conquest, it is sufficient that the Jewish people serve their role of "Yisrael," and through the force of their ethical behavior they will merit the Land. So the Sifrei expounds on the phrase, "that Hashem, your G-d, gives you" -- "because of your merit." Indeed, the law mandates that the king only be appointed after the Land has been successfully captured and settled.

According to this line of thought, the purpose of a king is to guide and unite the people in internal affairs. The Torah legislates that the king's first formal action upon ascending the throne is to write a Torah scroll. This is to demonstrate that the king is not above Divine justice; rather he is to be guided by its laws. The king exists in order to ensure the fulfillment and perpetuation of the Torah within the Jewish people. As the leader, the king serves as an example to the nation, so that they will follow his actions. Without a king there is no regulation, as is repeated throughout the Book of Shoftim (17:6, 21:25), "In those days there was no king in Israel; a man would do whatever seemed proper in his eyes."

This was Israel's sin, according to Rav Hirsch, as Shmuel admonished the people, "But when you saw that Nachash, king of the Ammonites, came upon you, you said to me, 'No, but a king shall reign over us.' But Hashem, your G-d, is your King!" (Shmuel I 12:12) The Jewish people chose a human king as a means of defense against foreign powers, showing that they viewed the role of the Jewish king identical to that of the nations. "There shall be a king over us, and we will be like all the other nations; our king will judge us, and go forth before us and FIGHT our wars." (Shmuel I 8:19-20) They demanded a king equal to the rest of the nations of the world not only in external form, but also in essence.

Based on this distinction of Rav Hirsch, we can understand the difference between the rights of a Jewish king as described in the Torah to those which are outlined by Shmuel. The Jewish king, according to the spirit of the Torah, does not require tremendous physical power or great wealth. Therefore, the Torah forbids the king from accumulating an abundance of silver and gold or horses for his chariots. (Devarim 17:16,17) However, in the time of Shmuel, the nation desired a king like that of the other nations, a king who had the power to lead them to battle successfully. According to their view, Shmuel warned them, "He [the king] will take away your sons and place them in his chariots and cavalry ... He will take a tenth of your sheep, and you will be his slaves." (Shmuel I 8:11,17) Shmuel warned them of the consequences of appointing a king for the wrong reasons.

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Prologue: The world is a complex place. The different people in the world present different faces and, as Chazal tell us, in the same manner that no two people have the same face, so too, no two people have the same thought process. People are given different lots in life that offer them different experiences and means to carry out their philosophies and Torah driven lives.

Yet, if we are all provided with different lots in life, how are we to be able to be held to the same Torah standards? How can the Torah tell the man who is inclined to living in an immaculate home with rich surroundings that he is to be held to the same standard that the individual who is too lazy to take out the garbage and does not care?

God makes his answer very clear. The common ground that different people are held to is noted clearly in the Parsha. "Tamim Tiheeyeh Im Hashem Elokeicha." Rav Yosef Yehuda Leib Bloch (Shiurei Daas I:4, 139) explains that Temimus is achieved when one feels complete with Hashem. All Jews, regardless of personal station or philosophy, need to achieve a certain closeness to Hashem and should be able to note the lacking in their lives when the closeness to him is not felt.

This can explain why the Possuk of Tamim Teheeyeh follows the commands concerning false fortune-telling. Rashi explains that Tamim Teeheeyeh is an obligation that requires us to accept that which is our lot in life and recognize our connection to Hashem within that lot. The Shiurei Daas explains that by avoiding the soothsayers one demonstrates his devotion to Hashem and his recognition that Hashem has a piece in his lot which will make that lot a complete one.

The United Negro College Fund used to remind Americans that "a mind is a terrible thing to waste." The same can be true about relationships. The Nesivos Shalom notes that man's various relationships in this world are merely paradigms for the different means of relating to Hakadosh Baruch Hu. Tamim Teeheeyeh, we must remember to foster that relationship and keep it in mind so that it should not go to waste Chalila. Elul (Ani L'Dodi V'Dodi Lee) reminds us of the relationship and how easy it is to achieve.

This week's chaburah examines waste on a different level. It is entitled:

Caution to the wind?: Aufruf bags and Baal Tashchis

The Midrash (Rus Rabba 7:11) notes that when a Chosson married a girl who was deemed to be inappropriate for him, his family would throw different kinds of nuts at him in order to hit him. The children who would collect the nuts would state that Ploni has removed himself from his family (See Yirushalmi Kiddushin 1:5). This is the earliest source for the Minhag of throwing Aufruf bags in Shuls during an Aufruf. How is the Minhag so prevalent? What about the Issur of Baal Tashchis that ensues upon the throwing of the food?

The truth is in order to properly evaluate the question at hand, we first must ask what the Issur of Baal Tashchis entails in this case.

The Gemara (Berachos 50b) notes that one cannot throw food from one place to the other because the food becomes disgusting in the process. Rashi explains that the disgust comes when, as a result of the throwing, the food becomes too soft, spoiled and ruined. The Michaber (Orach Chaim 171:1) takes this position as the Halacha.

The Beis Yosef and Bach expand and note that even if the food were to be tossed onto a plate or a cloth, and thus not ruined or smashed upon landing, the Issur still applies. Rav Shlomo Zalman Auerbach ztl. (cited in Eitz HaSadeh 18:1) explains that this is why Rashi explains that the process of something becoming disgusting comes from its softening. The process of softening to smash seems to come as a result of being tossed around and thus, food become inedible. Food that would not become

disgusting through throwing, (i.e. they cannot become softened like food in a shell) would appear to be ok to pass by way of tossing. This is explicitly noted by the Rambam (Hil. Berachos 7:9) and carried through L'Halacha by the Michaber.

However, the Heter to throw nuts is not cart blanche. The Michaber (171:4) notes that the throwing can only be done during the summer months but not in the rainy season. This seems to be based upon a Machlokes where Tosfos (Berachos 50b) maintains that when nuts that are still in their shells land in the dirt (i.e. mud), they are no longer edible to the average human. The Beis Yosef learns that according to Tosafos, therefore, one cannot throw nuts at Chassanim during Yimos HaGeshamim (the rainy season) even when they are still in their shells. The Shaar HaTzion (Orach Chaim 171:19) cites a Braisa in Meseches Simachos that seems to imply only already shelled nuts are Assur. If they are still in their shells, they can be thrown for a purpose even in the Rainy season.

And what about the waste? The Gemara (Berachos 50b see Rashi there) seems to be unconcerned with the waste of wine that used to go on when wine would flow before a Chosson and a Kalla. Why the concern now when it comes to nuts and not with the wine? The Ritva notes that when it comes to wine, the main Simchas Chosson V'Kalla is achieved through wine.

Hence there is no Hefseid. The Meiri explains that additional Simcha is achieved with wine and hence it is not a Baal Tashchis problem. However, the Bach disagrees. He maintains that for an actual Mitzva it would be Mutar to utilize the food even if it meant being Oiver Baal Tashchis. Here the wine is being used for a Siman Tov. Siman Tov is not enough of a reason to allow waste. As a result, we allow the pouring of the wine (despite the inherent disgrace to the food that it entails) provided that it will be consumed later. Otherwise, wine too, may not be poured.

But today's nuts are too thick and we do not pour wine before Chassanim V'Kallos. Today's bags are filled with much softer items. Is this ok? The Mishna Berurah (171:21) decried the practice of throwing raisins at a chosson because they become too soft and unusable. This would violate Baal Tashchis. Similarly, the Pesach HaDvir (296:3) notes that the throwing of rice (yes, it originally was a Jewish Minhag that the Chosson would throw on the Kalla as a Siman Beracha) should not be done since people step on it, and do not clean it up, it becomes ruined. Today's bags and janitorial staffs play an important role in the allowing of bags in shul. If the food inside will be eaten, it appears that it can be thrown. If that which is being thrown will never be edible, it seems better not to throw such food and minimize the Bizui Oichel.

Battala News Mazal Tov to Rabbi and Mrs. Ezra Schwartz upon the birth of a baby boy.

From: Yeshivat Har Etzion's Israel Koschitzky Virtual Beit Midrash
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Yeshivat Har Etzion Israel Koschitzky Virtual Beit Midrash (Vbm) Parashat Hashavua
This parasha series is being dedicated in memory of Michael Jotkowitz, z"l.

PARASHAT SHOFTIM

Dedicated to the memory of Reuven Salit z"l (Reuven ben Chaim Pesach), beloved husband, father, grandfather and great-grandfather on his 7th yearzeit - 4 Elul - by his family.

Dedicated in honor of Aharon Binyamin Etshalom, who entered the B'rit on 22 Menachem Av, by his parents, Rav Yitzchak ('83) and Stefanie Etshalom.

What is the Torah's Ideal Political System?

By Rav Elchanan Samet

a. APPOINTING A KING: MANDATORY OR OPTIONAL?

Does the Torah set out a particular social-political way of life for the nation of Israel dwelling in its land, or does it leave this sphere open to the people's choice? This question may be clarified in the context of the section of this week's parasha (17:14-20) dealing with the mitzva of appointing a king (and also by examining the chapters describing the establishment of the kingship in Shemuel I chapters 8-12).

The central question from an exegetical point of view is this: is the appointment of a king mandatory or optional? This question arises from a lack of clarity perhaps it should be called a contradiction in the text: (17:14) "When you come to the land which Hashem your God has given you and you possess it and dwell in it, and you say, 'Let us appoint a

king for ourselves like all the nations around us.' (17:15) You shall surely appoint a king over yourselves, whom Hashem your God will choose, one of your brethren shall you appoint as king over you. You may not appoint a stranger over you who is not your brother."

R. Chaim ben Atar (Ohr Ha-Chaim 17:14) presents the problem thus: "When the text says, 'When you come to the land... AND YOU SAY...', it means that it is not God's command to you that a king should reign; rather, if the nation speaks so, then they are permitted [to appoint him]. But later it says, 'You shall surely appoint' ϕ the language here shows that God is commanding that they appoint a king!"

According to this commentator, the whole of verse 14 contains the conditions for the command (i.e., the circumstances in which it applies), while the command itself is given in verse 15. The conditions for the mitzva in verse 14 are twofold: the first condition defines the time and the historical circumstances in which the mitzva applies: after the inheritance of the land and the settlement of it. The second condition stipulates the necessary social and political circumstances: when Am Yisrael requests a king. If the mitzva is conditional upon an expression of national will that the institution of kingship be established, then what this means is that the appointment of a king is voluntary, and the Torah merely details the procedure of this appointment. But if this is so, then why does the Torah in the next verse seem to formulate an absolute command to appoint a king?

b. THE TANNAITIC DISPUTE

The beginning of the exegetical dispute on this question is to be found in a debate between Tana'im found in a beraita (Sanhedrin 20b, and Tosefta Sanhedrin ch. 4), and in the Sifri Devarim on our parasha. "R. Yehuda said, Three commandments were given to Israel [to fulfill] upon their entry into the land: appointing a king, destroying Amalek, and building the Temple. R. Nehorai said, This parasha [of appointing a king] was given only in response to their murmurings, as it is written (17:14), 'And you shall say, "Let us appoint over ourselves a king [like all the nations around us]."'

Rashi interprets the words of R. Nehorai thus: "You shall surely appoint over yourselves a king' is a command, but only in response to your murmurings, for it was known to God that they would murmur about this in the future." The predicted "murmurings" of Israel were realized in the days of Shemuel. The mitzva in the Torah was meant to create a response to address this murmuring in advance, i.e., to create a framework for this future appointment of a king, which is voluntary and based only upon their dissatisfaction.

The Sifri (156) formulates a slightly different explanation: "And you shall say, Let us appoint over ourselves a king' ϕ R. Nehorai says: This is a matter of disgrace to Israel, as it is written (Shemuel I 8:7) 'For it is not you whom they have despised, but Me whom they have despised from ruling over them.' R. Yehuda said: But it is a mitzva from the Torah for them to request a king for themselves, as it is written, 'You shall surely appoint over yourselves a king.' So why were they punished for this in the days of Shemuel? Because it was too early for them to ask. 'Like all the nations around us' ϕ R. Nehorai said, They did not ask for a king for any other reason but so that he would institute idolatry, as it is written (Shemuel I 8:20), 'And we, too, shall be like all the nations, and our king will judge, and he will go out before us and fight our wars.'"

Attention should be paid to the fact that R. Nehorai's statement contains two parts. At first, when interpreting the beginning of the verse ("Let us appoint a king"), he says that the very wish for a king represents a rejection of God's rule over them, as expressed in Sefer Shemuel. R. Nehorai then interprets the continuation of the verse even more critically: their desire to be "like all the nations around us" reveals that their wish for a king is bound up with their wish to be free to engage in idolatry.

Despite the broad basis the R. Nehorai brings for his claim, the Rambam ϕ and, following his example, most of the early authorities ϕ rules according to R. Yehuda: he counts the mitzva of appointing a king as one of the 613 mitzvot (Sefer Ha-mitzvot, positive mitzva no. 173, Hil. Melakhim 1:1). This situation has caused many biblical commentators throughout the ages to interpret the text herein accordance with the explanation of R. Yehuda and the ruling of the Rambam, in order that their interpretation be compatible with the halakha.

However, some commentators differ with the majority and maintain that the appointment of a king is a voluntary matter. The existence of such an opinion among the Tana'im certainly strengthens their case.

c. THE DISPUTE AMONG RISHONIM

As stated, many of the medieval authorities rule as the Rambam did (the Semag ϕ positive mitzva 114, Sefer Ha-Chinukh 497, the Me'iri in Beit Ha-Bechira on Horayot 11b, the Ran in his eleventh derasha), and many of the early and later biblical commentators interpret the verses in the Torah accordingly (Radak in his commentary on Sefer Shemuel, Ramban, Ralbag, Rabbeinu Bechaye, Akeidat Yitzchak, etc.). We shall suffice with examining just one representative of this great camp: the Ramban. Thus writes the Ramban on the words, "And you shall say, 'Let us appoint over ourselves a king':" "According to the opinion of our Sages, this is equivalent to the Torah saying, 'and you shall say.' In other words, 'Say: Let us appoint over ourselves a king.' This is a positive mitzva, obligating us to declare this after the inheritance and settling of the land..."

Indeed, the Ramban succeeds thus in resolving the contradiction in the text: he changes the boundaries between conditions for the mitzva and the mitzva itself, defining them differently than the Ohr Ha-Chaim previously did. "And you shall say..." is not, in his opinion, part of the conditions for the mitzva but rather the beginning of the mitzva itself, which in turn is composed of two parts: one is a requirement that the nation REQUEST of its leaders that a king be appointed, and the other part is that the nation receive a positive response and that a worthy king in fact be appointed. The logic behind this double mitzva is that in this way the appointment of the king will not be forced on an unwilling. As for the end of the verse - "like all the nations" - the Ramban interprets that this phrase is not mandatory, but rather a prophetic foreshadowing and warning of what they will actually request in the time of Shemuel.

Attention should be paid to the fact that the Ramban interprets the text thus in order to

adapt it to "the opinion of our Sages" ϕ i.e., the opinion of R. Yehuda. However, he ignores the existence of a different opinion among Chazal ϕ that of R. Nehorai.

As opposed to the large group of commentaries who interpret the appointment of a king as mandatory, there are only a few who interpret it as voluntary. This latter group includes Targum Yonatan, Rabbeinu Meyuchas of Greece, and Ibn Ezra. Ibn Ezra expresses his view clearly and concisely: "You shall appoint" - this is optional; "Whom God will choose" - through a prophet or the decision of the Urim Ve-tumim; meaning - not someone whom you yourself will choose."

d. ABARBANEL AND SEFORNO

If we say that the appointment of a king is voluntary, and that the mitzva involves merely the procedures that Benei Yisrael must follow under circumstances that they themselves bring about, one important question arises: Is it desirable for Benei Yisrael to bring about these circumstances? In other words, is it optional and encouraged or optional and discouraged?

Two commentators expressed their positions in this regard explicitly and in detail. The similarities between the two are not coincidental: both lived in Renaissance Italy and both involved themselves not only in Biblical exegesis, but also in Jewish philosophy. They were both involved in the general culture of their time and had direct contact with the European political philosophy of their period as well as the various regimes that ruled throughout Europe and Italian provinces. Thus, their comments regarding the issue of Jewish monarchy take on special significance.

I) Rav Yitzchak Abarbanel: To properly understand his approach on our issue, we must first find out a little bit about his life. Abarbanel was born in 1437 to the minister of the treasury for the Portuguese king. His father provided him with both a Jewish and general education. The latter included Greek and Roman literature as well as command of the Portuguese language. Rav Yitzchak assumed the post as minister of the treasury upon his father's death, but shortly thereafter, with the change of rule in Lisbon, he was compelled to flee for his life to neighboring Spain. There he became the general economic advisor to King Ferdinand and Queen Isabella. In 1492 he left Spain as a result of the expulsion order. He resided in Naples where he served as royal economic advisor until he was again forced to flee, this time as a result of the French conquest. At the end of his life he lived in Venice, which was then an independent republic, where again he worked as an economic advisor to the authorities. He lived in Venice until his death. Alongside his political and economic involvement, Rav Yitzchak Abarbanel remained intensely engrossed in Torah studies, writing commentaries to Tanakh and other works.

Abarbanel was the only Jewish exegete of his time whose knowledge of various forms of government was that of an insider. He literally lived in the households of kings and rulers and caught more than a glimpse of their respective qualities and shortcomings, as well as those of the differing political theories and policies of his period.

In his lengthy introduction to our parasha, Abarbanel asks: If appointing a king is a mitzva, why didn't Yehoshua or others fulfill it? Furthermore, he asserts, Jewish history demonstrated that most Israelite kings led the people astray, and general history has shown that the more power is concentrated in an individual, the more corrupt he is likely to be. Abarbanel then presents his explanation of our verses: "When the Torah says, 'When you come to the land... and you say: Let us appoint a king for ourselves like all the nations around us,' this does not constitute a mitzva at all. God did not command that they say this and request a king (as the Ramban had explained). Rather, this is foretelling the future. It means, after your settlement in the chosen land, the conquest and all the wars, and after the division [of the land] ... I know that you will be ungrateful and say of your own volition, 'I will set a king over me,' not out of necessity to fight the nations and occupy the land, for it will have already come under your occupation, but rather to render yourselves equivalent to the nations that crown kings over themselves. He mentioned that when this occurs, they should not crown that king based on their own will, but rather [they must crown] the one who God chooses from among their brethren... According to this, then, the issue of the king is a positive commandment that depends upon a voluntary situation, as if to say, when you want to do so, notwithstanding its impropriety, do so only in this manner."

B) Rav Ovadia Seforno: Seforno (born in 1470) lived a generation later than Abarbanel and acquired vast scientific knowledge in the university in Rome. Although he never worked as a politician, Seforno, too, had close relationships with important figures in Italy and was quite familiar with the political culture of his time. He writes: "Let us appoint a king for ourselves like all the nations around us" - that the kingship will belong to him and his offspring, as opposed to the system of judges [shofetim] whereby only the judge himself serves, not his children after him. "They were commanded regarding the appointment of a judge in this manner (that is, without automatic transfer of authority to his children) upon their entry into the land, as it says (Bemidbar 27:17), 'So that God's community may not be like sheep that have no shepherd.' True, a king like the kings of the gentiles - who hold kingship for themselves and their offspring - is despicable to God. However, He commanded that when they insist upon setting up a king over themselves in this manner, they should select only a deserving person whom God chooses. He will not bring Yisrael to violate their religion, and he will not be a gentile. When they sinned by asking for a king who will rule as would his offspring 'like all the gentiles' (as described in Sefer Shemuel), they were punished through the mishaps suffered by the masses as a result of the king, as it says (Shemuel I, 8:18), 'The day will come when you cry out because of the king whom you yourselves have chosen; and God will not answer you on that day.'"

The comments of the Abarbanel and Seforno resemble each other, but here we will point out their differences:

I. The ideal government in the eyes of the Abarbanel is a republic (as he witnessed in Venice). Unlike Seforno, Abarbanel did not see in a single, authoritative figure who rules until his death an ideal example of government.

II. Abarbanel sees the problem with the request for a king as relating to the desire to grant exclusive authority to a single individual. According to Seforno, by contrast, this is

not the problem at all. Only the establishment of a hereditary kingship renders the request worthy of criticism.

III. Abarbanel emphasizes the failure of the institution of the monarchy as demonstrated by both Jewish and general history, a failing that he attributes to the ethical shortcomings inherent in the institution. Seforno, however, speaks of the punishment that will befall Benei Yisrael only for their sin of requesting a king who will bequeath his power to his heir.

Thus, Rav Ovadia Seforno expresses more mild opposition to the institution of the monarchy than does Rav Yitzchak Abarbanel (perhaps because he did not have firsthand experience with kingship as did Abarbanel). Seforno's approach raises the question: Wherein lies the fundamental difference between a king who bequeaths his rule to his son, a system that God deems "despicable," and a king who does not pass down his reign, the appointment of whom constitutes a mitzva? One would perhaps suggest that hereditary kingship contains the potential for corruption and the ascent of unrighteous rulers to the throne. This answer, however, fails to justify the inherent religious distinction between these two forms of government as expressed by the Seforno. A non-dynastic monarchy requires in every generation - or even more frequently - a selection of a new ruler over the people. When God Himself performs this selection, whether He does so directly through a prophet (the way Shaul and David were appointed) or in a roundabout manner through the emergence of a charismatic leader who saves the people from their enemies (as occurred during the period of the judges), then the sense of the presence of divine supervision remains among Benei Yisrael. By contrast, a dynastic kingship "like all the nations" gives the nation a sense of political stability that undermines their awareness of divine providence. This concern forms the basis of God's words to Shemuel when the people came to him to ask for a king (Shemuel I 8:7): "For it is not you that they have rejected; it is Me they have rejected as their king."

e. THE NETZIV'S INNOVATIVE APPROACH

Two commentators tried to resolve the contradiction between verses 17:14 and 17:15 by suggesting that the appointment of the king involves both an obligation as well as a voluntary measure. The first is the Ohr Ha-Chayim (in his interpretation of R. Nehorai's view), which I will leave for the reader to look up. The second commentator who adopts this approach is the Netziv, in his "He'amek Davar," only he develops this theory within Rav Yehuda's view: "And you say: Let us appoint a king for ourselves' - This does not imply 'saying' in the typical sense, that is, verbally (as the Ramban explained), but rather [it denotes the people's desire]... Indeed, from this expression it appears that this does not signify an outright obligation to appoint a king, but it is rather voluntary. However, it is well known in the words of Chazal that there does exist a mitzva to appoint a king. If so, then why is [the mitzva written in an equivocal fashion]? It seems that [this is] because national leadership changes [with regard to] whether it is controlled by the will of the monarchy or by the desire of the population and their elected officials. Some countries cannot tolerate royal authority, and other countries are like a ship without a captain when they do not have a king. This matter (determining the form of government) cannot be done according to a mandatory positive mitzva. For with regard to matters relevant to leadership over the nation at large, this involves issues of life-and-death that override a positive commandment. Therefore, it was impossible to command in absolute terms the appointment of a king UNTIL IT WAS AGREED UPON BY THE NATION to tolerate the royal yoke based on their observation that the surrounding nations managed better [under a monarchy]. Only then is it a positive mitzva for the Sanhedrin to appoint a king. B This is why throughout the three hundred years that the Mishkan was chosen to stand in Shilo there was no king - because there was no consensus among the people."

Underlying this original position of the Netziv are two basic assumptions, and only upon these cornerstones could he posit his startling approach. His first assumption he writes explicitly: that Chazal viewed the appointment of a king as a mitzva. Of course, this assumes the viewpoint of Rav Yehuda and ignores the opposing position of Rav Nehorai. The Netziv was most likely influenced by the ruling of the Ramban and others.

The second assumption emerges from his words more subtly. It is clear to the Netziv that careful consideration of the different forms of rule among the nations will bring those contemplating this issue to the conclusion that absolute monarchy is preferable over other forms of government (such as that which operates "according to the desire of the population and their elected officials"). The Netziv attributes this assumption to the Torah itself, which patiently waits for Benei Yisrael to arrive at this "correct" political outlook. Only then does the Torah mandate the appointment of a Jewish monarch. Of course, living in nineteenth-century Russia under the Czar, this presumption may have seemed to him natural and self-evident, but it is one which is difficult for contemporary man to accept.

f. ANOTHER PERSPECTIVE ON THE ISSUE In conclusion, we should note that most commentators saw the parasha of the king as the locus for a discussion regarding the Torah's preferred form of government. However, in the textual and historical contexts in which the issue of the monarchy arose (especially during the time of Shemuel), it seems that the question here involves a different issue: is there, according to the Torah, a need to establish any central authority at all? In other words, does the Torah destine Benei Yisrael for life within the framework of a political state, or does it prefer existence within a more anarchic social framework lacking any governmental authority? This second possibility describes Benei Yisrael's history during the time of the judges until the period of Shemuel. They lived within the framework of tribal treaties and agreements with no central authority endowed with the power of legislation or coercion. This social system was not easy for them, as external pressures from enemies did receive proper response given the lack of a king or organized military and governmental mechanism. Indeed, thoughts of a central authority arose from time to time throughout the period of the judges. Gidon responded to the people's request for a hereditary monarchy by proclaiming, "I will not rule over you myself, nor shall my son rule over you; God alone shall rule over you!" (Shoftim 8:23). Apparently, behind this anarchistic societal life stood a firm, religious outlook. The same may be

inferred from Shemuel's reaction to his constituents' request for a monarch. Their request in essence meant turning the voluntary treaty among the tribes into a single political body with central authority. The issue of the precise character of such a government is but a secondary question.

The Tanna'im who disputed the issue of the mitzva to appoint a king - R. Yehuda and R. Nehorai - seemed to have debated the question of the necessity of a state, not of the best form of government. According to Rav Yehuda, there is a mitzva for Benei Yisrael to establish a political framework in its land, for only thereby can they carry out the tasks which they were charged upon entry into Eretz Yisrael - destroying Amalek and building a Mikdash. The Gemara notes that the appointment of a king had to precede the other two, since only a political entity with concentrated authority can draft the necessary resources for the other two tasks. Shaul's victory over Amalek and Shelomo's construction of the Mikdash could not have occurred during the period of the judges.

According to what we have said, an anarchist could find in the Torah and the commentaries cited here a basis for his political theory, just as one who insists upon one form of governmental authority or another can find support for his view.

(Translated by Kaeren Fish and David Silverberg)

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[From 3 years ago] From jr@sco.COM Fri Sep 5 04:41:42 1997 From: Josh Rapps <jr@sco.COM> To: mj-ravtorah@shamash.org Subject: Shiur HaRav Soloveichik ZTL on Parshas Shoftim shoftim1.97

Shiur HaRav Soloveichik ZTL on Parshas Shoftim

[This summary covers the first part of the Yarchei Kallah on Parshas Shoftim that the Rav ZTL presented in Boston in the late 70's. I hope IYH to summarize the remainder of the Shiurim on Shoftim, as time permits. Apologies for not getting this out earlier in the week, as this took a major effort to submit to the list.]

The Torah commands us with a Mitzvas Asay to appoint judges in each city and district. There is a Mitzvah to establish a judiciary branch that interprets the law and an executive branch that enforces the laws. Rashi translates the semantics: Shoftim are judges that render decisions. Shotrim are the executive officers who translate the law into reality. In the modern, 3 part style of government, Shoftim are the judiciary, and probably the legislative branches. Shotrim is the executive branch of government that enforces and implements the laws and decisions.

The word Lishvatecha requires clarification. Rashi says that Lishvatecha lends itself to a double interpretation, your towns and settlements that Hashem granted the tribes. Or you could say that the appointment must be in accordance with the tribes so every Shevet must have its own judiciary. Rashi's opinion is that the latter interpretation is correct.

Is this a Mitzvah that applies only in Eretz Yisrael or does it apply to Chutz Laretz as well? In times when communities were autonomous would they have to establish such a system? The Ramban said the Mitzvah to appoint judges in cities did not apply in Chutz Laretz. The Ramban said that the Rambam agrees with this opinion. He then quotes the Gemara in Makos (7a) that says there is a Mitzvah of Minuy Shoftim, to appoint people to render decisions in accordance with Torah Law even in Chutz Laretz. We can't say that we should wait till the need arises and then appoint judges. Rather we need people in place before the conflict develops between litigants.

The Gemara says that there is a Mitzvah to appoint judges even in Chutz Laretz. But we don't know how many sets of judges are needed. In Eretz Yisrael there is a requirement to appoint judges in each city and district. In Chutz Laretz we appoint judges for the districts but not for the cities. The exclusive aspect of Eretz Yisrael is the number of judges that are appointed and their distribution. The Rav asked if there is a Mitzvas Minuy Dayanim in Chutz Laretz, then why is there a difference between Eretz Yisrael and Chutz Laretz in the number of judges and their distribution? And if there is no Mitzvas Minuy Dayanim, then what is the nature of the compromise between the cities and districts in Chutz Laretz in requiring a court in either the cities or the districts, but not both?

One could give a simple answer that there is no Mitzvah of Minuy Dayanim in Chutz Laretz. There simply is a requirement that in order that Chutz Laretz not become another Sodom Vamorah, the laws of the Torah must be enforced. So you need some judges in each district that should be on alert, so that in case the need arises they should be ready to judge the people and implement Din Torah. Appointing judges at the district level is not a Mitzvas Minuy, rather it is a good suggestion, in order to be ready to fulfill the Mitzvah of Vasisa Hayashar Vhatov. In Eretz Yisrael why do I need so many judges in each city and in each district? Apparently, in Eretz Yisrael there is a separate Mitzvah of Minuy Dayanim, and the Torah requires that there be judges appointed in both cities and districts to fulfill the Minuy Dayanim and Vasisa Hayashar Vhatov.

The Rambam (Hilchos Sanhedrin 1:1) says that there is a Mitzvah to appoint judges in cities and districts. In the next Halacha he says that the obligation for appointing judges in each city and district is limited to Eretz Yisrael. However in Chutz Laretz there is an obligation to appoint judges in each city and not in each district. The Ramban interprets the Rambam as we have above, that there is no Mitzvas Minuy Dayanim to appoint judges in each district rather there is a need to enforce Yashar Vtov. Why does the Ramban require judges in the cities while the Gemara requires them in each district? In Chutz Laretz, we appoint judges in each city and that is sufficient to satisfy Yashar Vtov. If someone has a conflict, he needs to be able to get justice immediately. The judges must be accessible. If they were in the districts only that would make them more difficult to get to. There is no special Mitzvas Minuy Dayanim. Perhaps the Rambam had a different Girsas (text) in the Gemara that required judges in the cities and not the districts. Since there was an obligation to make sure that Chutz Laretz did not

become a second Sodom Vamorah, there is an obligation to appoint judges. But Eretz Yisrael had a double reason for requiring judges: Yashar Vtov and the Mitzvas Minuy Dayanim.

The Ramban says that in Chutz Laretz we appoint judges to fulfill Vasisa Hayashar Vhatov. One could interpret that in Chutz Laretz there is no special Mitzvas Minuy Dayanim, rather we need that the judges be available when the need arises. The Ramban interprets that there is a Mitzvas Minuy Dayanim in Chutz Laretz, as well as Eretz Yisrael, based on the Gemara in Makos. If so, why distinguish between Eretz Yisrael and Chutz Laretz?

While listening to Krias Hatorah [the Rav took this opportunity to enforce the idea that Krias HaTorah should not be a mechanical reading, rather one must think and understand what is being read] for Parshas Devarim the following occurred to the Rav [he found the proof he had long sought to corroborate the following ideas that he had formulated before]. In the first chapter of Devarim the Torah relates how Bnai Yisrael spent almost 2 years in the proximity of Mount Sinai. Hashem now invited the people to enter and take over the land, without war or armed struggle. Next the Torah, puzzlingly, changes the topic and the continuity and tells us about a conversation that took place 38 years before between Moshe and Bnai Yisrael. Moshe told them the story of how he asked for recommendations as to who would be suitable to serve as a judge in the community. After all Moshe did not know everyone in the community, and requested their input to find the most suitable candidates. Moshe relates the instructions he gave to the judges as to how they were to act and serve as judges and how they had to be acceptable to the community. Then he relates the directions he gave the people themselves, that they should behave in accordance with the Torah when they enter the land. Moshe then relates that after the instructions had been given, they started the march. Hashem told Bnai Yisrael that the time has come for them to enter the land. They had come to the border of Har Emori. All that was left to do was to climb up the mountain and take over the land, in much the same way that one inherits property, Alay Reish. It was a small journey from Kadesh Barnea to Eretz Yisrael.

However, suddenly something happened that changed Jewish History. Moshe proceeds to relate the tragic story of how the people approached Moshe and wanted to send spies to explore the land. This incident changed the course of Jewish History and the destiny of the people. Moshe is telling them "How close you were to entering the land", Hashem urged you to enter the land and take it over voluntarily. All you had to do was walk into the land and take it over. Because of the episode of the spies, Jewish History was re-written. It is interesting to note that we read Parshas Devarim and the story of the spies on the Shabbos prior to Tisha Bav. Moshe tells them how close they, and he, were to entering the land. Had Moshe entered Eretz Yisrael and divided the land there never would have been an exile and the Beis Hamikdash would never have been destroyed. We had it right in our grasp, in our pockets. But that some crazy idea, to send spies, destroyed our destiny, and replaced it with a destiny of suffering and martyrdom.

Why did Moshe introduce the story of how he set up the system of judges in the middle of the story of their impending entry to the land and the subsequent tragedy that befell them? The continuity of the story of their impending entry and ultimate tragedy and disappointment is beautiful. Why interrupt it with the story of the judges? The Rav found in the Ramban a short answer that he expanded as follows. The Rav said that in order for them to be prepared to enter Eretz Yisrael, they had to have a complete system of justice in place. There was no need to prepare for battle for there would be no war, but there was a requirement that a system of justice be in place as a pre-requisite to taking over the land. When Moshe told the people that he could not carry the weight of judging the people on his own. He accepted Yisro's suggestion (which was obviously the will of Hashem). The Ramban says that the appointment of the judiciary is part of the preparation of the people to entering the land after they received the Torah. The judges that Moshe appointed were not limited to the role of judge. They were also the teachers and leaders of the people, like Devorah, she was not only a judge, but she was a leader as well.

The content of the Haftorah for Devarim, Chazon Yeshayahu, is the violation of the concepts of Tzedakah and Mishpat. The conclusion of the Haftorah is that Tzion will be rebuilt through Mishpat and its exiles through Tzedakah. In the time of Yeshayahu the judges had violated their trust and were corrupt. This was inconsistent with their role as leaders and violated the requirement of establishing a strong system of justice so the people may inherit the land. The prophet says that in his time the people violated the requirements for judges that Moshe gave them as retold in Parshas Devarim.

The Rav noted that the prerequisite of a system of justice prior to returning to the land is reiterated daily within our prayers. If we look at the middle 13 blessings of Shemoneh Esray we see that they are divided between the needs of the individual and the Tzibbur, specifically the latter half of the blessings discusses the theme of Geulas Yisrael, redemption of Israel. [The Ramban in Pairsush Hamishnayos already noticed the following as well.] The order of the blessings is the ingathering of the exiles, which implies conquest of the land. The next blessing should have been the petition to restore the Beis Hamikdash and the city of Jerusalem. However one cannot petition for that without first putting in place the strong system of justice, described in the blessing of Hashiva Shoftaynu. The very moment you speak about Kibbutz Galios you talk about Kibbush Haaretz and Kedushas Haaretz and Yerushalayim. You can't do that without first petitioning for the return of a fair system of justice.

Yerusha and Yeshiva is that Eretz Yisrael should be under our control. Yerusha Vyeshiva should not be considered only in terms of physical conquest of the land, but in terms of the establishment of a system of limud Torah and spiritual leadership. Without these things, the best trained soldiers do not matter. Bo'u Ureshu means that it is incumbent on you to take over the land, Moshe tells them that Yersusha Vyeshiva is not only in terms of warfare but in terms of Mishpat Utzedakah. After Moshe appointed the judges he reissued the call to them. Now that the judges are appointed you are prepared from the physical and spiritual viewpoints to take over the land. You have the physical and spiritual leadership to take over the land, Minuy Dayanim in Eretz Yisrael has a double aspect. We cannot permit corruption, so we must enforce Yashar Vtov. There also is an aspect of Yerusha Vyeshiva as well. The need to provide scholars and leaders is a part of Yerusha Vyeshiva.

Now we see why Eretz Yisrael differs from Chutz Laretz as far as Minuy Dayanim is concerned, even though it applies to both. Every city in Eretz Yisrael must have a Beis Din. A city in Eretz Yisrael has special halachic status which does not apply to cities in Chutz Laretz, no matter how large the city might be. In Chutz Laretz there is no Halachic entity of a city. It is viewed as a group of individuals, but there are no Deorays obligations that derive because of its status as a city. In Eretz Yisrael there are laws that pertain to a city, for example the laws that relate to Eglar Arufa, Ir Hanidachas, Metzora that must be sent outside the city, Ayaros Mukafos Chomah, Aray Miklat. These are all Chovas Ir. The Kedushas Ir in every city in Eretz Yisrael requires the appointment of judges, and this a Kiyum in the Mitzvah of Yerusha Vyeshiva. The Kedushas Ir is incomplete without the appointment of some form of Beis Din.

This is why Moshe integrated the mitzvah of Minuy Dayanim in the recounting of the story of the peoples march into Eretz Yisrael and the tragic change in Jewish Destiny that grew out of the Meraglim episode. The reason for requiring judges in cities and districts is that there should be the realization of the two aspects: 1) Tzedek Umishpat and 2) the realization of Yerusha Vyeshiva.

There are 2 Kedushos in the Halacha. The first is Kedushas Eretz Yisrael that was achieved in the time of Joshua via conquest and in the time of Ezra through Chazaka, colonization. The second is Kedushas Hamikdash which has separate unique process of Kiddush. The Ramban says that the Mikdash has a separate Kedusha that is based on the presence of the Shechina, The Ramban is of the opinion that the Churban eliminated the Kedushas Eretz Yisrael, but it did not eliminate the Kedushas Hamikdash. The reason is that since the original takeover of the land in the time of Joshua was through conquest, after Nebuchadnezzar invaded and showed that he was stronger this nullified the original Kedusha. Ezra reestablished the Kedusha through colonization. However the Kedushas Hamikdash continues intact from the time of Shlomo Hamelech, because it is based on Shechina, and Kedushas Shechina cannot be nullified. The Kedushas Eretz Yisrael nowadays dates back to the time of Ezra. Yersusha Vyeshiva reaches its culmination through the appointment of judges and institutions that pursue Tzedek Umishpat.

Does this apply only to Eretz Yisrael or Kedushas Hamikdash as well? The Ramban says that Kedushas Mikdash cannot be terminated. The present Kedushas Habayis dates to Shlomo while Kedushas Haaretz dates to Ezra. There is a physical aspect to Yersusha Vyeshiva as well as Asiyas Yashar Vtov. Alay Reish follows the appointment of judges. There is no need for the Jews to invade and conquer the land if they will behave like the Cnaanim. There is a need for Minuy Dayanim that goes beyond the need for social justice in order to complete Kedushas Haaretz and supplement the act of Yersusha Vyeshiva. What about the Kedushas Habayis? Beis Hamikdash has 1 purpose: Hakravas Korbanos. One could say that the reestablishment of Tzedek Umishpat only applies to Kedushas Eretz Yisrael. However one could also say that it applies to Kedushas Mikdash as well, after all Yeshayahu was speaking about the Kedushas Hamikdash and its defilement when he said Tzion Bmishpat Tipadeh. According to the Ramban that there are two aspects to the appointment of judges: to do Hayashar Vehatov as well as the political aspect of being a part of Yersusha Vyeshiva. In the time of Yeshayahu, Eretz Yisrael had already been attacked by Sancheriv. All that was left was Yehuda and Binyamin. The prophet talks about the sacrifices that were turned into an abomination by the Kohanim and the people. We copied the concept of Tzion Bmishpat Tipadeh in Shemoneh Esray that says that we have to restore the system of justice, before we request the rebuilding of the Temple. The principle of a restored system of justice is required for Kedushas Hamikdash as well.

We require the placement of the Sanhedrin next to the Beis Hamikdash. Not only does the Beis Din Hagadol depend on the Mekom Hamikdash, but the Kedushas Hamikdash is completed by the presence of the Sanhedrin Gedolah near it. Therefore even Kedushas Hamikdash depends on the reestablishment of the system of justice as described by Yeshayahu. The Rav noted that basically Tzion in Tanach refers to Yerushalayim and Mikdash. So when the Navi talks about Lamah Li Rov Zivchaychem he is talking about Yerushalayim and the Kedushas Mikdash. Tzion Bmishpat Tipadeh, is referring to the city and the Beis Hamikdash. Yerushalayim according to the Halacha is not viewed as a city but as an extension of the Beis Hamikdash. Therefore both the city and the Kedushas Hamikdash require Minuy Dayanim. When the torah says Vkamta Valisa El Hamakom, the Torah refers to the Mekom Hamikdash. So Minuy Dayanim is indispensable for Kedushas Eretz Yisrael and Kedushas Mikdash as well. There are 3 camps: Machne Shechinah, Leviya and Yisrael. This dates back to the Mishkan in the desert. The Ramban says that this setup is to be perpetuated with Yerushalayim forever. Jerusalem is not a mundane city, rather it is a part of the Beis Hamikdash. Since the city will be rebuilt only through Mishpat Utzedakah, it is clear that the Kedushas Beis Hamikdash depends on Minuy Dayanim as well.

This why Eretz Yisrael requires an additional tier of Batei Din, beyond that required for the cities. Without the additional tier I would think that the cities in Eretz Yisrael, like their counterparts in Chutz Laretz, require justice only for the reason of Yashar Vetov. The additional tier shows that there is a special Mitzvah of Yersusha Vyeshiva. If the judges that are appointed are corrupt then the Kedushas Haaretz is incomplete as well. Therefore this parsha is read before Tisha Bav to tell us that we can attain Geula only if the system of justice is restored.

The Ramban eliminates the word Lishvatecha from his citation of the Halacha. Why did the Ramban omit this? [The Ramban quotes the verse but it concludes with the word "etc.". It is not clear if the Ramban put in the shorthand or the printer did.] The Gemara (Sanhedrin 16b) says that Rabbi Shimon Ben Gamliel learns from Lishvatecha that there is a mitzvah on each Shevet to judge its own Shevet's disputes. The Ramban omitted this Halacha. The Rav explained that the Halacha of Shevet has nothing to do with the aspect of Minuy Dayanim that relates to the requirement of enforcing Mishpat Utzedakah. After all, if 2 litigants from one tribe come before a judge from another, the judge has the same responsibility and duty to judge the case fairly according to the Halacha. Lishvatecha is exclusively associated with the second aspect of Shoftim, Minuy Dayanim, as a part of Yerusha Vyeshiva. Minuy Dayanim is a Mekadesh. That is why Moshe appointed the judges before they started out on the march. A

conquest is considered Kibbush Rabbinim as long as it is done in accordance with the Beis Din Hagadol. All the Mitzvos Hateluyos Baaretz took effect after the 14 years of conquest and partition, which was the Mekadesh (except for Challah). Chiluk, partition, in addition to Kibbush, was a part of Kedushas Haaretz in the time of Joshua. If Minuy Dayanim was a part of Yerusha V'yeshiva, and the first Yerusha V'yeshiva consisted of Kibbush V'chiluk, then each Shevet must appoint judges and be represented in the overall judiciary system. In order for the Kibbush V'chiluk to be complete, all the Shevatim must be represented. After all, for simply judging a case between two litigants one would expect that all judges no matter what tribe they came from would be unbiased. Rather each Shevet was required to be represented from the aspect of Chiluk V'kibbush and Kedushas Haaretz. Minuy Dayanim must be a part of Kibbush and Chilluk as they are the acts of Kiddush Haaretz, and each Shevet must be represented. The Passuk bears this out beautifully: Shoftim V'shotrim Titen L'cha B'chal Shearecha Asher Hashem Elokecha Nosen Lecha. You must appoint judges from all the tribes to judge their own tribe in order that you should fulfill the Mitzvah of Yerusha V'yeshiva. Otherwise you will not acquire the cities that Hashem has promised to give you. And in towns that were partitioned between two tribes, according to Tosfos (Sanhedrin) the town required two Batei Din.

According to the Rambam (Beis Haba'era 6:16) the Kibbush Yehoshua was suspended and later restored by Ezra. The Kibbush by Joshua was based on physical conquest, because of the might of Joshua. This Kedusha was nullified by a stronger power, that of Nebuchadnezzar. However the Kedushas Yerushalayim is intact forever because its Kedusha was based on Kedushas Shechina in the Beis Hamikdash, This type of Kedusha could not be nullified. However the Kedushas Ezra was via Chazakah, as the Jewish Nation was poor and dependent on the kindness of Koresh. There was a special limud from the verse V'haytivcha V'hirbecha Mayovesacha, that allowed the Kedusha of Eretz Yisrael in the time of Ezra to return. The Chazakah and resettlement of the land brought about the Kedusha. The Rav asked: what about Chalukas Haaretz in the time of Ezra and even nowadays? Is the original Chalukah still in place? Or do we say that since the Kibbush was eliminated, the partition was also eliminated. Or do we say that the Kibbush was eliminated but the Chiluk continues from the time of Joshua. The Rav said that it would appear that the Chiluk should not continue since the original Kibbush was nullified. Chiluk and Kibbush were part of the same Mekadesh. If one aspect is nullified so is the other. Chiluk must lean on Kibbush. If Kibbush is nullified then so is the Chilluk. During the second temple, with the exclusion of a short period under the Chashmonaim, the Jews were vassals of foreign powers. The Mekadesh was Chazakah. Kibbush and Chiluk combine to make a single unit as far as granting the ability to divide the land, however Chazakah and Chiluk do not. Chazakah is not strong enough for Chiluk to rely on. Perhaps the Chiluk is dependent on Kibbush and in the second Beis Hamikdash there was no Kibbush, only Chazakah, so the Chiluk was suspended as well.

In Sefer Ezra it says that the people returned to the area of Jerusalem. According to Rabbeinu Tam, a minority from each tribe returned with Ezra. They settled in the towns around Jerusalem because they were under threat of attack and had to remain in proximity to Jerusalem. The land they settled belonged to Judah and Benjamin. We do not find that anyone was precluded from settling in the land that belonged to Yehuda and Binyamin. After all, if the original Chalukah was still in effect the land would not belong to the new settlers. We find that the people brought Bikurim and Maaser Shayni up to Yerushalayim and would read the appropriate Parshios which they could not do unless they had ownership of the land.

So one could say that the original Chalukah remained intact and each tribe retained ownership of its land. Even though the Chalukah was suspended, it will be reasserted by the Melech Hamoshiach, as said in Sefer Yechezkel as the Chalukah in messianic days will be 13 portions. On the other hand, one could say that since there was no Chalukah, and Nebuchadnezzar eliminated the original Kibbush and Chiluk, the land belongs to Knesses Yisrael, as one entity. Every Jew had a right to settle in any part of Eretz Yisrael since the land no longer belonged to the individual. If Lishvatecha would be a provision in the Mitzvas Minuy Dayanim, then according to the Rambam it should also exist today. If Lishvatecha was in force today, then there would be an obligation on litigants to seek out a Beis Din from their own Shevet. However if Lishvatecha is a provision in Chalukas Haaretz and continues to be a part in the complete realization of Kedushas Haaretz, then the only need for Lishvatecha is to redo the Chalukah. If the original Chalukah was nullified and never reasserted in the time of Ezra, then there is no reason for Lishvatecha. If it was a provision in Tzedek Tzedek Tirdof, then it should always apply in perpetuity. But if Lishvatecha is a provision in the division of the land and Kedushas Haaretz, Lishvatecha is measured by the Chalukas Haaretz, and if there is no Chalukas Haaretz, there is no Lishvatecha. That is why the Rambam omitted mentioning Lishvatecha.

There is a Machlokes if there was Yovel in Bayis Shayni. Josephus says that there was Tekias Shofar on Yom Kippur Shel Yovel in Bayis Sheini [the Rav said that his trustworthiness was open to debate]. The Rambam says there was no Yovel, Doraysa or Rabbanan, Rabbeinu Tam says there was Yovel Dorayasa, according to the Ran and Ramban Midoraysa no, Drabannan yes. The Gemara says that you need Kol Yoshveha Aleha, and during Bayis Sheini the majority of Bnai Yisrael lived in the diaspora, so how did they have Yovel? So Rabbeinu Tam says that there were representatives of each Shevet around and that was equivalent to Kol Yoshveha Aleha. So the Ran asks how can you claim that representatives are sufficient to take the place of Kol Yoshveha? Also, for Yovel to apply there is a requirement that the people live Ksidran, on their assigned plots. If all the inhabitants dwell in the land but they do not settle in their assigned plots, they are not Ksidran, then there is no Yovel. If each Shevet lived on each others land then how could there be ownership that would allow Yovel? After all, they have to resettle their original plots, they could not be intermixed (Mevulbalim).

The answer is that since the original Chalukah was nullified and the Klal Yisrael resettled the land, and not the individual tribes, then this resettlement was sufficient to create ownership for Yovel. The concept of Mevulbalim only applies where the Chalukah continues intact, but the members of the tribes settle in the wrong parts, for example Yehuda in Binyamin and Binyamin in Yehuda. However in the time of Bayis Shayni, the Chalukah was nullified so there was no way to identify that someone was dwelling on land that was not part of his Shevet.

Indeed the land belonged to Knesses Yisrael, so wherever they settled was considered Ksidran. They have the rights of ownership at that point equivalent to what they had in Bayis Rishon [which would explain how they could bring Maaser Sheini and Bikkurim and have Yovel during Bayis Sheini according to Rabbeinu Tam.]. This is the special Mitzvas Chazakah. Indeed the Gemara in Kedushin (26a) derives Kinyan Chazakah in Karkaos from Vyirishtem Osa Viyishavtem Bah (Devarim 11:31) which is related to Bayis Shayni, Al Pi Midras h.

The Gemara in Shabbos (139a) says: All evil in this world stems from corrupt judges in Israel (the Gemara quotes Micah 3:12). Hashem does not cause His countenance to shine on Israel only after the corrupt judges are removed. Yerushalayim will not be rebuilt only through Tzedakah. This fits well with what we previously said regarding the importance of a system of justice in order that Bnai Yisrael can return to their land and the double aspect to Minuy Dayanim in Eretz Yisrael. Minuy Dayanim represents 3 Mitzvos: 1) Assiyas Hayashar V'hatov (applies to Chutz L'aretz and Eretz Yisrael) 2) Kiddush Haaretz based on Vyirishtem Osa Viyishavtem Bah and 3) Sanctification of Jerusalem based on L'sichno T'drishu Uvasa Shama, there is a Mitzvah that Jerusalem be hallowed by an act of Bechira. We classify Vlamalshinim and Al Hatzadikim under the category of returning the system of justice to Israel to sanctify Eretz Yisrael and to sanctify Jerusalem. After all, it will be the appointed judges that will contrast with and destroy the Malchus Risha, the wicked system of justice and government. The blessings we recite are that the scholarship and leadership of Torah and Torah scholars be protected and reasserted to root out the wicked elements of corruption. Only after this occurs can we achieve sanctification of Eretz Yisrael and then the sanctification of Jerusalem. Spiritual leadership and survival is identical with Hashiva Shoftaynu Kvarishona.

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