

Mazal Tov to Norman and Sandy Nissel Horowitz on the upcoming wedding of Etan to Tracey Golstein. Mazal Tov as well to all the extended family. May you continue seeing much nachas from all your children !!!

In My Opinion :: ELUL :: Rabbi Berel Wein

The sound of the shofar reverberated in our synagogue this week as the month of Elul began. It signaled the approach of the Days of Awe and its attendant holidays only a few short weeks from now. In previous generations, devoid as they were from today's omnipresent technological wonders and obsessive necessity for instant communication with everybody and anybody, Elul took on a somber and serious note. It was an opportunity for introspection and thoughtful concern about life, mortality, mission and purpose.

The folk saying in Eastern European Jewry was that with the advent of Elul even the fish in the rivers began to tremble. Well, I don't know about the nervous state of fish in the current world's rivers but I don't notice too much trembling in the human society that surrounds us. Part of the problem that modernity and technology have created for us is that we have become desensitized and even disconnected from our own inner selves.

We are so busily occupied in texting and speaking to others that we have no time, desire or perhaps even ability to hear our own souls speaking to us and clamoring for meaningful attention. We may hear the sound of the shofar reverberating in our ears but the still small voice of our inner being is drowned out by the cacophony of sound and busyness that have become our daily fare.

Prisoners of our own technological progress, we are increasingly isolated and lonely and Elul really does not register deeply upon us – it is just another one of the months of the calendar year.

On my recent trip to Italy and Sicily, I did not have access for a week, to my email and the internet generally, for various reasons. I usually receive about twenty emails a day, some of which I do deem to be important, so, as you can imagine, I underwent a painful withdrawal syndrome for the first two days of my technological isolation.

But as the days passed I found myself more relaxed and somewhat more in touch with my inner self. One of the highlights of our summer tour was a visit to Sicily's Mount Aetna. As the hardier members of my family and the rest of the group actually began an ascent towards the crater top of the mountain itself, I sat on a bench part way up Mount Aetna and contemplated the boiling steam eruptions emanating from the crater of this still active volcano.

All around me people were prattling along on their mobile telephones. I thought to myself that it is impossible to appreciate Mount Aetna if one is speaking on a cell phone. The two are not only incongruous - they are antithetical. Sitting on that bench, watching the belching steam coming out of Mount Aetna, I quietly began to review the personal year that is now passing and its accomplishments and disappointments.

After a while I began to hear myself and I truly contemplated the arrival of Elul- and of the approaching new year. I thought that it was no wonder that many of the great men of Israel returned to the original places of Torah study of their youth to spend the month of Elul there in preparation for the approaching time of judgment and compassion. They did so in order to regain their inner voice.

I realize that it is quite impossible to bring Mount Aetna to my study in my apartment. But, nevertheless, I am striving to regain that moment of introspection that I experienced sitting on that bench in Sicily.

Of course now I am deluged with telephone calls, emails to respond to, articles to write, lectures to prepare, haircuts, chores and all of the other details of life that fill my days, so the atmosphere of that reverie on the

bench at Mount Aetna is almost impossible to replicate. But, after all, it is Elul and the sound of the shofar does stir emotions and contemplation within all of us.

Somehow, Elul does feel differently than any of the other months of the year. It is as though our inner self waits the entire year for Elul to arrive and when it finally does, our souls demand our attention and concern. I doubt that the Elul of Eastern European Jewry – trembling fish and all – is able to be replicated in our current society. But, we are bidden to create our own Elul, our own place of refuge and contemplation.

This is, in fact, the challenge of the month of Elul today and in our world - to experience an Elul that allows us to speak to ourselves and to hear our inner beings. There can be no better preparation for the Days of Awe than creating such an Elul for ourselves.

Shabat shalom.

Weekly Parsha :: SHOFTIM :: Rabbi Berel Wein

This week's parsha emphasizes, albeit in an indirect fashion, the litigious nature of human society and the requirement for the appointment of judges to decide disputes and for police to enforce those decisions. A perfect world needs no judges or courts, police or bailiffs. Our very imperfect world cannot reasonably hope to function and exist in their absence. Law and order are the requirements for a commercially and civilly successful society.

As such, judges and courts are the necessary check to prevent chaos and anarchy, But the Torah points out that there must always be necessary restraint on the powers of the courts and the police as well. And that check to judicial power is called justice and righteousness, as these concepts are defined and detailed by the Torah law and its traditions.

There is a special burden imposed by the Torah upon the judicial process, to somehow achieve not simply legally correct decisions, but a broader obligation to accomplish a sense of righteousness and justice in its general society. And the courts are bidden to be pursuers of justice and righteousness and not to satisfy themselves with seemingly correct legal conclusions, which narrowly construed, unfortunately can many times somehow lead to injustice and tragedy.

There are many examples in the history of the Jewish people where judicial and even rabbinic decisions, seemingly legally correct, led to terrible disputes and tragedies simply because the general public did not feel that justice was done in the matter. Without the palpable presence of justice and righteousness being present in our court system, we become a very divisive and spiritually sterile society.

Jewish tradition encourages compromise over hard and fast judicial decision. In fact, many great Jewish figures of the past and present, though personally involved in the world and practice of commerce, have prided themselves as never having been involved in any dispute that was submitted to a court of law or to a rabbinic tribunal.

The emotional and monetary costs of pursuing a matter of contention in a judicial manner are telling and long lasting. This is especially true when a family or partnership dispute is involved. Those scars are never completely healed. When I attended law school many decades ago we were taught to abide by an adage attributed to Abraham Lincoln: "A poor settlement is still better than a good lawsuit."

Disputes disturb our sense of ego and therefore we feel that we must prevail, sometimes at enormous personal cost. We become captivated by the sense of our legal rights and lose sight that justice, righteousness and inner harmony can be better served by realizing that less is more and that legal victories are many times more pyrrhic than real. The prophet

Yeshayahu calls to those that "pursue righteousness and justice" for they are the ones who truly seek "to find Godliness in their lives."

We need judges, courts and police in all human societies. Nevertheless, the wise person will regard them as matters of last resort and not as the prime solution to the frictions and problems of everyday life
Shabat shalom

Ohr Somayach :: Torah Weekly :: Parshat Shoftim

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by Rabbi Yaakov Asher Sinclair - www.seasonsofthemoon.com

Insights

No Stone Unturned

"Do not erect for yourself an altar of only one stone."

'Organized religion' is one of those phrases which is guaranteed to bring distaste to the Western liberal sensitivity.

Being part of a group smacks of regimentation. We who were educated in the 'liberal enlightened' tradition were taught to cherish the moment alone with one's Creator, in a field, on top of a hill, under the stars. And, to be sure, the individual communicating with his Creator not only finds a place in Judaism but is Judaism's bequest to the world.

But there is another side to Divine worship. One that is much maligned and misunderstood: that of the klal (the entire group) and its Maker.

There are two kinds of altars. An altar made from a single block of stone and an altar made from many stones. There are two kinds of Divine service. That of the individual and that of the klal. The single block represents the service of the individual; that of many stones represents the service of the complete group.

In this week's portion of the week we learn that the Torah forbids an altar consisting of only one stone. Even though in the times of the Avot (the fathers of the Jewish People) the single stone altar was beloved, subsequently, however, it became the preferred method of idolatry and thus was no longer fitting for the service of G-d.

The prophet Eliyahu erected an altar of twelve stones. Twelve is the number of the Tribes of Israel. The Altar of twelve stones symbolizes the unity of the Jewish People in the service of G-d; the klal becoming like one person. The stones are separate but they join together and become the instrument through which Man can serve his Creator. The individual's desire its appropriate expression when channeled through this mystical 'one person' who is the Jewish People.

Thus it was that the Forefathers were able to build altars of only one stone. For they were the entire Jewish People in embryo. But once the Jewish People are 'born' at Sinai, the service of the individual finds its proper fulfillment in making up the 'one person' who is Israel.

The spiritual light that we receive in this world is radiated as a totality to all parts of Creation. There is no place which is devoid of His radiance. Thus, when we approach our Creator, it must be as a totality, joined like the stones of the altar. For with even one stone missing, there is no altar.

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Peninim on the Torah by Rabbi A. Leib Scheinbaum

Parshas SHOFTIM

They shall judge the people with righteous judgment. (16:18)

The simple meaning of this command is that the judges who are appointed to adjudicate various disputes should do so with integrity and righteousness, acting with impartiality in maintaining a system of justice that is above reproach. The Midrash Tanchuma adds that the appointed judges were to intercede before Hashem on behalf of the Jewish People and find merit for them. While this is certainly a noble calling, the choice that the Midrash presents as an example of a leader who exemplifies the trait of seeking merit in behalf of Klal Yisrael is enigmatic. The fifth Shofet, judge of the Jewish People, following the petirah, passing, of Yehoshua bin Nun was Gideon. He led Klal Yisrael for forty years.

Apparently, he was quite good, having lasted that long. The problem is understanding what about his actions earned him such accolades.

The Navi teaches that the Jewish People had fallen into the labyrinth of sin. Hashem punished them with seven years of domination by the evil Midyanim who destroyed them materially, bringing the nation to its knees in a state of hunger and poverty. The suffering succeeded, such that the nation slowly put an end to their downward spiral and repented. Until that time, Gideon was a virtual unknown who commanded little respect. Hashem dispatched a Heavenly angel to appoint him as leader of the nation, to guide them back on their path of return. Gideon's response to the angel is incredulous: "If Hashem is with us, why has all this happened to us? And where are all of His wonders of which our forefathers told us, 'Behold Hashem brought us out of Egypt. For now Hashem has deserted us and He has delivered us into the control of Midyan.'" (Shoftim 6:12,13)

Rashi explains Gideon's reply to the angel. Apparently the angel appeared on Pesach, which prompted Gideon to say, "Yesterday, my father recited Hallel and he read to me how Hashem had taken the Jewish People out of Egypt, but now, Hashem has forsaken us! If our forefathers were righteous, Hashem should spare us in their merit. If they were not deserving, then we should be no worse than they. If He redeemed them despite their lack of zechuyos, merits, we should be no different." The angel wished him well, telling him that, in the merit of his having defended the Jewish People, he was chosen to lead them against the Midyanim.

Upon perusal of Gideon's reply to the angel, one is taken aback with his almost heretical response: Why did Hashem forsake His People, failing to protect them from their enemies? In the book, A Shabbos Vort, by Rabbi Sholom Smith, the author quotes Horav Avraham Pam, zl, who observes that it was precisely this advocacy on behalf of the nation that catapulted Gideon to become the nation's leader. Advocacy does not cover up the truth, painting a picture of righteousness over festering evil. Gideon told the truth. The people had sinned; while they might thus be unworthy of being spared from punishment, were they any different than their ancestors? If the earlier generation was saved, so should Gideon's generation. Hashem replied that it was this truth that He was waiting to hear. These words would ultimately vindicate the Jewish People. Cover-ups do not work. The best defense is the truth.

Gideon's defense of the Jewish People serves as the standard for how we should attempt to speak favorably of people. It is easy to find fault concerning anyone - as long as one looks hard enough. That same effort could be expended to seek the positive, to emphasize a reason to justify an individual's behavior. Criticizing a fellow Jew, finding fault in his shortcomings, will not do much for the subject and will only serve to distance one from Hashem. The Almighty wants to hear "good" about His children. When we knock other Jews, we are not causing much satisfaction for Hashem. No father wants to hear that his child is a problem. Advocacy on behalf of our brethren will help them and earns us "points" when it comes our time to be judged.

Horav Levi Yitzchak, zl, m'Berditchev was considered the consummate advocate on behalf of the Jewish People. He would find something positive in the most negative of behaviors. His love for Hashem's children was boundless, as evinced by his comment, "The mouth was created for two purposes - to speak words of Torah and to find merit in the Jewish People." Undoubtedly, there are "difficult" Jews, who have, by their actions and personal demeanor, alienated themselves from the community. Their behavior stymies us. They, too, deserve a chance. Everyone has a story, a pathology which sheds light on his individual behavior. A great tzaddik, righteous person, whose name eludes me, once said, "As one goes out of his way to farenfer, explain a shverer, difficult Tosfos, so, too, should he attempt to farenfer, justify, a shverer Yid.

Justice, justice shall you pursue. (16:20)

Rashi explains the Torah's enjoinder that we pursue justice as a demand that we seek out the most competent, knowledgeable court of law to adjudicate our dispute with another Jew. Sifsei Chachamim adds that, even though the case we have can really be listened to by any decent court of

law, the claimant has an obligation to go out of his way to seek the most learned, qualified, impartial *bais din* available. A *din Torah* is often "cut and dry." Reuven owes Shimon, and all that is necessary is a judge who is not "blind," who has the courage to render judgment. The command, *Tzedek, tzedek tirdof*, is speaking to a plaintiff who himself seeks justice. The Torah does not address itself to crooks. For them, there is no hope. No court will make a difference, and any judgment which they hear will be impugned - unless, of course, they win. Clearly, a deceitful plaintiff, bent on cheating the defendant, is not interested - nor will he adhere to the Torah's admonition to seek the best court of law. The Torah is speaking to the honest Jew, the upright, moral, dignified Jew who feels he has been wronged and is now going to court to retrieve what he feels is his. If he feels confident about his position, and if he has great trust in, and respect for, the court of law in his town, why must he go elsewhere to seek the "Cadillac" of courts of law? Yes, the Torah commands him to search for the very best court of law - even if it means traveling - even if he trusts the court of law in his town.

To put it succinctly: Reuven claims that Shimon owes him a substantial sum of money, for whatever reason. Reuven, the plaintiff, feels secure in his legitimate claim and substantiates it with incontrovertible proof. In his eyes, the defendant, Shimon, is clearly wrong. Reuven has no qualms about having the case adjudicated by the local *bais din*. Yet, the Torah writes that he must make every effort to have his case heard by the most qualified court, which could entail traveling to another city and incurring some unexpected expenses. Why? If the plaintiff is satisfied, why not stay in town?

Horav A. Henoch Leibowitz, zl, derives a powerful lesson from here. The Torah requires a Jew to maintain an exemplary level of honesty and integrity. We may be certain in our heart and mind that we are correct, but, what if...? We must always introspect and question our motives. Do we seek the truth? Are we interested in retrieving our money? Do we want to hurt, destroy the fellow who hurt us financially? Is *emes*, truth, a priority in our lives, or, is it something with which we live when it coincides with our comfort level? We might be right, but if there is a remote chance that a less-scholarly court may err in our favor, thereby taking money from the defendant unjustly, we have participated in a fraud. Thus, the Torah expects us to seek out the most scholarly judges to ensure that the level of integrity never be impugned - even in error. We choose a *bais din*, not because it will provide us with a "win," but because of its impartiality and accuracy in deciding the *halachah*. In other words, we, the plaintiff, do not want to wrong the accused. We only want the truth.

People do strange things for money. While they maintain the strictest standards of observance concerning their relationship with Hashem, their attitude suddenly changes when money is involved. By his very nature, man has a strong gravitational pull towards money. There is a reason it is called the root of all evil. I think the greatest allure of money emanates from the fact that it grants one power without accountability. While some will use their material wealth for the pursuit of good - to help others, support organizations, etc., there are those who use their money to lord over others and not have to answer to anyone for their reprehensible behavior. The Torah is teaching us the importance of honesty and how we should go out of our way not to do anything that is not above reproach. A Jew should shudder at the thought of doing anything that might harm his fellow.

And do not erect for yourself a matzeivah (idolatrous pillar) which Hashem, your G-d, hates. (16:22)

Much of *Sefer Devarim* alludes to warnings concerning the idolatrous behavior of the nations inhabiting *Eretz Yisrael*. The Torah admonishes us not to learn from their nefarious practices, lest we fall prey to the *yetzer hora*, evil inclination, which seduces one to worship idols. One of the prohibitions is the erection of a *matzeivah*, pillar of stone, on which they would offer sacrifices. This is forbidden, even if the offerings are to Hashem. Rashi explains that Hashem abhors a *matzeivah*. He commanded us to make a *Mizbayach avanim*, Altar of stones, a *Mizbayach adamah*,

Altar of earth, but not a *matzeivah*. He hates it because it had become the practice of the *Canaanim*. Although at one point, earlier in history, it had been beloved by Hashem, having become the altar of choice used by the *Avos*, Patriarchs. This all came to an end as a result of the *Canaanim* converting it into an altar dedicated to idolatry. Ramban notes that the *Canaanim* did not single out pillars as opposed to altars. They used both. Thus, according to Rashi, the Torah should have prohibited both types of *matzeiva*.

The *Shem M'Shmu'el* explains that actually there is a conceptual variation between the altar, made of several stones, and the pillar, consisting of one stone. One of the most famous altars was built by *Eliyahu HaNavi*, using twelve stones - one for each *shevet*, tribe.

Eliyahu's mizbayach connotes the essence of what an altar should be - and what it should represent. Comprised of twelve stones, it represented the Jewish nation - all twelve tribes - functioning as one. Each tribe, symbolized by its individual stone, made its unique contribution to the wholesomeness of *Klal Yisrael*. Together, the stones represent an integrated unit devoted to the service of Hashem. This is the principle of Divine worship - everyone together as one unit. An individual may not bring his own offering connecting to the integrated unit. A disenfranchised Jew has no business offering a sacrifice. He should coalesce with the rest of *Klal Yisrael*, because that is what we are: a *klal*, united congregation.

We now understand the contrast presented by the *matzeivah*, single pillar of stone. By the very nature of its singularity, it fails to symbolize the need for an amalgamated unit, symphonized by a unifying belief. The pillar represents the individual who has yet to join the *klal*. Thus, the pillar fosters a distorted, perhaps spurious, perception of Divine service. A word of caution must be interjected. It is not as if the individual has no bearing. Indeed, individuality is encouraged. With regard to Divine service, however, an entire nation comprised of individuals, each making his own conscious decision to unite with the group in worshipping Hashem, has greater meaning and efficacy.

Having said this, we must understand why the use of a *matzeivah* was not only permitted, but beloved by Hashem, when the *Avos*, Patriarchs, were offering the sacrifices. This does appear to be some form of spiritual double standard. The *Sochachover* explains that during the tenure of the *Avos*, prior to the formation of the Jewish nation, the *Avos* were *Klal Yisrael* in microcosm. Each Patriarch was the standard bearer for the belief in one G-d. Monotheism coursed through their veins, and the message of Torah - its values, observance, and the character traits of its adherents - was part and parcel of their lives. While it is true that they were individuals, their feelings represented the values and qualities of an entire nation.

Avraham Avinu inherited the Holy Land, just as the entire nation which is registered under his name was destined to do. *Yaakov Avinu's* immediate seventy descendants who descended with him to Egypt are represented as "one soul." The Patriarch embodied all of the traits and elements of the nation that would originate from him. *Yaakov* stood alone, as did *Avraham*: as the nation's Patriarchs they - in their individual, singular selves - represented the entire nation.

With this in mind, we understand the permissibility of the pillar in the era of the *Avos*. The *Avos* were a complete nation unto themselves. It was, thus, entirely appropriate for them to offer sacrifices on the pillar comprised of a single stone. The sacrifice on the single stone represents the service of the individual, which, in the case of the Patriarchs, was synonymous with the entire nation. The *Canaanim* specifically chose the pillar as their mode of service. Idolators, by definition, have no sense of unity - each one doing what he sees fit - worshipping whatever he sees fit. Essentially, the idolator worships none other than himself. Selfishness marks the character of the idol worshipper. As such, the pillar, the symbol of personal devotion, was well-suited for their needs. The idol worshipper never attains a sense of unity. It goes against the grain of his theology.

The Kohen shall approach and speak to the people. He shall say to them, "Hear, O' Yisrael, you are coming near to the battle against your

enemies; let your heart not be faint; do not be afraid; do not panic; and do not be broken before them." (20:2,3)

There is a well-known passage in the Talmud Berachos 5a which addresses the strategy one should employ upon being confronted by man's greatest enemy from within: the yetzer hora, evil inclination. Chazal give us four options which, based upon a person's spiritual level, should assist him in staving off the yetzer hora's crippling influence. The first approach is yargiz yetzer tov al yetzer hara, agitate one's good inclination against his evil inclination. Take the yetzer head on, using the good inclination within him to overwhelm the evil. If this does not prove effective, Chazal advise engaging in Torah study. If this does not succeed in vanquishing the yetzer hora, Chazal suggest that one recite Shema Yisrael. Apparently, reciting Shema garners greater devotion on one's part than Torah study. If these three methods have failed, the last suggestion rendered by Chazal is, yatzir lo yom ha'missa, "one should remind himself of the day of death." While this last approach carries with it the possibility of the dire side effects of sadness and depression, the alternative of falling into the clutches of the yetzer hora apparently outweighs the negative.

The Kli Yakar posits that these four approaches toward our constant battle with the yetzer hora are alluded to by the pasuk, Shema Yisrael atem krovim lamilchamah al oyveichem, "Hear O'Yisrael, you are coming near to the battle against your enemies." War is an especially dangerous time for the soldier - not merely in a physical sense, but also from a spiritual perspective. When one is exposed to an enemy bent on killing you, surrounded by a harmful environment without the protection of the stability of home and family, the Satan in the guise of the yetzer hora can wreak havoc on his spiritual demeanor. How does one vanquish the yetzer hora, assuring his continued affinity with good, and not falling victim to the evil? Chazal's four approaches are suggested. The Kli Yakar applies these in his interpretation of the pasukim which relate the declaration made by the Kohen Mashuach Milchamah, High Priest, who was anointed especially to be the spiritual anchor during the Jewish nation's wars.

Let us digress and address the last approach: yatzir lo yom ha'missah, "Let him remind himself of the day of death." I have always wondered why Chazal emphasize "day" of death as opposed to "death." One would think that it is the thought of death which shatters a person and causes him to tremble from head to toe. It is the concept of mortality that makes an individual wake up from his spiritual slumber and fortify himself in his battle with the forces of evil. Why the "day" of death?

I think that Chazal are teaching us a profound lesson. While some of us can possibly reconcile ourselves to the concept of death, we realize that no one yet has lived forever. Every man has his ultimate end, his last hurrah, his final curtain call, but how many of us think about that "last day", the events leading up to his demise? Imagine sitting at a wedding and enjoying oneself with friends and family and, suddenly, an uninvited guest, the Malach Ha'Maves, Angel of Death, appears and announces that your time has come! "But I am not ready," "I have unfinished business to address; I have not said my final good-byes!" The Angel of Death does not care. One dies at the exact moment, the precise time that has been decreed by Heaven Above. His excuses fall on "deaf" ears. Yom ha'missah is like that. It catches us by surprise. Even one who is terminally ill and who has reconciled himself to the end is not prepared for the yom ha'missah. It is the one day when all our preconceived plans and notions are shown to be futile. That is more frightening than even death itself.

In his sefer, Nitzotzos, Horav Yitzchak Herschkowitz, Shlita, has an inspiring analogy about death, one that-believe it or not - spurs one to think positive, one that heartens and encourages - rather than depressing us and makes us sad.

It was moving day. The post- middle-age couple had sold their sprawling house and were about to take up residence in a much smaller, more functional and practical apartment. The children were all married with large families of their own. Yom Tov was spent with the children and grandchildren at their homes. It was time to move on.

The movers were quickly emptying their beloved home of years of habitation. Each time another piece of furniture, another box, another fixture was removed, it brought back memories. It was a quiet time for reflection, a time for a subtle tear, a secret smile. The move was very emotional. The goodbyes to trusted neighbors were made, new phone numbers transferred. Forty years were being moved out of the house - forty years of family life, challenges, struggles, successes, failures, joys and sadness were all locked away in the boxes and furniture pieces.

The new apartment was carefully sought out. Location, accessibility, and opportunity for the children and grandchildren to visit were all taken into consideration. Nothing was left to "chance." The apartment was well-lit, spacious, comfortable and very clean. For what more could a person ask? But, after all was said and done, it would take some time to get used to it. It was not the "old house."

The husband turned to his wife and said, "You know, this move is much like Olam Hazeh, This World."

"What did you say?" she asked, clueless about his line of thinking and what he could be suggesting with his somewhat strange remark.

"When we leave our earthly abode," her husband began, "we know that we are leaving This World for a much better world. Our separation from this world is very difficult, in that we are leaving family, friends and the life we have made for ourselves. The leaving, however, is somewhat ameliorated with the knowledge that we know that we are going 'home' to our Source." When his wife heard his ruminating, she said, "I think it is time to leave. There is really no reason to tarry any longer. It is time to move on."

When they arrived at the new apartment, the husband almost passed out when he noticed that their dining room window had an incredible view of - the cemetery! He had never bothered looking earlier when they had negotiated for the apartment. What could he do now? How could he live opposite a scene that was a constant reminder of yom ha'missa, the day of death?

As he related this story a few months later, he said, "Actually, living opposite the cemetery had a most calming effect on me. Whenever things do not go my way, when life's challenges seem to all fall at my feet, I take a look out the window and realize, 'It won't be long now. Life on this world is temporary. There is a better place where these problems will have no effect.' Indeed, when I look out my dining room window I relax and am comforted with the realization that there is a better world, with a noble purpose. We do here what we can so that we will merit a ringside seat in the World to Come."

"Horav Nachman Breslover, zl, writes that the thought of yom ha'missah should engender a feeling of joy. Shlomo HaMelech says in Mishlei 31:27, 'She joyfully awaits the last day.' She awaits the inevitable last day of life with confidence that she will have earned the respect and honor. Now that I am exposed to a constant reminder concerning the yom acharon, last day, I realize the futility of life, the brevity of life and, thus, the overriding importance of not wasting one minute! I hope Hashem will bless me with continued arichas yamim, longevity, and that I should not lose sight of the yom acharon."

I conclude with yet another perspective on yom ha'missah. I came across an article written by Rav Avraham Fishman, zl, a yedid from Telshe, who wrote an appreciation of the Rosh Yeshivah, Rav Mordechai Gifter, zl. The Rosh Yeshivah would place great emphasis on the words of Rabbeinu Yonah in his Shaarei Teshuvah: "When a man begins to grow old, and his strength begins to dwindle, he should give heart to the closeness of his end and understand what will become of him. It is indeed cause for great wonderment. If one finds himself in the middle of his days and sees his days passing, how can his eyes be so blind and his heart not understand that he is continually advancing to his final resting place."

Rabbi Eliezer's comment quoted in the Talmud Shabbos 153 was one of Rav Gifter's more famous quotes. "Let a person repent today for he may die tomorrow; this way he will find himself living all of his days in a state of teshuvah, repentance." This is how the Rosh Yeshivah lived his life - ever-cognizant that tomorrow might be fraught with insurmountable

challenges. One must reach for the heights of achievement - today - because tomorrow it might be out of reach. He would often relate concerning the famous Rav Meir Anshel Rothschild, who had an aron, coffin, custom made for himself. He would lie down in it nightly as a reminder of the day of death which no one escapes.

A student once remarked to Rav Gifter that it was no great feat for the Rosh Yeshivah to be so proficient in every Tosfos, commentary to the Talmud, since the Rosh Yeshivah was considerably brilliant.

Rav Gifter immediately responded to the student, "You are mistaken. When I learn a blatt, page of Talmud, or a Tosfos, I view it as if it is the very last time I am going to see this blatt Gemorah or Tosfos, before I stand before the Heavenly Tribunal and take my ultimate father, test, on what I have learned in this world. That is why I remember it well. If you would learn Gemorah and meforshim, commentaries, in the same manner, you would also remember it."

This is how he lived - recognizing at every moment - that it could possibly be his last. He had to be prepared for the ultimate bechinah, test.

Avinu Malkeinu. Our Father, our King.

Previously, in the brachah of Yotzer or, we referred to Hashem as Elokei Olam, G-d of the World, while now He is referred to as Avinu Malkeinu - our Father, our King. Horav Avigdor Miller, zl, distinguishes between these terms and explains the significance of knowing that Hashem is our Father and our King. First, as G-d of the world, Hashem is being recognized as the universal Ruler, which applies to all men collectively - not only the Jewish People. In the brachah that addresses our relationship with Hashem via the Torah, the terms change from "universal" to "individual" with "our Father, our King" referring only to Klal Yisrael - the receivers of Hashem's Torah. Through the medium of Torah - our relationship with Hashem takes on a nature of singular significance. It is about "us" and "Him," with the Torah the point of attachment.

The notion that Hashem is our Father denotes that He especially created us, with the word Av/Father emphasizing the unique love that He has for His people. The word av is related to ahav, love, and likewise associated with yahav, to give. A Father gives to his child out of a sense of love: yahav/ahav/av. As Malkeinu, our King, Hashem is noted for His special interest, guidance, and supervision by means of His consummate wisdom and awesome power.

Avinu, Our Father, intimates that just like a loving father, all of His love is for us - His children. Our King connotes that all of His interest, His management of the affairs of the world, are solely due to Klal Yisrael. After all, He is "Our Father, Our King."

Sponsored by Rabbi & Mrs. Sroy Levitansky In memory of her parents Mr. & Mrs. Sol Rosenfeld Shlomo ben Tzvi z"l niftar 7 Ellul 5752 Henna bas Binyomin Menachem a"n niftar 2 Ellul 5771

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Rabbi Weinreb's Parsha Column, Parshat Shoftim

"We Are All Judges and Kings"

Sponsored in memory of Nathan and Louise Schwartz a"n

It is at this point in time that we all begin to realize that the summer is ending. There is something about mid-August that says, "The summer is waning." School children begin to experience the anxieties that come with the anticipation of the return to school; vacationers hasten to relish the last of the "lazy, hazy days;" and the baseball season is at the stage when the pennant and wild-card races begin to really heat up.

Spiritually too, there is a change going on inside of us. The month of Elul, the last month before the New Year, has begun, and with it comes the sound of the shofar which literally signals the fast approaching High Holidays and Days of Awe. The shofar simply gives voice to the inner feeling of "the fun times are over, it is time to get serious."

It is precisely at this season that we read the Torah portion, Parshat Shoftim (Deuteronomy 16:18-21:9). We open our bibles to this Torah portion in anticipation of some words to edify each of us as individuals.

We hope to find verses which will goad us toward introspection and inspire us to improve ourselves in many ways.

But that is not what we find in the parsha of Shoftim. We are disappointed in our search for a deeply personal message in this week's Torah selection.

What we find instead are laws and narratives which seem to be meant for someone else, not for us mere struggling ordinary mortals. The passages which we read are directed toward the elite stratum of our society, to the leaders, to the judges and kings.

The parsha opens with a description of the judicial and legal institutions, and with the establishment of a locale which we are to visit if we wish to consult priests and Levites, and experts in the law. The parsha proceeds to speak of kingship and royalty, of the privileges and responsibilities of the priestly class, of the role of prophets, and even of the structure of the military.

Where is the role of the individual in all of this? At this time of year, when those of us who are serious about our religious responsibilities are searching for personal guidance and spiritual illumination, what lessons can we learn from these texts which seem to be addressing a more lofty audience? What is a humble person to gain from laws of societal governance? Of what relevance are the responsibilities of judges and priests and kings to those of us with pedestrian concerns?

There are, of course, numerous approaches to resolving this quandary. But there is one approach which I would like to suggest and which seems to me to be of great practical utility.

To explain this approach, I must remind you of an important movement in the history of the Jewish people which had its roots in the middle of the 19th century. A man named Rabbi Israel Salanter was disturbed at the superficiality of the religious life that he observed even in the most traditional and observant communities of the Eastern Europe of his time. He felt that people were numb, or at least indifferent, to the important ethical issues which he considered to be the core of our faith.

And so he initiated a religious revolution known as the Mussar Movement, which was designed to once again place ethics and spirituality at the center of Jewish religious life.

This column is not the place to describe in detail the development of this movement over the course of the last century and a half. Suffice it to say that this movement, like so many similar ones, splintered into a number of different streams. One of these was centered in the small Lithuanian village of Kelm, and another in a suburb of the large city of Kovno, Slobodka.

The "old man" of Kelm, Rabbi Simcha Zissel, emphasized man's limitations, his frailties and vulnerabilities. His followers would spend the days of Elul in fear and trepidation, hoping to overcome the burdens of their sins.

The other "old man," Rabbi Nosson Zvi Finkel of Slobodka, had a very different spiritual strategy. He encouraged his disciples to recognize gadlut ha'adam, the greatness of man. He urged his followers to recognize their strength and near infinite potential.

Far be it from me to decide which approach is correct. I believe that they are both correct, but I feel that each is designed for its own time and place. In our time and in our place, I am convinced that it is the Slobodka approach which is preferable.

Nowadays, paradoxically, our external demeanor of arrogance and hubris is but a mask for deep inner feelings of inferiority and inadequacy. We fail to understand that we are capable, as individuals and as a nation, of gigantic accomplishments. We need to be reminded not of our limitations, but of our capabilities.

Perhaps it is for this reason that we read the parsha of Shoftim at this time of year. It reminds us that we are all "judges and kings." We all need to take our responsibilities seriously. Each and every one of us is a leader, if not over throngs of thousands, then over our communities, neighborhoods and families. Or at the very least, over ourselves.

This week, we are reminded that from our very beginnings we were given the appellation "a kingdom of priests, a holy nation." The road to teshuvah,

to authentic repentance, is not a private and solitary road. It is not a road which we travel as isolated individuals, with the puny tools of introspection and contemplation.

Rather, with the approach of the New Year, we must regard ourselves as part of a great nation, and imagine ourselves as leaders of that nation. That is why the parsha of Shoftim, with its emphasis upon large social institutions and systems of governance and military defense, is read at this time of year.

It is to remind us, nay to persuade us, that we are all "judges and kings."

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Britain's Chief Rabbi Lord Jonathan Sacks

Greatness is Humility

There is a fascinating detail in the passage about the king in this week's parsha. The text says that "When he takes the throne of his kingdom, he must write for himself a copy of this Torah on a scroll before the levitical priests" (Deut. 17: 18). He must "read it all the days of his life" so that he will be God-fearing and never break Torah law. But there is another reason also: so that he will "not begin to feel superior to his brethren" (Kaplan translation), "so that his heart be not haughty over his brothers" (Robert Alter). The king had to have humility. The highest in the land should not feel himself to be the highest in the land.

This is hugely significant in terms of the Jewish understanding of political leadership. There are other commands directed to the king. He must not accumulate horses so as not to establish trading links with Egypt. He should not have too many wives for "they will lead his heart astray." He should not accumulate wealth. These were all standing temptations to a king. As we know and as the sages pointed out, it was these three prohibitions that Solomon, wisest of men, broke, marking the beginning of the long slow slide into corruption that marked much of the history of the monarchy in ancient Israel. It led, after his death, to the division of the kingdom.

But these were symptoms, not the cause. The cause was the feeling on the part of the king that, since he is above the people he is above the law. As the rabbis said (Sanhedrin 21b), Solomon justified his breach of these prohibitions by saying: the only reason that a king may not accumulate wives is that they will lead his heart astray, so I will marry many wives and not let my heart be led astray. And since the only reason not to have many horses is not to establish links with Egypt, I will have many horses but not do business with Egypt. In both cases he fell into the trap of which the Torah had warned. Solomon's wives did lead his heart astray (1 Kings 11: 3), and his horses were imported from Egypt (1 Kings 10: 28-29). The arrogance of power is its downfall. Hubris leads to nemesis.

Hence the Torah's insistence on humility, not as a mere nicety, a good thing to have, but as essential to the role. The king was to be treated with the highest honour. In Jewish law, only a king may not renounce the honour due to his role. A parent may do so, so may a rav, so may even a nasi, but not a king (Kiddushin 32a-b). Yet there is to be a complete contrast between the external trappings of the king and his inward emotions.

Maimonides is eloquent on the subject:

Just as the Torah grants him [the king] great honour and obliges everyone to revere him, so it commands him to be lowly and empty at heart, as it says: 'My heart is empty within me' (Ps. 109:22). Nor should he treat Israel with overbearing haughtiness, for it says, "so that his heart be not haughty over his brothers" (Deut. 17: 20).

He should be gracious and merciful to the small and the great, involving himself in their good and welfare. He should protect the honour of even the humblest of men. When he speaks to the people as a community, he should speak gently, as it says, "Listen my brothers and my people..." (1 Chronicles 28:2), and

similarly, "If today you will be a servant to these people..." (1 Kings 12:7).

He should always conduct himself with great humility. There was none greater than Moses, our teacher. Yet he said: "What are we? Your complaints are not against us" (Ex. 16:8). He should bear the nation's difficulties, burdens, complaints and anger as a nurse carries an infant. (Maimonides, Laws of Kings 2: 6)

The model is Moses, described in the Torah as "very humble, more so than any person on the face of the earth" (Num. 12: 3). "Humble" here does not mean diffident, meek, self-abasing, timid, bashful, demure or lacking in self-confidence. Moses was none of these. It means honouring others and regarding them as important, no less important than you are. It does not mean holding yourself low; it means holding other people high. It means roughly what Ben Zoma meant when he said (Avot 4: 1), "Who is honoured? One who honours others." This led to one of the great rabbinic teachings, contained in the siddur and said on Motsei Shabbat:

Rabbi Jochanan said, Wherever you find the greatness of the Holy One, blessed be He, there you find His humility. This is written in the Torah, repeated in the Prophets, and stated a third time in the Writings. It is written in the Torah: "For the Lord your God is God of gods and Lord of lords, the great, mighty and awe-inspiring God, who shows no favoritism and accepts no bribe." Immediately afterwards it is written, "He upholds the cause of the orphan and widow, and loves the stranger, giving him food and clothing" ... (Megillah 31a)

God cares for all regardless of rank, and so must we, even a king, especially a king. Greatness is humility.

In the context of the Diamond Jubilee of Queen Elizabeth the Second, there is a story worth telling. It happened in St James Palace on 27 January 2005, the sixtieth anniversary of the liberation of Auschwitz. Punctuality, said Louis XVIII of France, is the politeness of kings. Royalty arrives on time and leaves on time. So it is with the Queen, but not on this occasion. When the time came for her to leave, she stayed. And stayed. One of her attendants said he had never known her to linger so long after her scheduled departure time.

She was meeting a group of Holocaust survivors. She gave each survivor – it was a large group – her focussed, unhurried attention. She stood with each until they had finished telling their personal story. One after another, the survivors were coming to me in a kind of trance, saying, "Sixty years ago I did not know whether I would be alive tomorrow, and here I am today talking to the Queen." It brought a kind of blessed closure into deeply lacerated lives. Sixty years earlier they had been treated, in Germany, Austria, Poland, in fact in most of Europe, as subhuman, yet now the Queen was treating them as if each were a visiting Head of State. That was humility: not holding yourself low but holding others high. And where you find humility, there you find greatness.

It is a lesson for each of us. R. Shlomo of Karlin said, Der grester yester hora is az mir fargest az mi is ein ben melekh, "The greatest source of sin is to forget we are children of the king." We say Avinu malkenu, "Our father, our king." It follows that we are all members of a royal family and must act as if we are. And the mark of royalty is humility.

The real honour is not the honour we receive but the honour we give.

To read more writings and teachings from the Chief Rabbi Lord Jonathan Sacks, please visit www.chief Rabbi.org.

Rabbi Yissocher Frand - Parshas Shoftim

Enticement To Worship Avodah Zarah Is Worse Than The Act Itself

In ancient times, idol worshippers would plant a tree, called an Asheira, which they used for ritual worship. The Torah teaches us at the beginning of this week's parsha "You shall not plant for yourselves an Asheira of any kind of tree beside the altar of the L-rd your G-d which you shall make for yourselves. Nor shall you set up a one-stone monument (matzevah) which the L-rd your G-d detests." [Devorim 16:21-22]. Rashi points out that we

are commanded to make a multi-stone altar and an altar out of earth; however a single stone altar was the practice of the Canannites and it thus became detestable in the eyes of the Almighty. Rashi goes on to state "Even though the 'matzevah' was beloved to Him in the time of the Patriarchs, in latter times it became hated since it became part of the idolatrous ritual."

The Ramban disagrees and comments that he does not understand Rashi's logic because, after all, the Canannites made use of both single stone (matzevah) and multi-stone (mizbeach) altars in their pagan rites. He cites as proof of this statement the pasuk: "You shall break apart their multi-stone altars and you shall break up their single-stone altars and their Ashera trees you shall burn in the fire..." [Devorim 12:3]. The Ramban therefore offers an alternate explanation: He suggests that the heathens had multi-stone altars within their Temples upon which they offered sacrifices to their various gods. Then they had one large stone at the entrance to the Temple upon which their priests would stand and they would plant in close proximity an enormous tree as an announcement – This is the way to the House of Avodah Zarah. We must remember that these are the days before billboards, neon signs, and helium balloons. How did they tell people how to get to the House of Avodah Zarah? They planted special big Ashera trees – the trademark of the House of Idolatry. Therefore, G-d, who detests Avodah Zarah forbade the Matzevah and Ashera and allowed only the Mizbeach which was necessary for the offerings.

The Sefer Ikvei Erev, asks the exact same questions on the Ramban as the Ramban asks on Rashi: Still, he argues, how did Ramban help matters? We still do not understand the difference between Mizbeach and Matzevah – why did G-d permit the former and prohibit the latter! On the contrary – according to the Ramban, the Mizbeach was INSIDE the House of Avodah Zarah and the Matzevah was OUTSIDE. The Mizbeach was the altar on which they brought their actual sacrifices; the Matzevah was only used as a platform upon which the priests would stand. It would make more sense to prohibit the Mizbeach and permit the Matzevah!

Therefore, the Ikvei Erev suggests a very interesting concept: The Ashera and the Matzevah that stood outside the House of Idolatry were WORSE than the Mizbeach which stood inside. He cites the law of the meisis – the enticer who tries to get people to worship Avodah Zarah [Devorim 13:7-12]. The act of enticing a fellow-Jew to worship idolatry is the worst crime a Jew can commit. The Torah prohibits having any type of mercy for the "enticer". The judicial procedures surrounding the prosecution of the "meisis" have instructions that are stricter than any other judicial proceeding in regard to closing any "loop-holes" that might get him off the hook, so to speak.

There is even an unprecedented law that entrapment is allowed in the case of a suspected "enticer" – we are advised to hide witnesses behind a fence and ask him to repeat his words of recommendation regarding the pagan ritual and then the witnesses jump out and throw the book at him!

What we see from "meisis" is that trying to get people off the proper path to begin to practice Avodah Zarah is worse than the crime itself. The death penalty for idol worship is "sayif" (killed by the sword) whereas the punishment for enticement to worship idols is "skilah" (stoning), which is the most severe form of capital punishment.

If that is the case, we can now understand why the mizbeach, which was used for the idolatrous sacrifices themselves, was not prohibited for future use for Divine Service, but the Ashera and the Matzevah, which were used to draw people into the idolatrous temples, became detested by G-d and were banned forevermore from Divine Service.

National Tragedy Preempts Personal Loss

Parshas Shoftim contains within it a repetition of the laws of the Cities of Refuge. If a person kills another person unintentionally (b'shogeg), the next of kin of the victim has the right to seek revenge and kill that "unintentional murderer" unless he flees to the City of Refuge (Ir Miklat) wherein the "blood redeemer" (Goel haDam) is not allowed to harm him. The "unintentional murderer" is required to remain in this Ir Miklat until

the death of the High Priest [Bamidbar 35:28]. Once the Kohen Gadol dies, the "unintentional murderer" is free to leave the City of Refuge and the "blood redeemer" is no longer allowed to touch him.

The Rambam discusses this set of laws in his Moreh Nevuchim (Guide to the Perplexed). He says we can understand that if the Kohen Gadol lives another 50 or 60 years after this unfortunate incident, then the "blood redeemer" will have had time to cool down and he will not be so enraged when he sees the person who is responsible for killing his brother walking the streets as a free man. However, the Ramban asks, what if the Kohen Gadol dies a week or a month after the death of the brother of the "blood redeemer" – how and why should the death of the High Priest affect the understandable rage of the Goel haDam? We have a principle that a dead person is not forgotten until after 12 months. Therefore, perhaps there should therefore be a minimum sentence of 12 months in the City of Refuge for any "unintentional killer"!

The Rambam explains that the High Priest was the most honored and beloved individual in the entire nation. His death would be a national tragedy of the greatest proportions. It is human nature, the Ramban writes, that the occurrence of a "greater tragedy" minimizes the psychological impact of "lesser tragedies". For example, suppose on August 28th, a person's car transmission broke. He will be upset. It will cost him a lot of money. He is angry, and so forth. If on the next day, he hears on the news of a natural disaster somewhere in the world, which killed hundreds and left thousands homeless, he will be as aggravated about his transmission problem anymore. National tragedies put personal things into perspective!

The national tragedy of the loss of the most honorable and beloved son of the nation for whom everyone is in mourning, will put the tragedy of the unintentional death of the Goel haDam's brother into perspective, such that he will now be able to handle the idea of the unintentional murderer walking around as a free man. The personal tragedy becomes nullified (batel), as it were, in the national tragedy of the Jewish people.

This is the way it should be. When Klal Yisrael suffers a tragedy, our personal troubles should be rendered insignificant. How many of us can truly say we react that way to tragedies that occur in our time to the Jewish people? Do we still complain about our petty problems when we read and hear about far greater challenges that face the Jews in Eretz Yisrael or elsewhere?

This is the ethical lesson (mussar haskel) to be learned from this Moreh Nevuchim regarding the laws of the Arei Miklat and the role of the death of the Kohen Gadol in setting free the one sentenced to exile in the City of Refuge. When Klal Yisrael suffers tragedy, all personal considerations should pale in comparison to our anxiety and concern about matters of national importance.

Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD

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Rav Kook List

Rav Kook on the Torah Portion

Shoftim: The Jerusalem Police Officer

"Appoint judges and police in all of your cities..." (Deut. 16:18)

Rav Kook was overjoyed with the news. David Tidhar, a Jewish officer serving in the British Mandatory police force, had come to announce that he was engaged to be married. The rabbi insisted that the wedding be held in his own residence, and that he would provide the wedding meal. Rav Kook even invited students from the yeshiva to join in the festivities.

Many people were surprised. Why was Rav Kook so fond of this particular policeman?

Rav Kook explained that David Tidhar had zechut avot - ancestral merits. His father, R. Moshe Betzalel Todrosovich, was a wealthy Jaffa philanthropist who had been instrumental in bringing Rav Kook to serve as rabbi of Jaffa. R. Moshe Betzalel supported numerous religious projects in Jaffa, especially anything related to education and helping out those in

need. This fine man, Rav Kook declared, is certainly deserving of our thanks and gratitude

The Run-Away Husband

Rav Kook's appreciation of David Tidhar was also based on his appreciation for the young man's own qualities and deeds. These close ties took on greater importance when Tidhar was appointed to serve as an officer in the Jerusalem police force. The Chief Rabbi would often turn to him for assistance in releasing a prisoner, or to ameliorate a prisoner's conditions in jail.

On one unusual occasion, however, Rav Kook requested Tidhar's help in placing a man under arrest.

Rav Kook was informed that a certain man had decided to abandon his family, with full intention of leaving his wife an agunah without a proper divorce. The husband intended to flee Jerusalem on the early morning train. Legally, there was no way to stop him. The request to detain him had been submitted to the regional court; but the order could only be approved after the judge arrived at ten o'clock.

Rav Kook turned to Tidhar, explaining the urgency of the situation. The resourceful police officer came up with an unconventional solution to deal with the case. He dispatched an undercover detective to the train station. There the detective pretended to pick a fight with the man. The altercation began with harsh words and quickly progressed to fisticuffs.

Policemen immediately arrived and arrested the two brawlers, bringing them in to the police station in Me'ah She'arim. At that point Tidhar arrived. He detained the man at the station until Rav Kook sent word that the court order had been obtained. He was then able to officially place the man under arrest.

Rav Kook would say that two men assisted him in maintaining order in religious affairs in Jerusalem. The first was the British high commissioner Herbert Samuel. The second was the police officer David Tidhar. But, Rav Kook noted, there is a difference between the two. The commissioner always conferred first with his legal adviser, so his assistance was often delayed. Officer Tidhar, on the other hand, was diligent and energetic. He did whatever he promised to do, quickly overcoming all obstacles.

The Would-Be Expulsion

In another incident, Tidhar needed to prevent the deportation of Jewish immigrants - a deportation that he himself was detailed to carry out.

The British passport office sent Tidhar a long list of illegal immigrants. The list included many details: names, addresses, ages, and so on. The policeman was astounded. How had the British obtained so much information about the immigrants?

The answer was not long in coming. British immigration officials had posed as Jewish aid workers, going house to house in Jerusalem neighborhoods. Using this ploy, they convinced the immigrants to divulge their identifying details.

As police commander, Tidhar was given the order to expel forty hapless families on the day before Yom Kippur. It would have been a heart-breaking sight. Tidhar met with the leaders of the Jewish city council. He requested that the refugees be provided with food and clothing; and he gave them a twelve hour reprieve before executing the deportation.

The council's Aliyah department agreed. They provided for the immigrants' needs, and secretly transferred them to distant neighborhoods.

In order to assist the refugees, it was necessary for Tidhar to work on Yom Kippur. Following Rav Kook's advice, he dressed as an Arab. This way the Jewish immigrants would not be disturbed by the sight of a Jew desecrating the holiest day of the year - even if his labors were for their own benefit.

David Tidhar commented about that period: the British officers thought that they were my commanding officers. But my true commanding officer was Rav Kook. For me, any request of the rabbi was an order, which I tried to discharge to the best of my ability. I considered it a great privilege to fulfill the Rav's wishes.

(Adapted from Chayei HaRe'iyah, pp. 303-304; Malachim Kivnei Adam, p. 151)

Comments and inquiries may be sent to: <mailto:RavKookList@gmail.com>

When there is a Way, there is a Will **By Rabbi Yirmiyohu Kaganoff**

Should an observant Jew have a will drafted? Must any arrangement be made so that a will drafted by an attorney will be consistent with halacha? May one distribute one's estate differently from what the Torah commands?

SHOULD A JEW WRITE A WILL?

The answer to this question depends on what will happen if one leaves no legally binding will. Who will become the legal guardians of one's minor children? Does one want one's property distributed according to the civil law applicable where one lives? The truth is that allowing one's property to be distributed on the basis of civil law will almost always result in someone receiving money that is not halachically his or hers! Thus, by not writing a halachically acceptable will, one may indirectly cause a person to receive stolen property!

The following shaylah that I was recently asked illustrates this problem:

Reuven Stern did not leave a will, and his property was divided up according to the "law of the land", without any concern for halacha. One of his daughters came to me with the following shaylah: Is she allowed to keep the money that she has received? She knows that her father intended to divide his property equally among his children; however, he had never drafted a will.

I told her that she is obligated to tell her brothers that her inheritance money is not halachically hers. If they wish, they can allow her to keep the money, but if she does not tell them, she will be violating the Torah prohibition of *gezeilah*, stealing (MiDor LeDor, a short work on the laws of wills by Rav Feivel Cohen, pg. 2).

DINA DEMALCHUSA DINA

Doesn't halacha recognize the civil law code? Isn't this called *dina demalchusa dina*?

This is an incorrect understanding of *dina demalchusa dina*, that the law of the government is binding in halacha. Because of *dina demalchusa dina*, we are forbidden to smuggle or counterfeit, and we are required to pay taxes. However, *dina demalchusa dina* does not replace the civil laws of the Torah (the laws of Choshen Mishpat) that govern the relationships between Jews. According to all accepted opinions, *dina demalchusa dina* does not apply to the laws of inheritance (Shu't Rashba 3:109, quoted by Beis Yosef, Choshen Mishpat end of Chapter 26, and by Shach, Choshen Mishpat 73:39).

IS A TYPICAL WILL VALID IN HALACHA?

Shimon had his lawyer draft a will. He instructed his lawyer to have certain bequests made to specific *tzedakos*, and to divide the rest of his estate equally among his sons and daughters. Is this will halachically valid? If it is not, what are the halachic ramifications?

According to civil law, a person has the right to choose his heirs, and therefore can choose to whom he wishes to distribute his earthly wealth after he passes on. However, according to Torah law, a person does not have the ability to choose his heirs, nor can he arrange for his property to be given away after his death. When a man dies, the Torah has a formula for distributing his assets.

If a person cannot create his or her own heir, does this mean that it is impossible for one to determine who receives one's assets after his passing? No. In this article, we will present different methods whereby one can make a civil will, enforceable according to halacha.

Here is a case of someone who drafted a will without first asking a shaylah. Mrs. Goldstein promised her nephew, Yitzchak, that she would support him in kollel. She told Yitzchak that she would make sure that he

was provided for, if anything happened to her. By supporting her nephew Yitzchak's learning, Mrs. Goldstein felt that she would be ensured of a good reward in the Olam HaEmes. Her own children were financially well-established, but unfortunately, non-observant. Any money she left them would be insignificant to them in terms of their own means. Unfortunately, when she had a will drafted, she failed to make any provisions for it to be halachically binding.

After Mrs. Goldstein's passing, Yitzchak researched the halachos about wills and realized that the property left to him might not be his from a halachic standpoint. According to many poskim, taking this money without the consent of his non-observant cousins would be stealing, so Yitzchak decided to take no money without his cousins' willing consent. This consent was not forthcoming, and consequently, Yitzchak did not want to benefit from his aunt's estate.

A DIFFERING APPROACH

It should be noted that, according to Shu't Igros Moshe (Even HaEzer 1:104), a properly drafted will is considered a kinyan on all the properties, and therefore Mrs. Goldstein's will is halachically binding. However, not all authorities accept Rav Moshe's position. Her nephew, Yitzchak, who is very meticulous about all his mitzvah observances, felt that he if he would not eat food that is kosher according to only some opinions, he should, similarly, not take money that is not his according to all opinions.

Unfortunately, even frum attorneys are often unaware of the halachic ramifications of drafting a will. Mrs. Goldstein's estate could have been divided according to her wishes without any halachic question, had she or her attorney asked a shaylah as to how this should be done.

WHY ISN'T THE WILL HALACHICALLY VALID BASED ON THE MITZVAH TO FULFILL THE WISHES OF THE DECEASED?

It is true that there is a halachic principle called mitzvah l'kayeim divrei hameis, which literally means that it is a mitzvah to fulfill the bequests of a deceased person. Thus, it would seem that the heirs are obligated to follow the directives of the will and distribute the property according to the instructions of the deceased.

However, relying on mitzvah l'kayeim divrei hameis does not guarantee that the terms of the will must be fulfilled. Firstly, the Shulchan Aruch rules that mitzvah l'kayeim divrei hameis applies only when the testator, the person making the will, instructs a third party as to exactly what he wants done and gives the party the properties (Choshen Mishpat 252:2). If these conditions are not fulfilled, the heirs are not obligated to carry out directives of the will. Obviously, the implementation of these conditions is impractical in the vast majority of wills.

Furthermore, even if every condition is fulfilled, if the heirs sell the property before the legatee (the beneficiary of the will) receives it, the legatee will have no halachic recourse to claim his property (Rama ad loc.). In essence, mitzvah l'kayeim divrei hameis is a mitzvah that the heirs should perform, but it is not binding on them.

In addition, according to many poskim, mitzvah l'kayeim divrei hameis applies only if the instructions are given directly to the halachic heirs, which is not typical in most wills (Shach, Choshen Mishpat 252:7). Thus, mitzvah l'kayeim divrei hameis is not an effective means of forcing the halachic heirs to fulfill one's will.

CAN'T THE TESTATOR TRANSFER THE PROPERTY THROUGH THE LAW OF METZAVEH MACHMAS MISAH?

The words metzaveh machmas misah are the approximate equivalent of the English term "last will and testament," meaning the instructions given by the testator for the distribution of his assets upon his passing. However, according to most poskim, metzaveh machmas misah has halachic validity only if made by a shechiv meira, a deathly ill person (Rama, Choshen Mishpat 250:25). Thus, according to most opinions, it will have no validity in most contemporary wills that are drafted when the testator is healthy.

There is a minority opinion that metzaveh machmas misah takes affect even for a healthy person, provided he gives away all his property (Mordechai, Bava Basra #591). Based on this opinion, some authorities rule that if the legatees have already received the property, they may keep it (Gesher HaChaim 1:6, see Shu't Maharasham 2:224).

ONE EFFECTIVE APPROACH

One method of making a civil will halachically effective is to have ownership of the property transferred while the testator is still alive. Thus, there is no need for the legatee to be a halachic heir since he/she is receiving ownership of the property as a gift, not as an inheritance.

Therefore a will can be rendered halachically effective by making a kinyan that transfers the assets to the legatee. There are many acts of kinyan recognized by halacha that transfer ownership.

For the purposes at hand, the simplest kinyan is what is usually called kinyan sudar, the same type of kinyan that is used to authorize one's rav to sell chametz. The testator lifts up a pen or any other utensil owned by someone else for the intention of transferring the ownership to the legatees, and thereby transfers the ownership of the estate to the beneficiaries of the will.

This kinyan will work to transfer to the legatee real estate, ownership in businesses, chattel, and stocks. However, bonds, bank deposits, and cash, are not transacted according to halacha via kinyan sudar, and would require a different method of kinyan (Choshen Mishpat 203:1; 66:1,10). This makes the kinyan process a bit more complicated than most people prefer.

Making the will halachically effective by using a kinyan does not require making any change in the will itself. After the will is drafted, one renders it halachically effective by making the kinyan described above.

DO I NEED WITNESSES?

Although technically not required, it is advisable to have the kinyan witnessed by two adult males who sign a statement that they observed it being made. This statement can then be filed together with the will. Otherwise, halachic heirs can protest that no kinyan was made and refuse to hand over properties.

Although the above method is halachically binding, it has several drawbacks.

According to halacha, one can transfer property only if it already exists and is already owned by the person transferring it. Furthermore, one can only transfer property to someone who is already born. Thus the kinyan will only transfer property that the testator owns at the time that it is made, and will only be effective for legatees who are already born.

Since people generally purchase new properties and investments, earn more money, and include as yet unborn children and grandchildren in their wills, the kinyan should be periodically renewed. Although this is possible, most people generally forget to take care of it.

DOES USING A TRUST OBVIATE THESE YERUSHA PROBLEMS?

I have seen poskim recommend the use of trusts to avoid some of the problems we mentioned above. However, I do not see any advantage in using a trust over simply making a kinyan. In the cases where the kinyan will not work, the trust will not work either, and the trust can create problems that the kinyan does not. Therefore, using a trust to assure that the will function according to halacha is usually not warranted.

A MORE EFFECTIVE APPROACH - CREATING INDEBTEDNESS

There is a tried and true method that has been used for hundreds of years to guarantee that one's will is upheld. The testator creates a large, theoretical indebtedness on his properties in favor of the beneficiaries of the will. This means that he creates a lien on all his property that is payable to the intended legatee who is not a halachic heir. A person can create indebtedness against himself and against his property even if there is no preexisting debt or obligation. The debt the testator creates should be much

greater than what he actually expects the legatee to receive, and may be larger than he estimates the value of his entire estate.

There is one important condition made on this debt – that it will be null and void if the heirs honor the conditions of the will. However, if the heirs refuse to honor the will, the lien becomes payable, thus depriving them of their inheritance; instead, the estate, or a significant part of it, is awarded to the legatees as payment of the debt. In reality, the indebtedness is never really used; its sole purpose is to enforce the terms of the will.

An example of how this method works will explain it better. Using our earlier examples, Reuven Stern wanted to leave property to his daughters, and Mrs. Goldstein wanted to leave property for her nephew. In both instances, the testator failed to arrange clear ownership of the legacy for the intended legatee.

What the testators could have done is to create a large, personal debt against their property to the benefit of the intended non-heir legatee. Thus, Reuven would have created a large indebtedness against his own property for the benefit of his daughters, and Mrs. Goldstein would have created one for her nephew. A condition would be placed on this debt that it is null and void if the conditions of the will are met and the heirs, in this case the sons, do not contest the will.

Both Reuven and Mrs. Goldstein would also have left a small but respectable legacy for their sons, something they should have done anyway, as will be explained later.

When the testator's will is executed, the sons, who are the halachic heirs, have the option to ignore the terms of the will. However, by doing so, the full (prearranged) indebtedness (of the deceased) must be paid from the estate. The result is that the sons will end up with no inheritance at all, since the debt might be greater than the entire estate. Thus, it is in the heirs' best interest to obey the will, and at least receive the small inheritance specified for them.

Although this method may seem like a modern gimmick, it has been in use for hundreds of years. It was commonplace to write a halachic will to provide daughters with part of the inheritance together with their brothers. The father achieved this by creating a lien against his own property for an amount of money that made it worthwhile for the sons to fulfill the conditions of the will (see Rama, Choshen Mishpat 281:7).

It should be noted that because of reasons beyond the scope of this article, the indebtedness made against a wife's properties would not be valid (see Kesubos 78b; Even HaEzer 90:9). In order to guarantee that the wife's will is halachically valid, the husband needs to place a lien against his properties. For this reason, when a couple has their wills drafted, the

indebtedness for both of their wills should place the conditional lien against his estate, not hers. (This approach is suggested and described in detail in MiDor LeDor).

IS IT PERMITTED TO DISTRIBUTE ONE'S ESTATE DIFFERENTLY FROM WHAT THE TORAH INSTRUCTS?

The Gemara tells us that Shmuel instructed his disciple, Rav Yehudah, to avoid becoming involved in situations where the Torah's laws of inheritance would be overruled, even to transfer property from an evil son to a good son, or from a son to a daughter (Bava Basra 133b; Kesubos 53a).

Does this imply that all property should be inherited only by the halachic heirs? If this is so, why was there a widespread custom of providing daughters with an inheritance to which they are not entitled according to Torah law?

There are several approaches given to answer this question.

Some poskim rule that it is permitted to give away a large part of one's estate, provided the testator makes certain that each of the heirs receives at least some inheritance (Tashbeitz 3:147; Ketzos 282:2; see Shu't Chasam Sofer, Choshen Mishpat #151, which disagrees).

Others explain that one should provide inheritance for one's daughters as a means of encouraging their shidduchim, attracting potential husbands by the expectation that they will eventually receive an inheritance (Shu't Maharam Mintz #47, quoted by Nachalas Shivah 21:4:2).

Others contend that when the accepted practice is that all children inherit equally, one should follow this custom to make sure that a machlokes does not result from unrealized expectations (Gesher HaChaim, 1:8; cf. MiDor LeDor pg. 31, which seems to disagree).

Gesher HaChaim records a story of a great talmid chacham who wanted his estate divided exactly as the Torah instructs. Thus he arranged legally that his bechor receive a double portion, and that only his sons should receive inheritance and not his daughters. Unfortunately, the result of this distribution was a legacy of machlokes that created a tremendous chillul Hashem. For this reason, Gesher HaChaim strongly recommends that a person divide his estate according to what is the expected norm in his community.

It is important to realize that legal rights and responsibilities are never governed by secular law. A Torah Jew realizes that Hashem's Torah is all-encompassing, and that every aspect of one's life is directed by Torah. Thus all financial aspects of our lives are also governed by halacha, and one should be careful to ask shaylos about one's business dealings.

Please address all comments and requests to Hamelaket@gmail.com