

PARSHAS SHOFTIM

תשפ"א

There are two separate jobs mentioned in the beginning of the Parsha. There are shoftim and shotrim. One cannot function without the other one. In Klal Yisroel, all laws are made either by the Torah or by the Sanhedrin Hagadol. The job of each shofet is to take these laws and apply them in specific practice to the people who come to him for a decision. The job of the shotrim – the police force – is to maintain law and order. They must enforce the laws – even by force. Without a police force, society falls apart. Anyone who is familiar with what happened in the United States last summer knows that when you get rid of the police, crime skyrockets and chaos ensues.

The Mishnah in Avos says exactly this point. The context of this Mishnah was a time when Klal Yisroel were suffering from horrible Roman persecutions. Yet Chazal still told us we need to pray for the government's welfare because without a functioning government, people will swallow each other up alive. Without an authority and a strict enforcement of that authority, society falls apart. The wonderful liberal philosophy that everyone has to be nice to each other, will lead to the collapse of society and the criminal element will take over.

The verse says that courts must be set up in every shevet and every locale. Why is this necessary? A shofet has to understand the situation on the ground. You need shoftim who appreciate the various nuances of the society they are judging.

There are two requirements of the judge. The dayan has to do an honest job, and he has to understand the situation.

We ask Hashem in every weekday shemoneh esrei that He provide us with a true system of justice, and tzedakah and mishpat. It is so vital that it is put in the 13 requests of shemoneh esrei.

A Torah judge has to meet very strict demands to reach the Torah's high standard for justice. It is not acceptable to twist the law to make sure the outcome is just. Both the means and the outcome has to be just through and through. The parsha goes on to talk about hearing testimony about avodo zoro and it tells the judges how to deal with witnesses. Even though a Torah judge has significant power, he has to keep in mind that true justice only comes from Hashem. Human beings cannot assume they can make the justice system fit their personal philosophy.

We say in every shacharis after krias shema, that the Torah is true and faithful – it will always be true for all time – in every generation. But one can ask, how can laws about how to behave be called "true"? Law about behavior aren't facts like arithmetic where the sum is either true or false.

The answer is that everything is based on a single principle. Hashem created a universe from absolute nothingness. There was no time, no space, no physical existence at all. Before this creation of physicality, there was already a Torah. Hashem fashioned the entire physical world to be the ideal place to express the Torah and mitzvos that existed prior to the world. So by definition, Torah must be true and faithful to its original purpose – it will match the physical world perfectly.

The Torah was not given to us to make us suffer. It is nechmod. If we fulfill the Torah our lives will be pleasant and fulfilled because our nature was made to fit the Torah.

The Torah judge has to carefully cross-examine the witnesses to be as sure as possible that the judgement will be according to the truth. But the Rambam says he can never be absolutely sure. On the other hand,

the judge can't say he is giving up since he cannot know for sure the witnesses aren't lying. The Torah says you have to do your maximum to reach the truth and then you make a judgment to the best of your ability.

Then we have the issur of Lo Sosur and the laws of a rebellious elder.

The Torah says determining the correct interpretation of the Torah is dependent on the human understanding of the Torah.

The gemara quotes a case where Rabbi Eliezer argued with all the other tannoim of the Sanhedrin regarding the halachic status of an oven. He made a test and said if the halacha is like me, let the river outside flow backwards. And the river flowed backwards! Unbelievable miracle. The Sanhedrin responded: we don't decide laws by rivers.

Another test – the tree will uproot itself and go somewhere else. Another test – let the walls of the beis midrash cave in. They all happened – and the Sanhedrin ignored them all. Finally, a Bas Kol rang out from Heaven declaring Rabbi Eliezer was right! The Sanhedrin responded: 'lo bashomayim hi'. One of the tannoim met Eliyahu Hanovi afterwards and asked how the Heavenly court reacted to this exchange. He was told that Hashem declared: "My own children have bested Me!"

This teaches us an important principle. Uncertainties about the Torah are decided only by those who were given the authority to interpret it. Despite all the unbelievable supernatural proofs one can bring, they are meaningless. Hashem entrusted the members of Sanhedrin to come to the appropriate conclusion. The Rambam says the Torah promises us that they will be faithful and not corrupt the Torah. The Ramban in this parsha says there is a special hashgocho from Shomayim to make sure that the outcome of the psak of beis din is what it was supposed to be. They can make a mistake, but only the Sanhedrin itself has the authority to recognize a mistake was made and retract their ruling. They have incredible power. No other body of scholars has the authority to say the Sanhedrin was wrong.

The Rambam explained why he had the authority to argue on the views of Geonim, who lived a few hundred years before the Rambam, yet he could not argue with the view of any amora in the gemara. The amoraim could argue on one another but not with any tanna. Why? The Mishnah and braissos passed through the Sanhedrin and had that authority. No amora had that authority. But why are amoraim greater than Geonim to the extent that the Rambam could not argue on any gemara?

The Rambam lists the chain of mesorah of 40 generations from Moshe Rabbeinu till Rav Ashi. In each generation there was an individual who mastered the entire Torah Shebaal Peh and was responsible for the transmission of the entire Torah Shebaal Peh to the next generation. The Gemara we have was written by Rav Ashi and his beis din – whose authority was accepted by the entire Klal Yisroel. This means Rav Ashi was one of the chachmei hamesorah, plus his beis din had the acceptance of the entire Klal Yisroel. This gives Talmud Bavli the equivalent authority of the Sanhedrin Hagadol. This is the authoritative, definitive version of Torah Shebaal Peh and cannot be argued with. The Torah promised they are trustworthy to be faithful to the truth.

The verse in this week's parsha which obligates us to listen to the psak of beis din and not rebel against it is referring to this specific authority of Sanhedrin. It only applies to the Sanhedrin Hagadol or its

equivalent. This is very clear in the Rambam and other Rishonim. This has nothing to do with the contemporary concept of Daas Torah.

The concept of listening to Daas Torah doesn't come from this parsha at all. It comes from the beginning of Parshas Devorim discussing Moshe Rabbeinu's appointment of judges. The Midrash there explains that when the leaders of Klal Yisroel get a deep understanding of the Torah, it naturally gives them tremendous clarity about how the world functions in all matters of life. It is logical that they be consulted for any matter that requires wisdom and insight. They will have it from the Torah.

Hashem talked to Yehoshua after Moshe died and Dovid Hamelech talked to Shlomo right before he dies. When these people are starting to take on a leadership position, they are instructed to lead the people according to the Torah – in every aspect. Why? The Torah will tell you how to function in every situation and you will be successful – but only if you follow the wisdom given by a deep understanding of the Torah.

The Midrash Rabbah gives a parable of a snake. The body of the snake has two ends. The tail protests to the head that it wants to lead the

body for a change. The head agrees and the tail is always falling into holes and dangers and brings disaster. Only the head which has eyes can see the dangers ahead and avoid them. The Torah gives one a tremendous insight into life. You need two things. You need to get advice that is consistent with Torah, and you need the Torah to perceive the reality properly and get proper direction.

This is not the issur of Lo Sosur. It is the advice of the Torah to allow those who understand the Torah best to lead the community. They have no agendas and no personal interests. They are only interested in the truth.

There are two separate things. Before everything became politicized, every Jewish community had a talmid chochom leading it in all matters which faced the community. They followed Daas Torah because they knew the direction they were being given was consistent with the Torah, the agenda of their leader was only Torah, and the insight into the world he had would be deep and accurate because it came from his understanding of the Torah. But the issur of Lo Sosur and a rebellious elder is when someone questions the definitive ruling of the Sanhedrin which had the highest authority of Torah Shebaal Peh.