



The Marcos and Adina Katz YUTORAH IN PRINT

Shoftim 5782

The Talmud and Nixon's Tapes

Rabbi Dr. Norman Lamm z"l (Originally delivered September 1, 1973)

Now that the highest courts in the land are studying the problem of President Nixon's refusal to surrender the famous tapes, it is timely to inquire what other systems of law have to say about this historic confrontation between the executive and the judiciary. Can any wisdom be gleaned from the Hebrew tradition, one of the main streams that feed into Western culture and civilization?

The Mishnah, the Jewish legal code redacted by Rabbi Judah in Palestine during the early part of the third century, teaches that a king may not judge and not be brought to trial; others may not testify against him and he may not be made to testify concerning others. The Talmud (the Babylonian commentary and extension of the Mishnah) limits this law to "Israelite Kings," i.e. those who were not of Davidic descent. Kings of the House of David, however, are subject to judgment and may be compelled to testify.

The Talmud then concludes that fundamentally the law requires that the king should submit to judgment and testimony, but that an exception was made in the case of the later Jewish Kings ("Israelite Kings") because of a historic incident. In the first century of the common era Jannai was King, and the head of the Sanhedrin (supreme court) was the fearlessly independent Simeon ben Shetah. Now it happened that a servant of the King had been accused of committing murder. According to the law, the master had to be present during the trial of the slave. Jannai obeyed, and presented himself in court. But then Simeon informed Jannai that the law required the master to stand while the trial was in session. Aware of the sensitivities involved, Simeon hastened to assure the King that "you are not standing before us, but before Him who by His word created the world." Here Jannai drew the line and hurled a challenge at Simeon: "not when you say so, but only when

your colleagues will tell me so." The shrewd monarch had made the right move. Simeon turned to his right, and his colleagues "buried their heads in the ground." He looked to his left, and his fellow judges did likewise. Defeated, Simeon was furious and called down the wrath of heaven upon his colleagues who, because of a combination of political calculations and cowardice, had subverted their eminent calling. The text closes with a legend-like flourish: the angel Gabriel came down, smote them on the ground, and they died.

What the Talmudic sages are teaching is that in a healthy society the executive is not above the law. The Chief magistrate of the land must honor a summons to trial and must offer testimony upon the order of the courts. It is only when the judiciary itself is bankrupt and shows a failure of nerve in its confrontation with the executive head of the government that the "separation of powers" becomes complete and all interaction between the various branches ceases. With an overpowerful king and an apprehensive and politically motivated judiciary, better abdicate all jurisdiction over the king and attend to other pressing matters, lest the courts be completely destroyed or corrupted.

Scholars agree that the story of this confrontation is factual. Some historians, however, maintained that the actual story took place some thirty years later, with a different cast of characters. Making this change brings the Talmudic tale somewhat into conformity with the reports by the historian Josephus. It is important to note the identity of the people involved in the Josephus story, because it adds another element of contemporary relevance. Instead of Simeon, Josephus talks of Sameas (Shemayah) as the head of the Sanhedrin. In place of Jannai, he writes of Hyrkan. And instead of an anonymous

“slave” of the king, the accused is none less than Herod – later to become the detested King – brought up on charges of political assassination. Herod is likewise called eved, which in this case means not one who is technically a slave, but an advisor of the King. The opinion of the ancient Jewish Court was, thus, that the king is responsible for the malfeasance of his advisors in the pursuit of their official duties!

Historical analogies should, of course, never be driven too far, and ancient law can at most provide illumination, rarely detailed prescriptions, for complex modern political problems. Yet the sense of the Hebrew legal tradition is clear enough: no one, not even a king, is above the law, and if his advisors commit a crime he is responsible for them. And, as Judge Sirica reminded us in quoting Chief Justice Marshall and his landmark decision against President Jefferson, there is, after all, a difference between an American president and an English King. The argument applies a fortiori to our case: if a Davidic king, who was not democratically elected, must submit to the courts,

An Aspiration is a Joy Forever

Rabbi Joshua (The Hoffer) Hoffman z”l

After listing a number of prohibitions, including the reading of omens, sorcery, consulting the dead, and similar practices, Moshe tells the people, “You shall be ‘tamim’ with the Lord your God. For these nations that you are possessing listen to astrologers and diviners, but as for you, not so has the Lord, your God, given for you.” (Devorim 18:13-14). What does the word ‘tamim’ mean, in this context? Onkeles translates it to mean ‘complete,’ and explains the verse as saying that we should be complete in our fear of God. My teacher, Rav Aharon Soloveichik, zt”l, elaborated on this meaning, saying that we should follow God’s commands in all areas of life, whether they involve matters between man and God, man and his fellow man, or man and himself. Rabbi Avrohom Aharon Yudelevitch, who served as rabbi of the Eldridge Street shul in New York in the 1920s, gives many more examples, in his *Darash Av*, of the different areas of life that a person may carve out as places into which he allows God to enter, to the exclusion of other areas. Some people, he writes, allow God into their lives up until their pockets, but retain their possessions exclusively for themselves. Others allow God in up until their heart, but retain their

how much more so an American president! (Interesting coincidence: Simeon ben Shetah and John Marshall were both related, respectively, to Jannai and Thomas Jefferson.)

The Talmud is a continuation of the Biblical tradition. Deuteronomy commands the appointment of judges before the crowning of a king. “Judges” ruled in ancient Israel before the rise of the monarchy. This limitation on the political head of the government is not only for the good of the people, but for the good of the king himself: “Thus he will not act arrogantly toward his fellow countrymen or deviate from the commandments to the right or to the left, to the end that he and his descendants may reign long in the midst of Israel.” (Deut. 17:20)

Will America learn in time what the Bible and the Talmud knew ages ago? If the President is wise, he will obey the Courts, if necessary yield the tapes, and “reign long.” If he is not, the Congress will have to remind him “not (to) act arrogantly toward his fellow countrymen.”

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emotions for themselves. Yet others allow God’s presence to influence them only until their mouths, but say whatever they like. Although Rabbi Yudelevitch does not mention it, there is a verse in parshas Netzovim that helps illustrate this point. The Torah there tells us that “the matter is very near to you, in your mouth and in your heart to perform it” (Devorim 3:14). I once heard Rabbi Moshe Besdin, z”l, of Yeshiva University, explain this to mean that a person needs to serve God in all areas, with his mouth, his heart and with his hands. Although Rabbi Besdin offered this explanation in a different context, it can also help us explain our verse in accordance with the translation of Onkeles, as elaborated upon by Rabbis Soloveichik and Yudelevitch.

Rashi explains the word ‘tamim’ differently. He understands the verse to mean that, in contrast to the other nations, who turn to sources of divination in order to know what the future will bring and thereby prepare for it, we should walk with God with wholeheartedness and look ahead to him, placing our trust in him and accepting whatever comes upon us. By doing this, Rashi says, we will be with God, as His portion. Maharal, in his super-

commentary to Rashi, Gur Aryeh, explains that, according to Rashi, the verse, consisting of five words, should be divided into two parts. The first two words, ‘tamim tiheyeh’ - you shall be whole hearted - command us to trust in God, rather than turning to diviners to know the future. The next three words - ‘im Hashem Elokecha” - tell us that if we will be tamim, than we will be ‘with God,’ meaning, we will be His portion. Rabbi Eliyohu Meir Bloch, in his Peninei Da’as, explains that being God’s portion means that we will be close to Him and receive His blessing. He then goes on to say that there is a deeper meaning to the verse, as well. Although there is actually a dispute between Rambam and Ramban whether there is any substance to the kind of practices performed by magicians, diviners, sorcerers, and the like, Rabbi Bloch, based on some Talmudic passages, follows the opinion of Ramban and says that they do have some kind of power. However, says Rabbi Bloch, that power is limited, and ultimately in God’s control. A person who understands this and is ‘tamim,’ placing himself totally under God’s control, realizing that He is the ultimate force in the universe, will not be subject to the limited power that these agents have.

Rav Ya’akov Moshe Charlop, who was a talmid/chaver, or close disciple, of Rav Avrohom Yitzchok HaKohein Kook, whose 69th yohrzeit occurs this Friday, the third of Elul, adds a further dimension to our understanding of the commandment to be ‘tamim’ with God. He says, in his Mei Marom to parshas Shoftim, that the practice of divination, sorcery, and the like bespeaks a desire to know the future, rather than dealing with the present. Those who engage in these practices, he says, are interested in results,

rather than in the process of attaining something of value. However, the approach of the Torah is to savor the present, to appreciate the process one goes through in achieving a worthy goal. It is, indeed, through the process that we can connect to God. While a goal may be finite, the aspiration towards a goal is never ending. In the words of Robert Louis Stevenson, an aspiration is a joy forever. The Chofetz Chaim, in a somewhat similar way, explains a passage included in the ‘Hadran,’ the paragraph one recites after the completion of a tractate of Talmud. That passage reads : ‘ We toil and they toil. We toil and receive reward, and they toil and do not receive reward.’ The Chofetz Chaim explained that in secular endeavors, only results count. If a worker toils at a job and does not deliver the expected product, he will not receive his pay. However, in the realm of Torah, the process itself has its own importance, and brings reward, even if one does not, in the end, succeed in fully understanding what he has studied. Since Torah, as God’s word, has unfathomable depth, learning any part of Torah is an unending process, through which we can constantly grow and deepen our connection to God. Rabbi Charlop writes that this approach, of emphasizing the present, and the process we go through in striving for a spiritual goal, applies to our spiritual efforts during the month of Elul, as well. Although the process of introspection we go through during this month is done in anticipation of the judgment that will occur on Rosh Hashonoh, the process itself, says Rabbi Charlop, by strengthening our connection to God, may ultimately have more importance for us than any anticipated future result of the process.

The Power of One?

Rabbi Assaf Bednarsh (Adapted by a Talmid from a shiur given on August 28, 2014)

At the beginning of this week’s Parsha, the pasuk says: *Lo sakim lecha Matzeivah asher sonei Hashem Elokecha*. You are not allowed to make a single pillar to pour oil on or something similar. And Rashi asks: What do you mean? We find that all the Avos made a Matzeivah. So if it was good enough for the Avos—and are we not supposed to emulate them—what’s wrong with making a Matzeivah? And Rashi gives his answer.

However, Shem Mi-Shmuel has a beautiful, more Chasidish explanation. He points out that in contrast to a Matzeivah that we are enjoined here not to use, Hashem

commands us to build a Mizbe’ach. What’s the difference between the two? They are both made of stones. However, the difference is clear. Matzeivah is one stone, while a Mizbe’ach consists of several stones. Eliyahu ha-Navi built a Mizbe’ach on Har ha-Karmel made of twelve stones—corresponding to the number of Shivtei Yisroel. What meaning did he want to convey by doing that? I am not here for myself. I am not here because I am so great and I am G-d’s favorite. No. It’s about Klal Yisroel. The ikar is the klal—all of us together make something. And he says that’s the answer to Rashi’s question. When Avraham

appeared on the scene, he set himself apart from the whole world. He was on one side of the river, so to speak, while the entire world remained on the other side. That's why he is called Avraham ha-Ivri. He was a yachid. And a yachid must be a monolith, like a Matzeivah—a big stone that stands by itself. Yitzchak also was a yachid. And so was Yaakov. Therefore, for the Avos, making a Matzeivah was appropriate. But we no longer live in the era of the Avos. We are part of a tzibur, part of a nation. It would be the height of arrogance for someone nowadays to think that

they are the only one who knows the truth and worships Hashem properly, like Avraham Avinu. That's what the pasuk means when it says *asher sonei Hashem Elokecha*. Now that we are Klal Yisroel, we must serve Hashem together. I am responsible for doing my part, but only all of us working together, in the spirit of a Mizbe'ach, can achieve a complete Avodas Hashem. And anyone who thinks that their Avodas Hashem is good enough by themselves is acting abhorrently and will not find favor in the eyes of Hashem.

Understanding and Respecting Rabbinic Authority

Rabbi Yossi Goldin

From my experience in the world of rabbinics and education, I have learned that many kids (particularly teenagers) struggle with the concept of Rabbinic authority. While many young men and women are able to accept the existence of G-d and the veracity of the Torah, they have trouble with the wide-ranging authority given to the Rabbis, and with the many Rabbinic expansions of Jewish law. Many get the sense that the Rabbis have over-extended the law through their various rules, causing Yahadut to feel very constricting.

The truth is that these questions and frustrations are not limited to teens. Many adults express them as well. Who are the “Rabbis”, and what gives them the authority to establish these rules and laws?

The initial answer is that Rabbinic Authority comes from G-d Himself- as Hashem declares in this week's parsha (17:11), “*According to the Torah that they will teach you and according to the judgement that they will say to you, shall you do; you shall not turn from the word that they tell you, right or left.*”

While the exact parameters of this authority- who it applies to, what exactly the authority entails- are the subject of debate, what is clear from these pesukim is that G-d gives tremendous power to the Rabbis and involves them in the halachic process- to the point that the concept of Rabbinic Authority is itself Biblical in nature.

This fact has a few practical ramifications- one of which is expressed in a Gemara (Shabbos 23a) discussion concerning the bracha recited prior to the performance of a Rabbinic mitzva. The gemara asks: How can we recite the standard birkat mitzvah on Rabbinic mitzvot? The standard text includes the phrase “*You (Hashem) have*

sanctified us with Your Mitzvot and commanded us...” These mitzvot, however, were not commanded to us by G-d, but rather by the Rabbis? The gemara answers by quoting our parsha. G-d commands us to listen to the Rabbis- and therefore, it is wholly appropriate to use the term “*that You commanded us*” in the bracha on Rabbinic mitzvot as well.

Why does G-d give so much import and power to the Rabbis?

A full discussion and history of Rabbinic Authority is beyond our purview, but I think it would be valuable for us to identify and understand a few foundational points. The concept of Rabbinic Authority is the bedrock of the Oral Law. In contrast to the Written Torah, the Oral law was passed down orally for generations, which inherently created a reliance on the authority of our great leaders to accurately pass down its contents. Additionally, and perhaps more fundamentally, built into the Halachic system is the need for the Rabbis to carry out two very important functions within the system.

The first function is Rabbinic interpretation. The written Torah contains many commandments and laws that are not fully explicated in the text itself- and the Rabbis are tasked with the interpretation of the Torah's meaning, through the use of tools transmitted to Moshe. For example, the Torah repeatedly states that on Shabbat it is forbidden to perform “*melocho*”. The Torah, however, does not explain what “*melocho*” means. The all-important interpretation and definition of this term is left to the Rabbis.

The second function is Rabbinic legislation. This refers to the ability of the Rabbis to establish new laws as a way of protecting and safeguarding the laws of the Torah. The imagery often given is that of a fence that is build around

a dangerous location, to ensure that people do not come too close. Based on their unique intuition regarding the nature of people, and out of a deep desire to ensure the commitment of Am Yisrael to the commandments of the Torah, the Rabbis create a “fence” around the mitzvot through Rabbinic laws. Such laws are not created arbitrarily- they are developed with tremendous thought and consideration.

Although the initial, and fundamental, level of Rabbinic interpretation and legislation was established by the time of the Mishna and Gemara, Rabbinic interpretation has continued throughout the centuries until today. As new realities, circumstances, and technologies present themselves in each generation, Rabbinic leaders are tasked with the interpretation and application of the Halacha to the contemporary issues of their day.

With that in mind, we can better understand the crucial role that Rabbinic Authority plays in the world of Halacha. Absent G-d Himself appearing to interpret and apply the Torah to our modern realities, the halachic system itself requires that authority be given to the Rabbis to play that role. They must guide us in applying the Torah to our world. Such Rabbinic Authority enables Halacha to continue to be both timeless and timely, eternal and continually relevant to all generations.

Of course, this does not mean that every person who gets semicha has the right to establish whatever laws he wants, nor does it mean that all Rabbis are infallible. Originally, the Rabbis who were given such authority were those who populated the pages of the Mishna, Gemara, Midrash, early Rishonim- and then the authority was passed to the few Torah giants of each generation who amassed enough Torah knowledge and mastery to make such important decisions. All other Rabbinic figures in our communities are simply sources of information regarding the law, not arbiters of the laws themselves.

Given all of this, part and parcel of the tradition that

we pass down to our children as parents must include a recognition and respect for Rabbinic Authority, and its place within our tradition. As always, much of what our children will learn about this topic will depend on what we model for them.

1) What is our attitude towards Rabbinic commandments in general? How do we approach Rabbinic law? Do we work hard to find loopholes around these laws, or do we make negative comments regarding their importance, relevance and legitimacy? As we have clearly seen, the Torah expects complete fealty to Rabbinic law, even at times where a particular Halacha may be challenging or inconvenient.

2) How do we relate to Rabbis in our shuls and schools- and what do we model concerning those relationships to our kids? While, as we mentioned, most of the Rabbis and educators in our shuls and schools are not those who are given the far-reaching authority by the Torah, our shul Rabbis and school Rebbeim are the people who represent Judaism to ourselves and our kids. When we speak derisively or condescendingly about our community Rabbi or our children’s Rebbe- it inevitably changes the way that we look at our Judaism, and certainly has an impact upon our children’s view of the Torah that these Rabbis represent. While we should always encourage our children (and ourselves) to be respectful to people in authority, it is even more crucial that this respect be shown when the authority figures involved represent our Torah.

In this week’s parsha, Hashem introduces us to the world of Rabbinic Authority- a concept crucial to the Oral Law and to the development and application of Halacha over the generations. Although this topic can sometimes be a source of frustration and resentment for ourselves and our children, we must strive to gain a better understanding regarding the importance of Rabbinic Authority within Judaism, and properly pass that knowledge and respect down to our children.

The Vital Rebbe-Talmid Relationship

Mrs. Michal Horowitz

In this week’s parsha, Parshas Shoftim, the Torah commands the Bnei Yisrael to establish Arei Miklat, cities of refuge, where one who killed someone accidentally would run to seek safety and refuge from the go’el ha’dam, the redeemer of blood, of the deceased

person. As long as the accidental killer remained in the Ir Miklat, he could not be harmed, nor could his life be taken, by the go’el ha’dam.

Three Cities of Refuge were established in Eretz Yisrael proper, and three others on Ever La’Yarden (the eastern

side of the Jordan River) in the territory of the tribes of Reuven, Gad and half the tribe of Menashe.

The pasuk tells us: וְהָיָה דְבַר הַרְצִיחַ, אֲשֶׁר-יָנוּס שָׁמָּה וְחָי: אֲשֶׁר יִכֶּה וְהָיָה לוֹ מִתְמַל שְׁלֹשָׁם אֶת-רֵעֵהוּ בְּבִלְי-דַעַת, וְהוּא לֹא-שָׂנֵא לוֹ מִתְמַל שְׁלֹשָׁם - *and this is the matter of the killer who shall flee there and he shall live: One who will strike his fellow without knowledge, and he did not hate him from yesterday or before yesterday* (Devarim 19:4).

What do we learn from the words וְחָי, “and he shall live”?

Writes Rabbi Shlomo Zalman Bregman in Short and Sweet on the Parsha (Feldheim), “The words ‘and he shall live’ appear here and elsewhere in the Torah in regard to the accidental killer, and in reference to this phrase the Gemara (Makkos 10a) expounds these words to mean that if a disciple is exiled to a City of Refuge, his teacher is exiled along with him. This is because we must provide him arrangements that enable him to ‘live’ - as the verse says: אֲשֶׁר-יָנוּס שָׁמָּה וְחָי, *that he shall flee to there and live* - and a student cannot survive without his rebbe! In fact, the Ritva, and many others, say that this halacha applies even if there are many other great talmidei chachamim and rabbonim available with whom one can learn in the City of Refuge. Because a talmid cannot survive without his rebbe; and a student cannot survive without his teacher.

“A fascinating source that teaches about the importance of the rebbe-talmid relationship is found in Pesachim 112a. R’ Shimon bar Yochai came to visit his rebbe, the great R’ Akiva when he had been imprisoned for teaching Torah. R’ Shimon bar Yochai asked R’ Akiva, his rebbe, to teach him Torah, and R’ Akiva said that he could not do so at this time. R’ Shimon bar Yochai replied that if R’ Akiva would not teach him, he would go to his father (Yochai) and they would inform on him to the government officials, and get him in further trouble!

“The Alter of Slabodka (Rav Nosson Tzvi Finkel, zt’l, 1849-1927) asks a question on this Gemara. Yes, R’ Shimon bar Yochai wanted to learn more Torah, but how could he speak to his own rebbe with such seemingly blatant chutzpah?

“The Alter answers that R’ Shimon bar Yochai did no wrong; in fact, he did the right thing and spoke well. He was trying to tell R’ Akiva that everything he had become in life was through the rebbe-talmid relationship he had with R’ Akiva, and without it, R’ Shimon bar Yochai could envision himself spiritually falling backwards, to the point where he could one day potentially become so corrupt he would become the lowest of the low, a moiser (one who informs on his fellow Jews to the foreign powers and

government rulers).

“This is what he meant by his threat to R’ Akiva.” If you don’t teach me, rebbe, R’ Shimon bar Yochai was saying, I may fall so low and so far I may even become a person who would (potentially) inform on another Jew!

“In asking R’ Akiva to teach him,” and issuing an ultimatum, “it was a plea to save him from spiritually backsliding.”

As to why R’ Shimon bar Yochai could not simply learn from a different Torah teacher or leader of that generation? “The answer is the same yesod - a student cannot survive without his own rebbe” (Short and Sweet on the Parsha, p.479-480).

So integral is the importance of the rebbe-talmid, teacher-student, relationship to our survival as a nation and the transmission of the mesorah, that even a person exiled to the City of Refuge must have his rebbe join him!

In regard to the rebbe-talmid relationship of Rav Moshe Twersky zt’l HY”D (rebbe at Yeshivas Toras Moshe, J’lem; eldest grandson of R’ Joseph B. Soloveitchik, zt’l; murdered in the Har Nof terror attack), his talmid, R’ Yehoshua Berman was maspid and said, “Rebba was incredibly devoted to his talmidim. He learned privately with so many talmidim over the years, in addition to the innumerable shiurim that he delivered and the night sedarim that he spent answering questions. One time during shiur, after explaining a certain point, rebbe said, ‘Are there any questions? Now is the time to ask!’ He wasn’t just teaching Gemara. He was teaching talmidim. His concern was they they should understand. If they didn’t, he would take the time to explain it again ... and again, if necessary, even if that meant that he would not get to the next topic that he wanted to delve into that day.

“... Rebbe never brushed off a talmid’s question ... to brush off a question as being silly or irrelevant - never. His respect and concern for his talmidim was just too great for that ... His concern for his talmidim was all-encompassing ... He was an absolute giant in Torah scholarship, but what a gentle giant he was!” (Living On, Feldheim, p.91-93).

Chazal teach us: עֲשֵׂה לָךְ רַב - *establish for yourself a rav* (Pirkei Avos 1:6). Let us each appreciate the relationship we must establish with our rabbeim, rabbonim and teachers, and the vital necessity of learning Divrei Elokim Chaim from their wisdom, Torah erudition and guidance, so that we may climb ever higher in all areas of our avodas Hashem.

Disappearing Role Models

Rabbi Moshe Taragin

Man was created free, but freedom can be brutally stifled or violently taken from him. Without stable government, society quickly disintegrates into chaos and anarchy. To prevent a collapse into lawlessness and mayhem, Hashem vested human beings with an innate “political instinct”, and empowered them to construct governments capable of administering law, protecting human dignity and advancing general welfare. Crafting a moral society, governed by the rule of law is the will of Hashem.

Thousands of years ago, our ancestors discovered a “one God” but were trapped in a tumultuous world of cruelty and barbarism. At best, societies were managed by strong-fisted tyrants who offered security and stability at the bitter cost of individual liberty. In most instances though, society degenerated into unruly ruckuses of cutthroat competition and vicious barbarism. Humanity was not yet prepared for organized systems of government, founded upon the rule of law while protecting human liberty.

Societies of Sinai

Several centuries after the first discovery of Hashem, we stood beneath the mountain of God and received the His directly revealed will, including a blueprint for a society of law and order. Even in our temporary desert camps, we fashioned a rudimentary network of courts braced by agencies of law enforcement. The Torah documents several instances of criminals who were prosecuted and sentenced in the desert. In the second year after the Exodus, both a shabbat violator and a blasphemer were sentenced to death. They weren't guillotined by a rabid mob, but afforded due process and an orderly trial for their crimes. Thirty-eight years later, land was expressly allocated for five women whose father had deceased. Additionally, several tribes were awarded “extramural land” in the fertile pasturelands of the East bank of the Jordan. In the aftermath of Sinai, a society driven by the rule of law was gradually coalescing. Lawlessness was slowly being replaced by civility, violence and aggression were ceding to common codes of right and wrong. The will of Hashem was becoming manifest in the human socio-political sphere.

Finally, it was time to enter the land of Israel, and it was obvious that a civil society governed by rule of law was a

precondition to settling the land and to constructing a city of Hashem. In this light, the mitzvah to appoint judges in Israel, delineated in parshat Shoftim, comes as no surprise.

Regional Courts

What is surprising is the geographical sweep of these appointments. The very first verse of Shoftim instructs the appointment of judges in every “gate” - b'chol she'arecha. At least in Israel, panels of magistrates were established in every region and in every city. From a logistical standpoint it is odd that every village and every city contains a tribunal of qualified judges. Wouldn't it be more economical and more efficient to station courts in major population areas, and require litigants to travel to these regional courts? Why must judges be positioned in every single region of Israel?

Apparently, the position of a judge involves more than just judiciary or legal duties and, evidently, judges provide a broader benefit to society. Maimonides describes the “expanded” function of judges: to encourage religious observance, correct religious malfunction, inspire religious consciousness, and uphold decrees and injunctions. In short, a judge boosts religious behavior, both through direct enforcement and, additionally, by setting an example of religious excellence. Situating judges in every city assures a national network of local and accessible religious role models.

Value of Role Models

Religious growth, and moral challenges in particular, can be very confusing. In the heat of a moral or religious crisis, theoretical notions of right and wrong are often ineffective. Our religious conviction and moral clarity often melt in the heat of the moment, when we face a confusing or overpowering religious predicament. My Rebbe and mentor, Rav Aharon Lichtenstein encouraged us to navigate religious challenges by imagining how our role models would respond to the same situation. Imagining the response of a role model is more far compelling than abstract calculations of right and wrong. Religious excellence depends upon real life examples of people who, by their own outstanding behavior, call us to higher ground. Their influence inspires us to lead “driven lives” and prevents self-complacency and excessive self-satisfaction from settling in.

Role models vs. Democracy

Where have our role models gone? In part, the culture of democracy has devalued the image of a role model. Democracy assumes political and economic equality. In the voter booth and the free marketplace every man stands equal. Political egalitarianism sometimes, incorrectly implies that every value and every moral position is also created equal.

The pre-democratic world was forged upon rigid political and social hierarchies which repressed human freedom and were often governed by immoral or abusive leaders. However, a world built upon hierarchy suggests a hierarchy or pyramid of values, in which certain values are ranked “higher” than others. By contrast, egalitarian democracies imply the absence of any absolute or superior moral value, thereby reducing the impact of role models. Why should we be inspired by another person if, fundamentally, everyone is equal? We have fallen into a sad state of self-arbitration in which every “citizen” appoints themselves as sole morally authority. Moral relativism and moral self-arbitration are the bastard children of democracy.

The fear of trust

Additionally, our culture has become jaded by the very concept of a role model. We have been exposed to too much hypocrisy from public figures, and we have been repeatedly victimized by corrupt and dishonest leadership. Inspiration from role models feels dangerously close to personality cults, and we all know the damage inflicted by excess veneration of charisma. We have learned to distrust because, all too often, our trust in others has been betrayed. Our public trust has been burned too often, and we have taken refuge in the relative safety of distrust and suspicion.

Closer to home, in the Jewish world, we have suffered through numerous scandals in which religious personalities have committed horrible crimes. In response, we have legislated strict guidelines to protect against possible abuse and to make our leadership and communal management more transparent.

We Never Stop Growing

Rabbi Efreim Goldberg

The Torah forbids erecting a מצבה, a monument, for God. Rashi explains that as opposed to a מזבח (altar), which is built from many different stones piled on top of one another, a מצבה consists of only a single

What have we lost?

All these steps are absolutely vital to curb the terrible abuse we have encountered, but just the same, it is fair to consider what we have lost in the process? For the sake of “transparency” have we rendered our leadership “invisible”? Are we so suspicious and jaded that we have lost inspiration? Regrettably, for many, the very phrase of “role model” is abrasive or even odious.

Perhaps human beings in search of meaningful lives, are in greater need of actual role models than we assumed. Perhaps religious excellence is so arduous that it is best achieved by simulating the conduct of others, rather than solely through personal development. Role models take vague notions of religion and morality and present them in more vivid form, in ways which are more concrete and compelling. Have we forfeited our ability to be inspired by the lives of others? Have we swung too far?

A patchwork

In an ideal world we are exposed to surpassing people whose lives display a sweeping range of virtues and values. My teacher, Rav Aharon Lichtenstein, modeled the entirety of religious and moral experience, providing a ‘gold standard’ in almost every imaginable area of religious endeavor. Sadly, those types of role models are becoming few and far between.

Perhaps one solution to our current dilemma is to decentralize role modelling. In lieu of great and sweeping personalities who showcase the entire range of values, we must be more appreciative of people who model specific values. We may not benefit from all-encompassing personalities, but we can be inspired by people who model select values or particular traits. We must be more receptive to being “inspire-able” and more conscious of the people in our lives who model desirable traits. We must also better balance our distaste for and fear of personality cults, with our need to be inspired by the lives of others.

stone. Originally, Rashi explains, in the times of the avos, it was perfectly valid to erect a מצבה to God. However, once the pagans adopted the practice of erecting מצבות for their gods, such structures became “detestable.”

What exactly is the problem with a מצבה? After all, the pagans had temples, altars and sacrifices, and we, too, are commanded to build a Beis Ha'mikdash and offer sacrifices on an altar. In fact, the Rambam, in Moreh Nevuchim, writes that God commanded us to build a Beis Ha'mikdash and offer korbanos specifically because Benei Yisrael had grown accustomed to this form of religious worship. Why, then, are מצבות considered inappropriate, and in fact something which God "detests"?

Rav Moshe Feinstein, in Derash Moshe, explains the symbolism of this command. An altar, as mentioned, consists of stones piled on top of one another, whereas a מצבה is simply a lone stone. Before Matan Torah, Rav Moshe said, all that was necessary was a simple מצבה, to be a generally good, decent person, without striving for more. After Matan Torah, however, we are expected to serve Hashem in a manner of a מזבח, continuously building. We are never to feel that we've accomplished enough, that just one "stone" suffices. Instead, we are to constantly seek to pile on additional stones, to reach for a higher level, to achieve more. A single-stone monument symbolizes stagnation and complacency, whereas the מזבח represents constant growth and progress. After Matan Torah, God detests complacency, the feeling of, "I've done enough." He wants us to continually move forward and add more "stones" to what we've already accomplished.

We might add that a מצבה is placed over a grave to

commemorate a departed loved one. After a person leaves this world, it is appropriate to erect a מצבה, to reflect upon what the person had accomplished during his lifetime. But while we are still alive, a מצבה is detestable. We need to always find more "stones" to add, further accomplishments to pursue.

This might explain the popular custom to place small stones on the מצבה when leaving a grave. We express that this individual has already completed his work in this world – but we haven't, and we are committed to building upon the foundations of what the deceased had achieved and had taught us. His work is finished – and we must now continue his work and reach for higher levels. We are to take his מצבה and turn it into a מזבח, adding more "stones," more achievements and more growth.

I once reached out to a young man and invited him to join our shul's learning programs.

"Nah," he replied, "my yeshiva years are done. I put in the time, I excelled in yeshiva, but now I'm finished."

This is a מצבה life, a life of complacency, of accepting mediocrity. What a tragedy it is for a person to remain stagnant, to stop his religious growth at the age of 20. What a tragedy it is for people to daven at 80 years old the way they davened when they were 18, and to understand the weekly parsha at 80 on the same level on which they understood it when they were in high school. We are to live a מזבח life, always seeking to progress and achieve more.

Judges and Officers in Our Homes

Rabbi Yehuda Mann

For the third time, the Torah tells us the laws of the accidental murderer (brought also in Bamidbar 35 and Devarim 4) and the need for him to go to one of the cities of refuge in order to be saved from a relative of the deceased who wants revenge.

In this parshah, the Torah adds another law that says that there is a need to "prepare the way." (Devarim 19:3) A mishnah (Makkot 2:5) explains that this is an instruction to establish special roads that lead to the cities of refuge, which will prevent the accidental murderer from getting lost and not finding his way to the city.

Rabbi Avraham Yeshayahu Karelitz ("Chazon Ish") raises this question: Why is it that the Torah gives a special commandment to help the accidental murderer to find the city easily, while there is no commandment to prepare

special ways to get to Jerusalem in order to help those who make a pilgrimage for every Jewish festival? The Chazon Ish gives a beautiful and educational answer it all depends on what we want to expose ourselves and our children to.

We, as parents and as educators, have an interest in exposing our children to positive figures, and at the same time we do not want to expose them to negative figures. The Torah wanted to provide us with the experience of seeing those who are going to perform a mitzvah to see those who are going to Jerusalem and hoping to experience a spiritual uplifting. For that reason, we don't want to help them find the way easily. We want them to come knocking on our doors, to enter our house and ask for directions, and at the same time we will show our children "Look, this person is seeking to do a mitzvah."

On the other hand, we don't want ourselves or our children to be exposed to accidental murderers. We don't want them to see a person who has blood on his hands and is careless about the lives of others. For that reason, we don't want him to approach us and ask for directions, and therefore we provide the murderer with clear ways to his destination.

Rabbi Chaim Yaakov Goldwicht (Asufot Ma'arachot Bamidbar pg. 72), discusses the Talmudic idea that any person who sees the sotah in her disgrace should then avoid drinking wine and become a nazir. (Sotah 2a) The simple reason is because we see that drinking wine may bring a person to commit adultery, and for that reason he should become a nazir and avoid wine. Rabbi Goldwicht then asks: why it is necessary to become a nazir in order to avoid wine? A person will do that naturally once he sees the disgrace of the sotah. He doesn't see her when she is enjoying the transgression, but rather he is seeing when she is being humiliated, disgraced and even in danger, so why is it important for him to go to an extreme and become a

nazir?

Rabbi Goldwicht explains that we learn from this that when a person is exposed

to a negative person, even when that person is suffering and seemingly in an unappealing situation, he subconsciously finds this person's conduct normal and legitimate. For that reason, the person who witnesses the sotah should become a nazir and prohibit himself from drinking wine.

That is our concern also with exposing ourselves and our children to an accidental murderer. He is now running for his life and is in grave danger, but once we see this thing and find it normal and legitimate, we might lose our sensitivity to careless bloodshed.

To conclude with the opening of our parshah: we need to place judges and officers in our gates. Perhaps, beyond the obligation to set officers and judges in the gates of cities, we should also place spiritual judges and officers in our homes in order to prevent ourselves from witnessing things that will cause us to lose our sensitivity.

Astrology, Witchcraft and Spiritualism in Judaism

Rabbi Ephraim Z. Buchwald

In this week's Torah portion, parashat Shoftim, the Torah describes the vital role of the prophet.

Speaking to the Children of Israel, Moses proclaims in Deuteronomy 18:15: *נְבִיא מִקִּרְבְּךָ מֵאַחֶיךָ כְּמוֹנֵי יָקִים לְךָ הַשֵּׁם*, *The L-rd, your G-d will raise up a prophet for you from the midst of your brethren, like me [Moses]. You shall listen to him.*

Although no subsequent prophet would ever rise to the rank of Moses, each generation will have their own "spiritual leader" who will serve, not so much as a predictor of the future, but as a spiritual teacher and religious guide.

The Torah, in Deuteronomy 13, already informed the People of Israel that the Hebrew prophets will offer signs and wonders. But signs and wonders are not sufficient to prove the veracity of a prophet's message. To protect the people from false prophets, the Torah warns the people that even if a prophet arises and offers predictions that come true, if the prophet attempts to seduce the people away from the word of G-d, he is clearly a false prophet-- signs and wonders notwithstanding.

Jewish history is replete with incidents of imposter prophets who claimed to speak in the name of G-d, but led

the people astray. Consequently, even before describing the role of the prophet, parashat Shoftim warns the people that magic, witchcraft and spiritualism are dangerous, and forbidden in Judaism.

The Torah warns in Deuteronomy 18:9, that when the Jewish people enter the land of Israel, they must not follow the abominable practices of the nations that reside there. It is strictly prohibited to cause a son or a daughter to pass through the fire, to practice divination, astrology, or to visit one who reads omens. Patronizing a sorcerer, an animal charmer, one who inquires of the Ov or Yidoni, or one who consults the dead is forbidden. The Torah informs the people clearly, that to follow these practices is an abomination in G-d's eyes. In Deuteronomy 18:13 scripture adjures the Jewish people: *תָּמִים תִּהְיֶה עִם הַשֵּׁם אֱלֹהֶיךָ*, *You shall be wholehearted with the L-rd, your G-d.* Clearly, the Torah is not at all supportive of, in fact is radically opposed to, the magic or spirituality of the ancients!

Yet there is little doubt that the ancient Israelites were influenced by astrology. The rabbis in the Talmud, Shabbat 156a, declare, that because Jews are under direct Divine

influence, אֵין מְזַל לְיִשְׂרָאֵל, that stars have no influence over the Jews. Despite these rabbinic pronouncements, strong traces of those beliefs are still to be found. The expression “Mazal Tov” which means literally a good star or orbit, is commonly used. A שְׁלִימָזַל --“shl’ mazal” is one who has no mazal, upon whom fortune does not shine. The Code of Jewish Law Yoreh Deah 179:1, finds it necessary to state categorically that Jews should not consult astrologers, nor should they cast lots to determine the future.

In light of the importance ascribed to astrology by the ancients, it is quite extraordinary that Maimonides, virtually alone in the Middle Ages, rejected belief in astrology. In a Letter on Astrology, written to the rabbis of Southern France, he distinguishes between astronomy as a true science, and astrology, which he deems to be sheer superstition. Many hundreds of years passed until the Western world came to the same conclusion. Maimonides boldly declares that in Judaism a person’s fate is determined by G-d alone, not by the stars.

Fascinating is the difference of opinion between

Maimonides and Ramban with regard to the efficacy of witchcraft and magic. As already noted, Maimonides completely denies any power to witches or witchcraft, whereas Nachmanides, in his comments on Deuteronomy 18:9-13, acknowledges that there may be powers that witches can employ. Nachmanides substantiates his position by referring to the story of the Witch of Endor (I Samuel 28). At the request of King Saul, the witch successfully raises the spirit of Samuel. When the prophet appears, he is terribly angry, proving that it is forbidden to disturb the dead. Maimonides, however, maintains that the Witch engaged in fraud, pure and simple, and that the vision was probably sleight of hand.

Rabbi Abraham Isaac Kook in a letter dated 1912, replies to a questioner on this subject as follows: “It is proper for a holy nation to cleave only to the L-rd, G-d of life.” Clearly, those who cleave to the “L-rd, G-d of life” should be concerned with the human relationship to G-d on this side of the grave, and not beyond the grave!

Understanding Eidim Zomemim

Rabbi Immanuel Bernstein

One of the unique sections in our parsha is that of eidim zomemim – the law regarding witnesses who plotted to convict someone, but whose testimony was impugned by other witnesses. The Torah states that the punishment that the first witnesses conspired to inflict on the defendant should now be given to them. The halachah stipulates that this law only applies when the second (impugning) set of witnesses say that the first pair were with them at the time they claim to have witnessed the person’s crime. If the second witnesses attack the first testimony in any other way, e.g. by saying that defendant was with them at that time, both pairs are considered suspect and the entire case is thrown out. (Makkos 5a) The halachah further states that this law only applies if the second witnesses come before the verdict is carried out, not if it has already been carried out. (Makkos 5b) Understandably, this second point has raised much discussion among the commentators. If we apply the law when the verdict has been issued but the punishment not yet carried out, how much more so should we apply it if the punishment was actually carried out!⁶

The Gemara itself (Bava Kama 72b) raises a basic

question regarding the entire concept of eidim zomemim: On what basis do we believe the second set of witnesses over the first? While according to the second set, the first testimony was false, according to the first set it was true! This should be like any other case where two testimonies conflict and we should be equally suspect of both sets!

Bringing all the above ideas together, R’ Dovid Zvi Hoffman, in his Commentary to Sefer Devarim, explains the matter as follows. In reality, it is always possible that witnesses have an ulterior motive behind their testimony. This could be either antagonism towards the person concerning whom they are giving testimony or alternatively, in a case where testimony has already been given to incriminate a person, other witnesses might be motivated to testify falsely in order to help the defendant evade punishment. Now, while generally we do not suspect witnesses of such motivations, in a case where two testimonies clash, such that that one set is definitely lying, we are forced to begin to think in this way. However, in an eidim zomemim case, while it is indeed possible that the first witnesses are testifying based on an ulterior motive, i.e., on account of a grievance that they have with the

defendant, it is unlikely that the second witnesses have a similar ulterior motive.

1. In terms of a possible grievance they may have with the first two witnesses, it is very unlikely that they have a similar grievance against two separate individuals.
2. In terms of trying saving the defendant, testifying that the first witnesses were with them is actually an ineffective way of doing so, since they leave open the possibility that additional witnesses may simply come and say that they saw the incriminating occurrence. If they wanted to save the defendant, they should have rather said that he was with them, thereby conflicting with any witnesses – present or future – who might then come and say that he had committed the crime.

Therefore, with plausible reason to ascribe an ulterior motive to the first witnesses, but no such basis to ascribe such a motive to the second, we believe the second set over the first. Indeed, it is for this reason that the law of eidim zomemim applies only if they say that the first witnesses were with them. If they say the defendant was with them, we do not believe either set, for the second set are now also suspect of lying to protect the defendant, as surely as the first set are suspect of trying to incriminate him. Moreover, this also explains why the law does not apply if the first set actually succeed in implementing the penalty against the defendant; for at this stage, we now suspect that the second set have a grievance with both of the first witnesses – namely, for incriminating their friend, and hence, the testimonies of both sets of witnesses are equally suspect!