

Torah Talk—מאמרי תורה



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Parashat Shoftim
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פרשת שופטים
ז' באלול תשע"ו

Torah Reading: *Devarim* (Deuteronomy) 16:18 -21:9

In this *parasha*, Moshe reviews the justice system for the Bnei Yisrael. Moshe talks about the limits future kings should have on their possessions and explains that the *Kohanim* [priests] and *Levi'im* [Levites] should not be paid and should survive on donations from the people. Finally, Moshe explains the laws of warfare.

The system of checks and balances that is familiar to us today in many areas of government and jurisprudence originated with the ancient Israelites. Chapter 17, verses 18-20 tells us:

וְהָיָה כְּשִׁבְתּוֹ, עַל כִּסֵּא מַמְלָכְתּוֹ--וְכָתַב לוֹ אֶת-מִשְׁנֵה הַתּוֹרָה הַזֹּאת, עַל-סֵפֶר, מִלְפָּנַי, הַכְּהֹנִים הַלְוִיִּם. וְהָיְתָה עִמּוֹ, וְקָרָא בּוֹ כָּל-יְמֵי חַיָּיו--לְמַעַן יִלְמַד, לִירְאָה אֶת-ה' אֱ-לֹהָיו, לִשְׁמֹר אֶת-כָּל-דִּבְרֵי הַתּוֹרָה הַזֹּאת וְאֶת-הַחֻקִּים הָאֵלֶּה, לַעֲשֹׂתָם. לְבִלְתִּי רוּם-לְבָבוֹ מֵאַחֲיוֹ, וּלְבִלְתִּי סוּר מִן-הַמִּצְוָה יְמִין וּשְׂמָאוֹל--לְמַעַן יֶאֱרִיד יָמָיו עַל-מַמְלָכְתּוֹ הוּא וּבָנָיו, בְּקֶרֶב יִשְׂרָאֵל.

It will be when [the king] sits on the throne of his kingdom and he writes for himself a copy of this Torah in a book before the priests and the Levites. And it will be with him and he will read from it all the days of his life in order that he may learn to fear Hashem his God, to fulfill all the words of this Torah and these statutes to do them. So that he does not elevate his heart above his brethren and so that he does not turn away from the commandment right or left so that he may lengthen the days of his kingdom, he and his sons in the midst of Yisrael.

Why did the king need to keep the Torah with him? According to the RaN (Rabbeinu Nissim of Gerona, 1320-1380), the practice served to maintain a system of checks and balances.

As we learn later in the *parasha* (19:15-21), the *Beit Din* [Rabbinical¹ Court] system featured many strictures which significantly decreased the likelihood of someone being convicted of a crime. Here is a small sampling of these rules as outlined in the Babylonian Talmud *Masechet* [Tractate] *Sanhedrin*: there had to be two witnesses, and those witnesses needed to agree on every detail of the crime. They could not be related to each other, to the perpetrator, or to the victim. The perpetrator had to have been warned of the consequences of his or her actions, and had to have repeated back that the warning was understood. As a matter of fact, it was so difficult to convict someone that the Talmud (Mishnah *Makkot* 1:10) says, “סִנְהֶדְרִין הַהוֹרְגִת אֶחָד בְּשָׁבוּעַ נִקְרָאת חוֹבְלָנִית – A *Sanhedrin* [Jewish Supreme Court] who convicted someone once in seven years is called destructive.”

We would think that given the difficulty of securing a conviction, there would have been anarchy in Israel, as everyone would have known that they would not be made to pay for their crimes. Therefore, there was a second system of courts called *mishpat hamelech*, the king's court. In *mishpat hamelech*, none of the above rules (or the other restrictive procedures mentioned in the Talmud) applied. The king sat as judge and jury and adjudicated cases to the best of his ability. However, the *Sanhedrin*, the high court, could overturn the king's ruling if its members thought it departed from Jewish law. This is why the king needed to keep the Torah with him always, as he would refer to it before or during the adjudication of a case. A case could be taken over by the king's court at his will, but the *Beit Din* could overturn the verdict of the king's court based on Jewish law. So, through these checks and balances, an equitable and fair legal system was created in the nascent land of Israel. Of course, this system was not without its failings, and it ceased to exist with the fall of both the kingdoms of Israel and Judah and with the dissolution of the *Sanhedrin*.

¹ The word “rabbinical” is actually an anachronism, since “rabbis” as we know them did not exist until just before the destruction of the Second Temple in 70 CE. However, the *Batei Din* [courts] were run by those who were steeped in the knowledge and traditions of both the written Torah and the oral Torah.

This is an example of the careful thought that went into the societal structure of ancient Israel. The king had power, and the rabbinical² judges had power as well, and each one kept the other one in check.

Shabbat Shalom.

For Discussion:

- How did the *Beit Din* contribute to maintaining order in the land of Israel?
- How did the *mishpat hamelech* contribute to maintaining order in the land of Israel?
- What do you think is the fairest and most certain way to solve disputes and to make sure people don't commit crimes?

² See previous note.