

The Parameters of Choice & G-d's Love for His Children

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Rabbi Yosef Kalatsky

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1. The Rabbinic courts present their query to the High Court of Israel when they have an irresolvable halachic issue.
2. Once The High Court offers clarification or rules on the issue all courts are bound to their ruling.
3. One is forbidden to deviate from the ruling.
4. Even If their ruling seems to be preposterous all are bound.
5. Rambam in Laws Of Repentance: As there is illness of the body there is illness of the soul.
6. The Prophet before the destruction of the First Temple says, "They refer to light as darkness and darkness as light."
7. Their understanding of truth was totally distorted.
8. The High Court of Israel is referred to as the eyes of the people.
9. Malbim: When G-d created Man, He situated the eyes on the highest part of the body to maximize on his ability to see.
10. The Sages of the Jewish people are likened to the eyes of the people.
11. They see and perceive what the ordinary person does not.
12. If they tell you that your left is your right, it is only due to your distortion of truth that you see it as your left.

Unswerving, Despite Life's Vicissitudes

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1. There is a Positive Commandment to be wholly faithful with G-d.
2. The nations seek out soothsayers and other mediums to know future events.
3. Gemara: A Jew must bless G-d whether he experiences good fortune or the contrary.
4. Ramchal: G-d created man to be a beneficiary of the ultimate good.
5. If one is able to internalize this reality, one will be able to weather the storms of life.
6. One will be fully trusting, not needing to know what tomorrow will bring.
7. G-d gave us prophets to inform and guide us in our lives.
8. Today, we no longer have prophets; we are guided and directed by the Torah itself.

Weekly Torah Commentary Series: Shoftim



The Parameters of Choice & G-d's Love for His Children

Moshe's Areas of Sacrifice

Torah: "Judges and officers you shall appoint for yourself..." The *Torah* could have stated, "Judges and officers shall you appoint..." What is the significance of the words "for yourself?"

Midrash: "The words 'for yourself' teach us that the judicial system of the Jewish people because it has relevance to *Moshe* identifies with him. It is because the judicial system (justice) is one of three areas for which *Moshe* had sacrificed. *Moshe* had sacrificed for the sake of *Torah*. As it states, 'He was with G-d (in heaven) for forty days and forty nights...' Since he sacrificed for the acquisition of the *Torah*, the *Torah* identifies with him, as it is written in *Malachi*, 'You should remember the *Torah* of *Moshe* My servant.'"

Why is *Moshe's* being in heaven for forty days and nights considered to be sacrifice? It is possible to

say that the basis for his sacrifice is, as the *Gemara* in Tractate *Shabbos* tells us, that when *Moshe* ascended to heaven to be receive the *Torah* by G-d, the angels wanted to consume him with the vapor their mouths. *Moshe* became overly frightened. G-d told him, 'Take hold of My Heavenly Throne and you would be protected.' We see from this that the setting in which *Moshe* was overwhelmingly terrified.

In addition, one could say that *Moshe's* exceptional sacrifice was as *Chazal* tell us every day after *Moshe* was taught the *Torah* in its entirety, he would forget everything that he learned. This experience repeated itself for forty days. Only after the fortieth day did *Moshe* retain everything that he was taught. It would seem that *Moshe* must have experienced a deep sense of inadequacy and disappointment that he was not able to retain the *Torah* that he was taught by G-d. Perhaps this suffering would be considered the sacrifice that *Moshe* had made for the acquisition of *Torah*.

It is clearly indicated by the *Yalkut* that the true sacrifice of *Moshe* when receiving the *Torah* is regarding his one personal state of being.

Yalkut: "What is the significance of *Moshe* informing the Jewish people that he did not eat bread or drink water when he was in heaven? *Moshe* was telling them, 'Just as I sacrificed my fat and blood for the sake of the acquisition of *Torah*, so too must you give up of your physicality to have the capacity to acquire the *Torah*.'"

Midrash: "In addition, *Moshe* sacrificed for the sake of the Jewish people. As it states (after the sin of the Golden Calf), 'If You (G-d) will not carry their sin You should obliterate my name from Your book (the *Torah*).' Thus, the Jewish people identify as *Moshe's* people, as it states, 'Go down because your people have become corrupted.'"

One would think that *Moshe's* sacrifice on behalf of the Jewish people was that he asked to be eliminated from a text that is eternal, which is the *Torah*. However, *Sforno* explains that *Moshe* was willing forfeit all of his merit and spiritual accomplishments for the sake of the Jewish people so that they could continue to exist. After the sin of the Golden Calf, they were classified as "evil," thus deserving to be destroyed.

Moshe, through his transfer of merit to their spiritual account, would sway the balance to the point that their merits would outweigh the sin of the Golden Calf, thus they would not be destroyed. Their classification who be "righteous." He was willing to relinquish his own personal eternity for the sake of the Jewish people. After giving his merit to the Jewish people he was willing to remain in a state of worthlessness because he would have no merit or accomplishment to his name.

Midrash: "The judicial system identifies with *Moshe* because he sacrificed himself for the sake of justice. As it states, 'He had killed the Egyptian and buried him in the sand.'" When *Moshe* witnessed an Egyptian beating a Jew, he killed him for the injustice that he was perpetrating. When *Moshe* killed the Egyptian for his unconscionable behavior, it was without considering the consequences and ramifications of his decision.

Moshe did not react to what he had witnessed out of anger, but rather as a judge rendering a decision

to put the defendant to death. His action was the equivalent of the *Sanhedrin* condemning a person to death. As it states, "(*Dasan* and *Aviram* had said) Who appointed you... a judge over us?" It was because of his sacrifice for the sake of justice that the appointment of judges identifies with him. As it states, "...his (*Moshe*) laws upon Israel." Although *Moshe* understood that there was a possibility that he would need to flee Egypt for an unknown length of time and what his predicament would be, it did not interfere with his decision to kill the Egyptian because his action was for the sake of justice.

The Nuances of the Judicial System

Torah: "Judges and officers you shall appoint in all your cities..." There is a positive commandment for every community to establish a Rabbinic court to adjudicate the law and install enforcement officers to implement the law.

Midrash citing a verse from Psalms: "'He relates His Words to *Yaakov*, His statutes and judgments to Israel...' What is the meaning of "His Words?" These are the words of *Torah*. What is the meaning of "statutes?" These are the interpretations of the *Torah*. What is the meaning of "judgments?" It is the laws. G-d gave His *Torah* and Laws only to the Jewish people. If a Jew and a non-Jew have a legal dispute between them, the Jew is not permitted to say to the non-Jew, 'Let us adjudicate this matter in your courts.' If the Jew does so, he will be in violation of a negative commandment...Why should the Jew not be permitted to go to the secular court, since one of the Seven Noahide laws is also to establish a judicial system?

"The verse in Psalms continues, '...He did not do so for any other nation, such judgments- they know not of them.' How is it possible that the nations of the world are unaware of the laws pertaining to adjudication when one of the Seven Noahide Laws is to establish a judicial system? They are aware of the laws, but they have no relevance to what is needed to establish irrefutable truth that pertains to verdict in a Jewish court (*dikdukei hadin*). (These are the detailed dictates that are needed to establish fact and law).

"For example, we had learned that when *Ben Zakai* would interrogate witnesses, to establish their credibility, if the incident of the crime had taken

place under a fig tree he would ask the witnesses, 'What was the length of the stems of the figs at the scene of the crime?'"

Midrash: This level of precision and interrogation has no relevance to the non-Jew. A non-Jew can be put to death through the testimony of a single witness and in a court that is comprised of a single judge. He can be found guilty even if he had not been forewarned. This is not so when rendering a judgment that pertains to a Jew.

If it is a monetary issue, a Jew must be tried before a court of three qualified judges. If it is a capital case, he must be tried before a court of twenty three qualified judges. Two witnesses are needed to offer testimony and must be properly interrogated by the judges. If in fact establishing a judicial system is one of the Seven Noahide laws, why is the criteria to establish fact in the Jewish court more detailed than the secular court?

Gemara in Tractate *Yevomos* citing a verse from *Yechezkel*: The classification of the Jewish people is "*adam* (man)." The inference of the verse is that the nations of the world are not classified as "*adam* (man)." As it states, "You (the Jewish people) are called *adam* (man)..." Why do the nations of the world not qualify for the classification of "*adam*" if they are also part of the human class?

The appellation of "*adam*" that was given by G-d to the first human being is derived from the word "*adamah* (earth)" because "he (*Adam*) was taken from the earth (*adamah*)."

Maharal of Prague: "If the domesticated and undomesticated animals were also formed from the earth, why are they not classified as '*adam*?'" *Maharal* of Prague explains that "*adamah*" (earth) represents potential and growth. Just as the earth has unlimited potential to produce all that is necessary for life, identically, "the *adam*" possess an unlimited potential. If the earth remains fallow and uncultivated it remains a clump of earth; however, if its potential is addressed and harnessed properly it will yield unlimited results. The human being reflects the characteristic of the earth in this vein.

Since the Jew is a spiritual being, his objective is to advance and develop to actualize his potential.

However, the non-Jew, since his essence is not spiritual, has no relevance to spiritual growth. His responsibility to G-d is to simply maintain the spirituality with which he was endowed. Negative commandments are restrictions that ensure the prevention of spiritual diminishment.

Positive commandments are intended to give one the opportunity to advance his spirituality to meet his potential. Thus, the Jew and non-Jew have different levels of responsibility within the realm of spirituality. The Seven Noahide laws are comprised of negative commandments except for the commandment to establish a judicial system, which is only to ensure that the other commandments are followed.

Since the Jewish people are classified as "*adam*," which indicates that their objective is to advance their spirituality through *Torah* and *mitzvos*, it is necessary to have a greater degree of negative commandments to allow the Jew to maintain his spirituality at the most advanced level so that he could address his spiritual growth. Thus, it is necessary to have 365 negative commandments which pertain to the Jew. Because of the dimension and sophistication of the spirituality of the Jew, the process of adjudication and law must be meticulous and exacting to determine fact and truth. However, the non-Jew whose essence does not possess the ability to advance, it is not necessary to meet the criteria of "*dikdukei hadin*."

The Power of the Sanhedrin

Torah: If one is in doubt regarding the meaning of a law in the *Torah* one should consult with the *Sanhedrin*.

Torah: "If a matter of judgment is hidden from you.... you shall rise up and ascend to the place that *Hashem*, your G-d shall choose....you shall inquire..." Once one is told the correct understanding, one is obligated to adhering to the ruling of the *Sanhedrin* (High Court). As it states "You shall do according to the word that they will tell you, ... and according to the judgment that they will say to you shall you do; you shall not deviate from the word that they tell you, right or left." The *Torah* could have simply stated, "do not deviate (from their word)." Why does the verse state, "you shall not deviate... right or left?"

Rashi citing *Chazal*: “One should adhere to the ruling of the court even if they should say that the one’s left is his right and his right is in fact his left. How much more so if they tell you that your right is your right and your left is your left.”

Chazal are telling us that one may believe that his right is his right, however, the judges/*Rabbis* who have a greater level of clarity and understanding know that his right is in fact his left. Based on one’s limited understanding, he may believe that something is permitted when in fact it is forbidden. Therefore, one may believe something to be so, However, if the judges say differently, he must adhere to their words because their advanced level of clarity enables them to perceive reality for what it is – even if their ruling is contrary to one’s rational perspective and understanding.

Ramban in his commentary: “The Spirit of G-d rests upon the officiants in the Temple (along side the Sanctuary). He will not abandon His devoutly righteous. They merit special Divine Assistance that protects them from errors and pitfalls.” Because of this special level of Divine Assistance that is bestowed upon the judges, one must adhere to their rulings, even if one does not understand or agree with them.

Even if the individual’s understanding of something is correct, he must nevertheless adhere to the ruling of the *Sanhedrin* because their words are synonymous with *Torah*. The position of the *Sanhedrin* is the position of the *Torah*. Thus, regardless of the accuracy of one’s understanding he must abide by their ruling. If one is able to subordinate himself to the ruling of the *Sanhedrin*, despite his own beliefs, it is considered to be a praiseworthy spiritual accomplishment.

Torah: If there is a dissenting opinion within the *Sanhedrin*, the minority must follow the majority – regardless of the cogency of the minority opinion. If there is an individual who is qualified to be a judge and does not accept the majority opinion (regardless of the accuracy/cogency of his position) and publicly apposes/defies it, the *Torah* states that he must be put to death.

Ramban: The *mitzvah* of adhering to the ruling of the *Sanhedrin*, regardless of the accuracy of their position, is a necessary and essential commandment. There was one *Torah* that was given to the Jewish people at Sinai.

Since each individual processes and understands reality in his own way, if people were allowed to follow their own understanding, there would be many opposing positions – regardless of the fact that there is only one *Torah*. Therefore there is a commandment that one must adhere to the ruling of the *Sanhedrin*, regardless of its correctness because the *Sanhedrin*’s ruling is that of the *Torah*.

Torah: If the court finds an individual guilty of committing an inadvertent murder, he must flee to a city of refuge and remain there until the passing of the *Kohen Gadol* (High Priest). The High Priest is responsible pray on behalf of the Jewish people. His role is unique in that he is the only one that is permitted to enter into the Holy of Holies and beseech G-d on their behalf. Thus, if the tragedy of inadvertent murder takes place under his watch, he is held accountable/responsible for it. If he had prayed more intensely, the tragedy would have been averted. This is the relationship between the High Priest and the inadvertent murderer.

It is interesting to note that if a new *Kohen Gadol* is installed before the ruling of the court, but after the murder, the inadvertent murderer must still be confined to the city of refuge until the passing of the High Priest.

Gemara in Tractate *Makos*: “If an individual were to inadvertently commit murder while the *Kohen Gadol* was already installed, one could say that the High Priest could have prevented this tragedy if he had only prayed more intensely. However, if the tragedy had occurred prior to the appointment of the High Priest, how could he be held culpable?”

Gemara: “As the new *Kohen Gadol*, he could have prayed that the court find the inadvertent murder not guilty. The fact that he was found guilty indicates that he did not pray sufficiently. Therefore, the inadvertent murder must remain in the city of refuge until the passing of the *Kohen Gadol*.” If one is in fact guilty, the court should find him guilty. What relevance does the prayers of the High Priest have with the ruling of the court?

The *Torah* dictates that the ruling of the *Sanhedrin* establishes reality. The understanding of the judges is guided by G-d Himself. Thus it is possible that if the High Priest had beseeched G-d sufficiently, the

judges would have perceived and understood him to be not guilty.

Chofetz Chaim in his work *Chofetz Chaim*: There was a situation in which an individual, who believed himself to be innocent (and was in fact innocent); however despite this, he was found guilty. One of the judges wrote a brief on the ruling and the background of the case. Another individual who read the brief openly criticized the ruling as being baseless and flawed.

Chofetz Chaim explains that the individual who criticized the ruling failed in two ways. If he had difficulty with the ruling he should have approached the judges in private and discussed the matter with them and not with the defendant who was found guilty. In addition, the *Rosh* (an earlier commentator) in Tractate *Bava Basera* writes that in certain cases one is found guilty because G-d wants him to be found guilty – regardless of his innocence. Therefore the individual should not have criticized the ruling of the court because it is the word of G-d.

Limiting One's Choice

Torah: “Judges and officers shall you appoint in all your cities...” The *Torah* is telling us that there is a Positive Commandment that every Jewish community must have a court of qualified judges and law enforcers to carry out their decisions.

Mishna in Tractate *Sanhedrin*: If a community is comprised of as few as 120 Jews it must have a rabbinical court.

Chazal: The Jewish court (*bais din*) to which the verse is referring is comprised of twenty-three qualified judges. This court is known as the *Sanhedrin Ketana* (Lesser Court). In order for a judge to be qualified to sit on court that can render capital punishment, lashes, and monetary penalties he must possess an ordination that could be traced through an unbroken chain back to *Moshe Rabbeinu*. Meaning, each judge was ordained by another judge who could trace his ordination back to *Moshe*. The Lesser Court was as qualified to render judgment as the High Court of Israel which was known as the *Sanhedrin Gedolah*. In addition to establishing a *Sanhedrin*, there must be law enforcers to enforce the verdicts and decisions that were rendered by the court. The law enforcers

(*shotrim*) are referred to as those individuals who are the tools for enforcing the law.

The discerning characteristic that distinguishes between the human being and an animal is the ability to make choices. The animal's function is solely based on instinct, while the human being, although functions to some degree by instinct, his primary basis for his actions are through his own choices.

Rambam in the Laws of Repentance: It is because man has the ability to choose of his own free will to do right or wrong, he is deserving of reward or culpable for punishment. If one chooses to act properly, one deserves to be rewarded because it was his initiative that brought about that positive result. However, if he chooses to transgress, one deserves to be punished because the transgression is a result of one not choosing to suppress his evil inclination.

If the primary purpose of man is to function within a context of choice, one would think that establishing an infrastructure within the Jewish people of judges and enforcers, it would greatly limit one's free choice to transgress. Understanding and appreciating the severe consequences of one's negative behavior, that can bring about corporal punishment, a rational or responsible individual would not consider for a moment to transgress.

For example, if one were to be forewarned not to eat meat that was not *Kosher* and he deliberately chooses to eat an amount that is minimally the volume of an olive, he is subject to thirty-nine lashes. In order for one to recover from this ordeal, one may need many years to recover from the physical effect of being lashed by the court. In addition, there are many other areas that the *Torah* does not address but are nevertheless governed by Rabbinic enactments, known as “fences”, which also result in severe punishment or consequences if they should be violated. If this is the infrastructure that is set forth for every Jewish community, how can one truly exercise his free will? Seemingly, one has no choice but to follow the dictate of the *Torah*.

Chinuch: Regarding every revealed miracle that G-d had brought about during the Exodus, including the plagues and the splitting of the Sea, He provided a way for one to deny that it was the His. In order to maintain free choice, G-d allowed one to choose to believe that

these acts were not miracles but rather acts of nature. For example, the *Torah* states regarding the splitting of the Sea, “and *Hashem* moved the sea with a strong east wind all the night...” If one wanted to deny that the splitting of the Sea was a miracle, one could attribute it to the strong wind that blew the entire night. If G-d wants one to retain his free choice, how do we reconcile this with the pervasive infrastructure of the judicial system and law enforcers that govern the lives of every Jew?

Torah: “*Moshe* said to the Jewish people, ‘You are children of *Hashem*, your G-d...’” A Jew is considered to be the child of G-d. Just as a father limits the choices that are available to his son, so that he should not bring harm upon himself, so too does G-d limit the extent of choices that are available to the Jew. Thus, G-d does not want a Jew to behave in a depraved manner or live a life that is devoid of spirituality. He wants the Jew to retain his spiritual profile which is something that has a semblance of the “image of G-d.” The *Torah* does not want the Jew to have a choice to live as an intellectual animal as a result of extreme levels of transgression.

The context of choice in which G-d wants the Jew to live is as one who functions within the parameters of the *Torah*. The choices that G-d provides in this context is not if one performs the *mitzvah* or not, but rather does one choose to perform the *mitzvah* for the sake of G-d (*l’shmah*) or with an ulterior motive (*shelo l’shmah*). The parameters that were set by the *Torah* circumscribes the Jew to advance or regress. Regardless of how a Jew performs, he will retain his status as a Jew. The safeguard to maintain the Jewish people, as a spiritual people, is through the *mitzvah* of establishing judges and law enforcers in every community.

The Qualification of a Sanhedrin

Torah: “Judges and officers shall you appoint in all your cities...”

Midrash: “A judge must be strong-armed and fortified (*baalei zeroah*) in good deeds. As it states, ‘*Moshe* chose men (*anshei chayil*) who were strong in *Torah*, good deeds, and fortitude (*gevurah*)...’ A judge must be beyond reproach in his personal conduct so that no one could be critical of him. His personal conduct should be consistent with his position as judge of the Jewish people.

Torah: Although *Moshe* was selflessly dedicated to the Jewish people he did not benefit from communal assets, when he acted on their behalf. As it states, ‘I did not benefit from them. I did not even take one donkey from them...’ This was so that no one should have a claim that he, as leader of the Jewish people, had benefit from them. He was above reproach, so too must the judges be above reproach.”

Regarding the qualifications of a judge, the *Midrash* cites the verse, “*Moshe* chose men (*anshei chayil*) who were strong in *Torah*, good deeds, and fortitude/strength (*gevurah*)...” What is the meaning of one who has fortitude/strength (*gevurah*)?

Mishna in Ethics of our Fathers: “Who is the strong one? It is the one who subdues his inclination.” One who has strength (*gevurah*) because of his self-control dictates his own life. His desires and needs do not control him.

Gemara in Tractate *Berachos* citing a verse from the Prophet *Yeshiya*: “‘Listen to me those who have strong hearts, those who are distant from charity.’ To who is this referring? (One opinion in the *Gemara* states) The entire world is sustained through G-d’s charity. But they (who have strong hearts) are sustained through their own arm/initiative.”

Rashi: “All the world is sustained through G-d’s charity and kindness because they do not have sufficient merit to sustain themselves. However, those who are strong armed, the devoutly righteous (*baalei zeroah*) are distant from the charity of G-d because they can sustain themselves through their own merits (*mitzvos*).”

Midrash: In order for one to be qualified to be a judge, he must be “strong-armed and fortified (*baalei zeroah*). Meaning, for one to be qualified to be a judge one must be devoutly righteous. Thus, he is able to sustain himself through his own initiative. One is only able to merit this ability if he is strong in *Torah* and good deeds (*anshei chayil*).

Gemara in Tractate *Shabbos* citing the verse from Proverbs: “‘Length of days to the right (*yaminah*) and to the left (*l’smaula*) is wealth and honor...’ ‘Length of days to the right’ is referring to those who perform *mitzvos* for their own sake (*l’shmah*). They are the one’s who merit eternal longevity in the world to come. In contrast, those who perform the *mitzvos* with their left

hand (*masmeelim*) in an awkward manner (similar to a right-handed person who uses his left hand), merit wealth and honor (which is material reward)."

One who is driven and motivated by his own needs and desires is one who values the material. The objective is not to do the Will of G-d, but rather it is based on self-interest. Because his performance is devoid of spirituality, his reward is manifest in the material. Thus, G-d rewards him with material success. However, the one who perform *mitzvos* selflessly, for their own sake, he merits spiritual reward which is longevity in the world to come.

The one who performs *mitzvos* for their own sake (*I'shmah*) does not allow his own self-interest to interfere with the objective in which the *mitzvah* is meant to be performed. The individual who performs the *mitzvah* for its own sake, has relevance to truth, which is the essence and purpose of the *mitzvah*. In contrast, the one who is motivated by self-interest, his *mitzvos* are lacking in truthfulness.

As a human being, even one who is proficient in *Torah* is not infallible and thus subject to error. However, the court that meets all of the criteria that is set forth by the *Torah* merits a special Divine Assistance. As it states "G-d Convenes within the congregation of G-d (*Elokeem netzav baadas Keil*).\" When the judges convene and adjudicate their rulings it is with the assistance of G-d. The only court that has relevance to G-d's Presence is a court that is rooted in truth. As it states, \"the signet of G-d is truth.\"

When one performs a *mitzvah* for its own sake, he is doing so for the sake of truth. He is not doing the Will of G-d for his own personal gain. Thus, in order to merit special Divine Assistance to render a truthful verdict he must be strong-armed and fortified (*baal zeroah*) to merit special Divine Assistance. He is the one who is distant from the charity of G-d. He supports himself through his own merits, which are based on his initiative.



Yad Avraham Institute