

Torah Table Talk – *The Observant Life*

Law and Order:

A Jewish Perspective on Secular Justice

The Secular Justice System by Rabbi Laurence Sebert Page 452

Parshat Shoftim, Deuteronomy 16:18 – 21:9

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In honor of Rabbi Mark Greenspan's birthday, *ad meah v'esrim*

I. Introduction

For most Jews in the modern world, the idea of not following the dictates of the secular courts sounds preposterous, if not blasphemous. For the past two hundred years Jews living in western lands have forged a relationship with secular society that made them full citizens while allowing them to maintain their own 'religious' practices. There was a trade-off in creating this relationship. Judaism is not a religion in the sense that most Christians think of religion. A good deal of 'religious law' deals with civil and criminal matters, and until modern times such matters were decided by religious courts. Rabbi Sebert offers an insightful history of the relationship between the Jewish people and gentile system of courts. For much of our history, the Jewish people have maintained autonomous communities. While Jews have held the principle *dina d'malchuta dina* (the law of the land is binding), Jews were encouraged to turn to their own people when adjudicating conflicts between Jews. Jews were not considered citizens of the land in which they lived but were given the latitude to decide matters of criminal and monetary law within their own communities. It was only with the Emancipation following the French Revolution that this relationship began to change. Today we witness a sometimes tense relationship between Ultraorthodox Jews and the secular court system because of a fundamental distrust of secular society. There is an attitude among a small but vocal community that Jews should deal with their own conflicts.

The question of governmental and judicial authority is at the heart of this week's Torah portion. The Torah commands us: "Justice, justice, shall you pursue." It goes on to offer broad principles of justice as well as limits to the power of the various authorities in society: judges, kings, priests and prophets. While we may no longer decide matters of civil and criminal law, there is much that we can learn from the Biblical and post biblical system of courts and government that are applicable today.

Deuteronomy 16:18-20: You shall appoint magistrates (*shoftim*) and officials (*shotrim*) for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice. You shall not judge unfairly; you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. Justice, justice, shall you pursue, that you may thrive and occupy the land that the Lord your God is giving you

II. Sources, Resources

- 1) "Judges and officers shalt thou appoint" (Deut. 16:18). R. Levi said: By what parable may the command [to appoint officers concerned with justice] be illustrated? By the one of a king who had many sons but loved the youngest more than the others. He also had an orchard which he loved more than anything else he had. So the king said: I will give this orchard, which I love more than anything else I have, to my youngest son, whom I love more than any of my other sons. So, too, the Holy One said: Of all the nations I created, I love only Israel. Of all else I created, I love only justice. So I will give what I love to the nation I love. The Holy One said to Israel: My children, as you live, I am exalted because of your intense concern for justice: "The Lord of hosts is exalted through justice" (Isa. 5:16). (*Devarim Rabbah* 5:7)
 - a) *What does this parable say about the attitude of Jews toward non-Jewish courts of law? How did Jews see their relationship to matters of justice?*
- 2) "Go to the ant...consider her ways and be wise" (Prov. 6:6). Rabbi Simeon ben Halafta said: Once it happened that an ant dropped a grain of wheat, and though all the other ants came by and sniffed at that grain, not one of them touched it, until the one to whom it belonged came back and took it. Ponder the wisdom an ant has! Ponder the rectitude an ant has! She learned her ways from no other creature. She has no ruler or officer over

her, as is said, "Without leaders, officers, or rulers" (Prov. 6:7). Hence, you, for whom I have appointed magistrates and clerks--how much more by far should you be willing to heed them, as enjoined in the verse "Ye shall appoint magistrates and officials in all your settlements" (Deut. 16:18). (*Devarim Rabbah* 5:2)

- a) *Compare this parable with the previous one? According to the parable of the ant, what is the source of justice and honesty? Do Jews have a unique and exclusive relationship to these values?*
- 3) The commandment to appoint judges and officials is addressed to the people...implying that they, or the elders on their behalf, are to make the appointments. At first, judging was probably not separate from other aspects of leadership and was done by the elders of a tribe or village acting collectively, as in several cases mentioned later in Deuteronomy...In later times judges were also appointed by national leaders such as the prophet Samuel, who appointed his sons, and by the king... (Jeffrey Tigay, *The JPS Torah Commentary*)
 - a) *What can we learn from the Torah about the appointment of judges?*
 - b) *In our society some judges are elected and others are appointed by the government. What are the arguments pro and con for electing judges to preside over our courts?*
- 4) This is the text of the letter which the prophet Jeremiah sent from Jerusalem to the priests, the prophets, the rest of the elders of the exile community and to all the people whom Nebuchadnezzar had exiled from Jerusalem to Babylon.... Thus said the Lord of hosts, the God of Israel, to the whole community which I exiled from Jerusalem to Babylon: Build houses and live in them, plant gardens and eat their fruit. Take wives and beget sons and daughters; and take wives for your sons, and give your daughters to husbands, that they may bear sons and daughters. Multiply and do not decrease. And seek the welfare of the city to which I have exiled you and pray to the Lord in its behalf, for in its prosperity you shall prosper. (*Jeremiah 29:1-7*)
 - a) *Jeremiah lived just prior to and in the aftermath of the destruction of the Temple and the exile of the Jewish people. What advice did he offer the newly established Jewish community in Babylonia?*
 - b) *What does it mean to "seek the welfare" of the city in which one lives?*
- 5) Rab Judah said in the name of Samuel: The property of a gentile is on the same footing as desert land; whoever first occupies it acquires ownership. The reason is that as soon as the heathen receives the money he ceases to be the owner, whereas the Jew does not become the owner till he obtains the deed of sale. Hence in the interval the land is like desert land and the first occupier becomes the owner. Said Abaye to Rabbi Joseph: Did Samuel really say this? Has not Samuel laid down that the law of the Government is law (*dina d'malchuta dina*), and the king has ordained that land is not to be acquired save by means of a deed? Rabbi Joseph replied: I know nothing of that. I only know that a case arose in Dura di-ra'awathn (a certain village) in which a Jew bought land from a heathen and another Jew came and dug up a little of it, and when the case came before Rab Judah he assigned the land to the latter. Abaye replied: You speak of Dura di-ra'awatha? There the fields belonged to people who hid themselves and did not pay the tax to the king, and the king had ordered that whoever paid the tax should have the usufruct of the field...Rabbah said: These three rules were told me by 'Ukba b. Nehemiah the Exilarch: one: the law of the Government [in civil cases] is law; second, that Persians acquire ownership by forty years' occupation; and third, that if property is bought from the rich landlords who buy up land and pay the tax on it, the sale is valid. This applies, however, only to [land] which is transferred to the landlords on account of the land tax; if it is sold to them on account of the poll tax, then a purchase from them is not valid, because the poll tax is imposed on the person. (*BT Baba Batra 54b-55a*)
 - a) *How were gentile and Jewish rules for the acquisition of land different from one another? What problems arose from these differences?*
 - b) *How did Samuel apply the principle of dina d'malchuta dina, "The law of the government is the law," in such cases?*
- 6) Rabbi Eleazar, son of R. Simeon, once met an officer of the Roman Government who had been sent to arrest thieves, 'How can you detect them?' he said. 'Are they not compared to wild beasts, of whom it is written, *Therein [in the darkness] all the beasts of the forest creep forth?*' (Psalm 104:20) Maybe,' he continued, 'you take the innocent and allow the guilty to escape?' The officer answered, 'What shall I do? It is the King's command.' Said the Rabbi, 'Let me tell you what to do. Go into a tavern at the fourth hour of the day. If you see a man dozing with a cup of wine in his hand, ask what he is. If he is a learned man, you may assume that he has risen early to pursue his studies; if he is a day laborer he must have been up early to do his work; if his work is of the kind that is done at night, he might have been rolling thin metal. If he is none of these, he is a thief; arrest

him.' The report of this conversation was brought to the Court, and the order was given: 'Let the reader of the letter become the messenger.' Rabbi Eleazar, son of R. Simeon, was accordingly sent for, and he proceeded to arrest the thieves. Thereupon R. Joshua, son of Karhah, sent word to him, 'Vinegar, son of wine! How long will you deliver up the people of our God for slaughter!' Back came the reply: 'I weed out thorns from the vineyard.' Whereupon R. Joshua retorted: 'Let the owner of the vineyard himself [God] come and weed out the thorns.'(BT, Baba Metziah 83b-84a)

- a) *What was Rabbi Joshua's grievance with Rabbi Eliezer? Do we ever wrestle with questions of turning Jews over to the authorities today?*
- b) *Why does Rabbi Joshua call him "Vinegar son of wine!"*

7) *Dina D'Malchutah Dina* only applies in monetary cases or criminal cases, not ritual. For example, secular marriage or divorce does not replace Jewish law or divorce just because a secular wedding or divorce is legal in that country. (*Shlomo HaKohen 1828–1905, Sdei Chemed, Vol. 2 pg. 70*)

III. Reflections

Ever since the Emancipation, Jews have struggled with the question of self-definition: Is Judaism a religious faith or are we a people? Is Judaism defined by its religious beliefs or by its system of law which applies not only to religious matters but to other matters that we think of in society today as completely secular? The founding of the State of Israel in 1948 did not lay these questions to rest. While Judaism is the state of the Jewish people it is not necessarily a Jewish state (in a religious sense of the word). Israel's judicial system is defined 'by an amalgam of Turkish, Moslim, British and Jewish law. Much like western secular societies, only matters of personal status (such as marriage and divorce) fall under the authority of religious courts and even then these questions are often a source of conflict and tension. In an ideal world, Israel might be a state defined by the system of jurisprudence of the Jewish people but such a definition might lead to serious conflicts among the Jewish people – not the least of which would be the question of who decides what the Jewish law should be.

And yet we see that there is much to be learned from the judicial and governmental laws of the Torah and Talmud, even if we do not apply these laws in a direct fashion. Judaism begins with a call for rectitude and integrity in the deportment of the courts and in the behavior of judges. There limits placed on the power and authority given to all societal leaders, both religious and secular. And government is a reflection of the will of the people, as we see in the principle, *dina d'malchuta dina*.

This idea has tremendous implications for Jewish life. In fact, *dina d'malchuta dina* is quoted in at least fourteen different chapters in *The Observant Life*. Virtually every chapter dealing with matters of justice 'fall back' on the principle of *dina d'malchuta dina*. Judaism may be more than a religious way of life but it has been significantly curtailed by the rules of citizenship and the power of government in our lives. This means that matters of secular justice take precedence over Jewish principles and laws in everything from intellectual property to employer-employee relations. Should that always be? When *halachah* demands more of us than the secular courts of law, should one follow the dictates of *halachah* rather than the governmental courts? What happens when the law of the government fails to live up to the principles of Jewish law? And even if we cannot apply the rulings of Jewish law because of *dina d'malchuta dina*, by understanding the civil and criminal principles of Jewish law, one can develop a nuanced sense of what justice is.

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