**S.A.L.T. – PARASHAT SHOFTIM**

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"א-ל נא, רפא נא לה";  בתוך שאר חולי ישראל.

Motzaei Shabbat

Parashat Shoftim begins with the command to appoint “*shofetim ve-shoterim*” – judges and law enforcers. As Rashi explains, the judges are authorized to determine the law, and the *shoterim* are authorized to enforce compliance through punitive measures.

The Midrash (*Devarim Rabba* 5:5) brings a different reading of this command to appoint “*shofetim ve-shoterim*,” explaining it to mean that the *shoterim* are to conduct themselves as *shofetim*. Rather than mindlessly applying force to impose compliance with the law, the *shoterim* are to exercise sound judgment and discretion in fulfilling their roles. They are to be equipped with a rod with which to strike violators when necessary, but also with judiciousness to know when punishment is unwise, and the restraint to withdraw the rod on such occasions.

The Midrash continues, “Actions should be in place of the rod and strap, so that the whip will not need to whip.” In other words, there are times when other actions take the place of punishment, when the desired result of positively modifying behavior can be achieved without punitive measures. The “*shoterim*” are to resemble “*shofetim*” by using common sense to know when punishment is necessary and when it isn’t.

In discussing this Midrashic passage, Rav Yissakhar Dov of Belz references *Chazal*’s famous teaching that one who delves into the study of the laws of the sacrifices is considered as having actually brought the sacrifice (Menachot 110a). Citing his father, Rav Yissakhar Dov of Belz explains that the objective of a punishment – such as a sacrifice – can often be more fully achieved through study, and God prefers study over punishment as a method of correcting wrongful behavior. We are therefore encouraged to delve into the study of Torah to learn the proper way to behave, which obviates the need to endure punishment for our wrongdoing. Similarly, those charged with the responsibility of enforcing compliance should not blindly resort to punitive measures in an effort to achieve the goal of enforcement. They are to use prudence in determining when to use force and when to use other, milder means of ensuring compliance with the law.

Often, when we react harshly to improper conduct, this is a visceral response, rather than a calculated decision as to the best way of handling the situation. We might justify our anger by claiming that this is the appropriate response, but in many instances, this is not the case, and the desired objective can be much more effectively achieved through a milder response. The Midrash here teaches us that the “rod” and “strap” are not always the best choice in handling misconduct, and that careful, sound judgment is needed before deciding upon the proper response to wrongful behavior.

Sunday

Towards the end of Parashat Shoftim, the Torah presents the prohibition known as *bal tashchit*, which forbids destroying edible food. This prohibition is introduced in the context of the Torah’s discussion of warfare, where it addresses the case of a siege against an enemy city. The Torah forbids cutting down fruit trees during the siege to obtain wood, and allows cutting down only “a tree that you know not to be a tree of food” (20:20).

A number of *Acharonim* noted that this verse appears, at first glance, to call into question the position famously taken by the Rambam concerning the status of *sefeikot* – halakhic uncertainties. The well-established halakhic principle of “*safeik de-Orayta le-chumra*” requires assuming the stringent possibility when an uncertainty arises regarding a Torah law (as opposed to a law enacted by the Sages). For example, if there is a question as to the status of a morsel of food, and a potential Torah violation is at stake, one must refrain from the food to avoid the risk of a Biblical transgression. However, the Rambam, in *Hilkhot Tum’at Meit* (15:12), writes that this principle was itself enacted by the Sages. As far as Torah law is concerned, according to the Rambam, one may act leniently in a situation of halakhic doubt, as it was *Chazal* who instituted that one must act stringently. The Rashba, both in a published responsum (401) and in his *Torat Ha-bayit* (4:1), famously disputed the Rambam’s position, and maintained that Torah law itself demands assuming the stringent possibility in situations of doubt. Some questioned the Rambam’s view in light of the Torah’s allowing cutting down only trees “which **you know** not to be a fruit of food” – indicating that a tree whose status is in doubt may not be cut. The fact that the Torah permits cutting only trees which are definitively known not to bear fruit seems to suggest that Torah law forbids following the lenient possibility in situations of doubt – in direct contradistinction to the Rambam’s position.

Various answers have been proposed in defense of the Rambam’s view. The simplest answer, perhaps, is that the context of *bal tashchit* marks an exception to the rule. The *Yad David* commentary (by Rav Yosef David Sinzheim of Strasbourg) to Masekhet Bava Kama (91b) writes that to the contrary, the fact that the Torah specified the need for definitive knowledge of the tree’s status in this context actually proves the Rambam’s view, that generally, we may be lenient in situations of doubt. The Torah had to specifically forbid cutting trees until they are definitively determined not to bear fruit because in other contexts, Torah prohibitions do not apply when there is uncertainty. This context marks an exceptional instance where the Torah does not allow relying on the lenient possibility, and instead applies a prohibition even when the status of the item in question is uncertain.

Rav Chaim Kanievsky, in his *Ta’ama Di-kra*, suggests a different answer, explaining that the verse’s intent is to emphasize that even fruit trees that do not currently bear fruit may not be cut. The phrase “which you know not to be a tree of food” should be understood as excluding not trees whose status is uncertain, but rather trees which at the present have no fruit but are capable of producing fruit. A tree may be cut only if it is a type that does not produce fruit; if it can produce fruit, then it may not be cut even if it currently has no fruit. According to this reading of this verse, it has nothing at all to do with the topic of *sefeikot*, and thus poses no difficulty with regard to the Rambam’s controversial position.

Others suggest that the Torah refers here to a tree which at one point bore fruit, but is no longer capable of producing fruit (as Seforno explains), such that even the Rambam would concede that definitive knowledge of its incapacity is necessary to permit cutting it down. The background to this answer is the theory advanced by several *Acharonim* that in a case of “*ikba issura*” – where it is known that a forbidden substance was at one time present – the Rambam agrees that Torah law forbids relying on the lenient possibility. After all, the Torah requires offering a special sacrifice (“*asham talui*”) in the case of an uncertain violation (if the prohibition carries the punishment of *kareit*), which should, at first glance, prove that Torah law requires acting stringently in situations of uncertainty. The common answer given to defend the Rambam’s view is that this sacrifice is required only if the forbidden item was definitely involved – such as in the case where one had forbidden food and permissible food, but he does not know which food he ate (see Rambam, *Hilkhot Shegagot* 8:3). In such a case, where forbidden food was definitely present, and it is uncertain which portion of food is the forbidden piece, the Rambam agrees that one must abstain from both pieces on the level of Torah law – as evidenced by the obligation to bring an atonement sacrifice if a person ate one of the pieces. Accordingly, some have suggested that when the Torah permits eating only “a tree which you know not to be a tree of food,” it refers to a fruit tree which has been determined to be no longer capable of producing fruit. Such a tree may be cut only if it is certain that it cannot produce more fruit, since this is a case of “*ikba issura*,” where the prohibition was definitely applicable at one point. In such situations, even the Rambam agrees that one must assume the prohibition is applicable until he can be certain that it isn’t. (This answer was suggested by the *Ma’ayan Ha-chokhma*, cited by *Chatam Sofer*, Y.D. 102 and Bava Batra 26; and by Rav Yosef Shaul Nathanson, *Shoel U-meishiv* – *Mahadura Kama* 2:146.)

Monday

The Torah in Parashat Shoftim (16:22) issues the prohibition against erecting a “*matzeiva*” (“monument”), stating that this is something which the Almighty “despises” (“*asher sanei Hashem Elokekha*”). Rashi, based on the *Sifrei*, explains that the difference between a *matzeiva* – which the Torah forbids erecting – and a *mizbei’ach* (altar) – which the Torah requires erecting and using for sacrifices – is that a *matzeiva* consists of just a single stone, whereas a *mizbei’ach* is made of many different stones. Numerous writers sought to uncover the meaning and significance underlying this prohibition, and to explain this distinction drawn by the Torah between a *matzeiva* and an altar.

The *Sheim Mi-Shmuel* suggests an explanation based on the verse in Sefer Melakhim I (18:31) describing the altar that the prophet Eliyahu constructed at Mount Carmel, during his confrontation with the false prophets of Ba’al. Eliyahu used twelve stones for the altar, and the verse states that this number was chosen to correspond to the twelve tribes of Israel. The *Sheim Mi-Shmuel* suggests deducing from this account that the stones of the altar represent the merging together of the different groups among the Jewish People. No two stones are precisely alike, but they are all combined into a single entity dedicated to the service of God. The twelve stones of Eliyahu’s altar reveals the symbolic meaning of the altar’s sons – the notion of different groups and different streams joining together in the devoted service of God.

On this basis, the *Sheim Mi-Shmuel* writes, we can understand why God “despises” a single-stone *matzeiva* but commands us to construct an altar. A *matzeiva* signifies the individual’s service of God as an individual, as opposed to serving Him as one of a large group of distinct but unified “stones.” Serving God with a *matzeiva* reflects the notion of serving God in isolation, separate and apart from the rest of *Am Yisrael*, focusing exclusively on developing one’s own personal connection to the Almighty, without joining with others. We are to devote ourselves to God not simply as individuals, but as members of a large nation consisting of many different groups. And thus we are to aspire not only to excel personally in our observance, but also to influence and inspire all the other “stones,” so that we all come together to form a single “altar” in the service of our Creator.

Tuesday

Parashat Shoftim concludes with the law of *egla arufa*, the special ceremony that was required when a murder victim was found along the road between two cities. The leaders of the city nearest the place where the remains were discovered needed to bring a calf to a stream, where it was killed as a type of atonement sacrifice, and to make a proclamation disavowing responsibility for the murder and pleading to God for forgiveness.

The *Sefer Ha-chinukh* (430) writes that this *mitzva* applies only when courts are authorized to administer capital punishment – meaning, when the *Sanhedrin* convenes in its proper place in the area of the *Beit Ha-mikdash*. Once the *Sanhedrin* was forced to leave the *Mikdash*, the courts no longer had the power to administer capital punishment, and according to the *Chinukh*, the *mitzva* of *egla arufa* became inapplicable at that point.

The *Minchat Chinukh* questions this assertion, claiming that there does not appear to be any source for this restriction on the scope of the *egla arufa* obligation. Apparently, the *Sefer Ha-chinukh* understood that *egla arufa* does not stand alone as an independent obligation that takes effect in the case where a murder victim is discovered, but is rather part of the broader framework of a court’s responsibility to punish murderers. When the murderer’s identity is known, the court is required to administer punishment, and when the murderer is unknown, the court is required to conduct a special atonement ceremony. These should be viewed – according to the *Chinukh* – not as two separate obligations, but as two aspects of the same command requiring the courts to punish murderers. And thus once this authority was taken away from the courts, and they could no longer punish killers, they also could no longer perform the *egla arufa* ceremony.

Rav Chaim Kanievsky, in his *Nachal Eitan* (1:3), brings several sources for this perspective of the *Sefer Ha-chinukh*. Firstly, the Tosefta (Sota 9:2) states explicitly that the measurement to determine the city closest to the corpse was done by “*beit din she-be-lishkat ha-gazit*” – the court in the special chamber of the *Sanhedrin* on the Temple Mount. This would certainly suggest that this ritual required the presence of the *Sanhedrin* in its place in the area of the Temple. Moreover, the Mishna (Sota 44b) establishes that the *egla arufa* ceremony is performed by the closest city that has a court; a city without a court does not perform this ceremony, even if it is situated closer to the victim’s remains than the nearest city with a court. The Rambam (*Hilkhot Rotzei’ach* 9:4) clarifies that *egla arufa* requires a city with a twenty-three-member court – that is, a court authorized to administer capital punishment. Mabit, in his *Kiryat Sefer* commentary to the Rambam, explains that this is because the *egla arufa* ceremony has the status of *dinei nefashot* (capital cases). It is performed in lieu of the murderer’s execution, and, as such, it requires a court of twenty-three judges, which has the authority to execute capital offenders.

Rav Kanievsky further notes the comment of the Talmud Yerushalmi (Sota 9:5) that the pronouncement of the city’s elders at the *egla arufa* ceremony includes their avowing that they did not identify the killer and then allow him to escape punishment. This suggests that the ceremony is performed only when the courts are authorized to punish murderers. The Yerushalmi also derives from the elders’ pronouncement that “our hands did not spill this blood, and our eyes did not see” (21:7) that only judges whose hands and vision are intact are qualified to serve on a court. These requirements apply only to judges of capital cases, and not to judges presiding over monetary disputes, as the Rambam rules (*Hilkhot Sanhedrin* 2:7). The fact that the Yerushalmi inferred these credentials from the pronouncement of the judges conducting the *egla arufa* ceremony appears to prove that the *mitzva* of *egla arufa* applies only when courts are authorized to administer capital punishment, as stated by the *Sefer Ha-chinukh*.

Rav Kanievsky further cites the Rashash (Sota 47b) as proving this theory from the explanation given by several commentators to the function of the *egla arufa* ceremony – that it is intended to publicize and generate awareness of the crime so that the killer will be identified and prosecuted. This is indicated by the Torah’s conclusion to this section – “and you shall eliminate the innocent blood from your midst” – which could be understood to mean that as a result of this ceremony, the killer will be found and eliminated. As the entire purpose of this ceremony is to increase the chances of finding the culprit so he can receive his due punishment, it stands to reason that this *mitzva* is applicable only at the time when courts are authorized to administer punishment.

Wednesday

Yesterday, we noted the view of the *Sefer Ha-chinukh* (430) that the *egla arufa* ceremony, which is required in order to atone for a murder when the killer has not been identified – is performed only in periods when courts are authorized to administer capital punishment. Once the *Sanhedrin* was forced to leave the area of the Temple Mount, courts lost this authority, and according to the *Chinukh*, the *mitzva* of *egla arufa* became inapplicable at that point. The *Minchat Chinukh* questioned this theory, but Rav Chaim Kanievsky, as we saw, brings in his work *Nachal Eitan* (1:3) several sources indicating that the *mitzva* of *egla arufa* is, in fact, linked to the courts’ responsibility to punish murderers.

Later in his discussion, however, Rav Kanievsky notes a passage in the Tosefta which appears to lend support to the *Minchat Chinukh*’s contention. The Mishna in Masekhet Sota (47a) states that when murder became rampant, observance of the *mitzva* of *egla arufa* was discontinued, because, as Rashi explains, the killers’ identities were known. The Tosefta (Sota 14:1) brings this statement in the name of Rabban Yochanan ben Zakai, who explained, “Because *egla arufa* is brought only in a case of uncertainty – and now there are many overt murderers.” Rabban Yochanan’s formulation indicates that it was during his lifetime when this unfortunate change occurred. As we know, Rabban Yochanan became the leading sage of his time shortly before the Second Temple’s destruction, after the time the *Sanhedrin* was forced to leave the Temple Mount. In fact, the Gemara in Masekhet Sanhedrin (41a) states explicitly that the *Sanhedrin* left its place in the Temple Mount before Rabban Yochanan became a rabbinic leader. This might thus prove that the *egla arufa* ceremony continued to be observed even after the *Sanhedrin* left and capital punishment could no longer be administered – in contradistinction to the view of the *Sefer Ha-chinukh*.

This proof might be reinforced in light of the Mishna’s remark there in Sota that when adultery became rampant, Rabban Yochanan ben Zakai instituted that the *sota* ritual – which would determine the innocence or guilt of a suspected adulteress – should no longer be performed. Tosafot in Maskehet Sota (7b) prove from the Mishna’s remark that the *sota* ritual may be performed even when capital punishment cannot be administered – as evidenced by the fact that it was still performed in the time of Rabban Yochanan ben Zakai’s tenure as leader. Similar proof may be drawn with regard to *egla arufa*, in light of the Tosefta’s implication that this ritual was discontinued during Rabban Yochanan’s tenure.

However, as Rav Kanievsky notes, the Rambam disputes Tosafot’s position, writing (in *Hilkhot Sota* 3:1) that the *sota* ritual is performed only when the *Sanhedrin* convenes in its place in the *Beit Ha-mikdash*. Apparently, the fact that Rabban Yochanan was the one who ordered the discontinuation of the *sota* ritual did not convince the Rambam that this ritual requires the courts’ authority to administer capital punishment. The reason, Rav Kanievsky speculates, is because the Gemara in Masekhet Sanhedrin (41a) speaks of an instance where Rabban Yochanan made a proposal before his appointment as leader, while he was still a student, and his proposal earned the acceptance of the sages of that time. Conceivably, this can be said also about other rulings and enactments attributed to Rabban Yochanan. As such, the fact that Rabban Yochanan instituted the discontinuation of the *sota* and *egla arufa* ceremonies does not necessarily prove that they were practiced until the time of his rise to rabbinic leadership.

Thursday

The Torah in Parashat Shoftim (16:19) reiterates the strict prohibition against judges accepting bribes, explaining, “for a bribe blinds the eyes of the wise and distorts the words of the pious.”

Rav Naftali of Ropshitz (in *Zera Kodesh*) suggests viewing this prohibition directed towards judges as an admonition to each and every one of us, warning against accepting a “bribe” from ourselves – specifically, from our evil inclinations. Sometimes, rather than simply dissuading us from properly fulfilling our duties, our sinful impulse will offer us a “bribe” – granting us the inspiration and motivation to achieve something significant, to perform an especially virtuous act in an especially virtuous way. In return, we are expected to surrender to our sinful instincts and lower our standards in other areas. Just as a litigant is prepared to sacrifice a small sum of money in the form of a bribe to secure a favorable verdict, similarly, the negative impulse within us is prepared to make the sacrifice of allowing us to achieve and excel in a certain *mitzva* so that we then feel proud and gratified, leading us to general complacency. Rav Naftali of Ropshitz creatively suggests that the Torah’s description of how a bribe “blinds the eyes of the wise” could allude, in the symbolic sense, to the misleading image of piety projected by a person who accepts such a “bribe.” When we excel in a certain area, we can expect to earn the admiration, respect and accolades of “wise” and impressive people, which feeds our feelings of pride that can then easily develop into arrogance. The “bribe” also has the effect of “distorting the words of the pious” – causing us to mistakenly assume in our arrogant self-confidence that words of instruction and guidance from our pious leaders are not relevant to us, given our impressive achievements.

The Torah’s obligations are numerous, diverse and wide-ranging, which can pose a considerable challenge. We might therefore be tempted to focus our attention on one particular area in order to absolve ourselves in our minds of our responsibilities in other areas. Religious observance becomes far simpler when we try to narrow it down to a small number of obligations and values, and so we might be tempted to “bribe” ourselves by committing ourselves at a high standard to one *mitzva* and feel justified in neglecting or making comprises in others. Rav Naftali of Ropshitz warns us against accepting such “bribes,” that we must not allow our success and achievement in one area to blind us to our responsibilities in other areas, and that we must instead honestly and humbly embrace and commit ourselves to each and every obligation the Torah casts upon us.

Friday

The Torah in Parashat Shoftim issues the command to obey the rulings of the *Sanhedrin*, the highest body of halakhic authority: “Do not deviate from that which they tell you, right or left” (17:11). The Rambam includes this prohibition in his list of the Torah’s 613 commands (*lo ta’aseh* 312; *Sefer Ha-chinukh*, 508).

Rav Moshe Teitelbaum of Ihel, in his *Yismach Moshe*, draws what at first appears as a random association between this verse and the *halakha* concerning the proper procedure for putting on shoes. The *Shulchan Arukh* (O.C. 2:4), based on the Gemara’s discussion in Masekhet Shabbat (61a), writes that one should put on his right shoe before his left, but tie his left shoe before his right shoe. The Gemara reached this conclusion after citing conflicting sources – one which stated that precedence should be given to the right shoe, as the right side is generally regarded as the more important side, and another which said that the left shoe takes precedence because *tefillin* is worn on the left arm. In order to uphold both statements, one of the *Amoraim* (Mar Debei De-Ravina) would put on his right shoe before his left shoe, but tie the left shoe before the right shoe. Several *Rishonim* seem not to have accepted this ruling, but rather followed the view of Rav Ashi, who, as the Gemara states, felt there was no required sequence for putting on shoes. Nevertheless, the *Tur* and *Shulchan Arukh* ruled that this procedure should be followed. The *Yismach Moshe* suggests that when the Torah warns against deviating “right or left” from the instructions of the Sages, it alludes to this *halakha*, the procedure for putting on and tying the right and left shoes.

What might be the special significance of this particular *halakha* in the context of the Torah’s command to obey *Chazal*’s guidance?

The Gemara’s conclusion is borne out of the consideration of two conflicting principles – the general importance of the right, and the uniqueness of the left in regard to tying, as expressed in the *tefillin*, which is tied on the left arm. (And for this reason, incidentally, the *Mishna Berura* brings from earlier sources that left-handed people should tie the right shoe before the left shoe, because they wear *tefillin* on their right arm.) This *halakha* reflects the Sages’ careful, calculated decision-making process, taking into account the different factors at play and then reaching the most appropriate conclusion. The *Yismach Moshe* thus explained that the requirement to abide by our Sages’ instructions alludes to the *halakha* of putting on shoes – because this *halakha* very clearly expresses the vital need for scholars with comprehensive knowledge and complexity of thought needed to reach appropriate decisions. We need to consult with such scholars because with limited knowledge, we are prone to seeing only one factor and not the other; to take into account some relevant considerations without seeing the opposite considerations. The Torah therefore commands us to consult those who can see both “right” and “left,” who understand and appreciate the full range of considerations on any given issue, and thereby reach the most prudent conclusion.

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