



Bet Horaah בית הוראה Shaarei Ezra שערי עזרא

Parshat Vayakheal-Pekudie

Zmanim for New York:

Candle Lighting: 6:46pm

Shabbat ends: 7:47pm

R"T 8:18pm

Shaare Ezra is a one of a kind, multi-faceted organization that's there for the community. Under the leadership of HaRav Shay Tahan שליט"א, Shaare Ezra feels that proper Halachic guidance should be accessible to everyone, therefore we offer the community the opportunity to call, text, WhatsApp, or e-mail any halachic questions they may have, through the Bet Horaah, where qualified, trained and ordained Rabbis are available to answer your questions in English, Hebrew and Russian. Shaare Ezra is from the community—for the community.

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Israeli Judicial Reform

RABBI SHAY TAHAN

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Introduction:

Soon after the new coalition government established after the recent elections in Israel came to power, the new Minister of Justice announced the government's intention to quickly push through the Knesset (parliament) a series of legislative reforms that would, among other things, seriously curtail the power of the judiciary branch and radically change the balance of powers between the different branches of government in Israel. The new coalition partners claim that their planned legislative reforms are needed to curb the excessive power of the Israeli Supreme Court and to restore the government's ability to govern, which they allege has been usurped by the Court.

However, critics of the proposed reforms see them as an attack on the separation of powers essential to any democracy and as an attempt by the government to remove any checks and balances on its own power. While the coalition is set on pushing through the legal changes as soon as possible, huge protests against these changes and the way in which they are being implemented have erupted in Israel.

What is the Torah perspective in this ongoing debate? In this article, we would like analyze which of the two sides—if any—the Torah would side with.

Torah Law on the establishment of the Jewish state:

In the year 1917 (תרע"ז) Britain had published the famous Balfour Declaration which stated its support for the establishment of a "national home for the Jewish people" in Palestine. Right then Rabbi Yosef Chaim Sonnenfeld worked tirelessly to ensure that if the Jewish state will indeed be established, it will follow the Torah way. Rabbi Sonnenfeld sent a letter to his brother, Rabbi Shmuel

warning that we might lose the land if the state law will not follow Halacha (עמודה עמוד פב).

Years later, in תרצ"ו, the head Rabbis and Jewish leaders met in a convention called הכנסת הגדולה של אגודת ישראל to discuss this matter and try to find a system to run a Jewish State in a way that will follow the Torah. There was a conflict of how this could be done; on one hand there are clear Halachot which must be followed, while on the other hand some of those Halachot will endanger the existence of the young Jewish State and the Jewish people.

For example, according to Torah law, all places of idolatry such as churches must be destroyed and idol worshipers must not have access to certain places in Yerushalayim. Houses and properties in the Holy Land must not be sold to non-Jews, etc. One can clearly understand the world outcry to such practices, especially in today's day and age where everything is scrutinized and easily categorized as racism and apartheid.

Another issue that faced the Rabbis at the convention was how to practically deal with the non-religious who had much more control than the religious leaders.

The protocols decided upon by the Rabbis and leaders at the time are described in a booklet entitled "Hapardes". The booklet explains that the Rabbis were against having an establishment of the Jewish state which will not be in accordance with Torah, but they also agreed that they had to find the path to work out the above dilemma. The booklet describes the spirit at the convention as a

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Israeli Judicial Reform

war zone, which got very heated with debates that lasted several long hours. Rabbi Wasserman and Rabbi Kotler, amongst many more Gedolim completely opposed the establishment. They explained that we can't agree and give a hand to an establishment which is in direct opposition to the wait for the coming of the Mashiah, especially since it opposes the Torah in many ways.

Other Gedolim believed the state may be established only if it will follow the path of Torah. Rabbi Isser Zalman Meltzer wrote that they should try to ensure that the leadership will be following all Torah laws.

On the other hand, there were Rabbis who felt that there is a great need to create such a Jewish state and to adjust the laws accordingly in order to allow such a state to survive. Rabbi Yitschak Herzog was amongst those who were pro having a creation of a Jewish state, even agreeing on some compromises, considering it a scenario of Pikuach Nefesh, hence allowing to overlook things which will endanger its existence.

The Chief Rabbi of Yerushalayim at the time, Rabbi Zvi Pesach Frank, was one of the leading fighters against a state which doesn't follow Halacha and wrote that if it's not shaped in such a way, the religious people should not accept it as a Jewish state and continue the fight to ensure it changes.

At the time two books were written on the topic, each explaining their opinion on the matter.

One book was written by the Agudath Israel leader, Rabbi Moshe Bloy, called *יסודות לחוקה במדינה היהודית* with the vision of Rabbi Chaim Ozer, explaining in detail how to run a state with accordance of Torah with no compromising. The other book was written by Rabbi Yitschak Herzog called *תחוקה לישראל על פי התורה*, which sided with the creation of the Jewish state with adjustments to fit the Torah law in a practical way which wouldn't endanger its survival.

The war didn't end after Israel's declaration of independence, which brought with it many opinions of whether the religious people should completely deny and ban everything in the state or accept things partially.

Does Torah sides with 'we the people' to decide, or a court system?

The above argument was regarding Torah and religious issues; but when dealing with questions which aren't related to Torah, the poskim wrote that we must appoint elected officials to be in charge of legislating laws, which are elected by votes of the people, just like our modern time democracies. Upon their appointment, one must follow whatever they decide (ראו שולחן ערוך (י"ד סימן ב' בש"ע ורמא).

"כל ציבור במקומו כגאונים לכל ישראל שתיקנו כמה תקנות לכל ישראל"

(רשב"א ח"א סימן תשכט)

The Rishonim (מרדכי ב"מ סי' רנו בשם רבינו גרשום) wrote that the people who were appointed have importance as the prophet Shmuel had: *כל מי שנתמנה על הציבור*: הוא כאביר שבאבירים, ויפתח בדורו כשמואל בדורו, וכל מה שעשה עשוי"

There are other opinions on this, see the Maharik (שורש א, יד) who wrote that those who were elected are not permitted to legislate new laws: *"אין לבני העיר כח לחדש תקנות, אלא רק לאכוף את הציבור"*

but 'על מה שנהוג מקדם', Le'halacha we follow the first opinion.

Enforcing Law and Order.

Many of the Torah laws are lenient on the aggressor preventing proper deterrence. For example, one who was caught stealing is only obligated to return the stolen item. One can easily come to the realization that by not having proper punishment, the thief has nothing to lose which will bring up crime. How then do we ensure public safety, law and order?

The Rashba (שו"ת חלק ג' סימן שצג הובא בב"י ס"ב) wrote that we shouldn't merely follow the laws of the Torah, but rather punish more than the Torah requires to cause deterrence. He explains that a society which will follow just the strict Torah law will bring crime up since the criminals will go unpunished. For example, one who kills according to Torah doesn't get punished unless there were witnesses and warning, and he must verbally accept upon himself prior to the crime to be punished. The Rashba says that by merely following the Torah law, the society won't survive:

"אם אתם מעמידים הכל על הדינים הקצובים בתורה... נמצא העולם חרב, שהיינו צריכים דינים והתראה, וכמו שאמרו חז"ל (בבא מציעא ל, ב) לא חרבה ירושלים אלא על שהעמידו דיניהם על דין תורה... ונמצאו קלי דעת פורצים גדרו של עולם, ונמצא העולם שמש"

Due to this, the Gemara (סנהדרין מו) concludes that a court may administer lashes and capital punishment even when not required so by Torah law. They may administer these punishments to erect a fence around the Torah, so that people will fear sinning.

The Gemara brings an example to this from an incident which occurred involving one who rode a horse on Shabbat during the days of the Greeks, and they brought him to court and stoned him. This was not because he deserved that punishment, as riding a horse on Shabbat is forbidden only Rabbinically, but because the hour required it, as people had become lax in their observance of Shabbat and therefore it became necessary to impose the severe punishment for a relatively minor offense.

This is also how the Shulchan Aruch starts his Choshen Mishpat Sefer (סימן ב') to teach us that Bet Din should enforce punishments to oppress crime.

PROTESTS IN THE TORAH'S PERSPECTIVE

In today's days, it seems like every place we turn, every newspaper or news site opened seems to report of another protest. Everybody is protesting about something. Worse yet, it seems like those protests are getting wilder, brutal and more aggressive.

These protests are common amongst the more religious

(known as Charedim) as well. Upon further examination however, one will find an interesting difference between their protests and everyone else's protest.

We all know what a regular protest looks like: large crowds chanting and screaming, big colorful signs with provocative words, closure of main roads and streets, garbage cans go

PROTESTS IN THE TORAH'S PERSPECTIVE

on fire. Add to that, in some circles, looting, beating and fighting with police.

The Charedi protests, on the other hand are an anomaly, the people gather with their hats and jackets and come peacefully and respectfully to listen to Rabbis' speeches—almost as if it was a Chizuk gathering before Yom Kippur! Afterwards, they recite a few chapters of Tehilim, pray Mincha and leave home. What is the reason for this very strange difference between the two crowds?

Those of us who learn Chumash know that protests are nothing new, as we find in the Chumash many places where the nation has been gathered for various reasons, with a common theme occurring by all the gatherings of the nation for the right reasons, and a common theme occurring by the gatherings for the wrong reasons. Whenever the nation gathers for the right reason, they don't come to talk, but rather to listen; but when they gather for the wrong reason, they come to scream and shout and let out frustrations.

Our Parasha opens with this Pasuk:

וַיִּקְהַל מֹשֶׁה אֶת כָּל עֵדֶת בְּנֵי יִשְׂרָאֵל וַיֹּאמֶר אֲלֵהֶם: אֱלֹהֵי הַדְּבָרִים אֲשֶׁר צִוָּה ה' לַעֲשׂוֹת אוֹתָם

Moshe Rabenu gathers the entire nation to tell them Hashem's words. This type of assembling was common; whenever Moshe needed the nation to gather, a trumpet would blow as a sign to come (במדבר י', א). After the nation gathers, Moshe would teach them the laws of the Torah.

But there were other assemblies as well using the same term ויקהל, but those were of the people's protests. For example, in last week Parasha it says: וַיִּקְהַל הָעָם עַל אַהֲרֹן, וַיֹּאמְרוּ אֵלָיו קוּם. עֲשֵׂה לָנוּ אֱלֹהִים אֲשֶׁר יֵלְכוּ לִפְנֵינוּ. The nation gathered around Aharon to protest and called out to him: Rise up and make for us gods that will go before us.

In those verses we find that their gathering was not to hear or learn anything from Aharon, not even to get advice from that holy man, but rather to command Aharon to do as they say.

Here are few more examples of this phenomena which repeats

itself throughout the pesukim:

When Korach and his men started rebelling against Moshe Rabenu the Pasuk says:

וַיִּקְהָלוּ עַל מֹשֶׁה וְעַל אַהֲרֹן וַיֹּאמְרוּ אֲלֵהֶם, רַב לָכֶם כִּי כָל הָעֵידָה כֹּלֵם קְדוֹשִׁים (במדבר טז, ג)

The people gathered against Moshe and Aaron and said to them: "It is too much for you! For the entire assembly are holy."

Again, the people who are protesting gather not to listen or learn, but to speak out against Moshe Rabenu.

Another similar gathering was after the Meraglim come back from spying the land of Israel. They gave a negative report and warned of what they believed was a bad land. On that night the nation gathered against Moshe and spoke out:

(במדבר יד, ב) וַיִּלֹּנוּ עַל מֹשֶׁה וְעַל אַהֲרֹן כָּל בְּנֵי יִשְׂרָאֵל, וַיֹּאמְרוּ אֲלֵהֶם כָּל הָעֵידָה לוֹ מִתְּנֵנוּ בְּאֶרֶץ מִצְרַיִם אוֹ בַּמִּדְבָּר הַזֶּה, לוֹ מִתְּנֵנוּ

All the nation complained against Moshe and Aharon and said to them: if only we had died in the land of Egypt or in the wilderness.

To explain the reason that religious people gather in a peaceful way while others don't, one needs to realize the different mind-sets between the two groups.

When faithful God-fearing Jews gather, they aren't really protesting, because they truly believe that whatever is happening comes from Above, and their gathering, therefore, is not to fight against anyone but to change and improve themselves, so that Hashem will change the bad decree (along with doing some Hishtadlut, effort, as required). When one comes to improve himself, he comes to listen, not to talk. But when everyone else comes to protest, they are coming to change others and therefore they use loud and offensive language, provocative signs and, if needed, violence.

These two very different approaches are not expressed only at protests, but they are very different world views which lead a believing Jew throughout his life. Whenever things don't go the way he likes, he turns to himself for a change and recites few chapters of Tehilim for Hashem's help.

Sweet Trash

Question: On the holiday of Purim we received large quantities of sweets and all kinds of candies, and we in our family have not eaten such sweets in a long time because we believe that they are very harmful to our health, and therefore have no use for those sweets. We also do not want to give those sweets to others because we believe that they aren't healthy for them either, so we wanted to ask if we are allowed to throw them in the trash or perhaps there is a prohibition of **בלב תשחית**, disposing food?

Answer: The prohibition of **בלב תשחית** is mentioned in the Pasuk:

כִּי תִצּוֹר אֶל עִיר יָמִים רַבִּים לֶהֲלַחַם עִלֶּיהָ לַתְּפֹשָׁה, לֹא תִשְׁחִית אֶת עֵצָהּ לִדְלוֹחַ עִלֶּיהָ גִּרְזֹן, כִּי מִמֶּנּוּ תֹאכַל וְאוֹתוֹ לֹא תִיכְרוּתָהּ (דברים כ, יט).

When waging war against a city and have to besiege it for a long time in order to capture it, you must not destroy its trees, wielding the ax against them. You may eat from them, but

you must not cut them down. Are trees of the field humans to withdraw before you into the besieged city?

The Rambam (פרק ו' מהלכות מלכים הלכה י') writes that this prohibition applies not only to destroying trees but anything that one destroys or disposes of.

However, all which we mentioned above is in a case where he loses more by wasting than he gains; but if he has a greater profit by wasting it, then it is permissible, as was brought up in the Gemara (בי"ק צא, ב).

that if the worth of the tree is more than its loss it's permitted to uproot it. Meaning to say, if the wood costs more as building material than the profit gained from its fruits, then one is allowed to cut down the tree and use it to build.

Accordingly, the Rishonim (רא"ש ב"ק שם וט"ז יו"ד סימן קטז) write that one may uproot a tree if it occupies a land which one needs to build on. The reason is the same, the gain of the space is greater than what the fruits of the tree bring forth.



SWEET TRASH

The Gemara (Shabbat קמ"ב) raised another basic principle that one's body is more important than his money, and therefore following the above principle that if the food harms the body more than it benefits, one may throw it away.

The Rambam (פ"ד מהלכות דעות) warns not to eat unhealthy food and writes: Most illnesses which afflict man are caused by harmful foods or by his filling his belly and overeating, even of healthy foods.

This was implied by Shlomo HaMelech in his wisdom: "Whoever guards his mouth and his tongue, guards his soul from dis-

treas" (Proverbs 21:23) ; i.e., "guards his mouth" from eating harmful food or eating his fill and "his tongue" from speaking [about things] other than his needs".

The Chazon Ish wrote (אגרות אקלו) the following : "I consider the natural endeavors in what concerns health to be a Mitzvah and an obligation, and as one of the duties to complete the human form which the Creator stamped in the coin of His world."

Therefore, it seems that eating such sweets, which are known to cause many, many sicknesses, should be avoided and one may dispose them.

ההפיכה המשפטית

וזה אומר בכה...איך יעשו? נראה בעיני שיש להושיב כל בעלי בתים...וילכו אחר הרוב לברור ראשים, הן להעמיד חזנים, הן לבנות, הן לתור בבית הכנסת, להוסיף ולגרור ולסתור...סוף דבר כל צורך הקהל יעשו על פיהם ככל אשר יאמרו. ואם ימאנו המיעוט ויעמדו מנגד לשמור ולעשות ככל הכתוב, יש כח ביד הרוב או ביד שימנו הרוב עליהם לראשים להכריחם ולכופם בין דיני ישראל, בין דיני האומות עד שיאמרו רוצים אנחנו", והאריך שם לכתוב איך יש לסדר דבר מינוי נציגי הקהל, ושכופין את הציבור לעשות כפי שהם ינהיגו.

ואת מי יש למנות כנציגי הציבור, כתב המהר"א (סימן ריד והובא בדרכי משה חו"מ סי' קסג) שהממונים דינם כדיונים ואסור להושיב ביניהם את מי שהוא עובר עבירות.

וחידש בשו"ת דברי מלכאל (ח"א סי' לה) שבדברים ההכרחיים לטובת הקהילה כמו במינוי רב או שליח ציבור בודאי יכולים המיעוט לכופ את הרוב, אף שהרוב אינם רוצים להוציא הוצאות לשוכרם.

שיטת חבר מביא חבר:



ויש הבדל בין מי שנתמנה על ידי יחידים וכשיטה הנוהגת היום בבתי משפט, לבין מי שנתמנה על ידי הציבור, שכתב המהר"י וייל (סימן קעג הובא בדרכ"מ יו"ד ריש סימן רנז) שאדם שלא נתמנה מדעת הציבור אלא ע"י השררה או בחזקה ראשים לערער אחריו ולקרוא עליו תיגר.

סילוק שופט ממשרתו:

האם ראשים לסלק ממונה ממשרתו, כתב השלחן ערוך (או"ח סימן נג סעיף כה) שאין מסלקים חזן מאומנתו אלא אם כן נמצא בו פסול עבירה, והוסיף המשנה ברורה שדין זה הוא גם לגבי כל מינוי, ולכן היה נראה שלא לסלק השופטים, אולם כתב בשו"ת הרשב"א (סימן רפג) שעכשיו המנהג הוא למנות ממונים על צורכי הציבור לפרק זמן קצוב ובהגיע אותו הזמן יחליפו אותם באחרים. ועוד כתב הרשב"א שגם אם לא קבעו להם זמן יש להחליפם כיון שנהגו כך נחשב זה כאילו קבעו כן מפורשות.

שלום לכבוד הרב. בעקבות הסערה על תיקון שיטת המשפט בארצנו, שבעוד שהשיטה עכשיו היא שהשופטים מחליטים אם לאשר או לבטל הצעות חוק שאושרו בממשלה, ההצעה לתיקון השיטה היא שחברי הכנסת, נציגי הציבור יהיו אלו שיחליטו אם חוק יאושר. והנה מציני הרפורמה במשפט טוענים שכיון שהשופטים המכהנים כיום אינם נבחרו הציבור לכן אין להם את הזכות להחליט עבור הציבור, ומאוד מעניין אותי לדעת מה דעת ההלכה בנידון.

שלום לשואל הנכבד.

הבה נבחן כמה הלכות הכתובות בראשוני הפוסקים הדנות בתקנות וחוקים הנקבעים לציבור. דמוקרטיה על פי התורה:

נפתח ונאמר שאת התקנות יש לעשות על פי רוב דיעות הקהל (שו"ת מיימוני בספר קנין סי' כז הובא בשו"ת דברי מלכאל (ח"א סי' לה) והוא מה שנקרא היום הליך דמוקרטי, וכמו שמובא ברבינו אשר (שו"ת הרא"ש כלל שיש אות ה') שנשאל אם יש רשות ליחידים להוציא את עצמם מן הכלל ולא

לקיים את ההסכמות שהסכימו הקהל עליהם. הרא"ש השיב בזה הלשון: "דע כי על עסק של רבים אמרה התורה 'אחרי רבים להטות', ועל כל ענין שהקהל מסכימים הולכים אחר הרוב, והיחידים צריכים לקיים כל מה שסיכמו עליהם הרבים, שאם לא כן לעולם לא יסכימו הקהל על שום דבר אם יהיה כח ביחידים לבטל ההסכמתם, לכן אמרה התורה בכל דבר הסכמה של רבים 'אחרי רבים להטות'.

מינוי נציגי ציבור על פי התורה:

אולם כל הנאמר הוא בדבר שצריך את דעת הקהל, אולם כיון שאין אפשר לכנס ולשאול את דעת כל הקהל על כל נידון, לכן הדרך הקלה והפרקטית יותר היא למנות נציגים שיהיו שליחי הציבור לטפל בכל הנדון. ואם אין הקהל יכולים להסכים על מי שיטפל בדברים יש לברור אנשים, כדכתב בהגהות מיימוניות (פ"א מהלכות תפלה ה"ג) וז"ל: "על אשר שאלת אם יש קטטה בין קהלכם ואינם יכולים להשוות דעתם לברור ראשים בהסכמת כולם, וזה אומר בכה

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MAY HASHEM SEND SPECIAL STRENGTH IN TORAH AND ALL THE BERACHOT TO DAVID AKIVA AND RACHEL LEON.

Wishing Rabbi Koval and Rabbi Eisenberger Mazal Tov for their children's wedding.

May you only see nachas from the entire family