

Shofetim 5783

שופטים תשפ"ג

Who Are You to Judge?

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Writing about Shofetim (Judges) feels like too much at this particular moment, when the judiciary of both the United States and Israel are beset by challenges. In Israel, judicial reform pursued by the ruling party is shifting the balance of powers, pushing Israeli society to a schism. In the US, questions of judicial ethics are at the forefront. What does it mean to have a lifetime appointment, and what is the line between friendship and bribery? Shofetim positions the need for righteous people to preside over courts while acknowledging the ever-present challenge human nature presents to this ideal.

The parashah opens by relating the imperative to create a judiciary and the qualities to look for in a judge:

You shall appoint magistrates and officials for your tribes, in all the settlements that your God י-ה-וָה 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. (Deut. 16:18–19)

As the Israelites are entering the new land that God is showing them, they need a system that offers the people *due justice*. In creating a functional society, the Torah lays out three qualities for those passing judgement: do not judge unfairly, show no partiality, and do not take bribes. Each of these provides a baseline for creating a civil society in which the people have access to fair rulings.

The opening verses of the parashah end with the famous call: צדָקָה תַּרְדֹּף (*tzedek, tzedek tiradof*), “Justice, justice shall you pursue,” with which many of us are familiar from current Jewish movements for social justice. But the caveat

after this initial call, “that you may settle the land,” is the pivot point for medieval commentators. Maimonides writes:

JUSTICE, JUSTICE SHALT THOU PURSUE. “Go to seek a reliable court. THAT THOU MAYEST LIVE, AND INHERIT THE LAND. The appointment of qualified judges is of sufficient [importance] to sustain Israel and to settle them upon their Land.” . . . The reason for the repetition [of the word “justice”] is to indicate that the judges should judge the people with righteous judgment (Maimonides on Deut. 16:20)

Fair courts with fair judges are essential to the creation of a fair society. But the parashah is aware of the ways in which fairness is difficult to attain and the challenges and limits of human nature. A judicial system must have protections to stop people from misleading or being misled. In two separate spaces in the portion, the Torah points to the importance of having multiple witnesses, never trusting that one person could have the full story or the motivations of the individual and sets up specific (albeit harsh) punishments for one who bears false witness—the punishment is death. Deuteronomy 19:15 was cited in a footnote of the Constitutional Convention’s argument on witnesses and treason, building the requirement for having multiple witnesses for capital offenses.¹

Judges themselves are also vulnerable. The opening of our parashah establishes greed as an impediment to rendering fair judgement. It also accounts for the fact that as individuals, there may be situations in which one cannot be

¹ Finkelstein, Sheldon. “[A Tale of Two Witnesses: The Constitution’s Two Witness Rule and the Talmudic Sanhedrin](#).” Litigation. September 2010.

impartial. “If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault—matters of disputes in your courts . . . appear before the Levitical priests, or the magistrate in charge at the time, and present your problem . . . ” (Deut 17:8–9). Shofetim stresses the importance of trustworthy systems, providing the judge and litigant with pathways for just decisions.

The question of the responsibilities of judicial systems and fair jurisprudence are circling in very different ways in the US and Israel at this moment. In the US, the current controversy of the Supreme Court is focused on one of the three fundamental rules of judicial fairness—do not accept bribes—with the following questions at the center: What constitutes a gift between friends? What constitutes a bribe? Arguments about ethical reform played out along party lines recently in the Senate Judiciary Committee, with both sides claiming that the other would hamper the impartiality of the highest court.

In Israel, judicial changes are at the center of the maelstrom, with the lines of divide harder to understand and see. Rabbi Daniel Gordis described the Israeli mood in the weeks leading up to the Knesset vote on reform as follows:

If Israel was a marriage, it would now be waiting in the lobby of the divorce lawyer’s office. The days of arguing about substance are long over. No longer does it really matter to anyone who is not earning enough, who is not helping enough with the kids, who never cleans up around the house, why the intimacy evaporated. Now we are simply drowning in seething mutual resentment, in a sea of hatred.

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The parashah asserts the importance of creating courts that people trust. In this messy moment, any legitimate concerns about the judiciary have been drowned out as the court’s power threatens to be diminished by the Knesset. It is hard to imagine that those who are protesting would have any faith in the justice system that will emerge from this vote. The American mood towards the judiciary is similarly bleak—confidence in the Supreme Court is at an all-time

low and while people aren’t taking to the street, there are increasing calls for reform.

Let’s return the central verb of this parashah’s call to action—“Justice, Justice shall you **pursue**.” And pursue we must if we want to uphold the safety and integrity of our civic institutions. In her sweeping article, “Autocratic Legalism,” Princeton Law Professor Kim Lane Schepple identifies the myriad of ways in which the powers of a free judiciary are being undermined. To protect the legal system, she writes, “[c]ivic education needs to teach people to recognize the new signs of danger. Under what circumstances is it safe to trust the appointment of judges to a political process? . . . People beyond the educated elite need to know why these questions matter, and they need to learn how to think about answering them” (39).² Certainly in Israel, this kind of activism is underway. Each of us must challenge ourselves to continue to pursue the values centered in Shofetim. The title of this piece asks, “Who are you to judge?” The answer is that you are essential to judging the system and determining its merit.

² Schepple, Kim Lane. “[Autocratic Legalism](#).” The University of Chicago Law Review. 2018