

INSIGHTS

Into The Weekly Parsha

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This week's Insights is dedicated in loving memory of Tova Necha bat Moshe Yaacov haKohan Hollander, mother of Dr. Amy Wolnerman of Boca Raton.
"May her Neshama have an Aliya!"

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Based on the Torah of our Rosh HaYeshiva HaRav Yochanan Zweig

PARSHAS SHOFTIM

...and Justice for All

You shall not pervert judgement, you shall not show favoritism, and you shall not take a bribe because bribery blinds the eyes of the wise and makes righteous words crooked (16:19).

This week's *parsha* exhorts judges to repudiate bribes. One must ask; for whom exactly was this prohibition written? It would seem kind of pointless to tell a crooked judge, "by the way you shouldn't take bribes." Obviously, an honest judge innately understands that taking a bribe undermines the whole justice system, while a crooked judge has made his choice and chosen to ignore the moral issues. So to whom is this prohibition directed?

Rashi (ad loc) makes a curious comment: A judge is forbidden to take a bribe "even to adjudicate the case honestly." What exactly is the case Rashi is referring to? If he is judging the case properly, what exactly is the issue? Perhaps even more puzzling: Why would someone even want to pay a judge to rule properly, what would be a compelling reason to offer a judge money in such a situation?

Rashi is actually alluding to a remarkable, and fairly tempting, situation. Imagine if one of the litigants approached the judge with the following argument: "Your honor, I am an honest person and I want you to adjudicate this case properly. I feel that I am in the right and I am entitled to monies from the other party. But, I fully recognize that I may be biased and that my claim may be wrong. In such a situation I would NEVER want the other party's money."

He continues, "I know that you have a lot of stress in your life, and that you need to make more money in order to make ends meet. I know you drive Uber shifts at night to earn extra cash. My concern is that you might be tired from all those extra hours working and it is likely that you may not have the peace of mind to give this case the proper attention it deserves. Under no circumstances would I, heaven forbid, want money that didn't belong to me. So please allow me to give you enough money so that you can solely focus on this case and not have to take on another job. But I am reiterating that I am only doing this so that you can give it the proper attention and adjudicate this properly."

Well, you can probably see where this is going. The reason it's such a sinister form of bribery is because it is so cleverly subtle, and a desperate judge might actually consider such an offer. It almost seems on the up and up. The reason it is so deceptive is that even if the judge turns it down, in reality the litigant has already accomplished proving to the judge what a good guy he is and that his heart is in the right place. That alone can affect the outcome of the case.

From here we can also learn a valuable life lesson: treachery sometimes comes in the illusion of an honest person with an outstretched hand offering help.



Did You Know...

In this week's *parsha*, we are commanded to appoint judges in every city. But how do we determine the size at which a city requires a court system? The Mishnah (*Sanhedrin* 2a) states that a population of at least 120 people are required to have the *Sanhedrin Ketana*, made up of 23 people. Why 23? This number is determined because we need to have a *minyan* (ten people) to argue for the defendant and a *minyan* to argue against the defendant. The final three are needed because a two person majority is needed to convict; as opposed to the leniency of a one person majority to acquit.

The Gemara (*Sanhedrin* 17b) later explains why the minimum required population for a city is 120 men:

1. You need 23 judges for the actual court. There is also the opinion that an additional 23 people are needed in case the whole *Beis Din* dies, so they can be replaced (Yad Ramah's preferred explanation).

2. Three rows, each with twenty three,

(Continued on Reverse)

Judge and Executioner

You shall appoint judges and policemen in all your gates that Hashem your Lord has given you, and they will judge the nation justly (16:18).

Rashi (ad loc) quotes the Midrash Tanchuma and defines the role of the officers: "They are the ones that enforce on the people the verdict of the judge, through hitting and restraining them." Rashi seems to be bothered by a remarkable omission in the *possuk*. The verse starts out saying that we must appoint judges and officers, yet only seems to describe the job of the judges; "and they will judge the nation justly." There is no independent mention of the role of the policemen. Rashi, therefore, concludes that their role was merely to support the judges; in other words, they are part of the system of courts.

This is a fascinating departure from the American system of jurisprudence. In American law, the judges are in the judicial branch of government, but all the enforcement of the law falls under the executive branch. That is to say that policemen, sheriffs, and other law

enforcement personnel work for the local, state, or national municipality; whether it is the mayor, governor, or president. This is because under the American system the judges bear no responsibility for the practical application of law, just the determination of it.

Under the Jewish system of law, the judges are required to not only adjudicate issues that come before them, but to also oversee the application and enforcement of the laws. The police force is the enforcement arm of the judicial system. In other words, the American system of jurisprudence simply charges the judges with determining the law while our system makes them fully responsible for the law; charging them with the responsibility of maintaining the integrity of the law as well.

Rambam (*Yad Hilchos Sanhedrin* 1:1) takes this one step further and explains that the officers not only enforced the laws and administered the punishments for those who violated the laws, they were also responsible for maintaining a moral and honest society. The police were responsible for monitoring the markets to make sure there was no price collusion or gouging and that all the weights and measures used in the marketplace were accurate and honest.

In the American system, there is a basic understanding that you can do what you want as long as you aren't hurting anyone. In our system of law, we are not just concerned with maintaining law and order. Our laws aren't in place just to make sure society doesn't devolve into anarchy; our primary concern is maintaining a moral society that reflects the values of our Torah.

Did You Know...

- were needed in case the judges that were judging were deadlocked and more pairs of judges had to be added to the court. The most judges that could be judging was 71, so it never happened that all of these reserve judges were required.
3. Ten unoccupied men were always in shul, in order to ensure that there would always be a *minyán* during the time for *davening*.
 4. Two court stenographers
 5. Two court officers (to administer punishments, serve summons, and monitor the marketplace)
 6. The two people involved in the case
 7. Two witnesses
 8. Two witnesses who can discredit those witnesses
 9. Two witnesses who can discredit those who discredited
 10. Two people to collect the towns charity
 11. Three people to distribute it
 12. And one person to serve as the towns doctor, bloodletter (for medical purposes), scribe, and teacher (obviously a very multi-talented individual).

This, of course, adds up to a total of 120.

