**PARASHAT HASHAVUA**

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**Dedicated in memory of Mrs. Leora Graham, z"l,**
**devoted wife to Yonatan and mother to Kinneret and Elitzur**,
**daughter of Rabbi and Mrs. Ephraim Mirvis '76, sister of Danny (2003-present), Hillel (2001), Noam (2005), and Eitan (2007),
who passed away this week after a long and brave fight with cancer throughout which she exhibited deep faith**

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**PARASHAT SHOFTIM**

**Zion Shall Be Redeemed With Justice**

**By Rav Yair Kahn**

**1. In All Your Gates**

“You shall appoint *shoftim* (judges) and *shotrim* (policemen) in all your gates” (16:18). 'Gates' is a reference to gates of cities. Therefore, the term 'all **your** gates' is an allusion to cities in Eretz Yisrael. From here we get the impression that the mitzva to appoint *shoftim* is exclusive to Eretz Yisrael. The Ramban initially agrees with this interpretation, however adds an important modification: "It is clarified here that they should place *shoftim* in all their cities, when Hashem gives them the land. For outside the land they are not obligated to establish courts. Instead, when one who feels wronged cries out, those that are worthy to pass judgment will arise and pass sentence according to their laws. Alternatively, he can go up to the land and there he will be judged in the place of justice" (16:18).

According to the Ramban, there are two separate *mitzvot*. The first is to maintain justice. The second is to appoint *shoftim* and establish a court system. The mitzva to maintain justice is universal, while the mitzva to appoint *shoftim* and set up courts applies only in Yisrael. Therefore, outside Yisrael, even though there are no permanent courts, there must be some avenue open for a person who is wronged.

However, there is a mishna in *Makot* (7a) that teaches us that *sanhedrin* (an established court) applies both in Eretz Yisrael as well as outside Eretz Yisrael. The Gemara then asks what we derive from the term 'your gates,' which specifically refers to cities in Eretz Yisrael and offers the following answer: “in your gates you establish courts in every district and every city, out of Eretz Yisrael you set up courts in every district, but not in every city”. Based on this *sugya*, the Ramban retracts his initial suggestion and concludes that the mitzva to appoint judges is not limited to Eretz Yisrael: “From this it would appear that we are obligated to establish a court outside Yisrael ….”

However, this distinction mentioned in the gemara, between Eretz Yisrael and *chutz la’aretz* requires clarification. After all, if district courts are sufficient to maintain law and order, it should be sufficient in Eretz Yisrael as well. On the other hand, if municipal courts are also necessary, why are they not set up in *chutz la-aretz*? Of course, one can respond that municipal courts are only necessary in Eretz Yisrael, where the general population is Jewish. In *chutz la-aretz*, whose primary population is non-Jewish, district courts are sufficient to deal with any inner Jewish conflict that may arise. Accordingly, there is no real distinction between Eretz Yisrael and *chutz la-aretz* regarding the requirement to set up courts. Regarding both, one must establish a sufficient number of courts. If, for instance there would be a city in *chutz la-aretz* with a large Jewish population, perhaps a municipal court would be necessary, while a district court may be enough in a sparsely populated area in Yisrael. Therefore, we are somewhat uncomfortable with the biblical phrase "in all **your** gates", which seems to indicate a basic categorical distinction between the courts in Yisrael and those in *chutz la-aretz*.

Perhaps, we can explain the distinction between Yisrael and outside Yisrael along the lines initially drawn by the Ramban. The mitzva to appoint shoftim and set up a court system may be exclusive to Eretz Yisrael. The need for a minimal amount of district courts outside Yisrael, is only in order to maintain justice, and to provide a ready response for one who is wronged and cries out for help.

It is noteworthy that the special status of Eretz Yisrael is derived from the *pasuk* that teaches the mitzva of appointing *shoftim*: “You shall appoint *shoftim* and *shotrim* in all your gates” (16:18). The gemara in *Makot* derives the need for courts outside Yisrael from another *pasuk*: "And these shall be for you a statute of judgment unto you throughout your generations in all your dwellings" (Bamidbar 35:29). This *pasuk*, which deals with punishment for a murderer, implies only that these laws should be applied in all your dwellings. However, there is no suggestion of a universal commandment of appointing *shoftim* or setting up courts. The *pasuk* merely demands the ability of effectively dealing with a murderer. Based on this *pasuk*, the mishna rules: "Sanhedrin is active in both in Eretz Yisrael and *chutz la-aretz*." However, the mishna does not teach us that the mitzva to appoint *shoftim* applies in *chutz la-aretz*.

**2. Moshe's Account of the Appointment of the Shoftim**

In our *shiur* on *Parashat Devarim*, we noted the historic inaccuracy of Moshe’s account of the appointment of *shoftim* (*Devarim* 1:9-18). On the one hand, Moshe seems to be referring to the incident recorded in *Parashat Bahaalotecha*, which occurred immediately after Yisrael began their march towards Eretz Yisrael. After the people complain that they want meat, Moshe tells Hashem that he is incapable of dealing with the nation by himself (*Bamidbar* 11:14). In the wake of that incident seventy people were chosen to join Moshe in leading the people. To achieve that, they were awarded prophesy (11:16-17). On the other hand, Moshe makes reference to ministers of thousands, hundreds, fifties and tens who were charged with judging the people. However, this reltes to a different incident which occurred in *Parashat Yitro*, as a result of the advice of Moshe’s father in-law (*Shemot* 118:13-27). How are we to resolve this discrepancy?

Before explaining this point, it is important to note an additional difficulty. Even if Moshe’s account is accurate, why is the appointment of the judges noted at all? Moshe is not interested in recording all the events that occurred during this period.. There are many incidents that took place during the journey from Sinai that are ignored. Moshe’s main agenda is to recall the episode of the *meraglim* in order to strengthen the people so that it should not happen again. Why then did Moshe choose to recall the appointment of the *shoftim*?

The Ramban was troubled by this question and commented: “However this was mentioned here to say; we have received the Torah and you placed upon yourselves *shoftim* and *shotrim* to judge and lead you and behold we were ready and prepared to enter the land, and we traveled from Chorev according to our flags with our *shoftim* and elders and then you all came to me … and requested *meraglim*, and all was ruined." From the Ramban, it is clear that the appointment of *shoftim* is a prerequisite to entering the land. Therefore, Moshe felt it necessary to note the appointment of the *shoftim* as an introduction to the tragic episode of the *meraglim*.

Based on the Ramban's comments, we can propose a reason why Moshe introduced the appointment of the *shoftim*, instead of the seventy prophets, at this point. In our *shiur* on *Parashat Devarim*, we suggested that Moshe’s account of past events was not a history lesson, but rather a religious one. Moshe deliberately altered certain events, in order to challenge Yisrael to study the speech and uncover the religious messages. By ‘mixing up’ the story of the seventy elders and introducing the appointment of the judges at this point, perhaps Moshe Rabbeinu was trying to convey the message that a system of social justice is a prerequisite to settling the land. Moshe was prefacing an idea that is stated explicitly in our parasha: "Justice, justice shall you follow, that you may live, and inherit the land which Hashem your God gives you." (16:20)

**3. In Order That You Live and Possess the Land**

Mori Ve-Rebbi, Rav Soloveitchik *zt"l*, further developed this idea to propose a different distinction between Eretz Yisrael and *Chutz la-aretz*. We have seen that the Torah hinges inheritance of Eretz Yisrael on the ability of Yisrael to administer justice. Accordingly, Rav Soloveitchik suggested that the mitzva to appoint *shoftim* might have two independent components. The first is to maintain justice. The second is as an integral part of *yerusha ve-yishiva* (conquering and settling of Eretz Yisrael).

Does settling Eretz Yisrael exhaust itself in the question of sovereignty? Is it measured only in quantitative terms; the amount of square miles under our political control? Or perhaps, there is a qualitative element as well. In order to properly settle Eretz Yisrael, we might be commanded to create a certain type of society. The creation of a system of social justice might be a basic component of the way in which we must settle Eretz Yisrael.

The first *pasuk* in *Parashat Shoftim* commands the establishment of both tribal courts and municipal courts (see Sanhedrin 16b). The need for tribal courts might also be connected with the relationship between the court system and settling Eretz Yisrael. After all, the land was divided along tribal lines. Similarly, the need for a separate court in every single population center of Eretz Yisrael may reflect the connection between the court system and the settlement in Eretz Yisrael, in which the tools of justice are imbedded in the very fabric of the settlement.

Rav Soloveitchik suggested that settling Eretz Yisrael means more than just political sovereignty in another context as well. The Rambam writes in *Hilkhot Avoda Zara*: "It is a positive commandment to destroy *avoda zara* (idolatry) … for it is written 'You shall completely destroy all the places, et cetera,' and it is further written, 'But you shall deal with them in this way: you shall destroy their altars, and break down their images, and cut down their *asherim*, and burn their carved idols with fire'. It is a commandment to pursue idolaters and idolatry in Eretz Yisrael until they are totally eradicated from our land, but we are not commanded to pursue them outside Yisrael … for it is written, '...and obliterate their name from that place.' This shows us that we have to pursue them in Yisrael, but not outside Yisrael." (7:1)

Rav Soloveitchik suggested that the obligation that is exclusive to Eretz Yisrael, whereby we are obligated to search out *avoda zara* and destroy it, is because the mitzva to destroy *avoda zara* is part of *yerusha ve-yeshiva*, as it says: "For you are crossing the Yarden to Eretz Canaan. … (*Bamidbar* 33:51-53). The Torah connects the mitzva to destroy *avoda zara* with conquering a settling the land. It is noteworthy that according to the Ramban (comments on the Sefer Hamitzvot), this pasuk is the source for the mitzva to settle Yisrael. Outside Yisrael, one must destroy *avoda zara* only if one chances upon it. After all, it is prohibited to derive any benefit from *avoda zara* and therefore, if it is at hand it should be destroyed so that one should not inadvertently benefit from it. However, there is no obligation to search for *avoda* *zara*. Only in Eretz Yisrael, where destroying *avoda zara* is part of *yerusha ve-yeshiva*, are we obligated to search and destroy *avoda zara*.

If we combine these two cases, we may conclude that *yerusha ve-yeshiva* demands establishing a society that is both religious and ethical. The existence of either *avoda zara*, or social injustice, have a negative impact on the quality of the settlement of Eretz Yisrael.

**4. From The Place That Hashem Will Choose**

*Parashat Shoftim* continues to describe a situation where there is an argument regarding a certain ruling. In that situation, the parties must go to the supreme court, known as the Sanhedrin. The Torah states that this court must be located in the place that Hashem will choose. According to our sages, there was an office in the *mikdash*, the *lishkat hagazit*, which housed the *Sanhedrin*.

On the one hand, the choice of this particular location reflects the idea that the authority of the *Sanhedrin* and the entire court system is ultimately based on Hashem. Location in the *mikdash* means in the presence of Hashem, as it were. Therefore, divine authority is at the root of the authority of the Sanhedrin.

However, the location of the Sanhedrin in the *mikdash* may also reflect the idea that justice is part of *yerusha ve-yeshiva*. Therefore, capitol city, which is the political and religious center of the *yishuv*, must house the supreme court.

On *Shabbat chazon*, (the Shabbat that precedes tisha b’Av), the *haftorah* that we read is from the opening chapter of *sefer Yeshayahu*. In that chapter, Yeshayahu describes how Yerushalayim, the place that Hashem chose, failed in its mission: “How did the faithful city become a harlot! She that was full of justice, righteousness lodged in her, but now murderers … Your princes are rebellious, and companions of thieves; every one loves bribes, and pursues rewards; they do not judge the orphans, nor does the cause of the widow come to them” (*Yeshayahu* 1:21-23).

The *haftorah* ends with a description of the redemption of Yerushalayim: “And I will restore your judges as at the first, and your counselors as at the beginning; afterwards you shall be called the city of righteousness, the faithful city. Zion shall be redeemed with justice and they that return to her through righteousness” (26-27). Yehsayahu states explicitly, that Yerushalayim will only be rebuilt on the foundations of justice and righteousness.