

# Torah Table Talk – *Pirkei Avot*

## Guilty Until Proven Innocent: Of Judges and Witnesses

*Parshat Shoftim*, Deuteronomy 16:18 – 21:8

Dedicated by Frances and Buddy Brandt

With love to their grandchildren

Elka, Joshua, Lindsay, Oren z"l, Jenny, David, Lauren, Kayla, Zenna, and Emily

*Shoftim* deals primarily with the institutions for the welfare of the public: the judiciary system, laws regarding the king, the priesthood, and prophets. No matter how much authority a public official is given, he is bound by the principles and laws of the Torah. The world has not changed; power is so easily abused by those in positions of leadership. This was particularly true with regard to judges who were charged to govern with “due justice.” The *Etz Hayim* commentary points out that the term, *Mishpat Tzedek*, due justice, refers to two aspects of communal justice. “*Tzedek* is justice in the sense of doing the right thing in legal procedure; *mishpat* is justice as a cosmic principle that maintains harmony in the world and makes possible the world’s continued existence.” These two principles are poetically expressed in Psalm 82 which is recited as one of the daily psalms each week.

Much of *Pirkei Avot* is addressed to the sages who were assigned the arduous task of offering decisions of law and serving as judges. Unlike modern day judges, a rabbinic judge’s responsibility was to ascertain the truth and decide the proper disposition of the law. Judges were not bound by a jury, or the pleas of counsel. With more power and authority than modern day judges in our American judicial system, it would have been easy for them to skew the discussion and influence the outcome of the case. Yehudah ben Tabbai and Shimon ben Shetach reminded their colleagues to listen to all arguments with impartiality and to decide the law according to the best interpretation of the law. When they were done, however, the plaintiffs were given the benefit of the doubt and treated as innocent.

**Pirkei Avot 1:8** Yehudah ben Tabbai said: When serving as a judge, do not play the role of counsel for either litigant; when the litigants appear before you, deem them both guilty. But when they depart, having accepted the verdict, regard them both as innocent.

**Pirkei Avot 1:9** Shimon ben Shetach said: Cross examine both witnesses thoroughly; be careful in your choice of words lest something you say lead them to testify falsely.

### Sources

#### Deuteronomy 16:18

You shall appoint judges and officials for your tribes, in all the settlements the Lord your God 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. Justice, justice shall you pursue that you may thrive and occupy the land that the Lord your God is giving you.

#### Deuteronomy 1: 16- 18

I charged your judges at that time as follows: “Hear out your fellow, and decide justly between a person and his fellow Israelite or a stranger. You shall not be partial in judgment, hear out low and high alike. Fear no person for judgment is God’s. And any matter that is too difficult for you, you shall bring to me and I shall hear it.”

#### Psalms 82

A Psalm of Asaf: God rises in the court of the mighty (*el*), pronouncing judgment over judges (*elohim*): “How long will you pervert justice? How long will you favor the wicked? Champion the weak and the orphan; uphold the downtrodden and the destitute. Rescue the weak and the needy; save them from the grip of the wicked.”

But they neither know nor understand; they wander about in darkness while the earth’s foundations are shaken. I thought you were Godlike, children of the most high, but you will die like mortals; like any prince you will fall. Arise O God and judge the earth for Your dominion is over all nations.

#### Babylonian Talmud Sanhedrin 7a

R. Samuel bar Nahmani said in the name of R. Jonathan: When a judge issues a true verdict in keeping with the facts as he has ascertained them, he causes the Presence to abide in Israel, as is said, "God stands in the court of the mighty, pronouncing judgment over judges." (Ps. 82:1). But when a judge does not issue a true verdict in keeping with the facts as he should have ascertained them, he causes the Presence to depart from Israel, as is said, " 'Because of the oppression of the poor, because of the sighing of the needy, now will I arise,' says the Lord" (Ps. 12:6).

## **Babylonian Talmud Sanhedrin 6b**

"Ye shall not be afraid of the face of any man" (Deut. 1:17). Resh Lakish said: When two men, one weak, the other strong, come to you in a lawsuit, before you have heard their case or even after you have heard their case, you may--so long as you are still undecided in whose favor judgment is tending--tell them, "I choose not to act as judge in your case," lest the party of great influence be found guilty and use his influence to harass the judge. But after you have heard their case and know in whose favor judgment is tending, you may not withdraw and say, "I choose not to act as judge in your case," because it is written, "Ye shall not be afraid of the face of any man." Rabbi Joshua ben Korhah said: How do we know that a disciple who is present when his master judges a case and sees a point in favor of the poor party or against the rich party should not remain silent? From the verse "Ye shall not be afraid [*lo taguru*] of the face of any man," which Rabbi Hanin took to mean, "You shall not hold back [*lo teageru*] your words because of anyone." Further, witnesses should know against whom [God] they are giving evidence, before whom they are giving evidence, and who will call them to account [in the event of false evidence]. For Scripture says, "Then both the men, between whom the controversy is, shall stand before the Lord" (Deut. 19:17). Judges should also know whom it is they are judging, before whom they are judging, and who will call them to account [if they subvert justice], as is written, "God rises in the court of the mighty pronouncing judgment over judges." (Ps. 82:1).

### **Commentary**

"One is Innocent until proven guilty." We take this as an almost sacred principle of our judicial system in America. It is surprising, then, to see the sages taking the opposite point of view. The judge should presume guilt while deciding the case, but once the verdict had been put into effect, the defendant should be treated as innocent. I believe this principle grows out of the presumption that the judge must be completely impartial in deciding what is just and right. He cannot be swayed by the elegance of the plaintiff's argument; he cannot be sympathetic to one party or the other either because one is more powerful or because the plaintiff is in a weaker position. The judge treats both parties equally – questioning each one's motives until he can ascertain the truth. Another way of looking at the role of the judge is that he must consider-- that both parties are flawed and he must make his decision according to the laws and not the needs of the individual.

Psalm 82 is a fascinating (and favorite) poem. Bible scholar Robert Alter offers a different interpretation of this passage. *Elohim*, which the sages understood as 'judges,' can literally mean, 'gods.' He sees this poem as a moment of transition between mythology and monotheism. God attacks the minor gods for not administering justice in an impartial and fair fashion. He accuses them of oppressing the weak and favoring the rich. God, therefore condemns these other deities to death. Judges often hold the power of life and death in their hands – in that sense the judges become god-like and their responsibility to maintain the world through the administration of justice is that much greater. An interesting aside is that the sages interpreted the first verse of this psalm as the basis of having three judges on a Jewish court: They read the first verse as "God judges with the judges," that is, God (the first judge) judges with the judges (the plural of judges counts as two.) For the Bible and the sages, justice is the very foundation of the world – without just procedures and decision the world cannot exist.

### **Questions to Ponder**

1. In what ways is rabbinic justice different from American justice? What do they have in common?
2. Most systems of law emphasize the importance of impartiality. Psalm 82, however, speaks of the judges' responsibility to protect the weak and defenseless in society? How do these two principles contradict one another? Is it ever appropriate for the judge to favor the weak?
3. The month of Elul (which began this week) ushers in a season of judgment. In what ways is God similar to and different from God's earthly counterparts?
4. What relevance do the teachings of Shimon ben Shetah and Yehudah ben Tabbari have for the lives of those who are not judges? What do they teach us about our relations with others?

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