

Small Tastings of Torah, Judaism and Spirituality

From Rav Binny Freedman

(Portion of Shoftim)

In the IDF, when an officer is due to receive his second bar, making him a full lieutenant, (usually after a year of combat service as an officer in the field), he has to pass a test on the military judicial code. Basically, once he attains this rank he may be asked to preside over a military court-martial in the field, and as such must know the military judicial procedures that are involved.

One of the sections of the military code dealt with the issue of when an officer was required to recuse him or herself from a case and it was fascinating to me to note that the Torah is much stricter with regards to such rules.

*I recall there was a soldier who fell asleep on guard duty while we were in Lebanon. It was not an uncommon occurrence, given the extreme conditions we were in, and how exhausted we all were, and one might expect leniency and understanding in such a case. And yet, one could not help but recall the **Nachal** infantry unit whose soldiers captured a position in the Lebanon war and were so exhausted they fell asleep on top of the hill (in 1982) without posting a guard. Terrorists snuck up on them in the wee hours of the morning and they were all captured by the Amal militia ending up as POW's for two years...*

At the time, I was a lieutenant serving as a platoon commander, and the company commander told me he wanted the soldier punished and ordered me to convene a court martial....

When I found out who the soldier was I realized I had a dilemma: As a principle in the field, Officers did guard duty alongside the men, and to set an example our CO would often take the first shift and we all followed suit. Whenever I took guard duty on our position (mutzav) this soldier somehow found out and he would always show up with a steaming hot cup of coffee that helped me get thru the guard duty. And I was quite sure all the guys knew he did this; so obviously could not objectively judge his case. I also knew him to be a good soldier and knew all the guys liked him, and yet I needed to send a message to the unit. In the field we were all especially tight with each other and this included the Company Commander, so how could any of us be impartial judges?

The easiest judgement would be to take away his upcoming weekend pass (I was allowed to sentence him to up 21 days without leave, more than that required a higher rank...). But weekend passes were holy; and I knew there might be a lot of resentment if I did that. In the end, taking into account his generally stellar service, along with his popularity, balanced by the severity of his offense, I ruled he was unfit for guard and combat duty for the next three weeks and sentenced him to extreme kitchen duties (entailing a lot of pots and pans...) instead.

The day after the court martial I took some early morning guard duty after coming back from a patrol, and he showed up with coffee, and actually thanked me for not taking away his weekend pass! Which of course gave me a lot of food for thought as to whether I had gotten it wrong....

The Torah in this week's portion of *Shofim* is quite clear: speaking to judges it states:

"Ve'lo tikach shochad" "You shall not take a bribe" (Devarim 16:19)

In fact, the laws regarding avoiding bribery are extremely strict in a Jewish Court (Beit din):

Obviously if a judge has a relationship with one of the litigants or has ever received favors from them, he is forbidden from sitting on the case. But judges are not even allowed to enter the courtroom until both litigants are present and standing, the theory being that one would subconsciously be inclined towards the fellow who arrived on time.

The **Aruch Hashulchan** (Rav Yechezkel Michel Epstein, the *Posek* (Arbiter) of Lithuanian Jewry in the late nineteenth century) once recused himself from a case simply because upon entering the court, he realized one of the litigants had earlier smiled and said good morning to him!

I justified my decision by noting that this was not a case of financial dispute and in fact (seeing as I presided alone and it was not a halachic court -*Beit Din* - which requires three judges) it was permissible for me to render a ruling especially as the military system for such low level misdemeanors practically uses the officers of the unit (which allows for a much quicker response time from 'crime' to 'court'). This means it is almost impossible for the 'judge' not to have a relationship with the 'accused'!

But it did give me a lot of pause, and much food for thought on the value of attempting impartiality when rendering decisions, especially in cases where a ruling in favor of one individual is necessarily at the expense of another such as in monetary disputes.

All of this reminds me of an interesting question regarding the story of Yitzchak and his sons:

Yitzchak essentially (for reasons beyond the scope of this article) seems to make a choice regarding which of his two sons (Yaakov and Esau) to bless. And he clearly decides to bless Esau, which Rivka their mother seems to interpret as being at the expense of Yaakov.

And the Torah leaves no room for doubt here: Yitzchak tells Esau (*Bereishit* (Genesis) 27:4)

"Prepare for me the foods as (you know) I love so that I may bless you..."

In other words, ***Yitzchak is bribed!***

In fact, the Torah tells us quite clearly, that Yitzchak loves Esau *because* he is a hunter, so Yitzchak's relationship with his son seems to be a relationship (even if only subconsciously) with ulterior motives! But how could a moral giant such as Yitzchak, the son of Avraham, make such a significant decision whilst so obviously partial to one of the 'litigants'? Would not one expect Yitzchak to recuse himself from ruling on the matter? Or at least we might have expected him to bless both sons equally?

Perhaps this is one of the points of the entire story:

Esau is described not just as a hunter, but also as a 'man of the field', an "***Ish sadeh***"(ibid. 25:27).

His food, then, is the food that comes from the field, so Yitzchak is eating of the food of the field.

So... who else do we know of that lives in the field? Way back in the story of the Garden of Eden the Torah describes the snake as being the most cunning of all the beasts of *the field!* (ibid. 3:1) And it is this same snake that tempts Eve (*Chavah*) who subsequently convinces Adam to eat the forbidden fruit of the tree. Indeed, eating the food offered (suggested) by the snake of the field, is what ultimately distances us from G-d and causes us to be exiled from the garden.

And when we eat at the suggestion of (read; the food of) the snake of the field, we no longer see things clearly. Indeed, we no longer see G-d, we can only hear G-d (Hashem) in the distance, because we have *become* distant.

Yitzchak too, has been eating of the food of Esau, the food of the field. Thus, he has become blinded and "*his eyes have become dim*" (ibid. 27:1); he can no longer *see* properly. So, it is easy for him to be unclear a.....s to which son should receive the blessings.

Indeed, the Torah tells us, such is the sinister nature of bribery:

"For bribery blinds the eyes of the wise..." (Devarim 16:19).

Yitzchak can no longer see straight. It is worth noting that true bribery is so sinister precisely because it does not appear so obviously as bribery. The Midrash tells us that Esau couched his wickedness with Torah ('How do we tithe salt?' and the like, see Rashi 25:27); it seems we are doing the right thing when in reality we can no longer objectively see the right thing!

And make no mistake about it, the Torah, in laying down the law for judges is speaking to all of us: as Rav Dessler (in his *Michtav me'Eliahu*) points out: we are all judges, and we judge the cases in our lives, every day.

As an example, imagine a person wants to know if it is permitted to play Monopoly on Shabbat. So he decides to look up the sources and see what the *Halacha* (Jewish law) has to say on the matter. He is effectively going to judge the 'case' of playing Monopoly on Shabbat. But why is he looking up the case in the first place? Because he wants to play monopoly! So how can he possibly objectively 'judge' the case?

Even a moral giant such as Yitzchak, one of the pillars of the world, who grew up on the knees of Avraham Avinu, can still be 'bribed'!

And we need to constantly be vigilant, especially when we are making the significant decisions in our lives to avoid the subtle and sometimes sinister 'bribery' that so easily creeps into our thought process.

Years ago, many of the yeshivot in Israel got together and decided that when meeting with prospective students we would not even pay for their coffee at a Starbucks nor give them any gifts, in order to avoid both the appearance of impropriety as well as any subliminal bribery that might enter their thoughts. If a recruiter for a particular College wines and dines a potential student, that student can no longer impartially choose the University for the right reasons.

Which leaves us with the obvious question: how then can we ever be impartial, about anything? There are actually two things a person can and should do to try to arrive at more impartial and hopefully more objectively correct decisions:

The **Rambam** in his *Hilchot Deot* (the laws of character development) lists eleven mitzvot which he views to be the foundation of ethical behavior and a balanced character. The second mitzvah is “*Le’hidabek be’Yodav*” literally to cling to those who know Hashem, meaning those who have a healthy relationship with Hashem. In fact, the Rambam (ibid chap. 1) defines a *Chacham* (which we normally take to mean a wise person) as someone who is ‘balanced’ leaning to neither extreme. In other words, we need to have role models; people who are more objective about us than we are. When possible, one should always try not to make significant decisions on their own.

Indeed, it is only when Rivkah (the ‘*Yoda’at Hashem*’ in Yitzchak’s life?) substitutes the food of Esau with her own food (of Torah?) that Yitzchak begins to see things more clearly...

And the second thing we can do, as pointed out by **Rav Avigdor Nevensahl** (*Sichot Le’sefer Bereishit, Toldot is* :

Twice every day before we recite the Shema, we ask Hashem to brighten (enlighten) our eyes with His Torah: “*ve’haier eineinu be’Toratecha ...*” .

It is Torah study and the awareness of Hashem as the source of reality which helps us to see things more clearly. Knowing that Hashem created us all for a purpose and seeing what is really important and valuable in this world, helps us to avoid falling into the trap of misguided morals and skewed values. Appreciating that money is given us only so that we can do good with it and help those less fortunate helps us to avoid the mistake of thinking that money and power are the goals, and recall what really matters most in life.

That is perhaps why and how Yaakov, described as the “*Ish tam Yoshev Ohalim*” which Jewish tradition understands as immersed in the study of Torah, avoids the flawed perspectives of his brother Esau.

We live in difficult times; here in Israel no less than a former Chief Rabbi was convicted and a former Prime Minister served time in prison for bribery, and the current Prime Minister has been indicted (though innocent until proven otherwise) for the same crime. Something is off balance, and we all need to think about how we can get back to seeing things more clearly....

Wishing all a Shabbat Shalom, from Jerusalem,

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