

# THE LIMITATION OF CHOICE

*by Rabbi Yosef Kalatsky*

## 1. The Limitation of Choice

The Torah states, "Judges and officers shall you appoint in all your cities..." The Torah is telling us that there is a Positive Commandment that every community must have a court of qualified judges and law enforcers to carry out their decisions. The Mishna in Tractate Sanhedrin tells us that if a community is comprised of as few as 120 Jews it must establish for itself a court. The Torah tells us in the Portion of Re'eh that if one adheres to the dictates of the Torah he is blessed. However, if one were to transgress, then he is cursed. It is not sufficient for one to understand the value of observing the Torah that he will be worthy of blessing and the one who violates it will be deserving of punishment to ensure its observance. Rather, the Torah prescribes that a judicial and enforcement system must be established in every Jewish community. Without one's understanding that there is culpability and recourse for transgressing, one would tend to do as he pleases and not live as a proper Jew. There are many levels of corporal punishment that the court is empowered to implement when the Torah is violated. The most severe level of punishment is the death penalty (this can be implemented on many levels based on the level of transgression). Certain crimes carry the death penalty through stoning, burning, execution by the sword or strangulation. There are also instances of violations that are of lesser liability that require 39 lashes to be administered. This is when a negative commandment is transgressed. In addition, there are legislative punishments that are promulgated by the Rabbis as fences to protect the Torah.

G'd Created man with a specific purpose and objective to perfect himself through making proper choices. Man was therefore endowed with an intellect to be able to choose between good and evil. Because it is within the power of man to choose between right and wrong, he is deserving of reward when he succeeds and is culpable of punishment if he fails. If one chooses to adhere to the dictates of the Torah he perfects and advances his spirituality. However, if one were to choose to follow his evil inclination, he would be fully culpable, consequently his spirituality would be diminished. Rambam writes in the Laws of Repentance, "It is not like those fools who say that one's status as righteous or evil is predetermined. One is fully deserving or culpable because one has the ability to choose to do right or perpetrate evil." The Gemara tells us in Tractate Berachos, "All is predestined (at the time of conception) except for the fear of Heaven." Meaning, the decision to become a tzaddik or rasha is completely within the purview of the individual.

If the primary purpose of man is to function within a context of being able to continuously choose

between right and wrong, one would think that establishing such a supervisory judicial and law enforcement system of judges and enforcers, would greatly limit one's free choice to transgress. Understanding and appreciating the severe consequences of one's behavior, which bring about corporal punishment, no rational person would consider violating the law. For example, if one were to be forewarned and deliberately eats a small measure (volume of an olive) of non-kosher meat, he would be subject to thirty-nine lashes. In order for one to recover from this experience one may need many years to recuperate from the physical effects of being whipped by the court. In addition, there are many other areas that the Torah does not address but are nevertheless governed by Rabbinic enactments which also result in severe consequences if violated. If this is the infrastructure of the judicial system within every Jewish community, that is comprised of as few as 120 individuals, how does one truly exercise his freedom of choice?

The Jewish people at Sinai became G'd's Chosen and Holy people. They are classified as "the Kingly and Priestly Nation of G'd." Because of their elevated and advanced spiritual status, G'd does not allow the Jew to choose to function only as an intellectual being. In addition, the Torah does not want the Jew to have a choice to forfeit his spiritual persona and sensitivity towards the spiritual through extreme levels of transgression. For example, if one should eat non-Kosher species/food, it desensitizes him to spirituality. Rambam writes, "The ingestion of non-Kosher species causes the Jew become corrupt and have a revulsion to spirituality." In order for the Jew to function within a proper context to advance himself, he must maintain a minimal level of spiritual sensitivity. This can only be attained if the Jew retains and maintains his spiritual profile through the observance of the Torah. Without a judicial system and a law enforcement body, this would not be possible.

The context of choice in which G'd wants the Jew to perform is on a qualitative level. When one observes the Shabbos, in what context does he do so? Is it because one longs to cull from the holiness and spirituality of the day, through its observances? Or, is it because one observes the Shabbos for his own reasons, which may not be for the sake of the mitzvah itself? By establishing a setting for the Jew to function within the parameters that the Torah prescribes, it enables one to make choices either to advance to a higher spiritual plane or to remain on the most simple level (such as performing a mitzvah with an ulterior motive). G'd does not want the Jew to have a choice to live as an intellectual animal, without having a sense for his own spirituality. This is because the Jewish people are His chosen and His children. Exile is a consequence of the Jewish people violating and transgressing the Torah. Existing in a state of exile, the spiritual infrastructure, which is provided by the Torah, no longer exists. The Jew is engulfed by influences that cause him to make choices between retaining the spiritual persona of a Jew or forfeiting it through one's choice to imitate the nations of the world. As a result of exile, the range of the Jew's choice has broadened and therefore it causes one more difficulty to sense one's own spirituality. However, if one, despite the overwhelming challenges of the world's influences succeeds, then his correct choice will have infinitely increased in value. Thus, the Jew will be advanced to another spiritual plateau.

## 2. Mercy within the Context of Justice

The Torah states, "Judges and officers shall you appoint in all your cities..." The Torah is telling us that there is a Positive Commandment that every Jewish community must establish for itself a court. The Gemara in Tractate Sanhedrin tells us that it is not sufficient to have a regional court or a court to cover each municipality, but rather every community that is comprised of at least 120 Jews must establish for itself a court. If the court is to impart corporal punishment, it must be comprised of 23 qualified judges who are ordained. Regarding monetary matters, a court of three judges is sufficient. An enforcement system must also be established in order to guarantee that the rulings of the court are implemented as they were adjudicated. Why is it not sufficient for a regional court to render judgments for their area of responsibility? Why must courts be established in every community, despite its size?

The Gemara in Tractate Sanhedrin tells us that if a judge renders a corrupt judgment that causes the defendant to lose even as little as one cent then the judge is liable to point that G'd will take his life. Since the lack of integrity within the judicial system is regarded by G'd so severely, a judge, when rendering his decision, must view himself as one who has a double-edged sword resting between his thighs. If he should move as much as an iota to the left or right, he will be cut in half. This is the level of trepidation that a judge must have when rendering justice. On the other hand, if a judge renders a true and honest judgment G'd considers him to be His partner in Creation. If one were to steal an enormous amount of money or cause great monetary damage to another, the liability in G'd's Eyes is not to the degree that one must forfeit his life. However if a judge renders a judgment in which the financial loss is even one cent, he deserves to die. Why is this so? In contrast, when the judge renders a proper judgment, why is his accomplishment given such value that he is considered to be G'd's partner in Creation?

The Midrash states, "If there is justice below, there is no need for justice from above. However if there is no justice below, then there will be justice from above." Meaning, if proper justice is rendered by the earthly court, then there is no need for Divine Justice. However, if the court is corrupt and does not render decisions that are just, then there will be Divine Justice, which is catastrophic and devastating. Divine Justice when implemented does not discern between the righteous and the wicked. This is because Divine Justice demands perfection and there is no human being who is perfect. This is the reason that a judge who does not render a proper decision deserves that his life should be taken by G'd. It is because of his lack of integrity that the world will be subject to harshest level of punishment. This is all attributed to the failing of the corrupt judge. The financial cost to the defendant is not relevant (it was one cent). It is because the earthly system of justice is considered to be dysfunctional.

In contrast, when a judge renders a truthful judgment he is considered to be G'd's partner in Creation because he, acting responsibly, ensures that existence will continue. Initially when G'd created the world, He did so with the Attribute of Justice. As the Torah states, "Bereishis bara Elokim ais

hashemayim v'ais haaretz - In the beginning G'd created the heaven and the earth..." Chazal explain that the appellation of "Elokim" connotes G'd's Attribute of Justice. This appellation is repeated throughout the process of Creation until Man was created. The Torah then associates the appellation "Hashem" with "Elokim". Chazal explain that the appellation "Hashem" connotes G'd's Attribute of Mercy. The Midrash tells us that initially when G'd brought about existence He wanted it to function within the context of the Attribute of Justice, which is exacting. However, when He created Man, He understood that Man would not be able to survive within this context because he is prone to fail, G'd therefore coalesced His Attribute of Mercy with the Attribute of Justice in order to allow the world to continue. Since G'd's initial intent was that Creation should function within the context of justice, He had given over this responsibility to mankind so that he should function within that context. Therefore, when a judge renders a decision that is truly just, he is in essence actualizing G'd's initial intent in Creation.

### **3. The Prerequisite for Spiritual Acquisition**

The Torah states regarding establishing a judicial system in every community, "Judges and officers shall you appoint for yourself in all your cities." The Torah could have stated, "Judges and officers shall you appoint in all your cities." What is the significance of the expression "for yourself?"

The Midrash explains, "The words 'for yourself' teach us that the judicial system of the Jewish people identifies with Moshe. The judicial system was one of three areas for which Moshe had sacrificed. Moshe had sacrificed himself for the sake of Torah. As it states, 'He was with G'd (in heaven) for forty days and forty nights...(Bread, I did not eat and water I did not drink.)' Since he sacrificed himself for the Torah, it identifies with him- as it is written, 'You should remember the Torah of Moshe My servant.' He understood that because he needed to ascend to heaven, his physicality would suffer because it would not be provided with physical sustenance. Nevertheless, he was willing to sacrifice himself for the sake of the Torah. In addition, Moshe sacrificed himself for the sake of the Jewish people. As it states (after the sin of the Golden Calf), 'If You (G'd) will not carry their sin (of the Jewish people) You should obliterate my name from Your book (the Torah).' (Sforno explains that Moshe was willing to transfer all of his spiritual merit for the sake of the Jewish people so that they should not be destroyed.) Thus, the Jewish people identify as Moshe's people - as it states, 'Go down because your people have become corrupted.'"

The Midrash continues, "The judicial system is identified with Moshe because he sacrificed himself for the sake of judging another in truth. As it states, 'He had killed the Egyptian and buried him in the sand.'" When Moshe had come out of the palace in Egypt he had witnessed an Egyptian beating a Jew after the Jew had become aware that the Egyptian had raped his wife. Witnessing this injustice, Moshe killed the Egyptian and buried him in the sand without considering the ramifications and consequences of his decision. Moshe acting as a judge who rendered a verdict put his life into jeopardy. He understood that he could be killed by Pharaoh for killing the Egyptian. He thus needed to flee from Egypt and disassociate himself from the Jewish people for a period of time. He had to

become a fugitive. It was because of his sacrifice that the judicial system identifies with him.

Based on the principle that is discussed in the Midrash regarding Moshe, if any Jew takes the initiative and is willing to sacrifice for his spirituality, the consequence will identify with him. We find this regarding the study of Torah. King David in Psalms refers to the Torah as "G'd's Torah" and after one engages in its study, he refers to it as "his Torah (the one who had studied it)." This is to indicate that once the individual takes the initiative to acquire its knowledge, G'd identifies the Torah with that individual. Therefore, the Gemara tells us that if a Torah sage chooses to waive his honor, it is his prerogative to do so. This is especially true if one has come upon the truth of Torah, as the Gemara tells us in Tractate Megillah, "If one says that he has toiled to acquire Torah and has come upon it, he is to be believed." This is because the truth of Torah is acquired through toil and sacrifice. As the Mishna in Ethics of Our Fathers states regarding the acquisition of the truth of Torah, "Bread and salt you shall eat. Water in small measure you shall drink. On the ground you shall sleep, and a life of pain (deprivation) you shall live." In order to acquire Torah on an exceptional level, one must be willing to make this level of sacrifice. Thus, when one engages in Torah or any other mitzvah in which he is willing to sacrifice his own personal comfort, then the mitzvah will identify with him.

#### **4. G'd Wants to See His Children in A Positive Light**

The Torah states, "Judges and officers shall you appoint in all your cities...and they shall judge the people with righteous judgment." The Torah dictates that every Jewish community establish a qualified court, who must judge the people with "righteous judgment." What is the meaning of "righteous judgment?" The court must pursue every possible avenue in order to find the defendant innocent. The Torah states regarding the court, "You must save the (eidah) community." The Gemara explains that the court must vindicate the community. If there were one hundred witnesses who testify that a defendant is guilty of a crime, if one of them were disqualified, then the court must disqualify the entire group. Although ninety-nine of the one hundred were qualified witnesses, the defendant retains his status. It is because G'd wants that His people be seen in a positive light and not incriminated.

The Midrash states, "The Torah tells us that you (the court) must judge the people with righteousness. What is the meaning of this? You must attempt to find the people innocent in your judgments. You should view the people in a positive light and give them the benefit of the doubt. Reb Yehudah b'Reb Shalom says, 'You (the Sanhedrin) should present the people favorably before G'd.' From where do we learn this? It is from Gidon Ben Yoash. In his day, the Jewish people were in a state of suffering. G'd was seeking someone who would speak positively about them and be an advocate on their behalf. However, G'd did not find an advocate. The generation was impoverished regarding their performance of mitzvos and good deeds. Gidon was the only one to speak positively about the Jewish people despite their spiritual failings. It is because of this that an angel of G'd appeared to him immediately, despite the fact that he was not worthy of this level of revelation. As it states, 'An angel of G'd came upon him...' The angel said to him, 'You should go to battle with this

strength.' What is the meaning of 'this strength?' G'd said, 'It is in the merit of speaking positively about My children that you will proceed with this strength and be victorious against your enemies.' Therefore, the Jewish court should do everything within their means to present the people in a positive light."

The Torah states in the Portion of Re'eh, "You are children to Hashem, your G'd - you shall not cut yourself..." The Jew is not permitted to lacerate himself or pull out his hair in a state of extreme grief over the passing of a loved one. Rashi cites Chazal who explain that it is because the Jewish people are the "children of G'd" that they must not present themselves in a disheveled or hopeless state, but rather in a becoming and pleasant state. They must understand and appreciate that their relationship with G'd is that of a father and child. As the Torah states when G'd sent Moshe to Egypt to redeem the Jewish people He referred to them as "My son, My firstborn." G'd's love for the Jewish people is not only that of a father for a son, but it is the love of a father to his first born, which is the most special.

Despite the shortcomings of the Jewish people they nevertheless are valued by G'd as His firstborn son. Regardless of a parent's disappointment and pain because of his child's failings, he seeks and hopes to find a redeeming quality in him. Similarly, because of His unlimited love for the Jewish people, G'd waits and hopes for one to present His children in a positive vein so that the Attribute of Mercy should be activated and subdue the Attribute of Justice.

The Gemara in Tractate Berachos tells us that one of the parchments contained within G'd's tefillin states, "Who is as Your people Israel, one nation on earth..." This particular verse indicates G'd's interest and level of focus regarding the Jewish people. The Jewish people can only be esteemed as being special if their attributes and special accomplishments are acknowledged. If in fact the Jewish people are failing and are impoverished regarding their spirituality, why is mentioning something positive about them sufficient to bring about salvation? It is because the Jewish people are G'd's chosen. If they are seen in a special light then it is a sanctification of G'd's Name, which in its essence has unlimited spiritual value. However, if all that is said about the Jewish people is negative, then it is a disgrace to G'd. It therefore activates the Attribute of Justice. We are currently in the month of Elul, which is referred to as the Days of Mercy. During this time, G'd is close to His people and is more attentive to their prayers. Our interest at this time is to be seen favorably by G'd. When one speaks about his fellow Jew in a favorable manner, this empowers the Attribute of Mercy, as was proven at the time of Gidon Ben Yoash. Although the Jewish people were spiritually impoverished, he merited victory because he spoke positively about them. If one cannot speak positively about his fellow, it is best to remain silent.

## **5. The Basis for the Effectiveness of the Jewish Court**

The Torah states, "Judges and officers shall you appoint in all your cities..." It is understood that in order to qualify to be a judge, one must be proficient in all areas of Jewish law. In addition, his

ordination must be traced back to Moshe himself. Thus, the one qualified to be a judge is of a unique spiritual and intellectual caliber. In addition to this, the Midrash states, "A judge must be strong-armed and fortified in good deeds. As it states, 'Moshe chose men who were strong in Torah, good deeds, and fortitude (anshei chayil).' A judge must be beyond reproach in his personal conduct so that no one could be critical of him. His personal conduct should be consistent with his position as judge of the Jewish people. As the Torah tells us, although Moshe was selflessly dedicated to the Jewish people and had the right to benefit from communal assets, when he acted on their behalf, he chose not to do so. As it states, 'I did not benefit from them. I did not even take one donkey from them...' This was so that no one should have a claim that he, because of his position as leader of the Jewish people, took advantage of them....Regarding the judges and law enforcers, there should not be a possibility for a claim against them."

The Midrash continues, "There was an incident with Reb Chanina Ben Elazar, who had a tree growing in his field, however the branches extended themselves onto the property of a neighbor. An individual came to Reb Chanina and said, 'There is someone whose tree is growing in their own field, but the branches extend onto my property. What should be done?' Reb Chanina told him to leave and return the next day. The individual said to Reb Chanina, 'In all areas of law you respond immediately, why in this case do you delay your ruling?' Reb Chanina sent workers immediately to cut down the tree in his own field whose branches had extended into the property of another. Only after he had done so, did Reb Chanina summon the individual whose tree was growing into his neighbor's field and told him to cut it down immediately. The individual told Reb Chanina, 'What about the tree in your field? I had seen that you also had a tree whose branches grew onto the property of your neighbor.' Reb Chanina told him, 'Go and see for yourself. Then you should do as I had done.' When the individual saw that Reb Chanina had cut down his own tree he did the same. Thus a judge must be beyond reproach in his personal conduct."

In order for a judge to be qualified to be a member of the court he also needs to have exceptional character and personal traits. He must be meticulous in the performance of mitzvos and strong in good deeds. His personal conduct must be beyond reproach. The judge must have all of these unique characteristics in order to merit the clarity to see truth. It is only the one who is imbued with Torah and good deeds in every aspect of his life can have the capacity to render truthful judgments. One must have fortitude to be willing to sacrifice himself for the acquisition of truth. Chazal are teaching us the qualifications of a Jewish leader.

The Torah states regarding the building of the Holy Ark, which was the repository that contained the Torah and Holy Tablets, "...You shall cover it with pure gold, from within and from without you shall cover it, and you shall make on it a gold crown all around." The Gemara in Tractate Yomah explains that by specifying that the Ark should be covered with pure gold on the inside as well as on the outside, the Torah is communicating to us, "A Torah Sage whose inside is not consistent with his outside is not considered to be a Torah Sage." Meaning, in order for one to be classified as a true

Torah Sage, his inner commitment and feelings should be consistent with his outward demeanor and personal conduct. A true Torah Sage is not merely a repository of information. He must be genuine and sincere in his service of G'd in every aspect of his life. If one is a true leader of the Jewish people, he must be beyond reproach in every respect. Therefore, he must conduct himself in a manner that even one could not mistakenly accuse him of doing the wrong.

The Mishna in Ethics of our Fathers (Pirkei Avos) states, "A Torah Sage must be careful of his words..." A Torah Sage must be articulate and clear regarding the meaning of his words. He should not allow his statements to be open to misinterpretation. Although every person will process the Torah Sage's words through his own conflicts of interest, the Torah Sage must be careful that even within this level of distortion, he will be beyond reproach. Text Copyright © 2011 by Rabbi Yosef Kalatsky and **Torah.org**.

Rabbi Kalatsky is the founder of the [Yad Avraham Institute](#), a New York-based learning center whose mission is to disseminate Torah to Jews of all backgrounds and walks of life.