

# PARSHAS KI SEITZEI - KEEPING IT OUT OF THE FAMILY

by Rabbi Yitzchok Adlerstein

## Keeping It Out of the Family<sup>1</sup>

*Fathers shall not be put to death because of sons, and sons shall not be put to death because of fathers. A man should be put to death for his own sin.*

The Torah does not go out of its way to banish feelings of closeness to one's own kind. It encourages associations based on family and closeness within the family, and even builds upon and strengthens those bonds[2]. Rather than undermine the sense of kinship through shevet they had known in Mitzrayim, the Torah kept it alive and strong through the degalim, the array of the people around the mishkan according to shevet[3]. In counting them in the midbar, not only was shevet important, but the smaller family group, the beis av. The Torah could have used the occasion of entry into the Land as a way of ending distinctions, and melded Bnei Yisrael into one strong nation without subdivisions. Instead, Eretz Yisrael was divided according to shevet. Even when the Torah asks us to relate to other Jews, it uses the language of family. When the Torah forbids taking interest, for example, it invokes a familial theme: "You shall not cause your brother to take interest[4]."

Family ties have their limit, however, when it comes to pursuing justice. After exploring the other options, this may just be the main point of our pasuk.

The Torah cannot simply be telling us that children should not be put to death for the crimes of their parents. First of all, this is self-evident; it is not necessary for the Torah to point out the obvious[5]. Additionally, it cannot be the purpose of the beginning of our verse, because this idea becomes clear enough from the end of the verse: "A man should be put to death for his own sin." Finally, the context of our pasuk does not allow for it to simply teach a provision in the administration of courtroom justice. If the Torah meant that, it loudly interrupts its teaching us a series of social justice laws, laws that appeal to our hearts. The pasuk immediately before urges us to think of the often desperate straits of workers who require their wages for subsistence. Delaying their payment is thus a great social crime. The pasuk following ours demands that we deal fairly and compassionately with the socially powerless and disadvantaged, like the stranger, the orphan and the widow. Why would a matter of legal procedure come between?

The Ran[6] maintains that our pasuk's chief point is not how to carry out a judicial inquiry. Rather, it

warns the court (and probably, by extension, the rest of the Torah nation) not to make a criminal's family members suffer for the misdeeds of their relative. Without that warning, the disappointment and disgust that people feel towards the criminal can easily be directed against his loved ones, making them pay a terrible toll for the sins of their father. While it is true that Hashem does exact retribution against children who follow the evil ways of their parents[7], we are here instructed not to learn from His example! Only He can determine if children really have embraced the evil of their forebears. The rest of us have no choice but to assume that they have not, and that each person can therefore be judged only for his own deeds. Family members must be allowed to live their lives unmolested.

The Ran's approach makes sense of where our pasuk is placed. It is sandwiched in between mitzvos dealing with the socially disadvantaged, because it, too, deals with people on the fringe. Close relatives of criminals are easy targets, and treated uncharitably by many others. The Torah tells us to refrain from mistreating them.

Even with the Ran's insight, we have not yet done justice to our pasuk. It does not say **לא יומתו אבות בנים**, which would focus on the consequences of sin. The expression **על בנים** implies something more - that fathers ought not to be brought to justice through their children. The gemara appropriately derives that children cannot be the agents through which a court reaches a guilty verdict. Expanding upon the concept, the gemara concludes that relatives are disqualified as witnesses in any kind of court action, whether criminal or monetary. Witnesses may not be related to either of the litigants, or to each other. (According to the Yerushalmi, judges as well may not be related to each other.)

This disqualification has nothing to do with trustworthiness. It is not because we think that relatives will lie on behalf of a relative that we must exclude them. No pair of witnesses strikes us as more reliable than Moshe and Aharon, yet as brothers, they are disqualified[8]. The exclusion of relatives must be sourced in a different objection - in the very role of witnesses in the conduct of judicial practice.

Witnesses do more than provide the evidence upon which judges base their decision. They are active participants in the process of seeking justice. In criminal cases, the witnesses must verbally warn the would-be perpetrator of the exact objection to his planned crime, as well as their intention to bring him before the bar to be punished. It is they who then come to court to denounce him, effectively acting as prosecutors. If the court reaches a guilty verdict, it is the witnesses again who begin the implementation of court-ordered execution.

The Torah excludes related witnesses (and judges, according to the Yerushalmi) to impress upon us the nature of Torah justice. In other societies, the law grows out of relations of clan or tribe. Courts act to safeguard rights bestowed and guaranteed by associations between groups of people, large or small. The Torah wishes to underscore that it looks very differently upon justice in the Torah

nation. Every person who meaningfully participates in a trial is licensed by an entire nation of people committed to the ideals of the Torah. Each person can only be another Ploni Almoni, acting on behalf of his nation's charter - the Torah. Any other relationship between litigants and witnesses obscures this fundamental license. When witnesses are related to the litigants or to each other, the case becomes one of family interest, rather than one of disinterested observers.

The Torah demands that all other interests be made irrelevant to the pursuit of justice, other than the shared commitment of every Jewish citizen to see to it that justice is done.

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1. Based on the Hirsch Chumash, Devarim 24:16
  2. See, for example, *infra*. 25:5, his development of the mitzvah of yibum, based on a brotherly responsibility to keep alive the interests, ambitions and goals of the deceased.
  3. Bamidbar 10:14-28
  4. *Supra*, 23:20
  5. So says the Ran that will soon be cited. What is obvious to the Ran was not so obvious to others. Hammurabi's Code, often seen as progressive for the ancient world, includes several provisions for punishment of children for the crimes of their parents. E.g. if a builder's shoddy construction led to a house collapsing, killing the child of the client, the builder's child was put to death. (Section 230)
  6. Chidushei ha-Ran, Sanhedrin 27B, s.v. lo yumsu
  7. Shemos 34:7
  8. Bava Basra 159A
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