

# JewishTimes

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## JUDAISM'S PHILOSOPHY

*Rabbi Israel Chait*

Sometimes you find a Torah verse that embodies Judaism's philosophy:

*When you see the ass of your enemy lying under its burden and you will refrain from helping him, you must certainly assist him (Exod. 23:5).*

Rashi says "and you will refrain from helping him" is rhetorical. Rashi means this:

*You "think" you will refrain from helping him? No. You will help him!*

I was thinking of another explanation. "And you will refrain from helping him" describes human nature. The natural response is not to help your enemy. The mitzvah however is to overcome that emotion. Unkelos learns this way:

*Abandon what is in your heart and assist him.*

This verse displays Judaism's psychology. Judaism does not deny human emotions; that is what other religions do and that is impossible [denying reality must fail].



This verse refers not to an enemy of the Jewish nation, but to someone you personally dislike. With the words "and you will refrain from helping him," Torah teaches one to first recognize the emotion to refrain from assisting one's enemy. Torah then teaches "you must certainly assist him" which directs us to overcome that emotion and assist the person. Torah teaches not to deny your emotion. This is a tremendous principle.

In our society, one of the greatest detriments to perfection is that we are raised with this type of thinking, acquired from gentiles. Tehillim says, "*You mingled with the nations and learned their ways*" (106:35). The wrong attitude is to deny one's dislike of another. This behavior presents itself as a value: "Hatred is evil." But you see from the gentiles, how, with their denial, they performed the most heinous murders. Denial allows the emotions to be ex-

pressed in other areas without one realizing it. The gentiles' denial of hate with their [self-proclaimed] "religion of love" allowed them to massacre without any compunction. Nazi Germany was the climax of Christianity's denial of hate, and Nazism was based on Christianity. If it wasn't for Christianity, I don't think Nazi Germany would have risen. Nazism didn't come about from thin air. It was due to centuries of denial of human nature.

Chazal say regarding Jacob's wrestling with the angel that it appeared to Jacob in the form of a talmid chocham. This means that the evil inclination doesn't always appear as an evil type of force, as people typically expect. But sometimes it appears in a veil of religiosity and that is the most dangerous form of the instincts. [In a different shiur, Rabbi Chait explained the gemara (Sanhedrin 64a) describing how the instincts emerged from the Holy of Holies as a fiery lion. He said what was most significant about that gemara is that the location from where the instincts emerged was the holiest religious site. He meant that the instincts have their strongest expression in religious matters. A "fiery lion" is a dangerous and fierce force.]

Thus, the verse does not say to deny one's feelings. The words "and you will refrain from helping him" instruct us to recognize the emotion and overcome it, and act in accord with objective righteousness. Parshas Mishpatim (judgments) were the first matters given to the Jews after they received the Torah. This is an important principle [that matters of justice were given to the Jews first, before other matters]. The

greatest hurdle to teshuvah is the inability to recognize one's sin, which is the first step of teshuvah.

If a person finds difficulty performing a mitzvah, he must examine his psyche as there is something wrong with him. There is no mitzvah that should burden a person where he feels bothered by it. Torah is a diagnostic system; if a mitzvah disturbs you, there is something detrimentally wrong.

Hillel told the gentile that the essence of Torah it is to *"love your friend as yourself"* (Lev. 19:18). This means that the most powerful emotion is feeling special; one's friends share your psychological makeup [they share your likes and dislikes]. This is the emotion behind cliques, friends, and "my group." Those not in one's close circle are viewed as enemies and worthless. Thereby, one favors his friends and feels enmity towards others. This "reality" which is a most powerful force opposes Torah. Torah demands that we look at others with only one barometer: Torah observance. Following Torah demands that we love others just as we love our best friend, even though psychologically one dislikes others. One must abandon such a psychological framework where he dislikes others because they said this or did that. And it is most difficult to do as it concerns one's ego. People take pride in the self and the self is defined by how a person distinguishes himself from others. King Solomon said this about the dead:

*Also their loves, also their hates, also their jealousies have long since perished... (Kobehes 9:6)*

King Solomon said that people identify themselves by their likes and dislikes. Be it food, music, etc., people consider what they like as objective reality. When people hear a

song that they do not like, they say [condescendingly] "Do you really like that music?!" They reject anyone who likes what they dislike. The self is identified by that part of the psyche that has likes and dislikes. A person [in his need to satisfy his ego] says, "How am I different than others? It is through the sum total of my likes and dislikes."

Judaism asks a person to rise above this psychological plane, for the essence of a person is [not the psychological component, but] his metaphysical component. This part of man is expressed in the system of Torah. We are obligated to love those who keep the Torah, whether or not they share our likes and dislikes. And if your best friend violates Torah, the mitzvah is to destroy him and hate him. It is not a personal hatred. To have peace in society, this principle must be followed, and it is impossible to have peace otherwise. You might have degrees of tolerance, but not peace.

Torah's ingenuity is seen just from these mitzvos alone. Torah provides the precise formula to produce a peaceful society [viz. assisting your enemy with is overburdened animal]. This is based on the removal of psychological identification with others and establishing a new kind of identification based on Torah observance. Study parshas Kedoshim regarding laws of refraining from revenge and harboring hate, and you will learn that every emotion is addressed. Only through observing these mitzvos is a peaceful society established.

Most people think only about themselves. But a gadol [Jewish leader] thinks in terms of the nation. It is a burden he is concerned about. Moshe said:

*Did I conceive all this people, did I bear them, that You should say to me, "Carry*

*them in your bosom as a nurse carries an infant," to the land that You have promised on oath to their fathers? (Num. 11:12)*

A gadol feels responsibility and compassion for the nation. And when he sees a destructive force in the nation, he is angry and this anger stems from his greatness, which most people cannot appreciate. He wishes to remove evil from others. Rabbi Moshe Feinstein was a gadol and was angry about conservative Jews [their distortions of authentic Judaism threatened Judaism].

If a person was raised in a home where Torah was not presented properly, and he thereby develops a hatred for Torah, it is not his fault.

The Torah's stories of individuals perfect us. That is why Torah includes those stories. There is some correction that takes place in our minds when we understand—as much as we can—Torah's accounts of individuals. ■

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## A FAVOR RETURNED

*Rabbi Reuven Mann*

This week's parsha, Mishpatim, takes up the complex issue of what is known as the Laws "between man and his friend." Judaism regards justice to be at the center of the religious experience. One who is scrupulous in matters of ritual requirements, but lax in how he behaves towards his fellow man, cannot obtain a high degree of spiritual perfection.

In the midst of all these laws regulating the practice of justice, the Torah makes a fascinating and challenging statement. "You shall be a

holy people for me; do not eat the flesh of an animal mauled to death in the field, but cast it to the dogs.”

First of all, what does abstaining from the meat of a “torn” animal have to do with holiness? Even more curious is the Torah’s advice that one should give it to the dogs. Why would it matter how one disposes of the forbidden flesh?

Holiness has to do with reigning in one’s instinctual makeup. The Torah promulgates meticulous rules governing the consumption of meat. Only certain categories of animals are permitted. In general, these are domesticated animals that are raised for the food they provide and are killed in a humane manner known as shechita.

The Torah does not approve of hunting, because it severely condemns causing pain to animals. It is certainly against hunting for sport, which inflicts extreme suffering on living creatures for no discernible necessity. But even if doing so for food, which is permitted to gentiles, one must take all measures to avoid torturing the animal.

Because of this, we are enjoined from consuming the meat of an animal that has been mauled to death by a predator. We are a holy people that controls its instincts and doesn’t allow them to be gratified at the expense of the suffering of other living beings. If we train ourselves to be so considerate of the needs of animals, how much more so will we take great care not to inflict pain on humans?

But what is the point of telling us that we should toss it to the dogs? Rashi comments, “The Holy One, blessed is He, does not withhold the reward of any creature. As it says [regarding the night of the slaying of the first born], ‘a dog will not sharpen its tongue to anyone from the children of Israel, neither to man or to beast, so that you may know that the Lord distinguishes between Egypt and Israel.’ ”

What Rashi seems to be saying is

that, since the dogs behaved in such a sensitive manner to the Jews, they deserve a reward, and Hashem therefore allocated the flesh of a torn animal to them. However, this concept is very difficult. Reward and punishment in the Torah is associated with free will, which an animal lacks. The silence of the dogs on the night of the tenth plague was controlled by divine providence. It wasn’t as if the animals made a conscious moral decision to follow G-d’s will so as not to frighten the Jews. If so, why do they deserve any reward?

In my opinion, the dogs should remind us of the extent to which Hashem cared for us in the course of the Exodus. Not only was He solicitous of our physical safety, but He went so far as to spare us any emotional distress as well.

Aside from this, the verse teaches us the great significance of hakarat hatov (appreciation of the good). Whenever we benefit from some being, even an animal, we can’t take it for granted, but must be grateful. Of course the gratitude is ultimately directed toward Hashem, but it is expressed via the agent that effectuated our salvation.

This is a matter of great significance. You may perform a great favor for someone in need. He will then express profuse thanks and assure you that, if you ever need his help, he’ll be there for you. Yet when the time comes to return the favor, it’s clear that his enthusiasm has waned. This is a great flaw.

The Rambam states in his Guide For The Perplexed, “If we find a person in trouble whose assistance we have once enjoyed, or of whom we have received some benefit, even if that person has subsequently done ill to us, we must bear in mind his previous [good] conduct. Thus the Law tells us: “Thou shalt not abhor an Egyptian, because thou wast a stranger in his land”, although the Egyptians have subsequently oppressed us very much, as is well

known.”

We should never take the good that someone does for us for granted. We should even remember the “kindness” of the dogs in remaining silent on the night of our redemption, when we have some non-kosher food that we need to dispose of.

Shabbat shalom.

P.S. Have you finished reading the essays in *Eternally Yours: Genesis* and are feeling a bit sad that you no longer have thought-provoking material to look forward to reading on Shabbat?

Good news, because *Eternally Yours: Exodus* is now available. The articles offer a new and original perspective on the weekly parsha that will encourage you to think and enhance your appreciation of Torah and enjoyment of Shabbat.

And I now have the pleasure to announce that *Eternally Yours on Bamidbar* is complete and is being printed. You will be able to get it very soon on Amazon. ■

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## THE ESSENCE OF SHABBAT

*Rabbi Dr. Darrell Ginsberg*

The number of new Jewish laws, or halachot, introduced in the weekly portion of Mishpatim is quite extensive, which makes a potential repetition of a previous commandment stand out. The day of Shabbat resurfaces after introducing the commandment of Shmita, with a further exhortation (Shemot 23:10-12):

“Six years you may sow your land and gather in its produce. But in the seventh [year] you shall release it and abandon it; the poor of your people shall eat [it], and what they leave

over, the beasts of the field shall eat. So shall you do to your vineyard [and] to your olive tree[s]. Six days you may do your work, but on the seventh day you shall rest [tishbot], in order that your ox and your donkey shall rest, and your maidservant's son and the stranger shall be refreshed."

What additional information is being presented here regarding Shabbat?

There are many different answers offered; the focus here will be on two that are developed within various Midrashim. The first explanation involves an odd line of thinking. A person might consider the prohibition of melacha, or creative act of labor on Shabbat, to only be applicable at the time one would actually be involved in such an action. During the time when one would not be engaged in melacha, the prohibition would no longer be an issue.

Why would someone think this? The prohibitions would seem to be tied to the fabric of the day, rather than only appearing when faced with the action at hand.

The second explanation is similarly problematic. The prior verses announce the occurrence of the Shmita year. For six years, the Jewish people were able to farm the Land of Israel. However, once the seventh year occurred, they were to be prohibited in planting anything new, allowing the land to lie fallow. The terminology used (later in the Torah) for the cessation of working the land is the same as for the seventh day of every week: "Shabbat". The verse then that follows the warning of Shmita redirects to the weekly Shabbat. In looking at the series of verses as being linked, Rashi notes that one should not conflate the two "Shabbatot". During the experiential seventh year of Shmita, one might consider the obligation to adhere to the weekly Shabbat as being unnecessary. As Rashi puts it, since the entire year is one of "Shabbat", one might not keep

the Shabbat of Creation.

While the assumption in this instance is slightly more reasonable, it is still remarkable to consider someone might come to this conclusion. It is true the two legal institutions share the same terminology; does this therefore imply a superfluity of one with the other?

The atmosphere of prohibition pervades Shabbat, a day where the performance of any physically creative action is problematic. On one level Shabbat would appear to be a day of privation. Removing oneself from the world of melacha is the objective of the sanctified day. If Shabbat were "merely" this idea, then one could understand how melacha only presents itself during the time when the potential for creative labor exists. The privation is empirical, expressing itself when faced with the opposing action. Shabbat becomes a vacuum of sorts, similar to Yom Kippur. On that day, the individual is deprived of the world of the instinctual, and the subsequent state allows for the immersion in repentance.

Shabbat, though, is not quite like this. Rather than view Shabbat as a state of withdrawal, it could be that Shabbat is a positive state of existence. It is the ideal realm a person should be in, where one's mind is able to focus solely on God. Much of weekly life draws a person away from this utopian condition. Of course, this does not mean that one should shun working. Rather, one should consider the value of the unique Shabbat experience and look forward to "creating" this paradigmatic state.

Sforno echoes this point in his commentary on the verse. He notes that the addition of "tishbot" in the verse widens the scope of that which one must avoid. This means the area of prohibition is no longer just specific creative actions. An example is the limitation in what one may speak about on Shabbat, where weekly matters (such as business) are off the

table. Introducing any significant aspect of the week into Shabbat is, in a sense, a corrupter of the environment sought out.

The other interpretation guides the reader into a different realm concerning Shabbat. When looking at the list of melachot forbidden on Shabbat, one notices how many of them are focused on the agricultural. Activities related to and including planting and harvesting are prohibited on Shabbat. Similarly, many such actions are forbidden to be done during the Shmita year. With the significant overlap in the various prohibited actions, why the need to celebrate the weekly Shabbat?

Rashi emphasizes how this is the Shabbat of Creation. While the legal and technical structures of the two acts of "melacha" might share much in common, their objectives are quite different. One of the primary objectives of allowing the land to "rest" involves internalizing the reality of humanity being dependent existences. The farmer labors daily, engaged intimately in the cycle of planting and harvesting. With all the work put in, it becomes natural to see one as being in control of the process. Of course, not everything (such as the weather) is within the farmer's purview. However, to easily put one's security in God and achieve a state of mind of complete dependence on Him, is a challenge. The year of Shmita affords the Jewish people just such an opportunity.

The weekly Shabbat, as noted above, is the entrance of the individual into an ideal state of existence. In such a state, the person now reflects on God as Creator, achieving a greater understanding of Him. The abstention from melacha allows for an individual to truly elevate on this unique day.

Thus, while the planting on Shabbat may appear no different than the planting done during Shmita, the objective of each is completely different. In a sense, the act of melacha can

take on two completely separate identities, yet be the same physical action.

On one level, it is obvious how Shabbat is a particular day, evidenced by the multitude of restrictions levied upon each and every Jew at its onset. Yet this additional verse in the Torah helps to lay out the transcendental experience Shabbat must be to each and everyone. When we leave the sole mindset of prohibition and turn our focus to God, the true potential of Shabbat is actualized. ■

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## EVERYTHING HAPPENS FOR A REASON?

*Rabbi M. Gisser*

Many people subscribe to the notion “Everything happens for a reason; chance doesn’t exist.” However, this rejected by Rambam in his Guide, and Sforno too says this at the end of parshas Tazria. They explain that God’s involvement in man’s life is proportional to his perfection. Great people like the Patriarchs and Matriarchs earned God’s providence in all parts of their lives, while lesser people are left to chance, like animals, (Guide, book III, chap. xviii). Maimonides based his opinion on a study of Torah and how God describes His relationship with various people. All matters of God’s acts are deep and we cannot speak without tremendous study. Although it’s comforting to believe that one’s life is purposeful in all its major events and minutia, this feeling is not the result of evidence or even theory. It would appear this feeling stems from the ego, “How can things happen to me and they aren’t planned or important?!” But does a person really feel he was meant to watch that TV

show, or that each day he arrives at work at that precise second, for a reason?

I would add that suggesting there is no thing as chance removes a person from taking responsibility: he will view all failures as divinely determined, when in fact—as Rambam says—most evils in life are self-inflicted. A person gets ill by eating poorly, not because God determined this. People lose jobs because they fail to meet requirements, and relationships end due to selfish emotions. All phenomena must be studied. ■

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## GOD’S USE OF METAPHOR

*Rabbi M. Gisser*

Parshas Mishpatim describes numerous laws without resorting to metaphor. We are taught of slaves, damages and other laws in a literal manner. Why then, when treating of the intruder, does God state (Exod. 22:2), “If the sun shines upon you...?” Rashi interprets this “sunshine” as follows: “This is only a kind of metaphor; if it is clear the intruder is at peace with you just as the sun brings peace... you are liable for shedding the intruder’s blood.” Torah teaches (according to Rashi) that despite the intruder’s monetary crime, he does not forfeit his right to life if he would not kill you, had you opposed his robbery. And if you killed him, you would have no defense against your murdering him based on grounds of trespass and/or robbery. From here we see 3 lessons:

1) Torah demands a level of intelligence. It demands we understand and apply metaphor. God’s lesson of

employing metaphor is that God desires that we use intelligence. By not resorting to literal description, but employing metaphor, God’s lesson is that the modes of deduction, induction and parallels are indications that intelligence are essential to understanding Torah. That is, God purposefully employs metaphor to teach the very lesson that Torah requires intelligence. But why here? In what manner is the intruder a more fitting case to be described using metaphor?

2) We are absolutely clear about what a pit is, what a fire is, and what damages are. These are clearly measured by absolute physical parameters. But can one be absolutely certain of the intent of another (the intruder)? How does one measure such an amorphous thing, this thing called intent? Perhaps as this is a “grey” area, since there is no unit that can accurately measure “intent”, a metaphoric description of the degree required is necessary. Thus, God tells us that it must be as clear as sun shine, 100%. So if you know with clarity that the intruder is not intent on killing you, you cannot kill him. How do you know this? It’s a personal call, as seen from the Torah’s lack of a concrete measure. Each relationship is different, and only the victim through his own intuition can gauge if this specific intruder would kill him. Perhaps this is why the verse says, “If the sun shines upon him...” It’s up to “him” to make this determination.

3) To illustrate the degree of certainly God demands to refrain from lethal action, God equates this degree of certainty to daylight. This teaches that if there is any doubt, and you feel the intruder might kill you, then your lethal defense is justified. Thus, error in this case sides with the victim. Any sense of risk allows the victim to use lethal action. ■

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# MISHPATIM

*Rabbi Bernie Fox*

*And these are the laws that  
you should place before them.  
(Shemot 21:1)*

## Using a Jewish Court

Parshat Mishpatim describes many of the civil laws of the Torah. The Talmud explains in Tractate Gitten that we are required to resolve civil disputes in Jewish courts. We are not permitted to submit such disputes before non-Jewish courts.<sup>1</sup> Rashi elaborates on this requirement. He explains that there are areas of civil law in which secular law may closely follow Torah law. In these cases, submitting a dispute to a secular court will produce a decision that is consistent with Torah law. Nonetheless, one may not take the dispute to a secular court.<sup>2</sup> Rashi does not explain the reason for this restriction. Assume that one is certain that the laws of a secular court are consistent with the Torah. What is wrong with availing oneself of this court?

Maimonides discusses this issue in his Mishne Torah. He explains that one who submits a dispute to a secular court is considered wicked. He is a blasphemer and has raised his hand against the Torah of Moshe our master.<sup>3</sup> This is a very serious condemnation. It seems extreme. The term blasphemy implies a denial of a central principle of the Torah! How has this person blasphemed? Furthermore, how does one who utilizes a secular court “raise his hand against the Torah”?

To understand Maimonides’ comments a brief introduction is required. In his commentary on the Mishne, Maimonides defines the fundamental principles of the Torah. One of these principles is that the entire Torah was revealed to Moshe.

The laws of the Torah were given to us from the Almighty.<sup>4</sup> We are required to uphold this conviction. This conviction is not merely an intellectual commitment. The principle also demands specific behaviors. We must act in a manner consistent with the conviction that the Torah is a revealed truth. Behavior that implies otherwise is prohibited.

We can now understand Maimonides’ comments regarding secular courts. We received the Torah from Sinai. It is a revealed truth. Therefore, it is a perfect system of law. This status applies to the laws governing ritual. It also applies to the civil law of the Torah. A person cognizant of the Divine origins of the Torah would not willingly submit oneself to the jurisdiction of another system. This person would only wish to be judged by Torah law. Abandonment of Torah law – even in a civil matter – implies denial of the Torah’s status as a revealed truth. It follows that submission of a civil dispute to a secular court is prohibited. One who seeks justice in a secular court has raised his hand against the Torah of Moshe. This is regarded as blasphemy against the Divine origins of the Torah.

*If he came alone, he will  
leave alone. If he is married,  
his wife leaves with him.  
(Shemot 21:3)*

This pasuk discusses the eved ivri – the Jewish slave. This law applies to a person who steals and cannot make restitution. The court has the authority to sell the person into slavery to pay his debt.<sup>5</sup>

The master of the slave – the eved – is permitted to give the servant a non-Jewish maidservant as a wife. Any children resulting from this union are the property of the master and are born into servitude.

Our pasuk restricts the rights of

the master to provide the Jewish eved with a non-Jewish maidservant. If he enters servitude married, the master may provide the eved with a maidservant. However, if he is not married, the master may not give the servant a maidservant wife.

This lesson is communicated through the phrase, “if he came alone, he will leave alone”. The meaning of this phrase is that if the eved entered servitude unmarried, he must remain unmarried. The master may not provide the eved with a maidservant.

The usual term for “alone” is le-vad. Our pasuk does not use this term. Instead, it uses the term begapo. The commentaries differ on the exact meaning of this term. Rashi maintains that it means, “with only his garment”. In other words, if he entered servitude with only his garment – without a wife, he may not be given a maidservant wife.<sup>6</sup>

Rabbaynu Avraham ibn Ezra disagrees with this interpretation of begapo. He asserts that the term means with his body. In other words, if he entered slavery with only his body – without a wife, the master may not provide him with a maidservant.<sup>7</sup>

We can more fully understand the dispute between Rashi and Ibn Ezra through analyzing this prohibition. Let us first consider Rashi’s interpretation. Rashi maintains that begapo means with only his clothing. The term describes a state of poverty. What is the relationship between poverty and the restriction against providing the eved with a maidservant?

The Torah regards servitude as an undesirable state. It is permitted under specific circumstances. However, it is not encouraged. The Torah provides a deterrent through eliminating any positive elements from servitude.

Consider a person entering servitude without a wife. His life is incomplete. In this sense, he is impoverished. The master cannot provide

this eved with a wife. This would improve the servant's life. He now would have a wife. The servant would benefit from his servitude. This cannot be permitted.

Ibn Ezra seems to understand the issue differently. According to him, begapo is a direct reference to the servant entering servitude without a wife. Basically, the pasuk is stating that the master may not provide the eved with a maidservant as a sole wife.

What is the difference between a maidservant who is a sole wife and one who is a second wife? If the slave enters servitude with a wife, he already has a companion. He is already bound by obligations to his existing wife and family. The master may provide this eved with a maidservant.

In contrast, an eved without a family, lacks this foundation. He is unconnected to an existing family structure. If he is permitted to live with a maidservant, this union will become his family.

The Torah allows the eved to live with a maidservant. However, it does not wish to encourage a strong bond between these partners. This is because she lacks the complete sanctity of a Jew. If the eved has an appropriate wife, we can hope that a strong bond will not develop with the maidservant. However, without a pre-existing family, the eved cannot live with a maidservant. This is because he can easily develop a permanent relationship with her.

*Do not follow the majority to do evil. Do not speak up in a trail to pervert justice. A case must be decided based on the majority. (Shemot 23:2)*

### **Deciding Religion by Popularity**

The last portion of this passage is

easily understood. In deciding a legal issue, the court must follow the majority of its members. For example, assume a person brings a question of halacha before the court. The court discusses the issue and the judges differ on the resolution of the issue. The members of the court vote. The issue is decided according to the majority's opinion. The law also applies to civil disputes. For example, two litigants bring a case before a court. After hearing both sides, the court votes. The decision of the court is determined by the majority of members.

The first portion of the passage is more difficult to interpret. The pasuk tells us not to follow the majority to do evil. This is an odd statement. Of course, we cannot act wickedly! Even if the majority of its members favor a decision that is evil, their position cannot be adopted by the court!

The Torah She'Be'Al Peh – the Oral Law – answers this question. Our Sages explain that the opening portion of the passage deals with capital cases. In these cases, if the defendant is found to be guilty, he or she will be executed. Our Sages also explain that the term “evil” in the passage should not be interpreted literally. Instead, it refers to a guilty verdict. The passage tells us that a simple majority is insufficient to execute a defendant. What is the criterion that must be met in order to execute a defendant? A majority of at least two judges is required.<sup>8</sup>

In short, two messages are communicated in these sections of the passage. First, the court's decisions should generally be determined by a simple majority. Second, the passage establishes an exception. The execution of a defendant requires a majority of at least two judges.

The Baal HaTumim – an outstanding scholar – was once challenged based on our passage. Our pasuk tells us to follow the majority opinion. It seems reasonable to apply this

principle beyond the confines of court cases. In fact, the Talmud does apply this principle to other areas of halacha. This means that other decisions as well should be based on this principle. The opinion of the majority should be followed.

The Jewish people are a minority. Even among the Jewish people the Torah is not universally accepted and observed. Other religions can rightfully claim larger followings. Therefore, should we not abandon the Torah based on the principle in our passage? We should follow the majority opinion and accept a more popular religion!

The Baal HaTumim responded that this question is based upon a misunderstanding of the principle in the passage. The pasuk does not suggest that we follow the majority in areas in which we have definite knowledge. The pasuk deals with a court case in which the guilt or innocence of the defendant is in doubt. To resolve the doubt, we follow the majority opinion. However, we are not swayed by the majority in areas in which we are certain. For example, assume a person knew that a certain food was not kosher – permitted. A group approaches this individual and claims the food is permitted. The person cannot eat something that one knows with certainty is not kosher. It is irrelevant that a large group claims the food is permitted. Personal knowledge cannot be denied.

Similarly, we know that the Torah is true. Therefore, regardless of the numbers that deny its authenticity, we cannot abandon the truth.

Rav Elchanan Wasserman also argues that the question is based upon a faulty understanding of the passage. The passage requires us to follow the majority opinion of a group of judges. Judges are individuals qualified to render a decision. The judge's knowledge and wisdom endow his opinion with credibility. The opinion of a simpleton is not given

credence. Rav Elchanan argues that religious issues cannot be evaluated based on popular appeal. The masses of humanity do not make religious decisions as a result of thorough analysis. Only scholars of religion are credible judges. Rav Elchanan points out that the Torah has been scrutinized by countless scholars. The Sages of the Talmud and of subsequent generations have subjected every detail of the Torah to painstaking analysis. No religion has been subjected to such thorough scrutiny over a period of centuries. Therefore, application of the principle in the passage only confirms the authenticity of the Torah.<sup>9</sup>

There is an even more basic flaw in this challenge to the Torah. We do not follow the majority because we logically assume the majority is correct. Were majority rule a logical principle, there would be no need for the Torah to mandate this practice. The court's decision is determined by majority opinion because the Torah commands this practice. Without the Torah's stipulation we could not follow the majority. Without this stipulation, cases before the court would only be resolved through a unanimous decision.

Therefore, it is completely circular to argue that the Torah should be abandoned because of the beliefs of most humanity. Without the Torah, there is no basis to grant any credence to the majority. Only because of the Torah's stipulation is majority opinion recognized as relevant. ■

(Rashi), Commentary on Sefer Shemot 21:2.

6 Rabbaynu Shlomo ben Yitzchak (Rashi), Commentary on Sefer Shemot 21:3.

7 Rabbaynu Avraham ibn Ezra, Commentary on Sefer Shemot 21:2.

8 Rabbaynu Moshe ben Maimon (Rambam / Maimonides) Mishne Torah, Hilchot Sanhedrin 8:1.

9 Rav Elchanan Wasserman, Kobetz Ma'amarim, Essay on Conviction.

1 Mesechet Gitten 88:b.

2 Rabbaynu Shlomo ben Yitzchak (Rashi), Commentary on Sefer Shemot 21:1.

3 Rabbaynu Moshe ben Maimon (Rambam / Maimonides) Mishne Torah, Hilchot Sanhedrin 26:7.

4 Rabbaynu Moshe ben Maimon (Rambam / Maimonides) Commentary on the Mishne, Mesechet Sanhedrin 10:1.

5 Rabbaynu Shlomo ben Yitzchak