

# Zera Shimshon

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## Chapter XLVIII: Shoftim (Deut. 16:18–21:9)

### Essay 1. Judging powerful and unethical people

"**וְשֹׁפְטֵי אֶת־הָעָם מִשְׁפָּט־צְדָקָה**". הָיָה לוֹ לומר "וְשֹׁפְטֵי אוֹתָהּ" כְּמוֹ שֶׁהִתְחִיל "תִּמְנֹן־לָהּ". וְעוֹד שֶׁהוּא לְשׁוֹן מִיּוֹמֵר, דְּהִנֵּה לוֹ לומר "וְשֹׁפְטֵי צְדָקָה", דְּפָשִׁיטָא שִׁי־שֹׁפְטֵי "אֶת־הָעָם", דְּאֵת מִי יִשְׁפָּטוּ אִם לֹא "אֶת־הָעָם", וְאִם יִשְׁפָּטוּ צְדָקָה פְּשִׁיטָא שִׁי־עָשׂוּ מִשְׁפָּט.

“Judges and officers you shall make in all your gates, that the L-rd your G-d is giving you, for your tribes; **and they shall judge the people with righteous justice**” (Deut. 16:18). **It could have said, “and they shall judge you,” as he began the verse by saying, “you shall make.”** In other words, the verse is speaking to the people who will be appointing the judges and officers. Aren’t they also part of the people? So why shouldn’t the verse say, “they shall judge you”?

**Also, that is overly wordy language, for he could have said, “they shall judge with righteousness,”** leaving out the words “the people” and “justice,” **for it is obvious that they will judge “the people,” for who would they judge if not “the people”?** **Also, if they will judge with righteousness, then it’s obvious that they will do “justice.”**

וְנִשְׁ לומר שֶׁלְפָעֲמִים הִדְיָן אֵינּוּ שׁוֹפְטֵי צְדָקָה כְּדִי לְהוֹצִיא הַדִּין לְאַמִּיתוֹ, כְּעוֹבְדָא דְמָרִי בַר אִיסק בְּמַצִּיעָא (דָּף ל"ט) דְאָמַר לִיה רַב חֲסָדָא, זִיל אֵת אִיִּיתִי סְהָדִי וְכוּ', וְאָמַר לוֹ, דִּינָא הֵכִי? אָמַר לוֹ, הֵכִי דִיִּינִינָן לָהּ וְלְכֹל אֶלְמָא חֲבָרָהּ.

**It can be said that sometimes the judge does not judge with righteousness, i.e., sometimes he violates the letter of the law, in order to execute judgment faithfully, like the incident of Mari bar Isak in tractate Bava Metzia (page 39b):**

Mari bar Isak [who was a wealthy and powerful man] had a brother [whom he did not previously know] come to him from Bei Chozai [which was distant from central Babylonia]. [His brother] said to him: Divide [the property that you inherited from our father and give half] to me. [Mari] said to him: I do not know you.

[The case] came before Rav Chisda. He said to [the brother]: [Mari bar Isak] spoke well to you, as it is stated: “And Joseph knew his brothers and they knew him not” (Gen. 42:8). This teaches that [Joseph] left [the Land of Israel] without

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the trace of a beard, and he came with the trace of a beard. [This proves that it is possible for brothers not to recognize each other. Mari bar Isak may be telling the truth when he claims he does not recognize you.] [Rav Chisda] said to [the brother]: Go bring witnesses that you are his brother. [The brother] said to him: I have witnesses, but they fear [Mari bar Isak] because he is a violent man. **[Rav Chisda] said to [Mari bar Isak]: You go bring witnesses that he is not your brother.**

**[Mari bar Isak] said to him: Is this the halacha?** [Doesn't] the burden of proof rests upon the claimant? **[Rav Chisda] said to him: This is how I judge you and all of your powerful friends.**

- Bava Metzia 39b

וְזָהוּ שֶׁאָמַר הַפְּתוּב "וְשִׁפְטוּ אֶת־הָעָם", הֵינּוּ הָאֱלֵמִים וְהַפְּחוּתִים שֶׁבְּיִשְׂרָאֵל כְּמוֹ שְׁמוּרָה שֶׁם "עָם", כְּמוֹ "וַיְהִי הָעָם כְּמִתְאֲנָנִים", וְהוֹסִיף מִלֵּת "מִשְׁפָּט" כְּלוֹמַר מִשְׁפָּט כְּמוֹ שְׁהוּא, אִף שְׁלֹא כְּדִין, כְּדִי שְׂיִבֵּא לְאוֹר הַדִּין צָדֵק.

**This is why the Scripture says, “and they shall judge the people,” which is the powerful and inferior ones among Israel, as the word “people” teaches there, as “the people took to complaining bitterly before the L-rd” (Num. 11:1), for which Rashi notes, “The term ‘the people’ always denotes wicked men.” So that answers one question. The verse says “they shall judge the people,” and not “they shall judge you,” because they will judge wicked men, and those who appoint the judges and officers are not in that category.**

**Also, the word “justice” is added to say, justice however it happens, even against the letter of the law, in order that the righteous justice shall come to light.**

אִי נִמְי דְאִיתָא בְּשׁוּלְחָן עֲרוּךְ חוֹשֵׁן מִשְׁפָּט (סִימָן ט"ו) שֶׁכְּשֶׁהִנֵּה רוּאָה הָרֵא"ש שֶׁהַדִּין מְרוּמָה, הֵנִיחַ כּוֹתֵב שְׁאִין לְשׁוּם דִּין לְהַשְׁמֵדל כְּדִין זֶה. בְּמָה דְבָרִים אֲמוּרִים? כְּשֶׁהַתּוֹכֵעַ רֵמְאִי. אֲבָל כְּשֶׁהַנּוֹתְבֵעַ רֵמְאִי אִין הַדִּין יְכוּל לְהַסְתַּלַּק, שְׁלֹא יִשְׁתַּכַּר הַרְמָאִי בְּרֵמְאוֹתוֹ וְעֵי"ש. וְזָהוּ "וְשִׁפְטוּ אֶת־הָעָם" דֵּהֵינּוּ הַרְמָאִים, רַק כְּשֶׁהַמִּשְׁפָּט יִהְיֶה צָדֵק, דֵּהֵינּוּ שְׁלֹא יִשְׁתַּכַּר הַרְמָאִי.

**Alternatively, it is brought in the Shulchan Aruch, Choshen Mishpat (siman 15, se'if 3–4), “When the Rosh<sup>1</sup> would notice on the basis of a well-grounded assumption that the lawsuit is fraudulent, he would write [a document] and place [it] in the possession of the defendant [to the effect] that no judge should endeavor [to try] this lawsuit. What is this talking about? When the claimant is a deceiver. But when the defendant is a deceiver, the judge cannot withdraw [from the case], so that the deceiver would benefit from his deception, but [the judge] should examine and investigate [the defendant] closely in order to upset his deception. If it becomes apparent to [the judge] on the basis of a well-grounded assumption that he [the defendant] is guilty, he may declare him guilty [provided] if he is a recognized judge and distinguished in his generation.” This is the meaning of “they shall judge the people,” which is the deceivers, only when the judgment will be righteous, which is that the deceivers will not benefit.**

<sup>1</sup> Asher ben Jehiel (“Rabbeinu Asher” or “the Rosh”) (c. 1250, probably Cologne–1327, Toledo).

ועוד איתא שם בהגהה ואם נראה לבית דין שאחד גזל את חברו, ולא יוכלו להוציאו ממנו בדין, יכולין לגזור על שאר בני אדם שלא ישאו ויתנו עמו וכו'. אם כן פשיט איזה דין בין שני אנשים, הבית דין גוזרים ושופטים כל העם שלא ישאו ויתנו עמו, וזהו "ושפטי את העם" כדי להוציא לאור "משפט צדק" בין שני בעלי דינו.

Alternatively, **it is also brought there** in siman 15, se'if 15 of the Shulchan Aruch, **in the Rema's annotation, "If it becomes apparent to the court that one [of the litigants] robbed his fellow, but legally they cannot compel him to surrender [the object acquired illegitimately], they can decree against other people not to have any dealings with him,** and if it is a woman, that she be not married to any man nor should they conduct negotiations preliminary to her betrothal until she surrenders that which does not belong to her." **If so, when there is any litigation between two people, the court has the ability to decree and rule upon all the people not to have any dealings with [one of them], and this is "they shall the judge the people,"** i.e., imposing a court order upon the general population, **in order to bring to light "righteous judgment" between two litigants.**

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