

Toldot Shimshon

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Published Livorno 1776*

Chapter I – Mishnah 8

יהודה בן טבאי ושמועון בן שטח קבלו מהם. יהודה בן טבאי אומר, אל תעש עצמך כעורכי הדין. וכשיהיו בעלי דין עומדים לפניך, יהיו בעיניך כפושעים. וכשנפטרים מלפניך, יהיו בעיניך כזכאים, כשקבלו עליהם את הדין.

Judah ben Tabbai and Shimon ben Shetach received [the oral tradition] from them. Judah ben Tabbai said: Do not make yourself as the legal advocates. And when those being judged stand before you, they should be as wicked [i.e., guilty] in your eyes. And when they leave your presence, they should be as innocent in your eyes, when they have accepted the judgment.

"כַּמְשָׂא כְבֵד וְכַבְדּוֹ" דקדוקי המפרשים, ואחרי גילוי אצבעותיהם לבנו הולך לדין, שהיה יכול לומר, "אל תעשה" כעורכי הדינים, ומהו "עצמך". אלא דקשייא לן בדבריהם, שפירשו שעורה טענות הבעל דין אחד וכו'. דמלתא דפשיטא היא. ועוד, אם בבעלי דינים ממש מיירי מתניתין, דהיינו שהאחד תובע מחבירו, בשלמא רישא נחא, שיהיו בעיניך כפושעים, ולא רשעים ממש, שאף מי שיצא חייב, שמא היה אנוס בסברתו. אבל סיפא, כשנפטרים יהיו בעיניך כזכאים, אמאי לא קתני יהיו בעיניך זכאים, שהרי כשקבלו הדין הם זכאים ממש, ולא "כזכאים", שמי שהיה טוען אמת, הוא בודאי זכאי, ומי שקבל עליו לפרוע, נעשה עתה זכאי.

"They are like a heavy burden,"¹ the minutiae of the commentators,² and after the folding of their fingers upon concluding their commentaries, our heart was guided to be precise, for [Judah ben Tabbai] could have said, "do not act' . . . as the legal advocates," instead of saying, "do not make yourself as the legal advocates."

Question 1: **What is the reason for this** apparently superfluous word **"yourself"**?

Question 2: **Rather, there is a difficulty for us in the words [of the commentators], that they explained** that Judah ben Tabbai is warning against a judge **who advocates the claims of one litigant etc. Isn't this something obvious?**

Question 3: **Also, why does the Mishnah say** "when those being judged stand before you, they should be as wicked in your eyes," instead of simply saying, "they should be wicked in your eyes?" **If the Mishnah is talking about actual litigants—that is, that one has a claim against his fellow—then granted the first clause is fine, that "you should look upon them as wicked [i.e., guilty]," and not literally wicked, that even one who is found guilty, was perhaps compelled to act as he did by his opinion.** For example, in a financial dispute, the party ultimately

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¹ Ps. 38:5.

² For example, see Rashi, Bartenura, Tosafot Yom Tov, and Magen Avot.

ordered to pay damages may not have been a scofflaw, but may have thought that his actions were proper and in accordance with the law. Thus, the prefix כ, meaning “as,” is fine for the first clause.

Question 4: **But regarding the last clause, “when they leave your presence, they should be as innocent in your eyes,” why doesn’t the Mishnah teach that they should be literally innocent in your eyes, omitting the prefix כ, meaning “as”? That is, when they have accepted the judgment, they are literally innocent, and not “as innocent,” for one who claims the truth is certainly innocent, and one who is found guilty and readily accepts upon himself to pay the other litigant, now becomes innocent.** That is, if the party ultimately ordered to pay damages had thought that his actions were proper and in accordance with the law, but now he accepts that he was wrong and has made restitution, he should be forgiven by the other litigant, the court, and society, and considered once again to be innocent.³

ועוד קשה, דהלא קנימא לו נהוי דן את כל האדם לכף זכות, והכא נמי, אפשר שמי שטוען שקר, לפעמים אין פונתו לטעון שקר, אלא שסבור שהאמת פה, לפי שאפשר ששכח האמת ממש. ועוד, דזה ניחא בטענה וכפירה, אמנם אם יהיה הדין בהבנת לשון השטר, איך קאמר יהיו בעיניו כרשעים, והא אפשר שיהיו שניהם צדיקים גמורים, ומן הספק יש לנו לדונם לכף זכות.

Question 5: **Another difficulty, is don’t we maintain “judge all men favorably”⁴ Here too, it’s possible that one who claims falsely sometimes does not have the intent to claim falsely, rather he believes that the truth is so, as it is possible that he has forgotten the truth.** So how can we say, “when those being judged stand before you, they should be as wicked [i.e., guilty] in your eyes”?

Question 6: **Also, this is fine to look upon them as guilty when there are litigants with claims and denial. However, if the judgment is according to the wording of documents, how can one say “they should [both] be as guilty in your eyes”?** I.e., the question between the court could relate to how to interpret a contract. **It’s possible that both will be completely righteous, and out of doubt we have a right to judge them favorably?** So again, how can we say, “when those being judged stand before you, they should be as wicked [i.e., guilty] in your eyes”?

לכף נראה, דלאו גבעלי דינים שיש להם דין זה עם זה מיירי התנא, אלא פונת התנא הוא בענין אחר, משום דקנימא לו, דבית דין מפין ועונשים לפי צורה השעה למיגדר מלתא, בין עונש ממון, בין עונש מלקות, בין עונש מיתה, ועיין בשלחן ערוך חשן משפט סימן ב' ובפוסקים שם.

The answer to questions 2, 5, and 6, is that **it seems that the Tanna, Judah ben Tabbai, is not speaking about litigants who have a case with each other that. Rather, the intent of the Tanna is regarding a different matter, because we hold that a court lashes and punishes according to the need of the hour as a preventive measure. This could be a punishment of**

³ Samuel de Uçeda, a 16th century rabbi in Tzfat and Constantinople, writes in *Midrash Shmuel* (Venice 1579) that many losing parties will curse a judge or react with anger. In such a case, the judge does not have to view that party as innocent, but rather he can consider him to be as a completely wicked person. But when the losing party accepts the verdict and shows the proper respect to the judge, then it’s proper for the judge to view him as innocent.

⁴ Pirkei Avot 1:6.

money, or a punishment of lashes, or a punishment of death, and see in the Shulchan Aruch, Choshen Mishpat, siman 2, se'if 1,⁵ and in the legal scholars there.

In modern times, a *beit din* has the power to adjudicate disputes between litigants who are willing to submit to the jurisdiction of the court, and has the power to excommunicate someone. Only the secular courts are able to review criminal matters and to administer capital and corporal punishment. But the Mishnah was teaching about a time when the *beit din* also had jurisdiction over criminals and against those who violated halacha, and could administer physical punishments.

וְהָרָא"ם בְּתִשְׁבּוּתָיו חֵלֵק א' סִימָן נ"ז הָאָרִיז הַרְבֵּה בְּעִנְיָנִים אֵלּוּ, וּבְסוּף הַתְּשׁוּבָה כְּתַב, וְנָה לְשׁוֹנוֹ, וְהוּא שֵׁיכּוֹנוֹ לַעֲשׂוֹת סִיג לַתּוֹרָה וְלִכְבוֹד לּוֹמְדֶיהָ בְּלִבָּד, וְשָׁלָא יְכוֹנוֹ כָּלֵל בְּנֵה לַעֲצָמָם לְשׁוּם הַנְּאָה וְתוֹעֵלַת שְׁבַעוּלָם, אוֹ לְהַנְקָם מֵאוֹיְבֵיהֶם אוֹ לְהַכְנִיעֵם, אוֹ כִּיּוֹצֵא בָּהֶם. אֲבָל אִם כְּוֹנוֹ בְּנֵה לַתּוֹעֵלַת עֲצָמָם, אוֹ לְהַנְקַת שׁוֹנְאֵיהֶם, אִין בְּאוֹתוֹ נְדוּי אוֹ חֶרֶם מִמֶּשׁ. וְהִבִּיא עוֹד שָׁם דְּבָרֵי הַרְמַב"ם בְּפָרָק כ"ד מֵהַלְכוֹת סְנֵהָרִין, וְעִין שָׁם, עכ"ל.

The Re'em⁶ in his responsa, part 1, siman 57, elaborated greatly on these matters, and at the end of this responsum wrote, and this is his language: “This is referring to those who intended to make a fence around the Torah⁷ and only to honor those who learn it, and who do not intend by this any enjoyment or benefit in the world for themselves, or to take revenge on their enemies or to subjugate them, or the like by [their actions]. But if they intended by [their actions] for their own benefit, or for the revenge of their enemies [even though the judges are wrong to act thus], there is no actual ban of ostracism⁸ or excommunication [as punishment for the judges].” He also brought their words of the Rambam in chapter 24 from the Mishneh Torah, Laws of the Sanhedrin, halachot 4–10, and see there.

וְכַתַּב הַטּוֹר שָׁם בְּחֻשׁוֹ מִשְׁפָּט סִימָן ב', כֵּל אֵלּוּ הַדְּבָרִים, לְפִי מַה שֵׁיִרְאָה הַדַּיָּין שֶׁנֶּה צָרִיךְ לָכֵד, אוֹ שֶׁהִשְׁעָה צָרִיכָה לָכֵד. וְכַתַּב הַב"ה, פְּרוּשׁ, כְּגוֹן שֶׁנֶּה הָעוֹבֵר רָאוּי לְהַעֲנִישׁוֹ בְּכֵד, לְפִי שֶׁהוּא רָשָׁע גָּמוֹר, כִּהְיָ דָרַב נִחְמָן דְּקִנְסִיָּה לְהַהוּא גְּבָרָא, מִשׁוּם דְּגִזְלָנָא עֲתִיקָא הָנָה, אִף עַל פִּי שְׂאִין הַשְׁעָה צָרִיכָה לָכֵד. אִי נִמְי, שֶׁהִשְׁעָה צָרִיכָה לָכֵד, שֶׁהִעָם פְּרוּצִים בְּעֵבְרִית וּמִצּוֹת בְּזוּיּוֹת עֲלֵיהֶם, כְּעוֹבְדָא דֵּהוּא גְּבָרָא דְרָכַב עַל הַסּוּס בְּשַׁבָּת בִּימֵי יְנָיִם, וְהִבִּיאוּהוּ לְבֵית דִּין וּסְקִלוּהוּ, אִף עַל פִּי שֶׁנֶּה לֹא הָיָה צָרִיךְ לָכֵד, שֶׁלֹּא הָיָה רָגִיל בְּכֵד, אֲלֹא הַשְׁתָּא הוּא דְעֵבֵר עֲבִירָה זוֹ, עכ"ל.

The Tur writes there in Choshen Mishpat, siman 2, [regarding] all these things, [the action should be] according to what the judge sees as necessary, or as required by the hour. The Bach writes: “The interpretation is that the one who violates [the halacha] deserves punishment for this, as though he were completely wicked. For example, as Rav Nachman,

⁵ Shulchan Aruch, Choshen Mishpat, siman 2, se'if 1: “Every shul court of law, even [one whose members] are not duly ordained in the Land of Israel—if they see that the people are unrestrained in [committing] sins, and [provided] that the needs of the hour demand it—may pass judgment both [with respect to] death and monetary [penalties] as well as [to administer] all laws of punishment, even if in the case [in question] there is no valid evidence [available]. And if [the party being judged] is a stern individual, they may flog him by means of heathen authorities. And they have authority to expropriate his property and to forfeit it according to whatever they see fit in order to fence in the lawlessness of the generation. All their acts, however, should be [done] for the sake of Heaven. And [this should be executed] only [by] a great personage of the generation or [by] the representatives of the town whom they [i.e., the people] have recognized as the court of law over them.

⁶ Elijah Mizrahi (c. 1455—c. 1526) (“Re'em”), Talmudist, posek, and mathematician, best known for *Sefer ha-Mizrahi*, a supercommentary on Rashi's commentary on the Torah.

⁷ Pirkei Avot 1:1.

⁸ Ostracism, which lasts a minimum of 30 days, is a lower form of excommunication. See Moed Katan 16a.

who fined a certain man who was an experienced robber, even though the hour didn't demand this [fine].⁹ Alternatively, that the hour does demand it, for the people are breaking out in transgressions and [the] mitzvot are despised by them, as the incident with a certain man who rode on a horse on the Sabbath during the days of the [occupation by the] Greeks. They brought him to the court and [even though riding a horse on the Sabbath is a relatively minor offense, only forbidden by rabbinic decree,] it stoned him. The court did so even though this [punishment] was not needed for this [offense], for [the man] did not regularly ride a horse on the Sabbath, but now he had violated this prohibition, and the court felt it had to act based on the general societal decline.

ובפרק ג' דסנהדרין דף כ"ז איתא, בַּר הַמָּא קָטַל גַּפְּשָׂא, אָמַר לִיה רִישׁ גְּלוּתָא לְרַב אַדָּא בַר יַעֲקֹב, פּוֹק עֵינֵי בֵיה, אִי וּדְאִי קָטַל, לַכְהֵי[ו] הוּ לְעֵינֵיהּ. וְכַתְּבַת הָרִיב"ש בְּסִימָן רנ"א, לְפִי שְׂרָאָה שְׁלִפִי צוּרָה הַשְּׁעָה הָיָה דִּי בְּעוֹנָשׁ כְּזָה, לְכַף לֹא צָנָה לְהוֹרְגוּ. וּבְשִׂאֲלוֹת וּתְשׁוּבוֹת מִנְהִי"ר סִימָן קל"ח כְּתַב, פּוֹק חֲזִי, אִי וּדְאִי קָטַל גַּפְּשָׂא, וְכִי סָלְקָא דַּעְתָּהּ שְׁיַעֲבֹדוּ עַל הַסְּפָקָא. אֲלָא כְּדָ רָצָה לִזְמַר, אֲפִילוּ לֹא יְהִי לָהּ עֲדוּת בְּרוּרָה וּגְמוּרָה עַל פִּי הַתּוֹרָה, אֲלָא שְׁיִהְיֶה בְּדַעְתָּהּ בְּרוּר וּדְאִי קָטַל גַּפְּשָׂא, אֲפִילוּ הָכִי לַכְהֵי[ו] הוּ לְעֵינֵיהּ, עכ"ל.

In the third chapter of tractate Sanhedrin, page 27a, it is brought that a man named bar Chama killed a person. The Exilarch said to Rav Abba bar Ya'akov: Go investigate this case, and if he certainly killed him, let them poke out his eyes. The Rivash wrote in siman 251,¹⁰ [the court acted thus] because it saw that according to the need of the hour, such a punishment was sufficient, therefore it did not command killing him.¹¹ In the Questions and Responsa of the *Manhir Einei Chachamim*, siman 138,¹² [the author] writes, “‘Go and see, if he certainly killed a person’—For does it enter your mind that they would punish him for a doubtful case? Rather, this is what it wanted to say: Even if you don’t have a clear and complete testimony according to the letter of the Torah law, but in your opinion, it will be clear that he certainly killed a person, even so, poke out his eyes.”

Thus, for question 3, we said that if the Mishnah were talking about a case with litigants, it would make sense to say, “when those being judged stand before you, they should be as wicked [i.e., guilty] in your eyes,” using the words “as wicked” because perhaps they were not truly wicked. But now we understand that the Mishnah is talking about a *beit din* that is hearing a criminal case, or a case of one who violated halacha. The words “as wicked” mean that a court should consider such a defendant who is somewhat wicked “as completely wicked,” and to judge him more harshly than it might ordinarily do, if required by the times or circumstances.

⁹ Bava Kamma 96b: A thief robbed a man of a pair of oxen, which the robber used to plow and sow his field. He then returned the oxen to the owner. The owner complained to Rav Nachman, who ruled that the robber had to pay half the value by which the field's value had been enhanced by the plowing and sowing. Rava was surprised, as the halacha had been satisfied by the return of the oxen, but Rav Nachman said that he wanted to fine the career criminal.

¹⁰ Isaac ben Sheshet Perfet, rabbi of Spain and Algeria (1326–1407), *Teshuvot HaRivash* (composed c.1350–1400).

¹¹ Other commentators held that the court could no longer impose the death penalty, because the Sanhedrin was disrupted, but that it could still impose other strict punishments according to the need of the hour, as discussed above and as codified in the Shulchan Aruch, Choshen Mishpat, siman 2, se'if 1. Other commentators interpret “poke out his eyes” to mean that the court takes his money to pay the estate of the deceased, or that they excommunicate him.

¹² Meir ben Gedalia (1558–616), Polish rabbi, Talmudist and posek. He wrote a commentary on the Talmud, *Meir Einei Chachamim*, and his responsa were published posthumously as *Manhir Einei Chachamim*.

ובכל זה, המשנה מבארת מעצמה, אל תעש עצמה פעורכי הדיינים, כשאתה רוצה לענוש איזה אדם שעבר עבירה, או משום שנה צריך לך, או משום שהשעה צריכה לך, תהיה פונתה הכל לשם שמים, ולא תכוין לתועלת עצמה קלל, וכדברי הרא"ם הנ"ל.

With all this, the Mishnah clarifies by itself, “Do not make yourself as the legal advocates.” I.e., the answer to question 1, the reason for the apparently superfluous word “yourself,” is to stress that **when you want to punish a man who violated a prohibition, or because this was necessary for that [action of the defendant], or because the hour demands that, your intention for everything should be for the sake of Heaven. You should not intend anything for your own benefit, and should act as directed by the words of the Re'em, above.**

וכשיהיו אותם הבעלי דינים, דהיינו העבריינים, עומדים לפניו, יהיו בעיניו פרשעים. ואף על פי שלפעמים אינם רשעים, שהרי אינם רגילים לעשות כן, אלא רק בפעם הזאת חטאו דרך עראי, כמו שהוא דרכב על סוס בשבת, שלא היה בזה חטא כל כך גדול, שהיה נקרא רשע, וכדברי הב"ח הנ"ל, עם כל זה הותר לה לענוש אותו לפי צורך השעה, ולחשוב אותו כרשע גמור.

When these being judged, that is the transgressors, “stand before you, they should be as wicked [i.e., guilty] in your eyes.” That is the case **even though sometimes they are not wicked, for they are not accustomed to act thus, rather only this time they happened to sin, like the one who rode on a horse on the Sabbath, which was not such a great sin that he should be called “wicked.”** This is like the words of the Bach above. Nevertheless, it is permitted for you to punish him according to the need of the hour, and to consider him as one who is completely wicked.

וכשנפטרים מלפניו, יהיו בעיניו פזאין וכו', כדברי השאלות והתשובות הנ"ל, שאף על פי שברור לה שהרג הנפש, והיה חייב מיתה, ואתה לא עשית לו אלא סימוי עינים וכיוצא בזה, במי שהוא חייב עונש חמור לפי העון שעשה, ולפי צורך השעה די ליתן לו עונש קל, אל תחשוב בעיניו שעדיין נקרא רשע, לפי שלא קבל כל העונש הראוי לו. אלא כיון שקבלו עליהם את הדין, שנתחרטו ועשו תשובה, יהיו בעיניו פזאין.

Finally, question 4 related to the instruction, **“And when they leave your presence, they should be as innocent in your eyes,** when they have accepted the judgment.” **This is as the words of the Questions and Responsa of the Manhir Einei Chachamim above. That is the case, for example, even though it is clear to you that he killed a person, and he was obligated to the death penalty, and you only blinded his eyes or the like. I.e., in the case of one who was obligated to a harsh penalty because of the evil he did, but according to the timing of the hour, it was enough to give him a lighter punishment, do not think in your eyes that he is still called wicked, because he did not receive all the punishment he deserved. Rather, because they accepted the judgment, accept that they repented and did penance, and then “they should be as innocent in your eyes.”**

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