

# SEPHARDIC INSTITUTE

511 Ave. R Brooklyn, NY 11223-2093  
Rabbi Moshe Shamah, Director

718 998 8171 Fax: 718 375 3263  
Rabbi Ronald Barry, Administrator

בס"ד

## Parashat Ki Tese Part I The Wayward and Rebellious Son

### 1. An Incongruity

The passage concerning the *ben sorer umoreh* (“the wayward and rebellious son” [Deut. 21:18-21]), which calls for putting a boy to death upon parental testimony of repeated disobedience and gluttony, appears to deviate from the Torah’s consistent concern for life, equity and fairness. Consider how incongruent it is with the principles manifest in the three immediately preceding passages. The case of a slain individual found in a field reflects the unique value of each human life; the captive woman legislation protects a foreigner against excessive abuse and exploitation by a captor; and the law regarding the “hated” wife’s firstborn son ensures the latter his rights. What about the value of the life of the boy of our passage and his rights to fair treatment? Following the case of the *ben sorer umoreh* is the prohibition against allowing the body of an executed criminal to remain hanging beyond the day of execution, highlighting the sanctity that inheres in every human body, even that of an egregious violator of the law.

Of course, obedience to parents is the foundation of an orderly society, as well as vital to the continuity of the covenant. But it is morally problematic to execute a boy for the misdeeds described in the passage. The major law codes of the ancient Near East authorized various harsh penalties for such a troublesome youngster. These included having him imprisoned, enslaved, physically mutilated or banished. But an official death penalty as herein codified has not been found, although in practice there may not have been sanctions against a father who in the course of chastisement killed an obstreperous son.

In explaining this law, the Mishnah (*m. Sanh.* 8:5) invokes notions of anticipating the future: בְּנֵי סוֹרֵר

וּמוֹרֵה נִידוֹן עַל שֵׁם סוֹפוֹ יָמוּת זָכָאֵי וְאֵל יָמוּת תָּיִב (“The *ben sorer umoreh* is judged in accordance with what would be his end, he should die innocent and not die guilty”). This interpretation seems to be an attempt to fit the case into the Torah’s overall legal framework, which does not mandate execution for anything comparable to the specified behavior. The idea of being “judged in accordance with what would be his end,” if taken literally, with its intimation of the doctrine of predetermination, would undermine the Torah’s foundational principle of human free will. It countermands the Torah’s principle of the ready availability of repentance and ignores the widespread experience of troublesome children growing into good citizens. The Mishnah’s explanation should not be thought of as the *peshat* of the passage.

In any event, Mishnah legislation expounds many conditions that strictly limit the possibility of there being such a case of capital punishment. The boy’s actions must have occurred during the short period of time when he was no longer a minor (having reached thirteen years of age and grown pubic hair) but not after he became a “man” (having pubic hair that ring the organ). He must have stolen money from his father, purchased with it kosher meat and wine of a certain quantity and ate and drank in the domain of others. Both parents must agree to submit him to the legal process; they must have warned their son in front of witnesses and he must have done his actions in front of witnesses. The accompanying talmudic discussion expands on the Mishnah qualifications and makes it virtually impossible to imagine such a case actually occurring.

The Mishnah’s explanation that the boy is put to death for anticipated behavior segues into a homiletic discourse, unusual for this generally legalistic code. It

states: “Death to the wicked is beneficial to them and to the world, whereas for the righteous it is harmful to them as well as to the world; wine and sleep for the wicked are beneficial to them and to the world but for the righteous, harmful to them and to the world; disunity ... unity ... tranquility ...” This seems to indicate that the basic interpretation itself is not proffered as *peshat* but as a homily.

We will further discuss the opinions of the sages later.

## 2. Rabbi Sassoon’s Approach

Rabbi S. D. Sassoon interpreted this law as designed to restrict a father’s almost absolute rights over his son in the ancient world and as a tactic to draw the elders into the case. Ultimately, its purpose was to protect the boy and prompt the elders to implement a strategy to remedy the family situation. The following is a free translation from *Natan Hochmah Lishlomo*, p. 74:

In some pre-Torah societies, a father who was dissatisfied with his son’s behavior would be able to do to him as he saw fit, including beating him to death. The Torah obligates the father and mother to express their dissatisfaction with their son by turning him over to the court, which would thoroughly investigate his behavior and make the determination concerning punishment or whatever is appropriate. Similarly in the case of *soṭah*, in pre-Torah societies a husband who suspected his wife of adultery was able to get away with killing her. The Torah restricted his rights, obligating him to bring her to the priest.

That a father often had powers of life and death over his children in ancient patriarchal societies is illustrated in several biblical instances. Reuben said to his father: “My two sons you may kill if I do not return him to you” (Gen. 42:37). Jephthah sacrificed his daughter in fulfillment of his vow (Judg. 11:39). (An enabling element in child sacrifice appears to have been the father having ownership of his offspring.) A patriarch’s power may also have extended over his daughter-in-law. This appears to be reflected in Judah’s unilateral decision that Tamar, in widowhood, should be put to death for breaching her *shomeret yabam* status (awaiting levirate rites from the brother of her deceased husband, who died

childless [Gen. 38:24]), given that such a penalty for such a violation is unknown from ancient codes.

Thus, according to Rabbi Sassoon, the case of the wayward and rebellious son is about the right of a troublesome or challenged child, or one with less-than-competent parents, to fair treatment and a decent upbringing. It is an attempt to involve capable outsiders in addressing the situation. As such, this case does, indeed, follow in the spirit of the textual context in which it is embedded, namely, concern and protection for the potentially exploited individual.

## 3. Textual Support

A careful reading of the four-verse passage – from the description of the boy’s negative characteristics and his unresponsiveness to parents, to their bringing him to the elders and their declaration concerning him, to his being put to death – appears to support Rabbi Sassoon’s interpretation.

The first verse presents the parents’ problem with their son in the objective, narrative mode: the son does not obey father or mother, they chastise him, but he persists in disobedience. We sense a crisis, but the text does not inform us of any particular legal violation beyond filial disobedience. Obviously, the boy did not strike or curse either parent, specific transgressions that carry the death penalty in themselves (Exod. 21:15, 17); had either occurred, the text would surely have made mention of it. By not specifying other misdeeds, the Torah transmits the impression that the boy is not necessarily worthy of death. Perhaps the problem is a result of poor parenting, perhaps the family is dysfunctional.

In the second verse, “his father and mother grab him and take him forth to the elders of his city.” The vivid phrase “grab him” points to frustrated parents, especially considering the mother’s participation in the grabbing. It suggests vindictive parents, probably abusive, who in their anger and frustration want to get rid of a difficult child.

The parents deliver their son to עִירֹו זְקֵנֵי, the elders of “his” (the boy’s) town and שַׁעַר מְקוֹמוֹ, the gate of “his” place. (The elders generally sit near the town gates.) These are most unusual pronominal usages that

immediately call to mind several more natural locutions. Why not state that the parents bring their son to the elders of “their” town and the gate of “their” place? Or to the elders of “the” town? Or merely, “to the elders.” And why in this sad case is this detail stressed with both phrases, *ziqueh ‘iro* and *sha‘ar meqomo*? These formulations are surely stressing that such parents – whether they realize it or not – must deal with the elders of the boy’s town. The Torah is pointing out that this town is also the boy’s town, not just that of his parents; he also has rights, which it is the responsibility of the town leaders to uphold. The elders are expected to be closely associated with the boy, indeed, he is their charge and they are expected to be his defenders.

The phrase *ziqueh ‘iro*, which appears twice in our passage, appears only twice more in Scripture, both in Deuteronomy. In 25:8 the would-be *yebama* (the widow awaiting levirate rites) complained to the elders that her brother-in-law was refusing to fulfill his levirate responsibility. She went to הַזִּקְנִים (“the elders”). Upon hearing her story they recognize that persuasion of her brother-in-law was called for, so *ziqueh ‘iro* – the friendly elders of her brother-in-law’s town – speak to him. When he persists in his refusal, however, the levirate severance procedure (*halisa*) is performed in the presence of “the elders,” since invoking a special relationship is no longer relevant. In Deuteronomy 19:12, when the authorities must remove a willful murderer from a city of refuge to bring him to justice, it is specifically the responsibility of *ziqueh ‘iro* to do so.

In the third verse of our passage, when the parents speak to “the elders of his town,” their complaints exceed what the objective narrative described at the beginning of the passage. They add that their son is זוֹלֵל וְסוֹבֵא, a glutton and a drunkard (cf. Prov. 23:20-21). Introducing the parents’ substantial, yet subjective, epithets strengthens the reader’s impression that they have given up on their son and have now decided to dispose of him in the legal manner.

The final verse mandates the death penalty for the boy. Contrary to the formulation of most of the other indictable cases in Deuteronomy, no investigation is called for. It is highly improbable that the court would

act without a trial, merely on the testimony of the parents who are prone to exaggeration and partiality. The sages posit many details to bring this case into some alignment with the legal justice system, but the Torah’s formulation gives the impression of an almost automatic conclusion to the case, as if the parents are entitled to be believed and that their testimony virtually concludes the case.

It rather appears that the law is providing the parents a credible channel for them to legally have their son put to death with the purpose of encouraging them to bring him to the elders. Abusive parents may not be interested in bringing their son to an authority that will necessarily make a thorough investigation. They would fear that such probing might place them in a negative light. But they may bring their son forward if they assume that they are generally believed and that they will finally be relieved of their problem.

It is noteworthy that in detailing his execution the passage does not mandate that the witnesses – the parents, in *peshat* – initiate the stoning, as appears to be the usual practice (Deut. 17:7), but that “all his townsmen” carry it out. This may be out of respect for the parents’ sensibilities, though they are the accusers and are bringing their son forward to be put to death. However, their absence in the final verse may be a sign that they were told that they had fulfilled their responsibility in having brought their son to the elders, who will see to his punishment and execution if appropriate. After their testimony they are to withdraw from the case; from that point on the elders and townspeople take over.

A supporting hint that we are not to view the boy’s violations as worthy of death may be gleaned from the following case (vv. 22-23): “And when there is in a man guilt of sin worthy of being put to death and he was put to death...” The sin was not specified, but it was worthy of death. It is significant that the case begins with the word וְכִי (“And when”). The conjunctive *vav* invites the reader to take that succeeding verse as linked with the previous case and as a comment on it. The passage of the *ben sorer umoreh* does not mention the word guilt or sin or any synonym of these words. By immediately relating about a man who does bear guilt worthy of death and who was put to death, we are prompted to think about

the previous case as concerning someone not guilty of a sin worthy of death.

In the Deuteronomic law compendium following the Decalogue (chapters 6–27) there are more than forty paragraphs (*petuhot* and *setumot*) that begin with the conditional clause כִּי (“if” or “when”). Only three paragraphs begin with וְכִי, whereby the “if” or “when” is prefaced with the conjunctive “and.” In 18:6, following legislation concerning the *Kohanim-Leviim* (vv. 1-5), we are told, “And when the Levite comes, etc.” That is clearly a law connected to the previous. In 19:11, following elaboration of the laws concerning the unintentional killer, it states, “And when a man hates his fellow and intentionally kills him,” etc. Again, there is clear linkage to the previous passage. The final introductory וְכִי (“and when”) is the one following the passage of the wayward and rebellious son, and one may wonder what is the connection to it. This supports our contention that it is an intended literary device to shed light on that boy’s case, indicating that it was not a case deserving death and death was not actually meted out.

It is noteworthy that in our paragraph the mother is portrayed as joined together with her husband in chastising her son, taking hold of him, turning him over to the elders and describing his misbehavior, in short, she is equated with her husband every step of the way. This reflects an innovative measure of equality for both parents regarding responsibility for their children. It promotes the process of restricting the father’s pre-Torah tyrannical authority over his son and serves to lessen the possibility of abuse of children. It also further enhances the status of women, clearly part of the Torah’s larger agenda.

#### 4. Support from the Tradition

In the Talmud, the following tradition is recorded in the name of Rabbi Shimon (*b. Sanh.* 71a) and echoed in statements of other sages:

Just because he ate a *tartimar* of meat and drank half a *log* of Italian wine, may his father and mother take him out to be stoned? The correct interpretation is that there never was a case of the wayward and rebellious son [put to death] and there never will be – בְּן סוֹרֵר וּמוֹדֵה לֹא הָיָה וְלֹא עָתִיד

לְהֵיוֹת. The reason it was written in Scripture is that one may study it and receive benefit.

With its opening question, the tradition teaches that a simplistic reading of the passage is unconscionable. The reply – that it will never come to be for whatever reasons – does not completely solve the conscience problem. Why was it formulated in the Torah as it is, even in a theoretical sphere? And if a case is never going to occur, what is the purpose of it being included in Scripture? The explanation that “it was written in Scripture so that one may study it and receive benefit” itself requires explanation. Perhaps the benefit of studying it refers to the social justice that proceeds from a full appreciation of the passage’s implications. This tradition then reflects an interpretation very similar to that of Rabbi Sassoon.\*

That the Torah provides legislation for an objective that is unspecified and unknown to the protagonists of a case is a result of the enormous gap that existed between the sophisticated program of prophetic law and the thinking of common people.

#### Endnote

\* Following Rabbi Sassoon’s interpretations of *ben sorer umoreh* and the case of the suspected adulteress, we may also view in this light the difficult case of the young married bride whose husband accused her of not having been a virgin on their wedding night (Deut. 22:13-21). The text states that if the husband’s allegation could not be disproven, “but if this matter be true, the signs of virginity were not found for the maiden” her penalty is death by stoning at the entranceway to her father’s house. The Talmud posits that this was a case in which the young lady had first been betrothed to her husband (the act that establishes the foundation of the marriage relationship), the general practice in those times and that two witnesses testified to her sexual infidelity after betrothal. But the Torah formulation does not mention the qualification that the sexual encounter the girl was presumably guilty of was after having become betrothed. Neither does it specify the presence of witnesses, a condition always required for the death penalty as stated twice previously in Deuteronomy (17:6 and 19:15). Here also, on the surface, this law is incongruent with Torah legislation. In *peshat*, it may be a case of saving

the young bride from an overly suspicious and possibly dangerous husband who might very well have been supported by the society of the time in whatever violent action he might have taken. The law that a guilty bride would be put to death would possibly encourage the husband to personally refrain from violent action and come forward to the elders.

Along somewhat similar lines, Jeffrey Tigay writes: “Some scholars believe that certain harsh penalties in Mesopotamian contracts and law corpora are meant... with no intention that they would actually be carried out... comparable to the rabbinic view that the law

about the rebellious son was... merely for educational purposes. One might, then, theorize that verses 20-21 of the present law [the betrothed maiden] are not intended for enforcement but are simply a rhetorical means of condemning premarital intercourse [and] provide ammunition for parents to use in warning their daughters against unchastity, much as they could have used 21:18-21 in warning sons against insubordination” (JPS Commentary on Deut., Excursus 20, p. 477).

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