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Center for Modern Torah Leadership



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"Taking Responsibility for Torah"

THE KAVANAUGH HEARINGS AND TORAH CONVERSATION

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A rabbi recently asked a conversion candidate whether the Torah had anything to say about the Kavanaugh hearings. The question was a failure, because the candidate did not feel safe enough to express disagreement with the (wrongly) presumed political consensus of the beit din. I think the presumption needed to be undone; it was vital to show that Torah conversation and Torah communities are intended to handle and even encourage open disagreement on such questions.

The great issues of the day often become political faultlines. In a healthy society, the importance of those issues drives people to engage regularly in substantive if heated conversation across those lines. In an unhealthy society, fear of social fracturing, moral disapproval, or economic reprisal; insecurity; and sheer disregard for the opinions and character of those one disagrees with, lead people to engage only with others who are demonstrably likeminded, and to shy away from authentic disagreement.

Genesis 14:13 describes Avram as an "Ivri," and Rabbi Yehudah (Bereishit Rabbah 48:4) understands that to mean that "The whole world was on one side=*eiver*, and he stood on the other." In other words, a Jew is someone willing to be ostracized for the sake of moral principle. But the medieval exegete Rabbi Yosef Bekhor Shor points out that Genesis 14:13 itself locates Avram in the terebinths of his covenanted allies Aner, Eskhol, and Mamre; Avraham and Sarah had each other; and the Rabbis also describe Avraham and Sarah as making converts ("the souls which they made in Charan"). This combination of willingness to bear unpopularity for the sake of principle, while maintaining human relationships and engaging with others in the hope of convincing them, should make for a healthy society.

One test of whether it succeeds in doing so is the process of conversion itself. Do candidates see themselves as entering a vibrant conversation which values the differences they bring to Judaism? Or do they see it as too risky to express political opinions that conflict with the apparent consensus of their intended community?

What matters is that we think seriously through the lens of Torah, not that we reach a specific conclusion. We should not pasken politics.

I'll go further. Thinking through the lens of Torah should almost never lead to an absolutely definitive conclusion regarding an issue about which reasonable moral people have differing intuitions. (This is also true of economics, philosophy, and political science.) Hopefully, it enables us to make better, deeper, and more authentic judgments and decisions. The Kavanaugh hearings modeled for me the breakdown of political conversation in the United States and reflected the ill health of American political society. I will take the chance here of trying to model a constructive Torah conversation about one aspect of the Kavanaugh hearings, in the hopes of contributing to the health of our community.

I found two Orthodox approaches on the web to the question of whether youthful sins can disqualify a person from public service.

The first, from a group calling itself The Coalition for Jewish Values, stated that

we should be judged on the totality of our lives, not merely on one alleged incident, and certainly not on an incident that is unsubstantiated and unprovable,

and

It is immoral to besmirch someone's name in the court of public opinion on 'evidence' that would not stand in a court of law.

These propositions were taken as self-evident.

The second, by Forward columnist Avital Chizhik Goldschmidt, cites Maimonides.

Open the Mishneh Torah, where Maimonides unpacks the biblical descriptions of a judge in great detail. Judges appointed to the Sanhedrin, he writes, must be "mighty in their observance of the mitzvot, who are very demanding of themselves, and who overcome their evil inclination until they possess no unfavorable qualities, no trace of an unpleasant reputation, even during their early manhood, they were spoken of highly." (Hilkehot Sanhedrin 2:7, Translation by [Eliyahu Tougeron Chabad.org](http://www.elyahu.org)).

Interestingly — the teenage behavior of a judicial candidate is relevant, Maimonides says. It is telling of one's moral character, no matter how long ago it was.

But perhaps what is more interesting is the fact that Maimonides does not only require a judge to be righteous, or rather, sin-less — something that may be, somewhat, measured.

A good "name," "no trace of an unpleasant reputation," as elusive as that is, is important for Maimonides. A mere stain on one's standing, a grave rumor with substantial weight, is enough to disqualify a judicial candidate from being confirmed — probably because a bad repute alone is enough to dangerously devalue a judge in the eyes of the people he serves.

Of these two approaches, I plainly prefer Ms. Goldschmidt's. She provides textual evidence, and therefore makes space for disagreement. An outsider reading her article could reasonably believe that someone providing plausible counterinterpretations or alternate texts would remain part of her religious community. But I don't mean to dismiss the CJV's intuitions, which I think can be reconciled with traditional texts.

From a halakhic perspective, we must of course ask how broadly Maimonides' position is shared. For example, the requirement that a judge be "*pirko naeb*" = "that his reputation be pleasant even during early manhood," is cited by Tur (Choshen Mishpat 7), but not in Shulchan Arukh. Perhaps Shulchan Arukh thought it was implicit in his citation of the requirement that judges be *baalei shem tov* = holders of good reputations. But perhaps he thought it was going too far to require that reputation to have been established in youth.

Maimonides' list is taken essentially verbatim from Tosefta (Sanhedrin Chapter 7, Chagigah Chapter 2). But the parallel text in the Babylonian Talmud (Sanhedrin 88b) leaves out *pirko naeb* (this remains true in all manuscripts available at fms.genizah.org and in [Dikdukei Sofrim](#)).

The *pirko naeb* requirement is also brought on Taanit 16b with regard to a *yoreid lifnei hateivah*, a prayer leader. There — as opposed to regarding judges — it has generated extensive discussion in the responsa literature over the past millennium. (This can be found by searching for variants of the phrase *pirko naeb* on the Bar Ilan Responsa Project.) Decisors as early as Rav Hai Gaon struggle throughout with on the one hand a recognition that a prayer leader's past misdeeds can legitimately diminish confidence in their capacity to effectively represent the community before G-d, and on the other hand a social need to reward penitence with acceptance, and a metaphysical claim that "where *baalei teshuvah* stand, those who have always been completely righteous cannot stand". They distinguish

between leading prayers on fast days (and perhaps Rosh HaShanah) and on other days; between holding the position of chazan and leading prayers on an ad hoc basis; between prospective appointment and removal from office; etc. All these distinctions are disputed.

Decisors similarly struggle with the standard of evidence needed to establish a genuinely bad reputation. Surely one uncorroborated report is not enough — or is it? The usual Halakhic category invoked is **פסיק דלא דלא פסיק**, a rumor that will not cease. But sometimes the court feels obligated to do its best to **make** the rumor cease.

Furthermore, does *pirko naeb* require one to have **nowa** reputation that one has been blameless throughout, or only to have escaped one's youth with a perhaps mistakenly unblemished reputation? At least one case in the responsa literature appears to involve new rumors of youthful offenses in which the accused both denies the worst claims and claims to have repented of the behavior that gave rise to the rumors of sin, as evidenced by his unblemished reputation ever since.

To summarize: Contentions made by both sides make their appearance in the halakhic tradition. Intuitions held by both sides make their appearance in the halakhic tradition.

Our community would have benefited — might still benefit — from a full scholarly analysis of these materials and a better sense of how past cases were decided. But that would still not yield binding law, as halakhah is fully cognizant that new social arrangements require precedents to be applied thoughtfully rather than mechanically.

I don't know whether such an analysis would have enabled genuinely healthy conversations in our community about the Kavanaugh nomination and hearings. Some issues may simply be too raw. Our communities of discourse may have sustained so much damage already as to be completely unable to handle an issue that pushes so many buttons so hard. Publishing this scrupulously neutral dvar Torah feels risky, as so many people seem committed to the approach that "anyone who is not the enemy of my enemy is my enemy." Yet reclaiming our capacity for this kind of conversation seems urgently necessary, for America and for Torah.

The mission of the Center for Modern Torah Leadership is to foster a vision of fully committed halakhic Judaism that embraces the intellectual and moral challenges of modernity as spiritual opportunities to create authentic leaders. The Center carries out its mission through the Summer Beit Midrash program, the Rabbis and Educators Professional Development Institute, the Campus and Community Education Institutes, weekly Divrei Torah and our website, www.torahleadership.org, which houses hundreds of articles and audio lectures.