

CENTER FOR MODERN TORAH LEADERSHIP



POLITICS IN A TORAHCRACY

By Rabbi Aryeh Klapper

Large-scale social problems often have complex and multiple causes. Narrow proposed solutions therefore are often ineffective, inefficient (=imposing costs greater than the benefits they obtain), or even counterproductive, while broad proposed solutions are often extremely risky and politically impossible.

Torah offers no foolproof way around or through this dynamic. That does not excuse Torah scholars, leaders, and just plain bnei and bnot Torah from grappling with large-scale social problems through the lens of Torah. However, it does require us to think responsibly about the role Torah and Torah authority should play in dealing with such problems.

For example, we evade responsibility by imagining that a complex problem would swiftly vanish in a true “Torah society”, where the “right answer” would be rapidly identified and then immediately implemented. A mentor and friend of mine calls this “magical thinking”.

An element of this “magical thinking” is the assumption that politics would disappear in a Torah society. This is akin to Ayn Rand’s fantasy that “there is no conflict of interest among rational men”. There are real and legitimate conflicts of interest and loyalty among genuinely religious people, and politics is the way those conflicts work themselves out.

The fantasy that Torah’s expression in human society is above politics often collapses on examination into a desire for fiat rule and/or fascism. Each of these rests on the assumption that individual or sectional interests and loyalties have no legitimacy when they conflict with the good of the whole, whereas politics assumes that they have legitimacy that must be taken into account when considering the good of the whole.

The fantasy therefore leads to Torah governance being presented as if it requires no “checks and balances”, as a simple top-down system in which anyone below the top level has no duty or right other than obedience. Any acknowledgement that the “top” is different in different spheres, e.g. “separation of powers” of the Sanhedrin, King, and High Priest, is twinned with an assumption that the

boundaries between those spheres are clear and indisputable. This inhibits serious Torah responses to large-scale social problems. Solutions to problems with complex and multiple causes inevitably cut across the “silos” that are set up to avoid allowing political conflict into Torah. They require cooperative efforts across realms of leadership.

To understand what such cooperative efforts entail, it is necessary to recognize that halakhah is not the only tool available to halakhic policy makers, or at least that it is a more variegated tool than is generally acknowledged.

For example: It is possible for Torah leaders to issue a formal prohibitive decree and at the same time acknowledge that it deliberately has no enforcement mechanism. Or to declare that a specific action is now a middat chasidut or mitzvah min hamuvchar, i.e. highly praiseworthy but not mandatory. Or to declare that the Torah endorses a specific end without taking any position as to which specific actions contribute to or frustrate that end.

These reflections were prompted by two pieces of parshah-related Torah.

The first was this week’s dvar Torah from Rav Shaul David Boczko shlita, discussing Devarim 20:19-20.

Read most narrowly, these verses establish a prohibition against cutting down still-productive fruit trees during a siege when one can accomplish the same thing by cutting down non-fruit trees. Read most broadly, they establish a general prohibition against destroying things without an adequately constructive purpose. (This prohibition is often referred to as bal tashchit, but should not be confused with the identically-named prohibition against men shaving with a razor.)

Rav Boczko proposes that the distinction between fruit and non-fruit trees applied only while the atmosphere was clear and health-giving. Now that air pollution poses a profound challenge to human thriving, all trees should be halakhically regarded as fruit trees.

I presume that R. Boczko intends this conceptual shift to apply to the broader prohibition as well. That is to say:

Pre-21st century applications of bal tashchit consider only the immediate human utility of the object being destroyed. We now need to consider the question of how that object's continued existence impacts its entire environment.

The proposed halakhic shift would have minimal practical impact. Halakhic precedent generally allows cutting down fruit trees for a wide variety of reasons. I am not offhand aware of a practical case in which a private landowner wished to cut down a specific fruit tree and was told that this was prohibited. It does not require that the desired gain be proportional to the loss, just that there be a real gain. (In the original military context, it prevents permanently harming the enemy's food supply as an act of vengeance without imposing any tactical or strategic restrictions.)

Nonetheless, within communities for which the Torah prohibition resonates, it might be very significant psychologically if people came to regard all trees as objects for which the Torah has the same special concern that it has for fruit trees.

At the same time, what if I am not convinced that trees contribute significantly to air quality? What if I'm afraid that the unintended impact of this ruling will be that fewer houses are eligible for solar panels, which will slow the capacity of solar energy to compete with fossil fuels economically?

The answer, I think, is that these objections are relating to the expansion of bal tashchit as if it were an attempt to comprehensively solve the problem of air quality. But halakhic interpretation by itself is rarely capable of having that kind of direct impact on large-scale social issues, especially when those issues cannot be usefully addressed within the halakhic community in isolation.

What halakhic interpretation can do is affect the political conversation about those issues within the halakhic community.

Imagine our world as a Torahcracy. What would the appropriate processes be for developing and implementing policies aimed at sustaining or improving air quality?

I suggest that it would require cooperation and coordination among all those with executive, legislative, and judicial authority. Moreover, I think that the number of those who would have such authority, and the complexities of their interrelationships, are radically understated in the ways we teach halakhah today.

Take for example the position of shoter. The opening verse of Parshat Shofetim veShoterim mandates the appointment of shoterim in "all your gates". Rashi describes them as court marshals, whose purpose is to ensure, by force if necessary, that people carry out court judgments. Rashbam emphasizes that they have no discretion and act solely at the command of

the courts. This seems to fit with a notion that courts-of-law have ultimate and exclusive sovereignty under halakhah.

However, the late 15th Century super commentary of Rabbi Eliyahu Mizrachi grants them discretion: "They are the ones in whose hands is the koach/power and memshalah/authority to bring into the light the judgment of the judges, and without them – the judges have no power or authority over the disputants at all, only lehorot/to determine the law." This is underscored by Gur Aryeh's objection that Mizrachi makes shoterim more important than shofetim!

Mizrachi concedes that Rambam's understanding of the position gives the shoterim a more expansive role while denying them all discretion: "They are the holders of stick and strap who stand before the judges who circulate in the marketplaces and stores to establish the market prices and weights and to correct all corruption, and all their actions are at the instruction of the judges". However, I'm not sure that these circulating judges are the same as those who sit in judgment on cases.

The 19th century commentary Shadal radically separates the roles of shofet and shoter:

"The shofetim would judge issues between people, or when witnesses came to testify that a person had sinned, while the shoterim would oversee the peace of the state and decree gezeirot/rules and hanhagot/practices on the people".

Netziv introduces yet another political player: the "head of the city", who represents the general public and is required to oversee the shofetim to ensure that they judge "mishpat tzedek".

Each of these role-definitions would themselves be the legitimate subject of political maneuvering among officeholders, each of whom would ultimately need support from their constituencies. (I leave aside the question of how people gain office, and how they can be impeached or otherwise removed. Generally, halakhah assumes democracy.) Effective mandatory environmental legislation would require the agreement or at least willing cooperation of all these authorities and constituencies. (We also haven't yet discussed whether the Sanhedrin can delegate whatever authority it has to regulatory agencies such as the EPA.)

My point is that the process for developing and implementing environmental policy in a Torahcracy would be roughly comparable to those in a pluralistic democracy. Therefore, the fact that Orthodox Jews do not control the entire system, and that Torah is not the agreed framework of conversation, if anything only increases our individual responsibility to be intellectual and practical contributors to the policy discourse on such issues.

Shabbat Shalom!

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