

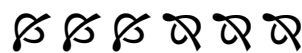


# Hierarchy of an Ideal Jewish Society: The Judiciary (Part 1)

© M. Zauderer 1999

## LESSON OUTLINE

1. Introduction
2. Relationship Between the Judiciary and the Monarchy  
*Link: Defining Chukim and Mishpatim Laws*  
*Link: Purpose of Mitzvot: To Establish a Relationship with G-d*
3. The Judiciary and the Tribe of Levi
4. The Judiciary and Prophetic Messages

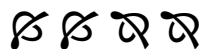


### Introduction

What governing bodies guide an ideal Jewish society? How does the Torah define the roles of the monarchy, the judiciary, the prophet, and the Tribe of Levi (which includes both the Priest [Kohen] and Levite)? What rights, powers, and limitations are accorded to the different branches of authority?

After the Jewish people had completed forty years of desert travel, as they were preparing themselves for societal life in the land of Israel, Moses laid out the structure of Jewish life in the land. Chapters 16 to 18 of the Book of Deuteronomy describe the role of four institutions that would govern Jewish life in Israel: the judiciary (16:18-20, 17:8-13), the monarchy (17:14-20), the Tribe of Levi (18:1-8), and the prophet (18:9-22).

In the first four lessons of this course, we will study some features of the four governing bodies that are to direct Jewish life: the judiciary, the monarchy, the prophet, and the Tribe of Levi.



### Relationship Between the Judiciary and the Monarchy

What is the role of the judiciary?

Rabbi Nissim (1290-1375 Spain) explains the division of power and purpose between the judiciary and monarchy:

Rabbi Nissim (*Discourses of Rabbi Nissim, Discourse 11*):

It is self-evident that a system of government is necessary to regulate laws for the proper functioning of any society. The Sages stressed its vital importance when they advised us to: "Pray for the welfare of the government [i.e., the government of any society in which we live], because if people did not fear governmental authority, they would 'swallow their fellow men alive'." (Ethics of the Fathers, 3:2). "Even thieves must establish rules among themselves," said a wise man. Every society must enact laws in order to maintain harmonious relationships between its members.

For the Jewish nation, however, social harmony is not the only purpose that government fulfills, nor is it the highest purpose. Jewish government also has the unique objective of creating a national environment that is conducive to bringing the Divine Presence (*Shechinah*) into the society.

The Torah establishes a distinct institution to achieve each of these goals. It is the role of the *judiciary* to ensure that the Torah's mitzvot are observed properly, so that the Divine Presence will remain among the Jewish people. The *monarchy's* role is to preserve the social structure, using whatever means become necessary, even at times employing extra-legal means to maintain peace and protect against abuses within society.

Thus, the king in Jewish society maintains basic order, ensuring that by and large, the population will be living within the parameters of Torah law. To accomplish this, the king has the freedom to take whatever steps he feels necessary, for he is not required to abide by the limitations imposed on the Jewish courts of law. Since the king has the authority to keep his subjects in line, the Jewish courts are free to pursue the higher goal of raising the nation's spiritual stature, creating the environment necessary in order for G-d's presence to abide among the nation.

Rabbi Nissim offers an example that demonstrates how the monarchy and the judiciary respond to a given case, administering justice in different ways, based on their different goals.

The Talmud (Tractate *Sanhedrin*) presents the strict criteria that the Torah imposes upon the courts when they must judge murder cases, which may lead to capital punishment for the murderer. Two eyewitnesses to the murder must each testify independently that the murderer acted with full cognizance of the severity of his crime. They are asked: "Did you recognize the victim? Before the murder took place, did you verbally warn the murderer of that he would face the death penalty if he were to commit the act of murder? Did the murderer respond to your warning by expressing his intent to kill his victim, knowing that he would then be liable to capital punishment?" If the witnesses answered "no" to any of these questions, or if they expressed doubt in their responses, Torah law does not permit the court to execute the murderer.

If the courts must meet such strict standards before they can implement capital punishment, how can society deal with murderers who manage to circumvent the Torah's legal framework? To preserve order within society, the monarchy is empowered to punish the offender in an extra-legal manner.

[Maimonides defines this royal prerogative: "A king is empowered to correct wrongdoing in society as the circumstances dictate. He may execute a murderer, even one who has not received proper warning from witnesses, and even if the evidence is uncertain, or if there was only one witness (instead of the court's requirement of two witnesses)." (Maimonides' Code of Jewish Law [12<sup>th</sup> century], Laws of Kings 3:10)]

**Summary:** Rabbi Nissim identifies two roles of government in Jewish society, and the institution that oversees each of them:

1. Societal Order – The monarchy is empowered to act in an extra-legal manner, in order to ensure that society functions peaceably.
2. Divine Presence – The judiciary is empowered to act only within the framework of Torah law, in order to bring the Divine Presence (*Shechinah*) among the Jewish people.

Historically, a legitimate Jewish monarchy, which functioned as the Torah intended, existed for only 456 years (from the coronation of King Saul of the tribe of Benjamin [879 BCE], until after the exile of King Zedekiah with the destruction of the First Temple [423 BCE]). How does Jewish society function nowadays, lacking a monarchy to preserve social harmony? Rabbi Nissim explains:

In the absence of a Jewish monarchy, the Torah empowers the judiciary to assume the king's role of enforcing order in society.

[Maimonides describes this adapted judicial power: "In order to safeguard the Torah, a Jewish court is allowed to punish flagrant violators, as circumstances require. The Talmud records a case of a court imposing lashes on someone who engaged in lewd behavior publicly." (Maimonides, Laws of Sanhedrin [Supreme Court], 24:4)

While the role of the monarchy – to maintain an orderly society – is readily understood, the role of the judiciary – to bring the Divine Presence among the Jewish people – requires explanation. Why does enforcing the Torah's mitzvot bring the Divine Presence to dwell among the Jewish people?

Rabbi Nissim explains how the judiciary serves as the vehicle for bringing about G-d's closeness to the Jewish people.

Introduction: Defining Torah *chukim* and *mishpatim* laws ([See Appendix](#))

Consider the two general categories of Torah mitzvot that the courts enforce: *chukim*-laws and *mishpatim*-laws. It is evident that *chukim* mitzvot serve a purpose other than the preservation of societal order; their purpose is to bring the Divine Presence among us. Such *chukim*-mitzvot, such as the offerings brought to the

Temple in Jerusalem, resulted in the Divine Presence being felt in very tangible ways in the Temple grounds ("Ethics of the Fathers" [5:7] lists ten specific miraculous occurrences that were associated with the Temple service). So too, albeit less spectacular and not so clearly distinguishable, the observance of the other *chukim*-laws bring other manifestations of the Divine Presence to the Jewish people.

That we do not understand *how* our performance of *chukim*-mitzvot brings the Divine Presence should not disturb us. Indeed, we do not understand the inner mechanics of many natural phenomena – yet we accept them as valid; in the same way we can accept that *chukim*-laws bring the Divine Presence among us.

Purpose of Mitzvot: To Establish a Relationship with G-d ([See Appendix](#))

In truth, even observance of the *mishpatim*-laws, which regulate an orderly society, *also* results in bringing the Divine Presence among us. When there is a proper monarch for the Jewish nation, who can himself oversee an orderly society, the judiciary can focus its means on applying even the Torah's *mishpatim*-laws to the task of bringing the Divine Presence to the nation.

It is enlightening to note that the *Sanhedrin* (Supreme Court of Torah Law) would meet in the very Temple grounds in Jerusalem. That the presence of this court is one of the functions which take place within the Holy Temple grounds highlights the fact that the court's primary role was the bringing of the Divine Presence.

## ***The Judiciary and the Tribe of Levi***

The Torah's outline of how cases were to be presented to the *Sanhedrin* (Supreme Court) highlights the importance of the participation of the Tribe of Levi in the judicial system.

**Torah Text & Oral Law (Deuteronomy 17:8-10):**

*If you are unable to reach a decision in a case involving capital punishment, litigation, leprous marks, [or any other case] where there is a dispute in your local courts, then you must set out and go up to the place that G-d your L-rd shall choose. You must approach the Levites [and] Priests [and other members of] the Supreme Court that exists in your time. When you make inquiry, they will hand over to you a legal decision. Since this decision comes from the place that G-d shall choose, you must do as they tell you; you must carefully follow their every decision...*

The Torah text singles out the Levite and Priest when it speaks about members of the Supreme Court, to instruct us to include both Levites and Priests among the *Sanhedrin* (Supreme Court). (Oral Law [Midrash *Sifrei* to Deuteronomy])

Rabbi Nissim (Discourse 11) and Rabbis Isaac Abarbanel (1437-1508, Spain – Italy) explain what it is about the lifestyles of the Levites and of the Priests that makes them especially qualified for a judiciary role for which the Torah so strongly recommends them:

As the Torah describes the Tribe of Levi's way of life, they are ideal candidates for the judiciary:

### **Occupation: Temple Service**

*G-d designated the tribe of Levi to carry the Ark of G-d's Covenant, to stand before G-d and serve Him [in the Temple], and to offer blessing in His Name. It is for this reason that Levi was not given any portion or inheritance [of land] with his brethren. G-d is his heritage, as G-d promised him (Deuteronomy 10:8-9).*

### **Material Support: Levite**

*To the descendants of Levi, I (G-d) am giving all the [agricultural] tithes in Israel as an inheritance. This is in exchange for their work, the service that they perform in the Communion Tent (Temple) (Numbers 18:21).*

### **Material Support: Priest**

*When any ox, sheep, or goat is slaughtered as food, you must give the priest the foreleg, the jaw, and the maw. You must [also] give him the first portion of your grain, wine, and oil, and the first of your shearing. This is because G-d your L-rd has chosen him and his descendants out of all your Tribes to stand and serve in G-d's Name for all time (Deuteronomy 18:3-4).*

1. **Mastery of Torah Law:** Freed from the need to engage in a livelihood, the Tribe of Levi was able to devote itself more easily to mastering the laws of the Torah. Moses made mention of their judicial acumen when he blessed the Jewish people for the last time: *“They (the tribe of Levi) shall teach Your law to Jacob, and Your Torah to Israel...”* (Deuteronomy 33:10). [Source: Rabbi Nissim]
2. **Refined Moral Character:** As G-d’s designated servants for the performance of the Temple service, the tribe of Levi was imbued with the feeling of G-d’s Presence in their daily lives. This elevated awareness made them eminently qualified to judge the people in matters involving G-d’s Torah laws. [Source: Rabbi Isaac Abarbanel]

## ***The Judiciary and Prophetic Messages***

The Torah’s instructions for how uncertainties in Jewish law are to be resolved (Deuteronomy 17:8-10, see the previous section) highlights the fact that prophecy played no role in ruling on issues relating to Torah law. Why does the Torah omit the possibility of resorting to prophetic channels and other means of communicating with G-d, in order to resolve issues involving Torah law? In fact, the Torah explicitly rejects Divine communication for the purpose of clarifying Torah law:

*This mandate [of the body of Torah law] that I am prescribing to you today is neither mysterious nor remote from you. It is not in heaven, so [that you should] say, “Who shall ascend to the heavens and bring it to us, so that we can hear it and observe it?”* (Deuteronomy 30:11-12)

The Oral Law explains the meaning of this cryptic statement that the Torah is “not in heaven”:

What is the meaning of the statement: *“It is not in heaven”*? Moses told the Jewish people, “Do not think that another “Moses” will appear to present you with another Torah from heaven (i.e., from G-d). I am informing you that there is no Torah remaining in heaven” (Midrash *Devarim Rabbah*, *ibid.*).

The Talmud relates an incident that happened around the year 82 CE, which makes absolutely clear the extent to which the Torah rejects employing prophetic and other supernatural channels to determine issues of Jewish law.

**Talmud (Tractate *Bava Metziah*):**

[Rabbi Eliezer differed with the majority of the other sages of the *Sanhedrin* (Supreme Court) in a certain matter of Jewish law. Although in such cases the law is that the ruling should follow the majority opinion, Rabbi Eliezer sought to demonstrate that his opinion was in fact the correct one, by invoking supernatural phenomena.]

Rabbi Eliezer declared: “If my opinion is correct, let this carob tree prove it.” The tree suddenly uprooted itself and was thrown a distance of 100 cubits [about 200 feet].

The Rabbis responded: “We do not accept evidence from a carob tree.”

“If my opinion is correct,” continued Rabbi Eliezer, “let this water channel prove it.” The water miraculously began to flow in an upward direction.

“We do not accept evidence from a water channel,” they responded.

“If my opinion is correct,” said Rabbi Eliezer, “let a heavenly Voice prove it.” A heavenly Voice then declared, “Why do you rabbis challenge the correctness of Rabbi Eliezer’s opinions?”

Rabbi Joshua (one of the dissenting members of the *Sanhedrin*) then rose to his feet and announced: *“It [the Torah] is not in heaven...”* (Deuteronomy 30:12).

Rabbi Yirmiyahu later explained Rabbi Joshua’s definitive response: “G-d already gave the Torah at Sinai, in which is taught that when deciding Jewish law, *‘A case must be decided on the basis of the majority opinion’*” (Exodus 23:2).

Years later, Rabbi Nosson had the opportunity to ask the prophet Elijah how G-d responded to Rabbi Joshua’s

rejection of the ruling of the heavenly Voice: “How did G-d react when Rabbi Joshua refused to accept the ruling of the heavenly Voice?” Elijah replied: “G-d was most pleased, and He said, ‘My children have overruled Me; My children have overruled Me.’”

Rabbi Hai Gaon (939-1038, Babylon) discusses the meaning behind the heavenly Voice and G-d’s reaction to the Sages’ ruling:

G-d dispatched a heavenly Voice to support Rabbi Eliezer’s minority opinion in order to test the Sages’ commitment to the Torah’s doctrine of majority rule. Would the Sages submit to the heavenly declaration of support for Rabbi Eliezer’s opinion, or would they follow the Torah’s principle of majority rule of a rabbinical court’s judges? [The fact that G-d was pleased with the Sages’ ruling confirms the authority of Torah law – which, once it was given at Sinai, is in the hands of the Torah sages to rule on – and the rejection of heavenly involvement in the rulings of the judiciary.]

Rabbi Nissim (Discourse 11) and Rabbi Isaac Abarbanel (Torah commentary to Deuteronomy 17:12-13) give several reasons for the rejection of various means of communication with G-d to decide matters of Jewish law. Two reasons are:

1. **Prophetic Conditionality vs. Torah Permanence:** The gift of prophetic experience requires a very high spiritual level and a special closeness to G-d (this point will be explained in an upcoming lesson of this course). Prophecy is a privilege that G-d grants to the Jewish people when they are living in the land of Israel and when they are on a sufficiently high spiritual level. In contrast, from the time G-d gave the Torah to the Jewish people, G-d promised that it would never be forgotten from among them (*“This is My covenant with them,” says G-d, “My spirit of holy purity that I have imbued within you; and My [Torah] words that I have placed in your mouth shall never depart from your mouth, from your descendant’s mouths, nor from their descendant’s mouths, forever,” says G-d* [Isaiah 59:21].) Were Torah law dependent upon Divine channels of communication, we would be unable to resolve legal issues during the long ages throughout history when such channels were closed to us. This has in fact been the case since the beginning of the Second Temple era (4<sup>th</sup> century BCE). The permanence of the Torah’s authority requires a dependable method of resolving issues. The task of ruling in matters of Torah law lies in the hands of the greatest Torah scholars of each generation. [Source: Rabbi Nissim]
2. **Torah Given to Human Intellect:** The Torah that G-d gave us can be understood by human intellect – it does not require prophetic communication for us to fathom its teachings. Moses invested extensive effort into teaching, expounding, and reviewing Torah law for the Jewish people (e.g., *“Moses began to explain this law...”* [Deuteronomy 1:5], and numerous other similar passages). This demonstrates his intention that the people should use their own intellects, refined by an understanding of the principles of Torah analysis and by experience in Torah study, to apply Torah law. Rather than consulting prophetic channels to understand Torah laws, we are to apply Torah law according to the clearly defined principles that were transmitted to us by G-d through Moses at Sinai. [Source: Rabbi Abarbanel]

# Appendix

## Defining Chukim and Mishpatim Laws

The most commonly applied classification of mitzvot is that which defines those laws referred to as *chukim* and *mishpatim*. The Talmud explains the difference between these two broad categories of mitzvot.

**Talmud** (Tractate *Yumah*):

*Follow My mishpatim and be careful to keep My chukim, [for] I am G-d your L-rd* (Leviticus 18:4).

*Mishpatim* are laws whose observance human reason and moral discernment would readily demand – even if G-d would not have commanded man to observe them. Examples of *mishpatim* are the prohibitions of idolatry, incest/adultery, murder, theft, and blasphemy [which, along with the prohibition of eating flesh taken from a live animal and the requirement to establish a judicial system, comprise the Seven Noahide laws, all of which are rational and could be derived through reasoning (Rabbi Samuel Eidels, 1555-1632, Poland).

*Chukim* are laws whose observance man's evil inclination tends to rebel against [since they do not appeal to human reason]. Examples of *chukim* are the prohibitions of eating pork (Lev. 11:7) and wearing garments made of a blend of wool and linen (Lev. 19:19); the laws relating to levirate marriage (Deut. 25:5); and the Goat sent away for atonement as part of the Yom Kippur service in the Temple (Lev. 16). Should you be inclined to dismiss observance of such laws as meaningless acts, remember that "*I am G-d your L-rd*," who established these laws. Thus you have no right to question their validity [on the grounds that you do not understand the reasons for them].

In his Talmudic commentary, Rabbi Shlomo son of Isaac ("Rashi," 1040-1105, France) identifies the specific complaint people will raise against the *chukim*-laws:

*Chukim*-laws provide fertile ground for anyone who wishes to deny the authenticity and the Divine origin of the Torah. "G-d could not possibly have commanded the observance of such laws," one might insist. "How do such laws better society and our own lives? If these laws are part of the Torah, then the Torah cannot be true!"

The Talmud defines *mishpatim* as those mitzvot whose benefits, both to individuals and to society at large, are readily apparent to anyone who considers them from a logical standpoint. In contrast, *chukim* are mitzvot whose purpose we cannot grasp through our own intellect – those commandments that G-d Himself must reveal to us as purposeful (e.g., Kosher dietary laws).

## Purpose of Mitzvot: To Establish a Relationship with G-d

The "Book of the Khazar," written by Rabbi Yehudah Ha'Levi (1080-1145, Spain), is based on an account of a legendary dialogue that took place in c.750 CE, between the King of the Khazars (a tribe living in what is today southwestern Asia) and a Jewish sage. This debate culminated in the conversion of the entire Khazar tribe. Among many topics explored in this work is found extensive inquiry into Jewish religious practice.

**Book of the Kuzari (Excerpts from Section 1, ch. 68, 77-9; Section 3, ch. 22-3):**

*Khazar King*: How can I achieve a closeness to G-d? Many religious groups - whose purpose is to draw near to G-d - employ practices that I see as more logical than those I see practiced among the Jewish people.

*Sage*: The mere desire to be close to G-d does not in itself guarantee that one will succeed in achieving a genuine closeness to G-d. Those who believe in a primordial world (as those philosophers who maintain that both G-d and the universe have always existed, and that time has no beginning), those who deify celestial bodies, and those who practice human sacrifice, all claim to seek closeness to G-d.

Know that it is impossible for any human being to determine - through his own sense of logic - what are the practices that will prove effective in drawing near to G-d. Even if it were possible somehow to know what activities would best foster the ideal man/God relationship, no one could know precisely how to perform



them, what is their proper balance, and at what times will these activities be most effective for promoting the relationship with our Creator. The only way by which a perfect relationship with G-d can be achieved is for G-d to communicate to man clear guidelines to govern that relationship.

A nation to whom G-d has communicated His Will, and who adheres to G-d's Will, will be able to relate to Him successfully. However, a nation that seeks closeness to G-d by performing random activities it has sanctified through subjective speculation, will not succeed.

The Sage provides an analogy to demonstrate how good intentions do not necessarily guarantee favorable results.

Consider an amateur pharmacist who prescribes medications randomly to sick people, without giving due consideration to the correct ingredients or dosages of the drugs, or even to their suitability to the patients' ailments. He may in fact heal a few patients by fortuitously dispensing the precise dosage of the correct drug. However, this benefit would be far outweighed by the serious damage he would cause to most of the other patients he treats. Despite his many failures, we would expect that at least some people would be convinced of the therapeutic value of the amateur's treatments, since a few of his prescriptions did meet with success.

The sensible approach for someone who is ill and seeks healing would be to rely on the advice of a professional pharmacist or doctor. Only such a professional can be trusted, since he understands the components of each medication, its proper dosage, and other elements necessary for the healing process, such as diet and rest.

In ancient times, prior to the Sinai Revelation, when Judaism was not yet a formal religion, almost all of mankind was drawn to idolatry. People neglected G-d and His moral code (the Seven Noahide Laws). Incompetent religious leaders instructed people to worship various natural forces (as the wind), physical beings (as human leaders), or spiritual entities (as angels or demons). Like the patient who follows the instructions of the amateur pharmacist, people followed these religious leaders, expecting and believing that the object of their worship would sustain them. G-d created the celestial bodies and the forces of nature to benefit mankind. Yet when people so distorted G-d's Will that they used these gifts for idol worship, G-d employed these very entities to be instruments of His punishment, as in the case of the Great Flood in Noah's days (that is, G-d's gift of rainfall, through which He nourishes life on earth, became a vehicle for divine punishment).

G-d formed all His creations with complex systems and laws. Natural phenomena exist through precise combinations of physical, chemical, electrical, and other interactions and occurrences. By observation and experimentation, we can understand only a minuscule portion of these staggeringly complex phenomena. Thus, for example, although man can come to know all that is required to *nurture and sustain life*, only G-d is capable of controlling the correct balance of forces needed to *create* life.

It is obvious that we cannot fully understand natural laws, although we have no choice but to accept them and live our lives in accordance with them. The means through which we can achieve closeness to G-d are no different; the forging of a relationship with G-d is governed by a careful balance of religious practices that G-d communicated to man in His Torah. Some of these practices we can understand, some we cannot; but all are effective and necessary in order to relate to G-d.