

POLICE or NO POLICE What does the Torah say?

SV by Shmuel Veffer

1. The Torah mandates establishing police as an arm of the courts.
2. Why do people need to be policed?
3. Authorities and limitations given to police and their broader role.

Deuteronomy 16:18-21

(18) You shall appoint **JUDGES** and [POLICE] **OFFICIALS**, in all your gates that the LORD your God is giving you, to your Tribes, and they shall govern the people with due justice.

(19) You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just.

(20) Justice, justice shall you pursue, that you may thrive and occupy the land that the LORD your God is giving you.

(21) You shall not set up a TREE [for Idol worship]—any kind of pole beside the altar of the LORD your God that you may make—

Rashi on Deuteronomy 16:18

(1) JUDGES AND OFFICERS—שופטים ושטרים are the judges who pronounce sentence, and שוטרים are those officers who enforce the order, armed with a baton and a strap until he accepts the judge's sentence (Sanhedrin 16b and Rashi thereon; cf. Sifrei Devarim 144:6).

(2) IN ALL YOUR GATES — i.e. in

דברים ט"ז:י"ח-כ"א

(יח) שופטים ושטרים תתן-לך בכל-שעריך אשר יהיה אליהך נתן לך לשבטיה ושפטו את-העם משפט-צדק:

(יט) לא-תטה משפט לא תפיר פנים ולא-תקח שחד כי השחד יעור עיני חכמים ויסלף דברי צדיקים:

(כ) צדק צדק תרדף למען תחיה וירשת את-הארץ אשר-יהיה אליהך נתן לך: (ס)

(כא) לא-תטע לך אשרה כל-עץ אצל מזבח יהוה אלהיך אשר תעשה-לך: (ס)

רש"י על דברים ט"ז:י"ח

(א) שופטים ושטרים. שופטים – דינים הפוסקים את הדין, ושטרים – הרודין את העם אחר מצותם (שמפין וכופתין) במקל ובברצועה עד שיקבל עליו את דין השופט:

(ב) בכל שעריך. בכל עיר ועיר:

each town (Sifrei Devarim 144:3).

(4) לשבטיך TO YOUR TRIBES — This teaches that judges must be appointed for each tribe separately and each city separately (Sifrei Devarim 144:4; Sanhedrin 16b).

(5) AND THEY SHALL JUDGE THE PEOPLE [WITH JUST JUDGMENT] — This means, appoint judges who are expert and righteous to give just judgment (cf. Sifrei Devarim 144:7).

Genesis 8:21

(21) The LORD smelled the pleasing odor, and the LORD said to Himself: “Never again will I doom the earth because of man, since YETZER LEV HA-ADAM (LIT: the inclination of man's heart - the human being's instinctual and learned physical drives) are evil from his youth; nor will I ever again destroy every living being, as I have done.

Sforno on Genesis 8:21

(3) **For the inclination of man's heart.** Human makeup was now inferior to what it was before the flood and the intellect no longer held sway during the years of youth. This enabled the appetites to achieve domination

Genesis 1:31

(31) And God saw all that He had made, and found it **very good**. And there was evening and there was morning, the sixth day.

Bereishit Rabbah 9:7

(ד) לשבטיך. מלמד שמושיבין דינין לכל שבט ושבט ובכל עיר ועיר (ספרי; סנהדרין ט"ז):

(ה) ושפטו את העם וגו'. מנה דינין ממחים וצדיקים לשפט צדק (עי' ספרי):

בראשית ח':כ"א

(כא) וירח יהוה את-ריח הניחח ויאמר יהוה אל-לבו לא-אסף לקלל עוד את-האדמה בעבור האדם כי יצר לב האדם רע מנעריו ולא-אסף עוד להכות את-כל-חי כאשר עשיתי:

ספורנו על בראשית ח':כ"א

(ג) כי יצר לב האדם רע כי בהיות המזגים מכאן ואילך פחותים מאשר היו קודם המבול לא יאיר בהם הכח השכלי מנעוריה' כבראשונה באופן שיתקומם למתאוה המתגבר עליו מנעוריו:

בראשית א':ל"א

(לא) וירא אלהים את-כל-אשר עשה והנה-טוב מאד ויהי-ערב ויהי-בקר יום הששי: (פ)

בראשית רבה ט':ז'

(7) Rabbi Nahman said in Rabbi Samuel's name: 'Behold, it was good' refers to the Good Desire; 'And behold, it was very good' refers to the Evil Desire. (It only says 'very good' after man was created with both the good and bad inclinations, in all other cases it only says 'and God saw that it was good')

Can then the Evil Desire be very good? That would be extraordinary! But without the Evil Desire, however, no man would build a house, take a wife and beget children; and thus said Solomon: 'Again, I considered all labour and all excelling in work, that it is a man's rivalry with his neighbour.' (Ecclesiastes 4:4).

Rashi on Genesis 2:25:1

(1) AND THEY WERE NOT ASHAMED — for they did not know what modestly meant, so as to distinguish between good and evil. Although he (Adam) had been endowed with knowledge to give names to all creatures, yet the evil inclination did not become an active principle in him until he had eaten of the tree, when it entered into him and he became aware of the difference between good and evil.

Da'at Tevunoth 51

(51) 51 Now you see, that if the Holy One blessed is he wanted to reveal all of his other characteristics of perfection, since they are all only characteristics of good - there is nothing in their boundaries other than the fulfillment of good, and there is nothing relevant in their revelation any action of evil.

(ז) רבי נחמן בר שמואל בר נחמן בשם רב שמואל בר נחמן אמר, הנה טוב מאד, זה יצר טוב. והנה טוב מאד, זה יצר רע.

וכי יצר הרע טוב מאד, אתמהא. אלא שאולולי יצר הרע לא בנה אדם בית, ולא נשא אשה, ולא הוליד, ולא נשא ונתן. וכן שלמה אומר (קהלת ד, ד): כי היא קנאת איש מרעהו.

רש"י על בראשית ב':כ"ה:א'

(א) ולא יתבוששו. שלא היו יודעים דרך צניעות להבחין בין טוב לרע, ואע"פ שנתנה בו דעה לקרות לו שמות, לא נתן בו יצר הרע עד אכלו מן העץ ונכנס בו יצר הרע וידע מה בין טוב לרע (בראשית רבה):

דעת תבונות נ"א

(נא) עתה הנך רואה, שאם היה רוצה הקב"ה לגלות כל שאר מעלות שלמותו, כיון שהם כולם רק מעלות של טוב - אין בגדרם אלא קיום הטוב, ולא היה שייך בגילויים עשיית הרע. אך ברצותו לגלות היחוד, שבגדרו יש שלילת

But in his will to reveal the Singularity, which in its boundary is the negation of evil, it is relegation to make evil, and to negate it from the necessary existence and rulership, in order that all of the parts of the boundary are fully revealed.

Mishneh Torah, The Sanhedrin and the Penalties within their Jurisdiction 1:1

It is a positive Scriptural commandment to appoint judges and enforcement officers in every city and in every region, as Deuteronomy 16:18 states: "Appoint judges and enforcement officers in all your gates."

"Judges" refers to magistrates whose attendance is fixed in court, before whom the litigants appear. "Enforcement officers" refers to those equipped with a billet and a lash who stand before the judges and patrol the market places and the streets to inspect the stores and to regulate the prices and the measures. They inflict corporal punishment on all offenders. Their deeds are controlled entirely by the judges.

Whenever a person is seen perpetrating injustice, they should bring him to the court, where he will be judged according to his wickedness.

D'var HaMishpat Hilkhoh Sanhedrin Section 7 Rabbi Chaim David HaLevy (20th century)

That is to say that the job of police officers is not restricted just to carrying a baton and a belt and to the punishment of criminals, rather they are the leaders of the generation. For a leader and a judge are sources of authority, and fields which border upon each other, sometimes they call him judge, and sometimes leader.

הרע, הנה שייך לעשות הרע, ולשלול אותו מן המציאות המוכרח והשליטה, כדי שיהיו כל חלקי הגדר מתגלים היטב.

משנה תורה, הלכות סנהדרין והעונשין המסורין להם א'א'

מִצְוַת עֲשֵׂה שֶׁל תּוֹרָה לְמִנּוֹת שׁוֹפְטִים וְשׁוֹטְרִים בְּכָל מְדִינָה וּמְדִינָה וּבְכָל פֶּלֶךְ וּפֶלֶךְ שֶׁנֶּאֱמַר (דברים טז יח) "שֹׁפְטִים וְשׁוֹטְרִים תִּתֵּן לָךְ בְּכָל שַׁעֲרֶיךָ".

שׁוֹפְטִים אֵלּוּ הַדִּיּוֹנִים הַקְּבוּעִין בְּבֵית דִּין וּבַעֲלֵי דִיּוּן בָּאִים לַפְּנֵיהֶם. שׁוֹטְרִים אֵלּוּ בַּעֲלֵי מַקֵּל וְרִצּוּעָה וְהֵם עוֹמְדִים לִפְנֵי הַדִּיּוּן הַמְּסֻבֵּין בְּשׁוּקִים וּבְרַחוּבוֹת וְעַל הַחֲנוּיֹת לְתַקֵּן הַשְּׁעָרִים וְהַמְּדוֹת וּלְהַכּוֹת כָּל מַעֲוֹת וְכָל מַעֲשֵׂיהֶם עַל פִּי הַדִּיּוֹנִים

וְכָל שְׂרִירָאוּ בּוֹ עוֹוֹת דָּבָר מְבִיאִין אוֹתוֹ לְבֵית דִּין וְדִיּוֹן אוֹתוֹ כְּפִי רָשָׁעוֹ:

Tosafot on Sanhedrin 7b:14

Be careful: To not terrorize the community, to come down on them too hard. And so it is proved later on, when we interpret this verse to say that a judge needs to be patient (lit. suffer) the community.

Sanhedrin 7b:14

The Gemara interprets other verses related to the topic of adjudicating cases. **“And I charged your judges at that time**, saying: Hear the causes between your brethren, and judge righteously between a man and his brother, and the stranger who is with him” (Deuteronomy 1:16).

Understanding that the word “charged” indicates alacrity, **Rabbi Yohanan says:** Moses urged the judges: **With regard to the baton and the strap, be vigilant.**

JEWISH LAW RELATED TO MODERN ISRAELI POLICE AND COURTS (20th Century) - thanks to Steven Conn and Jill Jacobs for the sources

Dvar HaMishpat, Rabbi Chaim David, HaLevy, Tel Aviv, 20th Century

And if we are honest, this [second hypothetical kind of judge whose job would be to accompany the police] would exist because this duty, where one arrests a person and brings them in front of a court - it isn't right that it should be given to a person who isn't an expert in the law, and who doesn't know very well what is a crime;

and it already many times happens that a person gets arrested, and it becomes clear, during his

תוספות על סנהדרין ז' ב:י"ד

תהא זריז - שלא להטיל אימה על הציבור
לרדותם יותר מדאי וכן מוכח לקמן (סנהדרין דף
ח.) דדרשינן מהאי קרא אזהרה לדיין שיסבול
את הציבור:

סנהדרין ז' ב:י"ד

(דברים א, טז) ואצוה את שופטיכם בעת ההיא
אמר רבי יוחנן כנגד מקל ורצועה תהא זריז
(דברים א, טז) שמוע בין אחיכם ושפטתם

...אם כנים אנו, הוא מפני שתפקיד זה של
מעצר אדם והבאתו בפני בית הדין אינו מן הדין
שימסר למי שאינו בקי בדינים ויודע היטב
עבירה מה היא,

וכבר קורה פעמים רבות שאדם נעצר ובמעצרו
מתברר שלא חטא, או שאף הוא מובא בפני
בית הדין, ורק שם מתברר שלא חטא כל עיקר,

אך בינתיים נגרם לו נזק רב הן חמרי והן נפשי,
וכל זה משום שהשוטר או המשטרה, נדמה

detention that he did nothing wrong, or even when he is brought before the court, only there does it become clear hasn't done wrong at all.

היה להם שאיש זה חטא, ולכן אפילו מעצר
זמני לא היה מותר אלא על פי הדיינים...

However, in the meantime much damage has been caused him - both physical and spiritual. And all this is because the officer or the police force - it seemed them that this person was a criminal. Therefore, even temporary detention is only permissible when directed by a judge.

Rabbi Chaim David HaLevy

Aseh L'kha Rav 3:48

“How is it possible to prevent distress and pain to those who are innocent, on whom suspicion falls, in cases in which it eventually becomes clear that there was no basis for this suspicion?...The requirement of police personnel of a stronger base for their suspicion is very just—it is exceedingly clear that this is something that depends on very careful consideration, and also on legal knowledge.”

Regardless of what is done to reform or re-vision policing, these measures will only be as effective as the commitment to them by police officers themselves. Rabbi HaLevy makes this clear in the following passage from D'var HaMishpat, which applies to Jewish police officers, but could easily apply to anyone charged with the responsibility for upholding laws in any community.

(D'var HaMishpat Hilkhhot Sanhedrin Section 7)

“The personality of Jewish police officers must be of the highest ethical order, so that they themselves will serve as a good example of following law and living a pure ethical life. And they will merit to see a society based on the foundations of purity and divine sanctity as promised in the Torah: ‘God commanded us to follow all of these laws and to fear God for our goodalways, that God might keep us alive, as is the case today.’ (Deut. 6:24)

