

תורה מציון Torah MiTzion

RELIGIOUS ZIONIST KOLLELS כוללים ציוניים בתפוצות

Shabbat Shalom from Torah MiTzion

Issue 122: Parshat Vayigash

6-7 Jan 2006, 7 Tevet 5766

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Parashat Vayigash, Tears of Joy and Tears of Sorrow Rav Shlomo Sobol, former Rosh Kollel, Detroit

When Yosef finally reveals himself to his brothers, he expresses his great love for his younger brother Binyamin. The Torah tells us, "he fell upon his brother Binyamin's neck(s) and wept; and Binyamin wept upon his neck." (Bereishit 45:14)

Clearly these tears are tears of joy between two brothers who have not seen each other for more than twenty years, but Chazal add another dimension to this encounter. The Midrash in Bereishit Rabbah, based on the plural usage of the word neck in Hebrew, wonders if Binyamin had two necks. Rabbi Elazar ben Pedat says that the significance of the plural is that Yosef saw, through Ruach HaKodesh, that in the future two Temples would be built in the Land of Binyamin and that these Temples would be destroyed. Binyamin, on the other hand, saw the establishment of the altar in Shilo in the area of Eretz Yisrael given to Yosef, and that this too would be destroyed.

This Midrash, explaining the tears of the brothers as tears of mourning over the future destruction of the Temples, seems to detract from the natural way to understand the tears, i.e. as an expression of joy and love between Yosef and Binyamin. Why do Chazal transform these tears from an expression of joy to an expression of mourning?

The answer may be, that while Yosef and Binyamin were certainly happy to see one another, their meeting caused them to reflect upon the reasons that they were separated for so many years. They remembered the hatred that was at the root of this long and painful separation. Yosef and Binyamin understood that this same hatred between brothers would be at the root of all the future tragedies that would befall the Jewish people, including the destruction of the holy Temple in Jerusalem.

Yosef and Binyamin's tears were both an expression of joy at their reunion and an

expression of sadness over the senseless hatred between brothers that would plague the Jewish people in years to come.

The only way to repair the schism that was caused the selling of Yosef and eventually the destruction of the Temples in Jerusalem, is an outpouring of love for one another as was so eloquently stated by Rabbi Avraham Yitzchak HaKohen Kook in Orot HaKodesh.

"If we have been destroyed and the world has been destroyed with us because of senseless hatred, we can be rebuilt once again, and the rest of the world along with us, through an outpouring of love."

Extradition Through the Prism of Jewish Law and History **Simon M. Jackson, Legal Advisor to Torah MiTzion**

In 1986, the Supreme Court of the State of Israel was asked to decide the issue of whether the State should be ordered to extradite to the French authorities a man who was wanted in France for murder. The accused was declared extraditable according to the Israeli Extradition Law, pursuant to a treaty between the two states, but the Justice Minister decided not to carry out the extradition, due to the fear of danger to the accused's life by prisoners in the French jail. Justice Menachem Elon analyzed the position of Jewish Law on the topic of extradition at length, ultimately concluding that it is possible, even under Jewish Law, to extradite a criminal to a foreign government.

The position adopted by Justice Elon aroused controversy. Amongst his disputants was the famed Rav Shaul Yisraeli z"l, the Rosh Yeshiva of Mercaz Harav and Dayan on the Supreme Rabbinical Court in Jerusalem, who emphasized the prohibition of litigating before non-Jewish courts. As we cite the Talmudic and Halakhic evidence adduced by Justice Elon in support of his position, we will cite the arguments of Rav Yisraeli against this position, followed by Elon's rejoinder to these arguments. Both positions are published in vol. 8 of the Halakhic journal, *Techumin* (Research Articles Concerning Torah, Society and State), and make fascinating reading!

Biblical Sources

According to Justice Elon, the basic position of Jewish Law to extradition is based on two explicit verses in the Torah, in the context of a slave who flees from his slavery, which prohibit a person from returning to his master an escaped slave who is now in his custody: "Do not deliver to his master a slave who has escaped from his master. He shall dwell in your midst with you, in the place he shall choose in one of your gates, where it is good for him; you shall not oppress him" (Devarim 23:16-17). [SMJ – Comment: In truth, these verses do not prohibit the extradition of an *offender*; they only prohibit returning an *innocent* slave to his previous enslavement].

On the other hand, the Torah states: "If a person shall maliciously kill another with guile, he shall be taken to die (even) from my altar" (Shemot 21:14). Entry onto sacred grounds cannot, therefore, protect a criminal from just punishment. The Rambam (Moreh Nevuchim 3:39) expands the duty to extradite, from a situation in which an offender flees to the assumed safety of the Temple and grasps hold of the altar, to the more common case of any fleeing offender who asks for our protection:

"An innocent slave must not be delivered to his master. Rather, we must grant protection to one who has requested our protection... However, when sinners or evildoers seek our assistance, no mercy must be shown to them, even if they are the greatest and noblest of men... [Rather], they must be turned over to the officer of justice from whom they fled... It is not proper to grant them protection or to pity them, for pity for the evil-doing wicked is cruelty to the rest of mankind."

Indeed, murder is the greatest of offenses: "Nothing is as objectionable to the Torah as bloodshed... which entails the destruction of society" (Rambam, Hilchot Rotzeach 1:4; 4:9).

Talmudic Period

Justice Elon notes that following the era of the Talmud, Jewish communities both in Israel and in the Diaspora often found themselves under the suzerainty of a heathen ruler. Jewish legal autonomy, while containing a not-insignificant measure of juridical competence even in the field of criminal law, was nevertheless *limited* in the majority of cases regarding serious offences and offences of interest to the authorities, in which areas the authorities retained the right of adjudication and the right to punish. Justice Elon proceeds to deal with the main problems and questions discussed in the Talmudic literature in this regard.

1. The Seizure and Extradition of Jewish Thieves and Robbers

During the Talmudic period, the Rabbis encountered cases in which they were requested by the Roman administration to hand over Jewish criminals. We find differing opinions among the Rabbis regarding the question as to whether such extradition is prohibited or permitted, and possibly even desirable. The Talmud (Bava Metzia 83b) relates how mid-second century Tanna, R. Elazar ben R. Shimon "would seize thieves and robbers" and hand them over to the Roman administration, to which R. Yehoshua ben Korcha retorted: "Vinegar son of wine: how long will you continue to deliver the people of God to death?" R. Elazar answered by way of a parable: "I am eliminating thorns from the vineyard" (i.e. I am acting in the public welfare) to which R. Yehoshua retorted: "Let the owner of the vineyard [i.e., God Himself] come and eliminate His thorns!" R. Yehoshua's position clearly reflects the aversion to turning over a Jew to the Roman government, suspected as it was of hostility to Jews, persecution of their persons and property, and a lack of commitment to a fair trial.

2. Saving Jews Suspected of Serious Crimes

An additional incident discussed by the Talmud and its commentaries (Niddah 61a) reflects the divergent approaches to the issue of granting asylum to a murderer. In this case, certain persons who were suspected of murder approached R. Tarfon with the request that he hide them from the authorities. R. Tarfon's response was that he could not hide them, for the Rabbis had stated that one should take heed of an evil rumor, i.e. the possibility that they were in fact murderers.

The Talmudic commentators are divided as to the reason for R. Tarfon's refusal to hide them. According to Rashi, R. Tarfon suspected there might be truth to the rumor that they had murdered, in which case it would be forbidden to save them. According to R. Acha Gaon (She'iltot de-Rav Acha §129), R. Tarfon's suspicion did not emanate from the fact that he was forbidden to save them, but rather from the danger he would be exposed to, were he to save them. R. Asher b. Yechiel (Rosh, on Niddah 9:5) adopts the She'iltot's explanation and rejects that of Rashi because, according to his view, *it cannot be forbidden to save a person's life merely because of a rumor that he has sinned!*

From the Rosh's words, it follows that, when it is clear that the person has indeed committed a crime, it would be *forbidden to save him and obligatory to extradite him*, even according to Rashi's disputants. R. Shlomo Luria (Yam shel Shlomo on Niddah 61a) states unequivocally that a distinction must be made between the case of one who has definitely murdered, whom it is forbidden to save and who must be handed over to the authorities for trial, and the case of a rumor, which gives rise to a mere suspicion, in which case the individual, who is presumed innocent until proven guilty, must be saved, provided there is no danger to the rescuer in doing so.

Based on the above Talmudic precedents, Justice Elon concludes that, according to Jewish Law, one should neither offer refuge to criminals nor assist them in escaping prosecution by the state. Indeed, Elon argues, we are enjoined to actively deliver Jewish offenders to the non-Jewish authorities. Do you agree with Justice Elon's conclusion based on the above sources?

Next Column: Can the principle of "The Law of the State is Law" justify the extradition of Jewish Offenders?

**Family Learning: Parshat Vayigash
Bluma Zalcman**

- 1) What were the two different approaches Yehuda used to try to free Binyamin?
- 2) How did Yosef treat his brothers when he finally revealed to them who he really was?
- 3) Who told Ya'akov that Yosef was alive? How did they tell him and what was their reward? (answers in KIDDIE KORNER)
- 4) Where did Ya'akov's family settle in Egypt?

Answers follow below

**V'Shavu Banim L'Gvulam
By David Wilder, The Jewish Community of Chevron**

In this week's parsha, we read about the beginning of the galut, exile, into Egypt. Thank G-d, we are now privileged to fulfill the nevuah, prophesy stated in Yirmiyahu "V'shavu Banim L'gvulam", "and the children returned to their borders."

Dr. Max Nordau was named at birth Meir Simcha. However, he was known as Max, a pediatrician in Paris. This following story describes how Dr. Nordau, a secular Jew, first became interested in Zionism.

On the second night of the first Zionist Congress in Basel, Nordau spoke in German while giving a long speech. He used the phrase in Hebrew "V'shavu Banim L'gvulam" several times during the speech as a motto. When asked by a young representative how he found the verse, and especially in Hebrew, for this did not fit Nordau's educational background, he replied: "I know these words from the person to whom I'm obliged all my Judaism and Zionism. A person whose name I don't even know. A person who was, in essence, only a little boy of eight or ten. And this is what happened:

"I have a children's clinic in Paris. A woman, an immigrant from Poland, her covered in a scarf, came in with a pale boy, eight or ten, sick for three weeks. Someone had recommended that she bring him to me. I took out a form for a new patient and tried to speak to him in our local language, but he could hardly understand French. I asked his mother, who was also very poor in French, and she said 'No, he doesn't go to a regular school, he goes to a Cheder."

"I answered her harshly. 'This only causes anti-Semitism. We have opened the door for you, the gates to the country, to refugees from Poland. Why doesn't your child learn the national language here?'

"She apologized and explained to me that he is still young and that her husband is from the 'old generation' but that he will grow and study in the 'gymnasium' and will learn the language.

"In anger, I asked the boy: 'In Cheder, what do you learn?' His eyes lit up and in Yiddish, which I understood because of my German, told me what he last studied in Cheder.

"Ya'akov was dying and he invited Yosef to him and made him swear not to bury Ya'akov in Egypt, saying: "There is Ma'arat HaMachpela, Avraham, Sara, Yitzchak, Rivka and Leah are all buried there. And when I came from Padan, Rachel died in Canaan, on the way to Efrat, and I buried her there on the way, near Beit Lechem."

"Rashi then asks the question of why did Ya'akov suddenly relate to the burial of Rachel? And he answers that Ya'akov felt a need to apologize to Yosef and say "I bother you like this, to take me from Egypt to Chevron, and I, myself didn't even bother to take your mother Rachel, despite the fact that I was very close. I didn't even bury her in the city of Beit Lechem, just on the way.

"But," Ya'akov continues "I'm not guilty, and I didn't act wrongly. G-d wanted it this way. He knew that the Nevuchadnezzar would, in the future, exile the sons of Rachel, from their home. Then she would leave her grave and weep and wail and her voice would be heard- "v'Rachel Bochah al baneha" Hashem will answer her "Stop your voice from weeping and your eyes from crying, because there is a reward for your actions, and a hope for the future. Your children will come back to their borders- "V'shavu Banim L'gvulam."

"And I," says Dr. Max Nordau, "didn't know what to do with myself. I turned to the window so that the mother and child wouldn't see the tears rolling down my cheeks and I said to myself "Max, aren't you ashamed of yourself? You are an educated man, known as an intellectual, with a medical degree, but you don't know anything about the history of your people. From all the holy scriptures, nothing? And here, this sick, weak child, an immigrant, a refugee, talks of Ya'akov, Yosef, Yimiyahu and Rachel as if it were yesterday, it all lives in front of his eyes?"

"I wiped the tears from my cheeks and turned to them and said 'A people, with children like this, that actually live their past will have a sparkling future.'

"In the weekend newspaper I saw an advertisement, "Whoever believes that the fate of the Jewish people is important to them, please call to help find an answer. Dr. Theodore Herzl. I called immediately.

"When we founded the first Zionist Congress, when I was honored to speak, the figure of that little boy, whose name I don't even remember, stood in front of my eyes. But the word I will never forget, because they are the foundation of Zionism, the pillars of Judaism, V'shavu banim L'gvulam- and the children return to their borders."

Torah MiTzion establishes Religious Zionist Kollels (centers of Jewish learning and outreach) in Diaspora Jewish communities to strengthen the study of Torah, Jewish identity, the unity of the Jewish people, and the connection between Torah study and Israel.

The Kollels, led by a Rosh Kollel, are comprised of Israeli shlichim (emissaries) - married men and their wives, and single young men, graduates of Yeshivot Hesder in Israel - who serve in the communities for a period of one-three years.

Torah MiTzion is also proud to be a partner of the "**Jewish Learning Initiative**" program on college campuses.
www.jli.co.il

The Head Office in Jerusalem:

Beit Meir, 54 King George Street
PO Box 71109
Jerusalem, 91710
Israel

Tel: +972-2-620-9020

Email: office@torahmitzion.org

Look for us on the web: www.TorahMiTzion.org

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Answers:Family Learning

- 1) He first tried to threaten Yosef then he tried to soften him.
- 2) He was very nice to them, and didn't treat them harshly.
- 3) Serach bat Asher. She told him by playing a nice song on her harp. Her reward was having a long life.
- 4) In Eretz Goshen.