

The Weekly 'Hi All' by Rabbi Jeff Bienenfeld

D'varim, Tish'a b'Av 5780

Among the many reasons given for the Churban, there is one that, while not often mentioned, may very well be at the root of the more well-known causes for the Temple's destruction. The Talmud (Shabbat 139a) states that HaShem's Presence will not rest upon Israel until corrupt judges and officers cease. The verses the Talmud references as proof clearly connect the Churban with the corruption of the judiciary. And Rashi (ad loc) points to the sin of bribery as the cause for this systemic break down of the legal order.

Rav Soloveitchik asserts that precisely because of the critical importance of a scrupulous court system, our Parsha interrupts the narrative of Moshe's final oration to Israel by launching into a detailed review of how Moshe set up the judiciary 40 years prior along with its powerful moral directives (1:13-18): "Judge justly ... Do not favor persons in judgment ... You shall not fear any man ..." At first blush, this digression appears inexplicable. Why at this point in the text, especially before the retelling of the Sin of the Spies? Answers the Rav: "... because the prerequisite for entry into the Land of Israel was the institution of a perfect system of justice ..." (Chumash Mesorat HaRav, Bamidbar, pp. 7-8). The implication should be clear: if a righteous judiciary is a precondition

for possessing the Land, then without such ethical lawfulness, Israel will forfeit her Land and churban will tragically ensue.

Could this possibly be the reason why Moshe discusses the sin of the meraglim, the first of the many terrible misfortunes that occurred on Tish'a b'Av (Ta'anit 26a-b), and in whose aftermath, an entire generation was denied entry into the Land? Could the juxtaposition suggest that however we may wish to interpret the sin of the 10 spies, their disastrous mistake amounted to an abject failure of leadership - tribal and judicial - both of which can - and did - breed terrible misfortune?

The cause and effect of a delinquent judiciary punished with exile becomes even more apparent when we examine the Haftora for our Parsha, the opening chapter in Yishayahu. The prophet protests against a generation that chooses to view the world as divided into two domains, the secular and the sacred, and that within the former, man is free to behave as he desires, without subjecting himself to Gd's word. And what are those sins that Yishayahu rails against: "How has she ... a faithful city, full of justice ..., but now murderers ..., everyone loves bribes and runs after payment ... the orphan they do not judge, and the quarrel of the widow does not come to them ..." Why choose this Haftora before Tisha b'Av? Why select this prophetic portion which

connects with only 6 verses from the Parsha?

The answer should be clear: when a supposedly religious person ignores and discards the mitzvot between man and man - severing them from the Divine command, when ethical norms are sacrificed for "the love of money", when justice becomes adulterated and distorted by selfish prejudicial pushes, it's only a short step away from another Tish'a b'Av. No wonder this Haftarah was chosen as the prelude to churban; no wonder Moshe, in our Parsha, chose to underscore the fundamental importance of a virtuous legal order.

Our Chazal enumerate at least 18 reasons to explain why the Churban took place. Of the 18, 14 of them all deal with ethical offenses: dishonesty, needless hatred, negative speech, murder, adultery, apathy in the face of evil, disrespect and contempt for the righteous, etc. How might we explain the etiology of these crimes? Can it be that when the people see that "there is no law and no judge" (B'reishit Rabba 26:6), they will succumb to the most vile and venal of behaviors? And when our social order "slouches towards Gomorrah" (Judge Robert Bork), and the "center cannot hold" (W.B. Yeats, The Second Coming), we place ourselves in the same ugly company of Sodom.

The answer to this frightening moral crisis, one in which "the generation is

judging its judges" (Bava Basra 15b), is to be found in the last pasuk in our Haftarah (1:27): "Zion shall be redeemed through justice (mishpat) and her penitent through righteousness (tz'daka)." Indeed, every society is enjoined - nay mandated - to uphold and support, respect and defend, a system of legal equity and judicial objectivity. But Rav Soloveitchik, with an eye on the above verse, adds another requisite component to any system of justice. "Any law that is not tempered with sympathy and kindness - devoid of a spark of tz'daka - any statute that is merely a decree bereft of love and understanding, is classified as wickedness. Justice itself can turn into a system of iniquity and malice if it is administered with all its force, never venturing beyond the letter of the law" (Halachic Morality, pp.127-128).

In this regard, we would do well to note a most pertinent insight of the Netziv (Harchev Davar, Sh'mot 18:23). The Torah reports that Yitro, who offered Moshe the advice to set up a judiciary, concludes his counsel thusly: "If you do this thing ... then you will be able to endure, and this entire people, as well, will come upon their place in peace." Comments the Netziv: the ultimate goal of any legal system is the pursuit of peace. Hence, the halachic requirement for judges to seek a compromise rather than ruling according to the strict letter of the law.

If there is one lesson we can learn from

our past wrongdoings, especially during these days leading up to Tish'a b'Av, it is the message that Moshe urgently sought to convey to Israel before his death along with the rebuke of the prophet: "Zion shall be redeemed through justice (mishpat) and her penitent through righteousness (tz'daka)."