Policing and Racial Injustice

Text Study: Policing in Jewish Law

1

Deuteronomy 16:18

You shall appoint judges (shoftim) and officers (shotrim) for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice.

Discussion Question

Based on this biblical text, what if anything can we say about the definition of officers (shotrim)?

2a

Rashi (France, 1040-1105) on Deuteronomy 16:18

“Shoftim and shotrim”—“shoftim" refers to judges who decide on the law. And "shotrim" are the ones who force the people to follow their commandments. For they hit and force them with a stick and a whip until they accept upon themselves the decision of the judge.

2b

Midrash Tanhuma, Parshat Shoftim 2:17

“Shoftim and shotrim”—"shoftim" are the judges. “Shotrim" are the leaders who lead the community. Rabbi Elazar said, "If there is no shoter, there is no shofet." How is this? When a person is obligated by the court to pay another, if there is no shoter to extract it from him after he has left the judge, the judge does not have the capacity to do anything to him, unless the judge delivers him to the shoter and the shoter extracts it from him.

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Rambam (Spain/Egypt c. 1135-1208),
*Mishneh Torah* Laws of Theft 8:20

The court is obligated to appoint *shotrim* in every city, and in every district, that they should go around to the stores and check the scales and the measures and to set the prices. If someone is found to have a weight or a measure that is lacking, or defective scales, the *shotrim* have permission to beat him according to his ability [to tolerate the beating], and to fine him according to what the court finds to be appropriate to enforce the matter. And if someone overcharges and sells at too high a price, we inflict corporal punishment on that person and force him to sell at market price.

Rambam, *Mishneh Torah*, Laws of the Sanhedrin 1:1

…"Shoftim" are the judges who remain in the courthouse, and litigants come before them. "Shotrim" have a stick and a whip and stand before the judges [and] who roam around in the marketplaces and the streets, and who go into stores to set prices and measures, and to inflict corporal punishment on transgressors. And all of their deeds are governed by the judges, and whenever they see a transgression, they bring that person to the court where he can be judged according to his deed.

Joseph Karo (Spain/Palestine, 1488-1575)
*Shulchan Arukh* Orach Chayim 529

The court is obligated to appoint *shotrim* on the festivals to rove around and search in the gardens, in the orchards, and by the rivers to make sure that men and women are not gathering there to eat and drink, and to enter into sin.

Discussion Questions

What are some of the roles of *shotrim* according to these commentaries?

Which, if any of these, seem akin to the role of modern-day police officers?
Rabbi Hisda said: At first, they would only appoint shotrim from among the Levites, as it says “The shotrim of the Levites before you” (II Chronicles 19:11). Now, we only appoint shotrim from among Yisrael, as it says “shotrim over you should come from the majority.” (This verse is not actually in Tanakh.)

Discussion Questions: The Levites were the only Israelite tribe that had special ritual duties and did not own land. Why do you think there might have been a shift from appointing shotrim from among the Levites to appointing shotrim from the rest of the community? Does this raise any parallel for you in discussions about policing today?

Synod of Castilian Jews of 1432 in Rabbi Louis Finkelstein, Jewish Self Government in the Middle Ages
New York: Jewish Theological Seminary, 1924, 361

We ordain that no judge shall order a Jew or Jewess to be seized bodily, except by order in writing signed by himself and witnesses; and that when the crime for which the person is apprehended is not defamation or a capital crime, the reason shall be stated in the writ.

Discussion Questions: Why do you think this communal enactment rejects so strongly the possibility of bodily seizure? What restrictions does this agreement make on the right to arrest? Why do you think it might make these enactments?
This function, of arresting a person and bringing him/her in front of the court should not be assigned to someone who is not well-versed in law, and who knows well the definition of transgression. It already happens many times that a person is arrested, and in the course of this person’s arrest, it becomes clear that s/he didn’t do anything wrong. Or, this person is brought before a court, and only there it becomes clear that s/he did nothing at all wrong. But in the meantime, much damage has been caused to this person, both materially and psychologically, and all of this is because it seemed to the officer or the police that this person had broken the law, and therefore, even short-term arrest is not permissible except by the authority of the judges who walk around with the police.

It’s true that we haven’t found anywhere judges who walk around in the markets and in the streets accompanying the police, and what I wrote above is only an interpretation of the language of Maimonides. But, it is also possible to say that the police officers charged with the responsibility of maintaining the public order, extending to the authority of arresting a person and bringing that person to the seat of judgment, are also called “dayyanim”—judges. Even though it is not their job to really judge, arrest is essentially the beginning of judgment, and for that reason, they are called judges.

It’s no surprise that the police officers of the people are also called judges, for they carry out judgment by imposing the social order on the people. . .and it is in their authority to arrest criminals and to bring them to court. . .for this reason, the verse “you shall appoint judges [shoftim] and officers [shotrim]” is interpreted to mean “the shoftim are judges. The officers/shotrim are the leaders who have responsibility for the community.” 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.

It is clear in any case that the appointment of police officers in our time is a mitzvah. And their position is honored and exalted, for they are appointed to protect the public order, and additionally to preserve moral behavior, laws and ordinances as has already been explained, and without them, people would transgress against one another. . . for this reason, 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 good always, that God might keep us alive, as is the case today.” (Deuteronomy 6:24)
It is completely clear that arrest is the beginning of the process of judgment. For this reason, we will begin with an elucidation of this topic in halakhah, which incidentally is one of the most difficult problems that has occupied us recently. 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? Let’s take this case as an example: A person respected in his neighborhood and among his peers, whom the police suspect per information that has been given to them. This person is arrested and brought to court, and an arrest warrant issued against him. In the end, it is proven that there was no basis for suspicion, and the person is released. But he complains bitterly—and rightly so: Should a person be arrested on the basis of information that has been given to them?

In my humble opinion, this is not enough. The prohibition on publishing the names of suspects may ease the severity of the burden, but it is not enough to repair it. For the arrest of a person attracts much attention among his neighbors, acquaintances, and friends—and obviously within his family—even without being publicized in the media, and this too causes great damage. 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…

There is an additional role assigned to police officers, and that is the most important responsibility—and this is the one central to our discussion: Arresting suspects in order to bring them to judgment.
One who makes an arrest is dealing with a person who, according to the law, is still innocent—this is before the person has stood in judgment, and before his guilt has been proven. For this reason, the arrest is a violation of the freedom of a person, who is presumed innocent. But in order to allow for the interrogation of the suspect, and for bringing him to court, we have to permit his arrest. But there are boundaries on this allowance, both in regard to the nature of the arrest, and in regard to the amount of time that a person may be held without trial. And above all, the obligation to release the person until trial. All of this comes from the fundamental right of human freedom, and the prohibition against detaining him and taking away his freedom. . .

The police officers who are charged with fining or arresting a person and with bringing this person before the court themselves belong to a certain tier of judgment, albeit lower than that of the judges who sit in the court. Per the language of Rashi, they are "general judges," and not real judges.

For this reason, halakhah assures us that no person will be arrested without cause, whether for a serious crime or a minor one such as those related to prices and measures and such things, and those who are charged with making arrests are in the realm of judges, with legal knowledge.

It also seems that the conditions of our times could learn from our early sources, and to entrust the right of arrest to judges only, obviously in such a way as not to disturb the peace of the community.

Discussion Questions

How does HaLevy define the role of police? How does he build on and reinterpret the earlier texts that you (and he) have seen? Why do you think that he understands shotrim as a type of judge? What would be the impact on our contemporary policing if we were to expect police to act like judges? How else might HaLevy’s requirements confirm or challenge current policing practices?