

Judging a Sovereign: How the Judges Are Judged

With thanks to Rabbi Jason Rubenstein of the Joseph Slifka Center for Jewish Life at Yale for identifying these texts. Read his analysis at <https://blogs.timesofisrael.com/in-impeachment-trial-the-senate-is-also-judged/>

A democratically-elected president is not a king from 2,000 years ago, and the Sanhedrin [religious court] is not the Senate. Nevertheless, the following passage offers many interesting parallels to impeachment and the responsibility that falls on the judges. Yannai, also called Alexander Jannaeus, was the second Hasmonean king of Judea, ruling from 103-76 BCE. He was renowned as a violent, cruel, and oppressive ruler. His wife, Shlomzion (Salome Alexandra), ruled after his death; she was the sister of Shimon ben Shetach.

Mishnah Sanhedrin chapter 2

משנה סנהדרין פרק ב

1. The High Priest may judge [in a court] and be judged; he may testify and others may testify against him...
2. The king may not judge or be judged; he may not testify nor may others testify against him...

א. פֶּהוּ גְדוּל דָּן וְדָנִין אוֹתוֹ, מְעִיד וּמְעִידִין אוֹתוֹ...
ב. הַמֶּלֶךְ לֹא דָן וְלֹא דָנִין אוֹתוֹ, לֹא מְעִיד וְלֹא מְעִידִין אוֹתוֹ...

- Why might the High Priest and the king be governed by different rules in this regard? What roles do they play in the society?

Talmud Sanhedrin 19a-b

תלמוד סנהדרין יט:א-ב

“A king may not judge...” Rav Yosef said: They only taught this regarding the kings of Israel [who were violent and did not follow the Torah], but the kings of the House of David can judge and be judged, as it says in Jeremiah (21:12), “O House of David, so says the ETERNAL: Execute justice in the morning.” If [others] may not judge him, how can he judge? It is also written in Zephaniah (2:1), “Gather together, gather [hitkosheshu vekoshu]”—Reish Lakish said: Adorn [kashet] yourself and then adorn others.

מֶלֶךְ לֹא דָן כּוֹי : אִמַר רַב יוֹסֵף
לֹא שֵׁנו אֵלֶּא מַלְכֵי יִשְׂרָאֵל אֲבָל
מַלְכֵי בֵּית דָּוִד דָּן וְדָנִין אוֹתָן
דְּכַתִּיב (יִרְמִיָּהוּ כָא, יב) בֵּית דָּוִד
כִּה אִמַר ה' דִּינוּ לְבַקֵּר מִשְׁפֵּט
וְאִי לֹא דִינִינָן לִיה אִינְהוּ הִיכִי
דִינִי וְהַכְּתִיב (צִפְנִיָּה ב, א)
הַתְּקוּשְׁשׁוּ וְקוּשׁוּ וְאִמַר ר' לֵי
קִשְׁט עֲצַמְךָ וְאַחַר כֵּךְ קִשְׁט
אַחֲרִים.

What is the reason kings of Israel [are not judged]?
Because of this incident:

אֵלֶּא מַלְכֵי יִשְׂרָאֵל מִיֵּט לֹא?
מִשׁוּם מַעֲשֵׂה שֶׁהָיָה

A slave of Yannai the King killed someone. Shimon ben Shetach [the head of the court] said to the rabbis: Let us set eyes on him and judge him. They sent [a message] to him: Your slave killed someone. He sent [the slave] to them. They sent [back] to him: You also come here! “He should be testified against with his owner¹” (Exodus 21:29)—The Torah stated: The owner of the ox should come and stand over his ox.

[Yannai] came and sat. Shimon ben Shetach said to him: King Yannai, stand on your feet that they may testify against you. It is not before us that you stand, but rather you stand before the One Who Spoke The World Into Being, as it says in Deuteronomy (19:17), “The two people who have a dispute shall stand [before the ETERNAL, before the priests and the judges that shall be in those days].” He said: I will not [stand] when you tell me, but as your colleagues say.

[Shimon] turned to his right; [the rabbis] turned their faces to the ground. To his left—they turned their faces to the ground. Shimon ben Shetach said to them: You are masters of thought—the Master of Thought will come and exact [payment] from you. Immediately, [the angel] Gabriel came and struck them to the ground and they died. At that hour they decreed: The king may not judge or be judged; he may not testify nor may others testify against him.

- How do you understand the first paragraph’s distinction between kings of Israel and the House of David? Can you draw a modern analogy?
- How does this text comment on the behavior of the king? The rabbis/judges?
- How does this text convey the importance of words and symbolism?
- Is the king in this passage above the law? Why or why not?
- Does it matter at all that the king’s wife was the sister of the head of the court?
- How do you understand the punchline—why did the rabbis make this ruling?
- The passage preceding this story concerns rules of public mourning. How does that context color your reading of the text?

דעבדיה דינאי מלכא קטל נפשא
אמר להו שמעון בן שטח
לחכמים תנו עיניכם בו ונדוננו
שלחו ליה עבדך קטל נפשא
שדריה להו שלחו ליי תא אנת
נמי להכא (שמות כא, כט) והועד
בבעליו אמרה תורה יבא בעל
השור ויעמוד על שורו

אתא ויתב א"ל שמעון בן שטח
ינאי המלך עמוד על רגליך
ויעידו בך ולא לפנינו אתה עומד
אלא לפני מי שאמר והיה העולם
אתה עומד שנאמר (דברים יט,
יז) ועמדו שני האנשים אשר
להם הריב וגוי אמר לו לא
כשתאמר אתה אלא כמה
שיאמרו חבריך

נפנה לימינו כבשו פניהם בקרקע
נפנה לשמאלו וכבשו פניהם
בקרקע אמר להו שמעון בן שטח
בעלי מחשבות אתם יבא בעל
מחשבות ויפרע מכם מיד בא
גבריאל וחבטן בקרקע ומתו
באותה שעה אמרו מלך לא דן
ולא דנין אותו לא מעיד ולא
מעידין אותו :

¹ The Talmud here bends the meaning of the Torah’s words midrashically; in context, these two words mean that the owner had been previously warned about the ox’s tendency to gore.

Further context

Deuteronomy 19:16-20 (Translation: NJPS)

If a man appears against another to testify maliciously and gives false testimony against him, the two parties to the dispute shall appear before the ETERNAL, before the priests or judges in authority at the time, and the judges shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow, you shall do to him as he schemed to do to his fellow. Thus you will sweep out evil from your midst; others will hear and be afraid, and such evil things will not again be done in your midst.

- How does seeing this verse, quoted above, in its fuller context shape your reading of the Talmudic passage? Of the impeachment proceedings?

דברים יט: טז-כ

כִּי־יָקוּם עַד־חָמָס בְּאִישׁ לְעֵנוֹת בּוֹ סָרָה:
וְעָמְדוּ שְׁנֵי־הָאֲנָשִׁים אֲשֶׁר־לָהֶם הָרִיב לִפְנֵי ה' לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַיָּמִים הָהֵם: וְדָרְשׁוּ הַשֹּׁפְטִים הַיָּטִב וְהַנָּה עֵד־שֶׁקֶר הָעֵד שֶׁקֶר עָנָה בְּאֲחִיו: וְעָשִׂיתֶם לוֹ כַּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאֲחִיו וַיַּעֲרֹת הָרָע מִקִּרְבּוֹ:
וְהַנְּשָׂאִים יִשְׁמְעוּ וַיִּרְאוּ וְלֹא־יִסְפוּ לַעֲשׂוֹת עוֹד כַּדָּבָר הָרָע הַזֶּה בְּקִרְבְּךָ:

Ecclesiastes 3:16-17

I also saw that—under the sun—in the place of judgment [i.e. the courthouse] there is wickedness, and in the place of justice there is wickedness. I said to myself: God will judge both the righteous and the wicked, for there is a time for every thing and for every deed that is done there.

קהלת ג: טז-יז

וְעוֹד רָאִיתִי תַּחַת הַשָּׁמַשׁ מְקוֹם הַמִּשְׁפָּט שָׁמָּה הַרְשָׁע וּמְקוֹם הַצְּדָק שָׁמָּה הַרְשָׁע: אֲמַרְתִּי אֲנִי בְּלִבִּי אֶת־הַצְּדִיק וְאֶת־הַרְשָׁע יִשְׁפֹּט הָאֱלֹהִים כִּי־עַתָּה לְכֹל־חִפְצָא וְעַל־כָּל־הַמַּעֲשֵׂה שָׁם:

Ein Yaakov on Bava Batra 1:2

[In of a discussion of the tyrant Herod's evil deeds, one rabbi defends Herod by quoting Exodus 22:27.] "You shall not curse a chieftain among your people."
[The other] responded saying: [That applies] when he behaves according to the practices of our people, but this one does not behave according to the practices of our people.

עין יעקב, בבא בתרא א: ב

"וְנִשְׂאִי בְעַמֶּדָה לֹא תֹארוּ" (שמות כב: כז).
אָמַר לִיה: בְּעוֹשֵׂה מַעֲשֵׂה עַמֶּדָה, וְהָאִי לֹאוֹ עוֹשֵׂה מַעֲשֵׂה עַמֶּדָה.

- Herod was king of Judea, under the Roman Empire, roughly 40 years after Yannai's death, ending the Hasmonean dynasty. How does that context shape your reading of this midrash?