



# Likkutei Sichos

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## The Limits of Justice

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We have made considerable effort to ensure the accuracy of the translation while maintaining readability. As in all translations, however, the possibility of inadvertent errors exists.

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## 1.

### EXTRA PHRASES WITHOUT EXPLANATION

On many occasions, we have discussed that in his Torah commentary, Rashi resolves **every** question in *pshat*.<sup>1</sup> If Rashi cannot find any explanation (according to the approach of *pshat*) for a problematic verse (or word), he remarks, “I do not know” or something of that sort.<sup>2</sup>

Therefore, whenever we come across a verse that ostensibly contains some difficulty, upon which Rashi does not comment, this itself proves that either on the level of *pshat*, there is no difficulty, to begin with, or the apparent difficulty can be resolved based on an **earlier** remark in Rashi’s commentary.

With this in mind, we must clarify a passage in our *parshah*. The Torah states:<sup>3</sup>

When there is a **ריב**, a quarrel, between people, and they approach {the court} for judgment, and they shall judge them, and they shall acquit the righteous one and convict the wicked one. If the wicked one is liable for flogging, the judge shall cast him down....

This clause, “they shall acquit the righteous one and convict the wicked one,” seems superfluous<sup>4</sup> (since obviously, a court should acquit the righteous and convict the wicked). The Torah should have said, “When there will be a quarrel... they shall judge them. If the wicked one is liable for flogging”! Why does Rashi not explain this superfluous **clause**?

Regarding the words “and convict the wicked one,” we could suggest (albeit with difficulty) that this clause is a prelude and lead-in to the clause “if the wicked one is liable.” Namely, the verse is saying: “When there will be a quarrel... and they convict the wicked one (then if he is a wicked one who

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<sup>1</sup> {The plain meaning of Scripture. Rashi says in his commentary to *Bereishis* 3:8: “I have come only to explain the plain meaning of Scripture.” Though there are many levels and depths of interpretation on the Torah, Rashi adopts a straightforward approach.}

<sup>2</sup> Cf. Rashi’s commentary on *Bereishis* 28:5; et al (as cited in *Likkutei Sichos*, vol. 5, p. 1, marginal notes).

<sup>3</sup> *Devarim* 25:1-2.

<sup>4</sup> See Rashi’s commentary **earlier** in our *parshah*, *Devarim* 22:8.

deserves lashes)<sup>5</sup> and if the wicked one is liable, (then) the judge shall cast him down....”

However, this explanation is very forced. Ultimately, it is superfluous to state “and convict the wicked one,” as once the verse has stated, “if the wicked one is liable,” we **automatically** know that the court has convicted the wicked one. **If anything**, the phrase “and convict the wicked one” leaves room to mistakenly contend (as **Rashi**<sup>6</sup> points out) that “(one might think) all who are judged guilty are flogged; the Torah, therefore, teaches....”

Furthermore, the following remains unclear: Why, on the level of *pshat*, does the verse say, “they shall acquit...”?

We cannot say that according to *pshat*, this is an additional<sup>7</sup> **command** and positive mitzvah to judge truthfully<sup>8</sup> (analogous to the **many injunctions** “not to pervert judgment”)<sup>9</sup> because from the **lengthiness** of the verse (“When there will be a quarrel... and they will approach {the court}... they shall judge them”), the Torah intimates that the verse is introducing a **new** concept.

## 2.

### ALTERNATIVE EXPLANATIONS

From the words, “they shall acquit the righteous one,” an opinion cited in *Sifri*,<sup>10</sup> derives that we are to “acquit him so that he is not flogged.” This is understood by commentaries<sup>11</sup> to mean that we must open {deliberations in court} by offering a rationale for acquittal. First and foremost, we must seek to vindicate the litigant “so that he is not flogged.” Only afterward may the court

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<sup>5</sup> See Rashi, ad loc., on the words, “and they convict.”

<sup>6</sup> Cited in the previous fn.

<sup>7</sup> In addition to the command (positive mitzvah) — *Devarim* 1:16; 16:18.

<sup>8</sup> As is in *Ralbag*’s interpretation of the verse.

<sup>9</sup> *Shemos* 23:6 (see also *Shemos* 23:2 and Rashi’s “literal” interpretation, ad loc.; 23:3 and Rashi, ad loc.); *Devarim* 16:19; 24:17 (see also Rashi, ad loc.); see also *Devarim* 1:17.

<sup>10</sup> *Sifri*, “*Ki Seitzei*,” 25:2.

<sup>11</sup> *Sifri DeBei Rav* and second interpretation in *Toldos Adam* on *Sifri*.

deliberate about his guilt. This would be similar to cases of capital punishment where halachah mandates that “we open {deliberations} with a rationale for {for the accused’s} acquittal.”<sup>12</sup>

However, it is unfeasible to suggest that Rashi accepts this interpretation. If so, Rashi should have stated this interpretation **explicitly**, as it is not one that a “novice student of Scripture” could figure out himself. (The elusiveness of this interpretation is especially apparent considering it is **expounded** in the *Sifri*.)

We can further presume that this interpretation {is not accepted by Rashi} because of its incompatibility with the wording of the verse: The two clauses in the verse — “they shall acquit the righteous one” and “convict the wicked one” on the face of it, refer to two **separate** individuals (i.e., the two disputants, one of whom is righteous and the other wicked). This interpretation differs from the interpretation mentioned above, which construes the entire verse to be referring to the same person: We must first try to vindicate him — “and they acquit (the righteous one)” — and only if we cannot, then “they convict (the wicked one).”

[Surely, we cannot suggest that Rashi accepts the exposition in the Gemara as **pshat**.<sup>13</sup> The Gemara interprets the verse as discussing an instance where “conspiring witnesses”<sup>14</sup> come forward and “convict the righteous one.” Afterward, “other witnesses testify and acquit the righteous one as he was originally, and render these {first witnesses} as wicked.” (In such a case, the halachah states — “[it will be that if] the wicked one has incurred lashes,” — that they, too, are liable for lashes). And to suggest that this Talmudic exegesis is so straightforward that Rashi needn’t spell it out is even more far-fetched!]

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<sup>12</sup> *Sanhedrin* beginning of ch. 4 (32a — in the mishnah; 32b, ff.); **Rashi**’s commentary on *Bamidbar* 5:19; see also *Bamidbar* (35:24-25) “the congregation shall judge... the congregation shall rescue...”

<sup>13</sup> *Makkos* 2b, and citations there (and as explained by Rashi on *Makkos*, ad loc., that the Gemara there wishes to answer “why do I need ‘and they acquit...’”) — cited as well by *Ramban* on this verse.

<sup>14</sup> {Witnesses who are convicted of giving false testimony on the basis of other witnesses who testify that the first set of witnesses could not have been present when the alleged event occurred. In such a case, the first set of witnesses are administered the same punishment that would have resulted from their conspiracy.}

### 3.

#### WHAT TYPE OF DISPUTE

We may suggest that the reason Rashi does not need to address this question (as to why the Torah states the clause, “they shall acquit the righteous one and convict the wicked one”) can be understood in light of Rashi’s earlier comment. At the beginning of the verse, “*When there will be a quarrel,*” Rashi says:

The disputants will eventually approach {the court} for adjudication. From this, we can see that peace does not come from quarrels. What caused Lot to separate from the righteous one {Avraham}? It was quarreling.

On this comment, the question arises (as posed by super-commentaries):<sup>15</sup> Why is it a problem {as intimated by Rashi} that “they will eventually approach {the court} for judgment”? On the contrary, by turning to the court for intervention, the disputants will restore **peace**,<sup>16</sup> as the verse states,<sup>17</sup> “They shall judge the people... and this entire people, as well, shall arrive at its destination in peace.”

This question is even stronger: The origin of this comment by Rashi is the *Sifri*.<sup>18</sup> However, in the *Sifri*, the following clause appears: “Peace does not come from quarrels.... What caused this one to be **flogged**? Clearly, it was the quarreling.” (That is, the quarrel caused one of them to be **flogged**). Rashi, however, **deviates** from the *Sifri*, and in place of {the phrase} “caused this one to be flogged,” he states that “they will eventually approach {the court} for **adjudication**”! {This is the basis for the idea that quarreling won’t lead to peace.}

The explanation for all this:

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<sup>15</sup> *Gur Aryeh*; Similarly appears in *Maskil LeDavid* (and *Sifri DeBei Rav* on *Sifri*); see also fn. 16 in the original and marginal notes ad loc.

<sup>16</sup> *Maskil LeDavid* (and *Sifri DeBei Rav*).

<sup>17</sup> *Shemos* 18:22-23. — As cited in *Maskil LeDavid* (and *Sifri DeBei Rav*). However, **Rashi, in his commentary**, ad loc., interprets the “entire people” as referring to “Aharon... and those who accompany you.” Regardless, this principle that judgment restores peace is both **logical** and straightforward.

<sup>18</sup> *Sifri*, “*Ki Seitzei*,” 25:2.

Rashi, in his comment, intends (also)<sup>19</sup> to resolve Scripture’s use of the term **רִיב**. In several places, we find that the Torah refers to a litigated dispute between two parties by the term “דָּבָר, matter.”<sup>20</sup> For example, “When<sup>21</sup> any of them has a **דָּבָר, matter**, he comes to me, and I judge between a man and his fellow.” “Whoever has **דְּבָרִים, matters** should approach them.”<sup>22</sup> However, the term “רִיב” is (generally)<sup>23</sup> used when referring to a quarrel for which the parties do not go to be judged. For example: “there was a **רִיב, quarrel**, between the herdsmen of Avram’s livestock...”;<sup>24</sup> “וַיִּרְיבוּ, they quarreled, the herdsmen of Gerar...”;<sup>25</sup> “When men **יִרְיָבוּ,**<sup>26</sup> will quarrel, and one will **strike...**”<sup>27</sup>

Accordingly, it would be more appropriate to have stated here, “When there will be a **דָּבָר, matter.**” [This is evident also from *Targum Onkelos*<sup>28</sup> on the word “רִיב” in this verse.<sup>29</sup> He renders the term not as a “מִצּוּחָא, quarrel,” as he usually does,<sup>30</sup> but as a “דִּין, lawsuit”].<sup>31</sup> Why, then, does Scripture here specifically use the word “רִיב” instead of “דָּבָר”?

Rashi explains: “*When there will be a רִיב* — they will eventually approach {the court} for judgment. From this, we can see that peace does not come from **quarrels.**” — {The verse} here discusses a dispute in the fashion of a **רִיב, quarrel**, and from **this** type of dispute, “peace does not come,” even if there is “**judgment**”:<sup>32</sup>

<sup>19</sup> In addition to the question, “why must it state, ‘When there will be a quarrel.’ It should have been written, ‘When people recourse to judgment’ (*Gur Aryeh*; similarly is stated by Rabbi Eliyahu Mizrahi; *Be’er Mayim Chaim* (authored by the brother of *Maharal*); et al).

<sup>20</sup> For the discussion below — concerning the difference between “דָּבָר” and “רִיב” — see, at length, *Malbim* on this verse.

<sup>21</sup> *Shemos* 18:16. See also *Shemos* 18:19 (and **Rashi**, ad loc.); *Shemos* 18:22; 18:26.

<sup>22</sup> *Shemos* 24:14 (see also Rashi, ad loc.).

<sup>23</sup> For there are select instances — even before our *parshah* — where the term is used referring to litigants in court: *Shemos* 23:2-3; 23:6; as well in *Devarim* 17:8; 19:17; 21:5.

<sup>24</sup> *Bereishis* 13:7. — This is the one that is referenced by Rashi here on our *parshah*.

<sup>25</sup> *Bereishis* 26:20.

<sup>26</sup> *Shemos* 21:18.

<sup>27</sup> See as well *Bereishis* 13:8; 26:21-22; 31:36; *Shemos* 17:2; 17:7; et al.

<sup>28</sup> Unlike in *Targum Yonason ben Uziel*, where it is translated as “תִּיגְרָא, controversy.”

<sup>29</sup> He does the same in those other instances cited above in fn. 23 {fn. 21 in the original} (with the exception of *Devarim* 17:8 where he translates רִיבֵיחַ as פְּלִיגַת דִּינָא, legal dispute).

<sup>30</sup> See *Targum Onkelos* in the places cited above in fns. 24-27 {fns. 22-25 in the original}.

<sup>31</sup> As he does when translating the word “דָּבָר” on *Shemos* 18:16; 24:14.

<sup>32</sup> Rashi therefore deviates from the wording of the *Sifri*, “caused this one to be flogged” — for the subject here is **the argument** {itself} and not that one of them will be flogged. [Unlike in Rashi’s commentary later on 25:11, where Rashi’s intent is the same as is in the *Sifri*.]

Generally, when two individuals have a dispute that is **not** considered a quarrel, it can be settled and peace restored: The disputants settle the matter themselves, or the court mediates a compromise. Even in an instance when the court concludes that one party is entirely in the right, even **this** ruling will restore peaceful relations because the disputants were not engaged in a “ריב,” squabbling amongst themselves, but were seeking the truth.

However, when there is a ריב — a dispute that devolves into a quarrel, then reaching a peaceful resolution becomes impossible. Even if the parties prosecute the matter and the court issues a **decisive** ruling on who is right and who is wrong, “peace does not come” even after the court’s ruling.<sup>33</sup>

For this reason, Rashi cites proof and an illustration from Lot: “What caused Lot to **separate** from the righteous one? It was quarreling.” Seemingly, the quarrel that occurred then was actually (not between Lot and Avraham, the righteous one, but rather) only between Avraham’s herdsmen and Lot’s herdsmen. Avraham and Lot themselves were “men who are brothers.”<sup>34</sup> Nonetheless, since a “quarrel” occurred, they could not remain at peace while together. Lot had to **separate** “from the righteous one.”

#### 4.

#### ADJUDICATING A QUARREL

On this basis, the question of why the verse states, “and they acquit the righteous one, and they convict the wicked one,” is automatically answered. The answer becomes clear in light of **Rashi’s commentary** — that the verse intimates that peace will never be restored, even through litigation — “when there will be a quarrel,” then “peace does not come.” Peace will remain elusive because the judgment is one in which “**they will acquit the righteous one and convict the wicked one**”:

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<sup>33</sup> Note as well the interpretation in *Toldos Adam* on *Sifri*, ad loc.

<sup>34</sup> *Bereishis* 13:8; see also Rashi, ad loc.

Here, we are not discussing two parties pursuing the truth. Were this the case, litigation would reestablish harmony. Instead, we are dealing with one righteous individual and another who is **wicked**. Accordingly, the court's adjudication only aims to determine and **acquit** the righteous party and **convict** the wicked.

## 5.

### VINDICATING THE RIGHTEOUS

We may further add that the verse here clarifies another issue:

One might suppose that since this is a “quarrel,” that the participants are argumentative, and that one or both parties are contentious (wicked people),<sup>35</sup> the court should not adjudicate their dispute. Instead, perhaps the court should chastise the disputants for their quarrel, after which we can wait and see: Diffusing the quarrel may bring peace, the admission of the truth, etc. The Torah {therefore} states: “When there will be a quarrel... **they shall judge them.**” Regardless that the parties are quarrelsome, the court is obligated to judge them, to immerse themselves in their dispute, to dissect the details of the case, and to issue a ruling.

Also, after {the court issues its ruling}, there is room to mistakenly think that since the two litigants were involved in a **quarrel**, neither can be entirely blameless. By wading into this argument, both will invariably exaggerate their claims, etc.<sup>36</sup> We may conclude that when a judge **acquits** one of them (which, according to *pshat*, means a complete acquittal), his ruling is mistaken.

The Torah {therefore} continues: “They shall acquit the **righteous** one and convict the **wicked** one.” It is indeed possible that both litigants are at fault for this dispute morphing into a “quarrel.” Nevertheless, concerning the court's

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<sup>35</sup> Note *Avos* 1:8: the litigants... {should be viewed} as wicked people.

<sup>36</sup> Akin to *Shemos* (2:13): “two... were fighting; he said to the wicked one, ‘why would you strike your fellow,’” which is interpreted by Rashi to mean “a wicked one like yourself” — and in light of what was explained here, it is understood **on the level of pshat** — how he surmised that he was a wicked person.



ruling by which “**they shall acquit the righteous one** and convict the wicked one,” the judges are correct. One litigant is **entirely** in the right, and the other is **entirely** in the wrong.

We may posit (along the lines of the Gemara’s exegesis) that the Torah is thereby saying even more — “and they acquit the righteous, as he was **originally**.”<sup>37</sup> When a court of justice, *בֵּית דִּין צָדֵק*, completely justifies, *מִצְדִּיק*, a person, one will see that the person is also “righteous,” *צָדִיק*, regarding the “quarrel” and dispute. He is entirely blameless.<sup>38</sup> The “quarrel” was provoked by the **wicked** person, and he alone remains accountable for it.<sup>39</sup> The righteous party, in contrast, is righteous, *צָדִיק* — “and they acquit the righteous as he was originally.”

— From the talk delivered on Shabbos *parshas Ki Seitzei*, 5741 (1981)

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<sup>37</sup> In the words of the Gemara — *Makkos*, op cit.

<sup>38</sup> Examine Rashi’s commentary on *Shemos* 18:21, s.v., “*sonei vatza*.” Further discussion is beyond the scope of this work.

<sup>39</sup> Note *Avos* (5:17): The controversy of Korach and all his henchmen.