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HaRav Yosef Grossman zt"l

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CHANGE OF MIND: WHEN A LEADER GROWS OLD

Adapted from the writings of Dayan Yitzhak Grossman

The AP reports:

President Joe Biden worked forcefully Friday to quell Democratic anxieties over his unsteady showing in his debate with former President Donald Trump, as elected members of his party closed ranks around him in an effort to shut down talk of replacing him atop the ticket.

Biden's halting delivery and meandering comments, particularly early in the debate, fueled concerns from even members of his own party that at age 81, he's not up for the task of leading the country for another four years. It created a crisis moment for Biden's campaign and his presidency, as members of his party flirted with potential replacements, and donors and supporters couldn't contain their concern about his showing against Trump...

Even before the debate, Biden's age had been a liability with voters, and Thursday night's faceoff appeared to reinforce the public's deep-seated concerns before perhaps the largest audience he will garner in the four months until Election Day...¹

In this article, we consider some Torah perspectives on whether advanced age is a desirable or undesirable quality in a leader.

The primary halachic statement on the topic appears in a *breisa*:

We do not seat as a judge in a sanhedrin (in capital cases) a *zakein* (old man), a man who is unable to sire children, or one who does not have children. R' Yehudah adds: Also a cruel person.²

It is interesting that an alternate version of this *breisa* that appears in the Tosefta and the Yerushalmi differs from the Bavli's version in a number of points, including omitting the *zakein*:

One who is unable to sire children and anyone who has not had children are eligible to judge monetary cases but not capital cases. R' Yehudah adds: Also a cruel person and a compassionate person (are ineligible to judge capital cases).³

Why is a *zakein* not eligible to serve on a sanhedrin?
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¹will defend democracy. Dems stick by him—for now. <https://apnews.com/article/trump-biden-debate-age-democrats-493d7f7faad75f6423ea39531e1628790>.
²Sanhedrin 36b.

³Tosefta ibid. 7-4 in the Vilna Shas; Yerushalmi ibid. 4:7 (but without mention of R' Yehudah's view). The Mitzpei Shmuel (ibid. ex 80 notes that in the Bavli's version, R' Yehudah does not disqualify a compassionate person.



PARSHAS BALAK

PAIN KILLER

Excerpted and adapted from a *shiur* by Dayan Yosef Greenwald

The malach of Hashem said to him, "For what reason did you strike your she-donkey these three times? Behold! I went out as an impediment, for he hastened on the road against me.

Bemidbar 22:32

The Rambam (Moreh Nevuchim 3:17) writes that the mitzvah of *tza'ar ba'alei chaim* (not to cause unnecessary pain to animals) is derived from this *pasuk*. In his view, the *malach* criticized Bilam for mistreating his donkey and violating *tza'ar ba'alei chaim*, which would seem to indicate that it is an *issur de'Oreisa*. The problem is that the Gemara (Bava Metzia 31-32) cites a dispute about this issue, and according to the Minchas Chinuch and the Gra, the Rambam himself rules that it is *deRabanan*.

Perhaps we can resolve the contradiction in the Rambam: *Tza'ar ba'alei chaim* is only a Rabbinic prohibition, but in the Moreh Nevuchim, he is talking about the imperative to refine one's character and avoid cruelty (like that practiced by Bilam toward his donkey), which he may hold is a *de'Oreisa*.

The Noda Bihudah appears to adopt a similar approach in a *teshuvah* about hunting for
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Q&A from the
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The Poor Capitalist

Q I have \$200,000 in the bank. I would like to use it to purchase an income-producing investment property and then receive tzedakah to cover my living expenses beyond the income the investment generates. Am I eligible for tzedakah?

A The Mishnah (Peiah 8:8) teaches that one who has two hundred *zuz* may not take *leket*, *shich'chah*, and *peiah* (different types of *matnos anyiyim*—gifts to the poor—that farmers must give). Two hundred *zuz* was the annual cost of living for one person. Someone with
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Rashi explains: "For he has already forgotten the pain of raising children,⁴ and he is not compassionate."⁵ The Ramah (R' Meir Halevi Abulafia) cites Rashi and then writes: "And we are accustomed to explain that a *zakein* is intolerant (*dato ketzarah*)⁶ and not compassionate."⁷ He seems to be saying that unlike Rashi, who understands that a *zakein's* lack of compassion stems from having forgotten the pain of raising children, he holds that a *zakein* is inherently cantankerous and lacking compassion.

The Rambam codifies the rules of the *breisa* as follows:

We do not appoint to any sanhedrin a man of very old age (*zakein muflag beshanim*) or one who is unable to sire children, for they have cruelty, nor one that doesn't have children, in order that he be merciful.⁸

The Lechem Mishneh (R' Avraham di Boton) explains that the Rambam added *muflag beshanim* in order to reconcile this rule with another rule from the Gemara,⁹ also codified by the Rambam,¹⁰ that *only* men of old age¹¹ are appointed to sanhedrins! The Rambam accordingly distinguishes between moderate old age and advanced old age.¹²

There are indeed many places where the Torah uses forms of the word *zakein* to refer to various types of leaders,¹³ at least some of which terms Chazal understood to refer to judges of either the Great Sanhedrin¹⁴ or lower courts.¹⁵ Although the Gemara does cite the view of R' Yosi HaGlili that at least in the context of the mitzvah to honor a *zakein*,¹⁶ the word means a person that has acquired wisdom and includes even the young and wise, it proceeds to explain that this is based on the particular wording of the mitzvah. This implies that even R' Yosi HaGlili would concede that in general, the term denotes actual old age.¹⁷ It seems, then, that the Torah has a general assumption that judges and leaders will be older people.

Returning to the Rambam, some infer from his language that he understands the rationale for the disqualification of a *zakein* and one who cannot have children to be that "their natures are cruel, due to their quality and essence, even if they have children."¹⁸ (This is similar to the understanding of the Ramah above.)

We have heretofore been considering the presumptive cruelty and lack of compassion of very old men as a negative trait; but the widespread concern about the president's age appears to derive

from the perception that he has suffered substantial cognitive decline, rather than a diminution of empathy.

This writer is not aware of much halachic discussion of age-related cognitive decline as a disqualification for judges or other public officeholders.¹⁹ In the absence of such discussion, we may consider discussions of general mental impairment (a *shoteh*) and their applicability to age-related cognitive decline. For example, the Rambam writes:

A *shoteh* is invalid as a witness *min* haTorah, because he is not obligated in the mitzvot. Not only a *shoteh* who walks around naked, breaks utensils, and throws stones, but anyone whose mind is disturbed and continuously confused regarding a certain matter, even if he can speak and ask appropriately in other matters, he is invalid as a witness and is reckoned among *shotim*.²⁰

There is an Aggadic discussion of age-related cognitive decline in the Mishnah:

R' Shimon ben Akashya says: Elderly unlearned men, as long as they continue to age, their minds get more confused, as it is stated, "He removes the speech of the capable and takes away the reasoning of the elderly."²¹ But elders of Torah are not like that; rather, as long as they continue to age, their minds become even more settled (*datan misyashevess aleihen*), as it is stated, "In the aged is wisdom and in length of days, understanding."^{22,23}

Similarly, a *breisa* states:

R' Yishmael ben R' Yosei says: *Talmidei* chachamim, the older they become, the more does wisdom increase within them, as it is stated, "In the aged is wisdom and in length of days, understanding." As for those who are bereft of Torah knowledge, the older they become, the more does foolishness increase within them, as it is stated, "He removes the speech of the capable and takes away the reasoning of the elderly."²⁴

The simple reading of these passages is that Torah scholars do not suffer a diminution of mental faculties as they age; on the contrary, they become wiser. The Drashos HaRan, however, explains Chazal's intention differently, in light of the empirical evidence that *talmidei* chachamim at least sometimes do indeed suffer mental impairment as they age:

The intention of the Mishnah is not to say that the wisdom of elders of Torah increases as they age, for it is possible that this is not so; because the intellect requires physical vessels, it is possible that when a person becomes extremely old and the vessels become extremely weak, the

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enough money to support his family for a year is not considered an *ani* (pauper) and is ineligible to receive tzedakah.



RAV ARYEH FINKEL

The Shulchan Aruch (Y.D. 253:1) codifies this halacha but adds that circumstances have changed. When the economy was largely agrarian, *aniyim* could expect a stream of *matnos aniyim* from local farms. This can no longer be assumed, so an *ani* may accept tzedakah if he doesn't possess the capital to produce enough income to support his family (ibid. 2). The Sheivet Halevi (2:120) therefore says that a person in your situation is eligible for tzedakah.

This halacha pertains to a person with no source of income in addition to his capital. Someone who has sufficient income from a job, even if he has no savings, may not receive tzedakah (Sheivet Halevi ibid.).

intellect will weaken as well.²⁵

He proceeds to explain what Chazal meant by *datan misyashevess aleihen*: There is tension between a man's lusts for the pleasures of the world and his intellect, which teaches him to reject these lusts. When he is young, the lusts are strong, and his imagination tempts him with what he is missing. As he ages, his lusts weaken, and he sees clearly that the pleasures he has relinquished are actually utterly worthless.

R' Chaim ibn Atar (the Or Hachaim) also understands that Chazal do not mean that the intellects of Torah scholars improve with age:

We see that when a man ages, his understanding is diminished, and even a scholar cannot "go out and come in"²⁶ in the battle of Torah, and his senses are diminished. Although the Chachamim, of blessed memory, have said that the minds of elders of Torah become increasingly settled as they age, they were careful to say "settled," as opposed to the ignorant elders whose minds become increasingly confused; nevertheless, the power of the intellect and understanding is nullified.²⁷

4 See Eiruvim 100b.
5 Rashi, Sanhedrin ibid.
6 See Sanhedrin 100b-101a.
7 Yad Ramah, Sanhedrin 36b.
8 Hilchos Sanhedrin 2:3. See Or Hayashar, Bad Kodesh, and Bais Haraeh ibid.; Amud Hayemini siman 5.
9 Sanhedrin 17a.
10 Ibid. halacha 6.
11 Our text of the Gemara has *ba'alei ziknah*, whereas the Rambam writes *ba'alei seivah*. Our text of the Mishnah (Pirkei Avos 5:2) says "a sixty-year-old attains ziknah; a seventy-year-old attains seivah," but see Midrash Shmuel and Tosfos Yom Tov ibid. for a variant text of the Mishnah. (I am indebted to my friend and chovrusa R' Yitzchok Mandel for bringing that text to my attention.)
12 Lechem Mishneh ibid. 2:3, and see Lechem Mishneh Shgagos 13.
13 Shmos 17:6 and 24:1-14; Vayikra 4:15; Bemidbar 11:16-25; Dvarim 21:1-9; Yehoshua 24:1, 31.
14 See Mishnah Sanhedrin 1:6 and Bavli ibid. 16b-17.
15 See Mishnah ibid. 1:3 and Bavli ibid. 13b-14b.
16 Vayikra 19:32.
17 Kidushin 32b.
18 R' Yosef (Ri) Korkos, Shgagos ibid., cited and elaborated upon in Sha'ar Yosef, Horayos 4b sv. v. *zakein* 36a.

19 See R' Shlomo Aviner, *Tzillus Hadaros Birnei Haziknah*, Sefer Assia, Volume 6.
20 Hilchos Eidus 9:9. See the Sefer Hamafteich to the Rambam ibid. (Frankel edition), and cf. Chagigah 3b-4a; Bais Yosef E.H. siman 121 sv. *Simanei hashoteh*; Or Hayashar and Or Yisrael (polemical works) in support of the validity of the famous "get of Kiev," and cf. Sha'agas Aryeh *hasafah siman* 2; Shu"t Bais Ephraim E.H. (cheilek 3) siman 89; Pitchei Teshuvah E.H. siman 121 sv. 2; Shu"t Sho'eil Umeishiv *tingano cheilek 4 siman 87*.
21 Yov 12:20.
22 Ibid. 12:12.
23 Kinim 3:6 (my translation).
24 Shabbos 152a.

25 Drashos HaRan, *Drush* 10.
26 See Dvarim 31:2.
27 Or Hachaim Bereishis 47:28. Cf. here and here.

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sport. He writes that killing animals in a hunt does not violate *tza'ar ba'alei chaim*, because that

prohibition applies only to causing animals pain without killing them. Still, he maintains that such hunting is forbidden for several other reasons, including that it

cultivates the *midah* of cruelty.



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