

5-31-25 Message to Roeh Israel Abilene – *BaMidbar* (in the wilderness)
Double Torah Portion: Numbers 1:1 – 4:20
Haftarah: Hosea 1:10 – 2:20
Suggested Acheron K'tuvim: Luke 5:27-32

Biblical Dispute Resolution 9 – Common Failures Part 1

Central question: What are some common ways we fail in applying the Constructive Purpose exception?

We are today in parasha *BaMidbar* which means “In the wilderness.” In our annual reading cycle, we now arrive at the first reading of the book of *BaMidbar*, which is known today by its more common name – Numbers. This book’s name originated because English translators noticed that the early topics of this book included a lot of census numbers. The first parasha in any of the books of Torah takes the same name of the book in Hebrew. This parasha’s name comes from the 9th through 11th word in the English and the 5th word in the original Hebrew.

Num 1:1-3

1 Then the Lord spoke to Moses in the wilderness of Sinai, in the tent of meeting, on the first of the second month, in the

second year after they had come out of the land of Egypt, saying, 2 "Take a census of all the congregation of the sons of Israel, by their families, by their fathers' households, according to the number of names, every male, head by head 3 from twenty years old and upward, whoever is able to go out to war in Israel, you and Aaron shall number them by their armies.

וַיְדַבֵּר יְהוָה אֶל־ מֹשֶׁה בְּמִדְבַּר סִינַי בְּאֶהֱלִי ^{1:1}
 And spake unto Moses in the wilderness of Sinai, in the tabernacle of 168

מוֹעֵד בְּאֶחָד הַיּוֹם לַחֹדֶשׁ הַשֵּׁנִי בַּשָּׁנָה הַשֵּׁנִית
 the congregation, on the first day of month, the second in year the second 8145 8141 8145 2320 9999 259 4150

לְצֵאתָם מֵאֶרֶץ מִצְרַיִם לֵאמֹר:
 after they were come out of the land of Egypt, saying, 3318 776 4714 559

שָׂאוּ אֹתָם רֹאשׁ כָּל־ עֵדֹת בְּנֵי־ יִשְׂרָאֵל ²
 Take ye the sum of all the congregation of the children of Israel, 5375 853 7218 3605 5712 1121 3478

לְמִשְׁפַּחֹתָם לְבֵית אֲבֹתָם בְּמִסְפָּר שְׁמוֹת
 after their families, by the house of their fathers, with the number of their names, 4940 1004 1 4557 9999 8034

כָּל־ זָכָר לְגִלְגָּלָתָם:
 every male by their polls; 3605 2145 1538

מִבֶּן עֶשְׂרִים שָׁנָה וּמַעֲלָה כָּל־ יֵצֵא צָבָא ³
 From old twenty years and upward, all that are able to go forth to war 1121 6242 8141 4605 3605 3318 6635

בְּיִשְׂרָאֵל תִּפְקְדוּ אֹתָם לְצִבְאוֹתָם אַתָּה וְאַהֲרֹן:
 in Israel: they shall number them by their armies. thou and Aaron 3478 6485 853 6635 859 175

We have been discussing the few ways that harmful speech is not only permitted but in some instances required. In many ways, the categories of the “constructive purpose” exception – called in Hebrew *toeles* – are somewhat vague. That is intentional.

It is vague enough to encompass all the infinite varieties of circumstances which require one to speak openly, even if it is harmful to another. In essence, *toeles* requires the individual to use a balancing test. Does the benefit justify the damage done by the speech? If so, it is not evil speech (*loshan hara*).

Before we go further, we need to once again revisit what generally constitutes *loshan hara*.

It is speech about a person that is negative or harmful to them. Even a true report can be evil speech, for it harm another’s standing in the community.

Let’s also review the four general categories speech which qualifies as *toeles*. They are:

1. Speech to help the person about whom you are speaking, such as privately informing a spiritual leader of harmful things being done by a congregation member.
2. Speech to help persons actually being harmed, or in danger of being harmed, by the actions of another.
3. Speaking in a way which assists in ending a dispute in which the person is involved, such as providing a private rebuke to that person, being a witness to establish facts during a confrontation by another person, and offering testimony before a *beit din*.
4. Speech by a spiritual leader calculated to help others learn from the failures of a particular person, often given during times of teaching, training, or discipleship.

Note that speech privately to the person regarding something you have seen or heard that is otherwise harmful is not *loshan hara*.

A primary consideration in whether the speech falls into these exceptions is the heart of the speaker, and the level of certainty that the speech will have the desired outcome. If the intentions of the speaker

are pure, and the speech is quite certain to achieve the desired outcome, then there is a greater chance that the speech will fall within the exception of *toeles*.

With this foundation being laid, I wish to now discuss some of the more common failure points in application of the principles of *toeles*, and in avoiding *loshan hara*.

Relying on Hearsay

With regard to judicial proceedings, outcomes must be based on accuracy and truth. Uniformly, throughout the state and federal courts of the United States, the rules of evidence (in particular Rule 801) prohibits the admission into evidence of hearsay testimony. In Jewish jurisprudence, hearsay is likewise prohibited.

The general definition of “hearsay” is: any out-of-court statement which is offered by someone testifying in court, which is offered to prove the truth of that out-of-court statement. So, hearsay applies to the facts that might be in dispute, not the law. If the facts are finally established, then the law can be applied to those facts, and a just result obtained.

Hearsay, in its simplest form, is testimony which is not based upon personal observation, but only upon the report of others (who likewise may not have been an eyewitness to the event).

The term itself tells us how the information was received by the speaker: he **hears** something, then later he **says** what he heard said. You may have already made the connection between hearsay and two forms of *loshan hara* – gossip (*rekhilut*) and malicious maligning (*motzi shem ra*). These involve statements made out of the presence of the one being spoken about, calculated to damage that person.

All trained and experienced trial attorneys know that when several people see the same event, and all are later called to testify about what they saw, there will often be significant discrepancies between the various reports they give.

It's not that these eyewitnesses are giving false testimony, but the variations in the reports are a product of how well people were able to observe the events, recall the events, and describe the events over time. Different people have different abilities in these areas, and so their reports will differ as well.

But if one were to also allow the entry of hearsay into the mix, finding the truth becomes dramatically more difficult. In fact, reliance upon hearsay can very easily result in errors in facts, which then often leads to errors in the application of law. And that is the very definition of “injustice.”

When Scripture contemplates that a witness is to offer testimony, it is to be an actual eye-witness to the event being testified to, or a witness to a confession by the accused.¹

We must not limit the prohibition of hearsay only to judicial proceedings. Hearsay is so prone to error that it must be prohibited even when we are trying to apply the exceptions of *toeles*.

Hearsay is prohibited, and so is reporting what is heard as a rumor, or even an accepted consensus in the community based upon flawed reports. As Samuel Clements famously quipped, “The reports of my demise are somewhat premature.”

Likewise, a student of history will recall that it was the consensus of science centuries ago that the earth was flat, and that the sun revolved around it. The scientific “consensus” was so firm in this belief that

¹ Leviticus 5:1

Copernicus - the astronomer who determined that the Earth was a planet circling the Sun – was excommunicated from the Catholic Church for his astronomical “heresies” which contradicted settled church theology of his day. And Columbus was seen by many as a fool because they believed he most certainly was going to sail off the edge of the flat earth, with the certain loss of the ships and crew.

Whether we are dealing with judicial proceedings in civil or religious courts, or merely trying to get to the bottom of what happened in a dispute in the Body of Faith, the greater the accuracy of the information which is provided to the discerning mind, the more righteous will be the decision based upon that information.

Facts matter, when engaging in any of the permitted exceptions to evil speech. Some have fashioned an exception to the “no hearsay rule” in circumstances where imminent harm is expected to a person, and a timely warning can’t wait for verification of the facts. In that case, the one giving the warning should make it clear that he is simply repeating the report of others, and that it may well not be accurate. The one who is warned should be urged to engage in his own investigation of that report before proceeding further.

Prejudgment, and Failing to Apply the Presumption of Innocence

There is an unfortunate tendency for people who witness certain events to only see part of what has happened, and stop short of gathering all the relevant facts. Some will immediately “connect the dots” – some of which are not there at all – and pass their own judgment of guilt.

This is wrong in two aspects. First, a witness is not also the judge. Second, the witness normally has only a part of the entire story. And more information just might change the conclusion dramatically.

If someone reports to another his legal conclusion of guilt, rather than the specific facts he has witnessed, then the witness has acted in presumption. He has wrongfully seated himself in the seat of the judge, and without gathering all other relevant facts, he has rendered his own judgment. The term “prejudice,” is derived directly from the objectionable conditions of pre-justice, or pre-judgement.

Without the knowledge or input of the one this person has accused, and after sitting as both witness and judge, he then also sits as executioner to imposes the consequences of his sentence upon the person.

The next step then is that this person feels justified in announcing his sentence abroad with evil speech encouraging others to join him in that punishment of the one accused.

Then the person who has been tried *en absentia* goes on unaware of what has unfolded behind his back, thinking all is well. He is caught quite by surprise by the way others begin treating him, and when he finds out the truth, he is so injured that fellowship is broken, especially with the one who has been the witness/judge/jury/executioner.

This breathtaking departure from the system of justice established by G-d represents a high level of hubris against G-d and against his fellow man. Unfortunately, this unholy practice is not met today with universal condemnation, or even disapproval. Thus, it seems to become more common.

There are a number of grievous sinful actions which Paul predicted would permeate the Body of Faith in the last days. I believe his prediction is coming true in our day. His advice to Timothy is valuable for each of us as well, when dealing with people who exhibit any one of these sinful conducts.

2 Tim 3:1-5

3 But realize this, that in the last days difficult times will come. 2 For men will be lovers of self, lovers of money, boastful, arrogant, revilers, disobedient to parents, ungrateful, unholy, 3 unloving, irreconcilable, **malicious gossips [backbiters]**, without self-control, brutal, haters of good, 4 treacherous, reckless, conceited, lovers of pleasure rather than lovers of God; 5 holding to a form of godliness, although they have denied its power; and **avoid such men as these.**

Scripture requires more than one witness to a fact to determine the truth.² The rationale for this requirement seems to be that the variations in human ability to observe and accurately report are less critical when two reports are considered. And further, Scripture recognizes that a single witness could be urged by unrighteous motives to offer false, or tragically incomplete, testimony which would lead to an unrighteous judgment. Examples in Scripture of this dynamic are not hard to find. Daniel was falsely accused. The trial of Yeshua was attended by false accusations and false testimony.³ And Paul was also falsely accused.⁴

² Deuteronomy 19:15, 1 Timothy 5:19

³ Matthew 27:11-14

⁴ Acts 26

The search for truth, especially when rendering judgment on biblical issues has a long and honorable history.

In the Talmud we find Jewish sages working hard to find the best application of G-d's justice to certain factual scenarios. Those sages would present a factual scenario relating to a certain command of G-d, and then work through it to reach a logical conclusion on how one should live-out G-d's instructions.

Then, one of the teachers would change one of the facts, or insert another one, and the analysis would then need to be redone. The end result then was often significantly different, because the facts were different.

This same technique of factual and legal analysis is used even today in American law schools. It is also used when presenting cases to trial courts and when arguing cases before appellate courts.

Lawyers learn early in their education how changing one fact, or adding another fact, can make dramatic changes in how the law should be applied. This change affects the outcome, which must also change to reflect what justice would require with those particular facts.

This is no less true when applying the law of G-d to situations which present themselves in the Body of Faith today.

No event stands alone. It is preceded by other events, and followed by more events. In the larger context, the event witnessed by the observer could be part of a quite innocent whole. But when taken out of context, a report of that single event – even if offered with fastidious accuracy – can seem sinful.

When offering a report of what has been seen, it is strongly preferred that the witness himself do some investigation of the context of the event, if possible, so as to give the true understanding of what he saw. He should do all this with a strong presumption of innocence, so that he does not approach the investigation with an agenda.

If you begin with a presumption of guilt, and search for evidence to support it, you will often find sufficient evidence, and will ignore all contrary evidence. But if you start with a presumption of innocence, your search will likely render also some evidence of innocence, as well as guilt, and your analysis will be more balanced. And if you are forced after investigation, into a firm factual basis for guilt, even in spite of your presumption of innocence, then your factual basis has ultimate integrity.

And you might just discover that your initial factual conclusion was flawed for lack of sufficient information. If you do discover facts that establish innocence, then the matter should end right there. This stops any possible damage to the person, or to the process of dispute resolution.

If you cannot investigate further, then you should offer your report of the facts you did see, together with the caution that you were unable to place the event in its full context.

It is far better to have presumed innocence in circumstances where there was, in context, a sinful act, than to presume guilt under circumstances where the larger context demonstrates innocence.

Can a violation of G-d's command be innocent, and not sinful? Yes, A holy life requires we balance the commandments, and prioritize them.

There are times when obedience to each of two specific commandments is impossible, and we must choose which is the superior one. Following the higher command then results in a violation of the lesser. But that violation is not sinful. Balance and prioritization is the key.

Virtually all of the commandments of G-d may be innocently breached when obedience to a greater commandment requires it. Scripture prohibits lying. But when Shifrah and Puah, the two midwives during our Egyptian captivity, were confronted with the choice of killing the male Hebrew children, or lying to Pharaoh, they chose to honor life, not the command of a king. God honored their choice.⁵

Pinchas drove a spear through a Midianite woman and a Hebrew of the tribe of Shimon who were defiling the Tent of Meeting, and he was rewarded by God with a perpetual covenant of peace.⁶ The parable of the “Good Samaritan” likewise illustrates the prioritization of commandments, where preserving life is paramount.⁷

There is an easy example of this we can find today. We all know that posted speed limits are ideally designed to aid in proper traffic flow, and to prevent collisions. If a police officer stops a vehicle which is exceeding the posted limit, he may issue a citation for a violation. But if the officer looks inside the vehicle and sees a woman in labor in the

⁵ Exodus 1:15–21, “15 Then the king of Egypt said to the Hebrew midwives, one of whom was named Shiphrah and the other Puah, 16 “When you serve as midwife to the Hebrew women and see them on the birthstool, if it is a son, you shall kill him, but if it is a daughter, she shall live.” 17 But the midwives feared God and did not do as the king of Egypt commanded them, but let the male children live. 18 So the king of Egypt called the midwives and said to them, “Why have you done this, and let the male children live?” 19 The midwives said to Pharaoh, “Because the Hebrew women are not like the Egyptian women, for they are vigorous and give birth before the midwife comes to them.” 20 So God dealt well with the midwives. And the people multiplied and grew very strong. 21 And because the midwives feared God, he gave them families.”

⁶ Numbers 25:6-13

⁷ Luke 10:30-37

passenger seat, and hears her husband the driver explaining the high-speed run to the hospital, the officer will more likely give the husband a police escort to the hospital with siren and lights blazing.

One more fact being added to the initial determination by the officer changed everything. What about a person simply observing the driver racing past him on the street, who does not have the power to pursue and get more facts? Do you see how a presumption of innocence makes all the difference?

Let's see how the failure to apply the presumption of innocence played out in an episode of Yeshua's ministry.

Luke 5:27-32

27 And after that He went out, and noticed a tax-gatherer named Levi, sitting in the tax office, and He said to him, "Follow Me." 28 And he left everything behind, and rose and began to follow Him.

29 And Levi gave a big reception for Him in his house; and there was a great crowd of tax-gatherers and other people who were reclining at the table with them. 30 And the

Pharisees and their scribes began grumbling at His disciples, saying, "Why do you eat and drink with the tax-gatherers and sinners?" 31 And Jesus answered and said to them, "It is not those who are well who need a physician, but those who are sick. 32 "I have not come to call the righteous but sinners to repentance."

The hostile accusers of Yeshua were investigating with a presumption of guilt, and they found what they believed to be evidence of guilt. They didn't approach Yeshua with a presumption of innocence, or an investigation to find out all the truth. They stopped short, "connected some dots," and then appointed themselves judges.

Do you see how their question of Yeshua and His disciples was one of judgment, and not a sincere search for more information?

It wasn't until Yeshua gave them the information that they should have been seeking in the first place, that they had sufficient information to determine the actual reason Yeshua was spending time with sinful people. The fact that these accusers persisted in their search for a factual basis to establish guilt, and did not repent of their own sinful actions, tells us much. Please, do not follow these bad practices today with one another.