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HIGHLY QUALIFIED

*Qualifications for Holding Public
Office* By Rav Yitzhak Grossman

A major theme of the recent elections and nominations for Supreme Court Justices has been the assertions that the leading candidates are “not qualified” due to deficiencies in temperament and character.

Back in 2016, a feud erupted between rivals for the Democratic Nomination - Senator Bernie Sanders and Secretary Hillary Clinton - over each other's qualifications. The Washington Post declared that “Clinton questions whether Sanders is qualified to be president”, and Sanders retorted that “I don't believe that she is qualified”.¹ There have been numerous assertions by prominent figures, as well as widespread public sentiment, that President Donald J. Trump is not qualified: a survey found that 61% of respondents did not consider him qualified. The Washington Post considers him “uniquely unqualified”, and a letter signed by 30 former Republican lawmakers declared him “manifestly unqualified”.

In the remainder of this article, we turn from the temporal to the eternal, and discuss some of the halachic rules governing qualifications for holding public office and voting on questions of public interest in general.

¹ Sanders repeated the charge, but subsequently retracted it.

LOCAL GOVERNMENT

The *Terumat HaDeshen* was asked about a certain individual who had been caught taking a false oath, and had been assessed various penalties for his offense. The community had settled with him and now wished to appoint him to the local governing council (*Tovei HaKahal*), despite his failure to accept upon himself a proper course of repentance. The *Terumat HaDeshen* ruled that he was ineligible for such an appointment. He established the doctrine that the governing council has the status of a court (*Bet Din*), and one who commits a sin motivated by venality is therefore ineligible to

serve on the council, just as he is ineligible to serve as a judge.¹

NATIONAL GOVERNMENT

Rav Zalman N. Goldberg is reported as having vehemently insisted, based upon this position of the *Terumat HaDeshen*, that it is Biblically prohibited to vote for any [Israeli political] party that contains “secular individuals (*chilonim*) who desecrate the Sabbath”, even the [ostensibly religious] “Jewish Home” party.² Similarly, Rav Ezra Batzri maintains that the Israeli Knesset's *halachic* legitimacy cannot be derived from the *Tovei HaKahal* - governing council - paradigm, since it includes members who are disqualified to serve as *Tovei HaKahal* due to sinfulness.³ Rav Batzri nevertheless grants the Knesset legitimacy under the principle of *Dina D'Malchuta Dina* (“the law of the government is the law”), which he argues is not affected by the sinfulness of the sovereign.⁴

¹ *Shut, Terumat HaDeshen, Pesakim U'Ktavim #214*, cited in Darke Moshe, Hoshen Mishpat beginning of siman 163, and codified in the Hagahot HaRema at the end of siman 37.

² *Yishai Cohen for Kikar Shabbat, Harav Zalman Nechemia Goldberg Romez: Yesh Isur Torah Le'Hatzbia Le'Habayit Ha'Yehudi*, 10 Adar, 5775. I have not found independent confirmation of this report and am uncertain of its accuracy.

³ R. Batzri rejects the view of Hacham Ovadia Hedaya in *Shut, Yaskil Avdi, Helek 6, Hoshen Mishpat, Siman 8 Ot 2* that takes for granted that the elected members of the Israeli Knesset “are not worse than the seven *Tovei Ha'Ir*”. The *Yaskil Avdi* does not address the question of disqualification due to sinfulness.

⁴ *Dinei Mamonot, Helek 4 Sha'ar 1 chapter 9 n. 10*. This view that the sinfulness of the sovereign does not vitiate the applicability of the principle of *Dina D'Malchuta Dina* is also the position of Hacham Ovadia Yosef in *Shut, Yehave Da'at, Helek 5 Siman*

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Highlights of a shiur by Rav Yosef Jacobovits

BE FRUITFUL AND MULTIPLY: TILL WHEN?

פרו ורבו ומלאו את הארץ וכבשוה

Be Fruitful and Multiply... (Bereshit 9:1)

What is the minimum needed to fulfill one's obligation? Or, more to the point: Can a person ever fulfill the obligation in its entirety?

The Mishna in *Yevamot* cites a discussion between Bet Shammai and Bet Hillel whether one needs both a boy a girl to fulfill one's obligation or is it enough to have two boys.

The Talmud Bavli is clear that their opinions are mutually exclusive; i.e., two boys according to Bet Hillel is not sufficient, and vice versa according to Bet Shammai.

The Yerushalmi - quoted by the Rashba - implies otherwise: both Bet Shammai and Bet Hillel agree that either of the two situations are sufficient.

The Maharit's first wife bore him only boys, yet he did not remarry. How do we understand this in light of the well-known dictum that we follow Bavli over the

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spotlight
The Kollel Zichron Gershon L'Dayanus now to begin the halachos of ribbis-interest and usury. Although it is not in Choshen Mishpat; it is a staple of business related halacha, and the Bais HaVaad is proud to provide a heter iska that is binding both in bais din as well as a civil court of law.

R. Shmuel David HaCohen Munk, on the other hand, maintains that the principle of *Dina D'Malchuta Dina* does not apply to the contemporary Knesset due to its members' moral or religious shortcomings.⁵

CITIZEN-ELECTORS

In a remarkable ruling, the *Hattam Sofer* apparently extends the principle of the *Terumat HaDeshen* to ordinary citizen-electors. He was asked about a community that had held an election for the position of rabbi. Subsequently, scandalous allegations emerged that some of the voters had been bribed to vote in the interest of one of the candidates. The *Hattam Sofer* ruled that insofar as these allegations have been conclusively established, the vote is void. One of his arguments is from the ruling of the *Terumat HaDeshen*: since the *Tovei HaKahal* have the same qualifications as judges, and a judge who accepts a bribe is thereby disqualified, the same applies to the *Tovei HaKahal* – and, apparently, to ordinary citizen-electors.⁶

The *Hattam Sofer* apparently understands that even citizen-electors have the same qualifications as judges when voting on public questions. Rav Eliezer Gordon of Telz notes this implication of the *Hattam Sofer's* ruling, and initially suggests that, consequently, relatives

of a candidate for (rabbinic) office should be barred for voting in the election for the position. He concludes, however, that relatives are indeed eligible to vote.⁷

Rav Elazar Meir Preil also notes the implication of the *Hattam Sofer's* ruling that even citizen-electors are held to the same standards as judges, and he considers this a decisive argument against female suffrage: since women cannot serve as judges, and citizen-electors are held to the same standards as judges, ergo women cannot have the franchise.⁸

FEMALES

Rav Preil raises the same objection from a woman's ineligibility to serve as a judge, combined with the ruling of the *Terumat HaDeshen* that holders of public office are held to the same standards as judges, to a woman holding public office (although he subsequently raises the possibility of the community's right to waive her ineligibility).⁹ This argument for women's ineligibility to hold public office was also raised by R. Preil's contemporary, R. Aharon Levine (the Reisher Rav).¹⁰

⁷ [Teshuvot R. Eliezer siman 4.](#)

⁸ [Sefer HaMaor beginning of siman 55.](#) Female suffrage and the related question of women's eligibility to hold public office were intensely debated topics among twentieth century Torah scholars, paralleling the contemporary debate in general society; in addition to R. Preil's lengthy treatment of the questions, see R. David Zvi Hoffmann, "Havat Da'at al Odot Behirot al Yede Nashim U'Behiratam al Yede Aherim", in *HaKibbutz B'Halachah (Asufat Ma'amarim)*, pp. 286-87; [Malki BaKodesh, Helek 2, Teshuvah 4; Shut. Mishpete Uziel, Helek 3 \(Hoshen Mishpat\) Siman 6; Shut. Seride Esh Helek 2 Siman 52 s.v. ve'al devar zechut ha'behira l'nashim and Helek 3 Siman 105.](#)

⁹ [Sefer HaMaor ibid. s.v. u'venoega le'ha'she'elah ha'sheniah.](#)

¹⁰ [Shut. Avne Hefetz, Siman 1 Ot 6 s.v. uv'makom aher.](#)

⁶ and [Shut. Be'er Sarim, Helek 6 Siman 90 Ot 4.](#) and cf. [Shut. Netzah Yisrael, Siman 33 Ot 9.](#)

⁵ [Shut. Pe'at Sadecha, Siman 91 Ot 1.](#) See also R. Yehudah Silman's uncompromising views in *Darke HaHoshen* pp. 394, 396.

⁶ [Shut. Hattam Sofer, Hoshen Mishpat, Siman 160,](#) cited in *Pithe Teshuvah, Hoshen Mishpat, Siman 8 s.k. 2.*



מסכת מנחות

This Week's Topics

RAV YEHOShUA GRUNWALD
RAV MOSHE ZEEV GRANEK

- דף ס"ג A Numbers Game
- דף ס"ד Pikuach Nefesh on Shabbat Without Intent
- דף ס"ה Taanis Esther: Minhag or Takamah?
- דף ס"ו Days & Weeks: One Mitzvah or Two?
- דף ס"ז The Measure for Separating Challah
- דף ס"ח Seeing the Light
- דף ט"ו Food Created Through a Neis



Yerushalmi? The Avnei Nezer introduces a Zohar in explicit accordance with the Yerushalmi, suggesting that the Maharit may have been following the Yerushalmi given the 'support' of the Zohar.

This is all regarding the Biblical commandment of *P'ru U'Rvu*.

There is still another obligation of: "*La'Erev Al Tanah Yadecha*" (*Kohelet* 11:6) – *In the evening do not rest your hand.* From here, we learn that one is obligated to continue his ef-

orts to bear children even after he has fulfilled his *P'ru U'Rvu* obligations. So, where *P'ru U'Rvu* ends, *Al Tanah Yadecha* begins, but they are not alike. The *Hida*, cited in *Pithe Teshuva*, cites some differences between the two.



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