TO QUANTIFY THE QUALIFY: QUALIFICATIONS FOR HOLDING PUBLIC OFFICE

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.

Local Government

The *Terumas Ha'Deshen* 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 (*tuvei ha'kahal*), despite his failure to accept upon himself a proper course of repentance. The *Terumas Ha'Deshen* ruled that he was ineligible for such an appointment. He established the doctrine that the governing council has the status of a court (*beis 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.[2]

National Government

1. Zalman Nechemia Goldberg is reported as having vehemently insisted, based upon this position of the *Terumas Ha'Deshen*, 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.[3] Similarly, R. Ezra Batzri maintains that the Israeli Knesset's *halachic* legitimacy cannot be derive from the *tuvei ha'kahal* paradigm, since it includes members who are disqualified to serve as *tuvei ha'kahal* due to sinfulness.[4] R. Batzri nevertheless grants the Knesset legitimacy under the principle of *dina de'malchusa dina* ("the law of the government is the law"), which he argues is not affected by the sinfulness of the sovereign.[5]
2. Shmuel David Ha'Cohen Munk, on the other hand, maintains that the principle of *dina de'malchusa dina* does not apply to the contemporary Knesset due to its members' moral or religious shortcomings.[6]

Citizen-Electors

In a remarkable ruling, the *Chasam Sofer* apparently extends the principle of the *Terumas Ha'Deshen* 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 *Chasam 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 *Terumas Ha'Deshen*: since the *tuvei ha'kahal* have the same qualifications as judges, and a judge who accepts a bribe is thereby disqualified, the same applies to the *tuvei ha'kahal* – and, apparently, to ordinary citizen-electors.[7]

The *Chasam Sofer* apparently understands that even citizen-electors have the same qualifications as judges when voting on public questions. R. Eliezer Gordon of Telz notes this implication of the *Chasam 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.[8]

1. Elazar Meir Preil also notes the implication of the *Chasam 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.[9]

Females

1. Preil raises the same objection from a woman's ineligibility to serve as a judge, combined with the ruling of the *Terumas Ha'Deshen* 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).[10] This argument for women's ineligibility to hold public office was also raised by R. Preil's contemporary, R. Aharon Levine (the Reisher Rav).[11]

[1] Sanders repeated the charge, but subsequently retracted it.

[2] *Shut. Terumas Ha'Deshen pesakim ve'kesavim* #214, cited in *Darkei Moshe choshen mishpat* beginning of *siman* 163, and codified in the *Hagahos Ha'Rema* at the end of *siman* 37.

[3] 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.

[4] R. Batzri rejects the view of *Shut. Yaskil Avdi chelek* 6 *chosen mishpat siman* 8 *os* 2 that takes for granted that the elected members of the Israeli Knesset "are not worse than the seven *tuvei ha'ir*". The *Yaskil Avdi* does not address the question of disqualification due to sinfulness.

[5] *Dinei Mamonos chelek* 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 *din de'malchusa dina* is also the position of *Shut. Yechaveh Da'as chelek* 5

siman 64 and *Shut. Be'er Sarim chelek* 6 *siman* 90 *os* 4, and cf. *Shut. Netzach Yisrael siman* 33 *os* 9.

[6] *Shut. Pe'as Sadecha siman* 91 *os* 1. See also R. Yehudah Silman's uncompromising views in *Darkei Ha'Choshen* pp. 394, 396.

[7] *Shut. Chasam Sofer choshen mishpat siman* 160, cited in *Pischei Teshuvah choshen mishpat siman* 8 *s.k.* 2.

[8] *Teshuvos R. Elie*zer *siman* 4.

[9] *Sefer Ha'Maor* 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, "*Chavas Da'as al Odos Bechiros al Yedei Nashim U'Bechirasam al Yedei Acheirim*", in *Ha'Kibutz Be'Halachah (Asufas Maamarim),* pp. 286-87; *Malki Ba'Kodesh chelek* 2 *teshuvah* 4; *Shut. Mishpetei Uziel chelek* 3 (*choshen mishpat*) *siman* 6; *Shut. Seridei Eish chelek* 2 *siman* 52 s.v. *ve'al devar zechus ha'bechirah le'nashim* and *chelek* 3 *siman* 105.

[10] *Sefer Ha'Maor ibid. s.v. u'venogea le'ha'she'eilah ha'sheniah*.

[11] *Shut. Avnei Cheifetz siman* 1 *os* 6 s.v. *u've'makom achier*.