

## Jewish Ethics and the Racially Diverse Workplace

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*Dedicated by Matthew Friedberg and Kim Smiley n memory of Avraham Mordechai ben Moshe z"l*



### Agenda

Professionalism Topics covered in this presentation:

- 6.1 Value of diversity and inclusion
- 6.2 Understanding power and privilege, unconscious bias or cultural homophily
- 6.3 Impact of daily verbal, behavioural and environmental indignities
- 6.6 How to prevent and address discrimination and harassment

### The Problem

1. Hal Johnson, *Yes, there is systemic racism in Canada*, MacLean's 6/24/20

<https://www.macleans.ca/opinion/by-the-time-i-started-pitching-bodybreak-id-already-experienced-incidents-of-racism-for-31-years/>

Yes, there is systemic racism in Canada. Too often, a white person will hire another white person who they can relate to; someone who reminds them of themselves or someone they know. I do think this will change because young white people are more integrated and more exposed to diversity than ever before. Instead of seeing a Black or Asian person across the table, they will see someone they may have grown up with.

I was fortunate to grow up in Toronto's North York, in a predominantly Jewish neighbourhood. When I eventually moved away, I would hear other friends of mine speak derogatory comments towards Jews. To me, they were not making a racial slur towards Jews. It was more personal than that—they were talking about my friends. When someone talks about your friends, you need to call them out.

2. Nat'l Post Editorial Board, *What is systemic racism? There is broad national confusion about the concept*, 6/27/20

<https://nationalpost.com/news/what-is-systemic-racism-there-is-broad-national-confusion-about-the-concept>

There is broad national confusion about this concept. The suggestion that Canadian society is racist can sound insulting, because if Canada is racist, then Canadians themselves must be racist and full of hate. This sense of insult is an obstacle to understanding what "systemic racism" means. A claim about society blurs into a claim about an individual. "Systemic racism" can come across as an accusation. One way out of this mess is to get over one's self.

The idea of systemic racism is not about individual attitudes. It is about how society works. Good people can participate in systemic racism. As an Ontario Superior Court judge put it this month, in sentencing a 25-year-old Black man on gun charges, the offender's life prospects were limited from birth by poverty and anti-Black racism in his Canadian society: "This was not simply the usual vicissitudes and general unfairness of life. It was systemic and structural."

3. Stratcom, *Challenges Facing Racialized Licensees: Final Report* (2013-2014)

- Racialized licensees were twice as likely as non-racialized to report having felt disadvantaged in law school
- Racialized licensees reported lower success rates across a range of key measures related to articling/training placement, finding a suitable first job, and finding employment in a suitable practice environment
- Racialized licensees were twice as likely as their non-racialized counterparts to report less rapid career advancement than their colleagues with similar qualifications (52% compared to 25%)
- More than four-fifths of racialized (83%) and three-fifths of non-racialized licensees (62%) agreed that racialized licensees face (much more/somewhat more) challenges to their entry into practice and advancement compared to their non-racialized colleagues.
- At least half of respondents in both groups agreed that the challenges faced by racialized licensees: impact the reputation of the legal system in Ontario (78% racialized, 62% non-racialized), affect access to justice for Ontarians (75% racialized, 54% non-racialized) and affect the quality of legal services for the public (69% racialized, 50% non-racialized).

4. LSO, 2018 Statistical Snapshot of Lawyers in Ontario

<https://lawsocietyontario.azureedge.net/media/lso/media/lawyers/practice-supports-resources/equity-supports-resources/snapshot-lawyerseng-pdf.pdf>

Table 1: Indigenous and Racialized Lawyers in Ontario in 2018, compared to the 2016 Ontario population

Group	Lawyers					Ontario Population		
						Everyone	Persons in the Labour Force, Ages 25-69	University Graduates in the Labour Force, Ages 25-69
	Number	Percent ignoring missing	Percent imputing missing	Percent Women	Percent Women Accounting for Age	Percent		
<b>Indigenous</b>								
First Nations	353	0.91	0.89	57.8	55.3	1.84	1.40	0.54
Inuk	6	0.02	0.02	66.7	73.8	0.03	0.02	0.01
Métis	188	0.48	0.47	55.9	51.7	0.94	0.89	0.49
Other and Multiple Indigenous						0.10	0.07	0.04
<b>Total Indigenous</b>	<b>547</b>	<b>1.40</b>	<b>1.38</b>	<b>57.2</b>	<b>54.3</b>	<b>2.91</b>	<b>2.38</b>	<b>1.08</b>
<b>Racialized</b>								
Arab	358	1.02	0.91	52.8	47.0	1.56	1.12	1.89
Black	1,242	3.54	3.16	59.7	55.6	4.20	4.00	2.91
Chinese	1,386	3.95	3.53	58.7	53.7	5.41	5.44	9.05
Filipino	137	0.39	0.35	55.5	51.4	2.24	2.75	3.43
Japanese	65	0.19	0.17	47.7	49.7	0.14	0.15	0.25
Korean	334	0.95	0.85	58.1	52.0	0.60	0.60	1.04
Latino	224	0.64	0.57	51.3	45.7	1.42	1.59	1.29
South Asian	2,615	7.45	6.65	50.9	45.6	8.50	8.35	13.21
Southeast Asian	137	0.39	0.35	62.8	56.9	0.90	0.89	0.66
West Asian	443	1.26	1.13	58.9	51.7	1.10	1.03	1.61
Other Visible Minority						0.71	0.70	0.45
More than one Racialized Group	319	0.91	0.81	59.6	53.9	0.74	0.54	0.66
Racialized and White	617	1.76	1.57	62.1	56.0	1.76	0.79	1.16
<b>Total Racialized</b>	<b>7,877</b>	<b>22.45</b>	<b>20.05</b>	<b>56.0</b>	<b>50.3</b>	<b>29.28</b>	<b>27.95</b>	<b>37.61</b>
<b>White</b>	<b>26,711</b>	<b>76.14</b>	<b>78.58</b>	<b>46.2</b>	<b>47.2</b>	<b>67.82</b>	<b>69.65</b>	<b>61.32</b>

5. *Lawyers of Colour and Racialized Immigrants with Foreign Legal Degrees: An Examination of the Institutionalized Processes of Social Nullification*, Int'l J of Criminology and Sociological Theory, Vol. 2, No. 1, June 2009, pg. 204

[https://www.yorku.ca/lfoster/2012-13/MPPAL%206130/lectures/Lawyers%20of%20Colour\\_Foster\\_09\\_UJST\\_.pdf](https://www.yorku.ca/lfoster/2012-13/MPPAL%206130/lectures/Lawyers%20of%20Colour_Foster_09_UJST_.pdf)

...[O]f the eight hundred Chinese speaking lawyers in Ontario, very few practice criminal, or family, or public interest, or human rights law. Where you are going to find them is in general practice or corporate commercial and real estate law. When I was on the Articling Subcommittee... an application came in from an Asian lawyer who previously practiced criminal law in an Asian Commonwealth country for several years. This lawyer made a formal request to the Law Society for abridged articles due to the years of experience. The discussion around the table was that there are plenty of criminal lawyers in Toronto. But I knew I could count on one hand the number of Chinese speaking lawyers in Toronto practicing criminal law, a city with a population of 350,000 Chinese. I knew the Chinese community's need for Chinese speaking criminal lawyers. What was missing from the discussion was the cultural and linguistic context of that request.

6. Ibid., pg. 205

Deepa Mattoo—who is now a lawyer with the South Asian Legal Clinic of Ontario (SALCO)— identifies some of the common experiences of racialized foreign lawyers and National Committee on Accreditation (NCA) students: When I

applied I was not aware that I needed documents from my law school in India. Given that there are no websites or e-mail addresses for many Indian institutions, I had to return to India to retrieve these documents before continuing the accreditation process. ... Despite the specific criteria, I found the discretion to be very broad and not transparent. In fact, it can be vague and uneven, and at times it seems arbitrary. I know one student who approached the NCA twice. The first time was told he had to write 8 exams. The next time he was told to write 14 exams, without any clear rationale for the discrepancy. This happens all the time. What is more frustrating is the NCA won't share information for writing their exams. I had a total lack of support during my studies for the licensing exam ... All in all, this was the most isolating experience that I have ever had.

7. Ibid., pg. 202

Xiaojun Ma, a sole practitioner in Toronto, spoke at the Asian Canadian Lawyers in Action Conference (2008), about how the barriers of culture in the licensure and registration process, actually became assets of her law practice: I had received my LL.B. and LL.M. from two leading institutions in China where she grew up, as well as an LL.M. from the University of Nebraska; and I became a member of the New York Bar before immigrating to Toronto in 1998...where I completed the requirements of the National Committee on Accreditation and was called to the Bar in Ontario in 2002. The most difficult part of the whole process was finding an articling position. I did not have access to any information about the articling process, and most articling positions were filled by the time I started my search. I had no information, no connections, and a language barrier ...

8. CBA, *Systemic Racism*, Transcript of Podcast

<https://www.cba.org/Publications-Resources/Podcasts/Transcripts/Systemic-Racism>

*Would you share with us for you what it has been like for you to practice as a black lawyer in Toronto?*

Arleen Huggins: ... I went to law school at the University of Toronto where I also did my undergrad. Another student asked me to talk to them about the special program for black students at the law school. And of course I was quite confused and asked what they meant. And you know, was told you know, the program – the quota program for black students here. Well of course there was no quota program for black students at UofT at law school. My response was, oh, is there a program. And they mumbled something in embarrassment recognizing the inappropriateness of the question...

But this kind of presumption of where our place is has continued throughout my career. I still get, after 30 years of practice, I still have people within the courtrooms, within the court houses, mistaking me for a court clerk. This is an area where lawyers are, that's where we are. That's our place. Yet it's not my place, apparently. And I'm seen as not belonging in this place.

9. LSO, *WORKING TOGETHER FOR CHANGE: STRATEGIES TO ADDRESS ISSUES OF SYSTEMIC RACISM IN THE LEGAL PROFESSIONS* (2016)

<http://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>

10. Implementation

- Overseeing compliance with EDI initiatives
- "Inclusion Index" based on responses from firms with 25+ licensees
- Tracking diversity

11. Jacques Gallant, *Lawyers Opposed to Diversity Initiative Dominate LSO Board Elections*, The Star May 1 '19

One of the Law Society of Ontario's key diversity initiatives could be in peril with the election of a slate of lawyers to its board of directors who are committed to scrapping it.

At issue is the legal regulator's "statement of principles" (SOP) — a requirement that every lawyer and paralegal adopt a statement (which they can write themselves) that acknowledges their "obligation to promote equality, diversity and inclusion."

The requirement was one of 13 recommendations made in 2016 by the law society's working group on challenges faced by racialized licensees, in a bid to tackle systemic racism in the legal profession. But it quickly drew the ire of some lawyers who argued the requirement for such a statement is compelled speech and unconstitutional. That criticism spilled over into this year's law society board of directors election, in which a slate known as StopSOP were victorious Wednesday, taking 22 of the 40 lawyer seats on the board. The slate campaigned on striking down the statement of principles.

"I believe the StopSOP slate was elected because so many lawyers object to being told what to think and what to say," Toronto lawyer and winning StopSOP candidate Chi-Kun Shi told the Star in an email.

"We do not believe that there should be an ideological litmus test for being allowed to practise law in this province. Independent lawyers are essential in a system based upon the rule of law, and when the regulator takes on the task of supervising the values that individual lawyers profess, that independence is in doubt."

12. Anita Balakrishnan, *StopSOP reveals why it rejected voluntary statement of principles*, Law Times News 6/28/19 <https://www.lawtimesnews.com/resources/professional-regulation/stopsop-reveals-why-it-rejected-voluntary-statement-of-principles/266924>

"The LSO's regulatory mandate does not include monitoring and shaping the political attitudes of its licensees. The SOP does exactly this, whether it is explicitly mandatory or formally 'encouraged,'" [Gary] Graham says in an email. "The rule of law requires that lawyers and paralegals be independent in thought and speech. The Groia proposal wants them to engage in groupthink and virtue signalling."

Toronto lawyer Joseph Groia was behind the amendment that sought to make the statement of principles voluntary. In it, the amendment said, the law society should "provide a section in the lawyer annual report and the paralegal annual report in which any licensee may choose to disclose that they have voluntarily adopted" a statement of principles. Groia's amendment also said that the law society should provide an "annual tally of the number of licensees who choose" to disclose that they made a statement of principles...

"Our position has always been that the SOP needed to be repealed, not modified and kept on life support. It was obvious yesterday that other members of Convocation were doing everything they could to avoid voting on our very simple and clean repeal," says Graham.

13. LSO, Self-Assessment Questions

<https://lso.ca/about-lso/initiatives/edi/measuring-progress/self-assessment-questions>

Your legal workplace formally considers opportunities to support equality, diversity, and inclusion when making decisions about (select all that apply):

- |   |                                    |  |  |
|---|------------------------------------|--|--|
| <input type="checkbox"/> Recruitment              | <input type="checkbox"/> Hiring    | <input type="checkbox"/> Advancement / promotion |  |
| <input type="checkbox"/> Training and development | <input type="checkbox"/> Mentoring | <input type="checkbox"/> Assignment of work      | <input type="checkbox"/> None of the above |

14. Joshua Sealy-Harrington, *Twelve Angry (White) Men: The Constitutionality of the Statement of Principles*, 2020 51-1 Ottawa Law Review 195, 2020 CanLII Docs 583, <<https://canlii.ca/t/srk2>>, retrieved on 2021-05-27

In sum, the SOP requirement mandated nothing more than "acknowledging" one's extant professional and human rights obligations. The following, then, would have met the requirement: "I acknowledge my existing professional and human rights obligations." That is what this controversy boils down to—the textual equivalent of checking a box next to an identical administrative phrase in an annual reporting form. However, one could go even further. While the SOP "need not include any statement of thought, belief or opinion," it certainly could—and that statement could have been as critical of the SOP, or equality rights generally, as the author desired.

Q1: Does Judaism speak to the issue of inclusion?

15. LSO, Inclusion Survey

<https://lso.ca/about-lso/initiatives/edi/measuring-progress/inclusion-survey>

I am included in informal social gatherings (eg. coffee, lunch etc.) at my legal workplace.

- |                                 |  |   |  |
|---------------------------------|--|---|--|
| <input type="checkbox"/> Always | <input type="checkbox"/> Often         | <input type="checkbox"/> Sometimes      | <input type="checkbox"/> Rarely                  |
| <input type="checkbox"/> Never  | <input type="checkbox"/> I do not know | <input type="checkbox"/> Not applicable | <input type="checkbox"/> I do not wish to answer |

16. Genesis 2:16-18

וַיִּצְוֵה ד' אֱלֹקִים עַל הָאָדָם לֵאמֹר מִכָּל עֵץ הַגָּן אָכַל תֹּאכַל: וּמֵעֵץ הַדַּעַת טוֹב וְרָע לֹא תֹאכַל מִמֶּנּוּ כִּי בְיוֹם אָכַלְהָ מָּוֹת תָּמוּת: וַיֹּאמֶר ד' אֱלֹקִים לֹא טוֹב הָיִית הָאָדָם לְבַדּוֹ אֶעֱשֶׂה לוֹ עֶזְרָ כְּנֶגְדּוֹ:

And Gd instructed the man, saying: From every tree of the garden you shall eat. And from the tree of knowledge of good and evil you shall not eat, for on the day you eat of it you shall die. And Gd said: It is not good for the man to be alone; I shall make him a help opposite him.

17. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Mishneh Torah, Laws of Yom Tov 6:18

וכשהוא אוכל ושותה חייב להאכיל "לגר ליתום ולאלמנה" עם שאר העניים האמללים, אבל מי שנועל דלתות חצרו ואוכל ושותה הוא ובניו ואשתו ואינו מאכיל ומשקה לעניים ולמרי נפש אין זו שמחת מצוה אלא שמחת כריסו....

When eating and drinking one must also feed "the stranger, the orphan and the widow," with all other paupers and needy people. For one who closes his yard's gates and eats and drinks with his children and wife and does not feed the needy and people of bitter spirit, this is not joy of a mitzvah; it is joy of his belly....

18. Leviticus 19:14

לֹא תִקְלַל חֵרֶשׁ וּלְפָנַי עוֹר לֹא תִתֵּן מַכְשֵׁל וִירֵאת מֵאִלְקוּד אֲנִי ד'

Do not curse the deaf, and do not put a stumbling block before the blind; you shall have awe of Gd, I am Gd.

19. Exodus 22:20

וְגַר לֹא-תוֹנֶה וְלֹא תִלְחָצֶנּוּ כִּי-גֵרִים הָיִיתֶם בְּאֶרֶץ מִצְרַיִם:

You shall neither abuse a stranger nor oppress him, for you were strangers in the land of Egypt.

20. Rabbi Moshe Feinstein (20<sup>th</sup> century USA), Igrot Moshe Yoreh Deah 4:29

ולענין כשבאים בביהכ"ג, ודאי צריכים הציבור לקבלם בסבר פנים יפות, אף את מי שאין להם דעת ללמוד עמהם. וגם לראות שיענו אמן וקדושה לומר עמהם בין בשביל עצמן - שיקיימו מה שאפשר, וגם ההליכה לביהכ"ג בעצמה הוא מצווה וישקו את ספר התורה - ובין בשביל כבוד האבות.

When they come to the synagogue, the congregation must greet them pleasantly, even when they cannot learn with the community. They must see to it that such children answer "Amen" and Kedushah, saying it with them so that they will do what they can, and so as to honor their parents. This has value for the children themselves as they fulfill whatever they can, as even walking to synagogue is a mitzvah, and they can kiss the Torah scroll.

21. Midrash, Shemot Rabbah 40:4

א"ר חנינא בן פזי אין לך גדול משבט יהודה ואין לך ירוד משבט דן שהיה מן הלחינות... אמר הקב"ה יבא ויזדווג לו שלא יהו מבזין אותו ושלא יהא אדם רוחו גסה עליו לפי שהגדול והקטן שוין לפני המקום... המשכן בשני שבטים אלו נעשה, וכן המקדש, שלמה מיהודה וחירם (מלכים א ז) בן אשה אלמנה ממטה נפתלי....

Rabbi Chanina ben Pazi said: There is none greater than the tribe of Yehudah and none lowlier than the tribe of Dan, which came from the maids... Gd said: Let him be matched with Betzalel, so that they will not mock him, and so that no one will be arrogant, for the great and small are equal before Gd... The Mishkan was made by these two tribes. And so, too, the Beit haMikdash, Shlomo was from Yehudah and Hiram was "the son of a widow from Naftali"...

22. Talmud, Succah 27b

אין לך כל שבט ושבט מישראל שלא העמיד ממנו שופט... אין לך כל שבט ושבט מישראל שלא יצאו ממנו נביאים

There was not a single tribe which did not produce a Judge... There was not a single tribe from which a prophet did not emerge.

Q2: Does Judaism speak to issues of racial diversity?

23. Rabbi Ahron Soloveichik (20<sup>th</sup> c. USA), *Civil Rights and the Dignity of Man*, Logic of the Heart, Logic of the Mind  
The Torah says in Genesis, "In the image of Gd He created Man" (1:27). This metaphysical idea leads to the *halachic* principle of *k'vod habriyos*, the dignity of Man....

The concept of "dignity of Man" is not only a metaphysical concept but it also has a legal counterpart, whose scope is broad enough to include all human beings since all were created in the image of Gd. This idea is contained in the saying of ben Azai, "Despise not any man" (*Avos* 4:3). The expression "any man" implies, as the commentaries say, that even pagans must be treated with respect, and it is a sin to despise them....



#### 24. Mishnah, Sanhedrin 4:5

לפיכך נברא אדם יחידי... ומפני שלום הבריות שלא יאמר אדם לחבירו אבא גדול מאביך ושלא יהו מינין אומרים הרבה רשויות בשמים ולהגיד גדולתו של הקב"ה שאדם טובע כמה מטבעות בחותם אחד וכולן דומין זה לזה ומלך מלכי המלכים הקב"ה טבע כל אדם בחותמו של אדם הראשון ואין אחד מהן דומה לחבירו...

This is why Man was created as an individual... And for the sake of peace among people, lest one say to another, "My ancestor was greater than your ancestor." And lest races say there are multiple gods. And to proclaim the greatness of Gd, for a person mints many coins with one seal and they all resemble each other, and the blessed, holy King of Kings of Kings minted each person with the seal of Adam the First, and not one resembles the other...

#### 25. Rabbi Moshe Feinstein, Published Letter

ומאד נצטערתי על מה ששמעתי שיש כאלו בא"י שמונעים מלקרובם בעניני רוחניות, וגורמים ח"ו שיהיו אבודים מדת יהודי. ונראה לי שכך נוהגים רק משום שצבע עורם הוא שחור. דפשוט שיש לקרובם, לא רק מצד שאינם גרועים משאר יהודים, ואין לדינא חילוק במה שהם שחורים...  
And I was very pained to hear that there are such people in Israel who refrain from drawing near [the Ethiopians] in spiritual matters, causing them – Gd forbid – to be lost from Judaism. It appears to me that they do this only because their skin is black. It is obvious that one must draw them close, not only because they are no worse than other Jews and there is no legal distinction due to their blackness...

#### 26. Rabbi J. David Bleich, *Black Jews: A Halakhic Perspective*, Tradition 15 (1972)

Judaism is color blind; skin pigmentation is unknown as a halakhic concept. The problem of determining the status of the various communities of Black Jews is totally unrelated to color. The sole issue is that of Jewish identity.

#### 27. Rabbi Dr. Norman Lamm, *Neither Thy Honey Nor Thy Sting*, 1969 sermon

<https://drive.google.com/file/d/1gDvsxQAPLNHm54RtbgVTXJtOm0l9IYyx/view>

I deeply regret that in the past those who were immersed in Judaism have largely failed to reach outward to other peoples, and those Jews who have reached outwards have usually had no real link with Judaism. As a result, for many people Civil Rights became a religion in itself. The help to the Black community became a substitute for Judaism, when it should have been an expression and function of Judaism.

#### 28. Isaiah 19:24-25

ביום ההוא יהיה ישראל שלישיה למצרים ולאשור ברכה ברכה בקרב הארץ: אשר ברכו ד' צבקות לאמר ברוך עמי מצרים ומעשה ידי אשור ונחלתי ישראל:  
?ישראל:

On that day Israel will be a triad with Egypt and Assyria, blessing in the midst of the land, as Gd has blessed it, saying, "Blessed is My nation Egypt, the work of My hand Assyria, My portion Israel."

#### 29. Mishnah, Rosh Hashanah 1:2

בראש השנה כל באי העולם עוברין לפניו כבני מרון...

On Rosh Hashanah, all who have entered the world pass before Him, like *bnei maron*...

#### 30. R' Dr. Shlomo Carmy, *Is Contemporary Orthodox Judaism Racist? Some Informal Remarks*, Tradition 50:4 (2018)

In my youth, families worried about evacuating their aging relatives before it was too late. I have written in these pages of my childhood at 715 Saint Marks Avenue in Brooklyn. Only a few years later, by the '60s and early '70s, one visited the family still there with trepidation—more than once a bottle whizzed past the visitor's ear and shattered on the pavement, accompanied by the hurler's hearty advice that Jews get off his turf. One of my aunts was forced to flee three times in twenty years. My mother bore the marks of several beatings. Can you imagine such experiences not engendering resentment and bitterness among the victims and those who absorbed indirectly what they suffered? Such memories, of course, do not justify racism. There was no black conspiracy to expel the Jews. If the eventual outcome was a kind of "ethnic cleansing" of the Jewish population, no small blame rests with real estate companies knowing that the Jews, especially the traditional Jews, could not fight "blockbusting," unlike other whites who would forcefully resist integration... Surely the evolving political consciousness of traditional Jews reflects an awareness of these factors. All the same, the language of broken bones, though eloquent, is not nuanced.

31. Racism and Rosh Hashanah <https://www.yutorah.org/lectures/lecture.cfm/969782/>

32. Rabbi Ahron Soloveichik (20<sup>th</sup> c. USA), *Civil Rights and the Dignity of Man*, Logic of the Heart, Logic of the Mind  
From the standpoint of the Torah, there can be no distinction between one human being and another on the basis of race or color. Any discrimination shown to a human being on account of the color of his or her skin constitutes loathsome barbarity.

33. Rabbi Yaakov Kamenetsky (20<sup>th</sup> century Canada, USA), *Emet l'Yaakov to Genesis 9:25*

זה ברור שדעת התורה היא כנגד גזענות וכבר הוכחתי זה בחידושי לעיל וכו' מלשון המשנה בסנהדרין דף ל"ז ע"א מפני מה נברא האדם יחידי שלא יאמר אדם לחבירו אבא גדול מאביך הרי שבדוקא שינה הקב"ה במין האדם משאר המינים וברא רק אדם יחידי כדי שלא יבואו בני האדם לידי מדה מגונה זו...

[I]t is clear that the Torah's view is against racism, as I have already proved earlier from the language of Sanhedrin 37a, "Why was humanity created as an individual? Lest one say to another, 'My ancestor was greater than your ancestor.'" We see that Gd specifically altered the human species from other species, creating only a single male, so that people would not come to this ugly trait!...

34. Rabbi Chaim ibn Attar (18<sup>th</sup> century North Africa, Italy, Israel), *Or haChaim to Exodus 19:21*

ונראה כי טעם הדבר הוא להראות ד' את בני ישראל הדור ההוא וכל דור ודור כי יש באומות גדולים בהבנה ובהשכלה, וצא ולמד מהשכלת יתרו בעצתו... כי לא באה הבחירה בישראל לצד שיש בהם השכלה והכרה יותר מכל האומות... אלא לחסד עליון ולהאבת האבות.

It appears that Gd did this [presenting the judicial hierarchy of courts as the idea of Yitro] to show the Children of Israel in that generation and every generation that the nations include giants of understanding and insight. Learn from Yitro's insightful counsel... For Israel was not selected due to greater insight and sense than other nations... but due to Divine kindness and love for their ancestors.

35. Talmud, Berachot 58a

תנו רבנן: הרואה אוכלוסי ישראל אומר ברוך חכם הרזים שאין דעתם דומה זה לזה ואין פרצופיהן דומים זה לזה.

Our sages taught: One who sees Jewish crowds says, "Blessed is the Wise One of secrets," for their intellects do not resemble each other and their forms do not resemble each other.

Q3: Does Judaism speak to issues of systemic racism and implicit bias?

36. Leviticus 24:10-11

וַיֵּצֵא בֶן אִשְׁתּוֹ יִשְׂרָאֵלִית וְהוּא בֶן אִישׁ מִצְרַיִם בְּתוֹךְ בְּנֵי יִשְׂרָאֵל וַיִּנָּצוּ בְּמַחֲנֶה בֶן הַיִּשְׂרָאֵלִית וְאִישׁ הַיִּשְׂרָאֵלִי:

And the son of an Israelite woman, the son of an Egyptian man, went out among the Children of Israel. And they fought in the camp – the son of the Israelite woman, and the Israelite man.

37. Midrash, Sifra Emor 14:18

מנין יצא? מבית דינו של משה שבא ליטע אהלו בתוך מחנה דן, אמרו לו מה טיבך ליטע בתוך מחנה דן, אמר להן "מבנות דן אני." אמרו לו הכתוב אומר "איש על דגלו באותות לבית אבותם יחנו בני ישראל." נכנס לבית דינו של משה ויצא מחוייב ועמד וגידף.

From where did he depart? From Moshe's court, for he came to plant his tent in the camp of Dan. They said to him, "Who are you to plant in the camp of Dan?" He replied, "I am from the daughters of Dan." They said to him, "The text says, 'Each with his flag by the signs according to their father's house, the Children of Israel shall camp.'" He entered Moshe's court and departed having lost, and he stood and blasphemed.

38. Talmud, Sanhedrin 99b

"אחות לוטן תמנע" מאי היא? תמנע בת מלכים הוא, דכתיב "אלוף לוטן אלוף תמנע" וכל אלוף מלכותא בלא תאגא היא. בעיא לאיגורי, באתה אצל אברהם יצחק ויעקב ולא קבלוה, הלכה והיתה פילגש לאליפז בן עשו. אמרה, "מוטב תהא שפחה לאומה זו ולא תהא גבירה לאומה אחרת." נפק מינה עמלק דצערינהו לישראל. מאי טעמא? דלא איבעי להו לרחקה.

"The sister of Lotan was Timna." Who was she? Timna was a daughter of kings, as it says, "Aluf Lotan, Aluf Timna," and each *aluf* is an uncrowned empire. She wanted to convert, and came to Avraham, Yitzchak and Yaakov, but they did not accept her. She became a concubine for Eliphaz ben Esav, saying, "Better a maid for this nation, and not a matron for another nation." Amalek, who pained Israel, emerged from her, because they should not have distanced her.

39. Talmud, Pesachim 53b

כל המטיל מלאי לכיס תלמידי חכמים זוכה ויושב בישיבה של מעלה שנאמר...

Anyone who provides merchandise for a Torah scholar will merit to sit in the Heavenly Academy, as it says...

40. Rabbi Aharon Lichtenstein, *The Embedded Message*

<https://www.etzion.org.il/en/tanakh/torah/sefer-bamidbar/parashat-naso/embedded-message>

While Judaism sees the family and the nation as central to Jewish identity and consciousness, it is well aware of the danger to which these loyalties can lead when taken to an extreme. It is for this reason that we are commanded with regard to *gezel ha-ger* in the middle of Parashat Naso. It is precisely the *ger*, the foreigner, lacking the sense of familial, tribal and national roots, who is most vulnerable to the atmosphere pervading the beginning of Sefer Bemidbar. Therefore, the Torah commands us here to deal with the *ger* exactly as we would with our fellow Israelites.

Q4: Does Judaism believe in regulating professional activities for ethical conduct?

41. Leviticus 24:22

משפט אחד יהיה לכם כגר כאזרח יהיה כי אני ד' אלקיכם:

You shall have one justice for yourself, like stranger like citizen, for I am HaShem your Gd.

42. Rabbi Moses Maimonides (Rambam, 12<sup>th</sup> century Egypt), *Mishneh Torah*, Hilchot Sanhedrin 2:7

ובכלל "אנשי חיל" שיהיה להן לב אמיץ להציל עשוק מיד עושקו, כענין שנאמר "ויקם משה ויושיען."

Including in "men of *chayil*" is that they must have a brave heart, to save the abused from one who would abuse him, as it says, "And Moshe arose and saved them."

43. Talmud, Gittin 37b

כי אתו לקמיה דרב, אמר ליה "מידי פרוסבול היה לך ואבד?" כגון זה 'פתח פיך לאלם הוא.'

When they came to Rav, he would ask, "Perhaps you had a *prozbul* and it was lost?" This is an example of "Open your mouth for the mute."

44. Rabbi Shimon Greenfield (19<sup>th</sup>-20<sup>th</sup> century Hungary), *Shu"t Maharshag* 2:125

הן אמת דלהשוכרים הוא טובה ותיקון, אבל לבעל הבית המשכיר הוא קלקול וחסרון, שאדם אחר משתמש בשלו בעל כרחך, ומאי חזית דאזלת בתר השוכרים לקרותו תיקון? זיל בתר המשכירים דהבית והחנות הוא שלהם והוי קלקול!

True, this is good and beneficial for the renters, but for the landlord who rents it out this is harm and loss, for someone else uses his property against his will. Why follow the renters to call it 'benefit'? Follow the landlords, for the house or store is theirs, and this is harm!

45. Rabbi Yehoshua Rokeiach (19<sup>th</sup> century Poland), *Ohel Yehoshua* 11

כל מה שעושים ומתקנים לטובת המדינה הוה כקיבלו עליהם כל החוקים יען שכל אנשי המדינה בוחרים צירים לבית הנבחרים ושולחים אותם לתקן להם תקנות טובות ומועילות אשר על כן בדברים שבממון אף שהוא היפך מד"ת יש להם הכח והעוז לתקן תיקון המדינה, וכל מה שעשו הנבחרים נחשב כמו שעשו הקהל בעצמם תקנה דשלוהו של אדם כמותו

[A]ll that they do and enact for the good of the population is as though the population had accepted all of these laws, because the entire population chooses emissaries to the parliament and sends them in order to issue good and effective enactments. Therefore, in financial matters, even against the Torah, they have authority and strength to enact for the population, and all that the elected officials do is considered as though the population themselves had enacted it; one's agent is like himself.

46. Rabbi Michael Broyde (20<sup>th</sup>-21<sup>st</sup> century USA), *The Pursuit of Justice in Jewish Law*, pg. 29, fn. 29

The obligation to obey the secular law because it is the law of the land is inapplicable to disciplinary rules, since they do not have the status of "law" in America.



### Q5: Does Judaism believe in the value of symbolic affirmations?

47. Rabbi Yechiel Michel Epstein (19<sup>th</sup>-20<sup>th</sup> century Lithuania), Aruch haShulchan, Orach Chaim 60:4

ודע דזכירות אלו יש שאומרים אותם אחר התפלה, ונדפסו בסידורים ששה זכירות: זכירת יציאת מצרים, זכירת מתן תורה, זכירת עמלק, זכירה דהקצפה, זכירת מרים, וזכירת שבת. ואינו אלא הידור בעלמא, דלא מצינו בגמרא ובפוסקים חיוב זכירות אלו, רק זכירת יציאת מצרים הוא חיוב בכל יום ערב ובוקר מדאורייתא, וזכירת עמלק הוא חיוב מדאורייתא לקרא פעם אחת בשנה... וזכירת שבת היא חיוב בכל שבת...

Know that these commemorations, some say them after prayer, and they are printed in *siddurim* as six commemorations: Remembering the exodus from Egypt, remembering the presentation of the Torah, remembering Amalek, remembering angering [Gd], remembering Miriam, and remembering Shabbat. This [recitation] is only a beautification, for we do not find a duty for these commemorations in the Talmud or halachic authorities. Only remembering the exodus from Egypt is a daily biblical duty, evening and morning, and remembering Amalek is a biblical duty to read it once per year... And remembering Shabbat is a duty every Shabbat...

### An Observation

48. Talmud, Bava Batra 89a

"יהיה לך" - מלמד שמעמידין אגרדמין למדות, ואין מעמידין אגרדמין לשערים. דבי נשיאה אוקימו אגרדמין בין למדות בין לשערים... כי הא דאמר רמי בר חמא א"ר יצחק: מעמידין אגרדמין בין למדות בין לשערים, מפני הרמאין.

"[Honest weights and measures] shall be for you" – This teaches that they appoint officers for measures, although not for prices. The house of the Prince appointed officers for both measures and prices... as Rami bar Chama cited Rabbi Yitzchak: We appoint officers for both measures and prices, due to cunning people.

49. Rabbi Moses Maimonides (12<sup>th</sup> century Egypt), Laws of Holidays 6:21

חייבין בית דין להעמיד שוטרים ברגלים שיהיו מסבבין ומחפשיין בגנות ובפרדסים ועל הנהרות כדי שלא יתקבצו לאכול ולשתות שם אנשים ונשים ויבואו לידי עבירה...

The courts must establish *shotrim* on festivals, to patrol and search in gardens and orchards and along rivers, lest men and women gather there to eat and drink and come to sin...

### Review Questions

- 1) How is Systemic Racism different from Personal Racism?
- 2) How can Systemic Racism within the legal profession affect Access to Justice?
- 3) What are three initiatives taken on by the Law Society to promote EDI?
- 4) What are three objections that have been put forth regarding Law Society EDI initiatives?
- 5) What are three examples of the importance of Inclusion in Jewish law?
- 6) Where is Inclusion in Jewish leadership emphasized in the Torah?
- 7) What is the biblical basis for the dignity of every human being?
- 8) What are two practical applications of Judaism's belief in the spiritual equality of every human being?
- 9) What are two reasons why Judaism values ethnic diversity?
- 10) What are three potential systemic biases in Judaism?
- 11) Does Judaism recognize professional regulation as binding as *dina d'malchuta*?
- 12) Where do we see symbolic affirmations in Judaism?