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When government is unjust

What do we do when our government is unjust?

The time: Somewhat more than 1,800 years ago. The place: a vineyard in the city of Yavneh, the center of rabbinic Judaism in Israel under the rule of the Roman Empire. The topic of discussion: the Roman government. The scene:

> Rabbi Yehudah, Rabbi Yosi [ha-Galili], and Rabbi Shimon [bar Yohai] were sitting together, and Yehudah ben Gerim was sitting beside them.
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> Rabbi Yehudah began and said: How pleasant are the acts of this [Roman] nation! They established markets! They established bathhouses! They established bridges!
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> Rabbi Yosi was silent.
>
> Rabbi Shimon [bar Yohai] answered and said: Everything they established, they established only for their own benefit. They established markets—to place prostitutes in them; bath houses—to pamper themselves; and bridges—to impose tolls [on us].
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> Yehudah ben Gerim went and retold their words, and it became known to the [Roman] government. They said: Yehudah, who extolled—let him be extolled. Yosi, who was silent—let him be exiled to Sepphoris. Shimon, who disparaged—let him be put to death.[1]

What do we do when our government is unjust? How should we respond when the government that is charged with protecting us, establishing justice, and promoting the general welfare instead uses its powers to harm us, to perpetuate injustice, and to promote the welfare of some over others? For the Jewish people, this is not a theoretical question. We have lived out most our history under the rule of governments that have acted unjustly toward us and toward others, from Egypt to Babylon, and from Rome to Europe. So we have a lot of experience and wisdom that has been preserved in Jewish texts about how to deal with unjust governments, when to go along with them, when to stay silent, and when to oppose them, and what issues are worth taking risks for. And today, right here and right now, almost everywhere we turn, we can see our government acting in ways we, as a Jewish community, shouldn't hesitate to say are unjust: tearing apart parents and children at our borders; jailing those seeking refuge; imposing mass incarceration on large numbers of black and brown people; giving billions of dollars to the rich by taking from the poor; cutting programs that feed the hungry and house the homeless; stripping citizenship and voting rights from people of color;

[1] Babylonian Talmud Shabbat 33b.

the list goes on and on, with violation upon violation of our Jewish values and traditions of justice. How should we respond, as members of a Jewish community? What should we do?

I know that in contemporary America there are plenty of people eagerly offering their own answers, but here we are in a synagogue, not a cable news show, and I'm a rabbi, not a politician. So what I want to offer you today is some insight wrung from the long Jewish history of dealing with unjust governments, insight preserved in the texts of the Talmud in ancient times. Despite their distance from us, I think the ancients can help us navigate the difficult moral situation in which we find ourselves. I'm going to focus on two, apparently competing, ancient Jewish principles: *dina d'malchuta dina*—"the law of the government is the law"—and *tzedek, tzedek tirdof*—"justice, justice shall you pursue." Both are important, widely quoted principles of Jewish life and law, but as we'll see, when we look at them more closely, they are not exactly what they seem, and the subtleties of their interpretation are important guides through the moral hazards of our time.

Dina d'Malchuta Dina

In Pirkei Avot, Rabbi Hanina, the Deputy High Priest, teaches: "Pray for the welfare of the government, for were it not for fear of it, people would swallow each other alive."[2] Clearly, government is an important institution in regulating the social life of human beings, and a form of government is one of the first things established by Moses after the Israelites leave Egypt and arrive at Mt. Sinai. The Israelites have already had an abject lesson in what it means to live under an unjust government in Egypt, where Pharaoh's succession of "executive orders" heaped ever more unjust hardship and suffering on the people without any logic or rationale behind them, and the people had no recourse, no way to appeal or resist. But even when the Israelites leave Egypt and can finally govern themselves, even when they have a leader chosen by none other than God, they find right away that the governing regime is still far from perfect. Almost from the beginning, we see that there are blind spots and mistakes in the system set up to govern the Israelites. Some of these—like the story of the daughters of Tzelophehad who demand consideration of female inheritance rights[3]—get resolved within the narrative of the Torah, while others—like the moment before the giving of the Torah when Moses seems to address only men rather than all the people as God directs[4]—are still…in process. The important thing is that even at the very beginning, we see that government is both a very necessary and a very flawed instrument for creating a just society. Even under Jewish self-rule, there is sometimes divergence between what the government allows and what justice demands.

[2] Pirkei Avot 3:2.
[3] See Numbers 27:1-11.
[4] See Exodus 19:15.

When the Jewish people, after a relatively short period of independence, come once again to live under the rule of first the Babylonians and then the Romans, the rabbis recognize immediately that given the very different values underlying them, the Jewish way of life and the Roman government will inevitably clash. What are the Jewish people to do? When these conflicts occur, should they stick to Jewish law and defy the Roman government, opposing the very system of government under which they live? Or should they instead acquiesce and follow Roman law even when it conflicts with Jewish law, putting the very purpose of the Jewish people—our role as a moral force in the universe, a "light unto the nations"—at risk?

The ancient rabbis, as they so often do, come up with a compromise, a principle that is invoked four times in the Talmud: *dina d'malchuta dina*—"the law of the government is the law." Of course, stated like that, it doesn't sound like much of a compromise; it sounds like complete capitulation! So it's important to look at the contexts in which this principle comes into play. Two of the cases are rather similar. In the first, the context is a discussion of the validity of documents witnessed by non-Jews in non-Jewish courts.[5] The rabbis are concerned that such documents might not be valid, since they do not conform to Jewish law concerning witnesses, but the Talmud invokes *dina d'malchuta dina* to rule that such documents should in fact be accepted as valid.[6] In the second case, the context is a discussion of the acquisition of property.[7] The rabbis give as an example a government under which the transfer of property is accomplished through payment alone, in contrast to Jewish law, where the buyer must take possession of the property—through working the land, for example—to complete the transfer. Should Jews accept this different method of property transfer as valid? Again, *dina d'malchuta dina* – Jews should accept the transfer as valid even though it goes against Jewish law. So both of these cases conclude that by the principle of *dina d'malchuta dina*, Jews should trust the administrative apparatus of the government and accept the validity of documents it produces even though it uses different standards and procedures than those required by Jewish law.

The next two cases are very different. In one, the context is a discussion of tax collectors and whether it is permissible to lie in order to avoid paying what the tax collector demands.[8] How could this be allowed, ask the rabbis? Don't we know that *dina d'malchuta*

[5] Babylonian Talmud Gittin 10b. Tractate Gittin ("Bills of Divorce") is primarily concerned with the proper creation, witnessing, and delivery of documents concerning divorce, but it also delves into issues of witnesses in general and what constitutes a valid legal document.
[6] There is still a dispute with regard to divorce documents, which may still require Jewish witnesses.
[7] Babylonian Talmud Bava Batra 54b-55a. Tractate Bava Batra ("The Last Gate") is primarily concerned with property ownership and the rights and responsibilities associated with it. Along with Tractate Bava Kamma ("The First Gate") and Tractate Bava Metzia ("The Middle Gate"), it originally made up a single, large work called Tractate Nezikin ("Damages").
[8] Babylonian Talmud Nedarim 28a. Tractate Nedarim ("Vows") concentrates on the making of vows and how they can be used, a fraught subject because the Torah warns that God takes

dina? The rabbis respond by saying that the case we're talking about is one where the tax collector is corrupt and collecting taxes unfairly. In that case, it is permitted to bend the truth or lie by omission in order to avoid submitting to the unjust treatment, even by an officer of the government. The other case is even more pointed.[9] The context here is an early rabbinic prohibition against making change from the trunk of customs collectors, because—and this really tells you something about the attitudes of the ancient rabbis—we can assume that customs collectors have stolen at least some of the funds found in their trunks. But, object other rabbis, how can we just assume that these officers of the government are corrupt? Haven't we been taught that *dina d'malchuta dina*? Since the government mandated the collection of customs, and the customs collector has collected them, aren't the funds collected lawful and able to be used as any other funds can be used? The Talmud concludes that while we might not be able to *assume* that the customs collectors are corrupt, we must always keep that possibility in mind! Only in a case where government officials are acting properly are we required to respect non-Jewish law under the principle of *dina d'malchuta dina.*

In case this deep dive into Talmudic reasoning has confused you—and there's a reason that "Talmudic" is often used as a synonym for "overly detailed" or "hairsplitting"—let me summarize. In the first two cases, we see the principle of *dina d'malchuta dina* being used to resolve a difficulty, to allow Jews to follow non-Jewish law in certain limited circumstances. And in the second two cases, we see this principle being used to pose a difficulty when Jews are refusing to follow non-Jewish law, only to find the Talmud resolving the difficulty in favor of Jews not following those laws! So while the government can be trusted with regard to legal documents and transfers of property, there are some pretty strict limitations to the idea that Jews should follow non-Jewish law when it conflicts with Jewish law. When injustices are being committed by government officials, we are no longer obligated to conform to the government's law and, indeed, are allowed to subvert it in the name of not giving in to injustice. So, despite the apparent conservatism of the principle of *dina d'malchuta dina*, it actually requires us to perform a careful moral analysis of the functioning of the government. When the government is functioning ethically, it is acceptable to cooperate with it even if it does not exactly accord with Jewish law. But when the government is being unethical, when it is committing or allowing injustice, then we are allowed—and maybe even required—to refuse to cooperate with it.

Let's hold on to this complex understanding of *dina d'malchuta dina* as we turn to a much more well-known principle, one that is introduced in the Torah itself.

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vows very seriously and will hold people to account for the obligations they place upon themselves with words.

[9] Babylonian Talmud Bava Kamma 113a. Tractate Bava Kamma ("The First Gate") is largely concerned with damage to property and compensation for that damage (i.e., torts), but, like many Talmudic tractates, it ranges widely over other related (and some unrelated) topics.

Tzedek, Tzedek Tirdof

For a people who understand so well the importance of good governance, there is surprisingly little instruction in the Torah about how that is to be achieved. One of the few places is in these famous verses from *parashat Shoftim*:

> You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with righteous judgement. You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the pleas of the righteous. *Tzedek, tzedek tirdof* – Justice, justice shall you pursue.[10]

This passage has inspired generations of readers of the Torah because in establishing a system of government, it firmly places the principle of justice above all other considerations, something that has appealed powerfully to Jews, who were so often at the mercy of governments easily swayed by prejudice, power, and money. Even the acknowledgment that the judgements of a government official are not identical with justice—that officials need not simply produce outcomes but instead are required to produce "righteous judgement"—is revolutionary. The idea that justice is a principle of governance that supersedes everything else shines brightly against the darkness of the injustices against which the Jewish people labored for so long in medieval times, in modern Europe, and in this country, where Jews worked alongside other oppressed minority groups for decades in pursuit of a simple goal—the equal application of justice—which, sadly, still remains out of reach for so many.

However, this inspiring language about justice is matched in intensity by the complicated interpretations that the Talmudic commentators bring to this verse, with its doubling of the word *tzedek*—"justice." Why, ask the rabbis, does the Torah, usually so economical with its words, repeat a word here? If the Torah just wanted to give us the idea that we should pursue justice, two words would have sufficed: *tzedek tirdof*—"Pursue justice!" By the repetition of the word for justice, the rabbis of the Talmud argue, the Torah is giving us some extra guidance to follow in our pursuit of justice. One of these pieces of guidance is about compromise. Rabbi Ashi argues that the two instances of the word "justice" are actually referring to two different forms of justice that are possible:

> As it is taught: "Justice, justice shall you pursue." One [mention of "justice" is stated] with regard to strict judgement and one [is stated] with regard to compromise. How so? [If there are] two boats traveling on the river and they encounter each other, if both of them [try] to pass, both of them sink [because the river is not wide enough for both to pass]. [But if they pass] one after the other, both of them pass.[11]

[10] Deuteronomy 16:18-20.
[11] Babylonian Talmud Sanhedrin 32b

Because both boats may be travelling with equal urgency, compromise may be required in order to decide which goes first; otherwise, both will sink.[12] So under this interpretation, the Torah here is opening up compromise as a legitimate avenue through which justice can—and sometimes must—prevail. In fact, Rabbi Yehoshua ben Karha argues that compromise is actually preferable to judgement, since strict judgement produces winners and losers, but only compromise truly creates peace between people who were previously in conflict.[13]

Another piece of guidance about how we pursue justice has to do with the means that we employ. Near the end of the Talmudic discussion, the Sages argue that *tzedek tzedek tirdof* is addressed not to those in charge of administering justice but to those who might potentially be seeking justice, i.e., to the whole people. In this view, justice is a project that involves every person in a society. And what is the obligation that falls on each of us? "Our sages taught: 'Justice, justice shall you pursue'—seek out an exemplary court."[14] In other words, the rabbis teach, do not pursue justice by finding a court that is biased in your favor or by in some other way gaming the system. Your pursuit of justice must itself be just and pursued through just means. The rabbis are saying: Pursue justice justly; otherwise, the entire concept of justice is put at risk. The integrity of the idea of justice depends on each of us holding fast to it as an ideal, not justifying unjust tactics by saying that we know we are in the right. The most important test of our pursuit of justice should not be whether we prevail but instead whether the idea of justice itself is upheld, and that responsibility falls on all of us.

So here is the advice we have received so far from our study of what the ancient rabbis have to teach us about how we should deal with an unjust government. 1. Don't oppose everything. Even when the government is unjust, there are aspects of its functioning that may be operating properly, and we shouldn't automatically refuse to cooperate with those, even if they do not exactly conform to the strictures of Jewish law. But… 2. Don't cooperate with what is immoral. We need to perform a careful moral analysis of what the government is doing, and when we determine that the government is acting unjustly, we are allowed—and perhaps obligated—to refuse to cooperate with it. 3. Seek compromise where possible. Even where we see injustice, we should first try to resolve it in ways that require bending on both sides, since compromise can produce a peaceful resolution in a way that strict judgement cannot. But… 4. Seek justice through just means. When compromise is impossible, we must make sure that we do not use the pure goal of justice in order to justify actions and advocacy that are themselves unjust. Only just means lead to just ends.

[12] For example, one of the owners of the boat may agree to let the other go first in exchange for monetary compensation.
[13] Babylonian Talmud Sanhedrin 6b.
[14] Babylonian Talmud Sanhedrin 32b.

Now let's see how we can apply these principles to understand what happens in the story I started with, the story of those three rabbis sitting and talking in the vineyard so many centuries ago.

The Three Rabbis

In the story, Rabbi Yehudah opens the discussion with an attempt to find good in what the Roman government has done, despite their misdeeds. Rabbi Yehudah, like Rabbi Shimon, is one of the leading sages of the time, the one who would later compile the Mishnah and provide a firm basis for the development of Jewish law. He is far from an evil or corrupt figure; on the contrary, he is a major source of guidance for us in our most foundational Jewish texts. So why would he, of all people, defend the Romans?

Rabbi Yehudah seems to be embodying the first thing we learned from our study of of *dina d'malchuta dina*: that non-Jewish law should be respected for the ways in which it can sometimes function well. He is not necessarily denying that the Roman government has flaws and can act unjustly; after all, he has lived through the persecutions of Hadrian, which fell heavily on the Jewish people. Yet he is also pointing out that there are good aspects to Roman rule, that not everything they do is corrupt. Perhaps he is also thinking of what we learned from our study of *tzedek, tzedek tirdof*: that compromise is the preferred way of resolving conflict. If he can acknowledge the positive side of Roman behavior, maybe he can forge a compromise between the Romans and the Jews by working from within, a compromise that will both benefit the Jewish people and promote peace.

How are we like Rabbi Yehudah? How can we relate to him? In our own time, in the difficult situation in which we find ourselves, facing governmental injustice, we may indeed legitimately see some good in what the government does, rather than condemning it wholesale. Like Rabbi Yehudah, we may choose to work strategically inside of the system of government in order to change it, starting from points of agreement and moving slowly to the points on which we diverge. The Talmud is not teaching us to condemn Rabbi Yehudah, God forbid, but instead to understand him as one legitimate possible response to an unjust government, a response that can have merit in certain situations.

What are the consequences of Rabbi Yehudah's approach? The Romans exalt him, and it is partly because of their recognition that he becomes an important leader. But in the dire situation in which the Jewish people find themselves, he has taken a tremendous risk. By compromising, by recognizing the possible good in the Roman regime, he risks undermining the Jewish project of proclaiming and working for justice, of serving as a moral voice for the world. That is the risk we take when we cooperate with an unjust government, even for noble ends. And please don't misunderstand: the risk may be worth it! But when the moral hazard is great enough, the possibility of failure within the system great enough, evenhandedness and compromise can sometimes smother the clarion call of justice.

The second rabbi in our story, Rabbi Yosi ha-Galili, listens to what Rabbi Yehudah has to say and is silent. Rabbi Yosi is an unusual figure in the Talmud, a person who spent much of his life studying by himself in the north of Israel, far from the company and discussions of the other rabbis.[15] Only in his later years does he join the rabbinic group in Yavneh, the center of Jewish learning, where he is immediately acclaimed as a sage, developing a lasting reputation for wisdom and piety. A contemporary of Rabbi Akiva, the greatest of the Sages, Rabbi Yosi is one of the few rabbis to whom even Akiva defers! So why would he stay silent when so much is at stake? I see Rabbi Yosi in this moment as deeply conflicted, unable to decide what to say or do. Silently, he asks himself, "What kind of moment is this? Is this a time when we should be strategically cooperating with the government that rules us, however corrupt it may be in some ways? Or is this a time when our moral calculus requires us not to cooperate? Is compromise possible in this situation? Or is this the time to figure out powerful and just ways to pursue justice?"

Many of us may have had these internal dialogues ourselves during the past year. The challenges that we face are so daunting, the issues so confusing, the onslaught of new issues and reported outrages so overwhelming, that it is easy to be reduced to silence. It is so difficult to know what kind of moment we are in. We have seen so many moments during the past year when an issue comes to the fore that everyone proclaims is the "last straw," the "true test," the "make-or-break" point, only to have that issue replaced in weeks or days or even hours with a new, even more intense issue. Is this the moment to speak out? Is this the time to take a strong stand? Or should we wait and consider further? Should we save our outrage, our energy, and our voices for something even more challenging to our sense of right and wrong? Sometimes, silence can be the wisest course. Sometimes taking the time to struggle with how to respond to injustice can allow us to make the kind of tough moral decisions that the Talmud is calling upon us to make. But as we know too well from our history, silence can also signal complicity, even approval. Silence can enable evil to triumph as surely as active support can. So to sit in silence, too, is to take a tremendous risk.

What are the consequences of Rabbi Yosi's silence? Interestingly, he is exiled to Sepphoris, which we have learned is one of the few places at that time in the ancient Land of Israel where Romans and Israelites, Christians and Jews live together and interact with each other freely, a place of a wide diversity of opinion amidst an equally wide diversity of people. Rather than sending Rabbi Yosi to a place that would push his thinking firmly in one direction, the Romans send him to the one place that is likely to increase his confusion instead. But perhaps, eventually, through exposure to all of that diversity, Rabbi Yosi can have the time he needs to move through his silence and his inaction. Just because he is silent in the moment of our story does not mean that he is silent forever. And just because we may enter into silence for a time, carefully considering the multitude of competing voices and interests that surround

[15] The epithet "ha-Galili"—"the northerner"—marks his identification with the northern district of the Land of Israel, the Galil.

us, that does not mean we will sit silent forever. Silence can be risky, but silence can also be a way to prepare ourselves to raise our voices when the moment is right.

Rabbi Shimon speaks out against the Romans, and his life story seems to have been leading him to that moment. Like Rabbi Yehudah, he grows up under Roman rule, studying in the academy of Rabbi Akiva, to whom he becomes very close. During the rule of the Roman Emperor Hadrian early in the 2nd century, the academies are shut down and Jewish study is prohibited, but Rabbi Akiva continues to teach Torah publicly despite the prohibition, and Shimon continues to study with him. Even when Rabbi Akiva is arrested and jailed, Shimon visits him in his cell to continue to learn. Finally, Rabbi Akiva is condemned to be tortured to death in front of his students, ending his life with the recitation of the Sh'ma to show his ultimate faith in the goodness of God despite the injustice of the world.[16] In the dark times that follow, Shimon continues to study Torah, and the Talmud relates that he is one of the five rabbis ordained by Rabbi Yehudah ben Bava at a time when ordination is prohibited on penalty of death for both the sage who ordains and the scholar who is ordained. Rabbi Yehudah ben Bava gives his life so that those he ordains, including now-Rabbi Shimon, can escape, his sacrifice making it possible for the study of Torah to continue in the world.[17] So when Rabbi Shimon sits down in the vineyard with these other sages to discuss how the Jewish people should deal with the Roman government, he is bringing his bitter experience with the cruelty and injustice of the Roman regime with him.

Why does Rabbi Shimon speak out against the Romans at this moment? Unlike Rabbi Yehudah, he sees the Roman government's immorality overwhelming any good effects its policies may have, and he decides that it is time to refuse to cooperate and thus be party to the injustices that the government is creating and perpetuating. Unlike Rabbi Yosi, he does not take time to deliberate but instead declares that this is a signal moment for the Jewish project, a moment to reject compromise with the Roman government and to speak out forcefully for justice. Clearly, Rabbi Shimon is taking a risk by openly opposing the Romans, and their reaction confirms the threat that his words pose to him and to them. But he has decided that opposition to the government is the only path that preserves the commitment to justice that is part of the identity of the Jewish people at a crucial moment in our history.

Many of us know how Rabbi Shimon feels. We have often felt unable to find any good in what our government is doing, and we feel the need to refuse to cooperate with its immorality. We have become disillusioned with compromise, seeing the need to raise our voices in protest in the cause of justice. But we need to be mindful of the tremendous risk that we take when we follow Rabbi Shimon's path—not the risk of imprisonment or death, which we, thank God, do not face in our moment, but the risk of letting our staunch defense of justice blind us to the means we employ and the attitudes we exhibit. We know from the continuation

[16] Babylonian Talmud B'rachot 61b .
[17] Babylonian Talmud Sanhedrin 14a.

of Rabbi Shimon's story in the Talmud that despite the Romans' threats, Rabbi Shimon is not put to death. He escapes and spends 12 years hiding in a cave. When he emerges, hearing that the threats to his life have faded, he is incensed to see Jews merely plowing their fields. Rabbi Shimon cries out, "They are forsaking the concerns of eternity for the concerns of the moment!" His anger is so great that his gaze incinerates everything in its path, visiting destruction upon the land, and causing a heavenly voice to cry out, "Do you mean to destroy My world?! Get back in your cave!"[18]

Rabbi Shimon has gone to extremes, isolating himself from human concerns to the point where his productive passion for justice has morphed into a destructive condemnation of others, an insistence that he can judge their motivations, and a certainty that attacks on them are justified: injustice in the service of justice. Only after another year in the cave, when he emerges and is moved to see a man carrying two bundles of myrtle in honor of Shabbat, does he learn the most important lesson: that goodness can be present even in a world filled with injustice, and that he must balance his thirst for justice with kindness, humility, and righteousness; as the Sages teach, he must pursue justice justly. This is the challenge for us in the moments when we follow Rabbi Shimon's path of speaking out for justice. Can we see the complexity of the world, sparks of goodness even in the midst of the darkness? Can we be careful in our judgment of others even as we act out our convictions, treating them with kindness rather than condemning them? Can we, as the psalmist writes, "rebuild the world with love"[19] rather than harnessing hate, pursuing justice only and always through just means?

Given the times in which we live, we can identify with these rabbis, with their deliberations, their challenges, the risks they take and the consequences they face. Their story pushes us to observe more carefully and engage more deeply in our current moment, when we see our government acting unjustly all around us just as they saw in their time. At different times, each of them may be a role model for us, as we strive to identify the time for compromise, the time to stay silent in deliberation, or the time to speak out and take action. No matter which we choose, we must recognize that our response carries with it tremendous moral risks. We cannot be paralyzed, but neither can we go forward with blinders on, even when the right course seems so clear to us. We must be deeply attuned to our moral sense, so that we always preserve the ideal of justice even when we struggle with its absence. Hillel taught: "In a place where no one is acting like a human being, strive with all your might to act like a human being."[20] May we seek this year to combat the injustice we see before us with humanity, balance, deliberation, strength, kindness, and peace. *Ken y'hi ratzon* – may this be God's will for us.

L'shanah tovah tikateivu.

[18] Babylonian Talmud Shabbat 33b.
[19] Psalm 89:3.
[20] Pirkei Avot 2:5.