

Sorkin, Schlesinger, and Rabbinic Judaism – Parashat Ki Tetzei

In season two of Aaron Sorkin's brilliant political drama, *The West Wing*, President Jed Bartlett finds himself in the company of Dr. Jenna Jacobs, a socially conservative talk-show host and commentator not so-loosely based on the real-life Dr. Laura Schlesinger. Dr. Jacobs has been publicly decrying homosexuality, pointing to the fact that the Bible classifies it as "an abomination," and the President has a few questions to ask the ersatz religious expert. "I'm interested in selling my youngest daughter into slavery as sanctioned in Exodus 21:7," he begins. "She's a Georgetown sophomore, speaks fluent Italian, always cleared the table when it was her turn. What would a good price for her be?"¹ Bartlett then goes on to inquire whether he's morally obligated to kill his Chief of Staff, who often works on Shabbat, what to do about the fact that our national pastime of football involves touching the forbidden skin of an unclean dead animal, and how he should handle the fact that his brother has been planting two different kinds of crop together in his garden and thus needs to be stoned. By the end of the episode, Bartlett has made his point clear not only to Jacobs but to all of us all well. When it comes to living by the words of Scripture, we tend to be cherry-pickers at best.

Most modern-day Jews, it turns out, are not Biblical in orientation but rather rabbinic which helps us to avoid some (but not all!) of the hypocrisy which Bartlett's tirade illustrates. While we see Torah as sacred and foundational, we ultimately believe that Jewish law is decided not by the words of the Bible alone but rather through the interpretation of the rabbis whose determination of what a verse means and how it should be applied is authoritative. Sometimes rabbinic law leads to incredible stringencies, for example the fact that we insist on full separation of meat and dairy including two sets of dishes, waiting periods, and certainly no cheeseburgers whereas the Torah says simply "You shall not boil a kid

¹ <https://www.youtube.com/watch?v=eD52OIkKfNs>

in its mother's milk." Sometimes rabbinic law leads to leniencies as well, as with the fact that "Eye for an eye, tooth for a tooth" has never been understood as allowing for retributive justice but rather as mandating monetary compensation for an injury. The authority of any particular law may come from Torah but how that law is to be understood comes directly from the rabbis. They are the ultimate arbiters of how we are to behave.

In this week's Torah portion, *Parashat Ki Tetzei*, we read of another law that President Bartlett might have used to illustrate selective non-compliance, another law utterly transformed by the rabbis, in the case of *ben sorer u'moreh* – the stubborn and rebellious child. As we read in Deuteronomy 21:18-21, "If a man has a wayward and defiant son, who does not heed his father and mother and does not obey them even after they discipline him, his father and mother shall take hold of him and bring him out to the elders of his town at the public place of his community. They shall say to the elders of the town: 'This son of ours is disloyal and defiant; he does not heed us. He is a glutton and a drunkard.' Thereupon the men of his town shall stone him to death. Thus you will sweep out evil from your midst: all Israel will hear and be afraid."

Seizing upon the harsh and seemingly disproportionate nature of the punishment to the crime, not to mention the fact that we are dealing here with a child and his presumably loving parents, commentators throughout the ages have attempted to explain this strange law, seeking to justify the rationale behind its creation. The medieval rabbi Rashi surmises that a boy who is already so unmanageable at such a young age will surely grow up to be far worse, committing even more egregious crimes, and so it is better to have him die now, while he is relatively innocent, rather than dying later when he is guilty. His colleague, Hizkuni, develops this idea further explaining that we are saving the future victims of the *ben sorer u'moreh* by taking him out of commission before he can hurt even more people. Finally, the 11th

century Spanish commentator, Ramban, takes a slightly different approach when he points to the end of the Torah passage in which this law occurs and the idea of deterrence, arguing that the boy is killed to set an example for the public and thus prevent similar deviant behavior from others. The rebellious child is a menace to himself, to future potential targets of his violence, and to others who might copy his evil acts. For this reason, he must be brought to justice.

Many of us will continue to feel uncomfortable with the Torah's treatment of the *ben sorer u'moreh*, even as we might appreciate the explanations just offered. How can we execute someone today on account of acts he might – or might not – commit in the future? What about the possibility of *teshuvah*, repentance, particularly given the boy's young age and relative immaturity? Is it ever acceptable to kill a minor and is this what his parents would really want, given the love and loyalty that tend to bind even the most dysfunctional of families? It is hard to imagine filicide ever being a comforting or desired solution.

As it turns out, the rabbis of the Talmud were as discomfited by our *parasha* as we are, and we know that this is true from the way in which they approach the interpretation of these verses. The sages saw words of Torah as Divinely ordained, and thus it was not their way to explicitly criticize or condemn them, but we notice in their methodology an attempt to undermine the application of this law nonetheless.

First, the Talmud explains that the decision to bring the rebellious child to trial must be shared by both father and mother; if either parent objects, the procedure cannot go forward. But then it gets even stranger still:

“Rabbi Judah said: ‘If [the boy’s] mother is not fit for his father, he is not considered a wayward and defiant son. What is meant by ‘not fit?’...This means that [the boy’s mother] is not physically like his father. Likewise it has been taught...If [the boy’s] mother is not exactly like his father in voice, appearance, and stature, the boy is not considered a wayward and defiant child” (Babylonian Talmud Sanhedrin 71a).

In other words, in order to be able to follow through with the law of *ben sorer u’moreh*, a rebellious child must have two parents who not only both agree to bring their son to be executed but are also the exact same height, sound exactly the same when they speak, and look identical to one another – something that is hard to imagine even under the most unusual of circumstances. And so it makes sense that the Talmudic passage concludes, “There never has been a wayward and defiant son and never will there be” (BT Sanhedrin 71a). The law has been made so restrictive by the rabbis that it is absolutely impossible to enforce; it has been interpreted out of existence. Why then, we might ask, does the Torah even contain the law of *ben sorer u’moreh* in the first place? The final words of the Talmud on this matter answer this question as well. “Why then was the law given? *D’rosh v’kabel s’char* - that you may study it and receive reward” (BT Sanhedrin 71a).

Our ancient sages understood intuitively the dilemma that President Bartlett raised in his attack on Dr. Jacobs, the fact that while certain laws of Torah remain timeless and inviolable others require re-interpretation in order to stay appropriate and relevant to the times in which we live. We do not wish to throw the baby out with the bath-water, rejecting the very premise of Torah itself just because some of its laws have become antiquated, but neither does it seem right to selectively pick and choose by fiat – deeming certain laws binding and others passé. The mechanism that the rabbis developed to maintain fidelity with the Bible while also updating it as necessary was interpretation, and we are the proud heirs

to that tradition. Indeed, I believe it is the flexibility that rabbinic Judaism offers that has allowed Judaism to survive for thousands of years through drastically changing times and circumstances.

I would like to point out that the idea of both adhering to tradition while also leaving room for change, is not only a “progressive Jewish” idea; it did not originate with the Reform and Conservative movements. Oftentimes there is the sense that Orthodox Judaism has an authenticity to it that liberal denominations do not; they are maintaining “true” Judaism while we are diluting it to meet our own contemporary needs. The example of the *ben sorer u'moreh* or the replacement of animal sacrifice by prayer with the destruction of the Second Temple or the fact that Jews no longer sell their daughters into slavery all indicate that the ability to make adjustments has been built into the very fabric of Judaism from its inception. It allows us to maintain continuity with the past without ossifying ourselves out of existence.

Of course, rabbinic Judaism does not solve all the problems of hypocrisy – or, I might prefer, inconsistency - that President Bartlett raises. Most of us still engage in some form of “pick and choose,” creating idiosyncratic patterns of behavior and commitment whereby certain pieces of tradition resonate, and are practiced, while others are followed less. This, in my mind, does not make us bad people or bad Jews; it means that we have decided to start somewhere and perhaps will one day deepen our allegiance to other *mitzvot* as well. It might, however, make us a little bit less quick to judge others who have chosen different parts of tradition upon which to focus.

I am grateful to the rabbis for their ability to reinvent Judaism and thus save it from extinction, for their Solomonic balance of tradition and modernity, for their tender care for the words of Torah even as they sought – in certain cases - to render them inapplicable. It is because of their insight that we conduct Passover seder each year, that we light candles on Friday night, that we can apply ancient wisdom to the

pressing questions of our day as, for example, when considering whether one can join a minyan via Skype or use a self-driving car on Shabbat (teaser: these, and other similar issues, will be considered in my Adult Education class this fall!). In order for Judaism to remain vital it has to speak to the values and concerns of contemporary Jews, constantly shifting throughout the ages. In order for Judaism to remain authentic, it must also display a true and genuine connection to the past and the central tenets at the heart of our tradition.

It is this balance, between tradition and change, convention and modernity, that the rabbis were constantly seeking to uphold, leading them to develop the laws by which we now live. And if all of this means no chicken parmesan, I suppose that's a sacrifice I'm willing to make!

D'rosh v'kabel s'char – May we continue to receive reward for studying Torah, both the parts which we maintain and the parts that we've interpreted away.

Shabbat Shalom!