

Dvar Torah – Matot/Masei 2018

Shabbat shalom.

Two days ago, I gave a talk over at Oakton Community College as part of their continuing education program, something I've been doing on a fairly regular basis for about a year and a half now.

I selected the topic 9 months ago for this summer's talk – on constitutional interpretation.

This was extraordinarily fortuitous timing – couldn't have planned it if I'd tried! - given Justice Kennedy's retirement and the nomination of Brett Kavanaugh to replace him.

So perhaps not surprisingly, I've been thinking a lot lately about the law, legal systems, and how we interpret and apply the law under different circumstances – not only because of my talk but also in light of recent events that have brought the issue of obeying the law to the forefront.

The Jewish tradition, of course, cares deeply about the law – the *Halacha*.

What to do, what not to do, when to do things, when not to do things, conditions, details, rules, disagreement and debate over legal outcomes – all of these are integral to Judaism.

In this week's *parsha*, for instance, we learn about the rules of the *Ir Miklat* (city of refuge) and the *Go'el Ha'dam* (the blood-avenger).

If someone kills another person accidentally, but without forethought or malice, they are exiled to one of the *Arei Miklat*, where they have to stay until the current Kohen Gadol dies. If they leave the city, the *go'el ha'dam* can kill that person (a revenge killing) without having any criminal liability at all.

There are a variety of details about when this comes into effect:

“These six cities shall serve the Israelites and the resident aliens among them for refuge, so that anyone who kills a person unintentionally may flee there. Anyone, however, who strikes another with an iron object so that death results is a murderer; the murderer must be put to death. If he struck him with a stone tool that could cause death, and death resulted, he is a murderer; the murderer must be put to death. Similarly, if the object with which he struck him was a wooden tool that could cause death, and death resulted, he is a murderer; the murderer must be put to death....

So, too, if he pushed him in hate or hurled something at him on purpose and death resulted, or if he struck him with his hand in enmity and death resulted, the assailant shall be put to death; he is a murderer. The blood-avenger shall put the murderer to death upon encounter. But if he pushed him without malice aforethought or hurled any object at him unintentionally, or inadvertently dropped upon him any deadly object of stone, and death resulted—though he was not an enemy of his and did not seek his harm— in such cases the assembly shall decide between the slayer and the blood-avenger.

The assembly shall protect the manslayer from the blood-avenger, and the assembly shall restore him to the city of refuge to which he fled, and there he shall remain until the death of the high priest who was anointed with the sacred oil. But if the manslayer ever goes outside the limits of the city of refuge to which he has fled, and the blood-avenger comes upon him outside the limits of his city of refuge, and the blood-avenger kills the manslayer, there is no bloodguilt on his account. For he must remain inside his city of refuge until the death of the high priest; after the death of the high priest, the manslayer may return to his land holding.”

What is the purpose of these rules, of setting up this unusual system for someone liable of manslaughter (applying a modern term)?

Why would the Torah want us to simultaneously protect the person responsible for causing the death of another and provide a legally sanctioned method of revenge killing if the rules are broken?

Rabbi Jonathan Sacks argues that this system is designed to tame the natural impulse people feel for revenge when someone they love has been killed.

He quotes *Rambam* from the *Moreh Nevuchim*, who states that sending the killer to exile until the Kohen Gadol dies allows the passion for revenge to cool off, so that when the killer is released the time for revenge will have passed.

Importantly, Sacks notes, “the Torah inserts one vital element *between* the killer and the victim’s family: the principle of justice. There must be no direct act of revenge. The killer must be protected until his case has been heard in a court of law.”¹

Effectively, this system of refuge is a way of taming the natural impulse for revenge, of civilizing us as much as possible.

The Torah wants to create a society in which those liable for crimes are punished, but also a society in which we can move from instinct to logic, from passion to justice.

In the broadest sense, then, what this shows is that law is about who we are and what we consider desirable and who we want to be.

Law helps to give structure to our society but, more importantly, it is supposed to get us closer to the ends we desire – equality, fairness, justice.

Simplistic invocations such as saying “it’s the law” or “that’s illegal” don’t necessarily get to the root of why we have those laws in the first place. If the laws do not lead to equality, fairness, or justice, they must be challenged.

As Dr. Martin Luther King Jr. wrote in 1963, in response to criticism from northern white ministers, in his “Letter from a Birmingham Jail”:

“You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: ‘How can you advocate breaking some laws and obeying others?’

¹ <http://rabbisacks.org/mattot-masei-5775/>.

The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws...

We should never forget that everything Adolf Hitler did in Germany was 'legal' and everything the Hungarian freedom fighters did in Hungary was 'illegal.' It was 'illegal' to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers."²

As Dr. King points out here, saying something is "legal" cannot be the end of the discussion – we need to evaluate whether laws meet our moral standards, and must challenge them when they do not.

So whatever the outcome of this current nomination, I would urge us in the long-run to work to prioritize the moral principles we care about and to shape a society in which our laws reflect those ideals.

Shabbat shalom.

² https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.