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D'var Torah on Shoftim

## Justice, Justice

In the very first chapter of Pirkei Avot, the Chapters of the Fathers, the Talmud says:

“Al shloscha devarim ha'olam kayam: 'Al ha-din, ve'al ha-emet, ve'al ha-shalom -- The world rests on three things: On Justice, on Truth, and on Peace.” (Avot 1:18)

Justice is listed first. It is the most important of the three.

The Torah begins with, “Bereshit bara Elohim -- In the beginning, God”, and the name for God that is used there, Elohim, traditionally reflects God's attribute of justice. The second attribute of God, the attribute of mercy, is associated with God's name YHVH, which we read Adonai, and is introduced a few verses later in the Torah.

So justice is number one with us. This week's Torah portion, Shoftim, reinforces the message. ‘Tzedek, tzedek tirdof!’, it says – ‘Justice, justice shall you pursue!’ (Deut. 16:20).

The word tzedek is sometimes also translated as righteousness or charity, but they are really just different aspects of the same thing – justice.

Justice is so vital in Judaism that the quote continues with ‘lemaan tichyeh – that you may live’. That second part is often omitted from the quote. The full quote is ‘Tzedek, tzedek tirdof lemaan tichyeh -- Justice, justice shall you pursue that you may live’. We simply can't live without justice.

In our tradition, non-Jews have just seven commandments to observe, the ‘Noahide laws’. All of them are negative (don't murder, don't steal, etc.) except one: ‘Establish courts of justice’. Everybody has a basic right to justice.

The Hebrew word 'tirdof' is usually translated as 'pursue', or 'follow', or 'seek'. Some say it is stronger than that – it means 'chase', which implies justice is trying to run away from you. Also, any of these translations says that you should try your best to dispense justice, but in truth, try as you may, you may never reach it. We are commanded to 'pursue' justice in all our dealings, with the implication that we may not succeed in catching it, as we are only human. It is not easy to attain justice.

Many commentators have asked the question: Why is the word 'justice' repeated in 'Justice, justice shall you pursue'? There must be a reason. Our Sages tell us that no word in the Torah is superfluous. There is a purpose to every word. It's up to us to find it. Let us review together some of the explanations that have been offered.

The first explanation is: For emphasis! Never neglect to mention the obvious. That is what is known as the 'pschat', the first level of understanding of the Torah.

The second explanation is: It means justice for yourself AND justice for others. Just as you must try hard to secure justice for yourself, so must you also try hard to secure it for others. And frequently you will find that, by securing it for others, you secure it for yourself as well, down the road. The two are not independent.

The third explanation comes from Rav Ashi in the Talmud (Sanhedrin 32b). He was a 5<sup>th</sup>-century Babylonian. He said that it means justice based on strict law AND justice based on compromise. With justice based on strict law – in Hebrew, din – the world cannot exist. With justice based on compromise – in Hebrew, pesharah – the world can go on.

Rav Ashi gives an example. Two boats are headed for a narrow pass. Both are the same distance from the pass. If they try to pass at the same time, they will collide and sink, but if one makes way for the other, both will pass. Strict justice says there is no reason to favor one over the other, so they should both keep going and crash. But compromise leads to a happier result. For example, the captains may agree that the boat farther from his destination should go first; or

the one with the larger cargo should go first; or the one going first should pay the other an agreed amount; or simply toss a coin. That's justice based on compromise.

The fourth explanation comes from Abraham Ibn Ezra, 12th century Spanish commentator. He said it means justice when it suits you AND justice when it hurts you. You must be equally loud in clamoring for justice whether it benefits you or hurts you. A tall order, but that's what fairness demands.

The fifth explanation is due to the Ramban, or Nachmanides, the famous 13<sup>th</sup>- century commentator from Catalonia. He said it means justice obtained in the courts AND justice dispensed by us, in our daily lives. Indeed, justice is not the exclusive province of courts of law. Every day, we have opportunities to dispense personal justice in small ways all around us, and to be fair in all our dealings.

The sixth explanation is from Rav Simcha Bunim, 18<sup>th</sup> century Hassidic Polish rabbi. He said it means justice for legitimate ends AND justice by legitimate means. In the pursuit of justice, we must not lose our values and our ideals. The end does not justify the means, even if the end is justice. In his view, no justice is better than ill-acquired justice.

Finally, I saved the most controversial commentary for last. The seventh explanation is due to the Sh"la haKadosh. He is Rabbi Isaiah Horowitz, a mystic from 17<sup>th</sup>- century Prague, then Tzfat, Israel. He said it means justice according to the letter of the law AND justice according to the spirit of the law. I believe it is a slippery slope because the 'spirit' of the law is not always universally recognized as such, and when judges invoke it they run the risk of being accused of making up their own laws. Let me discuss two extremes from the Talmud, extra-leniency and extra-harshness.

First, extra-leniency. The Torah clearly mandates the death penalty for many crimes. But the rabbis of the Talmud slowly moved away from it, and what they said is Jewish law today. They looked for creative ways to avoid applying it. They required two witnesses to the offense. They insisted that these witnesses be observant Jews, independent of each other, and be eyewitnesses rather than

circumstantial witnesses. They required evidence that the defendant was instructed before the event that what he was doing could cost him his life, etc.

The Talmud (Makkot 7a) says that a court that sentences one person to death in 7 years is a bloody court. Rabbi Eleazar ben Azariah added: It should be once in 70 years. Rabbi Tarfon and Rabbi Akiva added: If we were on the court no one would ever be put to death. Then there was the expected pushback. Rabbi Shim'on ben Gamliel said: Great, and then murderers would have a field day in Israel!

The second extreme is extra-harshness. In the Talmud (Sanhedrin 46a), "Rabbi Eliezer ben Ya'akov said: I have heard that the court may even pronounce sentences not [prescribed] by the Torah; yet not with the intention of disregarding the Torah but [on the contrary] in order to safeguard it." He gave the example of a man flogged for having intercourse with his wife in public, which is not a punishment prescribed in the Torah. He gave another example of a man stoned to death for riding a horse on Shabbat, which is only a rabbinic prohibition, and not a Torah prohibition, and so cannot carry the death penalty. The justification given in the Talmud was that those were times when Greek influence was so strong that it pushed Jewish observance to an all-time low, and extra-harshness was required to make sure it did not sink even lower.

But, one can argue, are people not entitled to know ahead of time the precise legal consequences of their actions? \*Are\* there times when the law must be broken in order to save it?

The Sh"la haKadosh continues (Shnay Luchot HaBrit, Shoftim 101a): The first "justice" is directed to judges who judge in accordance with Torah law. The second "justice" is for emergency decrees, which are done occasionally by a prophet or king, in order for the world to exist. Therefore, the verse concludes 'that you may live and inherit the land which the Lord your God gives you'. As Rabbi Johanan said in the Talmud (Bava Metzia 30b), "Jerusalem was destroyed only because they gave judgments therein in accordance with Biblical law, and did not go beyond the letter of the law."

Now, there is no question that \*some\* “extra-legal” input is required. The Midrash (Gen. R. 12:15) says: In creating the world God combined the two attributes of justice and mercy: "Thus said the Holy One, blessed be His name! 'If I create the world with the attribute of mercy, sin will abound; and if I create it with the attribute of justice, how can the world exist? Therefore I create it with both attributes, mercy and justice, and may it thus endure'". But this quote does not tell us how much justice and how much mercy to apply in a given case. It does not tell us whether one of them can be negative, as in the case of extra-harshness – more than 100% of justice and a negative amount of mercy. That is left as an exercise for the reader.

This tension is still with us today, as we emerge from a national battle about whether to confirm a Supreme Court nominee whom some accuse of being an activist judge – one who goes beyond the letter or even spirit of the law based on personal, extra-legal considerations. The general issue of activism on the bench is not going to be resolved anytime soon. God said, “Justice, justice shall you pursue”, but it is up to us to figure out what it really means.

Shabbat shalom.