

Parashat Shoftim is one of my favorites. I know, parshiyot are like children, and you're not supposed to have favorites, but there is just so much juicy stuff going on in here that every year when I look at it, I kind of wish I could write three different divrei Torah.

Well, not really. But it's always tough to decide where to focus.

In any case, Gideon will be speaking about the body at the end of the parashah tomorrow, so tonight I will focus on two seemingly unrelated consecutive instructions, and how they are connected by a commentator's remark.

The first is at the end of Chapter 19, containing phrases that actually are not new to *Shoftim*, but that show up in this parashah for the third time in Torah. Verse 21 instructs, regarding *eidim zomemim*, those who bear false witness: "show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot."

The second is the instructions in the Chapter immediately following these verses about punishing false witnesses. In Chapter 20, our parashah describes an elaborate scene in which, as troops muster for battle, the officers offer several opportunities for soldiers to opt out of fighting: if they are in the process of building a home, planting an orchard, are engaged to be married, or are just plain frightened of killing or dying. In each case, the officers say, "Let such a person go home."

What do these two have to do with each other? One commentator on this verse, Chizkuni, writes: "You shall not have pity with the guilty person; on the other hand, even during war time you shall display pity on people who are in the process of building their homes for the first time, be it that they are engaged to be married, that they are in the middle of building a house, or planting an

orchard. The Torah teaches you a lesson here of when it is appropriate to display pity and concern, and when not.

Chizkuni is pointing out that the phrase, “Show no pity” is *only* to be applied to dealing with false witnesses. In fact, society is in general supposed to be merciful, and to grant allowances to people based on their circumstances.

Now what does it mean that in this specific case, we show no pity? First of all, it doesn’t mean, according to basically all of our commentators and the way that Jewish law has evolved – that we actually kill someone, for example, who meant to set up someone else to be killed.

The first time this formulation – ‘eye for eye, life for life, etc.’” shows up in Exodus, it refers to a case where two people are fighting and in the heat of the encounter, one injures a bystander accidentally. The second time, in Leviticus, Chapter 24, it also refers to violent injury.

In both cases, the commentators are quick to assure us, the readers, that an eye for an eye does not mean that we actually take out someone’s eye- God forbid – but that the person has to pay monetary compensation corresponding to the loss of the eye – the equivalent of doctors’ fees and long-term disability, so to speak. Rabbeinu Bahya writes, commenting on the “eye for an eye” phrasing in Exodus, “if we were to apply the principle of “an eye for an eye” literally, this would often not be justice at all. If a man ruins the only eye of a one-eyed individual and he had an eye of his removed as a penalty, the former would remain blind whereas the guilty party would still have a good eye to see with. What kind of justice would this be? Moreover, a weak person might not survive having his eye gouged out so that he would pay with his life for having ruined a strong person’s eye.

Surely this would not be justice! The only way a semblance of justice could be achieved is to make financial compensation for the damage caused.”

Now, *Shoftim*, this week’s parasha, is describing a much more insidious case – when someone tries to frame another for a crime. This is not a spontaneous act of rage or force, but a premeditated attempt to destroy a person’s reputation and lead a court to inflict capital or corporeal punishment upon someone. When such a false witness is discovered, this formulation – eye for eye, etc. - refers to whatever the punishment would have been for the hypothetical crime. Verse 19 commands “you shall do to the false witness as he or she sought to do to his or her fellow.” And of course, as I read: “show no pity.”

And yet, even here, in this case of a willful attempt to obstruct justice, the medieval commentator Rashi says, “life for life, eye for an eye - this all refers to monetary compensation.”

So the difference between this case and the earlier cases, I can only infer, must be something psychological. Call them out. Don’t give them a break. Bearing false witness against someone is a really big deal – don’t just make them pay damages – but make them sweat – just as they made an innocent person sweat who had to appear in court on false charges. Or better yet - make it known that this is so abhorrent that no one would *do* such a terrible thing.

So recap – we don’t actually punish those who accidentally hurt someone by hurting them – but we charge a fine. So too with those who would frame someone – but we show them no pity, in addition. And soldiers have the option to opt out of war depending on their circumstances.

I wonder what this teaches us about justice. . .

The narrowest definition of justice would be the simple, literal eye-for-an eye. You hurt someone, you get hurt. You destroy a reputation; yours gets destroyed. There's a war, everyone needs to show up to the same extent as everyone else. But Rabbeinu Bayha in the commentary I quoted earlier made a very elegant case that "this would often not be justice at all."

Justice is not a simple "tit-for-tat" accounting, but a process that takes into account intention, malice, ability and all sorts of very personal realities about perpetrators and victims – at least most of the time. And yet, there is a limit. Even when the consequences are the same on paper, some behaviors are less easily forgivable than others. And I think Torah points us to what those are. One who deliberately and methodically sets up someone else, who sets out make an innocent person fear for his or life and be vulnerable in a court of law – in such a case, there can be no sympathy.

When I started studying this parashah, it was just an interesting abstract exploration of the nature of justice and mercy. But as I thought through the ideas I just shared with you, I realized that this is all too relevant to Oregon Measure 105, which seeks to dismantle the ordinance that prohibits the use of state and local resources to enforce federal immigration law. This measure, if passed would make a huge community of people more vulnerable to fear and to actual targeting by law enforcement. Sounds rather like framing an innocent person, doesn't it?

While some argue that undocumented immigrants are inherently guilty of crime by being in the country illegally, I think there is a vast difference between people whose very presence here is unauthorized by an immigration system that everyone admits is broken, but who are contributing to our society and looking for a better life, and those who commit crimes that make our communities unsafe.

Justice, and mercy. When do we apply each? It is not an abstract question, after all.