

HEARING OUT HIGH AND LOW ALIKE

A commentary on *Parashat Devarim*

By Matt Plen

We usually assume that compassion for the poor and vulnerable is the bedrock of a commitment to social justice and human rights. It is certainly the assumption behind the graphic, heart-rending adverts published by poverty, homelessness and refugee charities. This idea also has powerful philosophical roots. The philosopher Emmanuel Levinas writes that the basis of ethics is our intuitive response to the suffering face of the Other. In other words, morality is based not on principles or ideology, but on an instinctive impulse to act for an individual who we perceive to need our help.

How does this idea play out in *Parashat Devarim*? A significant section concerns G-d's instructions to the Israelites regarding the peoples whose land they had to cross on the way to Canaan:

Charge the people as follows: You will be passing through the territory of your kinsmen, the descendants of Esau, who live in Seir. They will be afraid of you, be very careful. Do not provoke them!

For I will not give you of their land so much as a foot can tread on; I have given the hill country of Seir as a possession to Esau. What food you eat you shall obtain from them for money; even the water you drink you shall procure from them for money.
(chapter 2, verses 4-6).

The obvious question this passage raises is: if the descendants of Esau are afraid, why do the Israelites need to be careful? Rashi, the medieval commentator, offers the following explanation, linking two consecutive phrases: "They will be afraid of you, be very careful" – how should they be careful? "Do not provoke them". Nechama Leibowitz, a 20th century Torah scholar, expands on Rashi's comment, explaining that the new generation, born into freedom after the Exodus from Egypt, were 'full of their own strength and vigour [and] had to learn to practise self-control

and curb their own aggressiveness aroused by the very fear displayed by their weaker neighbour'. In order to act on the imperative to protect the vulnerable, they first had to learn to see their neighbours – in Levinas' terms, the face of the Other.

Subsequently the narrative takes an unexpected turn. After enjoining the Israelites to practice restraint in relation to the sons of Esau, the Moabites and the Ammonites, G-d gives a different command regarding the Amorite kingdom of Sihon:

Up! Set out across the wadi Arnon! See, I give into your power Sihon the Amorite, King of Heshbon, and his land. Begin the occupation: engage him in battle. This day I begin to put the dread and fear of you upon the peoples everywhere under heaven, so that they shall tremble and quake because of you whenever they hear you mentioned (verses 24-25).

If the Israelites had to be restrained from provoking the previous people they encountered, we might expect them to leap at this opportunity to attack Sihon. Yet we read that Moses ignored G-d's instruction:

Then I sent messengers from the wilderness of Kedemoth to King Sihon of Heshbon with an offer of peace, as follows: "Let me pass through your country. I will keep strictly to the highway, turning off neither to the right nor to the left. What food I eat you will supply for money, and what water I drink you will furnish for money; just let me pass through..."
(verses 26-28).

How can this change in attitude be explained? It seems that Moses had internalised the principle underlying G-d's previous instructions. The fact that King Sihon was an assertive, military leader (see verses 30-32), very different from the frightened people that the Israelites had hitherto encountered, seems not to have influenced Moses. The principle of non-aggression had become detached from the specific identity of one's potential adversary.

This idea of prioritising abstract principle over personality is articulated explicitly earlier in the *Parasha*, when Moses recalls his establishment of a judicial system for the people as they emerged from Egyptian slavery:

I charged your magistrates at that time as follows, "Hear out your fellow men, and decide justly between any man and a fellow Israelite or a stranger. You shall not be partial in judgment: hear out low and high alike. Fear no man, for judgment is G-d's. And any matter that is too difficult for you, you shall bring to me and I will hear it" (chapter 1, verses 16-17).

Equal treatment before the law for Israelites and strangers is an easy principle to grasp.

But 'hearing out high and low alike' or, as stated elsewhere in the Torah 'You shall neither side with the mighty to do wrong ... nor shall you show deference to a poor man in his dispute' (Exodus 23:2-3) is more problematic.

If justice is about responding to the needy and vulnerable, then surely we should favour the poor over the rich! The Torah slaps this idea down with this unambiguous statement that the law must

be blind.

In a fascinating essay¹, German Jewish political theorist Hannah Arendt makes a startling argument that compassion for the poor is a dangerous principle on which to base justice. She claims the difference between the American revolution, whose resulting republic has survived for over 200 years, and its French counterpart, which descended almost immediately into anarchy and violence, was that the French revolutionaries were consumed with the urgent question of solving the problem of poverty. Their passion and their identification with the poor against the rich resulted in dogmatism, violence and ultimately the collapse of the revolution. The American Founding

Fathers, on the other hand, were preoccupied not with poverty but with freedom from tyranny. Accordingly, they set about creating institutions in which all men (slaves and women aside) could enjoy equal treatment and would be able to engage in deliberative politics.

Arendt believes that ignoring human particularity and suffering was, paradoxically, a vital ingredient in the struggle for freedom and justice. In today's turbulent political climate, can we say the same thing?

If justice is about responding to the needy and vulnerable, then surely we should favour the poor over the rich!



* Hannah Arendt

1. Hannah Arendt, 'The Social Question' in Peter Baehre (ed.) *The Portable Hannah Arendt*, Penguin Books, 2003.