

JUSTICE DOES NOT COME CHEAP

A commentary on *Parashat Parashat Shoftim*
By Micah Smith

Justice does not come cheap. Employing judges, paying for law enforcement, maintaining the infrastructure needed to administer justice...it's no wonder the judiciary are frequently called on to find cost savings. But when too much is cut, what is lost? Justice and the rule of law are essential for human rights. As the preamble to the UN Declaration on Human Rights puts it:

“it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

Likewise, Article 6 of the European Convention on Human Rights recognizes the right to a fair trial as a fundamental human right. We are fortunate to be able to go to fair-minded and independent judges who will apply the law properly. It's what restrains the state and others from acting in arbitrary ways that would undermine our human rights. That's why the rule of law, making everyone subject to the law, including the most powerful – matters so much.

Parashat Shoftim, meaning “judges”, recognizes this. It requires that even the king be subject to “*all the rules of the Torah*”. While the King stands above the people, he cannot stand above the law. In fact, the King is instructed to carry a copy of the law wherever he goes and to study it every day; the king is a servant and a student of the law, not its master.

Parashat Shoftim contains the Torah's most famous line about justice: “*Justice, justice shall you pursue*”.

Justice is thus painted as something elusive; something to be pursued and worked for and never simply had and taken for granted. The word “*justice*” is also repeated. Rabbi Bunim of Peshischa suggests that this is because in the pursuit of justice, both the means

and the ends must be just. It is not enough for justice to be administered; the way it is administered must also be just.

Shoftim offers clues for how to achieve this. In a commandment that prioritizes access to justice over efficiency savings, the people are called to appoint Judges for “*all cities*”, not just the largest ones. Then, in a commandment that prioritizes a representative judiciary over an efficient one, where a city has different tribes, each tribe is commanded to appoint its own judges. The cities are also commanded to appoint “*judges*”, not just one judge. This implies that at least two judges would hear each case, perhaps because, as written in Pirkei Avot, “*no one can judge alone but the One*”.

In all cases, judges had to be capable of giving “*righteous judgments*”. Judges were selected on the basis of merit alone and not prestige or connections. *Parashat Shoftim* requires individuals who will “*not pervert justice... show favoritism... [or] take a bribe*”. Human rights demand that not only do we support the justice system but that the justice system itself and its officials take pains to be above corruption.

Applying *Parashat Shoftim's* principles to modern times entails a justice system that is likely to be costly, but also effective. Justice has to be accessible and delivered close to the people (“*in all cities*”). The judiciary must be diverse and representative (“*for your tribes*”). There must be enough judges to deal with the caseload and deliberate over their judgments (because more than one judge hears a case). And all judges need the expertise and integrity to consider their cases appropriately. A robust justice system is expensive, but our rights depend on it, and ultimately it enriches us all.

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