

Shoftim : Justice and Corpses

Source Sheet by Judith Spicehandler

Deuteronomy 16:18-20

(18) You shall appoint magistrates and officials for your tribes, in all the settlements that your God יהוה is giving you, and they shall govern the people with due justice. (19) You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. (20) Justice, justice shall you pursue, that you may thrive and occupy the land that your God יהוה is giving you.

דברים ט"ז:י"ח-כ'

(יח) שֹׁפְטִים וְשֹׁטְרִים תִּתֶּן-לָךְ בְּכָל-שְׁעָרֶיךָ
אֲשֶׁר יְהוָה אֱלֹהֶיךָ נֹתֵן לְךָ לְשִׁבְטֶיךָ וְשֹׁפְטֵי
אֶת-הָעָם מִשְׁפַּט-צְדָק: (יט) לֹא-תִטֶּה
מִשְׁפָּט לֹא תִכִּיר פָּנִים וְלֹא-תִקַּח שֹׁחַד כִּי
הַשֹּׁחַד יַעֲוֹל עֵינַי חֲכָמִים וְיִסְלַף דְּבָרֵי
צְדִיקִים: (כ) צְדָק צְדָק תִּרְדֹּף לְמַעַן תִּחְיֶה
וְיִרְשַׁת אֶת-הָאָרֶץ אֲשֶׁר-יְהוָה אֱלֹהֶיךָ נֹתֵן
לְךָ: {ס}

Rashi on Deuteronomy 16:18:1

(1) שופטים ושוטרים JUDGES AND BAILIFFS — שופטים are the judges who pronounce sentence, and שוטרים are those who chastise the people at their (the judges') order [beating and binding the recalcitrant] with a stick and a strap until he accepts the judge's sentence (Sanhedrin 16b and Rashi thereon; cf. Sifrei Devarim 144:6).

Ibn Ezra on Deuteronomy 16:18:2

(2) OFFICERS. *Shoterim* (officers) means rulers. It is related to *shoter* (ruler) in *Overseer, or ruler* (Prov. 6:6) and similarly *mishtaro* (dominion thereof) in *the dominion thereof in the earth* (Job 38:33). **The *shofetim* (judges) judge and the *shoterim* (officers) force the crooked [to obey the law].**

Sforno on Deuteronomy 16:18:3

(3) משפט צדק, the manner in which the complaints of the litigants were heard should be such that the resulting decisions could be expected to be fair, צדק, righteous. The judges were not to discriminate in their treatment of either of the opposing litigants.

Rashi on Deuteronomy 16:20:1

(1) צדק צדק JUSTICE, JUSTICE SHALT THOU PURSUE — go to (search after) a reliable court (Sifrei Devarim 144:14; Sanhedrin 32b).

Ibn Ezra on Deuteronomy 16:20:1

(1) JUSTICE, JUSTICE. Moses speaks to the disputants. Moses repeats the word justice to indicate that one should pursue justice whether one gains or loses. Or the word is repeated to indicate that one should pursue justice as long as one exists; or the word is repeated for emphasis.

אבן עזרא על דברים ט"ז:כ"א'
(א) צדק צדק. עם בעלי הריב ידבר
וטעם שני פעמים לדבר צדק שירויה בו
או יפסיד או פעם אחר פעם כל ימי
היותך או לחזוק:

Ramban:

The reason for the repetition [of the word “justice”] is to indicate that the judges should *judge the people with righteous judgment*,¹⁸ Verse 18. and you must also pursue justice constantly by going from your place to the place of the great Sages: “after Rabban

Justice, justice you shall pursue...With justice, you shall pursue justice. Even the pursuit of justice must employ only just means, and not falsehood.

R' Simbah Bunim of Pshischa (18th century Poland)

Justice, justice you shall pursue...Justice alone is not enough, because there are many types of justice, just as there are many kinds of truth. Every regime has its own justice. The Torah, therefore, stresses, "Justice justice you shall pursue," namely the *musar* (ethic) of justice, where both the means and the end are just.

Derashot El Ami (19th-20th century Poland & Palestine)

Kedushat Levi

The blessed Holy One judges the Jewish people (knesset yisrael) on the Day of Judgment with the greatness of His compassion and love. But this requires arousal from below, to arouse the quality of compassion above. What is it that arouses this quality of love? When we below behave with love and judge others favorably, for merit. In this manner, that very quality of love is also aroused above, and so our fellows and all Israel are judged favorably and held with love as well. Thus we, through our actions below, arouse the highest gate, to open the gates of love, that blessing may rain down on all of Israel (cf. Malachi 3:10). This is the meaning of our verse, “You shall appoint

magistrates and officials for you in all of your gates”: that is, you, yourself, must establish and determine the divine judgment through your “gates,” the gates that you create and arouse through your actions. Thus we “shall judge the people with due justice”: that is, each one of us must train ourselves to learn to judge others with “due justice,” to offer positive testimony (tzedakah) and innocence for all others. In this manner, we can arouse the gates above and also come out innocent in judgment: “The way a person measures (others)

Slater, DMin, Rabbi Jonathan P. A Partner in Holiness Vol 2 (Institute for Jewish Spirituality) (p. 252). Turner Publishing Company. Kindle Edition.

Deuteronomy 21:1-9

(1) If, in the land that your God יהוה is assigning you to possess, someone slain is found lying in the open, the identity of the slayer not being known, (2) your elders and magistrates shall go out and measure the distances from the corpse to the nearby towns. (3) The elders of the town nearest to the corpse shall then take a heifer which has never been worked, which has never pulled in a yoke; (4) and the elders of that town shall bring the heifer down to an everflowing wadi, which is not tilled or sown. There, in the wadi, they shall break the heifer's neck. (5) The priests, sons of יהוה, shall come forward; for your God יהוה has chosen them for divine service and to pronounce blessing in the name of יהוה, and every lawsuit and case of assault is subject to their ruling. (6) Then all the elders of the town nearest to the corpse shall wash their hands over the heifer whose neck was broken in the wadi. (7) And they shall make this declaration: “Our hands did not shed this blood, nor did our eyes see it done. (8) Absolve, יהוה, Your people Israel whom You redeemed, and do not let guilt for the blood of the innocent remain among Your people Israel.” And they will be absolved of bloodguilt. (9) Thus you will remove from your midst guilt for the blood of the innocent, for you will be doing what is right in the sight of יהוה.

דברים כ"א:א'-ט'

(א) כִּי־יִמָּצָא חָלָל בְּאֶדְמָה אֲשֶׁר יְהוָה
 אֱלֹהֶיךָ נָתַן לְךָ לְרִשְׁתָּהּ נָפֶל בַּשָּׂדֶה לֹא
 נֹדָע מִי הִכָּהוּ: (ב) וַיֵּצְאוּ זְקֵנֶיךָ וְשֹׁפְטֶיךָ
 וּמִדְדוּ אֶל־הָעָרִים אֲשֶׁר סְבִיבַת הַחָלָל: (ג)
 וְהָיָה הָעִיר הַקְּרֹבָה אֶל־הַחָלָל וְלָקְחוּ זְקֵנֶי
 הָעִיר הַהוּא עֵגְלַת בָּקָר אֲשֶׁר לֹא־עָבַד
 בָּהּ אֲשֶׁר לֹא־מְשָׁכָה בְּעֵל: (ד) וְהוֹרְדוּ
 זְקֵנֵי הָעִיר הַהוּא אֶת־הָעֵגְלָה אֶל־נַחַל
 אֵיתָן אֲשֶׁר לֹא־יֵעָבֵד בּוֹ וְלֹא יִזְרַע
 וְעָרְפוּ־שָׁם אֶת־הָעֵגְלָה בַּנַּחַל: (ה) וּנְגַשׁוּ
 הַכֹּהֲנִים בְּנֵי לֵוִי כִּי בָם בָּחַר יְהוָה אֱלֹהֶיךָ
 לְשָׂרְתוֹ וּלְבָרָךְ בְּשֵׁם יְהוָה וְעַל־פִּיהֶם יְהִי
 כְּלִרְיָב וְכָל־נִגְעָה: (ו) וְכָל זְקֵנֵי הָעִיר הַהוּא
 הַקְּרֹבִים אֶל־הַחָלָל יִרְחֲצוּ אֶת־יְדֵיהֶם
 עַל־הָעֵגְלָה הָעָרוּפָה בַּנַּחַל: (ז) וְעָנוּ וְאָמְרוּ
 יְדֵינוּ לֹא (שִׁפְכָה) [שִׁפְכוּ] אֶת־הַדָּם הַזֶּה
 וְעֵינֵינוּ לֹא רָאוּ: (ח) כִּפְרוּ לְעַמְּךָ יִשְׂרָאֵל
 אֲשֶׁר־פָּדִיתָ יְהוָה וְאֶל־תִּתֵּן דָּם נָקִי בְּקִרְב
 עַמְּךָ יִשְׂרָאֵל וְנִכְפַּר לָהֶם הַדָּם: (ט) וְאִתָּהּ
 תִּבְעַר הַדָּם הַנָּקִי מִקְרֶבְךָ כִּי־תַעֲשֶׂה
 הַיֵּשֶׁר בְּעֵינֵי יְהוָה: {ס}

Dvar Torah by Guy Izhak Austrian

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At the end of each day, a dead body remains. Beneath all the layers of busy activity and earnest striving—a dead body. We lie down again, and when we arise, there it is still. In our clothing, in the walls of our buildings, in our food—a dead body. No matter how we might try to ignore it or explain it, people die as a result of global inequality, which is perpetuated for the sake of our easy access to the cheap resources and labor that support our affluent ways of life.

We do the best we can. We teach tzedakah and preach that a righteous person must always strive to recognize God in the Other. We buy informative books and click on e-action alerts. Many of us even participate in, fund and found organizations that do inspiring work to alleviate the world's injustice. Yet at the end of each day—a dead body remains.

In Parshat Shoftim, this stubborn, silent corpse makes its presence felt: If a dead body is found... fallen in the field, and it is not known who killed it ... The elders of the town nearest to the corpse shall then take a heifer [and] in the wadi they shall break the heifer's neck. ... Then [they] shall wash their hands over the heifer whose neck was broken in the wadi. And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done ..." And they will be absolved of bloodguilt.¹

There is a common reading of this ritual of the eglah arufah ("the broken-necked heifer") that applauds it for holding us, as a community,² responsible for addressing a murder, even when we are not directly guilty. We marvel at the Torah's insight and sensitivity, while envying our ancestors for having access to such a profound ritual. Yet I find that reading inadequate for our times, and the ritual troubling. If we are truly held accountable for this murder, can we so easily be absolved? Can we really just wash our hands, mumble a few lines of prescribed liturgy and be done with it?

This discomfort and dissatisfaction is shared by the early Rabbis. The Mishnah, taking up the ritual of the eglah arufah centuries after the Torah's completion, asserts that the practice was actually discontinued "from when the murderers increased."³ On the surface, the Mishnah is merely reporting the change, suggesting that the ritual became impractical once murder became commonplace—as though there weren't enough heifers and wadis.

But I believe that the Rabbis, dissatisfied with the ritual's theology of justice, actually want to undermine it and prevent its return.

We find this dynamic later in the very same mishnah. In parallel language, it reports on the abolition of another Torah ritual, hamayim hamarim, "the bitter waters"—an ordeal

for testing women suspected of adultery. According to the text, this torment was discontinued “from when the adulterers increased,” apparently as a practical matter. Yet as Rabbi Judith Hauptman has demonstrated, the Mishnah’s overall treatment of this ritual amounts to a gradual “rabbinic revolt” stemming from “the desire... to eliminate a practice that confounded their notions of justice and morality.”⁴ We can posit a similar dynamic with the eglah arufah: unable to disparage a Torah institution explicitly, the Mishnah laconically explains that current conditions are just not suitable. Therefore, by the time of the Mishnah, no religious ritual could induce God to absolve the community of a murder. Every dead body had to enter the human machinery of police, courts and cemeteries. If justice was not brought about by humans’ own effort, then the bloodguilt remained with them.

We still live in an era in which “the murderers increased”; yet the Mishnah, in reassessing the Torah’s ritual of the eglah arufah, insists that we cannot wash our hands of these deaths from war, poverty and other preventable causes—even those for which we are not directly guilty.

As we go about our lives, raising our families and doing the best we can to make a positive difference, we should not be too quick to congratulate ourselves for our modest contributions. We should stay aware of the real stakes and consequences. For somewhere, someone is coming across more bodies in other fields—and looking for “the elders of the town nearest...”

