

## Mishpatim 2014 – Lechu Neranena

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By: Noah Gradofsky<sup>1</sup>

“עֲשֵׂה צְדָקָה וּמִשְׁפָּט נִבְחָר לְה' מִזֶּבֶחַ.”<sup>2</sup> *Doing righteousness and justice is preferable to God over sacrifice.*”<sup>2</sup> Based on this verse, שמואל בר נחמני pictures God telling David: “חביב עלי משפט וצדקה” *the righteousness and justice that you do is more precious to me than the sacrifices* [that will be brought in the Temple built by David’s son, Solomon].<sup>3</sup>

Some verses from this week’s Torah portion, as well as their rabbinic interpretation, demonstrate the intimate interplay between ritual and righteousness and justice in Judaism. Last week’s Torah portion ended with instructions regarding construction of the altar.<sup>4</sup> This week’s Torah portion begins with the words “וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשְׁמֹר לִפְנֵיהֶם” *And these are the laws that you shall place before them.*<sup>5</sup> From this, Rashi tells us, we learn that the סנהדרין (*Sanhedrin*), the highest court, is to be right next to the altar.<sup>6</sup>

A few verses later, the Torah tells us regarding a murderer “וּמִמֶּנּוּ תִקַּחנֻהוּ לְמוֹת” *you shall take him from my altar to die,*” indicating that the sanctity of the place was no reason to refrain from carrying out justice.<sup>7</sup> The rabbis add an additional lesson from this verse—that a guilty priest who has come to do sacrificial services is to be removed and executed, although if he has already started the service he is allowed to finish.<sup>8</sup>

The rabbis recognized justice and righteousness to have a role in halakhic decision making, as demonstrated by the aphorism “גדול כבוד הבריות שדוחה [את] לא תעשה שבתורה” *Great is human dignity, for it overrides a prohibition of the Torah.*<sup>9</sup> Concrete examples are, for instance, Prozbol, the famous legal fiction enacted by Hillel to allow loans to be collected after the sabbatical year, which should cancel debts;<sup>10</sup> the limitations placed on the death penalty;<sup>11</sup> and

<sup>1</sup> All translations in this text are my own. Footnotes include source references as well as material that I culled down to shorten the spoken d’var Torah but may be of interest for further development of the theme.

<sup>2</sup> Proverbs 21:3.

<sup>3</sup> Jerusalem Talmud Berakhot 2:1, p. 4b. Similarly, in BT Succah 49b Similarly, Rabbi Elazar learns from this verse that “גדול העושה צדקה יותר מכל הקרבנות” *one who does righteousness is greater than [one who does] all the sacrifices.*”

<sup>4</sup> Ex. 20:20-22.

<sup>5</sup> Ex. 21:1.

<sup>6</sup> Rashi on Ex. 21:1 based on Mekhilta d’Rabbi Yishmael, Yitro, Bachodesh, chapter 11 (last comment).

<sup>7</sup> Ex. 21:14. The immediately previous verse tells us regarding one who kills accidentally, “וְשָׂמֵתִי לָהּ מְקוֹם אֲשֶׁר יָנוּס” *I will appoint a place whence he shall flee.*” The JPS Torah Commentary on this verse notes that the word “מְקוֹם,” like its Arabic cognate, is probably best translated “sacred site,” an idea that seems to be confirmed in the book of Kings when Adoniyahu and Joab grab the horns of the altar in an attempt to seek refuge from King Solomon’s retribution. C.f. 1 Kings 1:50-53, 2:28-34. Interestingly, 1 Kings 2:28 is taken by the Mekhilta cited in footnote 6 as a hint to the placement of the Sanhedrin near the altar.

<sup>8</sup> BT Yom 81a.

<sup>9</sup> See e.g. BT Berakhot 19b. The Talmud introduces an understanding of this statement to the effect that only rabbinic law is overridden by human dignity. Even in this reduced form, it recognizes human dignity as playing an important role in halakhic analysis.

<sup>10</sup> Mishnah Shevi’it 10:3. The Mishnah tells us that Hillel instituted this pathway around the strict application of Torah when he saw that the strict law had led the people to hold back from lending money, thus violating the biblical injunction, “לֹא תִתֵּן לּוֹ” *Take care for yourself, lest there be an evil thought in your heart to say ‘the seventh year, the sabbatical year is approaching’ and your eyes be unkind toward your destitute kinsman and you not give him . . .*” Deut. 15:9.

<sup>11</sup> See e.g. Mishnah Makot 1:10, appearing in BT at 7a.

deciding methods of the death penalty based on the biblical dictum “וְאָהַבְתָּ לְרֵעֶךָ כְּמוֹךָ” *love your neighbor as yourself*.”<sup>12</sup>

Today, sadly, there are those who would mistake considerations of justice and righteousness within the halakhic process as an indication of a lack of commitment to halakhah. Recently, the chief rabbinate of Israel called Rabbi Avi Weiss’s commitment to halakhah “questionable.” Frankly, that aspersion would probably be cast on each of us here tonight.

Genuine Orthodoxy, however, requires that we remain loyal not only to what is perceived as common practice, but also to the application of the sources and methods of our sacred tradition to the needs of the day and the sensibilities of our community. Strikingly, the intentions of groups like ours are often called into question. There must be some political or personal agenda—as if either of those things were necessarily wrong. Beyond expressing our offense at those who presume negative intentions of others, let’s look at the sources. In the Talmud Rabbi Yose relays a story told to him by Aba Elazar that a sacrificial animal was brought out to the women’s court so that women might perform the ritual of *semikhah*, laying their hands on the sacrifice, “אלא כדי לעשות נחת רוח לנשים - לא מפני שסמיכה בנשים” *not because semikhah applies to women, but so as to give satisfaction to women*.<sup>13</sup> Why was giving women ritual satisfaction a valid reason for *HaZ”aL*, our rabbi, of blessed memory) to allow women access to a religious ritual, but a reason to question the motivations of men and women today?<sup>14</sup> Is this an Orthodox attitude, an attitude of commitment to Halakhah as interpreted by our sages, or is it indicative of a different commitment altogether? More generally, oft quoted in the Talmud is the statement of Rav Yehudah in the name of Rav: “לעולם יעסוק אדם בתורה ובמצות אף על פי שלא לשמה”, *one should always immerse in Torah and mitzvot even if it not be for its own sake – for from [an act done] not for its own sake, one comes [to do the act] for its own sake*.<sup>15</sup> Is questioning a person’s desire to do a mitzvah consistent with our Talmud, or would the Talmud praise a person’s doing a mitzvah even if there were an ulterior motive?

A striking example of the unorthodox approach often taken toward women and ritual is the objections raised to women wearing tefillin. Particularly worth noting are the laws against doing so at the Western Wall. The Babylonian Talmud tells us that Michal, the daughter of Saul wore tefillin, “ולא מיהו בה חכמים” *and the sages didn’t bother her*,” a behavior that is entirely consistent with the general rule that anyone may do a *mitzvah* that he or she is not legally required to do.<sup>16</sup> The early post-Talmudic sources seem to accept this Talmud as authoritative,<sup>17</sup>

<sup>12</sup> Lev. 19:18. As the Talmud puts it, “ברור לו מתה יפה” . . . ואהבדת לרעך כבוד . . . ברור לו מתה יפה.” See e.g. BT Sanhedrin 52b.

<sup>13</sup> BT Hagigah 16b. For further discussion of this text see Rabbi Dr. Daniel Sperber’s article “Congregation Dignity and Human Dignity: Women and Public Torah Reading,” *Edah Journal* 3:2, currently available online at [http://www.edah.org/backend/JournalArticle/3\\_2\\_Sperber.pdf](http://www.edah.org/backend/JournalArticle/3_2_Sperber.pdf), p. 7-8.

<sup>14</sup> This is not to imply that the only benefit to performing a mitzvah not incumbent upon oneself is personal satisfaction. There is *s’char* (reward) for a person doing a mitzvah without obligation, see BT Bava Kama 38a, Ramba”n and BT Kiddushin 38a s.v. *u’mi hu mistabra*, Ra’avia 2: Megillah 597 s.v. *venireh b’aynay*.

<sup>15</sup> See e.g. BT Pesahim 50b.

<sup>16</sup> BT Eruvin 96a. In the Jerusalem Talmud, Eruvin 10:1, 26a it is reported that Rav Chizkiah said in the name of Rabbi Abahu that the sages did object to Michal’s wearing tefillin. This minority opinion in the Jerusalem Talmud should be given no halakhic weight as (a) even in the Jerusalem Talmud it is a minority opinion; (b) this opinion is not even mentioned in the Babylonian Talmud; and (c) the Babylonian Talmud is generally accepted as authoritative over the Jerusalem Talmud.

<sup>17</sup> Sefer Hachinuch, Mitzvah 471 and Responsa of RaSh”Ba 1:123 explicitly permit women to wear Tefillin. I am not aware of any early post-talmudic source forbidding the practice. Some read Tosafot Eruvin 96a s.v. *Michal* as

many of them offering this Talmud as precedent that a person may make a blessing on a mitzvah that s/he is not obligated to fulfill.<sup>18</sup> The rabbis did not bother Michal for wearing tefillin. How is attacking and/or arresting women for wearing tefillin anything resembling a commitment to halakhah? On this point, it is worthy to give recognition to SAR in Riverdale and Ramaz in Manhattan for allowing female students to wear tallit and tefillin. It was, after all, the proper Orthodox response.

On this particular Shabbat, I would like to draw a parallel to someone else who demanded that we strive for law and society that comply with the values of fairness and justice that are enshrined in our legal cannon. He was labeled a reformer. He was feared as a threat to the status quo and to "our way of life." But Martin Luther King, Jr., whom we celebrated this week, didn't lack commitment to the American way of life-he demanded it. King demanded that we apply the true values of the American tradition, for too long observed in the breach. Through peaceful protest and advocacy, he demonstrated his fealty to democracy and the American Constitution. But he also challenged our country, with great but not yet complete success, to live up to the laws and values enshrined in the Declaration of Independence, the Constitution, and the Bill of Rights.

“עֲשֵׂה צְדָקָה וּמִשְׁפָּט נִבְחָר לָהּ מִזְבַּח” *doing righteousness and justice is preferable to God over sacrifice.*” Whether it be in our ritual life, our family life, or our life as American citizens, let us remember and apply God’s commitment to justice and righteousness. Let us learn, teach, practice, and advocate for ways of fairness and human dignity in every facet of our lives. And in that spirit, let us read together with great dedication the words of our Torah, which bid us toward this pursuit with the words “וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשִׂים לִפְנֵיהֶם” *And these are the laws that you shall place before them.*”

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forbidding women to wear tefillin, but I believe Tosafot is merely explaining the rationale behind the non-authoritative suggestion that women might be held back from wearing tefillin.

<sup>18</sup> E.g. RaSh”Ba cited above, footnote 17, RO”Sh Hullin 8:26, Rabbenu Tam in Tosafot Eruvin 96a s.v. dilma savar. I personally disagree with the ruling permitting the reciting of a blessing on a mitzvah which is not incumbent on the particular person. See my compilation, "The Command of God: The meaning and Application of Blessings that State 'Who Has Sanctified Us By Your Commandment and Commanded Us To . . .'" and particularly the subsection "Blessings by the Uncommanded." That document can be accessed at <http://www.e-ark.net/rabbi/birkatm.pdf>.