

## **Shofetim 5778**

### **Jumpsuit Justice**

It doesn't matter how many prison dramas you watch on TV. It doesn't matter how many movies you see on the plane. The first time you see those orange jumpsuits and those shackles in real life is a time you won't forget.

That time happened for me a couple of weeks back. I went on a program organized by the JCRC, the Jewish Community Relations Council, to visit the courthouse down on Tulane for the afternoon and watch bail hearings.

We filed in gradually, so as not to be distracting, and sat ourselves in the hard wooden seats at the side of the room, along with family members and people who were coming back to court for pre-scheduled appearances. The judge sat up high, in a kind of wooden pulpit; a public defender with glasses and a nasty cough was interviewing her clients one by one behind the glass on the other side of the room; and there in a row were maybe a dozen people in orange jumpsuits and shackles. The majority were black and male. There was a sprinkle of women. One of the men had pink hair.

As the proceedings began I noticed a weary tone in the judge's voice as he addressed the row of people, all of whom were being held pending the grant of bail. It was clearly a speech he'd given innumerable times before: what he was going to do, what his criteria were - they included the severity of the offence, the flight risk and the person's history - and he emphatically underlined the dire consequences of what would happen if he granted bail but someone didn't come back to court as ordered.

And so the hearings began. One by one each person was asked to stand to confirm their identity and what they were being charged with. Each time the judge turned to the public defender who would argue, through her worsening cough, why it was that bail should be allowed. Sometimes it was, and sometimes the person was remanded back into custody.

We had been asked particularly to notice the numbers. The court has newly started using a 'matrix' to set bail. Some of the amounts were high but unsurprising - \$20,000 for illegally owning a firearm for example - but we saw many times that bail for non-violent crimes was also being set in four figures.

Afterwards, at debrief, we were told why this is a problem. It's one of the reasons that New Orleans is the most incarcerated city in America. Bail is regularly set far higher than people can afford. This supports a flourishing bail bond industry that in turn increases the financial burden of bail on the families and friends of those trying to put the money together. The longer the person remains incarcerated the greater the disruption to their own lives and the lives of their families, particularly their children, and the greater the effects on the city. As it was explained to me, bail is better decided on the criterion of risk to society - is it safe or unsafe to release that particular person? - than on the assigning of a financial value to their crime or crimes.

And even as I sat there at the debrief I knew what my sermon would be this morning. The longer I sat and listened, the more apparent it became to me that what I was seeing was an example of a difficult challenge our own tradition strives to address. My scribbled notes from the day contain the title of this morning's parashah - *Shofetim*, judges, and the well-known words:

*Tzedek, tzedek tirdof* - justice, justice shall you pursue.

The Torah is a small work, with a small vocabulary. Repetition is unusual and always draws the attention of readers and commentators. Why is *tzedek* repeated here?

There are various replies to the question. Rashi, the medieval commentator, tersely remarks, 'Seek out a good court,' as if to say that justice can be relative rather than absolute. Ibn Ezra, Rashi's almost-contemporary, teaches that the repetition serves to underline the importance of this mitzvah. Ramban teaches that the mitzvah applies both to justice in the court system and justice in our day to day lives.

But in the particular case of what I witnessed a few weeks ago, I was thinking of a more modern teaching - from the Hasidic master, Rav Simhah Bunim of Pezishcha. I think his interpretation is based on a curious fact of Biblical Hebrew grammar.

Biblical Hebrew doesn't have adverbs. All those lovely words we have that end in -ly are not a grammatical category in the Torah. So - as I was taught - we have to read the text sensitively and infer when they are there.

And this is just such a place. Here is Rav Simcha Bunim's teaching:

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

In other words, we must pursue justice justly.

This is a truly exacting standard of behavior. It's not enough only to set up a court system, as the opening of the Torah portion suggests. It's not enough even to mandate that the outcome should be just. The process has to be just as well. This is a real challenge in terms of scrutiny, of accountability and of accepting that the process of justice must evolve. Justice has to be *both* an absolute value and subject to procedural change in order for that absolute value to be made manifest.

And of course, this is where it gets sticky. In the particular case of the setting of bail, it is so much tidier and easier to monetize the various categories of misdemeanors and felonies and create a basic matrix, perhaps with a proviso for amendment if they are aggravated in some way. But that injunction to pursue justice justly suggests that we must opt for a messier, but ultimately fairer process - the judge must be able properly to perceive the particular individual standing before them and evaluate how much of a risk they pose to society. And this places a far greater burden on judges, and on the system in which they operate, and on the other individuals in that system.

But the Torah is clear. If we do not pursue justice justly - it isn't justice. As ever, our tradition holds humanity accountable to the highest of standards. It is up to us to pursue them. And the reward if we do, as expressed by the Torah, is that we will thrive.

Given that today's Torah portion is called *shofetim*, it feels right to give the last word to a judge - to Justice Ruth Bader Ginsberg. She writes:

*I say who I am in certain visible signs. The command from Deuteronomy appears in artworks, in Hebrew letters, on three walls and a table in my chambers, Tzedek, Tzedek tirdof - "Justice, justice shalt thou pursue," these artworks proclaim; they are ever-present reminders to me of what judges must do "that they may thrive."*

*I am a judge born, raised and proud of being a Jew. The demand for justice runs through the entirety of Jewish history and Jewish tradition. I hope, in all the years I have the good fortune to serve on the bench of the Supreme Court of the United States, I will have the strength and courage to remain steadfast in the service of that demand.*

Shabbat shalom.