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# Justice According to Whom?

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*Avlana Eisenberg ('93) teaches law students, researches the prison industry, and conducts orchestras. The single greatest challenge in each of these pursuits is getting passionate, insightful individuals to listen to each other.*

Parshat Shoftim introduces *lex talionis*, the principle that punishment must be calibrated to crime. “Life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” This principle of proportionality is the core of retributivism, a foundational justification for criminal punishment. Historically, *lex talionis* was a limiting principle—something to mitigate a victim’s desire for vengeance. According to this principle, one should be compensated for a loss, and, in interpretive literature, this is restricted to the monetary equivalent of the estimated value of that loss.

This week’s Parsha also introduces the iconic directive: “Justice, justice shall you pursue.” Commentators have suggested that the repetition of the word “justice” is not only for emphasis but also to stress that determining what is “just” requires looking at a situation from multiple perspectives. In that vein, this Parsha also teaches that one witness testifying to a crime is not enough—to convict there must

be two witnesses. This requirement of hearing from two witnesses—at least two distinct perspectives—is in keeping with the pursuit of justice.

*"Justice, Justice shall you pursue..."*

"צִדֵּק צִדֵּק תִּדְרֹף"

(Deuteronomy 16:20)

How does the directive to pursue justice, and the value of multiple perspectives in such pursuit, relate to the principle of proportionality in punishment? Perhaps it suggests that we should assume multiple perspectives when considering what constitutes a proportional punishment, including perspectives of the victim, the person who committed the crime, and even that of the community.

In the context of modern U.S. criminal law—or “criminal justice”—judges dole out punishments every day, including though not limited to periods of incarceration. How should one calibrate a period of incarceration to a given crime? And how should we conceive of the role of prison—whether to house, to punish, to educate, or to transform? The perspective of the victim provides information about the impact of the crime. However, if relied upon exclusively, this could lead to excessive deprivation and a punishment that is overly vengeful. The perspective of the person who committed the crime might help to provide important context, though it also could work against the value of deterring future crime. The perspective of the larger community may offer an important perspective about what messages are being conveyed by punishment, and how people punished for crimes are integrated back into the community. Since upwards of 95 percent of people incarcerated ultimately leave prison, this is a perspective that is crucial, yet often neglected.

The repetition of “justice” may also tell us something valuable about how perceptions of justice change over time. Maybe what seems “just” in the immediate aftermath of a crime is different from what seems “just” once a person has served the bulk of his or her sentence and is preparing to be released into the community. Perhaps the repetition of justice insists that questions of proportionality or “desert” be revisited not only at a given moment (e.g., conviction) but also over the duration

of the convicted person's term of confinement.

Finally, this Parsha describes justice as a pursuit. There is no indication that one could ever achieve justice, or that there is a template for justice that, if followed, would yield proper results. Instead, the pursuit of justice appears elusive—possibly like the pursuit of happiness—blessed and cursed with an ineffable, dynamic quality. If so, determining the contours of this pursuit requires constant reassessment and reevaluation. It also demands an accompanying humility, for even our own determination of what seems just (or proportional) will change over time. Perhaps the repetition of “justice” also speaks to the multiple perspectives within each of us, which might enable us better to hear and to listen to the views of others.

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