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Does Law Equal Justice?

Torah Reading: Leviticus 21:1 - 24:23

Haftarah Reading: Ezekiel 44:15 - 31

Our parashah this week ends in an odd way, a way that it is odd both for the book of Leviticus, and for Torah more generally. Leviticus is largely a book of laws – laws related to the Tabernacle and the priesthood (hence the English name of the book that invokes the tribe of Levi), laws of incest and sexual prohibitions, laws of ritual impurity, and so on. It contains very few narratives, yet it presents one here. Moreover, this may be the only occasion in which the Torah presents a male character who has no name, but whose mother's name is known (whereas we are far more used to unnamed female characters identified by relationship to a named father and/or husband):

And the son of an Israelite woman, he being the son of an Egyptian man, went out among the Israelites, and the son of Israelite woman and an Israelite man brawled in the camp (ba-mahaneh). And the son of the Israelite woman invoked the Name, vilifying it. And they brought him to Moses. And his mother's name was Shelomith daughter of Dibri of the tribe of Dan. And they left him under guard until it should be made clear to them by the word of the Lord. And the Lord spoke to Moses,

saying, "Take out him who vilified beyond the camp, and all who heard shall lay their hands on his head, and all the community shall stone him..." ... And Moses spoke to the Israelites, and they took out him who had vilified beyond the camp and pelted him with stones. (Lev. 24:10-14, 23; translation by Robert Alter

Like many biblical narratives, this story is terse and matter-of-fact. It tells us what happened, but little else, such as what led up to these events or what motivated the participants. The rabbis of antiquity were as aware of the difficulties in understanding the story as we are today, and commented on it in multiple ways. As they often did, one of the ways in which they sought to explicate the text was to elaborate on the biblical story with an additional midrashic tale of their own. The earliest version appears in the tannaitic (i.e., from about the same time as the Mishnah) midrashic work Sifra, which comments on the book of Leviticus

"And the son of an Israelite woman...went out" From where did he go out? From Moses' court. For he had sought to pitch his tent with the camp of (the tribe of) Dan. They said to him: What right do you have to pitch your tent within the camp of Dan? He said to them: I am (a descendant) from the daughters of Dan. They said to him: the Scripture says "Every man by his banner with standards for his father's house, shall the Israelites camp..." (Num. 2:2). He entered into Moses' court and emerged liable (i.e., he lost his case, his claim was denied), and rose and blasphemed.

The rabbinic story is framed as an answer (and there are others also offered in rabbinic tradition) to the question "From where did the man who blasphemed go out?" If these are the first words of the biblical account, what do they signify, what do they add to the story? But the rabbinic elaboration also provides explanation for at least two other potential odd linguistic and narrative details in the verses: First, why do we need to be told that the fight occurred "in the camp"? As the great modern Torah commentator Nehama Leibowitz writes, "we know, in any case, that all the Israelites were in camp, whilst in the wilderness" – so where else would a fight take place (as Leibowitz continues: "there is little point in understanding *ba-mahaneh*, in a locative sense.")? What the rabbinic midrash recognizes is that the Hebrew preposition "b..." can have nuanced meanings that include not just "in," but "regarding" – the two men fought about a matter "regarding the camp," i.e., whether the half-Israelite man had a place therein. The story also tells us why it is important to know about the lineage of the man who comes to blaspheme – because he does not have an Israelite father (and why this is so is a story for another day/drashah), he apparently has no legal place to pitch his tent within the Israelite camp that is arranged by paternal tribes.

I suspect that the rabbinic account means to suggest that Shelomit's son is something of a sore loser, who goes way too far in protest over a justified legal verdict. Of course the verdict is to his disadvantage, but as Leibowitz states, "Sometimes the law causes individual hardship and the victim feels unjustly treated. But it is the individual's duty to accept the hardship in the interest of the public good." There's some truth to this. And yet... While the rabbinic narrative is meant to explain and flesh out the biblical account, I have always found that it creates more new questions than it answers. Most particularly, it seems to me (and I suspect also to many of you reading this) that a great injustice has been done here to Shelomit's son. The verdict Moses renders according to this account does more than make hardship for this man – rather, it effectively disenfranchises him altogether, gives him no place at all to go among the Israelites. Is it any wonder that he reacts in anger and despair?

The legal system in the United States is overseen by the Justice Department, and we often refer to it as the "justice system." Law can be and often is a means by which human societies strive to make a more just world. But as this story demonstrates, and what history (both in the United States and in many other countries) has shown us is that law and justice are not synonymous. Some things can be fully legal, and yet result in great injustices.

What's more, we know from the Torah of at least two other instances when Moses was able to find (with Divine help) some sort of modification of the law, a compromise as it were, that created a more just outcome for the petitioners before him: at the celebration of Passover in the wilderness when certain members of the

community were unable to participate due to ritual impurity from contact with a corpse (Num. 9) and when the daughters of Tzelofhad came desiring to inherit a place in the Land of Israel on behalf of their deceased father who had left behind no sons (Num. 27). Why was Moses unable to find a workable solution for Shlomit's son when he first came with his case? Why did Moses wait until after the blasphemy to seek instruction from God?

One possibility – if we read the Torah as being on the whole a chronological narrative (though for various reasons the rabbis do not always do so, something I've discussed in other drashot in the past), then these two incidents would have occurred subsequent to the blasphemy case, and might even demonstrate that Moses has learned something from that earlier case, has learned something about the consequences of a verdict that meets the technical requirements of the law, but at the same time creates a deep injustice. Moses has learned to bring law and justice closer together in his court, and in the verdicts he renders for the Israelites.

It also strikes me that although the story of Shelomit's son and Moses' verdict was repeated many times in many other later rabbinic works, it may be only the Sifra that also links it to the legal process by which the rabbis imagined that a blasphemy case should be tried. A bit further down in the same chapter, we read:

Rabbi Yehoshua ben Korha said: Every day, they judge (i.e., examine) the witnesses using a euphemism (rather than the name of God used by the alleged blasphemer)... (But) at the conclusion of the case, they could not put (the accused) to death based on a euphemism. Rather, they send everyone (other than the judges and witnesses) outside and question the senior of them (the witnesses), and say to him: Say to us explicitly what you heard. And he says it. And the judges rise to their feet and tear (their garments) and do not (ever) sew up (those tears). And the second witness says: And too I heard like he did. (see also Mishnah Sanhedrin 7:5)

The fundamental legal principle here is that while the alleged blasphemy should not be repeated wantonly, it is also not just to put someone to death without at least once having taken testimony as to exactly what the defendant actually said. The rabbis also rule that when one hears blasphemy, one should tear one's clothes, similar to when a death occurs. In this instance, though, the witness himself intends no blasphemy. In fact, the intent is to do justice. And yet the judges must tear their clothes when they hear the second hand report of what the accused said. Perhaps this is because it is still shocking enough to such a response. But I also find myself wondering: perhaps the judges are in some way taking a measure of responsibility on themselves for the blasphemy? If someone has committed so heinous a crime, what lead that person to place of such hostility towards God? Has the community and/or its legal arbiters inadvertently or deliberately harmed this person, disenfranchised them, under the guise of what is legal? Perhaps the judges tear because the judges stand in for the entire community, and even for God – the community and/or (as it were) God that has in some way done an injustice to this defendant, even according to the strict measures of the law?

May we strive to create a community and system in which law bends towards justice and the just inclusion of all, and may God's name be elevated thereby.

Shabbat shalom.

Rabbi Gail Labovitz, PhD, is Professor of Rabbinic Literature and former Chair of the Department of Rabbinics for the Ziegler School of Rabbinic Studies. She also enjoys serving as the Ziegler School's faculty advisor for "InterSem," a dialogue program for students training for religious leadership at Jewish and Christian seminaries around the Los Angeles area. Dr. Labovitz formerly taught at the Jewish Theological Seminary of America (JTS) and the Academy for Jewish Religion in New York. Prior to joining the faculty at AJU, Dr. Labovitz worked as the Senior Research Analyst in Judaism for the Feminist Sexual Ethics Project at Brandeis University, and as the Coordinator for the Jewish Women's Research Group, a project of the Women's Studies Program at JTS. Rabbi Labovitz is also preparing a teshuva (rabbinic responsum) for

consideration by the Committee on Jewish Law and Standards of the Rabbinical Assembly on whether a person who is unable to fast for medical reasons may nonetheless serve as a leader of communal prayer on Yom Kippur.



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