

Ki Teitzei: “Kindness and consideration as Judaism’s motivating principle”

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chesed olam yibbaneh

So many of the laws contained in this week’s sidra (Deut. 21:10 – 25:19) exemplify the overriding element of *chesed* (kindness, mercy, and consideration) which we are expected to extend to all people, even to those whose people have fought against us and were captured in war. The Torah exemplifies this in the opening verses of our sidrah which describe the situation of beautiful female war captives. In antiquity and over the centuries it was routine that they became the sex slaves of their captors, and their fate was unimaginable.

At this time, when our thoughts are preoccupied with, and our hearts torn by, the fate of our Israeli brethren, captured, raped, tortured, starved, and kept in dark and airless underground cells, by Hamas, it is apposite to read what sort of moral standards the Torah expects of Jewish soldiers who have captured women in battle. The Torah was keenly aware of the tensions and emotional stresses of war, and it did not therefore demand that the Hebrew fighters be superhuman and resist the temptations of vanquished women, ‘dressed to kill!’ (perhaps an unfortunate, albeit apposite, reference!) offering themselves to the victors. In the words of the Talmud, ‘The Torah was offering a concession to the evil inclination.’¹

It was certainly not recommending the kidnap and sexual exploitation of captive women but was setting out to regulate that cruel universal practice. However, given that the defeat of a captive girl's nation inevitably meant the death or incapacitation of most male members of her family, as implied in the phrase, *And she shall spend a month in your house lamenting her father and mother, after which you may come to her and possess her and she shall become your wife* (21:13) – or, at the least, their inability to provide emotional and material support to, and provide a future for, their daughter – the Torah's legislation offered her a haven, protection, marriage, and, hopefully, love and stability. It also sets out to allow her safely to return to her family if her captor does not wish to continue the relationship. In the words of Israel Zangwill, 'The Legislator proceeds to trace the course of the husband's duty in the event of the conquered alien woman failing to bring him the expected delight:

You shall let her go wherever she wishes, but you may not sell her at all for money. You shall not deal with her as a slave because you have humbled her (1:14).'²

The freedom of a concubine from being sold as a slave is also referred to in Ex. 21:7-8. Such humane treatment and the extension of such *chesed* to one's enemy was unprecedented in the ancient world.

Even toward members of the criminal fraternity, who may be regarded as having forfeited their claim to society's mercy, the Torah demanded consideration. Hence, although the person undergoing flogging at the hand of the court is described as *rasha*, 'the evil one' (25:2), the Torah firmly warns against exceeding the number of lashes by even one blow – *v'niklah achiycha l'einecha* – 'lest your brother be degraded before your eyes' (v.3).

Significantly, once his prescribed punishment had been administered, he was no longer considered a *rasha*, but reverted to his overriding status as *achiycha*, ‘your brother,’ entitled to dignity and to the court’s respect, for which reason care had to be taken not to administer even a single further blow.

Forty lashes were imposed only for the most serious offences, and such cases were heard by one of the two higher courts, the lesser one, consisting of twenty-three judges, or the Great Sanhedrin of seventy-one. Minor cases, involving light flagellation or a small fine, were heard

by the first level court, or Bet Din, which held its sessions at the gates of every small town and was presided over by just three judges.

The Torah laid the greatest emphasis on the administration of justice, and hence the demand, *You shall not render an unfair decision: do not favour the poor or show deference to the rich; judge your kinsman fairly...I am the Lord* (Lev.19:15). In that spirit, early Jewish law determined that even at the very last moment when transporting a criminal to the place of execution, if anyone came forward with new evidence the court had to be immediately reconvened to consider it. Indeed, so difficult was it to secure a sentence of execution that the Talmud describes as “a destructive tribunal” any judges who could not discover an element of mitigation to avoid the imposition of capital punishment. The classical Mishnaic source for this states:

A Sanhedrin that executes a transgressor once in seven years is dubbed a destructive tribunal. Rabbi Elazar ben Azarya says: This appellation is attached even to a Sanhedrin that executes once in seventy years. Rabbi

Tarfon and Rabbi Akiva say: If we had been members of the Sanhedrin, no person would ever have been executed. Rabban Shimon ben Gamliel objected, saying, “The effect of their approach would have merely been to increase the number of murderers in Israel!”³

In stark contrast to this was a report I read some time ago of a special meeting of judges from southern states of America called to discuss ways of speeding up the death penalty and avoiding delays in carrying out the executions of condemned prisoners caused by the lodging of appeals by defence lawyers. It was reported that a Texas federal appeals judge had complained to a defence lawyer that a last-minute appeal by a death-row inmate had forced the judge to miss a birthday party for one of his sons!

But, at a less extreme level, so many of the Torah’s laws demand that in our everyday dealings we exercise a high degree of *chesed*, basic human consideration for, and special sensitivity toward, the less fortunate. Hence the law that a slave whose master oppresses him, and who in consequence flees the latter’s home, may not be forcibly returned.⁴ This law has a clear modern-day application in the case of political refugees from countries of oppression. The law of *chesed* demands that one may not return them to a place and situation of danger.

Chesed is to be applied especially when people fall on hard times and might well be embarrassed if their condition is made public. In the Torah’s pre-banking era, when it was expected of the wealthy to provide loans to those in need, legislation ensured that the

debtor retained his dignity and self-respect and that the loan arrangement was kept confidential.

Hence, if the creditor insists on receiving an item to serve as security for the loan, he is not permitted to enter the debtor's home to collect it:

When you make a loan of any sort to your fellowman, you must not enter his house to seize the pledge. You must remain outside, while the man to whom you make the loan brings the pledge out to you. If he is a needy man, you shall not go to sleep in his pledge; you must return it to him at sundown that he may sleep in his cloth and bless you; and it will be to your merit before the Lord your God (Deut. 24:11).⁵

The idea of bailiffs invading a person's home is clearly anathema to the Torah. An unfeeling banking service, that makes huge profits while depriving hapless people of their homes and businesses because of comparatively small outstanding loans, would be counter to the Torah's worldview based upon the application of *chesed* in every area of human interaction. Indeed, this same law, which prevents the creditor from entering the debtor's home to assess the value of the debtor's personal possessions, opens up the subject of privacy which is so consequential to our computer usage and the issue of disclosure.

In the same spirit is the law of interest:

You shall not deduct interest from loans to your brethren, whether in money or food or anything else that can be deducted as interest...that the Lord your God may bless you in all your undertakings in the land that you are about to enter and possess (Deut. 23:20).

The Torah's preoccupation with *chesed* also extended to emotional distress. Hence a newly-married couple is not to be separated from each other to the extent that the husband is exempted from national service for the first year of marriage (Deut. 24:5-6). But that did not leave him free to go out drinking with the lads every night. In place of national service the Torah directs him to the duty of domestic and romantic service – *V'simach et ishto asher lakach*, 'to make happy the wife he has chosen' – by providing her with a veritable year-long honeymoon. The claim that in Judaism a wife is a mere chattel of her husband is shown to be spurious with this legislation.

The law of *chesed* which our sidra exemplifies also requires that a tradesman be paid promptly at the end of each day in a situation where – *eilav hu nosei et nafsho* – 'he relies on his money for his livelihood' (24:14-15). This principle and its rationale extend beyond the immediate situation of the worker who is paid by the day and apply equally to delaying payment for work that has been completed or goods that have been delivered. Many, especially small, businesses go to the wall simply because customers have delayed or defaulted on their bills.

The seriousness of this situation may be gauged by the language used above by the Torah in urging prompt payment: *V'lo yikra alecha el Hashem v'hayah v'cha cheit* – 'So that he will not cry out because of you to God, and it shall be attributed to you as sin.

Chesed lies at the heart of our Torah. Avraham was its exemplar by the way he extended hospitality to strangers and wayfarers. Moses was chosen for leadership of God's human

flock, according to the Midrash, because of his *chesed*, his consideration for animal flock, for a little lamb that had strayed far off, and which Moses pursued to rescue for an entire day. Finding it exhausted, Moses cradled in his arms and carried it back to its mother. God said: “You have exhibited so much *chesed* for a lamb, so it is clear that you have the qualities to tend my special flock.”⁶

But not only does *chesed* extend to consideration for the lower animals, as in the prohibition of *tzaar ba'alei chayim*, the prohibition of inflicting pain on them, but also to the respect and consideration we are to display toward the earth itself and its produce. Thus, we are not allowed to exhaust nature of its resources which is the rationale of the laws of *shemittah* and *yoveil*, requiring the land to be left fallow every seven years and on the Jubilee. This also underlies the prohibition of a besieging army from cutting down a fruit-bearing tree. In the dramatic words of the Torah: *Ki ha'adam eitz ha-sadeh lavo mipanecha ba-matzor*, “For is the tree of the field a man that you should lay siege to it?” (20:19).

Chesed also underlies the rabbinic attitude towards disputes which the judges are enjoined to attempt to resolve in the first instance by means of *pesharah*, compromise between the parties, rather than by *din*, the imposition of a court decision in favour of one of the parties. Compromise is less focused or precise and may also be regarded as less just – especially by the party who feels he has most to lose – given his certainty that he is in the right and should accordingly be granted the full amount of his claim.

It is regarded as a preferable arrangement, however, because of the element of *chesed* underlying it. It is predicated on the assumption that the loser did not lay his claim before the Bet Din in a spirit of capriciousness and would not have attempted, or had the temerity, to lay any false claim before the court. It is assumed therefore that he sincerely believed that the circumstances were as he presented them. The party truly in the right is called upon, however, to compromise as a gesture of *chesed*, and in recognition of the fact that he clearly had failed to arrange the original transaction in a water-tight manner, leaving no margin for misunderstanding, misrepresentation, or error.

Pirkei Avot states, in the name of Shimon Ha-tzadik, that the world rests on three pillars – *al ha-torah v'al ha-avodah v'al gemilut chasadim* – ‘on the study and observance of Torah, on the Temple Service, and on deeds of *chesed*, kindness and consideration.’⁷

In this month of Ellul we are called upon to make our preparations for the *Yamim Nora'im* and strive to resolve the sins that have created a barrier between us and God. Those prerequisites for *teshuvah* also entail the removal of barriers we have created between our family, friends, and associates, through thoughtlessness, misrepresentation, and selfishness. In a word, through the absence of *chesed* from our hearts, minds, and lips.

In the words of Psalm 89:3, *Olam chesed yibbaneh*, ‘The world will [only] be repaired through compassion.’

NOTES

1. Tal. *Kid.* 21b.
2. Quoted in J.H. Hertz, Commentary to Deut. 21:12.
3. Mish. *Makkot* 1:10.
4. See Deut. 23-16-17)
5. See also Tal. *B. Metz.* 103a-b.
6. See Mid. *Shemot Rabb.* 2 (2).
7. Mish. *Avot* 1:2.

Shabbat shalom, shalom al Yisrael,

Uch'tivah v'chatimah tovah,

Rabbi Jeffrey