

DARCHAI NOAM - דרכי נועם

“Its ways are ways of pleasantness”

(Mishlei 3:17)

Parashat Mishpatim
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How can the Parasha help us grow this week?

Mishpatim – The indirect message¹

In this week's Parsha of Mishpatim we read about the Arei Miklat, the cities of refuge (Sh'mot 21:13). If someone accidentally kills another person (i.e. manslaughter), they would quickly flee to a city of refuge. As long as they were in such a city, they were safe from the Goel HaDam (the relatives of the deceased, known as the 'blood avengers'). Accidental killers were required to stay in the city of refuge until such time as the Kohen Gadol of the time passes away. If they leave the city of refuge before the Kohen Gadol dies, they are no longer protected from retribution by the Goel HaDam.²

Such a description evokes images of the Wild West. The relatives of the victim taking the law into their own hands! A desperate race to the city of refuge, where the cost of losing the race is death!

However, when we learn this portion of the Torah with the help of the oral law, we realise that the reality is actually far more civilised. There are three categories of 'accidental killing':

- Karov l'ones – these are cases of accident where there is almost no negligence whatsoever. In such cases the perpetrator cannot be held to blame. For instance, a person drives carefully down a street, and a young child unexpectedly runs in front of the car. The driver slams on his brakes as quickly as possible but unfortunately the car does not stop in time.
- Shogeg – these are cases where someone is genuinely negligent, and that negligence leads to someone's death. An example may be someone breaking the speed limit or running a red light and causing a fatal accident.
- Karov l'maizid – these are cases where the perpetrator is recklessly indifferent and does not care about the consequences of their actions. For instance, a person who practices target shooting with live ammunition in a public park without considering the safety of the public and without checking that there are no people nearby. Such cases can be described as 'wilful negligence' and are close to actual murder.

The Torah only permits the blood avenger to kill a perpetrator who falls into the second category.³ If the blood avenger takes revenge in the other two cases, the blood avenger himself would be guilty of murder. Therefore, the blood avenger is required to wait until the Beit Din judges the case before knowing whether he can take action. Furthermore, those perpetrators that do fit in the third category were provided with an escort by the Bet Din to ensure that they made it safely to the city of refuge.

So in reality, it seems to would have been quite unusual for any 'cowboy' type chase to have actually taken place. Why then does the Torah describe the scenario in this dramatic way if the reality was very different?

There are other cases in this week's Parsha where the Torah seems to convey a particularly harsh punishment for a crime, whereas in reality the punishment was much less harsh.

¹ This week's Darchai Noam is inspired by a shiur that I heard from Rabbi Ephraim Buchwald.

² See also the description of the cities of refuge in Bamidbar Chapter 35, in particular pasukim 25-28.

³ The first category is almost blameless and does not deserve to be killed by the blood avengers, nor does he need to flee to the city of refuge. The second category is negligent and carries some blame, and thus he needs to go into exile in a city of refuge. This helps him to gain atonement for his negligence. The third category, while not guilty of actual murder, is very blameworthy. He does not *deserve* the atonement that is provided by going into exile. He might think that he is fortunate to avoid exile, but he will have a much harder time doing teshuva and he will suffer the consequences of his action in the World to Come.

An eye for an eye: The famous pasuk (Shmot 21:24) states “an eye for an eye, a tooth for a tooth”. This seems to imply that if someone injures someone else, the injured party can punish the perpetrator by inflicting him with the same injury. If I poke you in the eye then you get to poke me in the eye! However, according to the halacha, the punishment is actually the requirement to pay the monetary value of the injury rather than to receive the same physical injury in return.

A goring ox: A person that owns an animal that is known to be dangerous must take appropriate precautions to prevent the animal from causing damage. If they fail to take the necessary precautions and the animal kills someone, the pasuk (Shmot 21:29) states that the owner of the animal shall be put to death. Yet, the very next pasuk explains that the owner of the animal may pay a ransom (i.e. a monetary fine) and then he is free from any further punishment.

In each of the cases cited above, the actual punishment that one receives is much less harsh than the way it first appears in the Torah. Rabbi Ephraim Buchwald suggests the following reason. The person who is guilty of negligence resulting in death really deserves to be killed by a relative of the deceased. It is only fair that he has to run for his life to a city of refuge to avoid being killed. Those who deliberately cause a physical injury to their fellow really do deserve to receive the same injury in return. The owner of a dangerous animal, who does not take appropriate precautions, and which leads to someone’s death, really does deserve the death penalty. However, Hashem in his mercy reduces the actual punishment, perhaps in recognition of the fact that we are only human and human beings make mistakes. In this way, we are being taught about Hashem’s attribute of mercy so that we can (hopefully) emulate it ourselves. Nevertheless, the lighter punishment means that there is a risk that the perpetrators might not appreciate the true ramifications of their actions. Perhaps that is why the Torah elucidates and sets out in full detail what they truly deserve, had Hashem not been merciful.

Furthermore, every year when listening to Parashat Mishpatim describing the punishment that they did deserve, the perpetrators would be alerted to the seriousness of their crime and hopefully incited to feel remorse. It is an indirect method of reminding them of the seriousness of their actions. In addition, the Torah portion describing these punishments can serve as a deterrent to all of us, reminding us to take due care as well as a reminder of Hashem’s mercy.

Similarly, we can learn to also use an indirect approach in an effort to change or improve someone’s behaviour. For example:

- Instead of directly telling a work colleague that they are not pulling their weight, we could suggest that the team introduce an objective method of calculating everyone’s contribution to ensure that everyone does their fair share.
- Instead of directly telling a child that they are not treating adults with sufficient respect, we can read bedtime stories that explain the importance of such behaviour and the consequences of disrespect.
- Instead of directly telling our friend that he or she was wrong for not giving us more notice when plans had changed, we can discuss with them how some people are less spontaneous than others and prefer more notice.

This indirect method requires patience. It may not work in all cases. However, it is worth a try. The advantage is that we are less likely to offend or antagonise others and thus more likely to gain cooperation and maintain a good relationship. Ultimately, by having compassion on others, we are emulating Hashem in His mercy. Hopefully, middah k’neged middah, Hashem will treat us in the same way.

Let’s try something this week:

1. Before you criticise someone, try to think of a more indirect and less confronting way to convey the message.
2. In situations when we feel we are in the right, perhaps we can hold ourselves back from inflicting the full measure of punishment and feel good about exercising Divine-like compassion.