

Parshah Shoftim – “If You Look At It Right”

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Here’s a little bit of trivia about me. Next to my photo in the Princeton class of 1982 yearbook, I cited as my motto a stanza from the Grateful Dead song, “Scarlet Begonias.” The lines are:

*Well, I ain’t often right, but I have never been wrong;
It seldom turns out the way it does in the song.
Once in awhile you can get shown the light
In the strangest of places, if you look at it right.*

That happened to me a few days ago as I was wrestling with parshah Shoftim, our Torah portion for this week. As a backdrop, I had posted on Facebook last week my pleasure in noting that the U.S. Supreme Court now consists of three women, three Jews, and three Princetonians. It was just a little orange-and-black alumni boosterism, and I got some good-natured ribbing in return, as you might imagine – particularly when I lamented that there was some overlap among the Jews and Princetonians and women, leaving room for some of my least favorite Justices.

So now fast-forward to last Monday evening, when the Grateful Dead and the Orange-and-Black once again came together – this time it was at Jerry Garcia Night at the ballgame here between the Giants and the Cubs. We sang Dead songs, inhaled the unusually sweet ballpark aromas, and cheered ourselves hoarse at the come-from-behind victory. As my friends and I were walking home after the game, the conversation turned to the recent Prop 8 court ruling and to some Internet gossip as to whether federal Judge Vaughn Walker is or isn’t gay. I have absolutely no clue myself, nor do I particularly care, but the question triggered an interesting discussion.

One of my friends said that we have a right to know, because it’s plausible that a judge’s impartiality might be compromised if he is a member of a small minority who could have a substantial personal self-interest in the decision. Another of my companions took the other side, noting that all of us always have some personal interest in any major decision, and as competent adults we can put our interest aside and act impartially.

And in that dialogue among friends – in that slightly intoxicated, hoarse and shivering bull session on the streets South of Market – that’s where parshah Shoftim clicked for me. *Once in awhile I can get shown the light in the strangest of places, if I look at it right.*

This parshah, like most of Deuteronomy, is essentially Moses’s final sermon to the Israelites as they are poised on the banks of the Jordan, about to cross into the Holy Land. Shoftim, in Hebrew, means “judges.” The first line of the parshah says *Shoftim v’sotrim titen l’chah b’chol sh’arecha ... lishvatecha*, “You shall appoint judges and officials in all your towns ... for all your tribes.” The parshah introduces the topic by proclaiming the famous line, *Tzedek, tzedek tirdof l’maan tichyeh*: “Justice, justice shall you pursue, that you may thrive.”

This doubling of the word *tzedek*, justice, has led many respected sages to infer that the Torah is telling us to elevate justice above all other aspirations for our society. And further, we are told not simply to *value* justice; no, we are instructed to actively *pursue* justice. The parshah speaks extensively about the procedures for selecting judges and secular government, and about how judges must act with impartiality and integrity. Among other things, the text prescribes capital punishment for people who defy a court's verdict; it talks about sweeping evil out of the community; it repeats the eye-for-an-eye code of punishment; and twice it explicitly says "you shall show no pity."

That's a fairly harsh definition of "justice", if you ask me. And that was what was eating at me when I donned my Deadhead Giants T-shirt and headed to the ballpark Monday night. By the end of our chilly and hoarse walk home from the game, I had two questions swirling in my mind:

- First, how can I get my arms around a justice code that is so regimented and harsh?
- Second, does it matter whether a judge in the Prop 8 case might be gay, and if he is, should he recuse himself?

As the Grateful Dead song goes, *Once in awhile you can get shown the light in the strangest of places if you look at it right*. With the song still in my ears, and with Princeton's orange-and-black all around me in the form of Giants regalia, I got shown the light.

I remembered what one Princeton alumna told a group of law school students several years before she was elevated to the Supreme Court. Sonia Sotomayor said, "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life."

In other words, judges are human, too. The best judges, in Justice Sotomayor's view, are those who draw from their own lives the wisdom to apply the law. Personal experience doesn't detract from a judge's impartiality, but rather leads to better jurisprudence.

So then I went back to the parshah, and re-read it. To my surprise, Justice Sotomayor's wisdom is right there in that first sentence: *Shoftim v'sotrim titen l'chah b'chol sh'arecha ... lishvatecha*, "You shall appoint judges and officials in all your towns ... for all your tribes." Why that last word, *lishvatecha*, "for all your tribes?"

A few sentences later, the text continues: "You are free to appoint your own government, but be sure to select one of your own people; you must not set a foreigner over you, one who is not your kin." Why not?

I think the implicit lesson here is that only your kin, your tribe, can have enough innate understanding of your situation to be able to judge you ethically and fairly. And so, perhaps, a wise gay man with the richness of his experience might reach a better conclusion than a straight person who hasn't lived that life.

In fact, if you scratch a little deeper into this parshah, you'll find that the supra-theme of pursuing justice with no pity is consistently undermined by a sub-theme of compassion. Capital punishment is mentioned several times, but in every instance the Torah also includes procedural roadblocks that make it almost impossible in practice.

So, for example, we read in this parshah of the establishment of sanctuary cities in which accidental felons can find temporary refuge, until tempers calm and fair judgment can be rendered. We also read that judges must conduct a thorough investigation, test the credibility of witnesses, and rely on the testimony of at least two reliable witnesses before passing judgment.

Just to make sure we don't miss this compassionate undertone, Shoftim includes two sections about warfare that are seemingly unconnected to the main theme of civilian government. In the first, generals are instructed to address their troops before a battle, and to send home any soldier who has built but not yet consecrated a new home, or who has planted but not yet harvested a new vineyard, or who is engaged but not yet married, or who is fearful of the battle to come. Why? Because even in the military, even in a war undertaken with G-d's blessing, compassion comes before judgment.

Similarly, if the army is laying siege to a city, the army is prohibited from destroying any fruit-bearing trees. The Torah explains that trees are helpless living things that cannot withdraw away from the battle, but it also implies that their fruit nourishes both the army and the city it is attacking; in both ways, compassion for war's victims trumps all else.

A bit of a digression, if you'll allow me: This weekend at the Castro Theater, you can see *Metropolis*, possibly the most amazing silent film ever. It's a magnificent sci-fi allegory pitting capital against labor in an imagined futuristic society, and it concludes with this epigraph: "The mediator between the brain and the hands must be the heart." That movie operates on two levels, equating capital with brain and labor with hands, but also equating God with brain and humankind with hands; the mediator, or heart, is portrayed in this very Catholic movie as Jesus.

But I'd argue that *Metropolis* is also a very Jewish movie, if we re-imagine the allegory on purely human terms: Torah explicitly gives us the power and right to judge ourselves and each other, so our brains judge people all the time, and our hands execute our decisions. *Metropolis* is telling me, as a Jew, that I must insert *chesed* and *tzedakah* – compassionate lovingkindness – between the *tzedek* – justice – of my brain and the merciless execution of my unthinking hands.

So now I'm going to turn the tables completely. We are used to seeing ourselves as the persecuted, and in Judge Walker's decision we finally see our vindication. In the beautiful interfaith service held here on Tuesday, one of the Christian ministers spoke of the need for healing and reconciliation. *We* don't need the healing – we're just fine, thank you.

Now we are the Israelites on the banks of the river, about to cross into the Holy Land of civil marriage. Now *we* are the aggressors. Now it is *our* turn to exercise our compassion and not our pitiless justice; now we need to refrain from vindictiveness toward those who opposed marriage equality. Instead we need to remember that the mediator between justice and action is the

compassionate heart: we can reach out to the Prop 8 people in *their* pain. We can't let ourselves destroy the fruit trees of their spirituality. Instead, we can live our lives fully and in the open, and teach them that marriage equality enhances rather than harms the institution of marriage that they – and we – so cherish.

Justice and compassion – one without the other is insufficient. I think that Judge Walker, whatever his sexuality may be, understands this. I know that the two Princeton women and all of the Jews on the Supreme Court understand this. Thea von Harbeau understood this, in a different context, when he wrote in *Metropolis* that the mediator between the brain and the hands must be the heart. And I believe that the Grateful Dead understood this, too:

*Well, I ain't often right, but I have never been wrong;
It seldom turns out the way it does in the song.*

The “right” rational judgment may be the “wrong” human decision, and vice versa. Real life seldom resembles the “songs” of law-school textbook cases or Torah injunctions of judgment and punishment. But:

*Once in awhile you can get shown the light
In the strangest of places, if you look at it right.*

With that sense of awareness that justice isn't always obvious, that sometimes compassion requires us to see things from a different angle, please turn to page 14 as we acknowledge our responsibility to pursue justice, and then to page 28 for our marriage equality blessing.

Kein y'hi ratzon, may it be G-d's will. Shabbat Shalom.