Ki Teize2020

There are so many themes that one can consider in this Parsha, some of which are quite disturbing while others are inspiring. Last year, I looked at a few of the mitzvot as being representative of the concept of responsibility to the community in the broadest sense of the word, and, to the earth. In my enthusiasm for preparing that d’var, I thought I should prepare another d’var on the same portion this year. Honestly, I don’t know what I was thinking. This year, I will take a different approach.

The Torah has been described as a Constitution, a book of laws, a moral code, the history of the Jewish people and a document that contains our foundational myths.

In the secular world, the legislative branches of governments can amend or repeal laws as they cease to be relevant or appropriate. But the Torah cannot be amended. How have we dealt with provisions that are contrary to our values or that are no longer applicable in our world? Do we simply look at them as part of our history or do we try to find meaning in them? Is there guidance on a method of interpreting the provisions that are no longer applicable?

Rabbi Ethan Tucker, in an interesting and, I would think, controversial article entitled Moral Revolution or Complex Application, argued that there are two ways to approach Torah interpretation.

He expressed the view that our sages have looked at the gaps between what they believed ought to have the value expressed in a verse and the plain meaning of the verse. The easiest example of this approach is not in this Parsha but in relation to the verse “an eye for an eye and a tooth for a tooth. ” We are taught to interpret this verse as not being about revenge but the need to compensate someone for the damage we have caused. It is a bit of a stretch from the actual wording.

But, even with the assistance of our scholars, many of the Torah’s verses justifiably seem inoperative in today’s world.

Rabbi Tucker than states that complex application is entirely different. If I understand Rabbi Tucker at all I think, he is asking us to look at the text in the context it was written and the ill it was intended to remedy. Rather than saying the words don’t mean what they say, there is an acknowledgment that they do. The interpretation of a verse that evolves over time flows directly from an understanding of the words themselves.

That leads me to the Canadian approach to statutory interpretation. Ruth Sullivan, a legal scholar, in discussing the evolution of statutory interpretation in Canada refers to the pragmatic approach. According to Sullivan, an appropriate solution to interpreting a legal text must

* conform to the legislative text: the clearer and more precise the text, the greater the weight it receives;
* carry out the intention of the legislature: the more cogent and compelling the evidence of legislative intent, the greater the weight it receives;
* produce an outcome that is just and reasonable: and
* the more important the public values invoked and the more intensely they are engaged, the greater the weight they receive.

*(Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the in*

*tention of Parliament.”* – Driedger, *Construction of Statutes* (2nd ed. 1983) – *Rizzo)*

I would like to look at the different approaches in relation to Verses 25:1-3 refer to judicial intervention in a conflict between two individuals, in which one of the parties is considered guilty. In the case where the judgment includes corporal punishment, it must be limited to 40 lashes. The reason is that more than that would result in “ your brother being disparaged before your eyes. “

 The verses do not specify the offences. Commentators suggested that based on the law that follows the verse, regarding the muzzling of an ox, corporal punishment would be the penalty for non compliance with a “negative commandment, which cannot be rectified by a positive action.” But, other commentators have written that the law of flogging applied only in limited cases of assault or perjury (cf. Mak. 2b);

According to R. Hanniah ben Gamliel, the use of the word brother is indicative of forgiveness. Before the person who has been found guilty is to be punished it is possible to consider him as evil or criminal. The status of the person who is punished changes following the punishment.

Having been punished, the person resumes his status as a member of the community, with all the rights and privileges of anyone else. At, least that is the theory. One cannot say whether the stigma of punishment had an impact on the future status of the individual.

How would contemporary religious and secular methods of interpretation apply to these verses? They would most likely acknowledge that serious offences require a significant punishment. They would further acknowledge that there wasn’t a penal system that provided for incarceration of wrong-doers, so corporal punishment was an option. They would look at which one of the 365 negative mitzvot had been contravened in a dispute between two individuals. Judicial discretion would apply in determining the severity of the offence, rejecting a mandatory sentence taking into account the circumstances. A modern approach might acknowledge that the Israelite were about to create a new society in Israel. Maintaining social order would have been an important value. Yet, it could also acknowledge that the purpose of the punishment was to ensure that the person would not commit a similar act in the future. It is to avoid recidivism. The punishment must not humiliate the individual .

This modern approach raises a few questions. The verse suggests that the guilty person is entitled to retain their basic human dignity and that we are intended to forgive the person. Today, do we avoid humiliating those who have done wrong? Do we forgive them as a matter of course, once they have been punished? Do we ensure that the goal is rehabilitation and reintegration?

In verse 23:4 Moses told the Israelites : No Ammonite or Moabite shall be admitted into the congregation not even, even in the tenth generation. The traditional explanation is that the Moabites did not meet the Israelites with food and water on their journey after they left Egypt and because they hired Balaam to curse the Israelites. One interpretation is that the prohibition only relates to “male members of the Ammonite or Moabite peoples must not marry Jewish women. “ The rationale was that as women did not go out, they would not have been involved in denying food to the Israelites. Thus Moabite women were permitted to enter marriages with Israelite men. This approach justifies the marriage of Ruth to Boaz and Ruth as an ancestor of King David.

A modern interpretation would look at the context . Not only did the Moabites try to have their prophet curse the Israelites, but they were unkind. As referred to in the Etz Hayim, the Moabites endangered the soul of the Israelites. Our sages have instructed us that inducing a person to to sin is worse than killing. A new society was about to be formed in Israel. Admitting Moabites to the congregation could have had a negative influence on the values of the new society. Perhaps the verse expresses an isolationist approach intended to encourage the value of loving kindness. Yet, if this is a sound approach , how would one explain a verse that follows. Verse 23:7 instructs us not to abhor the Egyptian as we were strangers in their land. Rashi tells us that although they cast our male children into the river, they were the hosts when we needed them in time of famine.

How do we interpret this taking into account the events of the 20th and 21st centuries? In particular, how do we interpret this in remembering the Holocaust. Is Rashi’s and other sage’s commentary on the Egyptians equally applicable to Germans?

Could one extract principles from this passage to guide us in modern times? Perhaps the most significant test of the relevance of this passage is the relationship between Israel and Germany. In 1965, 20 years after the end of the Holocaust and 17 years after the founding of the state of Israel, formal diplomatic relations were established between the two countries. The Germans had agreed to pay reparations to victims and their families. But deep antipathy remained and, at that time, there was a lot of denial of responsibility by Germans. And yet, it was seen as being in the interest of Israel to establish relations with the country that had tried to annihilate the Jewish people.

Is it even possible to justify the normalization of diplomatic relations in terms of the above cited passage? Is it ok because, pre Holocaust, Jews had thrived in Germany, as they had in Egypt, pre slavery? What would have happened if the Moabites had apologized? Or if the Israelites saw it as being in their interests to form an alliance with them against a common enemy? How would the prohibition have been treated? Would it have been interpreted in a way that rendered the actual words meaningless? Of course we will never know. I started this d’var by asking should we look at some verses as part of our history without meaning today? I think that is appropriate for certain verses. But, I do think that we can find meaning in verses that on first blush seem irrelevant to our times.