

The practice of law: letter and spirit
Rabbi Jill Jacobs

Those of us who are committed to living according to traditional Jewish legal structures, while also embracing the lessons of contemporary ethics often find ourselves caught between the impulse to preserve traditional law and the impulse to adapt this law to changing norms. Parshat Pinchas offers two contrasting responses to this sometime conflict between law and concern for humanity. The portion opens with an apparent charge to protect the letter of the law, even at the expense of human life, and closes with an episode in which law adapts to human need.

Last week's Torah reading ends with an incident in which Moabite women seduce Israelite men and induce these men to worship idols. As punishment, God inflicts a plague that kills 24,000 Israelites. Pinchas, one of the *kohanim* (priests), sees one of the tribal leaders having sex publicly with a Midianite woman and stabs and kills both of them. Parshat Pinchas opens with God ending the plague and rewarding Pinchas by making a "covenant of peace" with him and by granting his family the priesthood perpetually.

The story of Pinchas suggests that Jewish law—in this case, the prohibitions against idol worship and promiscuous sex—should be preserved at any cost. The Torah appears to justify not only Pinchas's murder of two offenders, but also God's punitive killing of 24,000 people. Even if we rationalize Pinchas's murder of two people as a necessary means of preventing the deaths of thousands more, we must ask why Pinchas does not first attempt other methods—such as prayer—of appeasing God. Even more

fundamentally, we should ask why God considers the death of 24,000 people to be an appropriate response to sexual immorality.

In contrast, the story of the daughters of Zelophechad, which appears at the end of the portion, offers an example of traditional law changing in response to changing human needs. Zelophechad dies, leaving only daughters. According to the previously-determined inheritance laws, only sons are able to inherit their fathers' property. The daughters of Zelophechad approach Moses and ask for their father's inheritance. Moses approaches God for a ruling on the matter, and God adapts the inheritance laws to include daughters among the list of approved heirs.

Other elements within the portion also challenge the suggestion that law takes precedence over human need. Immediately after the story of Pinchas, God commands Moses to take a census of the people. One medieval commentator, Rashi, compares this census to a case in which a wolf attacks a flock of sheep. Following the attack, the shepherd, overcome with grief, takes a count of the sheep that have survived. For Rashi, then, the census is a statement of God's love for the Jewish people. Furthermore, in comparing God to the shepherd, and not to the wolf, Rashi seems to absolve God of blame for the plague.

Within the census, the detailed listing of the members of each tribe offers a sharp contrast to the description of the plague, in which a single verse tells of the deaths of 24,000 people. While those who die in the plague remain only numbers, those mentioned in the census are named and identified according to their lineage and, in some cases, their stories. Among those mentioned in this census count are a few people who have died either for defying God or for sexual transgressions. Even these people are described

honorably. In speaking of Korach, the leader of a rebellion against Moses, the census refers to Korach's sin, but also specifies that Korach's sons did not join in the rebellion. Though punished by death, Korach is honored by his association with his sons, who remain faithful to God and Moses. When listing Er and Onan, the sons of Judah whom God kills for their sexual transgressions, the Torah says only that Er and Onan "died in the land of Canaan" (Numbers 26:19) and does not dishonor them by specifying the sin for which they died.

Parshat Pinchas thus offers us two opposing visions of the relationship between law and human life. The story of Pinchas and of the plague suggests that law trumps concern for humanity. In contrast, the story of the daughters of Zelophechad and the description of the census indicate a primary concern for human need and for human honor.

In the end, the rabbis prefer the model of the daughters of Zelophechad, in which law responds to human need, to the model of Pinchas, in which murder is an accepted means of preserving the law. In the Talmud, the rabbis suggest that God disapproves of Pinchas's actions and that the "covenant of peace" represents an attempt to calm Pinchas's temper and zealotry. (Sanhedrin 82b) Even the rabbis who approve of Pinchas's actions suggest that Pinchas succeeded only through a series of divine miracles. According to this understanding, God offered a number of signs to indicate to Pinchas that murder, while not generally acceptable, would be permissible in this one particular case. In contrast, the rabbis look favorably at the story of the daughters of Zelophechad, and understand it as evidence of God's compassion. (Sifrei Bamidbar 133)

It is not always easy to reconcile traditional law with human need. However, the story of the daughters of Zelophehad, the rabbinic response to the story of Pinchas, and the biblical description of the census all remind us of the need always to incorporate a commitment to human dignity and honor into our interpretations and practice of Jewish law.

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