Jewish Tribune – Mishpotim

**Ricardo the Thief**

It was front page news. A delinquent from a rough neighbourhood in one of South America’s most notorious cities was arrested for a heinous crime. The sixteen-year-old had shot both his parents and had been caught red handed.

And now he was appearing in court. How would he plead? What punishment would he receive? The case attracted international media attention and the public gallery was full.

Eventually, the wait was over, and Ricardo appeared. Flanked by two burly court security personnel, Ricardo looked more like a timid and apprehensive sixteen-year-old than a brazen son of a Mafia boss, that was the picture taken at his arrest.

The judge banged his gavel and said, “Quiet in court!”

All of a sudden, Ricardo motioned that he would like to speak to the judge. From the looks on the faces of the team, his lawyers had clearly not expected this.

“Yes, you may approach the bench,” the judge said.

Ricardo, looking almost angelic, spoke softly: “Please your honour, before you pass sentence, there is something I want to say in mitigation.”

“Go ahead,” said the judge.

Ricardo spoke: “Please have mercy on me, I am an orphan.”

Even his own team were surprised at the audacity. After all Ricardo, was only an orphan because he had shot his own parents!

Which brings us to this week’s sedrah.

The possuk says:

כִּי יִגְנֹב אִישׁ שׁוֹר אוֹ שֶׂ֔ה וּטְבָחוֹ אוֹ מְכָרוֹ חֲמִשָּׁה בָקָר יְשַׁלֵּם תַּחַת הַשּׁ֔וֹר וְאַרְבַּע צֹאן תַּחַת הַשֶּׂה

If a man steals an ox or a sheep, and slaughters it, or sells it, he shall pay five oxen for an on or four sheep for a sheep. (Shemos 21,37)

Why the discrepancy? Why does the Torah state the thief pays five times for the ox and only fourfold for the sheep?

The Gemoro (Bava Kama 79b) gives two reasons.

Rebbi Meir says the Torah is pointing to the loss to the owner and to the power of work:

אמר רבי מאיר: בא וראה כמה גדול כח של מלאכה, שור שביטלו ממלאכתו - חמשה, שה שלא ביטלו ממלאכתו - ארבעה.

Rabbi Meir says: Come and see how great the power of work is! For an ox, which causes (its owner) loss of work, the thief pays five. But for a sheep, through which there is no loss of work, he pays only four.

Rabbi Yochanan ben Zakai understands that the matter is less to do with compensating the owner but rather that the Torah is pointing to the punishment to the thief.

אמר רבן יוחנן בן זכאי: בא וראה כמה גדול כבוד הבריות, שור שהלך ברגליו - חמשה, שה שהרכיבו על כתיפו - ארבעה

Rabbi Yochanan ben Zakkai said: Come and see how great is (Hashem’s respect to) the dignity of His creations! For an ox, which walks on its own (and its thief was not humiliated by having to carry it on his shoulders), he pays five oxen. But for a sheep, which the thief carries on his shoulders, he pays only four sheep (since he was humiliated).

The punishment is the overriding objective and is reduced in the case of a sheep due to the humiliation involved.

But the thief brought it upon himself! Is he any better than Ricardo claiming the mitigating factor of being an orphan in his defence?

To prove the point, I have the saintly Chofetz Chaim on my side. In Zechor L’Miriam (chapter 23), the Chofetz Chaim discusses smoking and makes a fascinating comment:

שחוץ מזה שהם מזיקים לגוף כידוע, עוד גורמים היזק לנשמתו בביטול תורה

Aside from the well-known damage it does to the body, it also causes much bittul Torah (time wasted from Torah study).

It is fascinating on several levels. First of all, that the Chofetz Chaim is clear about the physical dangers of smoking at that time. Zechor L’Miriam was first published in 1925!

But perhaps you could argue, that now the smoker can’t help it, the poor person is addicted. Why blame him for the subsequent bittul Torah?

The Chofetz Chaim disagrees. The person chose to smoke. He got himself into this situation and cannot later claim a mitigation of addiction.

This is a powerful point. If we choose a course of action and at some later point down the line face the repercussions of our earlier bad choices, it is too bad and we have to face the consequences.

And this reinforces our earlier question. If a thief chose to steal, that may involve the embarrassment of schlepping a sheep on your shoulder across town. Why should that embarrassment be used later as mitigation? Why discount the thief’s punishment from a five-fold payment of the sheep to four because of the humiliation involved?

I challenge you not to read the next paragraph for at least an hour. Try to think of an answer. It will be far more satisfying if you do.

I said an hour! I once heard an answer from Rabbi Hartman. He explained that the thief is not paying less. He does indeed pay five times; it is just the fifth payment is in a different currency. Four parts are in money and the fifth part is in embarrassment.

May we all merit to lead noble and honest lives.

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