

Sometimes we don't have to work at all hard to find pleasant and meaningful messages from the Torah: Noah's Ark is a wonderful story about conservation and poses no real difficulty.

But what should we do with discomfiting passages of Torah? I say we should read them more closely to try to understand what's going on. And the more discomfiting they are, the more closely we should read. For something as disturbingly violent as urbicide, we should not only **בדורש** but also **חקר** – **שאל** until **היטב**. And, having done so, we've cleared away the upsetting debris commanding mass murder, and have uncovered a truth: a Biblical lesson about proportionality in justice.

**Gabriel Webber LBC rabbinic student**



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**LEO BAECK COLLEGE**  
Sternberg Centre for Judaism  
80 East End Road, Finchley N3 2SY  
Tel: 020 8349 5600 Email: [info@lbc.ac.uk](mailto:info@lbc.ac.uk)  
<http://www.lbc.ac.uk>

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**Parashat Re'eh**

**Gabriel Webber**

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**דְּבַר תּוֹרָה**  
**D'var Torah**

### The sliding scale of justice (d'var Torah: Parashat R'eh)

I once went to watch a double murder trial at the Old Bailey. It was a fascinating afternoon, watching a room full of people busily poring over a sequence of events from a couple of years earlier that will only have lasted two or three minutes at most. A judge, a substantial gaggle of lawyers, police officers, witnesses, firearms experts... The trial was on its fifth day, and once the hearing was over, the twelve jurors would retire and spend many hours making their decision.

I also once appealed against a parking ticket. This was a very different experience. I was in and out of the Adjudicator's room within 15 minutes; I waited perhaps a further five minutes for him to type up his two-paragraph decision, then it was done.

Both the week-long Old Bailey trial and the 15-minute parking adjudication are part of our country's justice system. But with such wildly differing levels of scrutiny, can they really both be described as 'justice'? Was I denied a fair hearing by a Parking Adjudicator who didn't pay me proper attention? Or, if not, and if an informal 15-minute chat delivers justice, then was the full-length criminal trial an unnecessary indulgence?

We all instinctively realise that the answer to both questions is 'no'. It would be ridiculous for a murder trial – where a grieving family demands action, and a defendant faces a lifetime in prison – to rush through intensely complex facts. And it would be equally ridiculous for my sense of indignation over a parking ticket – where all of £55 hung in the balance – to take up a week of everyone's time.

Two things on which all lawyers can agree are two basic principles of interpreting the law: the first is that every word counts (every word is included for a reason, and the law means something different to what it would mean if any of its words were left out), and the second is that different words mean different things.

Armed with these two rules, we can explore one particularly curious verse from this week's parashah. We're instructed that, before finding an entire town guilty of idolatry and putting it to the sword, we should "investigate and inquire and interrogate thoroughly". That translation – the JPS one – uses three fairly interchangeable words, perhaps chosen because they alliterate. But the Hebrew words seem equally synonymous: **דרש** meaning to study or seek; **חקר** meaning to search or examine; **שאל** meaning to ask or consult; all followed by **היטב** meaning 'thoroughly', 'skilfully' or 'until done right'.

Those first three verbs: what do they mean when used together? Does the 'different words have different meanings' rule work, making them three completely separate and distinct processes? What is the practical difference between examining and asking? It's unclear.

Luckily, though, Deuteronomy is positively teeming with capital offences, so we can compare their wording and see if there are any differences that might give us a clue.

For a false prophet, for example, and for an Israelite beguiling their fellows to worship

other gods, both are to be executed straight away: there is no prescribed investigation.

In acting against an Israelite individual who's been worshipping other gods, though, and against an Israelite who testifies falsely against another, we **שאל** before execution. But only **דרש** No need to **חקר** No need to **שאל**.

Now we're beginning to be able to infer the guidance we need, because we've found a spectrum. Two cases where punishment is immediate with no questions asked, two where we have to carry out some investigation, and one where we have to carry out a really rigorous investigation. In the latter cases, the investigation – whether described by one verb or three – has to be **היטב**, until done right.

I think that's the key. Doing it right. Some cases call for more detailed examination than others; the double murder versus the parking ticket. Our spectrum of capital offences is a lesson in proportionality. Where an Israelite has been making false prophecies or encouraging their neighbours to become idolaters, their guilt is well-established: these are, by nature, very public activities. The case of an Israelite practising idol-worship on their own is harder to prove because it inevitably takes place in private – so we have to investigate before acting. Likewise the false witness: in a case of one person's word against another, there is a real chance of executing the wrong person without proper scrutiny.

To slaughter an entire town is the most momentous decision of all – especially since the Torah notes that our suspicions will be raised by nothing more substantial than rumours: "if you hear it said concerning one of your towns..." Only the most painstaking inquiry will be sufficient to check, double-check and triple-check that the town is indeed liable for the death penalty.

In each case, the investigation must be **היטב**. What is **היטב** sufficient, proportionate in one situation might not be in another. The murder trial at the Old Bailey had to hear evidence in great detail because the jury had to be really sure of the defendant's guilt before depriving him of his freedom. Anything less rigorous than that would not have been **היטב**. The Parking Adjudicator, on the other hand, was taking a decision nowhere near as serious; any mistake on his part would have been mildly unfortunate but nothing worse.

So what of our proliferation of verbs? This is a law entirely about the 'every word counts' rule – but in an unusual way, because the words aren't being used for their individual meanings, but rather for emphasis. When we talk about a "great big house", this doesn't really mean anything other than a "big house" – the extra adjective is just there to be superlative. So it is, I think, with the investigations we're commanded to undertake before enacting the death penalty. The three verbs don't mean three separate things, but rather they're a triple-lock, a multi-layered safeguard. They urge us to a greater intensity of scrutiny than any one of them would have urged.

Let's step back for a moment. We're dealing with town-killing here: urbicide. Any law which tells us to put an entire town to the sword is a deeply unnerving law.