

## 5780 – Exodus 21-24 - Mishpatim (Judgements)

Following the revelation at Mount Sinai, *Mishpatim* fleshes out the details of the predominantly civil law that was to govern the Israelites: laws relating to slaves and their release, personal injuries and property laws, laws of social responsibility, justice and compassion, and laws relating to Shabbat and the festivals. It ends with a ratification of the covenant, and Moses ascending the mountain for forty days.

In the essays that follow the first examines the law about helping an enemy, and the social psychology that underlies it. The second looks at two interpretations of a passage that would eventually lead to divergent Jewish and Christian approaches to abortion. The third is about the contrast between the simplicity of the Ten Commandments and the complexity and detail of the laws of *Mishpatim*. Why does the Torah use both methodologies? The fourth is about one of the most challenging and distinctive of all biblical imperatives: the command to love the stranger.

### *God Is in the Details*<sup>1</sup>

The contrast between the parasha of *Yitro* and that of *Mishpatim* is immense. In the former, the Torah takes us to the greatest encounter ever between human beings and God, the revelation at Mount Sinai, with its **broad statement of principles popularly known as the Ten Commandments.**<sup>(1)</sup> **In the latter, we are suddenly plunged into a plethora of detail:** laws about the release of slaves, liability for personal injury, the protection of property and so on. We seem to move from the sublime (marvelous, transcendent, beautiful) to the prosaic (mundane, banal), **from an all-encompassing moral and spiritual vision to the small print of a law code.** Yet there is a profound connection between them, and it is Rashi,<sup>2</sup> the greatest of the Torah commentators, who gives us an understanding of what is at stake.

(1) Aseret HaDibrot, commonly translated as “ten commandments” is more accurately translated as ten “utterances” or “overarching principles.”

On the opening phrase of *Mishpatim*, “And these are the laws you are to set before them” (Exodus 21:1), Rashi comments:

“And these are the laws”—Wherever [the Torah only] uses the word “these” it signals a discontinuity with what has been stated previously. Wherever it uses the term “and these” it signals a continuity. [So it is

here, to teach that] just as the former commands [the Ten Commandments] were given at Sinai, so these [the civil laws] were given at Sinai. Why then are the civil laws placed in juxtaposition to the laws concerning the altar [at the end of the previous chapter]? To tell you to place the Sanhedrin [the Supreme Court] near to the Sanctuary. “Which you shall set before them”—God said to Moses: **You should not think, I will teach them a category and a law two or three times until they know the words verbatim but I will not take the trouble to make them understand the reason [behind the law] and its significance.** Therefore the Torah states “which you shall set before them” like a fully laid table with everything ready for eating.

Three remarkable propositions are being set out here, which have shaped the contours of Judaism ever since.

The first is that **just as the general principles of Judaism set forth in the Decalogue at Sinai are divine, so too are the details—the minutiae of the civil laws.** In the 1960s the Danish architect Arne Jacobson designed a new college campus in Oxford. Not content with designing the building, he went on to design the cutlery and crockery to be used in the dining hall, and supervised the planting of every shrub in the college garden. When asked why, he replied in the words of another architect, Mies van der Rohe: **“God is in the details.”**

That is a **Jewish sentiment.** There are those who believe that what is holy in Judaism is its broad vision, never so compellingly expressed as in the Decalogue at Sinai. The truth however is that God is in the details: **“Just as the former were given at Sinai, so these [the civil laws] were given at Sinai.” The greatness of Judaism is not simply in its noble vision of a free, just and compassionate society, but in the way it brings this vision down to earth in detailed legislation.**

Throughout history there have been philosophers—Plato,<sup>3</sup> Aristotle,<sup>4</sup> Locke,<sup>5</sup> Hume,<sup>6</sup> Kant,<sup>7</sup> Bentham,<sup>8</sup> Mill<sup>9</sup>—who have attempted to reduce the

3 Plato (c. 427–c. 347 BCE) was an Athenian philosopher during the Classical period in Ancient Greece, founder of the Platonist school of thought, and the Academy, the first institution of higher learning in the Western world.

4 Aristotle (384–322 BCE) was a Greek philosopher and polymath during the Classical period in Ancient Greece. He was the founder of the Lyceum (or “teaching hall”) and the Peripatetic (from the name of the cloister [*peripatos*] in which they walked and held their discussions) school of philosophy and Aristotelian tradition.

5 John Locke (1632–1704) was an English philosopher and physician, widely regarded as one of the most influential of Enlightenment thinkers and commonly known as the “Father of Liberalism.”

6 David Hume (1711–1776) was a Scottish Enlightenment philosopher, historian, economist, and essayist, who is best known today for his highly influential system of philosophical empiricism, scepticism, and naturalism.

7 Immanuel Kant (1724–1804) was an influential Prussian German philosopher in the Age of Enlightenment.

1 Rabbi Jonathan Sacks, *Covenant & Conversation: Genesis*, (Maggid Books & The Orthodox Union), p. 173–178

2 Shlomo Yitzchaki (1040–1105), known by the acronym Rashi (Rabbi SHlomo Itzhaki), was a medieval French rabbi and author of a comprehensive commentary on the Talmud and the *Tanakh*. He was acclaimed for his ability to present the basic meaning of the text (the *p’shat*) in a concise and lucid fashion.

moral life to a few broad principles: rationality, sympathy, duty or the greatest happiness for the greatest number (“utilitarianism”). But though these are important, **morality, if it is to become the text and texture of a society, must be translated into a code of conduct.** We are made moral by what we do on a day-to-day basis, and by what others do likewise. **Morality is like a language, and just as we cannot invent our own language and hope thereby to communicate with others, so we cannot invent our own morality and hope to live graciously with others in a society of shared ideals.**

That is why, in *Mishpatim* specifically and the Torah generally, **God reveals Himself in the form of laws, for it is law that gives colour and specificity to a social order.** Here is a simple example:

If you take your neighbour's cloak as a pledge, return it to him by sunset, because his cloak is the only covering he has for his body. What else will he sleep in? When he cries out to Me, I will hear, for I am compassionate. (Exodus 22:26-27)

**This is law with a human face.** Superficially, we are dealing with a simple economic transaction. Someone borrows money and gives the lender an item of clothing as security for the repayment of the loan, an everyday occurrence in ancient times. **Yet the Torah insists that we must not forget the existential human situation.** The borrower may be poor. The cloak may be the only one he has. The lender must not forget this fact. In strict legal terms he may be within his rights simply to hold on to the pledge, but **a decent society depends on more than legal rights.**

The Torah adds a detail by way of justification. God Himself says about the poor borrower, “When he cries out to Me, I will hear, for I am compassionate.” **God, the lawgiver, is not a remote abstraction.** He is a direct personal presence in the lives of those who keep His law. And **just as God tempers justice with compassion, so must His people do likewise.**

Note how the Torah teaches this principle. It does it by specific example. It does not say, “Be compassionate.” It gives us one example of what this might mean in daily life, and there are many others. Deuteronomy provides us with a different scenario: “Do not take a pair of millstones—not even the upper one—as security for a debt, because that would be taking a man's livelihood as security” (24:6). Here the concern is that someone in need of a loan might have nothing to offer as security except

that by which he earns his living. Were he to pledge this, he would be caught in a debt-trap, unable to repay what he has borrowed.

**Here as elsewhere the Torah builds up the picture of a moral life by way of concrete illustrations.** As Nahmanides<sup>10</sup> explains in his comment on the command in Deuteronomy (6:18), “Do what is right and good in the Lord's sight,” **it is impossible to specify in detail the moral response to every human interaction. Life is simply too complex and unpredictable. Therefore the Torah gives us general rules on the one hand, and examples on the other, so that we are able to see both the broad picture and some of the brushstrokes out of which it is made.**<sup>(2)</sup> God is not only in the generalities; he is also in the details.<sup>(3)</sup>

#### 1. Matthew 5:38-42

<sup>38</sup>“You have heard that it was said, ‘Eye for eye, and tooth for tooth’ (Exo 21:24). <sup>39</sup>But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also. <sup>40</sup>**And if anyone wants to sue you and take your shirt, hand over your coat as well.** <sup>41</sup>If anyone forces you to go one mile, go with them two miles. <sup>42</sup>Give to the one who asks you, and do not turn away from the one who wants to borrow from you.

#### a. Romans 12:17-19

<sup>17</sup>Do not repay anyone evil for evil. Be careful to do what is right in the eyes of everyone ...

#### b. 1Peter 3:9

<sup>9</sup>Do not repay evil with evil or insult with insult. On the contrary, repay evil with blessing ...

#### c. 1Thessalonians 5:15

<sup>15</sup>Make sure that nobody pays back wrong for wrong, but always strive to do what is good for each other and for everyone else.

#### 2. James 2:8-26

<sup>8</sup>If you really keep the royal law found in Scripture, “Love your neighbor as yourself,” **you are doing right.** <sup>9</sup>But if you show favoritism, you sin and are convicted by the law as lawbreakers. <sup>10</sup>For whoever keeps the whole law and yet stumbles at just one point is guilty of breaking all of it. <sup>11</sup>For he who said, “You shall not commit adultery,” also said, “You shall not murder.” If you do not commit adultery but do commit murder, you have become a lawbreaker. <sup>12</sup>Speak and act as those who are going to be judged by the law that gives freedom, <sup>13</sup>**because judg-**

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8 Jeremy Bentham (1748-1832) was an English philosopher, jurist, and social reformer regarded as the founder of modern utilitarianism.

9 John Stuart Mill (1806-1873) was a British philosopher, political economist, and civil servant. One of the most influential thinkers in the history of classical liberalism, he contributed widely to social theory, political theory, and political economy.

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10 Moses ben Nahman (1194-1270), commonly known as Nachmanides and also referred to by the acronym Ramban(Rabbi Moses ben Nachman) was a leading medieval Jewish scholar, Sephardic rabbi, philosopher, physician, kabbalist, and biblical commentator.

ment without mercy will be shown to anyone who has not been merciful. **Mercy triumphs over judgment ...**

3. Avot 1:15

15. Shammai says: Make your Torah [study] a fixed practice; **say little and do much**; and receive everyone with a cheerful face.

a. Matthew 6:2-4

<sup>2</sup>"So when you give to the needy, do not announce it with trumpets, as the hypocrites do in the synagogues and on the streets, to be honored by others ... <sup>4</sup>**so that your giving may be in secret.**

The second principle, no less fundamental, is that **civil law is not secular. We do not believe in the idea "render to Caesar what is Caesar's and to God what belongs to God."** We believe in the separation of powers<sup>(4)</sup> **but not in the secularisation of law or the spiritualisation of faith. The Sanhedrin or Supreme Court must be placed near the Temple, to teach that law itself must be driven by a religious vision.**

There is a famous rabbinic tradition that states that when Moses ascended to heaven to receive the Torah, the ministering angels protested to God: "Will You give Your most precious possession to mere mortals?" God told Moses to reply. Moses turned to the angels and said, "It says in the Torah, 'Remember the seventh day to keep it holy?' Do you angels work so that you need a day of rest? It says in the Torah, 'Honour your father and mother.' Do you have parents whom you need to honour? It says in the Torah, 'Do not commit adultery.' Do you angels have an impulse to adultery that needs to be kept in check by such a prohibition?" The angels thereupon ceased to object.<sup>(5)</sup>

God is in heaven, but we honour Him here on earth: that is what Torah—the word that means "law, teaching, ethical instruction"—is about. **It is precisely through the instrumentality of law that we enact spiritual truths in physical circumstances, creating fragments of heaven in our interactions on earth.**

It is not simply that, in Judaism, God is our lawgiver. It is that **the law itself is thereby transformed, etched throughout with signals of transcendence.** This is already foreshadowed in the first chapter of the Torah, with its statement of the equal and absolute dignity of the human person as the image of God (Genesis 1:26-27). Law and justice are primary vehicles of equality. **That is why society must be based on the rule of law, impartially administered, treating all alike:** "Do not follow the crowd in doing wrong. When you give testimony in a lawsuit, do not pervert justice by siding with the crowd, and do not show favouritism to a poor man in his lawsuit" (Exodus 23:2-3).

To be sure, at the highest levels of mysticism, God is to be found in the innermost depths of the human soul, but God is equally to be found in the

public square and in the structures of society: the marketplace, the corridors of power, and the courts of law. **There must be no gap, no dissociation of sensibilities, between the court of justice (the meeting-place of man and man) and the Temple (the meeting-place of man and God).**

4. Matthew 22:15-22

<sup>17</sup>Tell us then, what is your opinion? **Is it right to pay the imperial tax to Caesar or not?" ...**

a. Romans 13:7

<sup>7</sup>Give to everyone what you owe them: **If you owe taxes, pay taxes;** if revenue, then revenue ...

b. Luke 23:2

<sup>2</sup>And they began to accuse him, saying, "We have found this man subverting our nation. **He opposes payment of taxes to Caesar and claims to be Messiah,** a king."

c. 1Peter 2:13

<sup>13</sup>Submit yourselves for the Lord's sake to every human authority: whether to the emperor, as the supreme authority,

1) Proverb 24:21

... <sup>21</sup>do not join with rebellious officials,

d. Avot 3:2

2. Rabbi Chanina,<sup>11</sup> the deputy Kohen Gadol, says: **Pray for the welfare of the government,** because if people did not fear it, a person would swallow his fellow alive.

5. Matthew 5:21-48

<sup>22</sup>**But I tell you that anyone who is angry with a brother or sister will be subject to judgment ...**

<sup>28</sup>But I tell you that **anyone who looks at a woman lustfully has already committed adultery with her in his heart** (Exo 20:14; Deu 5:18) ...

<sup>34</sup>But I tell you, **do not swear an oath at all ...**

<sup>43</sup>"You have heard that it was said, '**Love your neighbor and hate your enemy**' (Lev 19:18). <sup>44</sup>But I tell you, love your enemies and pray for those who persecute you, <sup>45</sup>that you may be children of your Father in heaven. He causes his sun to rise on the evil and the good, and sends rain on the righteous and the unrighteous. <sup>46</sup>**If you love those who love you, what reward will you get?** Are not even the tax collectors doing that? <sup>47</sup>And **if you greet only your own people, what are you doing more than others?** Do not even pagans do that? <sup>48</sup>Be perfect, therefore, as your heavenly Father is perfect.

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11 Chanina bar Chama, frequently quoted in both Talmuds and Midrashim. He died c. 250 CE.

6. Matthew 25:31-46

<sup>31</sup>"When the Son of Man comes in his glory, and all the angels with him, he will sit on his glorious throne. <sup>32</sup>**All the nations will be gathered before him, and he will separate the people one from another as a shepherd separates the sheep from the goats.** <sup>33</sup>He will put the sheep on his right and the goats on his left ...

a. Proverbs 22:9 (NAS)

<sup>9</sup>He who is generous (*lit.*, "he that has a good eye") will be blessed, For he gives some of his food to the poor.

b. Proverbs 19:17

<sup>17</sup>Whoever is kind to the poor lends to the LORD, and he will reward them for what they have done.

c. Isaiah 58:5-10

<sup>5</sup>Is this the kind of fast I have chosen, only a day for people to humble themselves? **Is it only** for bowing one's head ... and for lying in sackcloth and ashes? ... <sup>6</sup>"Is not this the kind of fasting I have chosen: **to loose the chains of injustice ... to set the oppressed free and break every yoke?** <sup>7</sup>Is it not **to share your food with the hungry** and to **provide the poor wanderer with shelter—when you see the naked, to clothe them**, and not to turn away from your own flesh and blood? ...

The third principle, and the most remarkable of all, is **the idea that law does not belong to lawyers. It is the heritage of every Jew**: "Do not think, I will teach them a category and a law two or three times until they know the words verbatim but I will not take the trouble to make them understand the reason [behind the law] and its significance. Therefore Torah states 'which you shall set before them' like a fully laid table [*shulkhan arukh*] with everything ready for eating." This is the origin of the name of the most famous of all Jewish codes of law, Rabbi Joseph Karo's<sup>12</sup> *Shulkhan Arukh*.

From the earliest times, Judaism expected everyone to know and understand the law. Legal knowledge was never the closely guarded property of an elite. Instead, we have the famous phrase, "Torah is the heritage of the congregation of Jacob" (Deuteronomy 33:4). Already in the first century CE **Josephus could write that "should any one of our nation be asked about our laws, he will repeat them as readily as his own name.** The result of our thorough education in our laws from the very dawn of intelligence is that they are, as it were, engraved on our souls. Hence to break them is rare, and no one can evade punishment by the excuse of

ignorance."<sup>6</sup> That may be why there are so many Jewish lawyers. **Judaism is a religion of law—not because it does not believe in love ("You shall love the Lord your God," "You shall love your neighbor as yourself,") but because, without justice, neither love nor liberty nor human life itself can flourish.**

The *parasha* of *Mishpatim*, with its detailed rules and regulations, can sometimes seem an anticlimax after the breathtaking grandeur of the revelation at Sinai. It should not be. *Parashat Yitro* contains the vision, but God is in the details. **Without the vision, law is blind, but without the details, the vision floats in heaven.** With them, the Divine Presence is brought down to earth, where we need it most.

7. Matthew 22:34-40

<sup>36</sup>"Teacher, which is the greatest commandment in the Law?" <sup>37</sup>Yeshua replied: "**'Love the Lord your God with all your heart and with all your soul and with all your mind'** (Deu 6:5) <sup>38</sup>**This is the first and greatest commandment.** <sup>39</sup>**And the second is like it: 'Love your neighbor as yourself'** (Lev 19:18). <sup>40</sup>All the Law and the Prophets hang on these two commandments."

a. Mark 12:28-34

<sup>28</sup>One of the teachers of the law came and heard them debating. Noticing that Yeshua had given (the Sadducees) a good answer, he asked him, "Of all the commandments, which is the most important?" <sup>29</sup>"**The most important one,**" answered Yeshua, "**is this: 'Hear, O Israel: The Lord our God, the Lord is one.** <sup>30</sup>**Love the Lord your God with all your heart and with all your soul and with all your mind and with all your strength'** (Deu 6:4-5). <sup>31</sup>**The second is this: 'Love your neighbor as yourself'** (Lev 19:18) ...

<sup>12</sup> Joseph ben Ephraim Karo (1488–1575), was author of the last great codification of Jewish law, the *Shulkhan Aruch*, which is still authoritative for all Jews pertaining to their respective communities.