

"Na'aseh Venishma"

...and they said, "all that Hashem has spoken we will faithfully do."

Ex. 24:7

Shabbat Shalom, Mt. Sinai!

First, before turning to this week's parsha, I want everyone to know how glad I am to finally be living here in Cheyenne! Thank you to everyone on the Board for all their assistance!

Mishpatim Parsha Summary:

In contrast to the drama and pageantry of the Revelation at Mt. Sinai and the last several parshiyot, Mishpatim ("rules") sounds like we are all sitting in law school or a courtroom! In last week's portion, Yitro, we received the 10 Commandments/Words from God at Mt. Sinai. Now we are learning how to put those Commandments/Words into practice. This parsha describes specific situations and how to deal with them.

The Israelites need to establish a community to become a "kingdom of priests and a holy nation (Ex. 19:6)." They need more than a collection of laws – they need core principles and common values. They need to behave morally toward one another, over and above just "laws."

So Mishpatim presents a long series of civil and criminal laws, some of which have parallels today, including:

- 1) Treatment of serfs or slaves; 2) treatment and return of lost property, 3) penalties for capital crimes like murder, manslaughter, battery); 4) Civil penalties for disputes, damages and thefts; 5) treatment of widows, orphans, and strangers; 6) idolatry, bestiality, and idolatry 7) festival observance; 8) dietary laws, and more....much much more...

The parsha begins "V'Eilah Hamishpatim..." While the "V" or Vav means "and," today's scholars say it is superfluous, and read the verse simply: "These are the rules that you shall set before them." However, the traditional understanding is that the "vav" stresses the continuity to what preceded this parsha: These very specific laws were part of the Revelations given at Sinai and are just as important as the Ten Commandments. "Thou shalt" or "Thou shalt not" is called moral law or "apodictic law" – the general goal or aim of a society's laws. On the other hand, case law or "casuistic law" deals with how these principles apply in specific cases. To give a modern parallel, the general speed law is something like "thou shalt not drive any faster than is safe for the area and conditions..." while in case law that means

“65 on the freeway, 35 in a business zone, 15 in a school zone,” and so on. But you could be cited for driving at 35 on icy streets in Cheyenne, if you were slipping all over the place! So Mishpatim applies moral law to specific situations. It teaches us that our faith is not restricted to the spiritual realm, but also with the material and financial concerns people face every day. Everyday relationships between people are also “religious issues.” Religion without legal ethics can become lofty hypocrisy; on the other hand, legalism without some ethical basis can become dictatorial and nitpicky. One without the other leads to a limited blueprint for an elevated society, but with no application to real life. We know all too well that equal justice is sometimes not meted out fairly. Some forces obsessively uphold laws that oppress others with less power, or simply want to control others at all costs. The Torah asserts that there must be an integration between law and ethics. Religion applies to every part of life and where it shines most is in the everyday dealing with our fellow human beings. One of the basic goals of the Hebrew judicial system was the social equilibrium of the community and the moral perfection of its members; to inculcate human decency and moral responsibility.

Our Parsha starts by listing the responsibilities of an owner toward a Hebrew servant. Since the Torah excluded the Hebrew people from slavery, this seems to apply to a hired indentured servant.

I strongly disagree with those who claim that the Torah condoned “slavery.” Rather, it created rules for making sure that temporary indentured servitude did not degrade into long-term slavery. The Hebrew slave could only serve up to six years, and if the Shmita year (7th year) came before that time he could be freed during the six years. If the master refused the slave proper food, Talmud Kiddushin 20a states that if the master did not provide good bread, wine, mattress, etc., or imposed tasks upon him that hurt his dignity or if he insulted him or beat him, the Law Court (Bet Din) could immediately free the slave. One could only become a Hebrew Slave in two ways: First, if one was too poor to pay off a debt, one could work off that debt (Vayikra 25: 39,40); and Second, if one stole from someone, the court ruled that the thief had to pay off what he stole by working for that person. I think such a process would be much more effective than incarceration in transforming the consciousness of the one in debt or a thief. By assigning him to work for and get to know the person that he harmed; it is much more likely that an intimacy, and sense of remorse and compassion will occur as opposed to putting a person in prison, isolated, or surrounded by other wounded human beings who may be feeling angry and bitter and thus less likely to reform behavior. This is like Restorative Justice today. When people are released from prison with no money, earning power, or vocational training, the percentage of recidivism rises. The protections given to the Hebrew slave were such that the Talmud says that he who hires a Hebrew slave actually hires a master. Plus, bear in mind that by the time of the Talmud, the rabbis had grown to oppose slavery altogether.

A second theme which we hear no less than 42 times in the Torah in different forms is “You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.” (Ex. 22:20) Many of the laws in Mishpatim are commandments to exercise self-control when temptation is the greatest in one’s relationship to the weak and defenseless. The test of a society is how it treats the powerless.

And now a little Talmud. This parsha offers several examples or super-models of cases dealing with liability for “damages.” Today in law they are called “torts.” (I’m not a lawyer, but my father and sister were.)

- 1) “When an ox gores....” (21:28ff) = something you own (and know is dangerous) harms someone
- 2) “When a man opens a pit ”: (21:33) = creating a hazard such that someone is injured
- 3) “When a fire is started and spreads to thorns...” (22:4) = liability for negligence

All three cases – and many others – deal with negligence that causes harm to someone. Shouldn’t this apply as much to corporations, nations and governments that harm people or groups?

This illustration below shows how such laws were later developed and categorized in three famous tractates in the Mishnah and Talmud. Baba Kamma (“First gate”) deals with damages like we discuss above. Baba Metziah (“Gate of Found Objects”) and Baba Batra (“Last Gate”) deals mostly with property. And almost all these laws were derived and interpreted from this very parsha! So if you ever want to understand the sources of Greek, British and now American law, well, here it is, right in our Torah:

Another important example of law bringing about moral change is found in Ex. 23:4-5, “When you encounter your enemy’s ox or ass wandering, you must take it back to him. When you see the ass of your enemy lying ...you must nevertheless raise it with him.” The Torah seems to be thinking that by doing him a kind action, you may restore harmony. The Rabbis attached such importance to this law that they declared “Even your father tells you to ignore it, he must be disobeyed!” Think about that the next time you find a lost item!

This parsha contains more laws than we can possibly discuss in a few pages. Here are a few more:

21:18 : When individuals quarrel and one strikes the other with stone or fist, and the victim does not die but has to take to bed: If that victim then gets up and walks outdoors upon a staff, the assailant shall go unpunished – except for paying for the idleness and the cure. [meaning medical support and restitution]

21:22: When individuals fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman’s husband may exact...But if other damage ensues, the penalty shall be life for life...[in Judaism, life begins at birth, NOT at fertilization]

22:17: You shall not support a sorceress [one claiming to control events, NOT today’s Wiccans!]

22:21-22: You shall not ill-treat any widow or orphan. If you do mistreat them, I will heed their outcry as soon as they cry out to Me and My anger shall blaze forth and I will put you to the sword, and you own wives shall become widows and your children orphans.

22:24: If you lend money to My people, to the poor among you, do not act toward them as a creditor; exact no interest from them....

23:1: You must not carry false rumors; you shall not join hands with the guilty to act as a malicious witness. Right now our country is witnessing how “false rumors” can ultimately lead to violence.

This parsha also contains the famous “an eye for an eye” passage (Ex. 21:27). The Latin phrase is *lex talionis*.

From my colleague Rabbi Jonathan Kligler: “Rabbinic Judaism openly and emphatically rejected the plain meaning of *lex talionis* in the Torah, and insisted that henceforth it stands for compensatory damages, that is, the value of an eye for an eye, or the value of a tooth for a tooth. The Talmud developed a comprehensive set of standards for compensation, taking into account damages, pain, medical expenses, incapacitation, and mental anguish, contributing to the foundation of many modern legal codes.

But the rabbis went further in creating the legal and moral foundation for their audacious recasting of the plain meaning of the Torah. They expand another principle of the Torah in order to make the wanton disfiguring or extinguishing of a human being a moral wrong. Genesis 1:27 states, “And God created the human being in the Divine Image; male and female God created them.” The rabbis reason that if we are created in the image of God, then disfiguring a person somehow is a “disfigurement” of God as well. Further, if we are made in the image of God, and God is infinite, then the value of a human life must also be infinite. There can be no possible compensatory payment for the loss of a human life. Therefore, capital punishment, which is mandated for a variety of transgression in the Torah, must not be practiced, and with great audacity the rabbis create legislation that makes it virtually impossible for a court to assess the death penalty on a defendant.”

(from *An Eye For An Eye?* By Rabbi Jonathan Kligler)

The parsha closes with a classic scene. The people answer to Moshe Rabbeynu (24:7), “all that Hashem has spoken *Na’aseh V’Nishma*,” usually translated “we will do and we will hear” or “we will faithfully do.” These two distinct verbs “to do” and “to listen” mean more than blind obedience. Rather, they imply that action sometimes precedes understanding or leads to greater understanding. Through the doing of the commandments, we will hopefully come to understand them.

Shabbat Shalom!

Rabbi Moshe