

Thinking Torah

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Parashat Mishpatim

The Ethics of Slavery

Part I – Introduction:

Revelation and the Mishpatim: What is the connection?

Chavruta Study

The idea of this chavruta section is to examine the relationship between the revelation at Sinai and Parshat Mishpatim itself.

1. Open the Tanakh - look at the general plan of the perakim 19-24 - and ask yourselves:

- Where do the "mishpatim" begin, and where do they end?
- When - at what stage - were they "given"?
- Do these mishpatim relate to the ten commandments and the revelation at Sinai? In what way?
- What is the place of 23:20-33 in all of this?
- What is the place of 24:1-12 in all of this?

2. To answer these questions

- See Rashi on 21:1 d"h "ve'eileh hamishpatim" and the Ibn Ezra too
- See Rashi, Ibn Ezra and Ramban on 24:1

This week, we descend from the formidable heights of Mount Sinai to the nitty-gritty of human living. Rather than talking of revelation and Godly encounter, we read about slaves, homicide, lost property, negligent watchmen, accidental damage, wild oxen, compensation for bodily harm. There could not be a greater contrast between the epic images of last week's parsha and the mundane legalistic detail of our parsha this week.

This contrast is encapsulated in a discussion about a single letter. It is the letter "vav" which opens our parsha "VE'eileh hamishpatim" - "AND these are the laws". Rashi comments (21:1):

"This word 'VE-eleh' indicates a direct connection with the preceding narrative. Just like the earlier laws are from Sinai, so are these from Sinai."

Rashi poses the question. Our parsha begins with an opening title. It is a new heading informing the reader that we are about to discuss "mishpatim", societal laws, civil law. Is this the opening of a new chapter independent and unrelated to earlier events, or is the word "AND" which opens our parsha, an attempt to link to what came before? Rashi answers that there is indeed a connection. The change in mood and subject matter does not signify a change in status. This is not a move from core theological issues to the peripheral world of legal intricacy. The opening "vav" links the "mishpatim" (social laws) to the earlier revelation. There is no contradiction between the lofty heights of Mount Sinai and the laws which govern a street brawl, an irresponsible watchman, a dangerous pet. This is one story, a single homogeneous text.

This point cannot be over-emphasised. The intimate inter-

relationship between the Mishpatim and the Sinai revelation is spelled out by the Torah in the clearest way. This is achieved by the STRUCTURE of the perakim in the sefer:

CHAP 19-20	Covenant and revelation at Sinai
CHAP 21-23:19	The Mishpatim
CHAP 23:20-24:11	Covenant and revelation at Sinai

There is a certain dispute as to the timing of Chapter 24. Ramban says that it is a post-Mishpatim ceremony. Rashi, however, claims that Chap 24 is a second account of the events in Chapter 19. In which case, the Torah narrates the events of the revelation at Mt. Sinai both before AND after the Mishpatim. Why would the Torah structure the chapters in this unusual manner if it were not making a deliberate attempt to put the Mishpatim at the epicentre of the revelation experience and commitment ceremony at Sinai?

Indeed, according to the Ramban(24:1) and the Ibn Ezra (24:3) when Israel issued the famous proclamation of "Na'aseh Venishma - We accept and we will listen" (24:7) they were accepting none other than parshat Mishpatim! These laws, predominantly Bein Adam Lechaveiro - regulating interpersonal relations, governed by an ethic of a law abiding civil society, honesty and mutual assistance, form the heart of God's Revelation to us.

Part 2 - The Ethics Of Slavery

Chavruta Study

You would be best to study the relevant section or parshia (21:1-12) thoroughly with Rashi.

- See also Vayikra 25:55

- Why does the Torah support slavery - a practise which violates one of man's basic rights? Did the Torah see slavery as an ideal? What impression do you get from the pesukim?

The Shiur

This week, we shall examine a law that from a contemporary vantage point is rather problematic. I am talking about institutionalised, legal slavery. It is the opening law of our Parsha. We shall begin by examining the passage as it appears in the Torah:

"When you acquire a Hebrew slave, he shall serve six years; in the seventh year he shall go free, for nothing. If he came in single, he shall leave single; if he had a wife, his wife shall leave with him. If his master gave him a wife, and she has borne him children, the wife and her children shall belong to the master, and he shall leave alone. But if the slave declares, "I love my master, and my wife and my children: I do not wish to go free", his master shall take him before God. He shall be brought to the door or the doorpost, and his master shall pierce his ear with an awl; and he shall remain his slave for life." (21:2-6)

Many have raised their moral eyebrows at this opening to the great Torah code of civil law. Slavery is something that we would expect the Torah - with its deliberate sensitivity to human suffering - to outlaw. Does Torah really approve of slavery?

We can go further. Are the Israelites not a slave nation themselves? They have just freed themselves of the shackles of slavery. Are they already contemplating having slaves of their own? Moreover, it would seem that this opening law flies in the

face of the very first commandment. Were we not told (20:2):

"I am the Lord ... who took you out of the Land of Egypt, THE HOUSE OF SLAVERY".

Slavery would seem to be the antithesis of our acceptance of God!

RAISING THE STATUS OF THE SLAVE.

"The Torah, who's "ways are pleasant" and merciful, opened its 'judgments' with the law of a man-slave and maidservant who in ancient times were thought of and treated as animals. No judge would hear their case in court or take up their grievance against their master."

These are the opening lines of ShaDaL's commentary to this section. His voice joins an entire school of philosophers and commentators who all perceive the Jewish institution of slavery and its laws as aiming to raise the living conditions, and humanise the status of the slave. We do not need to be informed of the sub-human conditions and oppressive legal status that were part and parcel of the reality of slavery in the ancient world. According to this approach, the Torah in its laws of the slave come to soften, and, if at all possible, would hope to eradicate, the institution of slavery. We will give a few examples.

A slave is not a slave forever! Let us explain. As recorded clearly in our parsha, the Jewish slave [3] cannot be sold for a period exceeding a six-year stretch. It is in the seventh year (of his slavery, not necessarily the Sabbatical year) that he automatically gains his freedom. Not only is a slave encouraged to become free after his six-year stint, but the Torah explicitly instructs us to ensure that at the end of his period of slavery, the slave leaves his master's home with the means of supporting himself. This clearly provides an incentive to the slave, encouraging him to end his state of servitude:

"When you send him away from you, you may not send him empty handed... And remember that you were slaves in Egypt and God redeemed you, which is why I am commanding you in this matter" (Deut 15:13-14)

Other laws are worthy of mention within this context:

- The slave rests together with the entire household on the Sabbath (Ex 20:10).
- If a master hits his slave and knocks out his tooth or eye, the slave gains automatic freedom (21:26-27).
- The slave's life is no less worthy than any other regular citizen; If a master kills his slave, the master is put to death (21:20 and Rashi).

Rabbi Jonathan Sacks stresses this point in one of his shiurim:

Freedom is more than an abstract idea. It means (in an age in which slavery was taken for granted - it was not abolished in Britain or the United States until the nineteenth century) letting a slave go free after seven years, or immediately if his master has injured him. It means granting slaves complete rest and freedom one day in seven. These laws ...**they turn slavery from an existential fate to a temporary condition. Slavery is not what you are or how you were born, but some thing that has happened to you for a while and from which you will one day be liberated.**"

When we look at the parallels to these laws in other cultures of the time we realise how different Judaism was to other contemporaneous law systems. A case in point would be the

case of a runaway slave.

In the ancient code of the Hammurabi, for example (~15-16), the runaway slave is put to death. A citizen caught sheltering a runaway slave is also subject to the death penalty. By contrast, the Torah (Deuteronomy 23:16-17) instructs:

"You shall not turn over to his master a slave who takes refuge with you from his master... you must not ill-treat him"

For the Hammurabi, when it comes to a slave, there are no restrictions placed on the extent to which a master may beat his slave for a slave is his property. As we have seen in our parsha, a master who knocks out even the tooth of his slave gives the slave automatic freedom.

For many other cultures, the slave is a chattel, a piece of moveable property. [4] This is far from the case for the Torah, which is only interested in preserving the slave's humanity.

REHABILITATION

Who is the Hebrew slave that we are talking about? Why would one Jew buy another Jew? Why would a Jew sell himself into slavery? RASHI (v.2) explains that this is a person who has fallen on hard times and cannot meet his debts (See Vayikra 25:39). Alternatively, we are talking of a situation where the courts have sold a person who has stolen and did not have the financial means to repay his debt (based on 22:2). In both cases this is a tremendous opportunity for the slave. Rather than being left to fend for themselves, getting deeper and deeper into debt, they are offered a place in a home which has to have a high regard for their dignity and humanity. The likelihood of achieving such conditions in any other way was almost impossible.

"This is the one and only case in which the Torah orders deprivation of freedom as a punishment; and how does it order it? It orders the criminal to be brought into the life of a family as we might expect a refractory child to be brought under the influence of Jewish family life... How careful is it that the self-confidence of the criminal should not be broken... it insists that he may not be separated from his wife and family... In depriving him of his liberty, and thereby the means to provide for his dependents, the Torah puts the responsibility of caring for them, on those who ... have the benefit of his labours." (Hirsch 21:6)

We must add something of the Jewish legal restrictions of a master vis a vis his slave. In our parsha, the slave is pictured as saying "I love my master" and requesting to stay for a further period of slavery. This shows that slavery, in the mind of the Torah, could be a situation that a slave would wish to continue of his own volition. Why? Rabbi Samson Raphael Hirsch once again relates to the way in which the Torah:

"demands complete equality of the slave with his master and the rest of the household, in food, clothing and bedding, so much so that it became a popular saying "Who buys a Jewish slave for himself has acquired for himself a master." The moral responsibility is great on both sides, 'The master must treat the slave as a brother and the slave must treat himself and behave as a slave.'(Kiddushin 22a)" (Hirsch 21:5)

HUMAN MASTERS AND GOD

The slave who wishes to remain with his master has his ear

pierced. He is taken to the doorpost and his ear punctured. Why? According to tradition, this ritual reminds us of earlier events. The blood of the ear against the doorpost reminds us of the blood which was daubed on the doorposts of Jews on the night of our freedom from Egyptian slavery. The Torah wishes the freedom of everyman. The slave who prefers the security and comfort of the artificial environment of slavery - the world where he is taken care of and his worries are dealt with by others - and is willing to trade his freedom and liberty for that comfort, is scorned by the Torah. The Talmud asks:

“Why the doorpost of all the parts of the house? God said, ‘This is the very doorway that were my witnesses in Egypt when I passed over the lintels and doorposts of the houses of Israel. It was then that I said “The children of Israel will be slaves to me” and not slaves to My slaves, the people who I took from Slavery to freedom. Now this person has deliberately acted to acquire a (human) master for himself - let his ear be pierced before that doorpost” (Kiddushin 22b)

The Talmud continues:

“Why was the ear singled out from all other limbs of the body? God said, “The ear which heard my voice at Mt. Sinai saying ‘The Children of Israel are My slaves and not slaves to others slaves’ and went and acquired a master for himself, let his ear be pierced through”

Both of these texts stress a fundamental principle of our faith. It is the same principle which establishes the mention of freedom at the head of the Decalogue. The principle states that God freed us from servitude in Egypt in order to serve Him. This may be stated in one of two ways. First, the prerequisite for service of God is the free, un-pressured choice of that service. Second, that the service God is the meaning and goal of our free lives. When God freed us from Egypt, we were freed to serve another master. Our new master was not human, He was of a divine nature.

“I am the Lord your God who brought you out ... of the house of slavery” (20:2)

“It is to me that the Israelites are servants, they are my servants who I freed from the Land of Egypt” (Lev 25:55)

The man who desires human slavery is limiting his freedom. He is returning to the conditions of Egypt. He desires a human master and is unable to have a direct encounter with the Master of the Universe. He does not have the freedom to make his own decisions, to fulfil his spiritual potential to the full. This is because he is answerable to another human being and not solely to God.

SUMMARY

We have spoken of the moral and religious significance of slavery from the perspective of the enslaved and from the vantage point of the master. The master must protect the rights of the slave whereas the slave is to try and become a God-fearing free citizen.

A POSITIVE VIEW

However, there are those who challenge this entire way of looking at things.

The perspective that has been adopted thus far may be phrased like this: Slavery is wrong. However the Torah sees it as unavoidable, impossible to eradicate in ancient times. Hence the

Torah tries to make certain improvements to bring slavery to a tolerable position. In essence however, we see the Torah as legislating a fundamentally unethical law here.

But if the Torah allows slavery, are we then correct in viewing slavery as negative? [5]. This approach raises severe theological difficulties. Do we simply judge Torah on the basis of morality in the 21st Century? If we take contemporary standards as our starting point many Mitzvot need "adjustment." From the perspective of our Western lifestyle, many mitzvot, including the prohibition of homosexuality, possibly adultery, and maybe the strict laws of Shabbat are problematic; after all the notion of not using electricity is rather archaic! But we do not challenge these Halakhot.

Maybe the Torah is right and WE are wrong? Maybe there is some good in slavery? Or else why would God not have banned slavery in the same way in which he banned sorcery, or prostitution? (-both are examples of things which one might claim, people have weaknesses for - “you can’t fight it”)

Rav Kook in one of his letters actually suggests that slavery has an “ideal” dimension to it:

“You should know,” says Rav Kook, “that slavery, as with all the moral, upstanding ways of God “in which the righteous walk and the evil stumble,” never in itself caused any fault or error. Slavery is a natural law amongst the human race. Indeed there is no difference between legal slavery and “natural” slavery [6]. In fact legal slavery is within the jurisdiction of Torah, and is legislated in order to control certain flaws, and this, because God anticipated the reality of “natural” slavery. Let me explain. The reality of life is that there is rich and poor, weak and strong. A person who has great wealth hires poor people - legally - in order to do his work. These employees are in fact “natural” slaves, due to their socio-economic standing. For example, coal miners. These people go to work in the mines of their own free will, but they are in effect slaves to their employers ... and maybe if they were actually owned by their employer, they would be better off! ... The rich, with their stone hearts scoff at all morals and ethics. They don’t care if the mines lack air and light even if this shortens the life expectancy of their workers, whose numbers run into the tens of thousands, many of whom become critically ill. They certainly won’t engage in any extra expense to improve working conditions in the mines, and if a mineshaft collapses burying workers alive, they don’t care. Tomorrow they will find new workers to employ. If these people were owned by the master by legal slavery, he would have a financial interest to look after their lives and well-being, because they are his own assets.” (Rav Kook. Letters - Igrot HaRaaya - vol.1 no.89)

Rav Kook continues to develop his theory, adding that that there are certain sectors of society who fail when they have to fend for themselves and they thrive when they are given direction; “people whose absolute freedom is bad for themselves and negative for society”. His belief is that under the moral imperatives of the Torah, the lot of these people will be made infinitely better than in the current situation where they have become prey for irresponsible industry and charlatan businessmen.

This is certainly a surprising and provocative theory. We have brought only a fraction of Rav Kook’s letter, so we have been exposed to but a small section of his total argument thereby making it difficult to judge his opinion with objectivity. However, I

have to say that in an era in which we are fully aware of the problems of inner-city decay, homelessness, the sweat shops of Korea and Taiwan, the existence of an “underclass” - people so poor and uneducated that they cannot climb out of their ignorance and poverty - Rav Kook’s words to seem to contain more than a grain of truth! They certainly force me to re-evaluate this issue with renewed respect for the unique wisdom of the Torah.

Shabbat Shalom.

Footnotes

[1] And see Rashi 24:12 for a stronger expression of this view

[2] See Rashi’s opinion 24:1 that this entire parsha is sandwiched between two separate texts of the revelation. His view simply enhances our point. If Rashi is correct, then the Torah is trying to emphasise that even the attention to minute detail in the life of a human being is of concern to God. That is also part of the revelation.

[3] In this article I have allowed myself a certain leeway in switching from the laws of the Jewish slave to the laws of the gentile slave. I am aiming at showing the humanising tendencies in the Torah legislation. These are present in the laws of both types of slave. In fact, unlike the Hammurabi code which divides society into separate classes out of which one cannot escape, even the gentile slave has the possibility of becoming a fully fledged Jew. See Ex 12:44 and Rabbi Samson Raphael Hirsch’s commentary there.

[4] See Nahum M. Sarna. Exploring Exodus pg.180-182

[5] It is possible that there are certain mitzvot of this kind in the Torah i.e. mitzvot whose moral standing is under question despite the Torah presenting them as standard Halakha. When Rashi talks about Mitzvat Eshet Yefat Toar in Devarim 21:10, he tells us that this is a non-ideal mitzva - “dibra Torah k’ngged Yetzer Hara” - that it is a mitzva which “allows” for human failure. Likewise, the Rambam in Moreh Nevuchim views Korbanot as a non-ideal phenomenon, as a Jewish answer to Pagan rituals (the Ramban disagrees!).

[6] As you can see from the end of the passage. “natural” slavery refers to employment which can become exploitation worse than slavery when the system is abused.
