

THE DEVELOPMENT OF JEWISH JURISPRUDENCE
FROM THE PERSPECTIVE OF PARASHAH MISHPATIM

by C. Peter R. Gossels

The Torah, as you know, is sometimes remarkably specific when it wishes to be instructive. The description of how the Tabernacle was to be constructed in next week's portion (Trumah) is an excellent example, as is the detailed description of what sort of garment Aaron, the High Priest, was to wear in the following parasha (Ttzaveh).

But we are told very little in parasha B'shallah about the route that the Israelites took from the Sea of Reeds to Mount Sinai (or Mount Horeb) or the location of the holy mountain that Nancy and I may, or may not, have climbed some years ago.

What we are told are tales of much grumbling among the Israelites during the first three months of their trek into the wilderness and God's efforts to provide the people with food and water. You will recall how God provided the Israelites with manna and quail and taught Moses to produce water from a rock at Mount Horeb. Parashah Beshallah also recounts how God gave the Israelites the gift of Shabbat and helped them to fight off the Amelekites.

Last week's parashah, Yitro, introduced the fundamental issue facing Moses and his fellow wanderers in the desert: They had gained their freedom from the slavery of Egypt, but they had no laws to govern their conduct and only one judge, Moses, to resolve their disputes as a free people.

But as soon as the Israelites defeated the Amelekites, Moses' father-in-law, Yitro, a Midianite priest, arrived with Moses' wife, Zipporah, his daughter, and Moses' sons,

Gersham and Eliezer. He observes Moses act as the sole judge among the Israelites and offers Moses some important advice: Delegate some of your duties as the sole judge of Israel, by creating a judiciary of capable, trustworthy men who fear God to adjudicate the minor disputes that will arise in your community and bring only the major disputes to you. Unlike many of us, Moses heeded the advice of his father-in-law, Yitro (whom he had served as a shepherd many years before).

Having told us about how Moses created a judicial system for the Israelite people, the Torah now tells us of the great theophany at Mount Sinai, which was enveloped in a dense cloud filled with lightening and thunder as a very loud blast of the horn issued from the smoking mountain.

And God spoke all the words from the heavens that we know as the ten commands or the decalogue and promised to come and bless those who mentioned God's name as they made sacrifices upon the altar. (A somewhat different version of the ten commands appears in Deuteronomy 5, verse 5.)

Mishpatim, this week's parashah, follows immediately after God's utterance of the ten commands. God, it seems, may have considered those ten commands to be too simplistic. This is why the parashah begins with a vov, meaning "and".

Sometimes referred to as the Book of the Covenant, Mishpatim contains 85 verses spoken by God, which set forth the laws that Moses and his judiciary would look to in adjudicating disputes and maintaining a peaceful and orderly society.

Unless we cherry pick among them, the divine laws set forth in Mishpatim do not calculate in the Western world we live in. They were enacted, one might say, for the two

million Israelites, whom God had liberated from the slavery of Egypt. Based on the laws of the Covenant Code, we learn that those, who had been liberated, were slaveholders themselves. Nineteen of the laws deal with the management of cattle and other domesticated animals, leading one to wonder how the Israelites managed to feed and water the livestock they had brought from Egypt as they traveled through the wilderness of Sinai. And in the absence of prisons, the Covenant Code prescribes capital punishment for many offenses that we would consider unworthy of such a cruel punishment: adultery, blasphemy, unnatural or incestuous sexual acts and insubordination to the authorities, being just some of the offenses listed in fourteen of the verses of the Code.

Many of the laws in Mishpatim, though, make us feel proud of our heritage. Among those are the following, which are often cited by the Rabbis as examples of how humane and advanced the Israelites were three thousand years ago:

1. You shall not wrong or oppress a stranger, a widow or an orphan. Ex. 22, v. 20 & 21.
2. If you take your neighbor's garment in pledge, return it before sunset. Ex. 22, v. 25 & 26.
3. You must not carry false rumors or join hands with the guilty. Ex. 23, v. 1.
4. You shall not give perverse testimony in favor of the mighty, nor show deference to the poor. Ex. 23, v. 1
5. Do not subvert the rights of the needy. Ex. 23, v. 6.
6. Do not make false charges or take bribes. Ex. 23, v. 7 & 8.
7. Do not work on Shabbat. Ex. 23, v. 12.
8. Hold a festival for God on Passover, Shavuot and Succot. Ex. 23, v. 14.

Among God's Mishpatim, however, there are many laws that we would not obey today, regardless of their holy origin:

1. There are 14 verses, for example, which condone and regulate human slavery, however humane those laws may have been three thousand years ago, including the right of a father (but not a mother) to sell his daughter (but not a son) into slavery.
2. Capital punishment is prescribed for at least ten transgressions, including for those who insult either their father or mother.
3. The penalty of life for life, eye for eye, tooth for tooth, hand for hand or foot for foot, burn for burn, wound for wound, bruise for bruise is prescribed for those transgressions where there is no other penalty set.
4. If a man seduces a virgin, he must marry her.
5. You shall not put a curse upon a chieftain among your people. Does this apply to our President, our Governor or our Rabbi?
6. Would you lend your money to anyone without demanding interest, if you could get it?
7. Would you, or would you not, boil a kid in its mother's milk? and
8. Would you give up your first born to serve the Rabbi or the Union of Reform Jewry, as Hanna did when God gave her Samuel?

Well, with many exceptions, the ancient Israelites did not care for the laws set forth in Mishpatim either.

After the destruction of the sacrificial cult conducted by the priests at the Temple in or about 70 CE, however, the rabbis tried to reconcile the holy laws set forth in the Torah with the Holocaust that the people of Israel had just experienced at the hands of the Roman army. As they wrestled with the tragic circumstances that had become their

reality, the rabbis realized that they had to interpret and adapt the laws that God had set forth in the Torah if they wished to revive and revitalize the Jewish community, especially in Palestine.

So they invented a myth, which held that Moses memorized an Oral Torah transmitted to him by God while communing for forty days on Mount Sinai. Moses then passed that Oral Torah on to Joshua, who passed it on orally from generation to generation to the Rabbis who were composing the Mishnah. These Rabbis, under the leadership of Judah, called HaNasi or sometimes the prince, considered themselves authorized by Deuteronomy 17:8-11 to ignore and interpret God's commands, because the sacrificial system conducted by the priesthood at the Temple had been destroyed and there was no one left whose authority was greater than theirs.

Much of the work of these Rabbis was incorporated in the Seder Nezikin (The Order of Damages) consisting of ten volumes or tractates of the Mishnah, which created a systemic code of laws for the Jewish community comparable in some ways to the Roman law that governed the gentile community.

Without going into a discussion of their content, Seder Nazikim reinterpreted some of the harshest commands of the Book of the Covenant contained in this week's Torah portion based on the putative Oral Law transmitted to Moses on Mount Sinai. For example,

1. A man could still sell his daughter into slavery, a practice still common in many parts of Asia today, but her mother could not.
2. A man could be sold into slavery for theft, but not a woman.
3. The punishment of an "eye for an eye", etc., was largely abandoned. For example, Rabbi Simon be Yachai, who lived during and after the

destruction of the Second Temple in 70 CE, taught that equal justice could not be obtained if a blind man blinded a man who could see or if an amputee cut off the hand of another.

As a result of the promulgation of the laws of Nazikim, many of the most severe transgressions defined by the laws of Mishpatim could be expiated by restitution or compensation of the victim during the common era in which we have lived for two thousand years.

So, how shall we now regard the Covenant Code as we read and study this week's Torah portion?

I suggest that we regard Mishpatim as God's gift to the Israelites, who had just escaped from the slavery of Egypt to the freedom of the wilderness, because they could not enjoy the fruits of freedom without laws to govern everyone's conduct and a judicial system that could apply and enforce those laws fairly to the wealthy and powerful as well as to the poor and powerless.

It is remarkable how many of those laws express fundamental principles of justice that we treasure today.