Between the Lines—Mishpatim

Weekly Midrash Learning with Rabbi Abigail Treu

Mekhilta, Nezikin 18, on Exodus 22:22

מכילתא דרבי ישמעאל משפטים - מס' דנזיקין פרשה יח

כי אם צעק יצעק אלי שמוע אשמע צעקתו. יכול כל זמן שהוא צועק אני שומע, ואם אינו צועק איני שומע, תלמוד לומר שמוע אשמע מה תלמוד לומר כי אם צעוק יצעק אלי, אלא ממהר אני ליפרע על ידי שהוא צועק יותר ממי שאינו צועק. והלא דברים קל וחומר, אם כשהיחיד צועק על היחיד, שמוע אשמע צעקתו, כשהרבים צועקים על אחת כמה וכמה; ומה אם מדת פורענות מעוטה, כשיחיד צועק על הרבים כך, מדה טובה, ורבים מתפללים על היחיד על אחת כמה וכמה.

> **"For if they cry at all unto Me, I will surely hear their cry." Does it mean only if he cries I will hear, and if he does not cry I will not hear? But Scripture says: "I will surely heed their cry!" Behold then, what does Scripture mean by saying: "If they cry at all unto Me, I will surely hear"? Simply this: I will punish more quickly when there is one crying than when there is no one crying. Now it may be reasoned by using the method of *kal vakhomer*: If God hears when an individual cries, how much more will He hear when many cry? And it is further to be reasoned, by using the method of *kal vakhomer*: If with regard to meting out evil, which is of less importance, the rule is that when the individual cries against the group God hears his cry, how much more should this be the rule with regard to meting out good, which is of greater importance, and especially in the case when the group prays for the individual?**

What I love about this midrash is the way it shifts the power from God's hands to ours. The verses at hand deliver a warning about God's power to punish us, lest we abuse the weak in our society: "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 your own wives shall become widows and your children orphans" (Exod. 22:21–23, using the *New JPS* translation vs. the old JPS translation [above], which we have retained because it reflects the Hebrew grammar so crucial to the midrash). The midrash balks at the surface-level law here: does God really require the suffering to cry out to Him in order to act on their behalf, for their deliverance? The omnipotent God of Justice and Mercy would act without being asked. What the verses really teach, then, is not about God's power but about our own. The text addresses us, the readers, as power brokers; as the ones holding the power and at risk of oppressing others. The message, a meaningful communication in and of itself, tells us that no matter how powerless we may feel or be, we always have some power over somebody in some way—and so we need to be careful. The midrash, however, suggests that we-the-readers are the ones crying out. We can cry out as individuals, as the Torah verse envisions with its singular verbs; but we can also cry out as a community. We can cry out in complaint, or we can cry out for blessing. And most powerfully, we can cry out as a community to pray for the good of an individual. The power has shifted, as have the verbs: the verse was about an individual *crying out* for a group (an individual and his family) to be punished. The midrash makes it about a community *praying* for an individual to be helped. And so the law is turned on its head. What was a threat becomes a teaching about optimism, of placing the power to do good in our own hearts, and we are encouraged to turn from our narrow self-interest to the communal interest for the benefit of particular people in our communities who deserve good and need our prayers.

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Torah from JTS

Parashat Mishpatim
Shabbat Shekalim
Exodus 21:1–24:18
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Parashah Commentary

This week's commentary was written by Rabbi David Hoffman, Scholar-in-Residence, Development Department, JTS

Does the text of the Torah really mean what I am claiming it means or am I reading too much into it?

Am I pushing my own agenda and value system on words that intend something else?

What are the larger religious values that animate certain laws of the Torah? How does my own value system influence my reading of Torah?

Of course, these are some of the central questions we as readers face with each chapter of the Bible. For those of us who believe that the Torah expresses the divine will, these questions assume great urgency. If we believe that God does have a will for our lives and for the world, we must be vigilant against simply projecting our own values and desires onto the text. Yet we will never be able to take the human element of reading out of the equation as we try to understand God's hopes for the world.

Unlike the world that Rashi or Maimonides lived in, our culture demands that we reflect on the motivations behind our interpretations and realize that every explanation that we offer represents a choice to some extent. With every reading of scripture we propose, we must acknowledge that our particular reading is inextricably shaped by our personal experiences, values, and religious commitments. In a post-Freudian world, we realize that sometimes we are not even fully aware of the motivations that move us.

Let's consider one example from this week's parashah that plays out some of the concerns and questions detailed above. Exodus 21:37 states: "When a man steals an ox or a sheep, and slaughters it or sells it, he shall pay five oxen for the ox, and four sheep for the sheep."

The Torah institutes a severe penalty for stealing livestock. The thief must pay in kind fivefold for the ox and fourfold for the sheep. Seemingly, the severity of the punishment intends to serve as a deterrent. But how can we explain the difference in compensation for the two animals? Does the discrepancy in fines to be assessed actually express a divine commitment to a particular religious value?

Well, the Torah is silent. No explanation is offered for the difference between the two fines assigned to the thief of an ox and the thief of a sheep. However, this silence represents an opportunity for interpreters of the Torah to tease out the values that they believe animate this law.

For instance, Philo (first century, Egypt) explains this law as follows: "And on this account the Lawgiver has not affixed a fine of equal amount to the theft of each animal, but having calculated the use of both and the purposes for which both are available, God has appraised their value in this way" (Special Laws IV, 11). Philo argues that because an ox performs invaluable tasks required for human sustenance, like plowing and threshing, the ox is worth more than a sheep. The value of the animal to human beings determines the severity of the fine.

Rabbi Meir offers a similar interpretation to Philo, yet he places the emphasis in a different place. Rabbi Meir explains the discrepancy between the fines for stealing an ox and a sheep in the following manner: "Come and see how precious work is for He-who-spoke-and-the-world-came-into-being! The ox works—therefore one pays five-fold, and for the sheep which does not work—one pays a fine of four-fold" (Mekhilta, a midrash redacted in the second half of the third century CE).

This explanation of our law is different from Philo's because the emphasis is not on the financial loss for the owner but on a more abstract appreciation of the value of labor. Rabbi Meir argues that God values hard work and the ox works hard. Consequently, the fine assessed to the thief for stealing an ox is greater than that for stealing a sheep. Sheep do not perform work; they lounge around and graze. They simply benefit human beings through their fleece, milk, and meat.

Maimonides takes us in a different direction entirely. He proposes the following explanation for our law:

> [T]he more prevalent a transgression, the more serious the penalty to act as a deterrent. The less frequent the crime, the less severe the penalty . . . For the theft of an ox the Lawgiver increased the penalty to five-fold because the offence was easier to commit. Sheep are easier to guard since they keep together. But large cattle are widely scattered in the pasture and it is impossible for the shepherd to keep his eyes on them all the time. Hence ox stealing is more frequent than the stealing of sheep. (*Guide of the Perplexed* 3, 41)

Maimonides uses our example (Exod. 21:37) in order to make a more general claim as to the relationship between a transgression and its penalty. More serious penalties are needed for those sins that are easier to perform. For sins that are readily accessible and tempting, a more severe penalty keeps us in check.

In the absence of a rationale for our law, Philo, Rabbi Meir, and Maimonides all proffer different explanations. Philo suggests each fine reflects the worth of the object stolen. Rabbi Meir argues that the increased fine for stealing an ox communicates God's love for hard work. Maimonides conceptualizes the penalty for the thief within a larger framework of the relationship between transgression and punishment. That is to say, for a sin that is easily performed, the punishment must be greater than for a sin that is less easy to carry out.

All of these interpretations of our law offer us something, but it is Rabbi Yochanan ben Zakkai who sees within this very small and seemingly inconsequential detail, a powerful religious message: Rabbi Yochanan ben Zakkai said, "Come and see how much God cares about the dignity of human beings!" Because an ox moves by virtue of its own legs, a thief pays five times the original value. Whereas for a lamb, because the thief must carry it on his shoulders, the punishment is only four times the original value.

Is this the original intent of the law? Is this really the reason that might explain the difference between amounts for the fine—who is to say? What we do know is that in an unlikely place—during a discussion about the fiscal penalties for a thief—Rabbi Yochanan ben Zakkai expressed his profound commitment to the idea that God cares about the dignity of every human being, even sinners. Rabbi Yochanan ben Zakkai offers the almost too-compassionate suggestion that because a thief must compromise his human dignity in the act of carrying an animal away (even as he is stealing it!), the fine assessed is mitigated.

Rabbi Yochanan ben Zakkai seemingly read every sentence of the Torah based on the values he learned from other sections of the Torah. The book of Genesis repeats the idea that human beings are created in the image of God (1:27, 5:1). The Rabbis of the Talmud understood this bold statement to mean that human beings have inherent dignity and worth as a result of being a reflection of the divine image. As the Rabbis of the Talmud of the Land of Israel state, "This is a great principle of Torah!" For Rabbi Yochanan ben Zakkai, the notion of human dignity served as the lens through which he read every word of the Torah.

Reading and making meaning are complicated processes, especially when what is at stake is nothing less than an understanding of God's will and hopes for humanity.

There is no escape from an element of subjectivity in our interpretations of God's law. However, we must be conscious and reflective of the values and ideas that invariably influence our understanding of God's will.

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Taste of Torah

A Commentary by Rabbi Mathew Berkowitz, director of Israel Programs, JTS

Exodus 22:20 You will not wrong a stranger or oppress him, for you were strangers in the land of Egypt. You will 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 will blaze forth . . .

B'khor Shor, "You will not wrong a stranger or oppress him," Since he does not know the affairs of the country, it is easy to oppress them. "For you were strangers in the land of Egypt," and according to the law, they should love each other . . . "My anger will blaze forth," this is measure for measure . . .

As we read last week, the Israelites, having just been released from the land of Egypt, stood at Sinai accepting Torah. In Parashat Mishpatim, they are given further legislation in what has become known as *Sefer Ha-Brit* (book of the Covenant). This portion is divided into four sections: civil matters, humanitarian issues, divine reward for loyalty, and a ceremony of ratification. Embedded in the second section or humanitarian portion are laws related to the treatment of the powerless in society. Notably, Torah legislates against wronging a stranger. Why would Exodus be so concerned about wronging "strangers," especially after the Israelites themselves were enslaved in Egypt? Given that experience, one would think that it was time for the Israelites to focus solely on healing themselves and worrying exclusively about their existence.

B'khor Shor provides a compelling rationale for the Torah's concern. For the stranger in our midst, it is an issue of *knowledge*. Not being intimately acquainted with the land in which s/he lives, the stranger is at a disadvantage. B'khor Shor paints a picture of outsider pitted against insider; knowledge juxtaposed with ignorance; and power with powerlessness.

Further, Nahum Sarna explains,

> "The Hebrew term *ger*, 'stranger,' denotes a foreign born permanent resident whose status was intermediate between the native born citizen (*'ezrah*) and the foreigner temporarily residing outside his community (*nokhri*). Because he could not fall back upon local family and clan ties, he lacked social and legal protection that these ordinarily afforded. Being dependent on the goodwill of others, he could easily fall victim to discrimination and exploitation." (Sarna, *JPS Torah Commentary: Exod.* 137–138)

The experience of being slaves in Egypt should sensitize us to the plight of the powerless and disadvantaged in all lands. In fact, Torah compels those with security and knowledge to protect those lacking in the latter. Only through increased sensitivity that imparts much-needed knowledge to the *ger* in our midst can we truly become worthy of the divine blessing.

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