

דבר אחר | A Different Perspective



Law and Justice

Martin Oppenheimer, General Counsel, JTS

“Injustice anywhere is a threat to justice everywhere.”
—Martin Luther King Jr., “Letter from a Birmingham Jail”

As an attorney, I am fascinated by the code of civil and criminal law contained in Mishpatim. In Egypt, law was made by the Pharaoh, who could unilaterally decide the fate of his subjects. All lives and property were forfeit at his whim—as his subjects learned during the course of the plagues, and when the Egyptian army was decimated at the Red Sea. Conversely, Mosaic law focuses on equality and social justice. The poor, the downtrodden, the stranger—even the man whose destitution forced him to sell himself into slavery—were required to be treated with dignity under the law.

In Chapter 23, v. 1–3, the Torah sets out a standard for fairness in litigation. “You shall not join hands with the guilty to act as a malicious witness. You shall neither side with the mighty to do wrong . . . nor shall you show deference to a poor man in his dispute.” According to the Talmud, this verse was intended to forestall “a judge who is tempted to say: ‘The poor claimant has no case, but he needs the money more than the rich defendant does.’” The Sages fear that if nonlegal considerations are permitted to distort legal judgments, people will lose faith in the fairness of the courts, and the poor will suffer more from that loss of faith” (*Etz Hayim: Torah and Commentary*, 471).

These commandments remain relevant for our own time. Do juries render judgments in injury cases based on a true analysis of who is at fault, or do they award damages against a defendant who has done nothing wrong, but can afford to compensate the victim? Do prosecutors act fairly in deciding whether to bring charges against public officials? Do people—especially the disadvantaged—trust the honesty and fairness of our legal system? It seems that we still have far to go to reach the ideal that the Torah lays out.

(In memory of Rabbi Stanley Platek, z”l)

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Parashat Mishpatim 5775

פרשת משפטים תשע"ה



I can't stand my neighbor, but his ox needs a hand

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A rabbi and an astronomer have the middle and window seats on a long-haul flight while the fellow on the aisle is a champion sleeper. As neither of our sophisticated travelers is taking a stroll anytime soon, the astronomer begins to talk: “Tell me, rabbi. What, essentially, is Judaism for?” The rabbi thinks a bit, casting about for a reasonable response. He offers a few broad strokes and believes he’s done about as well as might be expected. The traveler responds, “All these rules and teachings and traditions, rabbi! Can’t it all be boiled down to ‘Be Nice?’” The rabbi nods and says, “All these galaxies and black holes and neutrinos and supernovas . . . professor, can’t it all be boiled down to ‘Twinkle, twinkle little star?’”

I returned to this (very) old nugget at the opening of (the older) Exodus 23: No spreading false rumors. No conspiracies of false testimony. Resist mob-think and hold to the truth as you know it, especially in adjudicated cases. Do the poor person no favors by skewing a case his way; just rule justly. When you encounter your enemy’s ox or donkey gone astray, lead the beast back to its owner. When your enemy is struggling to lift his animal, which has collapsed under a heavy and unbalanced load, resist the inclination to whistle on by. Rather, join your enemy in redistributing the load and righting the animal on its legs. Stay far from falsehood. Do not execute the innocent. Take no bribes. Do not oppress the outsider among you.

Can’t it all be boiled down to: *Be Nice. Be Fair. Do Right.*

Well, sure. But that hardly touches on the complexity of realizing

this bottom line in practice. In these short verses, the Torah addresses each individual Israelite, calling on him or her to consistently act in the right way in his or her own sphere. Everett Fox, in his translation and commentary on the Torah, notes that through v. 12, with the exception of that portion of v. 9 that cites that communal experience of slavery in Egypt and the communal norms that flow from it, this passage is rendered in the singular. Of course the laws in our passage apply to everyone. Yet the Torah chooses the singular voice to press home the significance of each person's role in establishing a just and sacred society.

The Torah recognizes that each of us is an independent actor and that the fabric of society depends on each of us, singly and individually, to do the right thing. We are enjoined to do the right thing not only when it will make a difference, but even when it won't. The Bekhor Shor, a 12th century French commentator famous for distilling the plain meaning of the text, writes of v. 2, in which we are cautioned against hiding behind a decisive majority that makes what one knows to be the wrong decision. When polled, one must state one's contrary position even though one knows it will be outvoted and *not* acted upon.

Most interesting in this passage is how at the same time the text calls on each of us to take individual responsibility and do the right thing, it also pushes back against our inclination to be rogue actors in the name of justice. On v. 3, which instructs us not to hold up the poverty of a poor or underprivileged person as a legitimate factor in his favor in his dispute (perhaps advocating on his behalf in a way that falls somewhere between pity and affirmative action), the Bekhor Shor comments, "don't be over-righteous and think, 'This fellow is poor. It would be an act of *tzedakah* to acquit him.' Favoritism has no place in justice." The courts are not the place the do *tzedakah*. Rather, they must be the place of *tzedek*—justice—in each individual case adjudicated in them. Systemic injustices and inequities are addressed in other ways. In our own passage, we read that for six years one is to work one's land, vineyards, and olive groves, but that in the seventh year one must leave them fallow and permit the poor to eat what grows without cultivation. They eat from hand to mouth and don't have a store of food to carry them through the

year (vv. 10–12).

In the matter of one's enemy's animal that has collapsed under its load, we should recognize first that it's taken for granted that one would assist a friend in that situation. The Torah is making the point that even in the situation where one might self-righteously think that the fool got what he deserved for overloading his animal, that he's made his bed and now he's going to sleep in it—that is precisely the situation in which one must act in the most responsible way. One must assist the owner in unpacking the animal's load and then in repacking it. The Talmud and other sources debate whether the reason for this obligation is out of concern for the animal or to take the opportunity to overcome one's most negative impulses. Maimonides concludes (*Laws of Murder and Preservation of Life*, 13:13) that the core motivation here is the latter. We are to walk into a situation that will challenge us deeply precisely because that is the case. We have to get over ourselves in order to make ours the kind of society it's meant to be.

Our passage, then, calls on each of us to do three things, none of which is easy and each of which is in some tension with the other two: always to act as an individual, to recognize the significance each of us can play in every situation, even if it is only to speak our truth; always to act in the interest of the community of which we are a part—as we experienced slavery together, we need to sustain a society that tolerates no oppression; even as we need always to be vigilant and present, we need also to get out of the way because most of the time, it's not really about us.

The astronomer and rabbi on the plane are an updated version of the famous Talmudic passage (Shabbat 31a) in which Hillel boils down the Torah to this: *What is hateful to you do not do to your fellow*. There, as here, the kicker is in his next instruction: The rest is commentary, so *zil gemor*—Go and learn. Be nice, indeed.

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