

After the heights of the revelation at Sinai, Parashat Mishpatim settles down to more mundane topics, including a lengthy discussion of torts. Perhaps motivated by this sudden change of altitude, Nahmanides interprets these details as expansions on the Ten Commandments, such as the prohibitions on coveting and theft: “For if a man does not know the laws of the house and field or other possessions, he might think that they belong to him and thus covet them and take them for himself” (*Ramban: Commentary on the Torah. Exodus*, translated by Charles Chavel, 338–339).

Viewed through lens of H.L.A Hart’s legal theory, Nahmanides expresses something profound: all linguistic expressions, including rules, are somewhat indeterminate. There may be clear-cut cases to which they apply, but because language is always general and the world is always particular, rules always have a certain “open texture.” For example, the rule “No vehicles in the park” certainly applies to a Honda Accord, but does it apply to a bicycle, or to a World War II-era tank displayed for Veterans Day? A rule is thus rendered determinate only through application to new cases. Such application not only clarifies the linguistic meaning of the rule; it more precisely specifies the intention behind it.

Parashat Mishpatim, then, renders more determinate the revelation at Sinai. The Torah takes the general commandments—for example, the prohibitions on coveting and theft—and spells out what exactly ownership is and thus what it might mean to covet or steal someone else’s property. But “open texture” is ineliminable. Even after these prohibitions are rendered more determinate within the Torah, the process continues— from the earliest Rabbinic literature to modern *responsa* that, for example, try to determine what it means to own intellectual property, so as to apply the prohibition on stealing for today.

We often privilege the general over the concrete when thinking about how we should act rightly. In religion we tout the spirit over the letter. In ethics we extol values and eschew norms. And in politics we are drawn to slogans over policies. But perhaps it is only through the letter that the spirit can be discerned, it is only through norms that values gain content, and it is only through policies that slogans attain meaning.

Parashat Mishpatim 5776

פרשת משפטים תשע"ו



Knowing the Feelings of the Stranger

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This week’s parashah comprises a multitude of ordinances, providing an embarrassment of riches upon which to comment. Capital punishment, abortion, workers’ rights—to name just a few of the issues suggested by the parashah—offer ample grist for the commentator’s mill. Yet in this political year, with all of its focus on immigration, refugees, and minority rights, it would seem almost churlish to avoid addressing one of the key themes of the Torah reading: the treatment of the *ger* (stranger).

The seminal verse is Exodus 22:20: “You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.” The treatment of strangers is not merely the subject of a solitary legal command; it appears to be a leitmotif of biblical literature. In fact, it is probably not too much of an exaggeration to say that the Torah is fixated on the treatment of strangers. According to the Rabbis of the Talmud (BT Bava Mezia 59b), the Torah admonishes us about the treatment of strangers no fewer than 36 times, including both the verse quoted above and a similar verse found later in our parashah (Exod. 23:9): “You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the Land of Egypt.” No other commandment is repeated so often.

What is more, this legal preoccupation with the stranger finds its counterpart in the full sweep of the narrative history of the Jewish people as depicted in the Torah, not simply the Exodus story. From the outset, Abraham becomes a stranger when he leaves his home and journeys toward Canaan. We also witness Jacob during a pivotal period of his life outside of the Land of Israel, in his uncle Laban’s house, where he suffers the financial exploitation of an outsider. And then we follow Joseph as he spends virtually his entire adult life in Egypt, initially enslaved and then imprisoned before he attains high office (but still the Egyptians would not eat with him! [Gen. 43:32]). The notion of being a stranger appears to be embedded in the Jewish experience and internalized in Jewish identity. I would venture that this is true even in the State of Israel, which is still—for the most part—a nation of immigrants and the children of immigrants.

So what does Exodus 22:20 mean, and to whom does it apply? The term *ger* can refer to a convert (*ger tzedek*) or a resident alien (*ger toshav*). While some biblical commentators interpret the verse as focusing on converts, the author of *Sefer Hahinukh* gives it a much more expansive reading: “The precept applies at all times and places . . . We should learn from this valuable precept to show compassion to anyone not in his (or her) hometown, far from friends, just as we observe that the Torah admonishes us to show compassion to all in need.” Note that the command makes no distinction between the stranger who resides in the Land legally and one who arrived illegally. All are deserving of our compassion.

Turning from its scope to its substance, we must ask: What does it mean to “wrong” and “oppress” a stranger, and how do those two concepts differ? According to the *Mekhilta*, to “wrong” relates to verbal abuse, while “oppression” refers to monetary matters (*Mishpatim*, Mas. *Nezikin*, 17).

The economic exploitation of resident aliens—particularly those who are not here legally—is a serious problem which ties directly to the Israelites’ experience of slavery in Egypt. Just as we remember that we were forced to labor for no wages in arduous conditions, so it is that we must be sensitive to the strangers in our midst who are compelled by force or circumstance to work in unsanitary or unsafe conditions for substandard pay. Recent news articles about immigrant nail technicians working in inadequately regulated salons and about migrant workers exploited in agricultural settings provide but two examples of this form of oppression. No one who takes seriously the Torah’s repeated concern with the treatment of strangers can turn a blind eye to these forms of oppression.

But the current political environment should also cause us to react vigorously and unequivocally to the other form of mistreatment of strangers in our midst: verbal abuse. When the political discourse devolves to generalizations about Muslim immigrants being terrorists and Mexican immigrants being rapists, we are called by the Torah to remember that Jews, too, have been the subject of such pernicious generalizations and therefore we “know the feelings of the stranger” (Exod. 23:9). They are feelings of isolation and, often, helplessness. The Torah commands us to combat those feelings by standing with the strangers among us and speaking on their behalf.

We must be honest enough with ourselves, however, to acknowledge that historical memory of prior suffering is often insufficient to motivate us to act on behalf of the oppressed. Indeed, as Nechama Leibowitz points out:

[T]he memory of your own humiliation is by itself no guarantee that you will not oppress the stranger in your own country once you have gained independence and left it all behind you . . . On the contrary, how often do we find that the slave or exile who gains power and freedom, or anyone who harbors the memory

of suffering to himself or his forbears, finds compensation for his former sufferings, by giving free rein to his tyrannical instincts, when he has the opportunity to lord it over others? (*Studies in Shemot*, 384)

Because the Jewish community has become more established, affluent, and accepted, the historical memory of suffering may no longer spur us to action. Rashi offers a pragmatic response to this problem: “If you wrong him [the stranger], he can wrong you back and say to you: ‘You also come from strangers.’” In other words, we should remember that oppression can often lead to retaliation.

That pragmatic, if somewhat cynical, advice is well worth considering, but I prefer the Ramban’s warning to those whose historical memory of suffering is inadequate to stir a compassionate response to the stranger. He points out that when the Israelites were at their most vulnerable and defenseless in Egypt, they had a divine Protector who redeemed them. So it is today. Some may believe that they can oppress the strangers in our community with impunity because immigrants are isolated from friends and family and have no one to protect them, but that protection will surely come from someplace else. The command of Exodus 22:20 and its other iterations call upon us to perform God’s work and provide that protection.

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דבר אחר | A Different Perspective



The Spirit and the Letter

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In all fields of experience, not only that of rules, there is a limit, inherent in the nature of language, to the guidance which general language can provide . . . Whichever device, precedent or legislation, is chosen for the communication of standards of behavior, these, however smoothly they work over the great mass of ordinary cases, will, at some point where their application is in question, prove indeterminate; they will have what has been termed an *open texture*. (H. L. A. Hart, *The Concept of Law*, 126-128)