

## Before Them, Before Us: Law as Master, Law as Servant

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וְאֶלְهָ הַמְשֻׁפְטִים אֲשֶׁר תְּשִׁים לִפְנֵיכֶם

“These are the rules that you shall place before them.” (Exod. 21:1)

So begins this week’s Parashah Mishpatim. It is here that the Jewish legal tradition begins, where Torah (i.e. “Instruction”) becomes Nomos or Law.

And immediately after that opening sentence, it continues with rules concerning masters and servants. This commentary will relate the theme of masters and servants to that of our relationship to law in the Jewish tradition, in ways that may be surprising.

There is certainly good reason to take pride in our legal tradition. It helped crystallize a society and later kept it together when sovereignty and a national center were lost. And one of the reasons it was able to do that was that it contains so many ennobling, uplifting exhortations and practices.

Be kind and extending to the person who is in need and borrows from you to subsist (22:24–26). Don’t even think of oppressing an orphan or a widow, for the merciful God will in turn call you to account for not being merciful (22:21–23). Do not automatically follow a majority bent on evil, just because they are the majority (23:2). Create moments that transcend mundane living and remind you of your spiritual core—Shabbat and pilgrim festivals, accompanied by various sacrifices of time and fortune (23:12–19).

These are rules and practices of which we could say, to borrow a line from our American culture, that very much lead us to the formation of a more perfect union, a better society, a more compassionate and humane community.

But these Mishpatim contain other elements as well. About a father selling his daughter into servitude, and into marriage as a child to someone she cannot refuse to be married to (21:7–11). About slaves from outside the Israelite community who could be beaten because they are described in our Torah as “the master’s property” (21:20–21). About the uprooting and destruction not only of idolatry but of the idolaters themselves (22:23–24). And about the execution of witches (22:17).

What are we to do with these less than ennobling and uplifting laws that live side by side with the sublime blueprint for a better, more humane society? It is an age-old question. Its answer will depend entirely on the view that we adopt about the true nature of what is written in our sacred scroll, and why that scroll, and others, are so sacred to us.

The great Hasidic preacher Simhah Bunim of Przysucha understood the opening line cited above (“that you shall place before them”) to mean that the laws **precede** us, i.e., they take precedence over us. In his view, they have a meaning and a validity that is independent of the moral assessments that we may be driven to make of them. We must recognize that and subjugate ourselves to them, for there is a truth and a wisdom here that precedes and

transcends human wisdom. Submission is religious authenticity, and the law is our master.

This is, however, not the only way, and certainly not the best or most canonical way, to understand Torah and what makes its words sacred. The late David Hartman z"l wrote these stark words in his last book, *The God Who Hates Lies* (2011):

*Halakha should be engaged as an open-ended educational framework rather than a binding normative one. Anyone repelled, perhaps, by those who seek to justify and sustain some of the tradition's systematic immoralities, who smugly deny expression to any doubt or uncertainty, claiming a monopoly on absolute truth—is invited to join me on this pilgrimage.*

Similarly, Barry Wimpfheimer (*Narrating the Law*, 2011) wrote about Jewish law that it ought to be seen as “a cultural discourse or language rather than a systemic code”. By seeing it that way, we get “a richer description of life within a Jewish legal culture,” and it becomes about “Jewish law as it might be lived, rather than how it is codified.”

This was the vision of Hartman and the many others who shared it: Torah should be seen as a means, and not as an imposed end. This is the alternative understanding of **אָשֶׁר תִּשְׁמַע לִפְנֵיכֶם**. The laws are placed “before us” in the sense of being offered to us, where we are, and not from some eternally valid place beyond us, take it or leave it. It is, in this view, always on our table, in our surroundings, trying to speak and relate to who and where we are. It is hoping and expecting that we will use our minds, our hearts, our intuitions, our spiritual insights, to develop a culture of Jewish living that will modify the texts, but in doing so, fulfill what Torah is all about: creating a more perfect union, a better society, a more compassionate and humane community. A project in which the law is a servant to the people to whom it was given.

Particularly today, with so much cruelty and immorality evident in our society and in too many of its actors, we need the courage to challenge those inhumanities with the powerful voice of this more humane view of what Torah is, of what all law should be. This parashah is not to be taken as a paradigm of a legal system that demands the subjugation of our minds and hearts. It was placed before us in order to launch a legal culture that each succeeding generation must take responsibility for, before indefensible understandings of it succeed in thwarting the sacred and humane goals of its Author.