

## Mishpatim (Exodus 21:1- 24:18)

29 Shevat 5770 -- Feb 13, 2010:

Triannual cycle: Ex 23:20-24:18

Maftir: Ex 30:11-16

Haftarah: II Kings 12: 1-17 [for *Shabbat shekalim*]

*Mishpatim* is a tough *parsha*. It is densely packed with laws that seem immensely practical and down to earth; but like all laws, they are also highly abstract and the *parsha*'s flow is hard to remember. The *parsha* begins with a whopper – a Jew's body is permanently marked because he refuses to be set free -- and it culminates in what seems an absurdity: “Then Moses and Aaron, Nadab and Abihu, and seventy elders of Israel ascended; and they saw the God of Israel: under His feet there was the likeness of a pavement of sapphire, like the very sky for purity [... ]; they beheld God, and they ate and drank” (Ex 24: 9-11). It makes your heart stop and you want to sink into the earth with embarrassment: the Jews see God and they eat and drink? It's hard to wrap your mind around the incongruence of that verse: in the presence of the greatest purity, the Jews parade their creatureliness; they indulge in the very act that marks them as stinky engines of organic decomposition? What is going on here?

And then you look over the *parsha* and you see that between the verse about the man punished for refusing to be free and the verse about the Jews

feeding their little bodies after (or even while) seeing God, you are confronted with the seedy underside of human life: there are laws about slavery and about sex in slavery (“When a man sells his daughter as a slave, she shall not be freed as male slaves are. If she proves to be displeasing to her master, who designated her for himself, he must let her be redeemed” Ex 21:7); there are laws about thievery and assault and battery; there are laws about homicide and manslaughter; there are laws about elder abuse: if you curse or strike your parents you will be put to death.

So you are asking yourself: who are these people who need such laws? Barbarians? Savages? Where is all that aggression coming from? And then you come across a sentence like this one: “You shall be holy people to me...” (Ex 22:30), and you are wondering: how can these savages be made into a “holy” people (*anshei kodesh*)? How can so much energy, aggression and anger be tamed? How can these drives to relentless self-assertion be bundled into the orderly conduct of holy people?

Of course we understand that “holy” here means simply “separate.” It means “different from” the surrounding barbarian tribes worshipping their idols. “Holy” designates a people keyed only to the God who is handing down these laws, these rules of conduct. And suddenly you realize that there is something enormous going on in this *parsha*, something so radically

transformative that it took even Sigmund Freud's breath away when in the early 1930s, faced with a new kind of barbarism arising in Germany, he started thinking about the foundations of civilization.

I've always liked *Mishpatim*, partly because of the great difficulties it presents, and partly because it supports my aversion to seeing pierced ears in Jews. I can't be sure anymore what came first, my dislike of pierced ears or my knowledge of the horrific passage at the opening of *Mishpatim* about the *eved ivri* (Hebrew slave) who refuses to accept his release into freedom and is hauled outside (brought to the doorpost) to have one of his ears pierced with an awl. In this way a pierced ear becomes the symbol of the refusal of freedom and thus seemingly the mark of a less noble human being.

When I made this point to my daughters, who at the ages of 13 and 7 wanted to get their ears pierced last fall, all they said was: "Oh, Mom, you are so not living in the right decade. You aren't even in the right millennium. Besides, this is America, everybody is free here."

I didn't want to rain on their parade, so I didn't break it to them that freedom is an illusion, that as long as you live in the company of others, your freedom is very tightly circumscribed and may in fact not exceed the *dalet amot* [the four cubits that the rabbinic sages defined as one's personal space]. Aristotle in Book I of his work *Politics* argues that "man is by

nature a political animal,” by which he means that man naturally wants to live in the company of others. He declares that “he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god [...] .” A bit earlier Aristotle is even more drastic. He writes: “He who by nature and not by mere accident is without a state, is either a bad man or above humanity; he is like the ‘tribeless, lawless, hearthless one’ whom Homer denounces – the natural outcast is forewith a lover of war [...] .”

What Aristotle says is that to be fully human – neither beast nor god – one has to live in the company of others; and a society in order to function must have a structure; it must be governed by laws. In his book *Politics*, Aristotle thinks systematically about the governance structures of human societies. In the opening sections of his treatise Aristotle ponders the origins of the state and its composition as a political community (*koinonia politike*). What struck me with great force, when I was studying Aristotle’s observations recently, is their surprising resemblance to the legal sections in *Mishpatim*. Like the writers of *Mishpatim*, Aristotle considers issues of property and economics -- who owns what and under what circumstances – to be absolutely basic to the functioning of a community no matter what its governance structure. And issues of economics are always tied up with

issues of ethical behavior, a point on which the writers of *Mishpatim* are more outspoken than Aristotle.

Thinking about Aristotle's *Politics*, however, makes clear just what we are facing in *Mishpatim*: we are given here the essential ground rules for a just society. Taken together, the laws in *Mishpatim* are Israel's first social constitution; these laws organize and structure the way in which the Israelites live together. We are witnessing an extraordinary moment, because it is by accepting these laws (as the Israelites do at the end of the *parsha*) that the Jews tie themselves to each other as a people, a social community. In *parshat Yitro* they tied themselves to God; in *parshat Mishpatim*, they tie themselves to each other as a state. *Yitro* and *Mishpatim* belong together and they are held together by the framing device of Moses ascending to the mountaintop to confer with God. In fact it was Moses' father-in-law Yitro who had freed Moses for his ascent by telling him that he (Moses) must learn to delegate his daily adjudicative duties (Ex 18: 13-23) to a group of deputies.

Let me step back for a moment and look at the larger picture. I'm doing this because in this week's newsletter at one of the Jewish day schools a rabbi complained in his *dvar Torah* that after 15 weeks of great stories racing from Creation to Mount Sinai, *Mishpatim* felt "like an abrupt come

down from the mountaintop [because we are forced here to deal] with pits and oxen, slaves and injuries [...].” The rabbi suggested that we hear “parashat *Mishpatim* as a string of stories... Once upon a time there was an ox that kept hurting others...” This is so wrong, you can’t help but roll your eyes in disbelief. Because what is happening in *Mishpatim* is that the Israelites are finally emancipated from stories, and -- as *bnai mitzvah* -- are admitted to the law. They are lifted up onto the mountaintop of intellect. That is why at the end of *Mishpatim* a group of seventy elders, representing the entirety of Israel, ascends Mount Sinai. *Am Yisrael* is being admitted to the law and to the presence of God and is asked to commit itself to laws that are extremely demanding: ethically, economically, and culturally.

If you look over the sweep of the Torah so far, you can see that it narrates Israel’s biography from birth to maturity, from Genesis to Sinai, and that this biography is accompanied by a steady stream of laws, evolving from a simple command: don’t eat from this tree, to laws of ever greater specificity. In fact, the dynamics of increasing specificity continues throughout the rest of the Torah and then spills over into the oral Torah, the rabbinic rulings collected in the Talmud and from there into the responsa literature. So that what you get as the Jews mature as a “state,” as a political community, is an ever-widening tree of highly specific rules and rulings.

In *Mishpatim, am Yisrael* is pushed for the first time toward full maturity by being confronted with the seriousness of what it is committing itself to as a people. There is no more hiding behind little stories. This is the real deal: a socio-political constitution like no other in the ancient world.

The issue at stake, then, is the commitment to these laws. What that means is simply this: you are no longer free. You are accepting a yoke. Your drives, your urges, your wildness will need to be tamed, and tamed in ways that will go against your deepest self-interests and will to power: “do not take bribes, do not oppress the stranger, do not mistreat widows and orphans, do not sow your land every seventh year. Pay for what you damage; if you destroy an eye, you pay for the value of an eye, for tooth the value of a tooth, and so on.” What these laws upset is the ancient motto that “might makes right.” If you commit to these rules, you give up personal power; you give up the freedom to assert yourself, you give up sovereignty. You are submitting to someone else’s authority.

And it is now that we are beginning to understand the brilliance of the Torah writers when they decided to start this *parsha* with the issue of *eved ivri*, the Hebrew slave, who refuses to accept his freedom because he loves his master and does not wish to leave the wife and children he acquired during his servitude.

The Apostle Paul, who knew the Torah well, put it bluntly in his letter to the Galatians: “[The covenant from Mount Sinai] gives birth to bondage” (4:24). To this the rabbinic sages replied with a now famous paradoxical pun. Commenting on the verse “the writing was the writing of God, engraved on the tablets” (Ex 32:16), the sages quipped: “Do not read *harut* (engraved) but *herut* [freedom]” (Eruvin 54a). The intention here is to say that subservience to the Law makes one free. But how does that make any sense? How can subservience make free? How can one be free and bound (or committed) at the same time?

This is an issue both of psychology and of political philosophy and the range of answers is enormous. Freud argued, like Hobbes, that one gives up the freedom of self-assertion for the security of communal life; and Freud argued further that we pay for security with the repression of our drives, which, in turn, enables us -- via a mechanism called sublimation -- to become creators of high culture. The energy you don't expend like Esau in the wild, you will use in the manner of Jacob in the tent.

Aristotle, in contrast, argued that there simply are people who are intended by nature to be governed because they don't have what it takes to be masters themselves. Such people would be considered less noble than those determined enough to be free and rule. This thought is reflected in the



Russian saying that every people gets the leader it deserves. Does this mean it was ignoble of the *eved ivri* to refuse his freedom? Does he have a slave mentality and will now get the master he deserves?

No. Exactly here is where the brilliance of Jewish law kicks in: the Jews figured out a way to have their cake and eat it too, to be both free and bound, to be both in the presence of the greatest purity and to feed their digestive system, to be both enslaved and in the possession of their bodies. The solution is to bring the master down from the mountain, to curtail his sovereignty. You remember the astonishing sentence in *parshat Yitro*: “The Lord came down ... and Moses went up” (Ex 19:20). The laws in *Mishpatim* uphold slavery and indentured servitude, but they curtail the rights of the enslaver and obligate him to respect the integrity of the slave’s body. If you damage that body, you have to make restitution. Everybody owns at least his or her own body; some people own more than that; and to every property, including bodies, a monetary value is assigned: the value of an eye for an eye, the value of a tooth for a tooth. That means, no one is totally dependent, totally owned by anybody else; you will always own, at least, your body, which represents a monetary value. And in all societies it is property that defines freedom. The legislation in *Mishpatim* is astoundingly modern, astoundingly liberating because it accords the slave and the weakest

members of society rights that they had nowhere else in the ancient world. It is correct, then, to say that while the laws bind the Jews into a community and constrain them, they also confer a modicum of freedom to each one by putting him or her in full possession of his or her body. And that is the reason why the elders can sit down to a meal in the very presence of the Lord: by eating and drinking they assert their sovereignty over their bodies, they assert their humanity in the presence of the Lord who is now bound not to strike them. “He did not raise His hand against the leaders of the Israelites; they beheld God and they ate and drank.” Very cool, indeed!