

פרשת משפטים

OVERVIEW

Immediately after the promulgation of the first constitutional laws the text turns to the detailed description of principles and rules marking the structure of the Jewish society. Our Sidrah contains a large number of ordinances referring to various aspects of communal living: laws pertaining to servants and maidservants, injuries to humans and animals, civil liabilities, theft, loans, interest. It ends with references to the three pilgrimage festivals and to the words of the Ten Commandments that were to be engraved on stone tablets.

COMMENTARY

The Jewish Servant

It is difficult to understand how an exemplary law compendium can begin with verses such as "if you purchase a Jewish servant" or "if a man sells his daughter to be a handmaid". It will appear in a different light however, if we realize that the primary source of the law is the Oral Law that has been kept alive by the living word. The exceptional cases are recorded at the outset in order to remind all the more forcefully of the ordinary principles of social justice.

Oral tradition teaches that we deal here with a thief who is unable to make restitution for the actual value of the stolen object. He has to place himself for a certain period of time in the service of the man whom he robbed. The amount of work he must perform corresponds to the value of the stolen goods. Thin is the normal case. There are also circumstances when a man sells his services because of poverty. Here, too, there is a time limit. During the period of his service he retains all rights to which the individual is entitled by law. This privilege does not extend to the civil rights that are enjoyed by the free citizens.

As for the master, he must not refuse the servant any comfort that he allows himself. He also must take care of the requirements of the servant's family. There is no demoralizing prison term for the thief. As for the impoverished person who sells himself, he must receive adequate compensation to avoid the catastrophic consequences of social ruin. We see that the law regarding the servant is based on the principal of mutual and collective responsibility on which the entire legislation is based.

The Murderer

"...If one kill another with premeditation, you must take him away (even) from My altar, that he may die". This spells the absolute equality of every individual before the law. No social class will enjoy privileged treatment and protection, "de jure" nor "de facto". From king to worker, everyone is subject to the same discipline. He who raises his hand against his neighbor will be called to account regardless of his station. Jewish law does not provide for the right of pardon that is the prerogative of most modern heads of state. As the Midrash comments: "If there is but one priest in the land and he has been found guilty of a crime, you should sooner deprive the temple of a servant than leave a crime unpunished".

Blows and Injuries

In addition to noting the brutal fact of the injury, the law also considers the circumstances, the consequences, the cure and of course the motive. Actually, the verse provides a rather general wording: "If men are engaged in a quarrel and one of them strikes the other". The act begins with a not unusual quarrel that may, but does not have to, end in bodily injury. Irrespective of intention or motivation, even in a case of obvious error, the law imposes restitution on the one who inflicted the wound. This

is based on the attitude of the Jewish law that considers restitution, unlike punishment, the essential ingredient of the Jewish legal system. These are cases where payment is required without additional punishment. An important detail: injuries must be a direct result of blows suffered by the victim and not caused by external circumstances

"Compensation of eye for eye, or foot for foot"

The verse does not refer to a right of reprisal (lex talionis). It deals with the amount of compensation, precisely determined, to "replace" the value of the destroyed eye or limb. It is puzzling that the verse employs a language which may cause confusion by its ambiguity. Perhaps the Torah wishes to ban any thought of revenge. It stipulates a simple compensation for the loss of the organ, nothing more.

Civil Liability

It is beyond the scope of this commentary to explore, even superficially, the detailed precepts regarding civil liability. A considerable part of the oral law and the Talmud deals with it. We shall concentrate on several major principles that help to clarify the text.

The Jew is responsible for any damage caused by him directly or by his property. In cases involving damages caused by animals we distinguish between two types: "נגח", if it was the first time and after one repetition of the incident; "מועד", after a second repetition (third occurrence) of damage caused by the same animal. In the first case, the owner must pay half of the damage cost; after a third time the owner is fully responsible. While these rules refer to cases occurring on public ground (street or communal pasture), in certain circumstances they also apply when the damage is inflicted in the victim's private property.

No compensation is required for damage done to property belonging to the temple. (The words "the ox of your fellowman" exclude temple property). The puzzling quality of this regulation underlines the fact that it is not a "man-made" law. G-d does not find it necessary to protect the temple that He erected in the midst of the people.

Theft through break-in

The situation is clearly described: if one confronts an intruder at night, one is entitled to assume that he has criminal intentions and therefore, as an act of legitimate defense, one is permitted to kill him. The oral law explains that the thief who commits the break-in at night must be aware of the special risk he runs in the course of his nocturnal crime. Whether he has actually criminal intentions or not is immaterial: we must assume that he would not hesitate to accomplish his plan against all odds. The following verse must be interpreted in this sense, "if the sun has risen upon him, there shall be blood guilt on his account". This means that the owner of the house would be guilty of murder if the circumstances prove that the thief has no murderous intentions. That is the case when the entry occurs in bright daylight or when a personal relationship between the thief and the owner (such as the case of a son who breaks in his father's house) precludes the assumption that the former would have had murderous potential in that case.

The Maiden

Verse 22:15 deals with the case of the seducer and the financial penalty as prescribed by the law. The sum is determined by the court in cooperation with the father. The seducer must marry the girl (if she consents). The measures

designed to protect the honor of the Jewish daughter are more severe in the case of a girl who is מאורסה to be married.

It should be noted that אירוסין (commonly translated "engagement") does not correspond with our definition of engagement, the latter referring to a simple promise of marriage. According to Jewish law אירוסין is the first obligation that joins the two partners together (requiring a divorce if not carried out) without placing on them the rights and duties of married life. The seducer of a girl "engaged" in this sense suffers the death penalty as it is considered as an act of adultery.

The Security

The law assists those who are in need of a loan by giving them every possible consideration. Thus the creditor is not allowed to demand payment of the debt unless there are doubts as to the debtor's trustworthiness. In that case he is entitled to demand a security in return for the loan. The security must not be an object that is of vital necessity for the debtor's family or his occupation. The advantage of a security is that the debt is not affected by the annulment prescribed for the Shemittah year and that it remains active even if there occurs a change in ownership due to the death of the debtor.

Spiritual purity

Verse 22:30 is introduced by the preamble "you shall be to Me men of a holy calling". These words refute the allegation that the dietary laws are based on nutritional considerations, climatic necessities and hygiene. Not our physical health is at issue but our spiritual and moral fitness and purity. This is the only interpretation allowed by the wording of the verse. Any other reasoning belongs in the realm of fantasy. The strict self-discipline in the area of nutrition is bound to have the most profound effect on the development of man. The symbolical language of these prohibitions is designed to imbue the Jew with the vital significance of his Jewish ideals.

This principle may be clarified by the following example: "treifa" does not denote "torn" or "slashed". It means "acquired" or "seized". As long as an organism is alive it belongs, as it were, to itself. If there is a fatal injury - even if death does not occur at once - the animal no longer belongs "to itself". It is already, as it were, in the power of another master: fate itself from which there is no escape.

Corruptibility

With extraordinary intensity the text stresses the danger of corruption. Fundamental principles of judicial ethics are violated when a judge is responsive to monetary persuasion.

There is no justice, no law, when the powerful and the rich obtain favorable treatment unavailable to the poor. It is a danger that is constantly and passionately stressed throughout the writings of our prophets. Justice must be free of any kind of monetary consideration. Only professional judges must serve in the employ of the state. Every sentence that brings the judge or arbiter a direct or indirect material gain is an immoral act. Chapter 23 speaks a categorical language that leaves no doubt as to the mortal danger posed by corrupt judges and corrupt justice.

The Foreigners

As a logical consequence of the judicial principles developed in our Sidrah, the position of the foreigner in the Jewish land is most favorable. The Jewish constitution gives complete equality to all who dwell in the Jewish land. Not in vain did Israel go through the harsh school of suffering in Egypt. But this is not the only motive for the foreigners' position of equality in the Jewish land. A more valid reason is the respect for the human being regardless of his status.

There is one condition attached to this important legislation. The foreigner must respect the great moral principles that form the foundation of every human society. The moral level of social life in the holy land was to serve as a model of a social structure that will be adopted by all nations as soon as their acceptance of G-d's rulership will remove all hatred and envy in the world.

Shemittah

"During six years you shall sow your land and gather in its produce; throughout the seventh year you shall abandon it, neither plow it nor sow it". The sabbatical year represents a magnificent demonstration by an entire nation that proclaims G-d as the sole and true owner of the land.

This Shabbat-year will be for the Jewish nation in the Jewish land what the Shabbat itself is to mean for mankind as a whole. The intimate relationship between these two institutions is evident in the proximity of verses 11 and 12. Both concepts are acts of courage, both witnesses to the bond between G-d and man. They will always serve as the tokens of Israel's loyalty to G-d, for both require strict self-control, iron self-discipline and productive enthusiasm.

The Youth of the Nation

After transmitting the initial laws to the nation, Moshe erects an altar consisting of twelve stones, representing Israel's tribes. It is Israel's youth who are chosen to offer the first sacrifices even before the sanctuary was dedicated (24:5). They do not wait for the completion of the sanctuary to demonstrate their eagerness to serve G-d, to walk ahead of the nation on the path leading upward. Surrounded by the youth, the people joined together in exclaiming "we shall act and we shall hearken". The nation swears to remain faithful to the Torah law, to uphold its vital precepts and to study them.

All of Israel, with one voice, led by the youth, entered into the bond with G-d that transformed them to become the immortal guarantors of a better future.

First publication in the French Language during WWII in Occupied France as "La Tohra Commentée" © 1945 Marc Breuer. Translated to English by R' Marc (מרדכי) and Jacob Breuer זצ"ל. Missing parts translated from the original French text by Elie Winsbacher. Edited and Published in English with permission of the author's family by Elie Winsbacher . © 2003. Based on the teachings of Rav Samson Raphael Hirsch זצ"ל. To receive electronically, please send email to: e.w@att.net or download from the website of the Central Organization for Jewish Outreach at <http://www.cojo.net>.