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## INTERNET PARSHA SHEET ON MISHPATIM - 5771

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Behind Jewish belief in Torah she-be-al Peh, the "Oral Law", lies a fundamental truth. The meaning of a text is not given by the text itself. Between a text and its meaning lies the act of interpretation - and this depends on who is interpreting, in what context, and with what beliefs.

Without an authoritative tradition of interpretation - in Judaism, the Oral Law - there would be chaos. To be sure, there were sectarian groups within Judaism - Sadducees, Karaites and others - who accepted the Written Torah but not the Oral Law, but in reality such a doctrine is untenable.

The Babylonian Talmud demonstrates this elegantly and with humour. It tells of a certain non-Jew who sought to convert to Judaism, and went to the great sage Hillel to do so. He made one proviso. "Convert me on condition that I accept the Written but not the Oral Law." He was willing to be a Jew, but only a heretical one.

Hillel made no protest, and told the man to come to him for instruction. The first day, Hillel taught him the first four letters of the Hebrew alphabet: aleph, bet, gimel, dalet. The next day he taught him the same letters in reverse order: dalet, gimel, bet, aleph. "But yesterday," protested the man, "you taught me the opposite." "You see," said Hillel, "you have to rely on me even to learn the alphabet. Rely on me also when it comes to the Oral Law." (Shabbat 31a). Without agreed principles, there can be no teaching, no learning, no authority, no genuine communication.

One passage in this week's sedra shows how differences in interpretation can lead to, or flow from, profound differences in culture. Ironically, the subject concerned - abortion - remains deeply contentious to this day.

The text deals not with abortion per se, but with a fight between two people in which a bystander - a pregnant woman - is hit, with the

result that she miscarries. What is the punishment in such a case? Here is the text:

"If men who are fighting hit a pregnant woman and she has a miscarriage but there is no other fatal damage [ason], the offender must be fined whatever the woman's husband demands and the court allows. But if there is fatal damage [ason], you are to take life for life . . ." (Ex. 21: 22-23) The word ason means "mischief, evil, harm, calamity, disaster". Jacob uses it when his sons tell him that the second-in-command in Egypt (Joseph) insists that they bring their youngest brother Benjamin with them when they return, if they are to be cleared of the charge of spying. With Joseph missing, Benjamin is the only son left of Jacob's beloved wife (by then dead), Rachel. Jacob refuses to give permission for Benjamin to leave home, saying: "If you take this one from me, too, and he meets with disaster (ason), you will send my white head down to the grave in sorrow" (Gen. 44: 29).

The meaning of the law about fighting men, then, is this: If the woman miscarries but suffers no other injury, the person responsible must pay compensation for the loss of the unborn child, but suffers no other penalty. If, however, the woman dies, he is guilty of a much more serious offence (the sages, in Sanhedrin 79a, disagreed as to whether this means that he is liable to capital punishment or not).

One thing, however, is clear. Causing a woman to miscarry - being responsible for the death of a foetus - is not a capital offence. Until birth, the foetus does not have the legal status of a person.

At the same time that the sages in Israel were teaching this law, there was a significant Jewish community in Alexandria, Egypt. A passage in the Talmud describes the great splendour of the synagogue there. The Alexandrian Jewish community - whose most famous member was the first century philosopher Philo - was highly Hellenized. It developed its own traditions, at times quite different from those of the rabbinic mainstream. In one of his works, Philo, explaining the main principles of Jewish law to a non-Hebrew-reading public, turns to the biblical passage under review, and paraphrases it in these words:

But if anyone has a contest with a woman who is pregnant, and strike her a blow on her belly, and she miscarry, if the child which was conceived within her is still unfashioned and unformed, he shall be punished by a fine, both for the assault which he has committed and also because he has prevented nature, who was fashioning and preparing that most excellent of all creatures, a human being, from bringing him into existence. But if the child which was conceived had assumed a distinct shape in all its parts, having received all its proper connective and distinctive qualities, he shall die; for such a creature as that, is a man, whom he has slain while still in the workshop of nature, who had not thought it as yet a proper time to produce him to the light, but had kept him like a statue lying in a sculptor's workshop, requiring nothing more than to be released and sent out into the world. (The Special Laws, III: XIX) Philo understands the word ason to mean, not "calamity", but rather "form". The meaning of the two verses is now completely different. In both cases, they are talking about damage to the foetus only. In the first case, "there is no ason" means, the foetus was "unformed" - i.e. at an early stage of development. The second verse speaks of a foetus "that has form", i.e. at a later stage of pregnancy. Philo puts this rather finely when he compares the developed foetus to a sculpture that has been finished but has not yet left the sculptor's workshop. On this view foeticide - and hence abortion - can be a capital crime, an act of murder.

Philo's interpretation - and the views of the Alexandrian Jewish community generally - were to play a significant part in the religious history of the West. This was not because they had an impact on Jews: they did not. Rather, they had an impact on Christianity. The

decisive victory of the Pauline Church over the Jerusalem Church, headed by Jesus' brother James, meant that Christianity spread among gentiles rather than Jews. The first Christian texts were written in Greek rather than Hebrew. They were, at the same time, intensely dependent on the Hebrew Bible. In fact the one serious attempt to divorce Christianity completely from the Hebrew Bible - made by the 2nd century Gnostic Marcion - was deemed to be a heresy.

Christians were therefore dependent on Greek translations of and commentaries to Tanakh, and these were to be found among Alexandrian Jewry. The result was that early Christian teaching on abortion followed Philo rather than the sages. The key distinction was, as Augustine put it, between embryo informatum and embryo formatum - an unformed or formed foetus. If the foetus was formed (i.e. more than forty or eighty days had passed since conception: there was argument over the precise period), then causing its death was murder. So taught Tertullian in the second century. So the law remained until 1588 when Pope Sixtus V ordained that abortion at any stage was murder. This ruling was overturned three years later by Pope Gregory XIV, but re-introduced by Pope Pius IX in 1869.

This is not to say that Jewish and Catholic views on abortion are completely different. In practice, they are quite close, especially when compared to the cultures of ancient Greece and Rome, or the secular West today, where abortion is widespread and not seen as a moral evil at all. Judaism permits abortion only to save the life of the mother or to protect her from life-threatening illness. A foetus may not be a person in Jewish law, but it is a potential person, and must therefore be protected. However, the theoretical difference is real. In Judaism, abortion is not murder. In Catholicism, it is.

It is fascinating to see how this difference arose - over a difference in interpretation of a single word, *ason*. Without tradition and all the sages meant by "the Oral Law", we would simply not know what a verse means. Between a text and its meaning stands the act of interpretation. Without rules to guide us - rules handed down across the generations - we would be in the same position as Hillel's student, unable even to begin.

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From: **RABBI MORDECHAI KAMENETZKY** [rmk@torah.org](mailto:rmk@torah.org)  
Subject: Drasha - Parshas Mishpatim -- Sealed and Delivered [From 9 years ago]

This parsha is called Mishpatim. Simply translated it means ordinances. The portion entails laws that deal with various torts and property damages. It discusses laws of damages, of servitude, of lenders and borrowers, employers and laborers, laws of lost items and the responsibilities of the finder. Many of these mitzvos that are discussed in the section of Shulchan Aruch Choshen Mishpat. But there are quite a few mitzvos mentioned that engage the purely spiritual quality of the Jew. Some of them deal with kosher restrictions, others with our relationship with the Almighty. One verse that deals with the requirement of shechita (ritual slaughter) begins with a prelude regarding holiness. "People of holiness shall you be to Me; you shall not eat flesh of an animal that was torn in the field; to the dog shall you throw it (Exodus 22:30). The question is simple. There are many esoteric mitzvos whose only justifiable reason is spiritual. Why does the Torah connect the fact that Jews should be holy with their prohibition of eating meat that was torn as opposed to ritually slaughtered? There are myriad mitzvos that require self-control and abstinence. Can there be another intonation to the holiness prelude? (I heard this amazing story a number of years ago from a reliable source; I saved it until I was able to use it as an appropriate parable to answer a scriptural difficulty. I hope that this is it!) Dovid, a serious yeshiva student, boarded the last flight out of Los Angeles on his way back to his Yeshiva in New York. He was glad that they were going to serve food as he had left his home in a rush and did not get a chance to eat supper. Sitting next to him on the airplane, was a southern fellow who knew little about Judaism, and considered Dovid a curiosity. As the plane flew eastward, he bantered with Dovid

about Jews, religion and the Bible, in a poor attempt to display his little bits of knowledge. Hungry and tired Dovid humored him with pleasantries and not much talking. He was pleased when his kosher meal was finally served. The kosher deli sandwich came wrapped in a plastic tray, and was sealed with a multiple array of stickers and labels testifying to its kosher integrity. His new-found neighbor was amused as Dovid struggled to break the myriad seals and reveal the sandwich, which unbelievably looked just as appetizing as the non-kosher deli sandwich the airline had served him. "Hey," he drawled, "your kosher stuff doesn't look too bad after all!" Dovid smiled and was about to take his first bite into the sandwich when he realized that he had to wash his hands for the bread. He walked to the back of the plane to find a sink. It took a little while to wash his hands properly, but soon enough he returned to his seat. His sandwich was still on his tray, nestled in its ripped-open wrapping, unscathed. And then it dawned upon him. There is a rabbinic ordinance that if unmarked or unsealed meat is left unattended in a gentile environment, it is prohibited to be eaten by a Jew. The Rabbis were worried that someone may have switched the kosher meat for non-kosher. Dovid felt that in the enclosed atmosphere of an airplane cabin, nothing could have happened. After all, no one is selling meat five miles above earth, and would have reason to switch the meat, but a halacha is halacha, the rule is a rule, and Dovid did not want to take the authority to overrule the age-old Halacha.

Pensively he sat down, made a blessing on the bread and careful not to eat the meat, he took a small bite of the bread. Then he put the sandwich down and let his hunger wrestle with his conscience. "Hey pardner," cried his neighbor, "what's wrong with the sandwich?" Dovid was embarrassed but figured; if he couldn't eat he would talk. He explained the Rabbinic law prohibiting unattended meat and then added with a self-effacing laugh, "and though I'm sure no one touched my food, in my religion, rules are rules." His neighbor turned white. "Praise the L-rd, the Rabbis, and all of you Jewish folk! Dovid looked at him quizzically.

"When you were back there doin' your thing, I says to myself, "I never had any kosher deli meat in my life. I thought I'd try to see if it was as good as my New York friends say it is! Well I snuck a piece of pastrami. But when I saw how skimpy I left your sandwich, I replaced your meat with a piece of mine! Someone up there is watching a holy fellow such as yourself!" The Pardes Yosef explains the correlation of the first half of the verse to the second with a quote from the Tractate Yevamos. The Torah is telling us more than an ordinance. It is relating a fact. "If you will act as a People of holiness then you shall not eat flesh of an animal that was torn in the field; to the dog shall you throw it. The purity of action prevents the mishaps of transgressions. Simple as that. Keep holy and you will be watched to ensure your purity. Sealed and delivered. Good Shabbos 2002 Rabbi Mordechai Kamenetzky

Best wishes to the Bergman Family of Flatbush thank you for your kind compliments. Drasha, Copyright 1 2002 by Rabbi M. Kamenetzky and Torah.org. Drasha is the e-mail edition of FaxHomily, a Project of the Henry and Myrtle Hirsch Foundation. Rabbi Mordechai Kamenetzky is the Associate Dean of the Yeshiva of South Shore, <http://www.yoss.org/>. Torah.org depends upon your support. Please visit <http://torah.org/support/> or write to [dedications@torah.org](mailto:dedications@torah.org) or [donations@torah.org](mailto:donations@torah.org). Thank you! Torah.org: The Judaism Site <http://www.torah.org/> 17 Warren Road, Suite 2B Baltimore, MD 21208

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from Kol Torah <[koltorah@koltorah.org](mailto:koltorah@koltorah.org)> hide details Feb 1 KOL TORAH A Student Publication of the Torah Academy of Bergen County Parshat Parashat Mishpatim 26 Shevat 5768 February 2, 2008 Vol.17 No.20

#### **Jewish Justice by Shlomo Klapper**

This week's Parasha begins with "VeEileh HaMishpatim," "And these are the ordinances;" the laws that the Sanhedrin - the Jewish religious Supreme Court - must enforce. The juxtaposition of this section to the preceding section, which dealt with aspects of the Mizbeiach, is buttressed by the conjunction "and," and many Meforshim offer explanations of this Semichut. Rashi, quoting Tanchuma, says this connection is why the Sanhedrin was located in

the Beit HaMikdash adjacent to the Mizbeiach. Rav Tzvi Pesach Frank notes that this placement represents their mutual characteristic of being a peacemaker, as Korbanot are offered on the Mizbeiach to attain atonement for our sins, making peace between Bnei Yisrael and Hashem, and the Sanhedrin executes justice, making peace between men; therefore, the Torah places the Sanhedrin near the Mizbeiach.

The Aveni Azel views this connection as an example of a fundamental difference between the world's and Hashem's civil law. The former has no religious or moral basis, but rather is a social agreement that allows society to function peacefully; however, the Torah's civil law is part of God's mandate and is endowed with the same sanctity as other Mitzvot. This equality is seen by that even though the word "Luchot" refers to all Ten Commandments on both tablets, it is written in the singular form "Luchat," since the first tablet of spiritual laws is equal to the second tablet of social laws. The parity between civil law, represented by the Sanhedrin, and ritual law, represented by the Mizbeiach, is the reason why the two are adjacent. Just as Korbanot in the Beit HaMikdash are holy, the civil laws that the Sanhedrin enforces are holy. The Sanhedrin is the earthly agent for Hashem, whose civil laws it enforces, and hence its members are called "Elohim," a name of Hashem. Rashi comments that both types of laws were given to Bnei Yisrael on Har Sinai. As most of civil law is logical, one might be tempted to see it as man's creation; therefore, the Torah explains that just as "irrational" laws, whose reasons are unknown to us, are from Hashem at Sinai, these logical civil laws also are from Hashem at Sinai.

The first Mishnah of Pirkei Avot shows this idea, too. Dealing with ethics and morals, Pirkei Avot might be erroneously perceived as the Jewish complement to the great gentile moralists; thus, the Mishnah begins the Masechet by tracing the Torah from Moshe, who "received the Torah from Sinai," emphasizing that the moral civil laws are no less holy than their ritual counterparts. Imrei Emet explains that a law that can be deduced from a Kal VaChomer (a fortiori) argument sometimes is stated explicitly in the Torah (see, inter alia, Yoma 43a) specifically to show that these laws emanate from Hashem and not from man's intellect. These "rational" laws must be observed because Hashem commanded us to observe them, not because we decide that they make sense.

The idea that we follow Hashem's commandments only due to our belief in Him and not because of other reasons was taken to heart by many Jewish scholars. The Vilna Gaon always recited Havdalah using wine, even though Halacha (Shulchan Aruch O.C. 296:2) permits doing so with Chamar Medinah, or the national drink. However, he made a special exception on Motzaei Pesach, when he made Havdalah specifically with beer. He did so because he wanted to show that he abstained from Chameitz on Pesach because Hashem commanded him to, not because he did not like Chameitz. By drinking beer - a drink of Chameitz - after Pesach, the Gaon showed that he did not eat Chameitz previously only because Hashem commanded him to.

Rav Soloveitchik interpreted the phrase in the Hoshanot that we recite on Sukkot, "Yoshevet UMamtenet Ad Sof HaShabbat," "We sit and wait until the end of Shabbat," in light of this idea. A Jew abstains from doing Melachah on Shabbat only because Hashem commanded him to, not because he is too lazy to work; therefore, he sits and waits until Shabbat's conclusion and immediately thereupon performs Melachah. This idea is a difference between Jews and gentiles in regards to divine justice. Gentiles do not only view divine justice as completely separate from civil justice; they see it as irrational and warped. Judaism has a different outlook on divine justice, as even the rational civil laws originate from Hashem, and we follow them because He commanded us to.

The Apter Rebbe explained another difference between the two justice systems. A non-Jewish judge once approached him and tried to explain the gentile justice system's supremacy. The judge studies the material before the set date for the trial, when two attorneys argue the case and the judge finally makes a well-reasoned decision, which is subject to appeal. The Jewish system, however, seems primitive, as the two parties present their arguments to a judicial panel, which makes a swift decision. The gentile system gives the most opportunities for both parties to be heard and the judge to make a conviction or vindication; however, the Jewish system does not seem to attain justice, as the parties seemingly do not have the chance to show their case adequately nor is the judge presented with enough time to make a thorough ruling. The Apter Rebbe responded with a Mashal. A wolf was about to eat a sheep, but a lion came and snatched it away. The wolf claimed that the lion was a thief, so the two animals decided to settle their dispute by going to a judge, the fox, who ruled that the sheep should be split evenly between the two constituents. After splitting the sheep in half, the fox realized that the halves

were not exactly equal, so he took a bite from one half, but as this bite made the other side smaller, he was forced to take another bite to correct his "miscalculation." Eventually, nothing remained for the litigants. This, the Apter explained, is the fault inherent in the gentile judicial system: events are unnecessarily lengthened, the lawyers' bills mount (leaving them the lion's share), and both litigants leave unhappily. In the Jewish system, Beit Din often strives to make a Pesharah, or compromise, that will benefit both sides.

More than half of the 613 Mitzvot and over seventy percent of the Talmud deal with laws relating to the land of Israel. Actually, the Torah explicitly lists justice as a key to inheriting Israel, as the Torah records, "Tzedek Tzedek Tirdof LeMaan Tichyeh VeYarashta Et HaAretz Asher Hashem Elokecha Notein Lach," "Follow justice and justice alone, so that you may live and possess the land that Hashem is giving you" (Devarim 16:20). Halacha (see Rashi to Shemot 21:1 s.v. Lifneihem) mandates that under most circumstances, civil disputes be brought to Beit Din, not secular court. Obligation or not, we must realize that divine justice, as enforced by Beit Din, is far superior to any other system.

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**Eli Putterman**

#### *The legal and theological context of Mishpatim*

Adapted from B. Eichler, "Study of the Bible in Light of Our Knowledge of the Ancient Near East," in: S. Carmy ed., *Modern Scholarship in the Study of Torah: Contributions and Limitations* (Northvale, NJ: Jason Aronson Press, 1996), 81-100.

Consider the following excerpts from ancient legal material from the Near East:

If an ox gores another ox and thus causes its death, the two owners shall divide the value of the living ox and the value of the dead ox.

If an ox gores a man to death while it is passing through the streets, that case has no basis for a claim.

If a man's ox is a known gorer... and that ox gores [a man] to death, he shall give 30 shekels of silver.

These laws sound like they were quoted directly from the civil law of the Torah, do they not? In fact, they are taken from two early-second-millennium BCE Mesopotamian codes: the first from the Laws of Eshunna, and the latter from the Code of Hammurabi. But one would not be so far off in assuming these laws were of Mosaic origin, as these exact laws, with only slightly different formulations, are to be found in *Sedra Mishpatim* (*Shemot* 21:35 and 21:28-30, respectively). The Torah was given in the fourteenth-century BCE, later by all accounts than the composition of either of these Ancient Near Eastern texts.

The extent of the similarities between the Biblical and Mesopotamian laws is too great to be put down to coincidence: besides for the legal content, the language and casuistic formulation of the respective laws are nearly identical. Why would the Torah phrase its laws in a manner similar to that of Ancient Near Eastern law? One might respond that since the earlier laws are just (as they must be if they are found in the Torah), and their content quite applicable to the Israelites, who had the same sort of society as that for which the Mesopotamian codes were intended, the Torah included them. But this response does not explain why the same terminology and paradigmatic cases are used. The situation is not quite the same as the *Shulkhan Arukh's* frequent borrowing from the *Mishneh Torah*!

If one examines just the passages in the Mesopotamian and Torah legal texts, the problem indeed seems irresolvable. To understand the reason that the Torah law took its formulations from external Ancient Near Eastern sources, it is necessary to widen the scope. When the respective legal corpora are compared in full, it becomes apparent that the similarities between Torah and Mesopotamian law are deliberate, existing to highlight the significant differences between them.

First of all, while the Biblical law prescribes that the ox that gores a human to death, whether it is a first-time or habitual gorer (*shor tam* and *shor mu'ad* in rabbinic terminology), be stoned, the Mesopotamian law does not. In addition, in the case of the *shor mu'ad*, an example of what contemporary jurists would deem 'negligent homicide,' the Torah recognizes in principle that the owner of the ox is deserving of capital punishment, but (in a formulation unique to this case) allows him to provide monetary compensation instead. Finally, the Laws of Eshunna use the same root (*ngp*) to describe an ox's goring of another ox and of a human, while the Biblical law uses different roots for these scenarios: *ngp* for an ox's goring of an ox, but *ngh* for goring of a human.

In addition, it should be noted that the Torah states that in the case of an ox goring a human, the same law applies whether the victim is a man or a woman, an adult or a minor. To understand why this provision must be made explicit, some further background in Mesopotamian law is required. The Code of Hammurabi takes the principle of *lex talionis* found in the Biblical 'eye for an eye' and follows it to its logical extreme: if a man kills (whether murderously or due to negligence) a member of the household whose status is not coequal to that of the killer, the killer himself is not subject to capital punishment but rather the corresponding member of the killer's household – thus, if a man builds a house that collapses upon the son of the homeowner, the builder's son is killed. Thus, it seems clear that the Torah meant to exclude the possibility that the ox's owner's punishment would be different based on the status of the goring victim.

It is now clear that the differences between Biblical and Mesopotamian law invalidate any attempt to draw any sort of equivalence between the two. Also, it certainly seems plausible at this point that those formulations of Torah laws which mimic Mesopotamian formulations are in fact meant to draw attention to the essential differences between the law codes. However, the original question has not been answered, only modified: why do these differences matter enough for the Torah to call attention to them? What is the deeper message here?

To answer this question, it must be understood that law does not exist in isolation: codified law, to a large extent, reflects the moral principles and values of the society to which it is applied. Hence, the Torah's highlighting of the differences between its own legal code and those that preceded it in Mesopotamia is intended to illustrate the differences between the values of the surrounding Ancient Near Eastern societies and those that the Israelites were meant to assimilate, 'Torah values' in an appropriate if often misapplied idiom.

The major difference on the moral plane between Torah and Mesopotamian law was in their divergent conception of man. Mesopotamian law saw man as *homo economicus*, a unit of wealth not in essence distinct from other forms of property. As such, when a human resource was destroyed in Mesopotamian society, an equivalent asset would be taken in retaliation, whether that asset coincided with the perpetrator or with one of his family members. In the case of an ox goring a human, the owner of the ox simply had to make good on the financial loss sustained by the household of the victim, without the suggestion of any moral wrong being righted.

In contrast, the Torah views the worth of human life as incommensurable with that of property, and the loss of it as necessitating a fundamentally different response than that occasioned by damage to property. As such, in any case of an ox goring a human to death, the ox was to be stoned, for the taking of a human life required a response: the ox could not escape punishment, even though it was not guilty in the moral sense. Furthermore, the Biblical law entertained the possibility that one culpable of negligent homicide forfeit his own life – however, since the crime could not be classified as murder, the judgment was ransom, a commutation allowed in no case where the homicide was intentional. Finally, the use of different roots to connote goring of an ox and of a human points clearly to the fact that these were considered radically different actions with different legal consequences.

The conflict between legal and moral conceptions of man in Mesopotamian and Torah law ultimately owed its root to the discontinuity between Ancient Near Eastern and Biblical theology. In the mythic tradition of Mesopotamia, as exemplified by the *Enima Eliš* and *Atra-Hasis* epics, man was created to serve the gods, who had real needs that had to be fulfilled by human labor. Law was then seen as an institution meant to preserve societal order, for in a state of anarchy man could not attend to the gods' wishes, but human life had no sacred, transcendent value distinct from that of property – the humans were slaves of the gods just as animals were the slaves of the humans.

In contrast, the Biblical account of creation betrays a view of the nature of man standing in stark contrast to that of Mesopotamian culture. Man is first and foremost a being in the divine image, which endows his existence with a value

which cannot be assessed on the slave market. Man's life being of intrinsic rather than instrumental worth, the taking of it cannot be atoned for by means of a financial transaction. This sentiment is epitomized by God's speech to Noah after the Flood, and it rings out once again in this week's *Parsha* and beyond. As such, the system of law outlined in *Mishpatim* is not utilitarian in its end, but rather a manifestation of a morality that draws a clear distinction between human life and property.

In conclusion, to ignore or explain away the literary, legal, and theological interaction between the Torah and other texts of the Ancient Near East is not merely intellectually dishonest. Such willful blindness misses the opportunity for the richer understanding of an eternal moral message of the Torah such as the one outlined above.

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Bewitched? We Sure Hope Not Guest Writer: **Uri Schneider**

Very rarely do we come across a three word pasuk in the Torah that is as halachically complex as the pasuk, "Machsheifa Lo Tichayeh- do not let a sorceress live." At first glance, this pasuk seems very peculiar. Why is the pasuk written in the feminine form? Male sorcerers, such as Bilam, also existed! Furthermore, why is the pasuk taught near the laws warning against sleeping with an animal and the laws of a molested בְּתוּלָה? Lastly, why didn't the pasuk simply say "Machsheifa Mos Tamus," language that is identical to the adjacent pasuk of "Kol Shocheiv Im Behaima Mos Tamus." Rashi, the Baal Haturim, ibn Ezra, and a plethora of Rishonim say that the pasuk is written in the feminine form because the majority of sorcerers are women. However, the law demands that anyone who performs witchcraft, man or woman, must die. The next question we must address is why this pasuk is put next to pasukim that are seemingly irrelevant to the topic of witches. The Malbim says that sorcery leads one to have desires for illicit relations. This idea works well with a comment of the Baal Haturim who notes that Bilam, an infamous sorcerer, had relations with his donkey. However, later I will propose an answer that is more relevant to how we live our lives. Perhaps we can answer the third question if we gain an understanding of an interesting passage of Gemara. The Gemara tells over a story concerning Shimon Ben Shetach and eighty witches that resided in Ashkelon. Although these witches did not harm anyone, Shimon took the initiative and sent his army to capture the witches. Shimon and his men slyly deceived the witches into getting off the ground and flying in the air. While the witches were in the air, Shimon captured and executed them. There are many things we can learn from this story. Although the witches were harming no one, Shimon knew he had the obligation to stone these sorceresses. This is exactly why the torah says Machsheifa Lo Tichayeh and not Machsheifa Mos Tamus. The Rashbam explains that the words Lo Tichayeh teaches that people should not be hesitant in performing this mitzvah. On the contrary, we should be like Shimon Ben Shetach and chase after any sorceresses in order to eliminate the impurity that they bring into the world. However, while this answers our original question, this Gemara is perplexing. Why did Shimon Ben Shetach have to lure these witches to the air before he could capture them? That should make it harder, not easier, to catch them! Perhaps we can answer this question using the idea found in Rashi found in Parshas Va'eira. When he comments on the Macah of Kinim (lice), he explains that the reason the magicians could not replicate this Macah is because a demon cannot have control over anything less than the size of a grain of barley. Sorcerers are completely intertwined with physicality. Shimon had to make sure that he got the eighty witches of the ground and away from their physical surroundings. Once this happened, the witches had no power. Although one may think that sorcerers have unlimited amounts of power, the story of Shimon Ben Shetach and the Macah of Kinim prove to us the limitations of witches. This idea sheds a new light on this passage's peculiar placement in the Torah. The Torah is teaching us that we should not be too immersed in physicality. We are told in this context to search out and kill a sorceress, a person that is ultimately lost in their physical attachments, so that the Torah can strengthen its message of the vulgarity of Arayot. It is one's duty to protect the world from too much physicality and immorality. Through showing the evils of a Machsheifa and demanding we search out and eliminate them for out midst, the Torah is demanding that we remove ourselves from too much gashmiyut. Like the Machsheifa, physical things do not last forever. On the other hand, an immersion in ones spiritual self can have just the opposite impact; long life, happiness, and the ultimate redemption.

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Mazal Tov to Yael and Michael Bleicher on the birth of a daughter. Mazal Tov as well to the proud grandparents Rabbi Raphael and Pessy Butler along with all the entire extended mishpacha

From Destiny Foundation/Rabbi Berel Wein  
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Subject Weekly Parsha from Rabbi Berel Wein

**Jerusalem Post :: Friday, January 28, 2011**  
**IT IS NEVER TOO LATE :: Rabbi Berel Wein**

Even though Tu B'Shvat occurred last week I still have figs, dates and other fruits in prominent display in my kitchen. So, I do not feel too guilty about writing this belated article about the day of Tu B'Shvat, the Jewish New Year for the trees of our beloved land. Throughout the years of the Jewish exile, the day of Tu B'Shvat falling in the midst of the winter season served as a heartening reminder of our unbreakable connection to our land and eating its fruits confirmed the holiness of Israel, the people and the land. I remember that as a child in the freezing Chicago winters, my parents would insist on my eating a piece of "boksar" – carob – to commemorate Tu B'Shvat. The "boksar" was hard as a rock and tasteless as wood. Yet I noticed that my parents, Jews of an earlier generation who were born before there was a State of Israel or a time when free and open worship was really allowed at the Western wall without Arab or government interference, ate their pieces of "boksar" slowly and with great affection.

Only later in my life did I realize that eating that piece of "boksar" validated their hope and belief that the Land of Israel would yet flourish and grow under Jewish sovereignty and that the vineyards and orchards of the land promised to us by our prophets would become abundant reality.

Every society needs physical symbols to validate its faiths and aspirations. That is why countries have flags and seals. The fruits of the Land of Israel became the flag and seal of the Jewish people vis a vis its beloved homeland even when there was little Jewish population and no Jewish sovereignty present there. The pieces of fruit served to remind Jews of who they were and where they came from and most importantly where they really were heading. In 1882 Baron Edmond de Rothschild's Carmel (East) Wine Company produced its first bottles of wine in Rishon L'Ziyon. At that time Rabbi Naftali Zvi Yehuda Berlin (Netziv) was the rav and head of the famed yeshiva in Volozhin in then Lithuania. He was also the titular chairman of the Chovevei Tziyon – The Lovers of Zion – the organization that encouraged Jewish immigration to the Land of Israel and helped support monetarily the nascent but growing population of the "yishuv hayashan" – the pre-Zionist settlers in the Land of Israel of the nineteenth century.

His nephew, Rabbi Baruch HaLevi Epstein (the author of Torah Temima, a popular commentary to the Torah) lived with his uncle and aunt in their home while being a very young student at the yeshiva. He recorded for us in his writings that the Carmel Wine Company sent a bottle of wine from its first production efforts to Rabbi Berlin in recognition of his efforts on behalf of the Jewish settlers in the Land of Israel.

When that bottle of Israeli wine finally reached the small village of Volozhin and was delivered to the house of Rabbi Berlin, the great

rabbi entered his bedroom and changed into his Shabat garments in honor of a bottle of wine produced by Jews from the grapes of the Holy Land and upon which all of the agricultural mitzvot of the Torah had been fulfilled.

I have often thought about this vignette when I hear observant Jews say they prefer wines from France, Argentina, Chile, Australia, South Africa, California, etc. over Israeli wines. They just don't get it. The lesson of the "boksar" of Tu B'Shvat has apparently not yet taken hold in their souls and psyches.

So Tu B'Shvat is not just a date (no pun intended) on the Jewish calendar year. It represents our undying and never failing attachment to the Land of Israel. It connects us to the two thousand year old entry in the Mishna that called the day of fifteen Shvat the New Year for trees in the Land of Israel.

The day is a slight holiday in Jewish ritual and synagogue service. I still ate "boksar" this year and its taste has not really materially improved. Yet I enjoyed every bite and I again saw my parents eating it with me. Though there were many other tastier and more delicious Israeli fruits on the table before me, none carried with them the emotional message in my heart that the "boksar" piece did.

So to me the message of Tu B'Shvat did not end last week with the passing of the day. Rather it serves every day to strengthen our claim to this piece of holy ground and to confirm the great times – each person under his vine and fig tree in security and happiness – that was promised to us by our prophets.

Shabat shalom.

From Destiny Foundation/Rabbi Berel Wein  
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Subject Weekly Parsha from Rabbi Berel Wein

**Weekly Parsha :: MISHPATIM :: Rabbi Berel Wein**

The Torah prescribes that a Jewish servant who wishes to remain permanently in servitude – he loves his master's home and his family – is given a permanent mark, a hole in his ear, as an everlasting reminder of his choice. Rashi explains, based on the Talmud, that the ear that heard on Sinai that the Jewish people are God's servants and not to be servants to other humans is to be drilled with an awl as a stark reminder of his poor choice in life.

The Talmud taught us that a truly free person is someone whose guide in life is Torah. The choice of servitude over freedom is anti-Jewish and anti-Torah in its very makeup. In the ancient world and even in later times, slaves were branded so that all could see that they were the chattel of their owner.

The Torah's instruction to bore a hole in the ear of the Jewish servant was to remind everyone of just the opposite idea. That this slave belonged to no other human but rather was to be a servant of God – that was the message of the drilled ear. Freedom and independence mean that we bow to no one but to our Creator alone.

Having other masters in life is a rejection of the Jewish mission and Judaism's true understanding of life's purpose. Jews have often in our long history been made to serve in involuntary servitude and slavery. But voluntarily giving up one's freedom of action and behavior is abhorrent to Jewish ideals and tradition.

The ancient world, as well as much of the later worlds, was built upon the institution of slavery, forced labor and involuntary servitude. In our time governments that preached equality and nobility enslaved others simply because they suspected them of having different ideas.

The mocking slogan at the entrance to Auschwitz "Work makes one free" symbolized the ultimate form of slavery and murder. The Gulag was the place where millions succumbed doing useless work. The great White Sea Canal of Stalin was literally a canal that led to

nowhere while myriads of people died in the process of building it, often only with their bare hands.

The Jewish people were coming forth from Egypt after centuries of slavery. One would have thought that having themselves experienced that type of servitude they would not wish to inflict it upon others. However Midrash teaches us that even in Egypt there were Jews who somehow owned other Jews as slaves. It would take millennia for Jews to be completely weaned from the practice of slavery. Such is the dark side of human nature and behavior. But the process of drilling the ear of one who wishes to remain a permanent slave reminds the Jewish society of the inherent wrong in the deprivation of people's freedom. Only God has the right to ask us to be His servants. And those who truly serve God have no interest in depriving others of their freedom. The message of freedom that was heard on Sinai should reverberate in all of our ears constantly. Shabat shalom.

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From Ohr Somayach <ohr@ohr.edu>  
To weekly@ohr.edu  
Subject Torah Weekly

TORAH WEEKLY—Parshat Mishpatim  
For the week ending 29 January 2011 / 23 Shevat 5771  
from Ohr Somayach | [www.ohr.edu](http://www.ohr.edu)  
by Rabbi Yaakov Asher Sinclair - [www.seasonsofthemoon.com](http://www.seasonsofthemoon.com)  
OVERVIEW

The Jewish People receive a series of laws concerning social justice. Topics include: Proper treatment of Jewish servants; a husband's obligations to his wife; penalties for hitting people and for cursing parents, judges and leaders; financial responsibilities for damaging people or their property, either by oneself or by one's animate or inanimate property, or by pitfalls that one created; payments for theft; not returning an object that one accepted responsibility to guard; the right to self-defense of a person being robbed. Other topics include: Prohibitions against seduction; witchcraft, bestiality and sacrifices to idols. The Torah warns us to treat the convert, widow and orphan with dignity, and to avoid lying. Usury is forbidden and the rights over collateral are limited. Payment of obligations to the Temple should not be delayed, and the Jewish People must be holy, even concerning food. The Torah teaches the proper conduct for judges in court proceedings. The commandments of Shabbat and the Sabbatical year are outlined. Three times a year — Pesach, Shavuot and Succot — we are to come to the Temple. The Torah concludes this listing of laws with a law of kashrut — not to mix milk and meat.

G-d promises that He will lead the Jewish People to the Land of Israel, helping them conquer its inhabitants, and tells them that by fulfilling His commandments they will bring blessings to their nation. The people promise to do and listen to everything that G-d says. Moshe writes the Book of the Covenant, and reads it to the people. Moshe ascends the mountain to remain there for 40 days in order to receive the two Tablets of the Covenant.

#### INSIGHTS

##### Rights And Obligations

“When you lend money to My people...” (22:24)

I live in a city of kindness.

In Yerushalyim, if your daughter suddenly becomes engaged and you don't have a bottle of whisky to make the customary l'chaim with family and friends, don't worry, look in the phone book and call the gemach!(A gemach is a free loan organization.)

You'll be able to borrow a bottle of Johnny Walker Black Label (could even be gold – I don't think they stretch to green or blue). Later on, just replace what you took. No charge.

There are gemachim for virtually everything under the sun. Let's say it's Shabbat, the drugstores are closed and you need a certain unusual antibiotic. No problem. There are people with gemachim of medicines in their homes that rival a commercial drugstore. There are gemachim for clothes, chairs, cameras, tapes, tables, telephones, money, free advice hotlines, mezuzot, tefillin, bridal outfits, wigs, cooking gas cylinders, baby strollers, cribs, lactation pumps, drills, saws and other tools, embroidered cushions to bring a Jewish baby to the

arms of the Sandek for his Brit Mila. In fact, I have a friend who has a talent for dreaming up new gemachim for people.

And Yerushalyim isn't alone in its kindness. Many, many cities share this distinction. We are a kind people. It's in our genes.

Gemach is an acronym for Gemilut Chessed – the bestowing of chessed.

There is no word for charity in Hebrew. Look up the word for charity in the English/Hebrew dictionary and you'll find the word tzedaka.

Tzedaka doesn't mean charity. It means 'righteousness'.

There's no such thing as a “Robin Goodfellow” in Jewish thought. We believe a person who gives charity doesn't deserve a slap on the back – someone who doesn't give 'charity' deserves a slap on the wrist.

If you look in the Written Torah there's not a single mention of the word 'rights'. On the other hand the Written Torah is full of obligations. Look at this week's Torah portion: Obligations of a master to a slave; the obligations of a child to its parents; of a pupil to his teacher and vice versa; of a community to the poor; of the individual to the community; obligations to the orphaned, to the sick, to the convert; the obligations of man to G-d. 'Rights', however, are something that the Written Torah never mentions. Why?

Because to the extent that I have obligations — you don't need rights.

You can construct a legal system that spells out people's rights or you can write a code that lists their obligations: “...all men are created equal and endowed by their Creator with certain inalienable rights...” comes to the same thing as “And these are the laws that you should put before them...” The end result will be the same.

But with one big difference.

A system that focuses on rights breeds a nation of takers. One that focuses on obligations creates a nation of givers.

Linguistic idiom reveals national character. In English, we say “My duty calls.”

Meaning, I start off unencumbered by obligation. My obligation calls to me. I am over here and my duty is over there. If I'm a good person I will heed that call. But still, my duty calls. I have to go to it. In the Holy Tongue, we talk about a person being 'yotzei chovotav' - literally 'going out from his obligations'. In other words, a Jew starts off by being obligated. He doesn't have to go anywhere or heed any call. Life and obligation are synonymous.

There are three places in the Torah where the Hebrew word “im” is not translated by its usual meaning “if” but “when”. One of those in this week's Torah portion:

“When you lend money to My people...”

Lending money to the poor is not optional — it's obligatory.

What reads like an “if” to the rest of the world, to the people of G-d is a “when”.

Sources: Rashi; Rabbi Uziel Milevsky, zatzal

Written and compiled by Rabbi Yaakov Asher Sinclair

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From Shema Yisrael Torah Network <shemalist@shemayisrael.com>  
To Peninim <peninim@shemayisrael.com>  
Subject Peninim on the Torah by Rabbi A. Leib Scheinbaum

#### Peninim on the Torah by Rabbi A. Leib Scheinbaum

##### Parshas Mishpatim

And these are the ordinances that you shall place before them. (21:21)

David HaMelech says in Sefer Tehillim 147:19, "He relates His word to Yaakov, His statutes and judgments to Yisrael. He did not do so for any other nation; such judgments they know them not." The psalm is positing that there exists a difference between Jewish law and secular law. Obviously, the source is the primary point of divergence. Secular law is man-made and, thus, prone to subjectivity. Torah law is Divine, and hence, not bound by anything subjective. Horav Mordechai Gifter, zl, takes this idea a bit further. While superficial aspects of both secular and Divine law may often coincide, a vast difference exists between the two in terms of relative depths. Secular laws are nothing more than human logic responding to the wants and needs of society. In order for society to function, people need laws. Hence, these laws change with the times, as the needs of the society shift. Torah law and its fulfillment are based on the ratzon Hashem, will of G-d. Mitzvos are meant to furt

her and promote character development and to achieve a closeness with Hashem - a goal which secular laws do not strive to attain. This is why Chazal demand that Jewish disputes be brought to a Jewish court for adjudication. This holds true even if the secular and Torah laws appear to be the same. When a

Jew brings his dispute to a secular court of law, he creates a grave chillul Hashem, desecration of Hashem's Name; because this gives the impression that secular and Jewish justice systems are equal.

The Rosh Yeshivah deduces that since Torah represents Divine will and - as such - is above the human thought process, every aspect of Torah - even its morals and ethics- are above human understanding. From the vantage point of the Divine perspective, ethics and morality are distinct from the laws of etiquette and moral behavior which are the product of human intellectual endeavor. In fact, even when they are the same - they are different.

When a Jew recites the phrase, Hamavdil bein ohr l'choshech, bein Yisrael l'amim, "He Who made a distinction between light and darkness, between Yisrael and the nations," he thereby declares the commonality between these two distinctions. As light and darkness are essentially different in kind - not merely in degree - so, too, are Klal Yisrael and the nations of the world different in essence, in kind, to the point that there is no point of similarity between the two. Our approach to all problems is decided by the Torah - and the Torah alone. The approach of the nations to their problems is predicated upon a totally different foundation.

The Rosh Yeshivah notes that the basic distinction is alluded to in the uniqueness of the vernacular used upon blessing a chacham, wise man. Upon seeing a secular chacham, an individual recites, She'nasan meichochmaso l'basar v'dam, "Who gave of his wisdom to flesh and blood." When he sees a talmid chacham, he recites, She'nasan mechachmaso l'reiav, "Who gave of his wisdom to those who fear Him." The wording itself suggests the reason for this distinction. The wisdom of the Torah is never totally disassociated from its Source; it is always a part of this Source, because the Torah scholar is essentially never disassociated from Hashem. He is connected with the Almighty. A secular wise man is a basar v'dam, flesh and blood, whose wisdom, albeit impressive, does not reflect a connection with the Almighty. The student of Torah is conscious that he is studying Hashem's treatise, not some humanly devised system of law. Everything he learns is Hashem's will, and he views it in this context. His decisions are not given to subjectivity, because they are not really his decisions. He is merely interpreting Hashem's law.

And these are the ordinances that you shall place before them. (21:1) Parashas Mishpatim is replete with laws that address interpersonal relationships among Jews. What stands out prominently is the theme of caution concerning damaging the property or person of a fellow Jew. Chazal express their own individual approaches towards developing one's level of chassidus, piety. They relate three opinions in the Talmud Bava Kamma 30 A concerning achieving this goal. Rav Yehudah opines that one who strives to become a chasid, a devout individual who has achieved a lofty, wholesome level of spirituality, who is pious, virtuous and the paragon of ethicality, should fulfill the laws and concepts that are addressed in Nezikin, Mesechtos Bava Kamma, Bava Metzia, Bava Basra. In other words, one who is careful not to infringe on another Jew's possessions is an individual who is on the road toward achieving chassidus. Rava contends that the key toward achieving this goal is to master Pirkei Avos, to excel in the values spelled out in Pirkei Avos. Last, Chazal posit that one who fulfills the ideas addressed in Mesechos Berachos, the tractate which concerns itself with the laws of Krias Shema and reciting blessings, will attain the level of chassidus.

In the preface to his commentary to Pirkei Avos, the Maharal, zl, m'Prague, explains that the above three opinions relate to three types of positive relationships upon which the would-be chassid should concentrate: between man and Hashem; between man and man; and between man and himself. The focus of Nezikin is upon interpersonal dependency, while Pirkei Avos concentrates upon man's consociation with himself. Berachos deals with man's rapport with Hashem. Each of these venues directs us in our quest for greater piety, virtue and spiritual integrity.

While all three play a significant role, it seems that the prevalent, most-accepted approach is through the medium of Nezikin. This seems enigmatic. Why take the road of negativity when one can focus instead on positive performance? This concept is illustrated when a man approached Hillel HaZakein with a request for a quick study of the entire Torah, literally while standing on one foot. Hillel instructed him in a principle which has been adopted as the golden rule: "Do not act toward your friend as you would not want him to act toward you." Why did Hillel not employ a positive approach which would have demonstrated the beauty and nobility of Torah?

Horav Avigdor Amiel, zl, explains that it is much easier to live a life of aseiv tov, "do good," than one of sur mei'ra, "turn away from evil." Some people are very kind, performing countless acts of chesed, loving-kindness, yet they have

no problem infringing upon their friends, creating machlokes, dispute, with its attending evil. Rav Amiel cites three underlying reasons for the "condition." To these individuals, performing good deeds, carrying out acts of loving-kindness, is momentary and quickly dissipates with the fleeting moment. Sur mei'ra, however, demands vigilance, constant commitment and extreme care. It is so much easier to be good for a day than to live a life of constant commitment.

Second, is the pleasure and good feeling one derives upon acting kindly. No one seems to feel good when he refrains from taking revenge and hurting someone. Good feelings are the result of positive action. Negative refrain does not necessarily generate such enthusiasm about oneself. While this should not be, one should indeed take great pride in averting spiritual downfall, in not damaging someone else's property. It should be - but, regrettably, it is not. Last, when one acts proactively, he receives a Mi'SheBeirach from everyone. He gets attention; people laud his endeavor. The individual who is sur mei'ra does not make it into the newspaper - not even into the shul bulletin. When was the last time that someone who did not rob his friend blind received a Mi'SheBeirach or praise for not cheating another person, when he could have gotten away with it? This is why the individual who truly strives to acquire chassidus, to carry the coveted mantle of chasid, should delve into the mesechtos that address the law of damages - Nezikin. From a false word you shall distance yourself. (23:7)

The prohibition against prevarication of any kind is unique. We are not admonished to distance ourselves from any other prohibition. Apparently, sheker, falsehood, is so pernicious, its effect so virulent and contagious, that it spreads to anyone who comes in contact with it. Additionally, chosomo shel HaKadosh Boruch Hu emes, "Hashem's seal is truth." The Almighty is the ultimate symbol of emes; to connect with sheker is to challenge the very basic principles of Judaism. Last, the yetzer hora pushes us to lie. Horav Shimon Schwab, zl, explains that when Lavan Ha'Arami, the one who redefined deception, the individual who was the consummate deceiver of all time, kissed his children, something rubbed off on them. Who were his offspring? The Imahos, Matriarchs, shevatim, the tribes, which comprised the actual Klal Yisrael, all became tainted with a powerful yetzer hora, evil inclination, with which we must constantly battle.

While we are children of Yaakov Avinu, who personified emes, it is something for which we have to fight. It does not come naturally. The Chazon Ish writes, B'teva ha'Adam eino sonei es ha'sheker, "A person does not naturally hate falsehood." The Chafetz Chaim, zl, once said that the only person who Lavan did not kiss was Yaakov, Der bandit hut nisht ke'kushed Yaakov, "The charlatan did not kiss Yaakov." Rav Schwab explains that this is because Yaakov personified emes. Sheker, represented by Lavan, cannot attach itself to pure truth.

In some instances the truth is presented under certain conditions and it is perceived as a lie. This may be one of those cases in which the spoken truth is skirting a lie. Laws govern if one should speak and what he should say. Horav Aharon Kotler, zl, was the gadol ha'dor, preeminent Torah leader of his generation, whose success as a builder of Torah is evident today. His secret to success was his ability to harness every ounce of his strength for truth. His devotion to the truth was his quintessential quality and, thus, the reason that he demanded and received such respect. His search for truth and purity of soul were attributes that he sought to imbue in his students. Rav Aharon took extreme care not to say anything derogatory unless he was obligated by the Torah to do so. He would reiterate that even when one is obligated to speak, he must know how to present the truth - truthfully. In other words, there are instances in which one must bend the truth in order to perceive it properly. The following incident illuminates this idea. Someone mentioned a prospective shidduch, matrimonial match, to a student in the yeshivah who was on the "older" side. She was not old - just past what in today's self-deceived perspective is considered "prime" time. The student refused to meet the girl. Hearing this, Rav Aharon was upset. What did the shadchan, matchmaker, tell the young man about the girl that turned him off so? The shadchan told the Rosh Yeshiva that when he told the young man that the girl was twenty-seven; he became turned off, refusing to date her. He had simply told the truth. The shadchan continued, "But, Rebbe, I know for a fact that she is twenty-seven years old. It was not a lie." Rav Aharon replied that emes, truthful speech, is defined by the listener - not necessarily by the speaker. When a twenty-eight year old boy is told that the girl is twenty-seven, he "hears" that actually she is "thirty." "You should have said a younger age!" Rav Aharon would often relate the following episode as a parable that demonstrates how describing factually correct events can present a misinterpretation of the truth.

A ship's captain kept a daily log of the comings and goings of the ship's crew. An over-zealous individual, the captain noted every movement, regardless of how extraneous it was. Every movement made by the first mate was noted in the log. One day, the first mate returned to ship slightly inebriated from an over-abundance of liquor consumed during his leave from the ship. The captain duly noted in his log, "First mate was drunk today." Understandably, the first mate was considerably upset over this. "After all," he said, "my work has not suffered in any way as a result of my one-time partying. My performance is best evaluated by the consequential tasks that I perform daily to the satisfaction of all concerned." The captain looked at his first mate and said, "I did not lie. Was there something in my notes that was untrue?"

A few days later the captain, feeling a bit under the weather, asked the first mate to keep the log that day. The very first entry that the first mate wrote in the log was: "The captain is not drunk today!" When the captain returned and discovered what the first mate had done, he was horrified, "How dare you write that into the log!" "Why not?" asked the ship's mate. "It is the truth!"

"Here is a case," explained Rav Aharon, "where a person tells the truth, but it implies a lie. One must be extremely careful not only with facts, but also with 'emes!'"

David Hamelech says (Tehillim 119:163), Sheker sanaisi v'soeivah, Torascha ahavti, "I hate falsehood; it disgusts me, I love Your Torah." The Malbim explains the connection between Torah, emes, sheker, toeivah. "I love Your Torah which is all truth. Therefore, I cannot possibly love falsehood. To love Your truth is to hate that which opposes truth." Sheker is the opposing force challenging truth, and, therefore, David Hamelech hated falsehood. The Malbim is teaching us that our hatred for falsehood must be the result of our love for Torah. This can only occur if our love for Torah is based upon our search for the truth, the emes inherent in Torah. Thus, if one were to learn Torah for the wrong reasons, he could still maintain a "relationship" with sheker. He has not yet negated it. Sheker and emes cannot exist together but, if emes is not yet really present, then the sheker can still fester, germinate and grow. I do not think this idea must be explained further. The message is quite clear.

Last, I cite Rav Schwab who lucidly points out that the ultimate emes is Hashem Himself, Ein od milvado. There is none other than Hashem, Alone. The ultimate sheker must then be atheism. Torah and Klal Yisrael are extensions of Hashem. Emes is exclusive. This means that there is nothing besides emes, except for sheker. There is no gray area between the two. It is either true or false - nothing in-between. Klal Yisrael comprises all that which is called kulah zera emes, everyone, a seed of truth. The Jew's mission is to live a life of truth based upon the emes expounded from the Torah, which is Hashem's word. To deviate from this course is to take the road of sheker, falsehood.

Avraham Avinu was the first to be korei b'Shem Hashem, call out in the Name of Hashem. This is a reference to his propagating emes. Nimrod and the dor ha'flagah, generation of the dispersion, were his nemeses. Their rallying cry was, naase lanu shem, "Let us make a name for ourselves." This was the clarion call of sheker. Since they oppose each other vehemently, the exponents of falsehood must hate those who stand for the truth. After all, emes undermines sheker and exposes its fallacy and duplicity. Hashem reassured Avraham with mekalelcha A'or, "Those who curse you, I will curse." (Bereishis 12:3). We, his descendants who follow in his ways must embody his adherence to emes, as we anticipate the inevitable repercussions of our rejection of the spokesmen for sheker.

Lest they cause you to sin against Me. (23:33)

The Torah admonishes us concerning the effects of an adverse environment. We have no idea how a pernicious influence creeps into our psyche, germinating into a full-blown scourge that destroys first our outlook, then our observance, until we are ultimately blown away from having any relationship with our people, our family, our G-d. It all starts with a subtle, innocuous relationship, with no malicious aforethought. By the time we realize what is happening, it is too late. We have already been caught in the maelstrom of evil. At times, it is not even necessary to have a relationship. The mere recognition, a simple acknowledgement, can have a devastating effect. The following incident demonstrates this reality. Horav Aharon Kotler, zl, was very fond of the Kapishnitzer Rebbe, zl, Horav Avraham Yehoshua Heschel, zl. He had enormous respect for him and considered him to be a pikeach, very clever. Rav Aharon was once asked how this unique friendship evolved. He related the following story: A student in the yeshivah decided one day that he wanted to apostatize himself. Imagine, out of the blue, a yeshivah student in a mainstream yeshivah announced his desire to drown his religion in the baptismal fount!

There are very few words in the English lexicon that would do justice to this insanity, but it was true. He wanted to renege on his Yiddishkeit and baptize himself. Why? He had no clue. He just wanted to do it. He was beyond reason. The Rosh Yeshivah attempted to reason with the troubled young man, to no avail. He was not listening. It was as if he was overcome with an obsession to convert, to become a "goy." After the "nice stuff" didn't seem to work, Rav Aharon took a more direct approach, outlining in very clear terms the punitive repercussions for his actions. This also was ineffective. The Rosh Yeshivah began to plead, to cry, to beg - and nothing. The young man stood his ground. He was not moved. He was proceeding with his decision.

Rav Aharon decided that given the Kapishnitzer Rebbe's reputation that -- exclusive of his brilliance in Torah erudition-- he was also unusually gifted with an astute and perceptive mind, he called the Rebbe and related his predicament. The Rebbe listened intently and replied, "Verify how he sets the time for his alarm clock."

It goes without saying that Rav Aharon found the Rebbe's advice slightly strange, but he was acutely aware that the Kapishnitzer Rebbe did not make unfounded statements. There must be some rationale to this one as well. As soon as he returned to the yeshivah, Rav Aharon called the student to his office and asked him, "How do you set your alarm clock? How do you determine the correct time?"

"Over the years that I have been a student in Beth Medrash Gavohah, I have made several attempts to confirm the correct time, so that I could set my alarm clock correctly. Every clock I checked was off by a minute here, a minute there. Finally, one day, as I looked out my dormitory window, I noticed the clock situated on the church tower across the street. It chimed on time - all the time. From that day on, I synchronized my alarm clock with the church clock. The 'timing' has been perfect."

Rav Aharon now understood what was plaguing the yeshivah student, and what had catalyzed his estrangement from Yiddishkeit. It was the church clock. He turned to the student and said, "I would like to give you a gift - a new watch. There is one condition, however, connected to this gift: you must set the time to coincide with the clock in the yeshivah."

The scheme worked and, before long, the troubled student became a ben Torah again. The lesson that we take from this incident is clear: one never knows the effect that tumah, spiritual contamination, has on the soul of a Jew. The most innocuous - is not innocuous. It is deleterious and devastating. The only way to protect oneself from its effect is to not come in contact with it - period.

And under his foot was the likeness of sapphire brickwork (24, 10) Rashi explains that the "brick" was placed before Hashem during the entire shibud, enslavement that Klal Yisrael endured in Egypt. As they were forced to work with the bricks, Hashem noted their suffering and kept the "sapphire" brick in front of Him as a constant "reminder" of their affliction. The timing begs elucidation. The description of the brick was related by Nadav, Avihu and the Shivim Zekeinim, seventy Elders. This occurred following the Exodus, as they prepared for the Revelation at Har Sinai and the Giving of the Torah. At this point, was it really necessary to have a reminder? The shibud, bondage, had ended; the Jewish People had already witnessed the Splitting of the Red Sea. They were on to "bigger and better" things.

Horav Yitzchak Zilberstein, Shlita, suggests that as the brick recalled the enslavement, it also conveyed the message that as long as the Jewish People were not yet free - they were to be considered enslaved. There is no middle ground. The Jew is either free or he is a slave. When did the Jews truly become free men? When they accepted the Torah. It was only after they accepted and committed themselves to Hashem's blueprint for life that they became free. Perhaps we might offer an alternative approach. There are those of us who have experienced trauma in our lives, as well as health and financial issues concerning our children. We prayed, and Hashem listened and responded favorably. Now what? We were grateful, but for how long did this gratitude extend? Hakoras hatov, recognizing the benefit we received and showing our appreciation, is only acting like a human being is supposed to act. We forget that gratitude should be a life-long endeavor. Imagine where we would be had we not received the favor when we did. In many cases it transformed our lives, saved relationships, kept families together, and put bread on the table, which in itself can make the difference in the health and welfare of a family. For the most part, however, as soon as the situation righted itself and we were back on the road to recovery, we forgot about the gratitude.

Let me just throw out a few instances that come to mind: the rebbe who made a difference in the primary grades; the shadchan, matchmaker, who changed our lives; our friends who were there when we needed them and quietly blended

into the woodwork once we no longer needed them. The list goes on; the message is identical. We forget too quickly, ignore too easily.

When Leah Imeinu had her fourth child, she recognized the enormity of this gift. She had now been blessed with being the Matriarch with the majority of tribes. Twelve tribes - four Matriarchs - do the math. Each Matriarch could easily each have three sons. Leah already had four. She was filled with gratitude. Every time she saw her fourth son, she wanted to remember her unique Heavenly gift. She named him Yehudah, Hapaam odeh es Hashem, "This time I thank Hashem." Yehudah's name bespoke hakoras hatov.

Moshe Rabbeinu had a speech impediment. Surely, he could have prayed to Hashem to remove this deficiency. As Klal Yisrael's quintessential leader and mentor, his ability to communicate the spoken word was crucial. Yet, he seemed to cling tenaciously to this impediment. Why? Let us go back in time and see how Moshe developed this speech defect. He was not born with it. Apparently, as a young child in Pharaoh's palace, word went out that this child was exceptional. Could it be possible that he was the one about whom the astrologers forecast would be the Jewish savior? Did he have designs on the imperial crown, or was he simply a precocious child? They put him to a test, placing before him: the royal crown, replete with gold and precious jewels; and a pot of burning coals. To which one would the child gravitate? Would it be the gold or the burning coals? As Moshe moved his hand towards the crown, an angel pushed his hand instead toward the burning coals. Moshe burned his fingers and immediately put them into his mouth, which caused his tongue to be singed. Hence, his speech problem.

Moshe never forgot that he was saved as a child. The speech impediment was his constant inborn reminder. He did not want to forget. Every time he spoke, he realized that he was alive thanks to Hashem. His speech defect reminded him of his good fortune. He refused to give that up.

What greater proof is there than Moshe's name? Our Rebbe had ten names. Yet, he is referred to by the name given him by Bisyah, Pharaoh's daughter. Why? One good reason might be because she saved him. How can we forget that? In eternal remembrance, we perpetuate her act of rescue by committing the name she gave the child that she saved to eternity.

We now understand why Hashem kept the sapphire brick before Him even after its "purpose" had seemingly been completed. This is because the obligation to remember the pain, misery and persecution did not end with the Exodus. As long as one remembers the pain, he does not forget its relief. The Exodus is germane as long as one remembers the pain. How quickly we forget the troubles once the pain has dissipated. This was the lesson Hashem was teaching Nadav, Avihu and the seventy Elders: I will never forget the slavery. Neither should you!

Sponsored by HILLEL BEN CHAIM AHARON JACOBSON by his family: David, Susan, Daniel, Breindy, Ephraim, Adeena, Aryeh and Michelle Jacobson and great grandchildren

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From Rabbi Yissocher Frand ryfrand@torah.org & genesis@torah.org  
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**Rabbi Yissocher Frand Parshas Mishpatim .**

The Needy do More for the Rich than Vice Versa

The pasuk in this week's parsha says: "When you lend money (im kesef talveh) to My people, to the poor person who is with you, do not act toward him as a creditor; do not lay interest upon him." [Shmos 22:24] Despite the fact that the Torah uses the word "Im" (which often means "if"), in this case, the word means "when". There is a great mitzvah to lend money to fellow Jews. We must perform this mitzvah without charging interest.

The Medrash points out that there is a fundamental difference indicated here between human beings and the Almighty. The Medrash quotes a pasuk [verse] in Proverbs "All a pauper's brothers hate him..." [Mishlei 19:7]. It is the nature of human beings, that if they have poor relatives, they really do not want to claim "credit" for them. The rich executive likes to distance himself from his "poor

cousins". The successful cousin cringes every time his impoverished relative greets him, as if he were afraid that poverty was contagious or perhaps it is just out of pure embarrassment. According to the Medrash, this is the nature of "flesh and blood". However, the Almighty is not like that, as it is written, "Wealth and honor come from You and You rule everything – in Your hand is power and strength and it is in Your hand to make anyone great or strong." [Divrei Hayamim I 29:12]. He has all the wealth in the world and yet He has a special place in His heart, so to speak, for the poor. It is for this reason, the Medrash concludes, that the Torah emphasizes, "When you lend money to MY NATION."

The more common Biblical style is to say, "When you loan money to your brother (achicha) or "to your friend (rey-echa)". The expression "to MY NATION" is noteworthy. It indicates G-d's closeness and concern for His people, even when (and perhaps especially when) they are poor.

The Medrash then cites a pasuk in Tehillim [61:8] and interprets it homiletically: Dovid HaMelech [King David] comes before the Almighty and asks, as it were, "Why, G-d, don't You become a socialist? Why did you make a world having both wealthy and poor people? Why isn't there an equal distribution of wealth (Yeshev olam lifnei Elokim)?" The Almighty answers (based on the continuation of the pasuk) "If I would do this, then who would practice Kindness and Truth? (Chessed v'Emes man yintzeruhu?)"

According to the Medrash, this pasuk foreshadows the famous dialog between the wicked Turnus Rufus and Rabbi Akiva: Turnus Rufus asked, "If your G-d loves the poor, why does He not provide them with a livelihood?" Rabbi Akiva answered: "So that we might be saved through them from the punishment of Gehinnom" [Bava Basra 10a].

The purpose of G-d allowing poverty to exist in this world is so that people should be able to practice Chessed – acts of charity and kindness towards the unfortunate. People should realize that if they are more wealthy and successful than someone else it is because the Almighty gave extra resources to them in order that they may do Chessed with their money.

"Rav Yehoshua taught: More than the wealthy person does for the poor, the poor does for the wealthy person." [Vayikra Rabbah Behar 34:8] G-d created poverty because He wants people to learn how to give. The world was created for the purpose of Chessed. This is so vital and so important that in order to facilitate it, people are created with many serious needs so that others might have the opportunity to fill those needs by doing acts of Chessed and kindness for them.

Holy People will not Come to Eat Non Kosher Meat

The pasuk in this week's parsha says: "People of holiness shall you be to Me; you shall not eat flesh of an animal that was torn in the field, to the dog shall you throw it." [Shmos 22:30]

We learn the Biblical prohibition of eating "torn meat" (basar treifah) from this pasuk. However, the Torah prefaces this prohibition with the words "And you shall be 'Anshei Kodesh' [holy people] to Me."

We can learn a lot from the Rambam merely by studying his placement and categorization of the various laws within his halachic compendium (Mishneh Torah/Yad HaChazakah). One of the 14 volumes of the "Yad HaChazakah" is "The Book of Holiness" (Sefer Kedusha). Sefer Kedusha contains both the laws of forbidden sexual relationships and the laws of forbidden foods. "Holiness" means to abstain. Holy does not necessarily mean wrapping oneself in a tallis all day long and not having anything to do with human beings. It merely connotes the ability to rule over one's instincts and desires.

The whole concept of forbidden foods is a manifestation of kedusha. Yet, the Torah does not preface every mention of forbidden food or illicit relationship with an expression of holiness, such as we find

here -- "You shall be a holy people". Why do we find such a preface here?

The Pardes Yosef quotes a fascinating Zohar. According to the Zohar, the words "be a holy people" is not a preface to the rest of the pasuk in the sense of "be a holy people, and therefore do not eat treife [non-kosher] food". The Zohar interprets: "If you will be a holy people, you will never come into contact with something that is forbidden."

The Gemara says, "G-d does not cause the righteous to stumble" [Chulin 5b]. This means that if a person is on a high spiritual level, he will never accidentally eat non-kosher food. The Gemara then says that the righteous Pinchas ben Yair was so pious that not only could he himself never ingest something non-kosher, but even his donkey refused to consume produce that had not been properly tithed.

Rabbi Mordechai Kaminetsky relates the following true story, which he connects with the Zohar cited by the Pardes Yosef:

A Yeshiva student was flying back to Yeshiva from a visit home. He was late for the plane and had to skip breakfast, but knew he had ordered a kosher meal so that he would not need to fast the whole day. Sitting next to him was a non-Jew from the South, who knew nothing about Judaism.

The Southerner got into a long discussion with the Yeshiva student about religion. Finally the meal came – a Kosher deli sandwich. The Yeshiva student was famished. He unwrapped the package and then remembered that he did not yet wash his hands. He put the sandwich down, went to the bathroom in the back of the plane to wash, and returned to his seat to begin his meal. He was about to take his first bite into his deli sandwich when he remembered the halacha of "basar shenisalem min ha'ay in" [meat from which one lost eye contact]. It is forbidden to leave meat out unattended when one does not know what might happen to it.

Even though the possibility of it being switched for non-kosher meat at 35,000 feet was highly unlikely, the halacha is the halacha. He decided not to eat the deli sandwich, despite his hunger. However, since he had already washed and made a blessing for the washing, he was concerned about the "al netilas yadayim" being a blessing in vain. Therefore, made a blessing over bread and took a small bite out of the roll in which they served the deli sandwich.

The Southerner asked the Yeshiva student, "Why aren't you eating your sandwich? – You told me you were hungry!" The Yeshiva student, who had already greatly shocked his travel partner by all that he had told him about Judaism, said: "You are not going to believe this, but according to Jewish law, if meat is left unattended, one is forbidden to eat it. We must take into account the far-fetched possibility that somehow the kosher meat got switched for non kosher meat."

The Southerner responded, "I must say G-d certainly watches over you Jews. I have an admission to make to you. All my life, I have been hearing from my friends in New York about 'Kosher pastrami' I said to myself 'When will I ever have the opportunity to taste such a thing?' So when you were in the bathroom – I am embarrassed to say this – I took out your pastrami and replaced it with a piece of meat from my sandwich. Now I know that G-d must be watching you and did not let you eat the non Kosher meat!"

This is exactly how the Pardes Yosef interprets the pasuk in our parsha based on the Zohar: You shall be holy people to me, THEREFORE I will not let you come to eat treife meat from the fields.

Transcribed by David Twersky Seattle, WA; Technical Assistance by Dovid Hoffman, Baltimore, MD

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A Thought for the Week, Rabbi Jay Kelman

### **A Thought for the Week with Rabbi Jay Kelman Parshat Mishpatim - Back in the Groove**

A child's wedding, an exotic vacation, a summer at camp; rarely do we feel ready to follow these up with a return to our daily schedule. It is common after a major event to have difficulty getting back into a routine. Surely, the excitement of receiving the Torah at Sinai would affect us in the same way. The thunder, lightning, and masses of people all gathered to witness Divine revelation would have put us all on a spiritual high from which it would be hard to come down. Following on the heels of the ten plagues and the splitting of the Sea, daily life must have seemed just plain boring.

Yet it is Parshat Mishpatim which follows Parshat Yitro . Its 53 mitzvot discuss such "inspiring" topics as the laws regarding slavery, goring animals, bailees, torts, bestiality, and the handling of loan collateral. Is this the proper follow-up to the grandeur of Sinai? The essence of Judaism lies in the way it infuses the mundane with holiness; a meal becomes a Seudat mitzva . This is especially true of matters relating to money. The Talmud teaches us that a person can be identified B'koso, B'kaaso, and B'kiso -by seeing how he acts when he drinks, when he is angry, and where there is money involved. Meticulousness in religious observance is one thing when it relates to such relatively easy matters as Shabbat, Kashrut , and even Tzniut (modesty). It is much harder to worry about every potential and possible religious violation when extra stringency can often mean less money in your pocket. This week's parsha deals mainly with civil law relating to monetary issues and disputes. Proper observance of these laws is the true test of religious devotion, and the real grandeur of Sinai.

Rashi sensed the difficulty people have in considering business matters as a religious issue. Commenting on the proximity of Parshat Mishpatim to Parshat Yitro , Rashi states that, just as the Ten Commandments come from Sinai and are of Divine origin, so too are the laws of slaves, oxen, and the like. Most of us tend to compartmentalize the different spheres of life. There is the religious sphere of davening , Shabbat, and the holidays, and then there is the real world of making a living and the "secular" side of life. While we readily acknowledge the Divine origin of our rituals, civil law and even "ethics" are often viewed as man-made. Both, however, emanate from the same source, with the basic principles given at Sinai along with a mandate to the scholars of each generation to apply those principles to day-to-day living. Mishpatim teaches us that there is no such thing as "secular" in life. There may be different levels of holiness, but all of life's activities can (and must) be conducted with an awareness that Torah is just as relevant in the boardroom and bedroom as it is in the synagogue.

Pirkei Avot , Ethics of the Fathers, is the Mishnaic tractate which has as its primary focus character development, ethics and morals. In editing the 63 tractates of the Mishna into six orders, Rabbi Yehuda Hanasi placed Pirkei Avot in the section of Nezikin (damages), which focuses on monetary matters. It is precisely here that we must stress ethics and morality.

Parshat Mishpatim often coincides with Parshat Shekalim . This is the first of the four special readings which start before Purim and conclude before Pesach. The Maftir describes the collection of a half Shekel from each Jew in order to help defray the costs of running the Temple . According to Rabbinic tradition, both the command to build

the Mishkan (tabernacle) and the appointment of a judiciary took place on the same day. Apparently, the Rabbis are stressing the point that we cannot build our temple if monetary disputes—even of only a half shekel—are still outstanding. The path to holiness can only be achieved if our monetary dealings leave no room for dispute. Let us each contribute our personal half shekel as we bring the grandeur of Sinai into our day-to-day routine.

Rabbi Kelman, in addition to his founder and leadership roles in Torah in Motion, teaches Ethics, Talmud and Rabbinics at the Community Hebrew Academy of Toronto.

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**Rav Kook List**  
**Rav Kook on the Torah Portion**  
**Mishpatim: Tablets of Stone**

In parashat Mishpatim the Torah makes an abrupt switch. The previous reading of Yitro deals with great, universal topics: the revelation at Sinai and the Aseret HaDibrot (the Ten Commandments). From these fundamental principles, the Torah suddenly descends into detailed laws of everyday life. Mishpatim speaks of servants, thieves, and kidnapers. The reading includes laws for personal injury, damages, and negligence, and legislation for lending money and borrowing articles. It is not enough to believe in Judaism's general principles. The Torah's ideals must permeate all aspects of life.

Lest one think that the two Torah portions are unrelated, the end of Mishpatim returns to the saga of Sinai, completing the story started in Yitro. God tells Moses:

"Come up to Me, to the mountain, and remain there. I will give you the stone tablets, the Torah and the mitzvah, that I have written for the people's instruction." (Ex. 24:12)

What exactly are 'the Torah and the mitzvah' that are mentioned here? Are they only the Aseret HaDibrot that were carved on the stone tablets?

All from Sinai

Third-century scholar Rabbi Shimon ben Lakish explained that each term mentioned in the verse refers to a different component of Torah:

'The stone tablets' refers to the Aseret HaDibrot.

'The Torah' refers to the Five Books of Moses.

'The mitzvah' is the Mishnah.

'That I have written' refers to the Ketuvim [the 'Writings,' the third section of Tanakh].

'For the people's instruction' is the Talmud.

"This teaches that all [of these] were transmitted to Moses at Sinai." (Berachot 5a)

Clearly, Rabbi Shimon did not mean that everything was explicitly revealed to Moses. The Talmud in Menachot 29b relates that God showed Moses a vision of Rabbi Akiva, the renowned second-century scholar, lecturing to his students. Moses became distressed when he realized that he was unable to follow the lesson. Then one of the students asked Rabbi Akiva, 'Our master, what is the source for this law?' The great scholar replied, 'It is a law given to Moses at Sinai.' Upon hearing this, Moses was immediately relieved.

The specific case was unfamiliar to Moses. But Rabbi Akiva affirmed that its true, ultimate source was Mount Sinai.

The point of Rabbi Shimon's exegesis is that the Oral Law, the Mishnah and the Talmud, are faithful applications of Sinaitic Law to the realities of life in second-century Eretz Yisrael and fifth-century Babylon. Not adjustments to the Torah to accommodate new times, but careful application of the guidelines set down at Sinai.

Sapphire Stone Tablets

Rav Kook asked an interesting question. Why were the Aseret HaDibrot written on stone tablets? Why is it important to mention the raw material used for the tablets?

One might think that it is only necessary to be faithful to the spirit of the Torah - that is the essence of Judaism. The details, the intricate laws of conduct, however, are a function of the prevailing culture and society. They must be adapted to fit the needs of the day. In other words, we need not be overly concerned with the detailed legal code of Mishpatim. What is important is following the general spirit of Yitro.

Therefore, the Torah relates that the tablets were made of stone. According to the Midrash, it was not just any stone, but sapphire. This material was so tough that a hammer swung against them would be smashed to pieces. God used tablets made of unbreakable sapphire to emphasize that even the Torah's physical manifestation - i.e., its day-to-day practical laws - may not be changed. The concept of the Torah's immutability, even in the details of everyday life, is particularly relevant to this verse. Sometimes the oral tradition appears to contradict the simple meaning of the written Torah. One might mistakenly think that the Talmudic sages adjusted Torah law in order to conform to the needs of their time. Rabbi Shimon taught that there are no changes in the Torah. The Mishnah and Talmud are rooted in oral traditions going back to Mount Sinai. "All of these were given to Moses at Sinai."

(Adapted from Ein Eyah vol. I, p. 14)

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Weekly Halacha  
by **Rabbi Doniel Neustadt**

**Talking in Shul**

One of the serious flaws in our society today is the lack of proper decorum in shul, especially on Shabbos and Yom Tov. While socializing in shul is not a new problem [1] and certainly most, if not all people who go to shul are aware of the prohibition against talking during davening, still a great deal of talking goes on anyway, either from force of habit or out of disregard for the halachah. Today, when the power of prayer is needed more than ever, we must find new ways to eradicate this scourge from our midst.

Ideally, there should be no talking in shul from the beginning to the end of davening. This should be the long-term goal of every congregation. Below, we will review the halachic background for this.

Talking in Shul: Halachic Issues

1. Shulchan Aruch rules that idle talk is forbidden in shul even when prayers are not being recited [2]. Idle talk includes conversation about one's livelihood or other essential needs [3]. Nowadays there is some room for leniency concerning such talk, since some Rishonim rule that shuls are generally built with a "precondition" allowing them to be used for essential matters other than davening [4].
2. During a scheduled prayer session one may not separate himself from the congregation and engage in idle talk [5].
3. Talking during prayers causes a chillul Hashem, since it unfortunately lends support to the widely held perception that non-Jews are more careful than Jews to maintain proper decorum in their houses of worship [6].
4. When one is wearing his tefillin, he should refrain from idle talk [7].
5. During certain portions of davening, talking is prohibited for additional reasons as well. Sometimes talking is considered a hefsek, an "interruption" which may invalidate the portion which is being interrupted, while at other times talking is prohibited because the congregation must give its undivided attention to that portion of the service. In the following paragraphs we will discuss the various sections of davening, the degree of the prohibition against talking in each section, and the reasons behind the prohibition. We will follow the order of tefillas Shacharis.

Note: During certain sections of davening, as will be noted, there is no specific prohibition against talking. However, the aforementioned reasons for prohibiting talking in general apply to these sections as well.

Between Birchos ha-Shachar and Baruch She'amar — There is no specific halachah which prohibits talking.

During Kaddish — Talking is strictly forbidden, as one must pay full attention so that he can answer Amen, etc. properly[8].

During Pesukei d'Zimrah — Unless there is an emergency, it is forbidden to talk during this time, as it would constitute an interruption between the blessing of Baruch she'amar and the blessing of Yishtabach[9].

Between Yishtabach and Barechu — It is permitted to talk for a pressing mitzvah need only[10].

Between Barechu and Yotzer Ohr or ha-Ma'ariv Aravim — It is strictly forbidden to talk[11].

During Birchos Kerias Shema and Shema — It is strictly forbidden to talk, as it would be considered an interruption in the middle of a blessing, which may invalidate the blessing[12].

Between Ga'al Yisrael and Shemoneh Esreh — It is strictly forbidden to talk, since it would interrupt the all-important connection between Geulah and Tefillah[13].

During Shemoneh Esreh — It is strictly forbidden to talk, as it constitutes an interruption in davening[14]. If one spoke inadvertently during one of the blessings of Shemoneh Esreh, he must repeat the blessing[15].

After Shemoneh Esreh — It is forbidden to talk if it will disturb the concentration of others who are still davening[16].

During Chazaras ha-Shatz — It is strictly forbidden to talk[17], since one must pay full attention so that he can answer Amen properly. One who talks during chazaras ha-shatz is called "a sinner whose sin is too great to be forgiven[18]." The poskim report that several shuls were destroyed on account of this sin[19].

During Kedushah — It is strictly forbidden to talk. Total concentration is mandatory[20].

During Nesias Kapayim — It is forbidden to talk, as complete attention must be paid to the Kohanim[21].

Between Chazaras ha-Shatz and Tachanun — It is inappropriate to talk, since l'chatchilah there should be no interruption between Shemoneh Esreh and Tachanun[22].

Between Tachanun and Kerias ha-Torah — There is no specific prohibition against talking.

During Kerias ha-Torah - It is strictly forbidden to engage in either idle talk or divrei Torah during Kerias ha-Torah[23]. One who speaks at that time is called "a sinner whose sin is too great to be forgiven[24]." Some poskim prohibit talking as soon as the Torah scroll is unrolled[25].

Between Aliyos — There are several views: Some poskim prohibit talking totally[26], others permit discussing divrei Torah only[27], and others are even more lenient[28].

During the Haftarah and Its Blessings — It is forbidden to talk, as one must give undivided attention to the Haftarah reading[29].

Between Kerias ha-Torah and the end of davening — There is no specific prohibition against talking.

During Hallel — It is forbidden to talk. Doing so constitutes an interruption of Hallel[30].

Kabbalas Shabbos — There is no specific prohibition against talking.

During Vayechulu and Magen Avos — It is forbidden to talk[31].

Note: From a halachic point of view, it is important to distinguish between those portions of the davening in which talking is prohibited because of hefsek (e.g., Birchos Kerias Shema and Shema, Shemoneh Esreh, Kedushah, Hallel), where not even a single word is permitted to be uttered regardless of "need," and those portions where the prohibition against talking is based on the requirement of paying attention to the davening or because of shul decorum (e.g. Kaddish, chazaras ha-shatz), where an exception can be made when a special need arises, allowing one to quietly utter a few words[32]. The following statement, authored by Harav Shimon Schwab[33], sums up the Torah viewpoint on this subject: "For Hashem's sake — let us be quiet in the Beis ha-Knesses. Our reverent silence during the Tefillah will speak very loudly to Him Who holds our fate in His hands. Communicating with Hashem is our only recourse in this era of trial and tribulations. There is too much ugly noise in our world today. Let us find peace and tranquility while we stand before Hashem in prayer!"

1. R' Avraham ben Rambam reports that this problem was so widespread in Egypt during his father's time that he decided to eliminate chazaras ha-shatz altogether; see Yechaveh Da'as 5:12. 2. O.C. 151:1. 3. Mishnah Berurah 151:2. 4. Aruch ha-Shulchan 151:5; Halichos Shelomo 1:19-1. 5. Rama, O.C. 68:1; 90:18. See Shulchan Aruch ha-Rav 124:10, who writes that talking while the congregation is praising Hashem is a form of blasphemy.

6. Aruch ha-Shulchan 124:12. 7. Mishnah Berurah 44:3. 8. Mishnah Berurah 56:1. 9. O.C. 51:4 and Mishnah Berurah 6 and 7.

10. Mishnah Berurah 54:6. 11. O.C. 57:2; Mishnah Berurah 236:2. 12. O.C. 65:1 and 66:1 and Mishnah Berurah. 13. O.C. 66:7. 14. O.C. 104:1. 15. Mishnah Berurah 104:25. 16. O.C. 123:2. 17.

It is permitted, however, for a rav to answer a halachic question that is posed to him during chazaras ha-shatz; Aruch ha-Shulchan 124:12. 18.

O.C. 124:7. 19. Mishnah Berurah 124:27. 20. Rama, O.C. 123:2; Mishnah Berurah 56:1. 21. O.C. 128:26, Be'er Heitev 46 and Mishnah Berurah 102. 22. See Mishnah Berurah 51:9 and 131:1. 23. O.C.

146:2. and Mishnah Berurah 5. 24. See Beir Halachah 146:2 (s.v. v'hanachon), who roundly condemns such people. 25. Mishnah Berurah

146:4. See, however, Kitzur Shulchan Aruch 23:8 and Aruch ha-Shulchan 146:3, who disagree. 26. O.C. 146:2; Mishnah Berurah 2, quoting

Eliyahu Rabba; Kitzur Shulchan Aruch 23:8. 27. Bach, as understood by Mishnah Berurah 146:6 and many poskim. 28. Machatzis ha-Shekel,

Aruch ha-Shulchan, and Shulchan ha-Tahor maintain that the Bach permits even idle talk between aliyos. See also Pri Chadash, who permits conversing

bein gavra l'gavra. Obviously, they are referring to the type of talk which is permitted in shul and on Shabbos. 29. O.C. 146:3, 284:3. 30. O.C. 422:4

and Beir Halachah (s.v. aval). 31. O.C. 268:12; Mishnah Berurah 56:1. 32. See Salmas Chayim 38 and written responsum by Harav C.

Kanievsky (Ishei Yisrael #206), based on Mishnah Berurah 125:9. 33. Selected Writings, page 230.

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