

Parshat Mishpatim
Justice: Both Earthly and Divine
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Parshat Mishpatim starts out with the following verse:

וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשִּׂים לִפְנֵיהֶם.

These are the rules that you shall set before them (Shemot 21:1).

The *parsha* then goes on to list a series of laws that govern justice in day-to-day life.

Rashi and other commentators address two related textual issues in the first *pasuk* of the *parsha*: the use of the “ו” (*vav*) in “וְאֵלֶּה” and the question of *פרשיות*, the textual juxtaposition between this section and the preceding sections. Rashi comments that the “ו” indicates that just as the Ten Commandments in the preceding section were given at Sinai, so too, these commandments were given at Sinai. Nechama Leibowitz points out that the supercommentaries on Rashi find Rashi’s comments puzzling, as were not all the commandments given at Sinai? Leibowitz quotes one source, the Beir Yitzchak, who quotes the Terumat Hadeshen, who offers the following solution to this puzzling comment of Rashi: The laws of *משפטים*, justice, presented in *parshat Mishpatim* so closely follow human nature that one might have thought that Moshe himself had written them, according to the way of the world. The Torah therefore quietly asserts that actually God presented these commandments.

Ramban (21:1 s.v. And these are the ordinances) views the laws of justice that appear in *parshat Mishpatim* as intricately tied to the Ten Commandments. For example, the Ten Commandments instruct us not to covet. However, only by knowing the laws regarding property would we correctly know what not to covet. Ramban adds, “And thus did the Rabbis say in Midrash Rabbah: ‘The whole Torah depends on justice; that is why the Holy One, blessed be He, gave the civil laws directly after the Ten Commandments’.” In order for the laws of the Torah to operate, justice must operate as well.

Although this week’s *parsha* establishes the connection between earthly justice and the Divine, it also points to human involvement in interpreting these laws of justice. Put differently, this week’s *parsha* provides a crucial example of the primacy of *Torah Shebeal Peh*, the Oral Law. Shemot 21:22-25 states:

וְכִי-יִנְצוּ אֲנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יְלָדֶיהָ וְלֹא יְהִי אָסוֹן עָבוֹשׂ יַעֲנֹשׂ כְּאִשָּׁר יִשִּׂית
עָלֶיהָ בְּעַל הָאִשָּׁה וְנָתַן בְּפִלְלִים: וְאִם-אָסוֹן יְהִי וְנִתְּתָה נַפְשׁ תַּחַת נַפְשׁ: עַיִן תַּחַת עַיִן
שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל: כִּוְיָה תַּחַת כִּוְיָה פָּצַע תַּחַת פָּצַע חֲבוּרָה
תַּחַת חֲבוּרָה:

When [two or more] parties fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman’s husband

may exact, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life, **eye for eye, tooth for tooth, hand for hand, foot for foot**, burn for burn, wound for wound, bruise for bruise.

Rashi here, and in Leviticus 24:20 and Deuteronomy 19:21 where the verse repeats, takes care to point out that our Rabbis have taught that these verses in fact refer to monetary compensation. The Babylonian Talmud in tractate Bava Kamma starting from page 83b devotes many pages to discussing why we should not read *ayin tachat ayin* (an eye for an eye) literally, with no less than fifteen proofs in favor of reading the verse figuratively. Rashi comments on the *gemara's* first explanation (s.v. ואם נפשו לומר) that the *gemara* offers alternate explanations in case someone does not find the first one satisfactory. Thus, the Rabbis clearly speak out against a literal read of what came to be termed *lex talionis*, the law of retaliation. Without *Torah Shebeal Peh*, we might not correctly understand the law.

At the end of the *parsha*, the tone of the text shifts and the subject suddenly turns to spiritual matters. Moshe prepares to ascend Har Sinai, ascends, and there God meets him. What significance can we find in this sudden shift from the earthly laws of justice to this heavenly spiritual encounter? Perhaps we can learn from this transition that only when justice prevails in the land and when society functions in a fair and equitable fashion, only then can the *shechina* dwell amongst us. Earlier in the *parsha*, we saw that the Ten Commandments and the laws of justice were contextually linked. Here at the end of the *parsha*, we see a similar linkage between Moshe ascending to Har Sinai and the laws of justice. Thus, the Torah presents the laws of justice between two heavenly encounters, perhaps to teach the Divine origin of justice but also to present justice as a prerequisite for our spiritual well-being.



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