

witnessed what no other generation would ever see. To have been privy to such a revelation of Hashem's glory was unprecedented. How could they speak for future generations who would be inundated with temptations, and missing the weaponry of these initial experiences which would arm them to withstand the extreme pressures of the alien forces, that could pull them away from their convictions? Hashem coerced them on this point. Hashem was not granting the Torah to one generation. The generation that experienced it all had to commit for future generations. They would have to imbue their descendants, infusing them with a passion and a devotion to uphold their commitment.

This is the meaning of "there" will be your burial. Indeed, this is a most accurate term, because wherever and whenever throughout the historical continuum of Judaism a generation would renege the Torah – they – they would meet their tragic end as Jews. Without Torah, we are nothing – certainly not Jews. The Jewish nation stands upon the foundation of Torah commitment. Without this commitment, we are a people, a race, a nation, but we do not represent the Jewish religion.

Rav Aharon posits that Chazal's simile that Hashem "held the mountain over their heads as a cask" is also an expression. The most important gift which Hashem has bestowed upon man is the gift of freedom. Regrettably, this gift is also the most misunderstood and abused among all moral values. Freedom must be viewed and utilized as an opportunity for realizing one's potential. It is not an end in and of itself. It is only a means. In the very last Mishnah of Shas, Chazal state: "Hashem did not find a better cask in which blessing can be kept other than peace, for it is written, 'G-d will give strength to His People; G-d will bless His People with shalom, peace'" (Tehillim 29:11).

Shalom bespeaks an absence of conflict and abuse of power. Shalom is synonymous not only with peace, but also with freedom. It is for this reason that shalom is considered by Chazal merely to be the container in which the yeinah shel Torah, "wine of Torah," may be kept. Shalom, like freedom, is an opportunity by which blessing, the fulfillment of man's spiritual and moral potential, may be realized. Peace is a means – not an end unto itself. As long as the wine is held virtually with its opening at the top, the wine will be preserved. If, however, the wine bottle is turned upside-down, all of the wine will spill out of the inverted opening, to be absorbed in the ground.

Nations yearn for peace; people clamor for freedom. For what? Just so that they can be free of dispute and relax? People want to be free, so that they do not have to answer to anyone, so that they can do what they want. Is this the purpose of freedom? Is this the benefit of peace? These values lay in the groundwork; they are the foundation upon which one can, and should, build his moral and spiritual self. They are opportunities for growth. If abused, they become catalysts for destruction.

Klal Yisrael's relationship with Hashem was originally

founded and established upon a covenant, representing the mutual consent of two parties: Hashem and Klal Yisrael. Once we declared Naase v'nishma, our posterity became automatically bound by the covenant, thus committing us to the relationship.

As long as we treat freedom as a means, a container, for the image of G-d which inheres in our souls to be realized, then freedom is a source of blessing. If the cask is overturned, by using freedom as an end unto itself, then the wine of Torah-- the blessing of freedom and opportunity for spiritual/moral growth-- will be lost.

The blessing of freedom has value as long as we do not abuse it. If we utilize it properly, by realizing the image of G-d within us and instilling this message in our children, so that they too grow into committed observant Jews, we have succeeded in protecting the contents of the cask. Hashem demands a lasting commitment, an enduring relationship. This can be realized only when we transmit our heritage to the next generation. Otherwise, the cask is for naught and its contents will leak out and dissipate.

### Va'ani Tefillah

ואלה המשפטים אשר תשים לפניהם – ישמח ישראל בעשיו  
**Yismach Yisrael b'osav. Let Yisrael exult in its Creator.**

This expression presents a difficulty for the reader, since the word osav, "its Creator," is written in the plural, rather than osei, which would have been the appropriate vernacular, in the singular. Horav Shimon Schwab, zl, feels that it is simply the use of the "majestic plural," similar to the "royal we." This was not an uncommon usage for royalty. Horav S.R. Hirsch, zl, quotes the pasuk in Yeshayahu 54:5, ki boalayich osayich, "for your Master is your Creator," where the plural form is also utilized. He explains that the formation, or creation of the Jewish nation by Hashem, was not a one-time event. Rather, it has occurred many times throughout history. There was the initial creation during the Egyptian exodus, which was followed up by continued expansion during the world-historic events that have kept us alive as a nation ever since. The culmination and final creation of the Jewish People will take place during Techias HaMeisim, Resurrection of the Dead, when it will have reached its highest possible state of being. Thus, the word b'osav, would be "the One Who has – many times – created it."

### 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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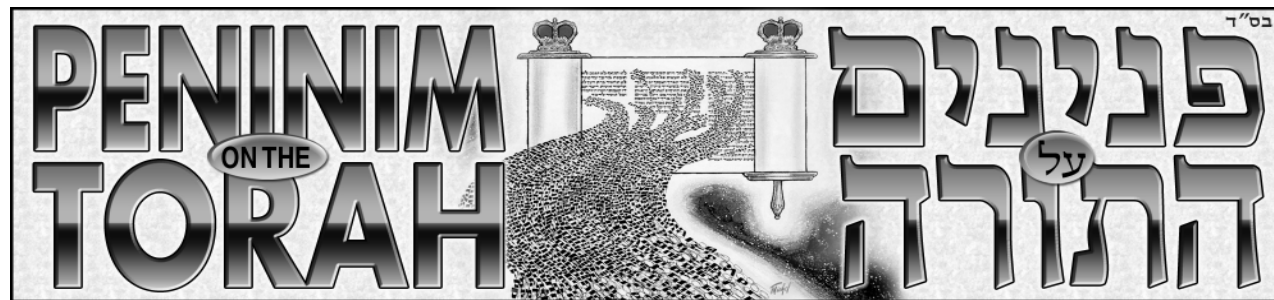
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## Parashas Mishpatim

תש"ע

פרשת משפטים

### TORAH THOUGHTS ON THE PARSHA

ואלה המשפטים אשר תשים לפניהם

**And these are the ordinances that you shall place before them. (21:1)**

Chazal sense that the word lifneihem, "before them," alludes to a novel halachah. Obviously, the ordinances should be placed before "them." Before whom else should Torah be placed? Chazal derive a number of halachos from this pasuk. For example, they say that disputes between Jews should be decided by lifneihem, "them," a Jewish court of law. It is forbidden, except under specific circumstances, to settle a dispute in a secular court of law. Horav Avigdor HaLevi Nebentzhal, Shlita, suggests a novel approach to understanding the significance of lifneihem. We have to bear in mind the circumstances under which Moshe Rabbeinu received the Torah. He spent forty days and nights learning Torah from Hashem. He delved into its innermost secrets; its deepest esoteric meanings were revealed to him. Moshe was able to perceive emes, truth, l'amito, in its most absolute, pristine form. Tzedek, justice, had an altogether different meaning to him. Our quintessential rebbe was privy to Heavenly law, which we will see is quite different from the Torah law that we, in this world of human limitation, understand and adjudicate.

After Moshe completed his Heavenly studies, Hashem told him, "I have revealed to you the meaning of Heavenly justice. Now you are returning to a world in which Torah law must address the needs, personalities, inclinations and perceptions of the people about whom and for whom these laws were written. When you descend with the law, you must place it lifneihem, before them. They cannot possibly adjudicate according to the level of truth which is to be found in Heaven. Heavenly justice is too perfect and precise for human society. Man is incapable of carrying out the law to such a sublime plateau." The question is asked: What will happen to Heavenly justice? Are we to ignore consummate truth and justice just because we are human? The answer, claims Rav Nebentzhal, is simple: Heaven will fill in the blanks. Those areas in which a defendant is freed without appropriate punishment, due to the constraints imposed by halachah – Heaven will intervene and see to it that justice is executed. This is the underlying meaning of the halachah of Patur midinei adam v'chayav b'dinei Shomayim, He is not liable according to the laws of man, but he is liable according to the laws of Heaven. This means that the

Heavenly Tribunal will see to it that retribution is exacted for the offense that was committed. A Jew who commits an offense does not get away scot-free. He will ultimately pay – regardless of the lack of liability imposed on him by a court of his peers.

A number of differences exist between the Heavenly Shulchan Aruch, Code of Jewish Law, and the one used by man. We will identify just a few: The Heavenly Tribunal needs neither the testimony of witnesses, nor hasraah, warning, issued by the witness. The purpose of this warning is to determine the offenders' culpability with regard to intent. Heaven does not require this determination. Hashem knows everything. Other aspects of this warning are clearly not applicable in the Heavenly Court. These ordinances are necessary lifneihem, earthly courts.

Rav Nebentzhal notes another significant difference between the courts of man and Heaven: collateral damage. Man cannot take into consideration the effect the punishment has on the offender's family. The most caring and sensitive judge has no way to calculate the heavy toll this punishment might take on the individual's wife and children. The Heavenly Tribunal considers everything and everybody – present and future. Indeed, at times, the punishment of the individual who is liable and should be punished will be delayed or even modified, so that the innocent others connected to him will not suffer needlessly.

The earthly court does not view one's background as a factor in his liability. For instance, consider two people who desecrate Shabbos, which is one of the capital transgressions. One of them had an observant upbringing, the finest Torah schools, yeshivos – the works. The other one was raised in a non-observant home, where Shabbos had little or no significance. Clearly, the behavior of the latter does not represent a rebellion against Hashem in comparison with that of the former. This idea may also be extended to individuals whose home life leaves something to be desired. The offender has had to contend with serious familial and social issues which cloud his mind concerning religion.

The list goes on. In some situations, the earthly court must allow an individual to go free, although new evidence ascertaining his guilt has been entered. Since bais din, the court, has already issued a verdict of innocent, however, we may not retry him. Hashem responds with Ki lo atzdik rasha, "I will not exonerate a wicked person" (ibid 23:7).

Understandably, a believing Jew's focus and concern should be on what the Heavenly court thinks of him and his

behavior, because His decision matters most. We might be able to extricate ourselves out of a negative judgment in this world, but this does not mean that the Heavenly Court will affirm this decision. Hashem knows our true attitude, our real intentions, what was coursing through our minds when we transgressed. That is what matters. Rav Nebentzhal cites *Rabbeinu Yonah* in his preface to his magnum opus, *Shaarei Teshuvah*, who says, “One should not look at the “insignificance” of the transgression, but rather at the One who exhorted us concerning it.” The slightest sin pales in contrast with Hashem. Man has no way of determining the effrontery of one who sins.

The punishment extends to future generations. Avraham Avinu asked *Bama eida ki irashenu*, “Whereby shall I know that I am to inherit it (*Eretz Yisrael*)?” (*Bereishis* 15:8) This query catalyzed *shibud Mitzrayim*, the Egyptian bondage. *Chazal* explain these and many such instances throughout history as reversion to the spiritual infirmity of an ancestor. We have, however, one glimmer of hope. Once we are able to grasp the depth of sin and the spiritual blemish it creates, we can begin to perceive the awesome reward in store for every *mitzvah* and good deed. This is a flipside, which should be heartening. Just as Hashem is particular concerning every transgression, regardless of its significance, likewise, He will reward us commensurately for every positive spiritual endeavor. Our motivation, attitude, devotion, and the immediate and far-reaching effect it has on others will all be tallied and reattributed. Nothing goes unrequited.

כל אלמנה ויחום לא תענון. אם ענה תענה אחר כי אם צעק יצעק אלי שמת  
אשמת צעקתו

**You shall not cause pain to any widow or orphan. If you (dare to) cause him pain... for if he shall cry out to Me, I shall surely hear his outcry. (22:21,22)**

The Torah admonishes us in the strongest terms to be sensitive to the feelings of the underprivileged, the weak and the helpless. Although it is prohibited to take advantage of anyone, the Torah underscores the widow and the orphan, because they are the most vulnerable and, hence, the most abused. I have always had difficulty understanding the need for the Torah to even mention such loathsome behavior in connection with the Jewish People. While there are con-men in every generation who prey on the weak, these are usually isolated cases perpetrated by very sick individuals. For the most part, *Klal Yisrael* is comprised of *rachamanim bnei rachamanim*, compassionate sons of compassionate fathers. What relationship do we have with such egregious behavior?

I think the answer lies in the word used by the Torah to describe the evil which these *rashaim*, wicked persons, perpetuate: *taanun, ano, saaneh*, all derivatives of the word *ano*, which means to respond or to make dependent. The petitioner depends on the response. A number of other definitions, such as humble and afflict, are variations of the verb. Some people do not steal or cheat the helpless, but have no problem humbling them or making them feel a sense of dependence. In other words, the Torah is addressing those individuals who are insecure and whose ego is so low that the only way that they can feel some self-worth is by subjecting another person to their scorn. They enjoy taking advantage of the helpless, because this raises their own esteem. They do not cheat – or steal; they simply make the other person feel more helpless, more weak. The poor man/orphan/widow comes to borrow money to pay the rent. The “benefactor” gives them the money after he has made them wait,

squirm, feel like two cents. That is *Lo saaneh*, making someone feel dependent, depriving a person of his self-esteem. This type of behavior is regrettably much more prevalent than we care to admit. At the end of the day, the disadvantaged person goes home and cries to Hashem in the same fashion as the orphan that has been cheated out of his money. Hashem listens to both of the afflicted.

*Chazal* teach us a powerful lesson. When Rabbi Yishmael and Rabbi Shimon *ben Gamliel* were being taken out to be executed, Rabbi Yishmael began to cry. R’ Shimon said to him, “In another few moments you will be together with the righteous – yet you cry?” R’ Yishmael replied, “I cry because we are being punished like common criminals, like murderers.” R’ Shimon looked at him and said, “Perhaps a woman came to ask you a *shailah, halachic* question, and your servant said that you were sleeping, thus making her wait for you?” The *Mechilta* quotes the reply as: “Perhaps someone asked you a question, and you made him wait while you tied your shoe, drank a glass of water, or put on your jacket?” No difference exists between a great affliction and a minor affliction. If you cause another Jew any kind of anguish, Hashem holds you accountable.

The **Rambam** writes that he would have all people lined up by his office, waiting to see him. He refused to even grab a bite of food, lest he make them wait one moment longer than necessary. He would be up until all hours of the night caring for his patients with respect and dignity. Yet, many of us have no problem taking advantage of those who are too weak to protest.

The Torah tells us in very clear language that when the orphan cries out to Hashem, He will listen to his lament. **Horav Shimshon Pincus, zl**, derives a very important lesson from here concerning the efficacy of *tefillah*, prayer. A person is beset with adversity, whether it be a financial crisis, a serious health issue, or any of the challenges that can entirely devour a person’s life. In order to resolve the situation, to see it culminate in a positive, beneficial manner, he tries everything. He goes to *tzaddikim*, righteous individuals, seeking their blessing; he goes from doctor to doctor in search of the best medical advice; he prays with all his heart and soul, piercing the Heavens for Hashem’s positive, merciful response. He is no different from the poor man that goes from door to door in search of alms. Under such circumstances, the *halachah* is clear; the benefactor is obliged to give him a standard donation.

A similar idea applies to *tefillah*. When one pursues many endeavors and approaches to ameliorate his challenge, while *tefillah* is just another one of them, Hashem responds much like the benefactor before whose door a poor person stands. Hashem will likely grant him some favor. Since the person is doing many things to solve his problem – praying to Hashem is another one of these endeavors – Hashem will do something, but not necessarily everything.

When a poor man comes to the door, the would-be benefactor figures that this man is going to many others. He will somehow make it. Therefore, he does not feel compelled to give more than a token donation. Likewise, if we were to question the miser who slammed the door in the poor man’s face about why he acted so “nicely,” he would likely respond, “Why does he have to go only to me? There are others!”

If, however, there was no one else; if he was the only person who could help; if he was the only physician who could save the patient, the benefactor would act differently, because the poor man/patient would be confronting his only option. When one comes before Hashem with the understanding that only He

can help, he *davens* differently – and he will be answered differently.

Rav Pincus explains that this is referred to as *nipul, falling completely* on Hashem’s mercy, manifesting total abnegation that He is the only One Who could help him out of this situation. This is how the commentators understand the entreaty of the orphan and widow. They have no one to whom to turn other than Hashem; therefore, Hashem listens to them. This is noted from the redundancy of the word *tzaok yitzak*, he shall cry out. One does not have to cry out to Hashem more than once. He cries – Hashem listens – responds yes, or no. If the response is not in the affirmative, the petitioner tries another approach. The orphan and widow have nowhere else to turn. They come back and cry again. Hence, the double crying. If all of us would *daven* as if we had nowhere else to turn, we might receive the response for which we have been waiting. After all, we really do not have anywhere else to turn.

מלאחר ודמער נל האחר

**Do not delay your fullness-offering or your heave-offering. (22:28)**

The fullness-offering is a reference to the *Bikurim*, first fruits, which are picked after they become full and ripe and are brought to the *Kohen*. The heave-offering refers to *Terumah*, a portion of one’s crops which is separated and given to the *Kohen*. The Torah is underscoring the idea that whatever we have is a gift from Hashem, which should be recognized, acknowledged and appreciated. **Horav Yosef Tzvi Dushinsky, zl**, goes a bit further, offering a homiletic rendering of the *pasuk*.

*Mileiascha*, “your fullness” – when Hashem blesses you with abundance; your crops are full and overflowing with goodness – you must demonstrate your appreciation to the Almighty with even greater service. You have been blessed with excess. Respond in kind. Your gratitude should be commensurate with your blessing. In order to do that, one must delve into his blessing to understand how much he has truly benefited from Hashem.

*Dimaacha*, “your tears,” (from the word *dema*, which is a tear). – the *demaos shel gil v’simchah*, tears of joy and happiness, for your good fortune; *lo se’acheir*, “do not delay.” Express your added praise and gratitude immediately. Do not tarry in proclaiming your thankfulness.

Moreover, do not restrain your weeping in prayer and entreaty to Hashem, because that is why Hashem has blessed you. Your good fortune avails you the opportunity, the peace of mind, the relaxed spirit, so that you can *daven* with greater fervor, learn Torah with increased enthusiasm, and serve Hashem on a higher spiritual plane. We are quick to accept Hashem’s favors, but, often, leisurely in offering our gratitude.

ויקה ספר הברית ויקרא באזני העם ויאמרו כל אשר דבר ד' ונעשה ונשמע  
**And he took the book of the covenant and he read it in the ears of the nation and they said, “All that G-d has said, we will do and we will listen.” (24:7)**

The most important occurrence in the history of mankind was *Mattan Torah*, the Giving of the Torah. It was a cosmic event during which Hashem revealed Himself to the Jewish People at *Har Sinai*. *Chazal* attempt to recapture the emotions of our ancestors as they stood at the foot of the mountain and experienced the glory and splendor of that seminal moment. Most of the *divrei Chazal*, expressions of *Chazal* in the

*Talmud* and *Midrash*, give us a favorable impression of the generation that accepted the Torah. Our forefathers are portrayed as being quite enthusiastic to accept the word of Hashem of their own free-will. Their loud declaration of *Naase v’nishmah*, “We will do and we will listen!” is considered the paradigmatic response of a Jew.

Some other passages do not seem to be as complimentary. Indeed, the following passage from the *Talmud Shabbos* 88a implies that *Klal Yisrael* was not willing to accept the yoke of the Torah, to the point that the Almighty had to compel them into consenting to observe the laws of the Torah.

“And they stood at the foot of the mountain” (ibid 19:17). This teaches us that Hashem held the Torah over them as a cask and said, “If you accept the Torah – good – and, if not, there will be your burial.” This does not depict them as eager to accept the Torah. How are we to reconcile the opposing statements of *Chazal*? Did our ancestors hesitate in accepting the Torah to the point that they needed some outside intervention to motivate them, or did they readily, enthusiastically, of their own free-will, declare their acceptance of the Torah?

Furthermore, the text of the *Talmud* which relates Hashem’s exhortation to the people seems a bit out of order. “If not, there will be your burial.” They are standing here beneath the mountain. If they do not accept the Torah, the mountain will come crashing down on their heads, thus burying them here. What is the meaning of “there” will be your burial?

**Horav Aharon Soloveitchik, zl**, resolves this discrepancy in a novel manner. He cites a *Midrash* in *Shir HaShirim* that quotes Hashem as asking our forefathers for guarantees before He relinquishes the Torah to them. Hashem wanted a surety that the Torah would not be neglected, that it would be observed throughout the generations and that it would become the cornerstone of our national existence. The Jewish People responded with the Patriarchs, who were the foundation of our People. Surely, they could serve as guarantors for the Torah. Hashem refused their proposal. They then suggested the *Neviim*, Prophets, as guarantors. Hashem still did not agree. Finally, they said, “Our children will be sureties for the Torah.” Hashem agreed. After all, *Torah tzivah lanu Moshe*. “The Torah that Moshe commanded us,” *morashah kehillas Yaakov*, “Is the heritage of the congregation of Yaakov” (*Devarim* 33:4). The Divine gift of the Torah is far too precious to be given to a single generation. It had to be a legacy for generations to come so that all Jews should feel a personal affinity with it. It belongs to all of us throughout the continuum of history.

With this in mind, Rav Aharon explains that the *Talmudic* passages do not contradict one another. The passage in the *Talmud Shabbos* which intimates that *Klal Yisrael* was coerced into accepting the Torah does not contradict the fact that they had declared *Naase v’nishma*. Unquestionably, *Klal Yisrael* eagerly accepted the Torah, and completely committed themselves to its principles. Consequently, they exclaimed in unison and with genuine sincerity, “We will do and we will listen!” But that statement could be made only concerning their personal commitment. They were present, experiencing the Revelation. Of course they would accept! However, with regard to the millions of unborn Jews, the untold future generations, the People who stood at Sinai felt that they could not speak for them.

The generation who had experienced the miraculous exodus from Egypt, who had watched as their Egyptian oppressors drowned in the Red Sea, who had witnessed mind-altering miracles and phenomena – they could commit. They had