

## Freedom and Faith in Mishpatim (Exodus 21:1–24:18)

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Rabbinic commentators have said that the Book of Exodus is concerned with a problem that is essentially the opposite of what we find in the Book of Genesis. In Genesis, the problem, as former Chief Rabbi of Britain Jonathan Sacks points out, is that humans have freedom but no order: the antediluvian world is so disorderly in its unrestrained freedom that G-d decides to destroy it. The post-Flood world of Genesis is perhaps just as corrupt, but instead of destroying it, G-d chooses a man, Abraham, as the agent of its salvation.

Exodus, however, begins very differently. Now the primary protagonists of the Torah, the Israelites, have order but no freedom—because they have been reduced to slavery in the Land of Egypt. We may thus consider, along with Rabbi Sacks, the epic narrative of Exodus to be an account of how the Israelites learn to reconcile order and freedom in the process of transforming themselves into an enduring community or nation.

During this process of collective transformation in Exodus, a series of extraordinary reversals or transformations take place. These reversals revolve around the growing ability of the community to distinguish between servitude and covenantal responsibility.

The central transformation is the decision the Israelites make to serve G-d faithfully and unconditionally. This is the great paradox that Exodus seeks to illuminate and resolve. For no sooner are the Israelites free of one master, Pharaoh, than they choose to serve another of a different kind: G-d.

The key difference, of course, is that once freed from bondage, the Israelites have the freedom of choice to accept—or reject—the authority of G-d. We must not diminish the emotional and cognitive tension implied by this choice, however, for the narrative of Exodus is rife with the ambivalent

hesitations of the Israelites in making the choice to dedicate themselves to G-d so soon after they have been released from slavery.

And Exodus in fact abounds with indications of how difficult it is for the Israelites to learn to have faith G-d, and the reciprocal doubts of G-d that they are not yet fully trustworthy. In Exodus 16, for example, manna will be distributed by G-d every morning to the Israelites in the Sinai desert, but only in the measure they need for a single day; if they attempt to demonstrate independence from G-d by hoarding or storing the manna, as some Israelites inevitably do, the manna rots and grows worm-infested overnight.

The gravest test, which once again some of the Israelites fail, occurs after this week's parashah, Mishpatim, when Moses descends from Sinai and discovers the golden calf. But this is only the most serious instance of the rigorous testing process the Israelites must go through in their collective transformation by the covenantal agreement. G-d, reciprocally, indicates again and again throughout Exodus, including in Mishpatim, that the covenant will be verifiable by the Israelites by degrees over time as they take the steps He commands of them in their conquest of the Land of Israel. This pattern of testing, verification, and iterated reaffirmation of the divine-human covenant is central to the narrative of Exodus.

Yet parshat Mishpatim, chapters 21-24 of Exodus, also crystalizes a different aspect of the Israelites' collective transformation into a nation which is more complex and profound than the quid pro quo implied in the episodes of the manna, the golden calf, and G-d's incremental fulfillment of promises. This other transformation is the birth of the Israelite nation as a truly free community reliant not on visible or empirical proofs but on a deeper form of covenantal trust rooted in the development of social responsibility.

To comprehend this remarkable element of the transformation in Exodus, we need to consider the genre shift of Mishpatim, which literally translates as "ordinances." What is striking and yet puzzling about the parashah, as commentators have noted, is that the gripping narrative of Exodus recounted thus far is interrupted with such a seemingly prosaic enumeration of laws related to day-to-day life. These include ordinances

about how the Israelites must treat slaves, about the required compensation owed for accidental damages, the respect owed to parents, punishment for murder, theft, or sexual transgressions, acceptable treatment of domestic animals, the agricultural sabbatical year, treatment of a stranger, money-lending, bearing true witness, treatment of the poor and orphans, and the imperative to keep the sabbath and holy feasts. The legislative chapters of Exodus 21-23 conclude with the command to worship G-d alone, in fulfillment of which the Israelites are promised health, prosperity, and dominion over the Land of Israel.

Not only do these three chapters of Exodus represent a remarkable departure from the epic narrative genre that precedes and follows them, but they also carry surprising implications for what we may call the heuristics of the Torah—that is, the way in which the text conceptualizes the process of learning. Up to now, the Torah has indicated that the community learns through the immediacy of what its members see and experience directly. Freedom is learned through the immediate experience of salvation from slavery; G-d's power is learned through the miracles of the burning bush Moses sees, the plagues sent in warning to Pharaoh, the parting of the Red Sea for the fleeing Israelites and the destruction of the Egyptian army when the sea closes again, G-d's provision of manna in the desert, and so forth. The golden calf incident later in Exodus is also an indication of how central the visual mode and physical immediacy are to the Israelites' abiding conception of themselves as a people.

Starting in Mishpatim, however, a different process of learning is presented. This new heuristic mode is based not in the spectacular display of miracles but in norms and rules that allow the community to govern itself. Now, I know this sounds abstract, but it is actually no more abstract than the parallel shift in Judaism from the visual and immediate forms of pagan idol worship to the scriptural basis of religion inaugurated by monotheism. Just as Judaism replaces the visual iconography of paganism with the idea of a single invisible G-d, so too the written Torah, as evidenced in Mishpatim, supplements mythical narrative with the more abstract structure of a written legal code. The laws put forward in this section of Exodus are suggestive of the idea of a community that is able to govern and regulate itself based on agreed principles of fairness and justice rather than by reference to its miraculous origins in the spectacular visions of myth.

In less theoretical terms, the ordinances referenced in Mishpatim suggest that the framers of Exodus, poised between mythic and legal modes, imagine the Israelites as a community transforming itself into an independent nation that is fully capable of self-governance and yet still deeply aware of the centrality of its faith. The laws introduced here presume the existence of a people capable of rational judgment and fair application of legal decisions—as well as the further development of these basic principles in living case law. The Talmud is a wondrous—and yet entirely foreseeable—elaboration of laws first introduced in the Torah: the Talmud may be understood, in this sense, as a logical development of the project of self-governance initiated here in Exodus.

The covenantal transformation of the Israelites suggested in Exodus may be understood by us, then, as a strikingly new conceptualization of liberty in ancient times. The Israelites' decision to adhere faithfully to G-d's Torah is rendered meaningful only because *they are also granted the freedom not to obey G-d*. The laws introduced in Mishpatim extend this power of choice: the people themselves, and not G-d directly, shall govern the nascent community. The framers of Exodus suggest that G-d steps away from the community, just as the written Torah stands at a remove from the immediacy of mythic narrative, in order for the community to become fully independent in its self-governance—and thus truly free.

And yet, the framers of Exodus recognize that freedom is not equivalent to the radical independence of *creatio ex nihilo* or self-engendering. That is why we must account for the continuous tension in Exodus between, on one hand, the evolution of an independent community based in normative laws and, on the other hand, the continuing mysterious presence of G-d. This tension is manifest throughout Exodus. In Exodus 18, notably, Moses's father-in-law, Jethro, rebukes Moses for trying to serve as the sole judge for individual disputes among the Israelites and counsels him to instead appoint a caste of judges who, proportionally, will share the burden of meting out civic justice. Jethro's counsel, in other words, is that Moses should establish a system of representative governance, so that no single leader is either indispensable or too powerful.

In Mishpatim, the significance of such proportionality is signaled yet again. The final chapter of the parashah, chapter 24, echoes chapters 19 and 20, where G-d has forbidden anyone but Moses to approach Mount Sinai, and where the people, out of fear of G-d's awesome power, have asked Moses to serve as their representative to G-d. Now, in chapter 24, G-d tells Moses to bring Aaron, Nadav, Avihu and 70 other Israelite elders part way up Mount Sinai to act as witnesses. These witnesses are not permitted to approach too closely, but they are allowed to see G-d from some distance without themselves being destroyed by what they see. The elders then descend the mountain again, while Moses goes up into the presence of G-d, where he stays for forty days. Here, again, we see how Exodus postulates a representative structure of authority, just as Jethro had counseled Moses earlier. The 70 elders serve as an extension of the authority vested in Moses by G-d; and the community thus gains a system of checks and balances analogous to the legal structure introduced earlier. Rule of law, the structures of representative government: we think of these as modern innovations of democracy, and yet here they are, laid out plainly in the Torah.

It is important to note, however, that G-d remains a mystery in chapter 24, obscured in the dark cloud which only Moses is permitted to penetrate. The productive tension is thus preserved here between the self-governing Israelite community and a mysterious G-d; between social norms and religious belief; between rational judgment and spiritual faith. This is perhaps the central paradox of Judaism, which presents us with the possibility that individual and collective freedoms do not contradict a belief in the essential spiritual unity of the world.