

Parashat Mishpatim

In last's week's parashah we spoke about the imperative of placing the Ten Commandments in context, because it is only in this way that we can read them well. Indeed, as we also discovered, the attitude of love and compassion is essential to reading them well. It was thus that Yeshua explained Torah observance in the context of the parable of the Good Samaritan, concluding his discourse with the challenge to go and do likewise. Of course while furnishing ourselves with attitudes of love and compassion toward others is vital we also need a little help in fleshing these out tangibly. That's where Parashat Mishpatim comes in. While the many commandments in this parashah stop far short of providing us with a fully worked out legal system, through them we are nevertheless invited to consider how these vital attitudes may be effectively and practically applied in a whole host of moral, ethical and legal situations.

The mishpatim begin with the rights of persons, including laws protecting the Hebrew servant - who was likely the lowest person on the social scale. The law mandated that such a person be set free in the seventh year of his service. Laws concerning personal injuries; murder; crimes against parents and kidnapping follow this. The law of Lex talionis - the commandment that punishment should follow, an eye for an eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise and life for a life - is particularly noticeable in these passages. As former CofE minister, now Roman Catholic priest, Robbie Low has cogently stated: "'An eye for an eye and a tooth for a tooth' is often quoted as a shorthand summation of Old Testament of legal principles. The marginally literate are likely to add a reflection, variously attributed to every peacemaker from Gandhi onwards, 'if we follow that teaching the world would be full of blind and toothless people.' We are presented with a grisly picture of benighted primitives poking each other in the eye and punching each other in the mouth. The implication is that we are a civilization greatly advanced on those Hebrew backwoodsmen who thought they had encountered God and consequently enshrined his legal requirements. After all, the modernist will argue, even Jesus, who was moulded by some pretty restrictive social conditioning, overturned that particular injunction, didn't he?" Well, no he didn't! The problem with such a point of view is that no Jew ever interpreted Lex Talionis in the gruesome way that it is so often caricatured to have been. Lex Talionis isn't about the law granting the right to poke someone in the eye straight after they have poked you. Rather, as Dr J H Hertz explains, these phrases are legal terms meaning 'fair compensation' after Vayikra 24:18 which says, "Anyone who strikes an animal and kills it is to make restitution, life for life." "This only means 'fair compensation'," Dr Hertz continues, "otherwise any man who slew an animal would have to forfeit his own life in return!"

Many have maligned the Torah over the millennia as a blood-thirsty, vengeful text, but as we shall see, this is hardly the case. Thus Parashat Mishpatim enshrines protection for the weak and marginalised and ensures justice for all. As such the Mosaic code reflects the compassionate character of God. We therefore read in our parashah, "You must neither

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wrong nor oppress a foreigner living among you, for you yourselves were foreigners in the land of Egypt". Here the Israelite is positively commanded to feel empathy for the marginalised and oppressed society. Xenophobia or hatred toward foreigners has been a danger in every age and especially thrives on a fear of the unknown and a protective tribalism which dehumanises the other. However, in Parashat Mishpatim we are commanded to look beyond such instinctive fears and place ourselves in the shoes of the other - in the shoes, say, of the Syrian refugee, or the migrant European worker. Placing ourselves in those shoes, the mitzvah instructs, will properly lead to acts of compassion not hatred. As Dr JH Hertz again helpfully comments, "Nothing must be done to injure or annoy him [the foreigner], or even by word to wound his feelings. The fact that a man is a stranger should in no way justify treatment other than that enjoyed by brethren in race. 'This law of shielding the alien from all wrong is of vital significance in the history of religion. With it alone true Religion begins. The alien was to be protected, not because he was a member of one's family, clan, religious community, or people; but because he was a human being. In the alien, therefore, man discovered the idea of humanity'."

Indeed it is concepts of humanity and fairness that underscore all the varied commandments in our portion. Therefore "If you come upon your enemy's ox or donkey straying, you must return it to him. If you see the donkey which belongs to someone who hates you lying down helpless under its load, you are not to pass him by but to go and help him free it." According to the Mechilta the ox here is merely symbolic and the commandment applies to any situation in which your enemy might need help. Just because your enemy, a person whom you might have come to fear and hate, may have wronged you in the past and done you an injury, so that you entertain a grievance against him, it is not right, so the commandment makes clear, for you to allow it to influence your action when your duty towards him is clear. As Dr JH Hertz adds, "He has not ceased to be your fellowman, because he violates the law of neighbourly love towards you. Therefore, all envy or ill-will towards him is forbidden. No thought of vengeance must be permitted to rise in your heart: his actions towards you must not be the standard of your conduct towards him. For the sake of your own human dignity there must be readiness to help him in his need..." The injunction to help your enemy "has both the humanitarian motive towards the animal and the charitable motive towards the enemy. The greatest hero, say the Rabbis, is he who turns an enemy into a friend; and this can only be done by deeds of loving-kindness. 'If thine enemy be hungry, give him bread to eat, and if he be thirsty, give him water to drink... and the Lord will reward thee.'"

Though the historical-social context in which these commandments were initially given has long since disappeared it is important to note that this does not invalidate the commandments. Indeed, as is the case with all mitzvot, their presumed eternal nature does not mean that we have to preserve the original historical-social context, because the fundamental truths that the commandments seek to convey do not depend on either their literal interpretation or the continued existence of the original historical-social context. Rather, as Ludwig Wittgenstein said, the commandments are couched in coded religious

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language, in which, say, a goring ox is simply a cypher or metaphor. It is therefore the task of the Jewish community, in each generation, to take up the Torah's own challenge to read, debate it, argue with it, and in eventually uncovering the eternal truths of the commandments for themselves, apply them to the challenges that face us in a rapidly changing contemporary society. Though, for instance, the Torah may not specifically address such ethically taxing issues as donor insemination or cloning, to name but two, as we nevertheless wrestle with Torah we will discover both an ethical taxonomy and a rich repository of related wisdom that aids us in constructing a halakhic approach to the challenges of modern life. Indeed, if the only way that we read the mitzvot is hyper-literally, then we would be forced to conclude, as so many have done, that the Torah is in, the words of Monty Python, a "dead parrot." For what relevance do the commandments relating to goring oxen literally have in today's modern society? Who here owns an ox? And yet, as Yeshua said, "until heaven and earth pass away, not so much as a yud or a stroke will pass from the Torah". It must be then that when Yeshua said this he also had in mind the idea that the eternal truths of the Torah lie hidden below the surface - underneath the initial historical-social context. As in fact we have heard, the Mechilta explains that the ox is symbolic. There are therefore many possible explanations of the laws concerning the goring ox, and given that this is so and we do not have unlimited time, I should like to examine just one.

As we read, in Bresheet 9, when Noach exited the Ark there was a revolutionary change in the relationship between human beings and animals. Up until that point both humans and animals ate the same food - vegetation. In Bresheet 1 Hashem said, "Here! Throughout the whole earth I am giving you as food every seed-bearing plant and every tree with seed-bearing fruit. And to every wild animal, bird in the air and creature crawling on the earth, in which there is a living soul, I am giving as food every kind of green plant." These injunctions are repeated to Adam in Bresheet 2: "Adonai, God, gave the person this order: "You may freely eat from every tree in the garden." Although humans are mentioned as being uniquely made in God's image and helped to name the animals (thus implying man's superiority) and was given dominion over them, at this point both humans and animals were exactly alike in only being permitted to eat vegetation. Even after the fall the same state of parity between human beings and animals was maintained in that, "the ground is cursed on your account; you will work hard to eat from it as long as you live. It will produce thorns and thistles for you, and you will eat field plants. You will eat bread by the sweat of your forehead till you return to the ground — for you were taken out of it: you are dust, and you will return to dust." And yet, as we have noted, there was a sea change in this order when Noach exited the ark. Not only did Noach present animal sacrifices to God, thus taking their lives, but, significantly, for the first time, human beings were given permission to eat the flesh of animals. As we read, Hashem said, "Be fruitful, multiply and fill the earth. The fear and dread of you will be upon every wild animal, every bird in the air, every creature populating the ground, and all the fish in the sea; they have been handed over to you. Every moving thing that lives will be food for you; just as I gave you green plants before, so now I give you everything — only flesh with its life, which is its blood, you are not to eat." What then was the point of this sea change? It's

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not that human beings hadn't previously thrived on a vegetarian diet, for Noach's ancestors had lived for eight or nine hundred years. It was not for the sake of diet then, but rather for the sake of further clarifying and establishing the position of humans with regard to animals. From now on human beings would be permitted to take the lives of animals and eat their flesh and there would be no come back - unless of course those parts of the animal which were intended for use as sacrifice, namely the fat and the blood, was ingested, for those parts belonged to God Himself. The reverse, however, did not apply. Animals could not be permitted to take the life of a human being. As again we read, "I will certainly demand an accounting for the blood of your lives: I will demand it from every animal and from every human being. I will demand from every human being an accounting for the life of his fellow human being. Whoever sheds human blood, by a human being will his own blood be shed; for God made human beings in his image. And you people, be fruitful, multiply, swarm on the earth and multiply on it." Although neither human beings nor animals were permitted to kill and consume human beings, since they were made in the image of God, the same rule did not apply with regard to the human killing and consumption of animals. Thus when a human being killed and ate an animal it was not considered homicide, as the title to the Smith's second classic album, "Meat is Murder," would have us believe. The purpose of this sea change was therefore to extend, entrench and clarify the fundamental difference between humans and animals that we have seen was gestured in the Creation account. Allowing humans to kill and eat animals, but not the reverse set the seal on this Creational order. Therefore, as the mitzvot in our parashah make clear, although animal lives are certainly precious, they are nevertheless not equivalent to the lives of human beings. An ox which gores a human being to death must therefore be killed because it has not only taken the life of a human being, made in the image of God, but in so doing it has also rebelled against the created order. Furthermore, although the animal may only have killed a single human being, its offence is actually against the whole of humanity. This explains why, according to the mitzvah, the ox that kills a human may not be dispatched in the usual slaughtering manner, ie. by having its throat cut, but must be stoned by the community. Stoning is actually the regular sanction invoked against crimes that entail ritual defilement of the corporate community - child sacrifice, for instance, which is the equivalence of worship of foreign gods, or any other form of idolatry. It is carried out by the community as a whole and avoids further contact that would ritually defile the executioners. This is necessary because the ox has become polluted and defiled by committing a de facto insurrection. As Jacob Finkelstein writes in his seminal investigation of this subject, "The Ox That Gored," "Goring to death a human being constitutes an act of "insurrection against the cosmic order," and the ox's action thus constitutes a crime which "'offends' the corporate community" and strikes at its "moral and religious fibres," for which the prescribed penalty is death by stoning."

Of course many people simply regard the case of the goring ox as an anachronism which can have no relevance to the concerns of modern people. And yet, once we see the ox correctly as a cypher our eyes are opened. We are moving into a new age of technology in which robotics and artificial intelligence are opening up the possibility of a new species of

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autonomous, self aware beings. A fundamental question which will arise with regard to these developments is what rights, if any, such creations might have? Should a robot possessing artificial intelligence, including self awareness and consciousness, be considered human or will they be animals? And if the former is it right to enslave such creations to our service? And what if, God forbid, an artificially intelligent robot should kill a human being? Do we then judge that robot *as* a human being, or do we insist it is a lesser being that has rebelled against the created order? This is a scenario and these are questions that have been explored many times over in science fiction books and movies, most recently for example in "I, Robot," starring Will Smith, in which AI equipped robots rebel against their programming, kill human beings and seek to turn the slave tables on their creators.

Of course, thankfully, we are not quite there yet, but the purpose of such science fiction, as with the mitzvot relating to the goring ox, is to get us to ask all these vital questions well in advance, and in so asking to furnish us with a framework for our exploration and deliberation. Who'd have thought that we could speak of the goring ox and AI robots in the same sentence. But there you are! As Yeshua said, "until heaven and earth pass away, not so much as a yud or a stroke will pass from the Torah."