

פרשת משפטים

Parashat Mishpatim

CHAPTER 21 [MISHPAṬIM] ¹ These are the rules that you shall set before them:
² When you acquire a Hebrew slave, he shall serve six years; in the seventh year he shall go free, without payment.
³ If he came single, he shall leave single; if he had a wife, his wife shall leave

פרק כא [פרשת משפטים] [ראשון]
א וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשִׂים לְפָנֵיהֶם:
ב כִּי תִקְנֶה עֶבֶד עִבְרִי שֵׁשׁ שָׁנִים יַעֲבֹד
וּבְשִׁבְעַת יָצֵא לְחֻפְשֵׁי חָנָם: ג אִם-בְּגִפּוֹ יָבֵא
בְּגִפּוֹ יָצֵא אִם-בְּעַל אִשָּׁה הוּא וַיִּצְאָה אִשְׁתּוֹ

The Mishpaṭim (21:1 — 23:19)

Introduction: A large portion of the Torah’s civil, domestic, criminal and slavery laws, as well as religious and cultic regulations, are contained in chapters 21–23 of Exodus. Upon being committed to writing, this compendium (with the Decalogue) is termed “The Book of the Covenant” (24:7).

In these ordinances, remarkable progress is made on many fronts of law, including those of human rights and basic principles of fairness and justice. The very fact that laws of different categories are combined in one code — contrary to all previous formulations of law in the ancient Near East in which each type of law was seen as emanating from a different sphere — is itself a significant innovation. This reflects the unity and common source of all the laws, that they are all derived from the one God. Henceforth in Torah culture, all principles of law would have to be in harmony with all other law, enabling human conscience and common sense to play much more significant roles than previously.

As the God-Israel covenant was structured in accordance with contemporary covenant format, so too we note that the Torah articulated many of the laws in our *parashah* in the distinctive manner of prior legal formulations.

Indeed, it uses external similarity to its advantage, subtly invoking the well-known backdrop of a law while it concentrates on the content. In many cases the Torah vocabulary and syntax is strikingly similar to its antecedents, sometimes appearing as if “lifted” from a previous law code. Nevertheless, the differences are profound.

v. 1: וְאֵלֶּה הַמִּשְׁפָּטִים: By using the conjunctive *vav*, the *mishpaṭim* are linked to the previous: the innovations in thought latent in the Decalogue, which initiated the lawgiving, are now applied to the particulars of a law code that is contained in the forthcoming section.

אֲשֶׁר תִּשִׂים לְפָנֵיהֶם: *That you shall set before them, i.e., make accessible to them.* This locution — rather than a clause such as “that you are to transmit to them” — instructs Moses to provide the public ready access to the law, presenting it as the common heritage of all Israelites. This also is a major advance. In other Near Eastern societies, the law was the possession of the political heads and the scribal and priestly elites, while general accessibility was restricted.

vv. 2–11: In the subsistence economy of the ancient Near East, slavery was an important part of the solution to the ever-present danger of death and chronic illness due to deprivation

with him. ⁴ If his master gave him a wife, and she has borne him children, the wife and her children shall belong to the master, and he shall leave alone. ⁵ But if the slave declares, “I love my master, and my wife and children: I do not wish to go free,” ⁶ his master shall take him before God. He shall be brought to the door or the doorpost, and his master shall pierce his ear with an awl; and he shall then remain his slave for life. ⁷ When a man sells his daughter as a slave, she shall not be freed as male slaves are.

of food and shelter. It also was a safeguard against many turning to crime. Neither government nor community were sufficiently advanced and ordered to care for the indigent and the less capable members of society. It is difficult to imagine how society of that time could have functioned beneficially for its inhabitants without it.

Thus, there was virtually no chance that a law outlawing slavery under the circumstances that then prevailed could be implemented. While allowing the institution of slavery to exist, however, the Torah initiated critical reforms regarding its functioning.

v. 2: **עֶבֶד עִבְרִי**: The biblical rules governing the Israelite slave, an עֶבֶד עִבְרִי (a “Hebrew slave”), make absolutely clear that in the final analysis such an individual was not at all a slave in the usual understanding of the word. Sold because of inability to repay a theft (Exod. 22:2) or impoverishment (Lev. 25:39), he was consistently termed “your brother” (Lev. 25:39 ff.; Deut. 15:12), fostering an attitude of extra

עָמוֹ: הָאִם-אֲדָנָיו יִתְּנוּ-לוֹ אִשָּׁה וַיֵּלְדוּ-
לוֹ בָּנִים אֹו בָּנוֹת הָאִשָּׁה וַיֵּלְדוּהָ תִּהְיֶה
לְאֲדֹנָיָהּ וְהוּא יֵצֵא בְּגֹפוֹ: הָוְאִם-אָמַר
יֹאמַר הָעֶבֶד אֶהְבֵּתִי אֶת-אֲדֹנָי אֶת-אִשְׁתִּי
וְאֶת-בָּנָי לֹא יֵצֵא חֲפְזִי: וְהִגִּישׁוּ אֲדֹנָיו
אֶל-הָאֱלֹהִים וְהִגִּישׁוּ אֶל-הַדָּלֶת אֹו אֶל-
הַמְּזוּזָה וְרָצַע אֲדֹנָיו אֶת-אָזְנוֹ בַּמַּרְצֵעַ
וַעֲבָדוֹ לְעֹלָם: {ס} וְכִי-יִמְכַר אִישׁ אֶת-
בִּתּוֹ לְאִמָּה לֹא תֵצֵא כְצֵאת הָעֶבְדִּים:

concern for him.

Thus, we may say that the term עֶבֶד (“slave”) for the Torah’s concept of a Hebrew slave is a homonym with its use of the word in other contexts. The sages remark, “Whosoever purchases a Hebrew slave is as if he purchased a master for himself” (*b. Qidd. 20a*).

שֵׁשׁ שָׁנִים יַעֲבֹד: The Israelite slave automatically gained his freedom following six years of service (Exod. 21:2; Deut. 15:12) or at the Jubilee year (Lev. 25:10, 40). Upon his freedom the master was to present him with a substantial gift to assist him in getting established (Deut. 15:13–14).

v. 7: **וְכִי-יִמְכַר אִישׁ אֶת-בִּתּוֹ לְאִמָּה**: When an Israelite sold his daughter, it was usually due to dire poverty and/or to provide her a secure future. The Torah insisted on a number of precedent-setting conditions that substantially improved the girl’s lot from what it would have otherwise been expected to be. Essentially, the “slave” situation was transformed into short-term domestic work as a household maid.

8 If she proves to be displeasing to her master, who designated her for himself, he must let her be redeemed; he shall not have the right to sell her to outsiders, since he broke faith with her. 9 And if he designated her for his son, he shall deal with her as is the practice with free maidens. 10 If he marries another, he must not withhold from this one her food, her clothing, or her conjugal rights. 11 If he fails her in these three ways, she shall go free, without payment. 12 He who fatally strikes a man shall be put to death. 13 If he did not do it by design, but it came about by an act of God, I will assign you a place to which he can flee. 14 When a man schemes against another and kills him treacherously, you shall take him from My very altar to be put to death. 15 He who strikes his father or his mother shall be put to death. 16 He who kidnaps a man — whether he has sold him or is still holding him — shall be put to death. 17 He who insults his father or his mother shall be put to death. 18 When men quarrel and one strikes the other

ה אִם-רָעָה בְּעֵינַי אֲדַנְיָהּ אֲשֶׁר-לֹא [לו] יַעֲדָה וְהִפְדָּה לְעַם נְכָרִי לֹא-יִמְשַׁל לְמִכְרָהּ בְּבָגְדוֹ-בָּהּ: ט וְאִם-לְבָנוּ יִיעֲדָנָה כְּמִשְׁפַּט הַבָּנוֹת יַעֲשֶׂה-לָּהּ: י אִם-אֲחֵרֵת יִקַּח-לָּהּ שְׂאֵרָה כְּסוּתָהּ וְעֹנֹתָהּ לֹא יִגְרַע: יא וְאִם-שְׁלֹש־אֵלֶּה לֹא יַעֲשֶׂה לָּהּ וַיִּצְאָה חֲנָם אֵין כְּסָף: {ס} יב מִכָּה אִישׁ וּמֵת מוֹת יוּמָת: יג וְאֲשֶׁר לֹא צָדָה וְהִאֲלֵהִים אָנָּה לִידּוֹ וְשִׁמְתִי לָּהּ מְקוֹם אֲשֶׁר יָנוּם שָׁמָּה: {ס} יד וְכִי-יִזַּד אִישׁ עַל-רֵעֵהוּ לְהִרְגוֹ בְּעֶרְמָה מִעַם מְזִבְחֵי תִקְחֶנּוּ לְמוֹת: {ס} טו וּמִכָּה אָבִיו וְאִמּוֹ מוֹת יוּמָת: {ס} טז וְגִבּוֹ אִישׁ וּמִכְרָו וְנִמְצָא בְּיָדוֹ מוֹת יוּמָת: {ס} יז וּמִקְלֵל אָבִיו וְאִמּוֹ מוֹת יוּמָת: {ס} יח וְכִי-יִרְיֹבֵן אֲנָשִׁים וְהִכָּה-אִישׁ אֶת-רֵעֵהוּ

vv. 8–9: It was officially understood that when she comes of age either the master or one of his sons would marry her (thus preventing sexual exploitation). In addition, she would be treated “in accordance with the rules of daughters” of free families. She could not be resold.

v. 10: שְׂאֵרָה כְּסוּתָהּ וְעֹנֹתָהּ: These are generally translated as bodily sustenance (food), clothing and conjugal rights, respectively.

Alternatively, the third term, עֹנֹתָהּ, may mean “shelter” or “ointments.”

v. 13: וְשִׁמְתִי לָּהּ מְקוֹם: Accidental as well as unintentional killing could no longer be punishable by death.

v. 14: מִעַם מְזִבְחֵי תִקְחֶנּוּ לְמוֹת: Refuge cannot be provided to an intentional murderer, even at God’s altar. Numbers 35:31 states that ransom can never be accepted to spare a murderer.

with stone or fist, and he does not die but has to take to his bed — ¹⁹ if he then gets up and walks outdoors upon his staff, the assailant shall go unpunished, except that he must pay for his idleness and his cure. ²⁰ When a man strikes his slave, male or female, with a rod, and he dies there and then, he must be avenged. ²¹ But if he survives a day or two, he is not to be avenged, since he is the other's property. ²² When men fight, and one of them pushes a pregnant woman and a miscarriage results,

vv. 20–21: These two verses are clearly referring to a non-Israelite slave. This is indicated by use of the unqualified term עֶבֶד (slave) as opposed to עֶבֶד עִבְרִי (Hebrew slave) that was employed earlier in the chapter and by referring to the slave with the phrase כִּי כֶסֶף הוּא (‘‘for he is his monetary possession’’).

Regarding the non-Israelite slave, the Torah prescribed a group of laws unprecedented in the ancient Near East (and perhaps anywhere). Despite the fact that such slaves were considered a monetary possession, salable and inheritable, the Torah categorically considered them fellow human beings.

v. 20: יָקָם יָקָם: This unusual usage is understood by the sages, as well as by most present-day scholars, to mandate the death penalty for the perpetrator, which is seen as ‘‘vindication’’ (נִקְמָה) for the murdered man. This is consistent with the fundamental Torah precept, ‘‘Whoever sheds the blood of man, by man shall his blood be shed, for in the image of God did He create man.’’ (Gen. 9:6)

Although generally associated with

בְּאֶבֶן אֹדוּ בְּאֶגְרֵף וְלֹא יָמוּת וְנָפֵל לְמִשְׁכְּבוֹ:
 יֵשׁ אִם־יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל־מִשְׁעָנָתוֹ
 וְנִקְהָ הַמִּכָּה רַק שִׁבְתּוֹ יִתֵּן וְרָפָא יִרְפָּא: {ס}
 [שְׁנִי] כּוֹיֵיכֶּה אִישׁ אֶת־עַבְדּוֹ אֹ
 אֶת־אִמָּתוֹ בַּשֵּׁבֶט וּמַת תַּחַת יָדוֹ נָקָם
 יִנָּקָם: כֹּא אֵךְ אִם־יֹם אֹ יוֹמִים יַעֲמֹד
 לֹא יִקָּם כִּי כֶסֶף הוּא: {ס} כּוֹיֵינְצוּ
 אֲנָשִׁים וְנָגְפוּ אִשָּׁה הָרָה וַיֵּצְאוּ יֵלְדֶיהָ

killing, the *n-q-m* root is not otherwise used in place of saying, ‘‘he should be put to death.’’ The reason for this unique locution here is because of the qualification that if the slave does not die within the day, לֹא יָקָם (‘‘he is not avenged’’ [v. 21]), that is, the master is not put to death, contrary to the law in standard cases of murder.

v. 21: לֹא יָקָם: To prod the slave to work, the master may have resorted to physical chastisement, which was permitted, for that was the common way of disciplining slaves. The striking that brought about the slave's death may have resulted from the master's chastising him and, without awareness, overdoing it.

If the slave dies promptly from the master's blow, the presumption is that the master was aware that he might be killing him and is accordingly subject to the death penalty. When the slave's death was after a time, the master must be given the benefit of the doubt.

vv. 22–25: *Targum Onqelos* and *Targum Jonathan*, as well as the *Mekhilta*, take ason

but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning.²³ But if other damage ensues, the penalty shall be life for life,²⁴ eye for eye, tooth for tooth, hand for hand, foot for foot,²⁵ burn for burn, wound for wound, bruise for bruise.²⁶ When a man strikes the eye of his slave, male or female, and destroys it,

to mean death. (The three other biblical attestations of this word [Gen. 42:4, 38; 44:29] refer to the tragedy Jacob feared might befall Benjamin were he to travel to Egypt with his brothers.) Translating it so, our two clauses, on the surface, yield the following: If the woman does not die, but suffers injury (the miscarriage), the punishment is monetary compensation; if she dies, the penalty is "life for life." Verses 24–25 address the possibilities of her having been injured in various organs, stating that the penalty is "eye for eye, tooth for tooth," etc., in accordance with the nature of the injury.

vv. 24–25: עֵיִן תַּחַת עֵיִן: A major question that has engaged sages and commentators through the centuries has been whether the Torah intended "an eye for an eye," etc., literally. Or was this a figurative expression intended to be understood as monetary compensation that was to be in accordance with the severity of the injury, perhaps relying on an established tradition that explained it so and as was eventually codified in the Mishnah (*m. B. Qam.* 8:1)?

Recent advances in uncovering the practices of the ancient Near East, including discovery of several of its major law codes

וְלֹא יִהְיֶה אֶסּוֹן עֲנוּשׁ יַעֲנֹשׁ כַּאֲשֶׁר יִשְׁתִּי
עָלָיו בְּעַל הָאִשָּׁה וְנָתַן בְּפִלְלִים: כִּי וְאִם־
אֶסּוֹן יִהְיֶה וְנָתַתָּה נַפֶּשׁ תַּחַת נַפֶּשׁ: כִּי עֵיִן
תַּחַת עֵיִן שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת
רֶגֶל: כִּי כְּוִיָּה תַּחַת כְּוִיָּה פֶּצַע תַּחַת פֶּצַע
חַבוּרָה תַּחַת חַבוּרָה: {ס} כִּי וְכִי־יִכֶּה אִישׁ
אֶת־עֵיִן עַבְדּוֹ אוֹ־אֶת־עֵיִן אִמְתּוֹ וְשִׁחַתָּהּ

and many thousands of documents of court proceedings, have shown that the widely established practice for many centuries in the pre-Torah world of the Near East was to impose monetary compensation for inflicting physical injury, including when one caused the loss of another's eye or limb. The Eshnunna laws, which preceded Hammurabi by several centuries, and other ancient codes, are clear on this matter.

Thus, we may assume, as Cassuto explains in his commentary on *Shemot* (1951, 192), that "an eye for an eye" was viewed as a centuries-old, archaic formula that had long lost any literal meaning that it may have once possessed (which it possibly never did). There was no danger of any misunderstanding. Torah use of the formula is also philosophically justified, as monetary compensation is viewed as ransom for what theoretically should have been the perpetrator's punishment. Only in the case of murder is ransom prohibited.

vv. 26–27: עֵיִן עַבְדּוֹ... שֵׁן עַבְדּוֹ: By specifying "eye" and "tooth" — widely considered the most and least precious respectively of those organs whose loss is non-lethal — the law obviously meant to extend the principle to all bodily

he shall let him go free on account of his eye. ²⁷ If he knocks out the tooth of his slave, male or female, he shall let him go free on account of his tooth. ²⁸ When an ox gores a man or a woman to death, the ox shall be stoned and its flesh shall not be eaten, but the owner of the ox is not to be punished. ²⁹ If, however, that ox has been in the habit of goring, and its owner, though warned, has failed to guard it, and it kills a man or a woman — the ox shall be stoned and its owner, too, shall be put to death. ³⁰ If ransom is laid upon him, he must pay whatever is laid upon him to redeem his life. ³¹ So, too, if it gores a minor, male or female, [the owner] shall be dealt with according to the same rule. ³² But if the ox gores a slave, male or female, he shall pay thirty shekels of silver to the master, and the ox shall be stoned.

organs. In addition to the inherent fairness of such laws, they were powerful deterrents to abusive treatment.

vv. 28–32: Compare these verses to the Code of Hammurabi (king of Babylon in the 18th century B.C.E.), §§250–252:

If an ox, when it was walking along the street, gored a seignior to death, that case is not subject to claim. If a seignior's ox was a gorer and the city council made it known to him that it was a gorer, but he did not pad its horns or tie up his ox, and that ox gored to death a member of the aristocracy, he shall give one-half mina of silver (thirty shekels). If it was a seignior's slave, he shall give one-third mina of

לְחֶפְשֵׁי יִשְׁלַחְנוּ תַּחַת עֵינָיו: כִּי וְאִם-נִשָּׁן
עֲבָדָו אֹו-נִשָּׁן אֲמָתוֹ יִפִּיל לְחֶפְשֵׁי יִשְׁלַחְנוּ
תַּחַת שָׁנָיו: {פ} כֹּה וְכִי-יִגַּח שׂוֹר אֶת-אִישׁ
אוֹ אֶת-אִשָּׁה וּמֵת סָקוֹל יִסָּקֵל הַשׂוֹר
וְלֹא יֵאָכַל אֶת-בְּשָׂרֹו וּבָעַל הַשׂוֹר נָקִי:
כִּי וְאִם שׂוֹר נִגָּח הוּא מִתְמַלְּ שְׁלָשִׁים
וְהוֹעֵד בְּבָעָלָיו וְלֹא יִשְׁמְרֵנוּ וְהָמִית אִישׁ
אוֹ אִשָּׁה הַשׂוֹר יִסָּקֵל וְגַם-בְּעָלָיו יוּמָת:
לֹא-אִם-כֹּפֶר יוֹשֵׁת עָלָיו וְנָתַן פְּדִיָן נַפְשׁוֹ
כָּכֹל אֲנָשֶׁר-יוֹשֵׁת עָלָיו: לֹא אוֹ-בֵן יִגָּח אוֹ-
בַּת יִגָּח כִּמְשַׁפֵּט הַזֶּה יַעֲשֶׂה לָּו: לֹב אִם-
עֲבָד יִגָּח הַשׂוֹר אוֹ אֲמָה כֶּסֶף | שְׁלֹשִׁים
שֶׁקֶלִים יִתֵּן לְאֲדָנָיו וְהַשׂוֹר יִסָּקֵל: {ס}

silver (twenty shekels).

The Torah is more stringent on several accounts: It mandates death by stoning for the ox that killed a person. Furthermore, if the ox's owner did not guard it properly in spite of being forewarned of its tendency to gore, the Torah states that he deserves to be put to death (וְגַם-בְּעָלָיו יוּמָת [v. 29]; although he is not actually killed, see v. 30). The monetary penalty for one's ox killing a slave is greater in the Torah than in the Code of Hammurabi, and the penalty for it killing a free person is not limited. Thus, the Torah emphasizes both the sanctity of human life and the need for one to take on great responsibility in guarding his animals.

33 When a man opens a pit, or digs a pit and does not cover it, and an ox or an ass falls into it, 34 the one responsible for the pit must make restitution; he shall pay the price to the owner, but shall keep the dead animal. 35 When a man's ox injures his neighbor's ox and it dies, they shall sell the live ox and divide its price; they shall also divide the dead animal. 36 If, however, it is known that the ox was in the habit of goring, and its owner has failed to guard it, he must restore ox for ox, but shall keep the dead animal. 37 When a man steals an ox or a sheep, and slaughters it or sells it, he shall pay five oxen for the ox, and four sheep for the sheep. —

לֹא יִכְסֶּנּוּ וְנִפְלֵ-שָׂמָה שׁוֹר אִו חֲמוֹר:
 לֹד בְּעַל הַבּוֹר יִשְׁלַם כֶּסֶף יָשִׁיב לְבַעְלָיו
 וְהַמֵּת יִהְיֶה-לּוֹ: {ס} לֹה וְכִי-יִגְף שׁוֹר-אִישׁ
 אֶת-שׁוֹר רֵעֵהוּ וּמָת וּמָכְרוּ אֶת-הַשׁוֹר הַחַי
 וְחָצְוּ אֶת-כֶּסֶפּוֹ וְגַם אֶת-הַמֵּת יַחְצִוּ: לוֹ אִו
 נֹדַע כִּי שׁוֹר נִגָּח הוּא מִתְמוֹל שְׁלֹשׁ וְלֹא
 יִשְׁמְרֵנוּ בְּעַלְיוֹ שְׁלֹשׁ יִשְׁלַם שׁוֹר תַּחַת
 הַשׁוֹר וְהַמֵּת יִהְיֶה-לּוֹ: {ס} לוֹ כִּי יִגְנֹב-אִישׁ
 שׁוֹר אִו-שֶׂה וּטְבַחוֹ אִו מָכְרוֹ חֲמִשָּׁה בְּקָר
 יִשְׁלַם תַּחַת הַשׁוֹר וְאַרְבַּע-צֹאן תַּחַת
 הַשֶּׂה:

v. 33: וְכִי-יִפְתַּח אִישׁ בּוֹר: *Mishneh Torah*, Laws of Damages to Property, 13:2: The law of the “pit” is understood by the Rabbis to refer to any type of hazard that one created in a public domain.

וְנִפְלֵ-שָׂמָה שׁוֹר אִו חֲמוֹר: *Mishneh Torah*, Laws of Damages to Property, 13:1:

One who created a hazard in a public domain is only liable if an animal was injured or killed by it. But if a person was injured, or vessels were broken, he is exempt.

v. 35: וּמָכְרוּ אֶת-הַשׁוֹר הַחַי: In Rabbinic tradition, the rule is that the owner of the goring ox pays half of the damage מגופו (from the “body” of the ox), meaning that the payment cannot exceed the ox’s entire value (*Mishneh Torah*, Laws of Damages to Property, 13:2–3). The reason only half of the damages are paid is because an ox that has never gored is not

expected to do so, and its owner cannot be expected to be on guard for that. The scenario described in our verse is one where the gorer and its victim are of equal value.

v. 36: שׁוֹר נִגָּח: If the ox was known to be a habitual gorer, its owner must take full responsibility for guarding it from doing so again, and he is liable for all damages.

v. 37: חֲמִשָּׁה בְּקָר ... וְאַרְבַּע-צֹאן: The ratios of four and five were likely meant as a deterrent, probably since an animal thief was unlikely to be caught, especially after slaughtering or selling the animal.

R Meir says that since an ox can work, its loss is felt more strongly. (*Mekhilta*)

Ibn Ezra cites this view by way of R Saadia Gaon. He also cites a Karaite hakham who says that since an ox cannot be easily hidden, only an experienced thief would dare steal one.