Why So Many Laws? Mishpatim and the Making of a Moral Society



This piece first ran on our Substack, Reading Jewish History in the Parsha. We're pleased to share it here on our website.

"But Mom, *why*?" As a parent of four young children, I've heard this query more often than I can count. For a child (or my children, at least), it's not enough to know that something is "the rule"—they want to understand *why* it's the rule, or at least who they have to speak to in order to get said rule changed.

This effort to understand the source and purpose of law is no brand-new phenomenon. The Torah portion of Mishpatim is notable in that it introduces many Torah laws, offering many examples to boot. And yet, the question underlying the laws of Mishpatim is one that has been hotly debated throughout Jewish history: Why do we need these laws? What is their purpose? Can they be changed? Should they?

Why Law?

Mishpatim opens with God instructing Moshe on a body of law he is to transmit to the Jewish People: "*Vi'eleh hasmishpatim asher tasim lifanayhem*—these are the laws that you should place before them." This pronouncement follows the Ten Commandments, but presents an otherwise abrupt shift in the Torah from narrative to law. As the late Rabbi Sacks put it:

Up until now, the book of Shemot has carried us along with the sweep and drama of the narrative: the Israelites' enslavement, their hope for freedom, the plagues, Pharaoh's obstinacy, their escape into the desert, the crossing of the Red Sea, the journey to Mount Sinai and the great covenant with G-d."

And yet, instead of continuing with the powerful narrative of Shemot thus far, the Torah veers towards a different direction, focusing on the nitty-gritty of law.

And what range and specificity we find in the laws of Mishpatim! There is an extensive discussion of slavery, including the rights of slaves and opportunities to pursue freedom, and analyses of murder, manslaughter, and other forms of killing that would rival my criminal law classes. Mishaptim contains the famous language of "an eye for an eye;" it covers the laws of ransom that are so painfully relevant in our present moment. It addresses sorcery, the need to protect widows and orphans, and the appropriate guidelines for interest in lending. Mishpatim provides law on bribery and ethical judgment, and addresses seemingly legal minutiae like the added damages one must pay if one harms a pregnant woman.

In this dizzying array of laws, as we read Mishpatim, we may wonder—why? Why all these laws? Why here? And on a deeper level, why *does* the Torah choose to focus its messages through detailed law and not only narrative? What is the ultimate purpose of this body of law, and how does that impact its relevance over time?

The Torah contains two types of laws—"*chukim*" and "*mishpatim*." Traditionally, *chukim* are considered to be laws that don't have an obvious explanation, while *mishpatim* contain laws that "make sense." This distinction illustrates the primary purpose of law: to create a functional society, with basic boundaries and safety mechanisms. *Mishpatim* denote social laws, rules that govern how people live together and engage with one another. *Chukim*, on the other hand, connote laws that don't have obvious connections to the larger social good, such as Kashrut.

While the primary purpose of the laws in Mishpatim may be to create a functional and orderly society, the Torah seems to hint at a deeper purpose as well: to create a society that is not only effective, but *just*. The moral code beneath many of the laws in Mishpatim speaks to the Torah's broader sense of justice. Particularly powerful is God's exhortation to protect the widow and orphan: "You should not oppress the widow and the orphan. If you do mistreat them, I will heed their outcry as soon as they cry out to me, and my anger shall blaze forth and I will put you to the sword, and your own wives shall become widows and your children orphans." Throughout the Torah, the widow and orphan symbolize the vulnerable members of society. As Rashi frames it in his commentary on Exodus 22:21, the widow and orphan are "feeble in their defensive power" (i.e. have no one to protect them), and are therefore frequently targeted. Both the Torah's statements and Rashi's interpretation expose a more complex relationship between law and the social order than might first meet the eye. While all societies require basic rules and enforcement to function, there are still base human impulses that survive in nearly all societies—and one of these is the exploitation of those in vulnerable positions by those with power. By imposing laws that govern how those with power must treat those without power, the Torah aims to counteract these impulses, creating a society where justice, ethics, and human rights are woven into the fabric of interpersonal interactions.

Counter-Arguments to Mishpatim

At this point, it seems as though our work is done—we have discussed the Torah's surprising transition from story to law in Parshat Mishpatim, as well as the practical and ethical considerations behind the implementation of law more broadly. However, as we will see, there have been powerful counter-arguments to the use and implementation of law throughout Jewish history, making it difficult for the society envisioned through the laws in Mishpatim to become reality. While there are numerous points to consider, I will focus on two particular challenges: (1) navigating the spirit versus the letter of law, and (2) understanding Jewish wrongdoing in the context of Jewish law. Each of these challenges center on a collective question—Do we *really* need *so many* laws? And are they really relevant millennia later?

One of the most complicated moments in Jewish history is the development of alternative movements and denominations within Judaism that embraced Jewish identity while dismissing Jewish law. In many cases, detractors of Jewish law pointed to the conflict between the spirit and letter of the law, and the tension that can arise when something legislated by the Torah or halacha doesn't "feel right," or align with broader values and sensibilities.

This tension has been part of Jewish life for a long, long time. In *Hilchot Mamrim*, the Laws of the Rebellious Ones, the Rambam denigrates those who deny the Oral Law. "He follows after his frivolous thoughts and his capricious heart," writes the Rambam, seemingly describing a person who uplifts their own interpretation of Jewish thought above the strictures of Jewish law. Centuries later, in the 18th and 19th century, the Haskalah, or Enlightenment movement, sought to modernize Judaism by rejecting laws that conflicted with European cultural values. Moses Mendelssohn, a scion of the Haskalah movement, believed the religious dogma should not coerce its followers, but should rather inspire them with its larger moral message. Eventually, the Reform movement grew out of the legacy of the Haskalah, inspiring yet more debates as to the continuity of Jewish law.

The question of adherence to the code of Jewish law—or lack thereof—was so hotly debated that it featured at the very center of some of the most significant moments in American Jewish history. For instance, in July of 1883, over 200 guests gathered in Cincinnati, Ohio, to celebrate the first graduating class of Hebrew Union College. Founded by Isaac Mayer Wise, the College, as well as a partnering association of congregations, was initially intended to gather both traditional and Reform-leaning rabbis to create a unified Jewish community. Participating rabbis held radically different views on what the role of traditional Jewish law should be in American Jewish law, with some even campaigning for the Sabbath to be transferred to Sunday. It was in the midst of these debates that the Hebrew Union College banquet was held. While the program and speeches were delivered as planned, it was another element of the banquet that created an uproar, and ultimately changed Jewish history: the menu. The first course consisted of "Little Neck Clams," followed by "Soft-Shell Crabs" and "Salade of Shrimp." Some rabbis rushed out of the room, others stood stone-faced, refusing to applaud. The dairy ice cream served following the seafood and meat dishes did not help matters. Historians debate whose idea it was, exactly, to serve all the non-kosher food—was the caterer acting alone? Was it a faction of liberal, Reform-leaning rabbis who co-opted the program? Was it a simple failure to review the menu? Regardless, this "*trefa* banquet," as it has come to be known, eventually led to the Reform movement adopting a more radical approach, and the subsequent creation of the Conservative movement. Soon after the banquet, in 1885, the Reform movement adopted the Pittsburgh Platform, stating the core beliefs of the movement at that time. In this document, the Reform movement noted that it found only "moral laws" in Judaism to be binding, rejecting those "such as are not adapted to the views and habits of modern civilization." As we can see from this history, and from the range of Jewish practice in modern times, the question of which laws we still "need," and why, goes to the heart of Jewish thought.

Beyond the question of the long-term applicability of Jewish law, Mishpatim also urges us towards a deeper question of human nature: Why do we need *such* detailed laws in order to build a healthy and ethical society? Can't we follow the spirit of the law and trust our own instincts, alone?

Jewish history has two layers of narrative: the stories we like to tell, and the stories we shy away from. Throughout Jewish history, Jews themselves have been agents of harm at times—villains, as well as heroes. Even in the Exodus narrative itself, there were Jews who "did not wish to depart Egypt," who died there instead, according to Rashi. Shemot Rabbah adds that "there were sinners among the Jews," echoing this sentiment. In reading *Bodies and Souls: The Tragic Plight of Three Jewish Women Forced Into Prostitution in the Americas,* I was shocked to read a very difficult piece of pre-war *shtetl* history, one in which human trafficking occurred in horrifying numbers. Not only did some local leaders know this was happening and look the other way, some even helped facilitate these trafficking rings in exchange for compensation. In modern times, the rise and devastating fall of Bernie Madoff is yet another example of Jewish wrongdoing.

It is an easy, and understandable, instinct, to want to push these stories into obscurity, in favor of a narrative that emphasizes Jewish heroism. However, understanding what makes people behave badly is actually fundamental to understanding the purpose of the laws in Mishpatim, in all their specificity. In his remarkable book *Why They Do It*, Harvard Business School Professor Eugene Soltes examines the thoughts and impulses behind white collar crime, including famous cases such as Madoff. Soltes' findings offer valuable insight into wrongdoing more broadly, and why specific, focused laws, such as those in Mishpatim, are so critical to building an ethical society.

First, Soltes points out there is often a disconnect between what we intellectually understand to be right or wrong, and what we intuitively feel is acceptable. For instance, placing the wrong number in a spreadsheet of financial reports is unlikely to inspire great emotional reactions, yet it is the first step towards financial fraud. Second, Soltes finds that in interviewing white-collar criminals, very few had put much thought into their behavior, either its risks to them or its harm to others. Instead, they "extended surprisingly little effort deliberating the consequences of their actions." The lack of proximity between the perpetrator and victim of financial crimes made it even harder for executives to make moral choices. Many executives interviewed made intuitive decisions, ones that turned out to be catastrophic for their victims, their companies, their families, and themselves. Soltes argues that the human call to moral behavior is much more tenuous than we realize, and that without clear structures, guidelines and monitoring, we are far more likely than we expect to revert to wrongdoing. Our emotional, intuitive impulses are far less helpful than we think, easily leading us towards temptation. As one summary of Soltes' book puts it, "it's easy to imagine that we should have some strong intuition telling us 'No!' when faced with the choice to engage in wrongdoing. Yet this impression overlooks our basic human nature, which can easily fail to recognize distant and temporally offset harms."

As *Why They Do It* illustrates, the line between morality and immorality is thinner than we might think, and our ability to intuitively interpret the moral choice in any given scenario is far less reliable than we might expect. The laws in Mishpatim, in all their intricacy, are particularly resonant with Soltes' book in the backdrop, illustrating how critical law is to creating a just society, fueled by ethical behavior.

To the untrained eye, law may seem like a boring, trite concept, designed to limit us through technicalities and trivialities. We may experience this thought process firsthand as we read through Mishpatim, shifting from the dramatic story of the Exodus to the drier telling of the laws and commandments. And yet, as we see in Mishpatim, law and narrative are fundamentally intertwined. It is our history as a people that informs many of the laws God commands in Mishpatim. "You shall not wrong or oppress a stranger," God demands, "for you were strangers in the land of Egypt." Rabbi Sacks invokes the work of Robert Cover on *nomos* and narrative—the concept that beneath any laws are a *nomos*, a vision of the ideal social order, and behind every *nomos* is a narrative of *why* that is the idealized vision. Mishpatim is not just a compilation of laws and strictures—it provides a *nomos*, a model of a society that is not only functional, but ethical, where might and power do not alone dictate behavior, and where vulnerability is protected. And behind this *nomos* is the Exodus narrative we have just read and heard in the Torah portions, the famous story of the vulnerable, oppressed Jewish people walking into freedom. Because of what we have been through, it's not enough to create *a* society, we must build a social order that counteracts oppression.

This vision of Mishpatim also helps us navigate attacks against Jewish law. While society has changed over thousands of years, human impulses have not, and the underpinnings of Mishpatim—the easy human instinct to prioritize power over justice–are just as relevant today as they ever have been. Furthermore, studies such as Eugene Soltes' work highlight the relative ease of wrongdoing, and the challenges of behaving ethically, especially when we can get away with the opposite. Through Mishpatim, we learn that law is not only intrinsically connected to the story of the Jewish People, but fundamental to building a healthy society, avoiding wrongdoing, and creating a world of truth and justice.
