

Mishpatim: The Source of Civil Law

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Civil law in Judaism seems to be mainly a rational process. True, there are some basic civil laws stated in the Torah, but most of the Talmudic discussions center around human reason and logic. As a matter of fact, the *gemara* (*Bava Kamma* 46b) uses the following expression as one of the most basic tenets of Jewish civil law: "why do we need a *passuk* if it is common sense?" We also find the commentaries (*Rabbeinu Bachaya*, *Breishis* 18:20) explaining why the people of Sdom were held accountable for their actions despite the fact that they did not have a Torah, nor commandments that had been imposed upon them. They explain that basic human decency and civil behavior is something that ought to be innate to a human being. The people of Sdom, not having this innate sense, were not deemed worthy of survival.

Yet when we look at the *parsha* of *Mishpatim* we find a very different perspective. The very first Rashi in *Mishpatim* explains that the letter *vav* in the word '*veilaeh*' is there to teach us that the laws of *Mishpatim*, which are by and large civil laws, were given at Sinai.

Rashi also explains that the proximity of *Parshas Mishpatim* to the *parsha* dealing with building an altar is to teach us that the *Sanhedrin* [the High Court of Israel], needs to be located adjacent to the *Beis Hamikdash*. One understands that this is not simply a matter of decorum, but it is a statement about the conceptual proximity of the civil laws to the divine temple.

But perhaps the greatest indication of the connection between civil law and Hashem is from the next word, "that you shall place before them". Rashi, quoting the Talmud (*Gittin* 88b), says that one is prohibited to go to a court that is not religious in its nature even if it rules the same way regarding the particular litigation. Thus, despite the fact we're talking about a case where the Jewish *beis din* and the secular court will both rule exactly the same way, there is a very strict prohibition against going to the secular court. It is expressed in the following language: "a person who brings a case to a non-Jewish court is desecrating God's name and enhancing the name of the idols". This is really difficult to understand; if the purpose of civil law is to make sure that each person receives that which is rightfully his, then what difference does it make who the arbiter is thereof? Let us take an analogy. Nowadays we check a *sefer* Torah by a computer program. No one looks askance at it; if anything, we feel it is more accurate. To be sure we look over all the problems that the computer flagged, and we double check that the computer is not in error. The computer, of course, cannot make the call of whether or not a problem invalidates the Torah. But as far as the technical determination of whether there are issues to examine goes, it does not make any difference. So, if the secular court will issue the same ruling, and the money goes to its rightful owners, why is that treated differently than checking a Torah?

The *passuk* which exhorts us not to twist and distort judgment states as the reason is that, "judgment is to G-d" (*Devarim* 1:17). In the context of the *passuk* it would seem as follows: the *dayan* is but the **arbiter** of a system whose validity is drawn from 'someone' outside of himself. He does not decide essentially what is right or wrong; Hashem is the one who **establishes** right and wrong. The *dayan* merely adjudicates and referees the particular event at hand and makes a decision of whether or not it fits certain criteria. This means that the 'right and wrong' and the 'good and the bad' of even those *mitzvos* that we consider graspable by the human mind, stem from a place outside of a human reason. It is Hashem's will and decision. This is not different at all then, for instance, the human measuring of *lulav* and *aravos*. The

standard has been set by the Torah; we merely measure and determine whether or not this particular item fits the Torah standard.

This is what our *parsha* is trying to stress. The *halachos* of ownership of objects, the appropriate transfer of ownership, the responsibilities of transactional parties to each other, and the responsibilities to pay for various damages done, are anchored not in human reason sees but rather in Divine diktat.

However, it is true that human beings, being that they possess a divine soul, have an innate feeling for that sense of right and wrong. That is actually the reason why Sdom, who had no sense of that decency, did not deserve to live. Their actions and mindset demonstrated that they had no connection to a divine soul. But for everyone else - who does have that sensitivity - it is fundamental to understand that the validity of these laws and axioms is not **because** the human mind feels that way, but rather because it is Hashem's decision. We, with our spiritual intuition, are merely picking up on it.

It is true that the *dayan* uses his mind to discern the facts at hand and determine the application of the appropriate halacha. It is true that anything that we can derive with our minds by extrapolating logically from the Torah does not need a specific command. But the fundamental validity of it all is because of Hashem's will and wisdom. That is why this *parsha* was placed next to the *parsha* of the giving of the Torah. It is to tell us that despite the fact that all of these laws seem quite rational, and we use logic to determine their application, still the root of the halacha is G-d-given.

Thus, a person who brings litigation to a secular court is making a statement about what is the root of propriety and honesty. He is making a statement that the human being himself is the source of morality regarding civil law. That indeed is a desecration of Hashem's name. Our firmest belief is that right and wrong in all matters - both so-called religious and so-called mundane - are all divine in origin. We, as humans, have been given the privilege to **participate** in the application of the *mishpatim*, using our own mind to apply Hashem's *emess* to each and every case.