

SEPHARDIC INSTITUTE

511 Ave. R Brooklyn, NY 11223-2093
Rabbi Moshe Shamah, Director

718 998 8171 Fax: 718 375 3263
Rabbi Ronald Barry, Administrator

דב"ט

Parashat Shofetim Part I

1. The Leadership Groups

In *Parashat Shofetim* Moses begins to expound the third division of the law compendium, the *mishpatim*, the ordinances that govern man's interaction with his fellowman, as well as with fellow creatures. These laws constitute a significant portion of the Torah's domestic, civil and criminal law. Except for several closing regulations, this section completes the "stipulations" portion of the covenant renewal between G-d and Israel. As Moses had presented the *misvot* and *huqim* (extending from Deut. 6:4 to 16:17) as expansions of the Decalogue's first five commandments, he expounded the *mishpatim* as related to that proclamation's later commandments.

Before proceeding to the elaboration of the sixth commandment, however, Moses provides an introduction to the *mishpatim* section. In it he transmits rules and regulations that govern the four basic branches of national leadership: the judges (together with details pertaining to the legal justice system), the king, the priests, and the prophet. "Elders," though part of the leadership and sometimes officially called upon to be involved in addressing certain issues (see Deut. 19:12; 21:3-6; 21:19-20; 22:15-19 and 25:7-9), are omitted. Their prominent status was a function of their positions as heads of family clans with responsibility to their constituents, and their influence and commitment could therefore not always be reliably counted upon. In any event, the authority of a developing, organized bureaucracy was increasing, progressively diminishing the power of the elders; most of the latter's functions were being replaced by judges and eventually by officials of one type or another.

It is a major Torah innovation that the responsibilities of the leaders and the regulations governing and limiting their power are part of the public record, of equal accessibility with the other laws and expected to eventually be known by all. Such common knowledge facilitates a degree of accountability to the public and

helps promote continuation of the proper division of power and prevention of domination and abuse by a single group of the leadership.

As we have seen in our study on *Parashat Re'eh Part III*, Moses had elaborated the final cluster of laws in the *huqim* section, those of the three festivals, as an expansion of the Decalogue's fourth commandment (that of the Sabbath). It therefore is possible that the national leadership groups that he presents at this point were intended to be seen as an extension of the fifth commandment, the obligation to honor father and mother. The leadership groups stand in the nation as father and mother do in the family. Judges, king, priests and prophet are expected to deeply care for and be dedicated to the welfare of their charges. The latter, in turn, are to respect and revere their leaders. That the fifth commandment had previously been expounded to mandate that the Israelites honor G-d in an inference from their responsibility to honor parents (as expressed in "You are sons to Hashem your G-d" [Deut. 14:1]) does not preclude it from being expounded in another manner. There is no reason why commandments may not be given multiple expansions.*

Another possible explanation as to why the discussion concerning the leadership groups is located precisely in its present location is based on a major conceptual distinction as regards the fundamental derivation of different classes of law. Although G-d commanded all of the Ten Commandments, the first five are in the realm of His sovereignty and jurisdiction. It is His primal right to require those laws and it is understood that He intervenes in the human sphere to demand their fulfillment. Of course society's leaders teach and enforce those laws, but in the philosophy of law they are seen as doing so on G-d's behalf. This is self-evident as concerns the first four commandments. The command to honor father and mother, although it involves interaction in the human sphere, also belongs with this group because of the covenantal context. It is explicitly spelled out in the beginning and end of the

(“do not deviate from the word they speak to you right or left” [17:11]). The king is adjured וְלִבְלֹתֵי סוּר מִן- (“that he is not to deviate from the *misvah* right or left” [17:20]).

d) The priests are termed *hakohanim-halviyim* (“the levitical priests”) in the passages that describe the judges (17:9), the king (17:18) and the priesthood (18:1).

e) The literary formulations of the exhortation (and punishment) concerning one who intentionally disobeys the judgment of the topmost legal authority are very similar to what is stated concerning the prophet who transmits a false prophecy or who speaks in the name of other gods.

Several less-prominent commonalities are also found in these passages.

In our *Parashat Re'eh Part 1* study we had occasion to address the nine-verse digression (16:21–17:7) to legislate laws concerning improper worship and idolatry in the midst of our *Parashat Shofetim* discussion on judges and the legal justice system. (Briefly, our conjecture was that it appears to be a case of וְאִין מְקַדְּמִים וּמְאַחֵרִים בְּתוֹרָה – that the passage of 17:2-7 “belongs” with the passages regarding idolatry in Deuteronomy 12–13 but was placed here to illustrate judicial procedure and articulate several key relevant principles. Of the three previous verses (16:21–17:1), one may have concluded the preceding discussion in chapter 12 where it seems to naturally belong and the other two fit the first of the passages regarding idolatry but for the sake of maintaining an identifiable block, were “transferred” here together with the following case.)

3. Applications of the Later Decalogue Commandments

In the Decalogue, the section of interpersonal ordinances understandably begins with the prohibition of the leading transgression in the human sphere, that of homicide (the sixth commandment). In a corresponding manner, the elaboration of the laws of interpersonal relationships in the *mishpatim* section begins with an explication of various aspects of this statute (Deut. 19:1-13). Moses’ primary focus in this passage is on protecting an unintentional killer from a blood-avenger. He details laws concerning such an

individual and the cities of refuge, emphasizing the great importance of providing asylum to an unintentional killer. He follows this with an assertion of the categorical rejection of asylum for the intentional murderer. When an individual has been determined by the court to be guilty of the death penalty a city of refuge cannot save him. It is a Torah innovation that the sanctity of life cannot be compromised or negotiated about. (See Num. 35:31 for a complementary statement on the subject.)

The following verse (19:14) articulates the primary application of the eighth commandment – the prohibition against stealing. As the first case of expounding this commandment, the law addresses the most egregious instance of this transgression, that of stealing another’s territorial estate. Such an act strikes against an essential privilege of the covenant, each individual’s right to an allotment of land in the promised land. The verse explicitly expands on this point; it prohibits moving a neighbor’s border markers that have been established by the early generations “in the inheritance you shall inherit in the land Hashem your G-d gives you to possess” (ibid.).

The next passage (19:15-21) moves to the ninth commandment, the prohibition against giving false testimony. It places this law in a full context of related issues. It speaks of the inadequacy of one witness to determine the outcome of a case, the requirement for the court to conduct a thorough investigation, the punishment for giving false testimony and the deterrent effect the latter would have on the community. Whereas the apodictic Decalogue formulation has (in the Deuteronomy version): וְלֹא-תִעַד בְּרֵעֲךָ עַד שְׂוֵא (“You shall not testify against your fellow-man as a false witness” [5:17]), here, it states עַד-שֶׁקֶר הָעֵד שֶׁקֶר עָנָה בְּאָחִיו (“The witness was false, he testified falsely against his brother” [19:18]). “Brother” replaces “fellow man” and *sheqer* replaces *shav*. (The Exodus Decalogue formulation of the ninth commandment employs *sheqer* in the spot where the Deuteronomy Decalogue has *shav*.) Clearly, this passage is intended as a primary expansion of the ninth commandment.

Thus, the section expanding on the later Decalogue commandments begins with a striking cluster of three first-level examples of commandments six, eight and nine respectively. Each is unsurpassed by any other formulation in the Deuteronomic law compendium as

an illustration of these three Decalogue precepts. The absence of an application of the seventh commandment (the prohibition against adultery) in this grouping requires an explanation.

In the Leviticus 19 exposition of the Decalogue, the primary application of the seventh commandment was “postponed” to a section that followed shortly afterward in Leviticus 20. In the latter context the linkage to the seventh commandment was explicit and emphasized by means of multiple usages of the key word for adultery (see our study *Parashat Qedoshim Part II: Linkage with the Decalogue*). Here, the articulation of the adultery law is in Deuteronomy 22:22, and the regulations attached to it do make it into a section. (This being said, it should be noted that derivative cases of the seventh commandment are mentioned in Leviticus 19 and – as we point out in the next section – in Deut. 21:10-14). It appears that Moses proceeded according to Decalogue sequence, in clusters of law, but in a general way, employing other considerations of association also. We have not yet attained a full understanding of his system of linkage of the laws.

The tenth commandment, comprised of *lo tahmod* and *lo titaveh* clauses, prohibits one to covet a fellowman’s wife, house, field, etc. This commandment was placed at the conclusion of the Decalogue apparently because it was to serve as a general reinforcement for commandments six through nine. In our section of law there is no explicit counterpart to it. However, the following passage in our *parashah* does make reference to an individual’s new house, orchard and wife. The law is concerned that he not die in battle and another man take his place in any of these milestones. This is a proclamation that a man is entitled to satisfaction with his wife, his home and his field, etc., countering the temptation for another to desire to acquire them, which is what the tenth commandment is about.

4. Second-Level Applications

The general assumption has been that the laws are in a systematic order of one type or another, intentionally located just where they are. Connections are governed by rational considerations, principles of association and similarity of details. Sometimes, such linkage is self-evident but “stream of consciousness” associations are often extremely difficult to recognize.

As Ibn Ezra stated, we should attribute any inability to understand linkage of the laws to our shortcoming of comprehension. The failure to persuasively demonstrate linkage has long been the case for much of the law compendium.

However, the evidence appears compelling that the *misvot*, *huqim* and *mishpatim* sections reflect Decalogue sequence (see our earlier Deuteronomy studies) and that the *mishpatim* begin with first-level applications of Decalogue commandments six, eight and nine, as pointed out in the previous section. Accordingly, it is appropriate to assume as a working hypothesis the possibility that Decalogue sequence plays a continuing role. The following may bear this out.

The latter portion of *Parashat Shofetim* through the first case of *Parashat Ki Tese* – five passages – contains four passages of warfare-related ordinances with one nonwarfare case in their midst. (The latter case concerns the murder of a civilian, and appears to be located where it is because of the unique message it provides in a warfare context, as we shall explain in our *Parashat Shofetim Part III* study.) A brief outline of these passages together with the second case of *Parashat Ki Tese*, which we intend to comment upon at this time, follows:

- 1). Preparations for war and military exemptions (20:1-9)
- 2). The requirement to opt for peace (20:10-11); dealing with the surrendered city and the vanquished foe (vv. 12-18)
- 3). Prohibition against wanton destruction during a siege (20:19-20)
- 4). The “slaying of the heifer” procedure associated with an unknown murderer (21:1-9)
- 5). Treatment of the beautiful captive girl (21:10-14)
- 6). Inheritance rights of one’s firstborn son from the “hated” wife (21:15-17)

With the warfare subsection, Moses returned to the subject of killing but on another plane, in second-level applications of the sixth commandment. Despite the categorical imperative of “Thou shalt not kill,” the Torah acknowledges the necessity of sometimes engaging in warfare with the taking of life. In accordance with its values, the Torah significantly regulates the initiation of war and wartime killing in several ways novel to legal codes of the time. As we

will discuss in our study on Deuteronomy 20, these passages greatly emphasize the value of life and loudly proclaim that in certain ways the prohibition inherent in the sixth commandment is always relevant, even in warfare situations.

The first warfare passage expresses sensitivity to life and its milestones, acknowledging the exceptional anguish attendant upon the death of an individual who was on the threshold of fulfilling one of life's goals. The second passage limits the options of the Israelite military, requiring a call for peace before entering battle. The third, speaking in a context of besieging a city even for a lengthy period of time, prohibits the cutting down of the enemy's fruit trees even when required for siege works (20:19-20). This revolutionary law, contrary to the well-known practice in the ancient world, recognizes that fruit trees are vital for life and even in war circumstances must be preserved, for the local population will require them in the future. (The nonfulfillment of this precept in Elisha's prediction and Israel's behavior in 2 Kings 3:19 is disappointing.) The "slaying of the heifer" case, dealing with society's response to a violation of the sixth commandment, follows. Appearing in the midst of the war passages, that law reflects the inestimable value placed on each human life, as we will discuss in our study on that passage.

The final passage in the warfare series addresses the Israelite captor's sexual lust for the female war captive (Deut. 21:10-14). When the captor feels a strong desire for the "beautiful" non-Israelite captive woman, regarding whom "you would take her for your wife" (the most probable translation of וְלָקַחְתָּ לָּךְ אִשָּׁה לְאִשְׁרָאֵלִי), Torah law intervenes to prevent what may be an impulsive and exploitative act, driven by sexual passion.

The captor-captive relationship has ever been exploitative and abusive, the captive girl bereft of rights and dignity and the captor free to act as he desires. The Torah imposes a one-month restraint for what may be called an adjustment and trial period. During this time the woman, shorn of any attractive attire and beauty accoutrements that she may have been dressed in, "sits" in the captor's home, mourning father and mother. This period is marked by sexual abstinence. In the straightforward reading of the law,

sexual union is only permitted afterward. If the captor chooses not to marry her, the law insists on her freedom and fair treatment. This prohibition against sexual impropriety is likely presented as a derivative application of the seventh commandment, *lo tin'af*.

The following case concerns a man who has two wives, one "loved" and one "hated," surely relative descriptions. He has sons from both, but his firstborn is from the "hated" wife. At issue is the firstborn's extra portion of inheritance. History is replete with instances of the favorite wife gaining preferable treatment for her son at the expense of the sons of other wives. The Torah provides for the rights of the "hated" wife's son, prohibiting the father from arranging that the extra portion of inheritance go to the "loved" wife's son. This is an application of the eighth commandment, "Do not steal," carrying it to another plane.

Thus, beginning with chapter 20, it appears possible that there is a cluster of second-level applications of commandments six, seven and eight in succession, reflecting Decalogue sequence. As this immediately follows the cluster of first-level applications of commandments six, eight and nine, which began the *mishpatim* section, the case for continuing to use the Decalogue sequence in analyzing the order of laws is strengthened.

Endnote

* The formulation of honoring father and mother in the Deuteronomy Decalogue (5:16) comprises twenty-two words, thirteen of which are in the expression of reward. Most of the latter words reappear with relevant modification in the cases of the first two of the leadership groups, the judges (16:20) and the king (17:20). Such connections may be part of a "template" and do not prove linkage but their presence should be acknowledged. It should also be noted that the first case in the section that speaks of the prophet is the prohibition against a practice diametrically opposed to honoring father and mother – the abomination of a parent consigning a son or daughter to the fire (18:9-10).