

In Parshas Mishpatim we follow the natural course of an emerging governance structure: the Ten Commandments leads to other laws that relate to civil and religious life. Some of the laws we read draw from other cultures in the area, for example the Code of Hammurabi, though scholars explain that many of the Mosaic laws are unique and progressive for their day. We might also think of these laws as executive orders – fiats by God or Moses, if you will – as there is no legislature or citizen’s council who debated these laws before they got enshrined into the parashas – at least not as we know. (Keep that point in mind as I give my drash.)

Many of the laws in Mishpatim include a consequence – tying the behavior to a particular punishment that the offender can expect, depending on the crime that he or she committed. I would hazard the guess these laws, especially the harsh ones, were very handy tools for prevention: for example, who would dare strike or curse a parent rather than run away or take some other refuge, when confronted with the following consequence?

Strike your mother or father? You shall be strangled to death.

Curse your mother or father? Death by stoning.

When we read the laws and their consequences in the Parasha, I wonder: how much turns out to be just a threat -- albeit with the benefit of discouraging people from breaking the law in the first place—VERSUS how much, or how often, was the stated consequence ever put into action? Do we have evidence of Jewish people being strangled because they struck a parent? Or being stoned if they cursed their mother or father? In my research¹, I could

¹ https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1010-99192021000300007

find only two cases of stoning in ancient times for violations of divine law (as it was called), but neither stoning was for violating these two laws.

So here is my take: When we consider Mishpatim, I think we are missing half the story if we only think about the what the laws say, and ignore how they were, or were not put into practice by the community. This leads to a key question: For those laws that didn't simply act as deterrent, how many were actually implemented and enforced and by whom? How did this enforcement actually work, especially back in the desert when our ancestors could best be characterized as a group of bewildered and begruntled freed slaves?

Remember, we are not just talking about a small community of folks on a camping trip where everyone pretty much knows everybody else. Far from it: Exodus 12, vs. 37-38 (I'm quoting now) talks *about six hundred thousand men on foot, besides women and children. A mixed multitude also went up with them, and very much livestock, both flocks and herds.* This same number is also mentioned in the Book of Numbers (1:46; 2:32; 26:51). Even if the word thousand (eleph) could be rather understood as "clan," as some commentators suggest, the number still sounds huge – albeit probably over-inflated, at about 2 million people. That debate is immaterial to my focus, however: the point is, it is a big number and who on earth did the enforcing in those early days? Even later on, once the Israelites settled in Canaan, in the promised land, one can surmise that the infrastructure needed to monitor the laws—let alone ascribe accountability, enforcement, and consequence – must have taken generations to develop.

I recognize that issues of legal fiat and enforcement reverberate strongly in our current environment. L'havdil to some extent – the situations are not the same – but might we apply our learning from ancient times to the present?

Perhaps I am wrong by even asking this question. The "Laws of Moses" in ancient Israel was different from other legal codes in the ancient Near East because transgressions were seen as offences against God rather than solely as offences against society (civil law). Consequently, the laws set out in the books of Leviticus and Deuteronomy came to be considered supreme over all other sources of authority (for example, going beyond any king and/or his officials). Eventually we learn that the Levites (members of the tribe of Levi) were assigned as the guardians and interpreters of the law. But who organized them, trained them, and when? How did all that work? What role, if any, did the common Israelite play as citizen-enforcers?

But Okay, let's stick with the Levites as the guardians and interpreters of the law. One wonders – or at least I do – how well they did, particularly in the beginning when the laws were brand new and the Israelites -- lots of them - - were still wandering in the desert.

I mean, it takes time to get this stuff right. The Trump teams had been planning over four years to make sure that, if and when they returned to the White House for a second term, all their intents would be clearly spelled out in Project 2025 and thus, the implementation would be like clockwork. And they still got lots of it legally wrong within their first two weeks in office. Many other lawsuits are currently underway – the more the better, from my point of view. So much of what is promised as exceptions or waivers, is also not happening – for example that food aid could continue as part of foreign assistance, but the US Government is still not paying for it. This is true even when the courts have decreed otherwise. There are so many examples. In relation to the drash, however, the point is clear: even in modern times, making a mishpat – a law or a decree – and implementing it and then enforcing it – are entirely different steps. We cannot assume that one will lead to the other.

The problem of enforcement is not unique to the ancient Israelites or to the Oligarchs currently inhabiting the White House. Having grown up in New York, I'm an inveterate jay-walker and I've never gotten into trouble for it, even though jay-walking is clearly against the law. I guess jay-walking is a victimless crime, so it's not very important in the scheme of things. By contrast, in so many countries where I have worked, there are great laws on women's equality and child protection, but the abuse of women and children goes on in real life, unabated. Obviously, these laws there aren't worth much more than the paper they are written on.

So what good are laws if they aren't and cannot be enforced? L'havidl, what laws exist that we don't WANT to have enforced? I can think of a lot of new immigration statutes that I'd be happy to disobey – for example, not reporting on people I know are undocumented, helping others to find ways that they can circumvent the decrees' immorality.

You may ask, how do we decide which law to obey or help implement, and which ones we should willfully disobey? What if we decide that a law – or its stated consequence – is not ethical or defies our understanding of other laws? Does the willful disobedience of any laws make us into criminals or vigilantes? If you don't want to think about our current government, or even about some of the laws in Mishpatim, what about the laws of Jim Crow or the Nazi laws targeting Jews starting in the 1930s? I'm not suggesting that the laws described in Mishpatim are in any way comparable. But if you were an ancient Israelite, would you tell a Levite guardian who cursed a parent, given the inevitable result was that the miscreant would have been stoned to death?

And today, in relation to good laws, or bad ones, it may not be difficult to decide which ones to disobey **if** – like my jaywalking – there is little or no consequence. But what of the laws that seem unduly harsh or unfair, or

where people we think of innocent are harmed? The ultimate question here is, How do we navigate the laws and decrees that are meant to govern our lives, in order to live by our ethics and not by our fears?

Enough of my musings. Now it is your turn. I have broken this down into three specific questions

1. When you consider the value of laws under which we are supposed to live – including the executive decrees that are intended to have the power of law – how much do you think of enforcement?
2. And when it comes to enforcement, especially where citizen cooperation is needed, for what type of laws do you see yourself as complicit, and when and where, by contrast, do you see yourself doing “good trouble” as the late John Lewis described?
3. Most critically, how do you decide which role to take?