

# The Book of the Covenant

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## Parashat Mishpatim 5781

What is the covenant method?

The Lord recruits human beings (universal Noahide covenant) to become allies—later full partners—in repairing the world.<sup>1</sup> At Sinai, the Jewish people were established as lead partners, and ultimately ambassadors to the world, in this process of redemption.<sup>2</sup> The Messianic vision includes filling the earth with life and repairing the world so as to overcome all enemies of life such as poverty, oppression, war, and sickness.<sup>3</sup>

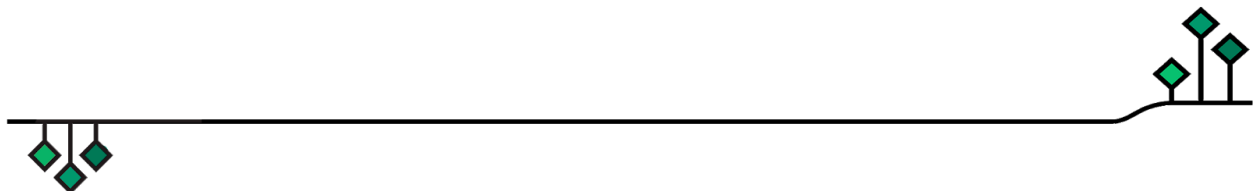
The utopian total transformation of nature and history will be realized through a pragmatic, human-centered, real life process. The essence of this paradoxical method is to start by

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<sup>1</sup> See e.g. my earlier essays on Parashat Noah (“Covenant”) and Lekh Lekha (“Covenantal Pluralism”), available here: <https://www.hadar.org/torah-resource/covenant>; and here: <https://www.hadar.org/torah-resource/covenantal-pluralism>.

<sup>2</sup> See my essay on last week’s *parashah* for the recentering of this aspect of the Sinai experience, “What Happened at Sinai?: From Revelation to Entering the Covenant in Love”, available here: <https://www.hadar.org/torah-resource/what-happened-sinai>.

<sup>3</sup> See Genesis 1-2; Isaiah 45:18; and Isaiah 66:12; 44:8-10; Ezekiel 34:25-29; Isaiah 11:4, 9; Isaiah 2:3-4; Isaiah 35:5-6 as examples. In prophetic and Rabbinic literature, when the earth becomes the dreamed of Garden of Eden, it is described as the Kingdom of God (*malkhut Shaddai*).



affirming the value of the real world as it is and the importance of living life in it. At the same, time the covenant focuses on the future ideal world; participants commit to move the present status quo toward that desired ideal state. This will be done by upgrading conditions, step by step, bringing improvements while affirming human dignity (even of proponents of the status quo) and accepting human limitations (i.e. not overriding or coercing people to move to a higher level). The Divine sets goals, instructs, inspires, and judges—but the human partner must actively participate in the process or the desired outcome will not happen.

Living by the covenant translates into reviewing every behavior in life. Each action is shaped and reshaped. While fully anchored in the present reality, each behavior should reflect some movement toward the ideal, honoring the ultimate standard. One example in this *parashah* is lending money to someone who is poor. There is no attempt to end poverty by redistributing property or setting up a socialist economy. The way of the world is that there are poor and they need to borrow. But the Torah forbids the lender from lording it over the borrower and turning the loan into social degradation. It also prohibits taking interest, for repaying that increase in the debt will drive the needy deeper into poverty. The lender can take the blanket or cloak of the borrower as collateral, but it must be returned to the borrower every night so he will not be cold (Exodus 22:24-26).

To join the covenant, one must commit one's whole life. The commandments cover ritual and religious behaviors, but they equally regulate ethics, i.e. all behaviors between human beings. Mishpatim includes prohibition of idolatry (22:19); commands to observe Passover, Shavuot, and Sukkot, and visit the sanctuary three times a year (23:14-17); a requirement to dedicate the first-born animals to the sanctuary (23:19); instructions not to eat meat that is torn by beasts in the field, not actually slaughtered properly (22:30); and not to cook a kid goat in its



mother's milk (23:19).<sup>4</sup> There are many more laws regulating parent-child interactions (21:15, 17); governing economic relations and commercial behaviors (22:6-30); placing responsibility for torts (21:22-36); for telling truth (23:1); providing equal justice in legal action (23:2); for protecting widows and orphans (22:21); as well as not exploiting or taking advantage of outsiders (*gerim*, 23:9). Contra the prevalent patterns we see in many Jewish communities today, there is no narrowing of the covenantal commitment to limited ritual areas, even as there are no sweeping utopian steps to bring the Kingdom now.

Every aspect of society will be transformed in the eventual Kingdom of God so that human life is treated as of infinite value, equal and unique. That condition is a long way from present standards. Mishpatim's Book of the Covenant is a case study of the first steps on the covenantal journey. They show, at once, the acceptance of current culture—thus implicating the Torah in present inequities and violations of Messianic norms—as well as the initial, halting steps toward the future. The Book of the Covenant is a first sketch of how to live by covenantal guidelines when the Israelites settle down in a reclaimed homeland.

As is appropriate in addressing a community of ex-slaves, just liberated, the first laws deal with the treatment of slaves (21:1ff). But wait, by the covenantal, ideal standard, slavery is utterly unacceptable! Ben Azzai taught that every human being is “created in the image of God” (Genesis 1:27; 5:1) is the *kelal gadol*, core teaching and underlying foundation, of the whole Torah (Jerusalem Talmud Nedarim 9:4, 41c). According to the Mishnah, the divine image means that every human being is of infinite value, neither measurable nor fungible, by

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<sup>4</sup> This last instruction is translated by the Oral Law into a broad prohibition of eating, or even cooking or deriving any benefit from meat and milk together.



any amount of money (Mishnah Sanhedrin 4:5).<sup>5</sup> The essence of slavery is that the person is turned into property, to be bought and sold. In the Messianic state there is zero room for slavery.<sup>6</sup> However in the world when the Torah was given, slavery was a standard fact of life. The covenant starts in the world as it is and begins the process of moving toward the ideal state.

The Torah, therefore, does not abolish slavery; it accepts it as the starting point in reality for the redemptive process which will some day end it. The covenant moves to ameliorate slavery in three ways. The Torah puts a time limit of six years on servitude; in the seventh year every slave goes free (Exodus 21:2).<sup>7</sup> Within the six years of bondage, the slave is free every seventh day; they are prohibited to work on Shabbat, as all free people are (20:9-10; Deuteronomy 5:14-15). Samson Raphael Hirsh suggested that the Shabbat law is designed to instill in the indentured servant the recognition that he or she is fundamentally a free person who is temporarily in servitude, and not a slave with one day off a week. Finally, when the slave goes free, they get special payments to tide them over and enable them to begin a free life of economic dignity (Deuteronomy 15:12-18).<sup>8</sup>

The Oral Law continued this process of incremental amelioration. The improvements included requiring that the food, shelter, and clothing of the servants be equal to the master's

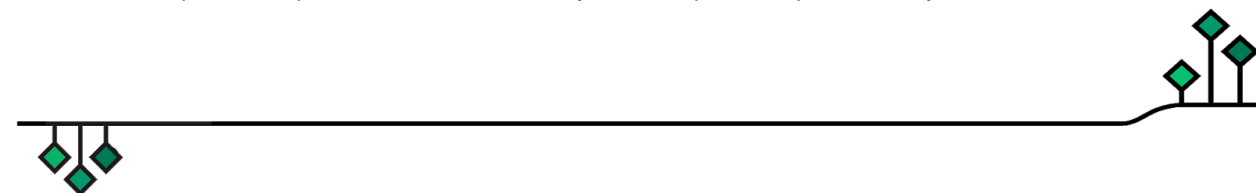
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<sup>5</sup> Which is why saving one life is equivalent to saving a whole world, see the mishnah and discussion on Babylonian Talmud Sanhedrin 37a (the other defined dignities are equality and uniqueness). The Torah specifically does not permit compensation payments for a murderer to avoid punishment for killing; see Numbers 35:31.

<sup>6</sup> See Leviticus 25:55: Jews cannot be others' slaves because they belong to God.

<sup>7</sup> Full disclosure: The slave could reject this release and voluntarily continue as a slave indefinitely; see Exodus 21:5-6 and Deuteronomy 15:16-17. However, in the Jubilee year, the Torah's year of living by its ideal standards, all the slaves, even the self-extended, had to go free; see Leviticus 25:10-11.

<sup>8</sup> The record shows that Hebrew slave owners resisted and often violated this law, obviously feeling that this restricted their profit compared to the rest of society which kept slaves permanently; see Jeremiah 34.



(= a free person); that the labor assignment be not servile or degrading but of the same type as free labor.<sup>9</sup>

Nevertheless, two demurrals must fill in the record. This process of gradual amelioration is started with Hebrew slaves. Gentile slavery is limited only in one way: violent mistreatment is prohibited. In fact, the Gentile slave is set free if the master injures them by physical abuse (Exodus 21:26-27). Furthermore, by starting with acceptance of the standing culture, the Torah is implicated in the violation of its own ultimate standard, the image of God. If the master fatally injured his slave, he is punished. But if the slave survives for a while before dying, the master is ultimately exonerated because he is guilty of **damaging his property**—not of killing a free person (21:20-21).

The Book of the Covenant exhibits a similar approach to the status of women. In the Torah's ideal world, a woman is unequivocally an image of God, just as a man is (Genesis 1:26). Equality means full standing as a citizen. However in the contemporary world, women were chattels, bought and sold. The Torah does not overthrow that world; it starts the process of amelioration within it. The Torah states that henceforth only a father can sell his daughter, i.e. general trafficking and making business of selling women is over (Exodus 21:7-11). The father can only sell her to a man who wishes to marry her (or marry her to his son) and commits to do this. When she marries, she is given all the rights of a free wife (as if she had never been bought). If the marriage is not entered into, the woman goes free (21:15).

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<sup>9</sup> See the various laws in Babylonian Talmud Kiddushin, especially the comment on 20a that “buying a Hebrew slave is like buying yourself a master,” i.e. that the regulations made hiring a slave as expensive and as restrictive as hiring free labor.



The last two paragraphs are painful to write for a person like me who believes in the divinity and eternity of the Torah. Nevertheless, believers in the divinity of the Torah must uphold their faith with integrity. They must not cover up the record in order to claim that the Torah is somehow not implicated in its human context and beyond criticism or change. This record refutes the ultra-Orthodox version that the Torah is always self-validated, authoritative, and not subject to human judgement. The Oral Law reflects that God seeks out human judgement and partnership. The problematics make the Oral Law—the process of interpretation and application revealed at Sinai—essential. The Oral tradition enables the Torah to be totally present in the human culture and context in every generation. At the same time, the Torah has a mechanism to remove the contradictions to its ultimate values and to keep the process—and Jewish society and the world—moving toward the final state of repair, when full human dignity will be realized for all.

I defend the Torah's choice of temporarily incorporating social evils out of the belief that the future ideal world is best realized by the covenantal method. Partnership with God and between the generations—working via gradualism, compromises, respect for human nature and the dignity even of opponents, and never ceasing until complete repair is achieved—may be slower and morally compromised but it will more likely get to the goal.<sup>10</sup> I acknowledge the heavy human cost along the way. Still, I believe that there is a lesser toll and less human suffering in this method than has been done by the more ideologically driven, more universal, more immediate, totally demanding movements for redemption that have proliferated, particularly in recent centuries. There are also less dead ends or systemic outcomes which totally oppress the people.

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<sup>10</sup> See my essay on Parashat VaYehi, “The Covenant Between the Generations”, available here: <https://www.hadar.org/torah-resource/covenant-between-generations>.



Mishpatim, the Book of the Covenant, sketches the beginning of a long way which is the shorter way toward *tikkun olam*. Of course, an essential condition for reaching the goal is that the carriers of the covenant never sink into the status quo, never freeze or fossilize the Torah, never sell out to the local civilization along the way. That is why joining the covenant is not limited to those who happened to be at Sinai or in the plains of Moab (Deuteronomy 29:9ff). This is an open covenant—inviting in those “standing with us **today** before Lord our God, and those not with us today” (29:14)—who will take up the task next day, next year, next century, next millennium.

