



Law as Commentary

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Even as Parashat Mishpatim marks a sharp transition from epic narrative to dense legal code, the first law of that code makes it clear that the stories of the Torah have not been forgotten.

It is no coincidence that the opening “*mishpat*” (law) deals with the requirement to let a Hebrew slave go free (יצא לחפשי) just after we have read the story of the Hebrew slaves being freed and going out (יצאו) from the land of Egypt.¹ A more pointed reference to the Exodus is then inserted a few verses later, in the instruction to take a slave who declines his freedom (אלא) to have his ear pierced on doorpost (המזוזה), a word we have only seen before during the night of the final plague, when the the Israelites were instructed to slaughter a lamb and put its blood on the two doorposts (מזוזות).² The laws of the Torah, it seems, are in conscious dialogue with the previous narrative, serving as a form of reflection and commentary on what has come before.

¹ See Exodus 21:2-4, the word, “יֵצֵא” - he will go out,” appears once in echo of three successive verses, plus once in the feminine form, “וַיֵּצֵאָהּ” - she will go out.” Then in Exodus 21:5, the response comes using the same verb, “לֹא אֵצֵא” - I will not go out.” The verb is used five times altogether in this case.

² Compare Exodus 21:6 and Exodus 12:7. R. Shimon bar Rabbi (Talmud Bavli Kiddushin 22b) notes this connection and explains that someone who is aware that God brought the children of Israel from slavery to freedom, “והלך זה וקנה אדון לעצמו” - and then went and acquired a master for himself,” should be taken back to the doorposts that were witnesses to his liberation as a form of chastisement for his having taken that freedom for granted.



Three more cases in Parashat Mishpatim all employ this technique, but push us further back than the Exodus narrative, into the family dramas in Genesis.³ One comes just a few lines further on, when we are presented with one case of manslaughter and one of homicide. The terms of the law itself are that the accidental killer can flee to a place of refuge, but an intentional killer must be put to death. But the wording of the case is threaded through with subtle references to an earlier story.

שמות כא:יב-יד

מִכָּה אִישׁ וְמֵת מוֹת יוֹמָת. וְאִשֶּׁר לֹא צָדָה וְהָאֱלֹקִים אָנָּה לִידּוֹ וְשִׁמְתִּי לָהּ מְקוֹם אֲשֶׁר יָנוֹס שָׁמָּה. וְכִי יִזְדּוּ אִישׁ עַל רֵעֵהוּ לְהַרְגוֹ בְּעֶרְמָה מֵעַם מִזְבְּחִי תִקְחֶנּוּ לְמוֹת.

Exodus 21:12-14

One who fatally strikes a man will surely die. If he did not **plot** to kill the other—but it came about by an act of God—I will assign you a place to which he can flee. But if he **intentionally schemes** against another and kills him through deception, you shall take that person from My very altar to be put to death.

The callback words here are not as conspicuous as “doorpost,” but taken together, they lead us back to a very specific moment in the Genesis narrative. The word here for intentional action or “scheming” (זָדָה), will eventually become an important category in Jewish law, distinguishing between intentional (מִזִּיד) and unintentional (שׁוּגֵג) sins. But its first usage was a in a very different context:

³ I see these as a set because they deal with three generations in one family: Yitzhak, Ya'akov, and Ya'akov's sons. My colleague, Shai Held, gives a superb reading of a Genesis callback in another verse in Parshat Mishpatim, in “What Can Human Beings Do, and What Can't They? Or: Does the Torah Believe in Progress?” available here: <https://hadar.org/torah-tefillah/resources/what-can-human-beings-do-and-what-cant-they>.



בראשית כה:כז-כט

וַיִּגְדְּלוּ הַנְּעָרִים וַיְהִי עֲשׂוֹ אִישׁ יָדַע צִיד אִישׁ שָׂדֶה וַיַּעֲקֹב אִישׁ תָּם יוֹשֵׁב אֹהֶלִים. וַיֶּאֱהָב יַצְחָק אֶת עֲשׂוֹ כִּי צִיד
בְּפִיו וּרְבִקָּה אֹהֶבֶת אֶת יַעֲקֹב. וַיִּזְד יַעֲקֹב נָזִיד וַיָּבֹא עֲשׂוֹ מִן הַשָּׂדֶה וְהוּא עֵיִף.

Genesis 25:27-29

The boys grew up, and Esav became a man who knew how to **hunt**, a man of the field, while Ya'akov was a mild man, who sat in tents. Yitzhak loved Esav because he had **game** in his mouth, but Rivkah loved Ya'akov. Once, Ya'akov **prepared a stew**, and Esav came in from the field, exhausted.

The words for Ya'akov's "preparing (*vayezed*) the stew (*nazid*)" use the same root as the word in our *parashah* for "scheming (*yazid*)"—for the basic meaning of this root (ט.י.ז) is: to do something intentionally. Once we have made that connection, we might also notice that the word for "plotting" in our *parashah* (*tzadah*) is similarly related to the word for hunting, trapping, game in the Ya'akov and Esav story: *tzayid*. These are not common words in the Torah; that much linguistic relatedness constitutes a reference.

But what would this law be saying about the story of Esav's sale of his birthright to Ya'akov? No one was killed in that tale. The only transgression we might wonder about is that perhaps Ya'akov took advantage of Esav's exhaustion and temperament and made the most of the moment.

Let's consider the connecting words. The "schemer" in our law in Exodus is guilty, whereas the one who did not "plot" or "entrap" is allowed to flee the scene. In the earlier story, ironically, it is the "hunter" or "trapper" in the story, Esav, who was acting without guile, whereas the mild-mannered tent-dweller was perhaps guilty of "scheming," setting a trap for his brother.

Now, Ya'akov is our ancestor. Our tradition generally regards his acquiring the birthright as a good thing, and offers various justifications for his various manipulations.⁴ But there is no doubt that Ya'akov is a “schemer.” He gets by in the world through dealmaking and outmaneuvering, sometimes even deceiving. If you have ever read those stories of his early life and felt uncomfortable with the ethics of his behavior, you will be inclined to read the hints in our law as a subtle condemnation of Ya'akov, suggesting that his scheming was something akin to murder, depriving Esav of his life's legacy.⁵ Of course, Ya'akov did not really kill his brother, so his consequence will be fleeing, not death. But we are being asked to look back at his behavior and to question whether he is the protagonist in the story, or perhaps the antagonist.

Before we race to condemn Ya'akov, however, another law in Parashat Mishpatim brings us to a moment in which Ya'akov is the aggrieved party and it is others who are doing him harm. The law considers the case of a *shomer* (guardian), someone who has agreed to watch over his neighbor's animal and it dies, injures, or goes missing.

שמות כב:יב

אם טרף יטרף, ובאהו עד הטרפה לא ישלם.

Exodus 22:12

If it was **torn, torn apart** by beasts, he shall bring it as evidence, and then he will not have to pay.

⁴ Rashi says that Esav was known to be wicked and unworthy of the birthright. The Radak suggests (in his father's name) that Ya'akov actually paid the full price for a birthright, although the Torah never mentions this. Meanwhile, the Torah itself condemns Esav for disparaging the birthright (ויבז עשו את הבכרה). So surely not all the blame can be placed on Ya'akov.

⁵ Doesn't he say, after all, “אני הולך למות” - I am going to die”?



The repetition of the word for “torn” catches the eye. In Hebrew it is “*tarof yitaref* - torn, torn apart.” If that sounds familiar, that is because very similar doubled language appears in the story of Yosef and his brothers. Hating him, they sold him into slavery, and then tricked their father, Ya’akov, into believing he was killed by a wild animal. They took a piece of Yosef’s clothing and dipped it in goat’s blood. And when Jacob saw it, this is what he says:

בראשית לז:לג

קָתַנְתָּ בְנִי חֲמֵה רָעָה אֲכָלְתָּהוּ טָרֵף טָרֵף יוֹסֵף.

Genesis 37:33

My son’s coat! An evil beast devoured him! Yosef has been **torn, torn apart!**

Again there is the doubling of the language: “*tarof toraf* - torn, torn apart.” Two different books of the Torah, 45 chapters apart, but the similarity is striking.⁶ What might this law be saying about the earlier narrative? Unlike the story of the selling of the birthright, the crime here is unambiguous. The brothers kidnapped Yosef (also forbidden in Parashat Mishpatim) and sold him, and then lied about it.

Note that the law here in Exodus requires that someone who claims a wild beast tore an animal apart must bring the remains of the animal itself as evidence. Yosef’s brothers, meanwhile, brought only Yosef’s bloody coat as proof of his untimely demise. The law seems to be correcting that flimsy evidentiary standard. If Ya’akov had only insisted on seeing the body, he would have caught his sons in their lie—and perhaps gone looking for Yosef and been spared 22 years of heartache.

⁶ The great 20th century scholar of ancient law, David Daube, also notices this parallel: “Jacob, when forced to admit to his sons that a wild beast has caused Joseph’s death, uses the same emphatic form that we find in that provision.” He assumes that the law of Exodus already existed in some primitive form and the brothers are carrying it out, “For it was this rule which his brothers, by analogy, applied to their case, though, needless to mention, they abused it. Having sold Joseph to the Ishmaelites, they dyed his coat red and delivered it to Jacob as the only trace left of his child, just as a shepherd would submit to his master the last few scraps of an animal killed by a wild beast.” See, *Studies in Biblical Law*, Ch. 1, “Law in the Narratives” (1947).



This time Ya'akov is not the “schemer,” but the one who has been schemed; our sympathies lie with him. Yet, in a sense, the law’s critique is still directed at Ya'akov. We don’t need to be told, after all, that what Yosef’s brothers did was wrong—that much is obvious. But Ya'akov should have insisted on better proof for such a shocking claim.⁷

One final case, toward the end of the legal code in Parashat Mishpatim, also presents us with hints of a critique directed toward an otherwise sympathetic character. The law is well-known, in part because it is repeated in Deuteronomy in the section that calls for the appointment of judges. Here is the language from our *parashah*:

שמות כג:

וְשֹׁחַד לֹא תִקַּח כִּי הַשֹּׁחַד יְעִוֵּר פְּקֻחִים וְיִסְלֹף דְּבָרֵי צְדִיקִים.

Exodus 23:8

Do not take bribes. For a bribe can blind those who can see, and distort the words of the righteous.

This time the “reference” backward is not made through parallel words. Instead, to find the connection, we have to ask about the contours of the scenario: is there anyone in the Torah so far who was known to be blind, and who might have taken a bribe? A *midrash* from the Tanhuma identifies the character for us, and suggests that the law in our *parashah* can help explain his blindness:

⁷ Ya'akov especially should have known better because, as R. Jonathan Sacks points out: “Jacob himself says to Laban, whose flocks and herds have been placed in his charge, ‘I did not bring you animals torn by wild beasts; I bore the loss myself’ (Gen. 31:39). It is clear he has some awareness of the need to bring the torn animal in order to be exonerated.” See Sacks’ essay on Parashat VaYeishev, “Refusing Comfort, Keeping Hope,” available here: <https://rabbisacks.org/covenant-conversation/vayeshev/refusing-comfort-keeping-hope/>.



מדרש תנחומא תולדות ח

וְלָמָּה כָּהוּ עֵינָיו שֶׁל יִצְחָק? ... עַל שֶׁהָיָה מְבִיא צִיד וּמֵאֲכִילוֹ, וְכָתִיב: "כִּי הִשְׁחָד יַעֲזֹר פְּקֻחִים" (שמות כג, ח).

Midrash Tanhuma Toldot 8

Why had Yitzhak's "eyes dimmed" (as it says in Genesis 27:1)... because Esav would bring him game and feed it to him. For it is written, "Bribes blind those who can see."⁸

It is usually assumed that Yitzhak had grown blind due to old age, and that Ya'akov and Rivkah took advantage of that frailty and tricked him by dressing one son up as the other. But this *midrash* places the blame on Yitzhak himself for allowing himself to be bribed by Esav. There is some logic to this connection in the Genesis verse. Note how closely the mention of Yitzhak's blindness is to his request for Esav's gifts, there in the very same verse:

בראשית כז:א

וַיְהִי כִּי זָקֵן יִצְחָק וַתִּכְהֶינּוּ עֵינָיו מִרְאֵת וַיִּקְרָא אֶת עֶשָׂו בְּנוֹ הַגָּדֹל.

Genesis 27:1

Yitzhak had grown old and his eyes had dimmed from seeing; and he called Esav, his elder son.

He asks Esav to catch and prepare a dish that he likes, "so that I can give you my life's blessing" (Genesis 27:4). That was the bribe solicitation, and that is what caused him to be blinded - in this case literally, though of course the suggestion offered by the law's "commentary" is also that Yitzhak's perspective had become distorted because he willingly orchestrated his own manipulation. Remember that he was biased from the start:

⁸ The language in a later *midrash*, Yalkut Shimoni, is even more damning: "Those who justify the wicked because of a bribe, and take away the righteousness of the righteous' (Isaiah 5:23)—this is Yitzhak, whose eyes dimmed because he justified the wicked."

בראשית כה:כח

וַיֶּאֱהָב יִצְחָק אֶת עֵשָׂו כִּי צַיִד בְּפִיו וְרִבְקָה אֹהֶבֶת אֶת יַעֲקֹב.

Genesis 25:28

Yitzhak loved Esav, because there was **game** in his mouth. But Rivkah loves Ya'akov.

Each parent favored one of the two boys from the start. But Rivkah simply “loves Ya'akov”—unconditionally—whereas Yitzhak loved Esav—especially when there was “game (*tzayid*) in his mouth.” Yitzhak likes the food that Esav traps, and through them Yitzhak is entrapping himself, allowing himself to be lured into favoritism. This is a character we tend to regard as entirely victimized in this scene. But the law of bribe-taking in Parashat Mishpatim reminds us that Yitzhak was perhaps not entirely innocent in this drama, even as it warns us to be on the lookout for our own biases and self-delusions

What do we make of all this? First, we have seen that the law of the Torah is clearly written with an awareness of the Torah's earlier narrative; that will be important to look out for as we encounter other legal sections. But is the law also written as a kind of coded condemnation of earlier characters, with an agenda to problematize again and again the heroes of Genesis? Was Ya'akov a criminal, was Yitzhak corrupt?

On the contrary, the laws of the Torah evoke the earlier stories because the Lawgiver is deeply sympathetic to the challenges our ancestors faced. The Torah is being given to a people who lived in a world without a robust legal system, first as nomads and then as slaves. It was hard for them to resolve conflicts and to know how to treat each other. Human instincts sometimes produced great righteousness and compassion, but often produced violent conflict and selfish competition. There were customs and virtues in those days, but there was no set of laws that everyone could agree on, to set a clear standard for peaceful, equitable

living. In those days, as Moshe put it in his farewell address, “everyone did what was right in their eyes” (Deuteronomy 12:8).

We must understand the moral dilemmas our ancestors struggled through in order to appreciate the value of the *mishpatim*. We need these laws. Without them, we might tear each other apart.

