

Maamarei Mordechai

הסבר לפי ממש פשוט

Parshas Mishpatim 5786

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Hashem teaches Moshe the Law to teach to Bnei Yisroel.

אִם-לֹא יִמָּצֵא הַגָּנוֹב וְיִקְרַב בְּעַל־הַבַּיִת אֱלֹהֵי־הָאֱלֹהִים אִם-לֹא שָׁלַח יָדוֹ בְּמַלְאֲכַת רֵעֵהוּ:

“If the thief is not found, and the owner shall approach the highest adjudicator (lit. almighty), and shall testify that he did not send his hand on the workmanship of his neighbor.” (Shmos 22:7).

This pasuk is discussing if a person was holding something for safekeeping and it was stolen from him. The pasuk states that in cases where the thief makes a clean escape and is unknown, then the custodian swears he had nothing to do with the theft. This pasuk also uses the term almighty in the secular sense. Instead of referring to Hashem, as Lord, it refers to the high adjudicator. This is for two reasons. First, the system of courts had not been established yet. Instead, Moshe, on the advice of his father-in-law, instituted a system of arbitrators who would try to adjudicate disputes. (Ibid 18:22). Second, the word does not really mean God or Lord. It means most high or almighty. This is a title the Torah gives to Hashem when it comes to matters of Creation; Hashem is the Most High.

There is another reason why the Torah refers to the justice as the almighty. The Torah stated that Moshe set up a system whereby the arbitrators were over a thousand, over a hundred, over fifty, and over ten. (Ibid 18:21). They are referred to as officers or chamberlains in that pasuk. Then the next pasuk says, and they shall govern the people at all times; any great matter comes before you and small matters they shall adjudicate. (Ibid 18:22). It gives further authority to these men, saying that they can govern. However, Moshe remains the supreme adjudicator. Moshe, in this case, is the almighty.

The Torah already called Moshe the almighty. “And Aharon shall speak for you to the people; he shall be your mouth. And you shall be to him as an almighty.” (Ibid 4:16). The “to him” in this pasuk is Pharaoh. While Pharaoh is not mentioned in the immediately preceding pesukim, the entire subject of the narrative is Moshe going to speak with Pharaoh on behalf of Bnei Yisroel. Further, the Torah reiterates, “See that I have placed as you as an almighty to Pharaoh, and Aharon, your brother, shall be your advisor.” (Ibid 7:1). Both pesukim use the word elohim. Moshe is not only a messenger of Hashem; he is not a mere equal to Pharaoh. He is actually Pharaoh’s superior. Pharaoh will be made to look up to Moshe.

There are a few other times the Torah calls the justice an almighty. If a Hebrew indentured servant does not want to go free after six years – having worked off his debt for the crimes he committed – then his master shall take him before the almighty adjudicator (elohim)...” (Ibid 21:6). The pasuk also says “his master” (adonav), another word the Torah often uses to describe Hashem because Hashem is the Master. Then the Torah says that in all matters of misappropriation, “both parties shall come before the

almighty adjudicator. The one whom that almighty adjudicator shall deem guilty shall surely pay.” (Ibid 22:8).

Further, the Torah says, “You shall not curse “Elokim,” neither shall you be evil toward the prince amongst your people.” (Ibid 22:7). This could also mean the human almighty adjudicator, because it is paired with the human prince. Do not degrade the leaders—be it civil or spiritual—of the nation. After these series of laws, however, the Torah does not use that term to refer to the high adjudicator anymore. In each of these cases, the person would not simply go to Beis Din, the Court. He would not go to the officer adjudicating over tens, fifties, hundred, or thousands. He would go straight to the highest adjudicator. That would be Moshe or it could be Aharon and Chur. (Ibid 24:14).

The Torah says that Moshe should leave Aharon and Chur in charge for whoever has legal matters. However, Moshe already established the system of arbitrators before the Revelation. Therefore, this pasuk is specifically addressing the almighty adjudicator. Moshe is about to go up on the mountain. (Ibid 24:13). He appointed Aharon and Chur in his stead. They were, now, the almighty adjudicators instead of Moshe. It was already established earlier that Moshe was to hear the difficult cases. The other officers remained in place to deal with the lesser cases. The Torah now defines a few of the difficult cases, cases that go straight to Moshe/the high court/Sanhedrin.

While the Torah no longer refers to the high adjudicator, because it later puts into place formal court systems and governance, the translation of elohim as high adjudicator is further corroborated in Tehillim. “The Lord stands in the divine congregation; He governs amongst the almighty adjudicators.” (Tehillim 82:1). This perek of Tehillim is referring to how Hashem oversees the Sanhedrin and other high courts of Yisroel, over the years, and holds them to a high standard to make sure they are administering justice.

Har Sinai is also called the Mountain of the Lord (Elokim). It is called that when Moshe wandered there and saw the burning thornbush. (Shmos 3:1). It refers to it again after these laws are given, after Hashem spoke from Har Sinai. (Ibid 24:13). Really, it should be the Har of Hashem. Hashem is the name used when Hashem deals with mankind. When Hashem sets down laws and acts as high judge, it should be as Hashem. However, it uses the term Elokim - Lord because it is the Mountain of the High Adjudicator. This is the mountain where the law—the bulk of it—was given. Also, it is the Law that helps fulfill mankind’s mission on earth, which was the entire purpose of Creation. Accordingly, the law is tied into Creation. That is also why when Hashem introduced the Ten Utterances, the Torah says, “And Elokim spoke.” (Ibid 20:1). It was the almighty adjudicator giving the laws. It was the Creator of nature that gave laws to mankind to fulfill the purpose of Creation. Further, Hashem told Moshe that he would take Bnei Yisroel out of Mitzrayim and bring them to the mountain to worship Hashem. (Ibid 3:12). That means to receive the Torah.

The Torah adjures men to try to act like Hashem. Man is made in His image and are to emulate Him. Those who are in a position of power should treat it as a responsibility, not a privilege. Leadership and halachic jurisdiction are not an authority but a duty. Treat the duties with kindness, compassion, but also truth. All parties have a right to be heard, acknowledge, and guided correctly.

BONUS SHTIKEL

How does the Torah view a fetus in terms of being property or a life?

וְכִי־יִנָּצוּ אֲנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אָסוֹן עָנוּשׁ יַעֲנֹשׁ כְּאִשָּׁר
יִשִּׁית עָלֶיהָ בְּעַל הָאִשָּׁה וְנָתַן בְּפִלְלִים:

“Because when two parties are fighting and they shove a woman who is pregnant, and her children exit her, and there is no fatality; there shall surely be punishment: Just as the woman’s husband raises a claim and it is given based on the assessors valuation.” (Shmos 21:22).

Before reading this pasuk in context, as is so important, as few things about the wording must be delineated. Reading the pasuk as: *If two people are fighting and one knocks against a pregnant woman, and the baby miscarries, and there is no fatality, then they shall be assessed and fined according to the claim of her husband.* However, that is not a translation, but a paraphrase. This is a pasuk that teaches nuanced legal repercussions and the translation must be particular.

The pasuk calls these two that are fighting, men. This is akin to the men who fought alongside Avraham. (Bereishis 14:24). This is akin to the men that Esav was coming with toward Yaakov. (Ibid 33:1). The Torah uses the term “men” often to indicate fighting men. This means that they have raised their liability from negligence to malfeasance of reckless endangerment. They are held to a higher standard because they are fighting in public or near other people.

The woman is pregnant, obviously so. If an issue comes from her, then clearly, she was pregnant. However, it says they struck a pregnant woman, indicating that they knew she was pregnant. She is showing. This would indicate if they did not know she was pregnant, if she did not know herself or it was early on and not yet showing, then the outcome may be different. One may want to argue that you take the woman as is, and the reality is she is pregnant. However, the Torah would just write a woman. Then it would indicate a woman – whether she was showing and whether she knew. By stating she was pregnant it indicates the men knew they were hitting a pregnant woman.

The Torah then unambiguously calls the issue that comes out a child. *And the children exit.* It did not use words like seed or issue. The Torah has words for such an event. כִּנְפֹל טָמוּן לֹא אֶהְיֶה כְּעֵלְלִים “The stillborn was miscarried (fell), and the infant...” (Iyov 3:16). Here, the Torah does not use the word fell – miscarried as it does there. The Torah also calls a fetus “fruit of the womb.” (Devarim 7:13). The Torah does seem to refer to unborn children as “children.” וַיִּתְרַצְצוּ הַבָּנִים בְּקֶרֶבָּהּ “And the children were running from within her.” (Bereishis 25:22). Many, like the Midrash does allegorically, interpret this to mean Yaakov and Esav were struggling or running inside her. (Bereishis Rabbah 63). Contextually, it simply means that she could not get pregnant, children were running from her womb. It is an expression meaning her womb would not produce children. In

that way it does not refer to a fetus but the concept of children. Even so, our pasuk instead uses the word יְלֵדִים indicating live children.

There is no fatality. This refers to the neonate. The child is born, albeit prematurely, and it lives. It has defects, is premature, but it does not die. Soon the explanation of why this cannot refer to the mother will be discussed.

There is surely punishment. This shows it is a criminal case. This is not a civil case. The Torah calling the issue a child and calling this a punishment shows that the Torah considers the fetus to be a human life. Should one argue that this only refers to a woman far enough along to have a viable child, the next verse states “there is a fatality.” (Shmos 21:23). This means the child was not viable and still called a child and still there is a criminal case.

The husband raises the claim. He has the right to raise the claim, as much as she does. This is even if he is not the father. If she was already pregnant and then married this man, or if she mothered a child with another man while married, either way it is the husband that raises the claim. This illustrates that the husband is deemed to be the father, regardless of the circumstances of conception.

Instead of using the term “court” the Torah says assessors. This is because this is not a simple matter of punishment. There is no eruchin amount (human valuation per Vayikra 27:1-8) for a premature infant. There has to be an evaluation done based on viability, health, deformities, and similar factors.

The contextual pesukim add further veracity to the above interpretation. One who murders is put to death. (Ibid 21:12). If the cause of death was not done by design, the Lord acted through his hand, he shall run to a city of refuge. (Ibid 21:13). If two are fighting and one injures the other and he is on bedrest, and he able to “walk it off” even with an aid, then there is no penalty. (Ibid 21:18-19). Even if one strikes his indentured servant, within intent to punish not to kill, but the servant dies, then that blood is avenged. (Ibid 21:2). In the case of striking a pregnant woman, and there is a fatality, there is a monetary penalty of life in place of a life. (Ibid 21:23).

The law is clear that intentional murder and manslaughter, murder done unintentionally but through violent means, is a death penalty. Accidental killing gets exile only. When both parties are liable (they are quarreling) then there is no punishment unless there is a death. In our case if one would interpret it as an actual miscarriage, then why is there a criminal assessment and not exile? Why no exile or death penalty if the mother is killed, too? Why only a monetary assessment for the mother’s life? How can it be harsher to cause a miscarriage but not kill the mother (criminal fine) than to cause a miscarriage and kill the mother (only a monetary penalty). What is the nuance that the husband can raise the claim when there is harm but not death to his wife? Of course, he can, he is the husband. Why does he not raise the claim if his wife is killed?

Therefore, the Torah is referring to when the child—a human being even in utero—is born prematurely, at the cause of another. It is a criminal penalty because they caused developmental defects. If they caused a miscarriage (ibid 21:23) then they pay the ware guilt price—a life in place of a life; they pay money instead of the death penalty. A premature neonate is worth a full life’s ware guilt.