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PARASHAT HASHAVUA

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PARASHAT MISHPATIM

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“For Judgment Belongs to God”  
By Rav Gad Eldad

a. “For judgment belongs to God”

After the Revelation at Sinai, *Bnei Yisrael* are given a series of “*mishpatim*” (civil laws). The commentators are hard-pressed to find any sort of order or organizing principle guiding the presentation of these laws.<sup>1</sup> We will set this issue aside and seek to focus on a different question. Although we acknowledge that we lack the ability to propose a full explanation for the phenomenon that we will note, at least we can make note of it and attempt to address one of its manifestations:

And these are the *mishpatim* that you shall place before them: **If you buy** (*ki tikneh*) a Hebrew servant, six years he shall serve, and in the seventh he shall go out free, for nothing. If he came in by himself, he shall go out by himself; if he is married, then his wife shall go out with him. **If his master** (*adonav*) **has given him** a wife, and she has born him sons or daughters, the wife and her children **shall belong to her master** (*la-adoneiha*), and he shall go out by himself. And if the servant shall plainly say, “I love my master, my wife, and my children; I will not go out free,” then **his master** (*adonav*) **shall bring him to the judges**; he shall also bring him to the door, or to the doorpost, and his master shall bore his ear through with an awl, and he shall serve him forever. (*Shemot* 21:1-6)

The grammatical difficulties presented by this unit are noted by R. Chaim ben Attar, the *Ohr Ha-Chayim*:

One difficulty is: Why does the text begin by speaking in the second person (“If you buy”), but then change over to the third person (“if his master has given him...,” “she shall belong to her master,” “his master shall bring him...,” such that the entire remainder of the unit is in the third person? It would seem appropriate that the command continue in the same way that it started: “If you have given him...,” “She shall be belong to you...,” “you shall bring him...” (*Ohr Ha-Chayim*, *Shemot* 21:4)

<sup>1</sup> Some commentators have attempted to argue that the order of the *mishpatim* corresponds, in some or other way, to the Ten Commandments (Rabbenu Bechayei, Abravanel, and others), while others have tried to identify themes or logical development from the content of the *mishpatim* themselves and the connections among them (Ibn Ezra, Chizkuni).

This difficulty not only characterizes the unit on the Hebrew slave, but also appears elsewhere in the list of *mishpatim*. A bird’s-eye view of the *mishpatim*, from this perspective, shows that they are divided into two parts:

- a. Part 1 – 21:1-22:19. In this part, the *mishpatim* are formulated as a classic law book, addressed neither in the second person nor in the third, but rather presenting the case and the appropriate judgment. For instance, we find:

And one who smites his father or his mother shall surely be put to death. And one who steals a man and sells him, if he is found in his hand, he shall surely be put to death. And he who curses his father or his mother shall surely be put to death. (21:15-17)

- b. Part II – 22:19-23:9 and onwards. At this stage, the formulation shifts to the second person. For example:

You shall neither vex a stranger nor oppress him, for you were strangers in the land of Egypt. You shall not afflict any widow, or fatherless child... If you lend money to any of My people that is poor by you, you shall not be to him as a creditor, neither shall you lay upon him interest. If you at all take your neighbor’s garment for a pledge, you shall deliver it to him by sundown... You shall not revile the judges, nor curse the ruler of your people. (*Shemot* 22:20-27)

However, as we have noted, even the first part itself is not uniform; it contains exceptions that are formulated in the second person:

1. **If you buy** a Hebrew servant, six years he shall serve, and in the seventh he shall go out free, for nothing. If he came in by himself, he shall go out by himself; if he is married, then his wife shall go out with him. **If his master** has given him a wife... (*Shemot* 21:2-3)
2. One who smites a man so that he die, shall surely be put to death. But if he did not lie in wait, but God allowed it to happen to him, then I shall appoint a place **for you** to which he shall flee. But if a man came presumptuously upon his neighbor, to slay him with guile, **you shall take him** [even] from My altar, that he may die. (*Shemot* 21:12-14)
3. If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no further harm ensue, **he shall be surely punished**, according as the woman’s husband will lay upon him, and he shall pay as the judges determine. But if any harm ensue, then **you shall give** life for life. (*Shemot* 21:22-23)
4. **You shall not** suffer a witch to live. (*Shemot* 22:17)

As noted, we do not pretend to offer a full explanation of this phenomenon. In this article, we will attempt to explore what

might be the hidden message of example 2 above, concerning the murderer and accidental killer.

**b. “But if he did not lie in wait, but God allowed it to happen to him”**

In order to propose an explanation, let us first take note of another puzzling aspect of the *mishpatim*. The word *elohim* (or *Elokim*) assumes different meanings over the course of the *parasha*:

1. Then his master shall bring him to the judges (*elohim*)... and his master shall bore his ear through with an awl, and he shall serve him forever. (*Shemot* 21:6)
2. But if he did not lie in wait, but God (*Elokim*) allowed it to happen to him, then I will appoint a place for you to which he shall flee. (*Shemot* 21:13)
3. If a man delivers to his neighbor money or vessels to keep, and it is stolen out of the man’s house... If the thief is not found, then the master of the house shall be brought to the judges (*elohim*) [to swear] that he has not put his hand to his neighbor’s goods. For all manner of trespass... of which one can say, “This is it,” the cause of both parties shall come before the judges (*elohim*), and whoever the judges (*elohim*) condemn, he shall pay double to his neighbor. (*Shemot* 22:6-8)
4. He who sacrifices to any god (*elohim*) shall be utterly destroyed, except to the Lord alone. (*Shemot* 22:19)
5. You shall not revile the judges (*elohim*), nor curse the ruler of your people. (*Shemot* 22:27)

It seems that the term is used in most cases to refer to the judges. However, in examples 2 and 4 above, the reference must be to spiritual entities. Example 2 refers to God, while example 4 refers to His “competitors,” as it were.

We also find God’s Name (the Tetragrammaton – Y-H-V-H) mentioned a few times over the course of the *parasha*:

If a man deliver to his neighbor a donkey or an ox or a sheep, or any beast, to keep, and it dies, or is hurt, or is driven away, no man seeing it, then **an oath of the Lord** shall be between them both, that he has not put his hand to his neighbor’s goods, and the owner of it shall accept this, and he shall not make it good. (*Shemot* 22:9-10)

He who sacrifices to any god shall be utterly destroyed, except to the Lord alone. (*Shemot* 22:19)

To summarize, we find a number of variable terms in the legal presentation of the laws of the Torah. Sometimes the command is addressed in the second person; at other times it is formulated in the third person. In addition, sometimes the term *elohim* refers to the judges, while in other instances it refers to God or to a spiritual entity.

**c. “Then I shall appoint a place for you”**

As mentioned at the outset, we will focus on a specific command in which we find that the addressee is changed midway:

But if he did not lie in wait, but God (*Elokim*) allowed it to happen to him (*ve-ha-Elokim ina le-yado*), then **I shall appoint** a place **for you** (*ve-samti lekha makom*) to which he shall flee. (*Shemot* 21:13)

Who is the speaker in this verse? Seemingly, the “*Elokim*” who “allowed it to happen” is a reference to God. However, if this is indeed the intention, the Hebrew syntax seems clumsy. It would seem more logical for the verse to be formulated in one of two ways:

- “But if he did not lie in wait for him, but I allowed it to happen to him, then I shall appoint a place for you, to which he shall flee”; or
- “But if he did not lie in wait for him, but God allowed it to happen, then God will appoint a place for you, to which he shall flee.”

From the formulation of the verse as it stands, we understand that the speaker is not necessarily God. Who, then, is speaking? The answer awaits us in the verse that follows:

But if a man came presumptuously upon his neighbor, to slay him with guile, you shall take him [even] **from My altar**, that he may die. (*Shemot* 21:14)

It turns out that the speaker is indeed God, at the Revelation at Sinai.<sup>2</sup> This conclusion necessarily leads us to reexamine our understanding of the term “*elohim*” (or *Elokim*) which, as we have seen, is used with different meanings in our *parasha*.

**d. “The mighty ones of Moav were seized with trembling”**

The word *elohim* would appear to be derived from *el*,<sup>3</sup> meaning power and strength, as suggested in many places in *Tanakh*.<sup>4</sup> This suggests that the word is borrowed for

<sup>2</sup> At the end of the Revelation, God commands the building of an altar, to which He refers in this verse: “And the Lord said to Moshe: Thus shall you say to *Bnei Yisrael*: You have seen that I have talked with you from heaven. You shall not make with Me gods of silver, neither shall you make for yourselves gods of gold. An altar of earth shall you make to Me, and you shall sacrifice on it your burnt offerings, and your peace offerings, your sheep, and your oxen, in all places where I cause My Name to be pronounced, I will come to you and I will bless you. And if you will make Me an altar of stone, you shall not build it of hewn stone, for if you lift up your tool upon it, you have defiled it. Neither shall you go up by steps to My altar, that your nakedness not be exposed on it” (*Shemot* 20:19-23).

<sup>3</sup> For example: “The mighty One (*El*) *Elokim*, the Lord; the Mighty One (*El*), *Elokim*, the Lord, He knows and Israel shall know, if in rebellion, or if in transgression against the Lord – do not save us that day” (*Yehoshua* 22:22).

<sup>4</sup> We find examples in the commentaries on the verse, “The mighty ones (*eilei*) of Moav were seized with trembling” (*Shemot* 15:15). For example, Ibn Ezra (short commentary) quotes a verse from *Tehillim*: “I am reckoned with those who go down into the pit; I am like a man with no strength (*eyal*)” (*Tehillim* 88:5). Midrash Sekhel Tov: “The mighty ones of Moav – the strong ones of Moav, like ‘He has taken away the mighty ones (*eilei*) of the land’” (*Yechezkel* 17:13); “It is in the power of my hand (*le-el yadi*) to do you harm’ (*Bereishit* 31:29); “these [mighty]

application in reference to figures of power and authority, whether they be judges, ministers, or spiritual entities.

Before addressing the verse itself, let us take another look at the grammatical switch that occurs in it:

But if he did not lie in wait, but God allowed it to happen **to him** [literally, to his hand], then I shall appoint a place **for you** to which he shall flee.

Seemingly, the verse should read:

But if he did not lie in wait, but God allowed it to happen **to him**, then I shall appoint a place **for him** to which he shall flee.

We must ask, who is the verse addressing in the second person (“I shall appoint a place *for you*”)?

On the basis of the examples we presented of *mishpatim* formulated in the second person, it would seem that the command is directed to the figure(s) possessing the authority to pass judgment and punish.<sup>5</sup> In this verse, the command addresses these figures with the aim of indicating that they are obligated to ensure that the person who killed accidentally is rescued, since he is innocent of guilt; “*Elokim*” allowed it to happen to him.

A superficial reading of the text gives the reader the impression that “*Elokim*” here refers to God. If so, these verses reveal an astonishing insight: God is manifest in two different garbs. He is the Authority Who sets down the laws of nature, giving all the elements of Creation their power. At the same time, He knows that the laws of nature operate regardless of the moral or educational context, and therefore He Himself must “keep an eye” on these laws, as it were, and deal with “mutations,” when necessary. God, as it were, declares the deficient character of reality which He Himself created.

“*Elokim*” expresses the powering of a mighty mechanism that operates according to blind rules.<sup>6</sup> *Elokim* is the power that animates the world, but not necessarily the mechanism of justice. In order to achieve justice, the text draws the attention of the judicial authorities to the fact that further action is necessary in order to rescue the person in question from the fate to which “*Elokim*” consigns him.

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abominations (*ha-toevot ha-el*)” (*Vayikra* 18:27); “these cities (*he-arim ha-el*)” (*Devarim* 19:11); “Only to these [mighty] men” (*Bereishit* 19:8) – all these examples are meant in the sense of strength” (Sekhel Tov, *Beshalach* 15:15).

<sup>5</sup> An exception is the example with which the *parasha* opens, concerning a person who buys a Hebrew servant (“if you buy...”).

<sup>6</sup> The Rambam (*Guide For the Perplexed* 3:17-19) explains his view of how Divine Providence is dependent on the degree of man’s spiritual closeness to God. The most direct ramification of this approach is that if a person does not cleave to God, he is left to the whims of nature and chance. R. Yitzchak Shilat (*Hakdamot Ha-Rambam La-Mishna*, pp. 213-216) explains that this perception in no way negates or contradicts the faith that God is all-knowing and that He takes everything into account in performing righteous judgment. Had the person been close to God, he would have merited Divine intervention to save him; the fact that he is left to his fate is a punishment. In terms of this approach, “*Elokim*” is the idea of people being left to natural forces and phenomena, such that sometimes even an accidental murder may be perpetrated by them.

*Chazal* are sensitive to this reading and support it.<sup>7</sup> However, they explain the situation as a mechanism that aims to aid or complement justice, since God’s manifestation in the world as “*Elokim*” does not always allow for a person to be rewarded or punished in exact accordance with his actions.

A simple reading of the text, on the other hand, seems to indicate the opposite. Sometimes, God’s manifestation as “*Elokim*” ensures regularity and order, but may also lead to injustice, whereby guilt is assigned to someone who is actually innocent. Therefore, this system needs a complement that allows the innocent to be saved from it. This reading is supported by the verse that follows, depicting a situation that is the opposite of the preceding one:

But if a man came presumptuously upon his neighbor, to slay him with guile, **you shall take him [even] from My altar**, that he may die.

Once again, the speaker – whom we have identified as the Giver of the Torah – addresses the judicial authorities. The case here involves a person who is trying to exploit the mechanism of justice and order to achieve injustice. He seeks to attach himself to a “place” designated by God in order to save himself from justice. The judicial authorities are therefore commanded not to give up or to reconcile themselves to the reality that has been created, protected by the law, according to which there can be no killing before the altar. Rather, the murderer must be taken from there and must be punished.

We thus propose that the text deliberately refers to different entities by the same term – “*elohim*” (or *Elokim*) – with the intentional purpose of blurring the distinction between them, highlighting instead what they share in common. These are all figures or bodies occupying positions of power by virtue of the overarching order and regularity of Creation.

In addition, in the context of our particular command, the term “*elohim/Elokim*” has a special purpose. The text seeks to expose a new and different aspect of regularity and order, showing that regularity and order are not always a guarantee of justice.

Let us now try to apply this insight to a different unit.

**e. “Then an oath of the Lord shall be between them both”**

Further on in the *parasha*, we find the laws pertaining to a guardian:

If a man delivers to his neighbor money or vessels to keep, and it is stolen out of the man’s house... If the thief is not found, then the master of the house shall be brought **to the judges (*elohim*)** [to swear] that he

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<sup>7</sup> Rashi, commenting on our verse, citing the *gemara* (*Makkot* 10b), proposes a situation where two people killed others, one by mistake and the other in a premeditated fashion, both without witnesses. These two people must be punished, but they are outside the scope of the *beit din*’s power, since there is no-one to testify. God sets up a situation in which the same act is committed once again, to facilitate their judgment, thereby repairing the injustice. Rashbam, following in his grandfather’s footsteps, offers a similar explanation.

has not put his hand to his neighbor's goods. For all manner of trespass – whether for an ox, or a donkey, or a sheep, or a garment, or for any manner of lost thing of which one can say, "This is it," the cause of both parties shall come **before the judges (elohim)**, and whoever **the judges (elohim) condemn**, he shall pay double to his neighbor.

If a man deliver to his neighbor a donkey or an ox or a sheep, or any beast, to keep, and it dies, or is hurt, or is driven away, no man seeing it, then **an oath of the Lord (shevu'at Elokim)** shall be between them both, that he has not put his hand to his neighbor's goods, and the owner of it shall accept this, and he shall not make it good. But if it is stolen from him, he shall make restitution to its owner. If it is torn in pieces, then let him bring it as evidence; he shall not make good that which was torn. (*Shemot* 22:6-13)

In light of the perspective discussed above, there is a conspicuous difference between these two units.<sup>8</sup> The first directs the parties in conflict to the judiciary, the *elohim*, and awards exclusive validity to its legal discretion. The second unit, in contrast, ignores the role of the *elohim* in the resolution of the conflict. The only legal procedure that it recognizes in the process of resolution is "an oath of the Lord."<sup>9</sup>

While the second unit also deals with a case in which something happened to the item without the guardian's involvement and there are no witnesses, the exclusion of an appeal to the *elohim* is carried through to the verses that follow. The text passes judgment on the guardian, obligating him to pay or exempting him as appropriate, with no attention to the preliminary process, described in the preceding unit, in the form of an appeal to the *elohim* and their deliberation of the case. Perhaps the text seeks to convey a covert message that contrasts a judgment managed by *elohim* with a judgment arrived at by God and an oath in His Name.

A simple reading of the first unit suggests the following scenario: The guardian reports that the item has disappeared, and he must declare this before an official authority. In the event that the person who deposited the item with him claims that the guardian was negligent, the judicial authority must weigh the case, and if the conclusion is that the guardian was indeed at

fault, he pays double. The issue left unaddressed is, of course, what happens if the person who deposited his article with the guardian fails to produce satisfactory evidence. In this instance, the guardian would appear to be exempt from paying restitution, even though he may, in fact, have been negligent. Only someone who is convicted by the *elohim* pays double.

The second unit exposes fully the limitations of this system. Where there is no evidence, the claimant's position has no basis and the judicial authority is helpless. By means of this distinction between the two units, the text seeks to show that while the absence of evidence does have the effect of paralyzing the mechanism of legal redress, this does not necessarily mean that the outcome is true justice. To achieve justice, a different legal instrument is needed for dealing with the conflict by setting the claimant's mind at rest. This instrument is the "oath of the Lord."

f. **"For judgment belongs to the Lord"**

Ramban, commenting on our *parasha*, writes:

"And his master shall bring him to the judges"... R. Eliezer said that the judges are called *elohim* because they uphold the *mishpatim* of God (*Elokim*) in this world. To my mind, when the text says, "And his master shall bring him to the judges" (21:6), or "the cause of both parties shall come before the judges" (22:8), it hints to the idea that God will be with them [the judges] in the process of judgment; He will lead to conviction or to acquittal. And this is the meaning of the phrase, "whoever the judges (*elohim*) condemn" (22:8). Likewise, Moshe says, "For judgment belongs to *Elokim*" (*Devarim* 1:17)... In a similar vein we find, "God [*Elokim*] stands in the congregation of God; He judges among the judges (*elohim*)..." (*Tehillim* 82:1) – in other words, He judges among the company of *elohim* (judges), for *Elokim* is the Judge. And likewise we find, "Then both men who are at odds shall stand before the Lord" (*Devarim* 19:17). And this is the meaning of, "for I will not justify the wicked" (*Shemot* 23:7) properly understood. (Ramban, *Shemot* 21:6)

According to Ramban, the attribute represented by the Name *Elokim* includes justice. A person presents himself before a human court, but his sentence comes from Heaven.<sup>10</sup> According to his view, it would seem that there is no room for the distinction proposed above.

However, Rabbenu Bechayei was sensitive to the shift in the Name of God used over the course of our unit, and perhaps we might detect in his words some outline of what we have said here:

<sup>8</sup> *Chazal* draw a distinction between the *shomer chinam* (unpaid guardian) in the first unit (vv. 6-8) and the *shomer sakhar* (paid guardian) in the second (vv. 9-13). Rashbam, in contrast, focuses on the distinction regarding the type of item that is given over for guardianship. See further R. Yehuda Rock, *Torat Etzion, Shemot, Parashat Mishpatim*, and elsewhere.

<sup>9</sup> This shift may be an intentional strategy to differentiate between the different concepts represented by the two Names of God, as in verse 19 – "He who sacrifices to any god (*elohim*) will be utterly destroyed, except to the Lord (Y-H-V-H) alone." There, too, the aim is to highlight the difference between these two concepts, and therefore we seek a similar message in our unit. It must be noted that the text does not always endeavour to highlight this distinction. Thus, for example, we find: "You shall not revile the judges (*elohim*), nor curse the ruler of your people" (*Shemot* 22:27). While the plain meaning of the text here points to the judge, the prohibition against reviling may also be understood as pertaining to God. Thus, the text could have used the expression "an oath of *Elokim*," which could have been understood as "an oath of God," in the same way that the text uses the phrase "*Elokim* allowed it to happen to him," which we understand as referring to God.

<sup>10</sup> Ramban follows the same approach in explaining the phrase, "as he had schemed to do" (*Devarim* 19:19): "[The text says, 'as he had schemed to do'] and not 'as he did.' From here *Chazal* learn, 'if they killed [i.e., if on the basis of perjurers' testimony the person was put to death] – they [the false witnesses] are not to be killed.' So says Rashi, based on *Chazal* (*Makkot* 5b)... Furthermore, God would not allow the righteous judges who stand before Him to spill innocent blood, for 'judgement belongs to God'; **He judges among the judges'. All of this speaks to the virtue of the judges of Israel, and the promise that God will agree with them and be with them in judgment...**" (Ramban, *Devarim* 19:19).

“Then the master of the house shall be brought to the judges”; “the cause of both parties shall come before the judges”; “whomever the judges shall condemn” – three times the text speaks of the judges (*elohim*), and from here *Chazal* learn (*Sanhedrin* 3b) that no *beit din* can comprise less than three [judges]. And nowhere in all the laws in this *parasha*, from the beginning of the *Sefer* to this point, is there any mention of God’s Name [the Tetragrammaton]; instead, we find *Elokim*. The reason for this is that “Judgment belongs to God” (*Devarim* 1:17). But when it comes to the oath, the text mentions God’s Name and says, “an oath of the Lord,” because the middle part is the essence of the oath, and therefore the oath is attributed to the Name of God. (Rabbenu Bechaye 21:7)

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