

Zera Shimshon

by Rabbi Shimshon Chaim Nachmani zt"l

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Chapter XVIII: Mishpatim (Ex. 21:1–24:18)

Essay 1. The Torah's civil laws

פְּסוּק "וְאֵלֶּה הַמִּשְׁפָּטִים", פָּרַשׁ רַשִׁ"י וְלָמַד נִסְמָכָה פָּרַשׁת דִּינֵי לְפָרֶשֶׁת מִזְבֵּחַ, לֹאמַר שֶׁתְּשִׁימִם סְנֵהֲדָרִין אֶצְלֵ מִזְבֵּחַ, "אֲשֶׁר תִּשְׁמִי לְפָנֵיהֶם" וְלֹא לְפָנֵי נְכָרִים וְכוּ'. הַקְּשׁוּ הַמְּפָרְשִׁים מָה עֲנִין שֶׁתְּשִׁימִם סְנֵהֲדָרִין אֶצְלֵ הַמִּזְבֵּחַ לְ"אֲשֶׁר תִּשְׁמִי לְפָנֵיהֶם" וְלֹא לְפָנֵי נְכָרִים, וְאִם עַל פִּי שְׂיֵשׁ סְפָרִים שְׂגוּרִים בְּפִירוּשׁ רַשִׁ"י אֶצְלֵ הַמְּקַדָּשׁ, עִם כָּל זֶה גִּירְסָא הָרֵאשׁוֹנָה צְרִיכָה בִּיאור, וּמְפָל שְׂכּוֹן דְּהַכִּי גִרְסִין בְּמַכִּילְתָּא.

The parasha begins with the **verse**: “**And these are the rules** that you shall set before them.”¹ **Rashi explains: Why is the section about civil laws juxtaposed to the section of the making of the altar? To tell you that you should place the Sanhedrin next to the altar.**

Regarding the ending of the verse, “**that you shall set before them,**” Rashi interprets:

Before them [i.e., the Jews] **and not before non-Jews.** Even if you know that in the case of a particular matter of law they will decide it in the same way as Jewish law would, do not bring it before their courts; for he who brings Israel’s legal cases before the non-Jews defames the Name [of the L-rd] and honors the name of the idol [by which the non-Jewish court administers justice] for praise.

- Rashi on Ex. 21:1

The commentators question: What is the connection between placing the Sanhedrin next to the altar, and sitting before them in judgment, not before foreigners?

Even though some versions of Rashi’s explanation read “next to the Temple” (instead of “next to the altar”), **the original version requires clarification**, as the Sanhedrin was not physically placed adjacent to the altar.

[That the original version requires clarification] is especially true since this is the version found in the Mechilta, at the beginning of parashat Mishpatim, which is the source of Rashi’s comment. I.e., the later versions that read “next to the Temple” may have been due to an overzealous editor who felt that the original version “next to the altar” was a simple error. However, *Zera Shimshon* will show that there is a basis for the reading “next to the altar.”

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¹ Ex. 21:1.

והנה תחלה פרש רש"י מה הראשונים מסיני אף אלו מסיני, ואחר כך כתב ולמה נסמכה וכו', ואחר כך כתב אשר תשים בשלחן ערוף ואחר כך כתב לפניהם ולא לפני נכרים וסיים ואפילו ידעת וכו' מפני שמיקר שם וכו'. וקשה דמתחלה כתב שאסור לילך לפני נכרים מגזירת הכתוב "אשר תשים לפניהם", ואחר כך כתב הטעם מפני שמיקר שם האילים וכו', ומה צורך לטעם זה, והלא כבר אסור מ"אשר תשים" וכו'. ואי משום שכתב ואפילו ידעת בדין אחד וכו', גם על זה קשה מי הכניסו לפרש זה כאן, שהרי רש"י לא בא אלא לפרש הכתוב ולא לפסוק הדינים.

Behold, initially Rashi explained, “Just as the earlier [rules, i.e., the Ten Commandments] were from Sinai, so too these are from Sinai.” Afterwards he wrote, “Why is this section about [civil] law placed adjacent to the section of the [making of the] altar.” Afterwards he wrote, “You shall place them [the judges of the Sanhedrin] as one would set a prepared table before a person with everything ready for eating.” Afterwards he wrote, “Before them, and not before non-Jews,” and he concluded, “Even if you know that in the case of a particular matter of law they will decide it in the same way as Jewish law would, do not bring it before their courts; for he who brings Israel’s legal cases before the non-Jews defames the Name [of the L-rd] and honors the name of the idol [by which the non-Jewish court administers justice] for praise.”

The difficulty here is that initially Rashi wrote that it is forbidden to sit before non-Jews to judge them, as a decree of the verse, “and these are the rules that you shall set before them,” and afterwards he wrote the reason for it, because it honors the name of the idol, etc. But what is the need for this reason? Isn’t it already prohibited from the words, “that you shall set before them”?

Even if it [he brought the reason] because Rashi wrote, “Even if you know that in the case of a particular matter of law, they will decide it in the same way as Jewish law would, do not bring it before their courts,” this is also problematic. Who brought [Rashi] to explain this here? After all, Rashi’s role is only to explain the verse, not to provide legal rulings.

ונבא לתרץ במה שהקשה הרא"ם על מה הראשונים מסיני, דמה צורך ללימוד והלא כל המצוות נאמרו מסיני, שאנו למדים זה מהשמיטה כמו שכתב שם רש"י בפסוק "בהר סיני", או מפסוק "אלה המצוות" וכו' "בהר סיני", ותירץ, דכל המצוות אנו יודעים שנאמרו בסיני, אבל זה הוא באותן ארבעים יום שישב משה בהר כדי לקבל כל התורה, אבל פסוק "ואלה המשפטים" נאמרו בסיני בקולות וברקים כמו העשרת הדיברות, ומשום הכי הוצרכו ללימוד פרטי ד"ואלה" מוסיף על הראשונים עכ"ל.

We will now come to explain the question raised by Rabbi Eliyahu Mizrahi (the Re'em)² on “Just as the earlier [rules] were from Sinai,” for what is the need for this teaching, “weren’t all the commandments given at Sinai?” We learn this from the Sabbatical year, as Rashi wrote on the first verse from parashat Behar, “The L-rd spoke to Moses on Mount Sinai,”³ that all the laws with all their details were given at Sinai,⁴ or from the concluding verse of

² Rabbi Elijah Mizrahi (c. 1455–c. 1525) (“the Re'em). His *Sefer ha-Mizrahi* is a supercommentary on Rashi’s commentary on the Torah.

³ Lev. 25:1.

⁴ Rashi on Lev. 25:1: “What has the matter of the Sabbatical year to do with Mount Sinai, that Scripture felt compelled to expressly state where it was commanded? Were not all commandments given on Sinai? But this statement is intended to suggest the following comparison: How is it in the case of the law of Shemittah? Its general rules, [its

Leviticus, “These are the commandments that the L-rd gave Moses for the Israelite people on Mount Sinai.”⁵

The answer is: While we know that all the commandments were given at Sinai, this refers to the forty days that Moses sat on the mountain to receive the entire Torah. But the verse “And these are the rules” was given at Sinai with thunder and lightning, like the Ten Commandments, and therefore there was a need for a specific teaching, because this adds to the earlier commandments.

ומעתה קשה למה הפסיק בפרשת מזבח בין עשרת הדברות ובין "ואלה המשפטים", ונהלא פרשת מזבח לא נאמרה בסיני בקולות וברקים כמו העשרת הדברות והמשפטים, אלא באותן ארבעים יום כמו שאר התורה וכמו כל הפרשיות של מלאכת המשכן, שבודאי גם זו של מזבח נאמרה בכלל שאר מלאכת המשכן, שהרי לא היה שום צורך למזבח קודם המשכן, וגם לא מצינו שעשו המזבח קודם המשכן, ולמה הפסיק בפרשת מזבח בין עשרת הדברות ל"ואלה המשפטים", אלא ודאי לדרוש סמוכים. ומשום הכי לאחר שפירש רש"י מה הראשונים מסיני וכו' הקשה ולמה נסמכה פרשת דייגים לפרשת מזבח ותירץ שמשים סנהדרין אצל המזבח.

Now, it is difficult to understand why the section about the altar interrupts between the Ten Commandments and “And these are the rules.” After all, the section about the altar was not given at Sinai with thunder and lightning, like the Ten Commandments and the judgments, but during the forty days that Moses spent on the mountain, as was the case with the rest of the Torah and the sections concerning the work of the Tabernacle. Certainly, the laws about the altar were also included within the general laws concerning the work of the Tabernacle, since there was no need for the altar before the Tabernacle. Furthermore, we do not find that the altar was made before the Tabernacle. So, why does the section about the altar interrupt between the Ten Commandments and “And these are the rules”? The answer must be that there is a lesson to be learned from their juxtaposition. Because of that after Rashi explained that the earlier ones were from Sinai, he then asked, “Why is the section about [civil] laws adjacent to the section of the [making of the] altar,” and he answered, “To tell you that you should place the Sanhedrin next to the altar.”

אבל עדיין יש לדקדק בתירוץ זה, שהרי הסנהדרין לא היו אצל מזבח אלא בלשפת הגזית היו יושבין, והיא הייתה חצונה בקדש וחצונה בחול, והסנהדרין היו יושבין בחצונה שהיא בחול ואם פן לא היו אצל מזבח. אלא ודאי צריך לומר שסמיכות זה לא קא משמע לו אלא שדין הסנהדרין הוא כדיו המזבח, תדא דבמזבח כתיב "אבנים שלמות תבנה" ואף בסנהדרין בעינן שיהיו שלימים ובעלי מדות טובות, כדכתיב "כלה יפה רעית", כל"ה בגימטריא שבועים.

But still, we need to check this explanation, for the Sanhedrin was not located by the altar, but rather in the Chamber of Hewn Stone, and it was situated half in the sacred area and half in the non-sacred area.⁶ The Sanhedrin sat in the part that was in the secular area,

specific prescriptions] and minute details were ordained on Mount Sinai! So, also, were all commandments with their general rules and their minute details ordained on Mount Sinai.”

⁵ Lev. 27:34.

⁶ Yoma 25a.

so they were not by the altar. Rather, we must say that the juxtaposition here is not telling us that the Sanhedrin should be physically located by the altar, but rather **only telling us that the law of the Sanhedrin is similar to that of the altar. First, because regarding the altar, it is written, “Of unhewn stones you must build the altar of the L-rd, your G-d,”⁷ and similarly, for the Sanhedrin, there is a requirement that its members should be whole and of good character,⁸ as it is written, “You are altogether [בְּלֶדֶד] beautiful, my love,”⁹ and the Gematria of “you are altogether” is seventy, which equals the number of judges of the Sanhedrin.**

ועוד ד"אֲשֶׁר תִּשִׂים לְפָנֵיהֶם" אֲנִי מְפָרְשִׁים שְׁלֹפְנֵי יִשְׂרָאֵל אֲנִי מְחַוִּיבִים לְפָרֵשׁ לָהֶם הַטַּעַם הַדִּינִים כְּשֶׁלֶחַן הָעֶרְוָה וּמוֹכֵן לְאָכֹל, אֲבָל לֹא לְפָנֵי נְכָרִים, שְׂאִין אֲנִי יְכוּלִים לְהַשִּׂים הַדִּינִים כְּלָל לְפָנֵי נְכָרִים. וּמִזֶּה הִיָּה אֶפְשָׁר לֹאמַר שְׂאִין יְבִאוּ נְכָרִים לְפָנֵינוּ לְדִין שְׂאִין אֲנִי יְכוּלִים לְדוֹנֵם בְּדִין תּוֹרָה, כְּדִי שְׂלֹא לֹאמַר לָהֶם דִּין תּוֹרָה, וְזֶה אֵינוֹ, דְּבִכְמָה דּוֹכְתִי אֶמְרִינוּ כְּגוֹן שֶׁהַנְּכָרִי קָבֵל עָלָיו לְעֲמוֹד עַל דִּין תּוֹרָה.

Additionally, the phrase “that you shall set before them” we interpret as “before Israel, we are obligated to explain the reasoning behind the laws, just as a table is set and prepared for eating, but not before non-Jews, as we cannot impose the laws before non-Jews at all.”

From this, one might have thought that if non-Jews come before us for judgment, we cannot judge them according to Torah law, in order not to give them a ruling based on Torah law. However, this is not the case, as we say in a few places that if a non-Jew accepts upon himself to abide by Torah law, we can judge him according to Torah law.¹⁰

וּלְפִיכֶּךָ בָּא הַלִּימוּד שֶׁתִּשִׂים סִנְהֶדְרִין אֶצְלֵי הַמִּזְבֵּחַ, דִּהְיִינוּ שֶׁהַסִּנְהֶדְרִין יִהְיוּ דוֹמִים לְמִזְבֵּחַ, דְּמֵה הַמִּזְבֵּחַ עֲשׂוּי לְקַבֵּל קִרְבָּנוֹת מִיִּשְׂרָאֵל וּנְאֻפְלוּ הֵכִי אִם הַנְּכָרִים יִקְרִיבוּ אִף הֵם נְדָרִים וּנְדָבוֹת מְקַבְּלִים מֵהֶם, דְּכַתִּיב "אִישׁ אִישׁ" מְלַמֵּד שְׂאִין הַנְּכָרִים נוֹדְרִים וּנְדָבוֹת כִּיִּשְׂרָאֵל, אִף הַסִּנְהֶדְרִין כּוֹן, אִם הַנְּכָרִים יִרְצוּ לְקַבֵּל עֲלֵיהֶם דִּין תּוֹרָה, יְכוּלִים הַדִּינִים לְדוֹנֵם, וְהָאִיסוּר הוּא שְׂלֹא לְלַמֵּד לָהֶם טַעְמֵי הַדִּינִים וְהַסְּבָרוֹת, דְּזֶה אֲנִי לֹאמְדִים מֵאֲשֶׁר תִּשִׂים כְּשֶׁלֶחַן הָעֶרְוָה וּמוֹכֵן לְאָכֹל, דְּמִיָּרִי בְּטַעְמֵי הַמִּצְוֹת וְהַדִּינִים.

Therefore, the lesson is taught that the Sanhedrin should be placed near the altar, meaning that the Sanhedrin should be similar to the altar. Just as the altar is designed to accept sacrifices from Israel, even so, if non-Jews bring vows and freewill offerings, they are accepted from them. This is as it is written, “When any person of the house of Israel or of the strangers in Israel presents a burnt offering,”¹¹ teaching that even non-Jews can make vows and freewill offerings like Israel.¹² So too, the Sanhedrin: if non-Jews wish to accept Torah law upon themselves, the judges can judge them. The prohibition is not to teach them the reasoning behind the laws and the derivations, and this we learn from, “You shall place them [the judges of the Sanhedrin] as one would set a prepared table with everything ready for eating,” which is speaking about the reasons for the commandments and laws.

⁷ Deut. 27:6.

⁸ Sanhedrin 36b.

⁹ Song of Songs 4:7.

¹⁰ Bechorot 13b; Bava Metzia 71b.

¹¹ Lev. 22:18.

¹² Chullin 40b.

ולפי זה דבר פשוט הוא ללמוד נמי מפסוק זה שהנכרים פסולים לדון, הואיל שאינם יודעים הדינים שלנו, ופשיטא שישטלו מזה ויתנו לזה שלא כדיון. אלא שמזה היה משמע שאם היינו יודעים בדין אהד שהם דנים אותו כדיני ישראל שיהיה מותר לנו ללכת לדון לפניהם.

According to this, it is clear from this verse that non-Jews are disqualified from judging, since they do not know our laws, and it is obvious that they would take from one person and give to another improperly. However, from this, one might infer that if we knew that they judged a particular case according to the laws of Israel, it would be permissible for us to go and judge before them.

ועל זה מסיים ואפילו ידעת בדין אהד וכו', כדי לבאר דבריו שאמר "לפניהם" ולא לפני נכרים, שלא תאמר שהאסור אינו אלא ללמד להם הדינים והטעמים, אבל לילך לדון לפניהם במה שהם יודעים שפיר דמי, לכך הוסיף דאין הכי נמי דשייך אסור אף לדון לפניהם, ואיירי קרא בין בל[מי]נת הדינים להם בין לדון לפניהם, דהסברא גומתת שאסור מפני שמקרא שם האלילים להשביחם וכו'.

Regarding this, he concludes, “Even if you know that in the case of a particular matter of law they will decide it in the same way as Jewish law would, do not bring it before their courts.” This is in order to clarify his words that [Scripture] said, “And these are the rules that you shall set before them” and not before non-Jews. This is so that you will not say that the prohibition only applies to teaching them the laws and reasoning, but that it would be permissible to go and be judged by them in matters that they know correctly. Therefore, he added that it is indeed so that the prohibition also applies to going before them for judgment. The verse is addressing both teaching them the laws and going before them for judgment. The reasoning is that it is forbidden because it honors the name of the idols [by which the non-Jewish court administers justice] for praising them.

ונהו שאמר הכתוב "מגיד דברו ליעקב תקיו ומשפטיו לישראל: לא עשה כן לכל-גוי ומשפטים בל-ידעום", דקשה מהו "בל-ידעום", פשיטא שלא ידעו, שהרי "לא עשה כן לכל-גוי" ולא נתן המשפטים אלא לישראל. ועוד למה לא אמר נמי "תקים ומשפטים בל-ידעום" וכו'? ועוד איך אפשר שלא ידעום והא בני נח נצטוו על הדינים.

This is the reason that the verse says, “He issued His commands to Jacob, His statutes and rules to Israel. He did not do so for any other nation; and the rules—they know nothing of them. Hallelujah.”¹³ A difficulty is what is the meaning of “they know nothing of them”? It is obvious they do not know, for “He did not do so for any other nation,” and He only gave the statutes to Israel.

Also, why doesn't it also say “and the statutes and rules—they know nothing of them,” to parallel the construction of the previous verse, “He issued . . . His statues and rules to Israel”?

Also, how is it possible that they did not know them, since the children of Noah were commanded regarding the laws?

¹³ Ps. 147:19–20.

ועם מה שאמרנו אתי שפיר, דאף על גב שאומר הכתוב "חקיו ומשפטיו לישראל: לא עשה כן לכל־גוי", כלומר שלא הגיד הדינים לכל גוי, אין ללמוד מכאן שאסור לדון את הגוי בדין תורה היכא שיקבל עליו זה הדין, דזה אינו, שזה האיסור אינו אלא ללמ[ד] להם טעמי הדינים, ואף על פי שגם הם נצטוו על הדינים, יש כמה חילוקים בין דינים שנצטוו הם לדינים שנצטוו ישראל, כדאמרינן בפרק ב' [דבכורות] (דף י"ג) בדיניהם שפסקה להם תורה, ועוד דיניהם בדין אחד בעד אחד וכו', אבל הדינים מותר לומר להם היכא שיבאו לדון לפנינו ויקבלו עליהם דין תורה.

With what we have said, it is fine, that even though Scripture says, “His statutes and rules to Israel. He did not do so for any other nation,” as if to say that He did not tell his laws to every nation, we cannot learn from here that it is forbidden to judge the non-Jew according to Torah law when they accept the judgment. This is not the case, as the prohibition only applies to teaching them the reasoning behind the laws. Even though they are commanded regarding the laws, there are several differences between the laws they were commanded to follow and the laws that were commanded to Israel. As we say in the second chapter of [Bechorot] (page 13a) according to their laws that the Torah assigned to them, which differ from the laws assigned to Jews. Also, they are judged by one judge based on a single witness, which is very different from the Jewish courts. However, it is permissible to tell them the laws when they come to be judged before us and accept Torah law.

ונזהו "ומשפטים בל־ידעום", ולא אמר "בל־ידעו" אלא "ידעום", כלומר אף מהדינים שתאמר להם, לא ידעום, לא ידעו אותם בטעמם. אבל מהחקים לא אמר "והחקים לא ידעום", לפי שאינם רשאים לקיים שום מצוה משאר המצוות של תורה, אלא או יהיה גר צדק ויקבל כל המצוות או יצמוד בתורתו ולא יוסיף ולא יגרע. וכמו שפסק הרמב"ם ז"ל (בפרק י' מהלכות מלקים) ואם ירצו לקיים איזו מצוה אחרת מכין אותן ומודיעים להם שהוא חייב מיתה על זה, אבל לא הורגין אותם.

This is the meaning of “and the rules—they know nothing of them.” It does not say “they know nothing” but rather “they know nothing of them,” meaning that even the laws that you would tell them, they do not know them, they do not know them with their reasoning.

But regarding the statutes, it does not say “and the statutes—they do not know them,” because they are not permitted to observe any of the other commandments of the Torah, unless he becomes a proselyte and accepts all the commandments, or he stands with his Torah, i.e., the teachings that apply to a Noachide, without adding or subtracting.

As the Rambam rules in the *Mishneh Torah*, the tenth chapter of the Laws of Kings, halacha 9, “If they wish to observe any other commandment, they are beaten and told that they are liable to the death penalty for this, but they are not executed.”

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