

Parshat Mishpatim But What Were The Terms And Conditions? Rabba Claudia Marbach

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In my first career, as an attorney, I worked on what were then called “shrinkwrap” licenses. Then, when you bought a software program, it came on a floppy disc that you used to download the program to your computer. The shrinkwrap referred to the plastic wrap around the envelope containing the disc. The license was printed on the envelope and said that by opening the plastic and the envelope you accepted the terms of use of the contract. The courts of the times were unsure that such a contract could be enforceable, because they were unsure about whether the contract was actually read and the opener was consenting to the terms. Today the grandchild of those contracts reads “click here to accept these terms and conditions”. The basic idea is you agree through a tiny action, and you are bound to a whole lot of terms and conditions that you might not even know about.

At the end of Mishpatim, Moshe reads what is called סֵפֶר הַבְּרִית, the book of the Covenant. Bnei Yisrael famously say: וַיֹּאמְרוּ, כָּל אֲשֶׁר-דִּבֶּר ה' נַעֲשֶׂה וְנִשְׁמָע. “The people said as God has spoken we will do and we will hear.” Yes, at the end, rather than just before Ma'amad Har Sinai! This is an example of where the midrash and pshat often get confused in our minds. Rashi, based on a Midrash Mechilta, rearranges these chapters and weaves the *Na'aseh v'Nishma* statement into the narrative prior to Har Sinai because of the principle אין בתורה מוקדם ומאוחר - that the Torah's written order is not sacrosanct. By moving these words, Rashi transforms *Na'aseh v'Nishma* into a great statement of faith and turns it into a shrinkwrap agreement. Bnei Yisrael agree to the terms without actually hearing them.

Does this make for a good contract? Not clear. It makes for a great love story. The great “I do” moment. The mountain is dressed in green, there is shofar music, a photographer with a flashgun, and speeches. But as in any marriage you say yes with great hope that your spouse will be who you think they are. Because you don't know, you only know the courtship experience.

I am skeptical about Rashi's rewrite. Ibn Ezra and Ramban think that *na'aseh v'nishma* should stay right where it is found. After the Ten Commandments and the Mishpatim were given, there is a whole *brit* ceremony that includes the youth putting up twelve pillars representing the tribes, sacrificing animals, dividing up the blood of these animals into two troughs, sprinkling one trough on Bnei Yisrael, then the elders have a nice meal and see a vision of God with a lapis lazuli walkway all before Moshe goes up to Har Sinai for forty days to get the luchot.

Perhaps Bnei Yisrael did not go into this agreement without reading the terms. Not only did they receive the grand mission statement, in the form of the Ten Commandments, but they accepted parashat Mishpatim which is filled with the nitty gritty details of Jewish life and establishes the rule of law for all. The everyday mundane of people interacting, and not always well, but aspiring to be the holy nation of God. Treating the poor and powerless with kindness and fairness that is enshrined into the legal system.

Yet that is not all. Before the people say וַיֹּאמְרוּ, כָּל אֲשֶׁר-דִּבֶּר ה' נַעֲשֶׂה וְנִשְׁמָע Moshe reads them the סֵפֶר הַבְּרִית. What is this book of the covenant? Rashi tells us that it is Sefer Bereshit. What about Sefer Bereshit is so compelling at this point in Jewish history? It has no laws in the manner of those just revealed. But Sefer Bereshit is full of *britot*, covenants, and in many ways Bnei Yisrael have been knowingly and unknowingly reenacting these covenants during יציאת מצרים, going out of Egypt. The first *brit* in Bereishit is the *Brit Milah* of Avraham, the

preliminary act of conversion. The midrash in Shemot Rabba tells us that before they ate the korban Pesach on the eve of their departure from Egypt the men and boys, like Avraham, were circumcised.

The next *brit* was *Brit bein haBetarim*, in which Hashem instructs Avraham to take a variety of animals and to divide them in half. God uses language that echoes the language of the Exodus. Predicting the slavery in Egypt and how Bnei Yisrael will leave with a fortune. Who knows how much of this history Bnei Yisrael knew? A midrash says that they kept their names, their clothes and their language. Did they keep their family history? We don't know. But surely they would recognize their connection in the promise to Avraham. "Oh yeah - that really happened to us!", they might say. And only then they say *naase v'nishma*. Once they affirm the *brit*, Moshe takes the blood from the sacrifices and divides it into two troughs and sprinkles the blood from one trough on to the altar and the blood of the other on to the people to seal the deal. Reenacting *Brit bein haBetarim* and committing it to communal memory.

The Beit haLevi wondered why *naase v'nishma* was said in the plural. We will do and we will hear. His thinks it was a statement of mutual responsibility. Each accepted the contract for themselves and then the responsibility to help their neighbor live up to the terms. But I would suggest that when the people answered as one they were answering as Avraham did. Renewing his *brit*.

The rereading of Breishit connected the people to their history and the *brit*. However, there was another reason to add the reading to the contract. The Ten Commandments are the great statement of purpose, a mission statement. Mishpatim establishes civil and ritual society and the values that those rules embody. Bereshit is about *gemilut chasadim*, acts of loving kindness. While justice is crucial, Judaism tempers itself with *gemilut chasadim* - putting your values into action in the service of others. The Haamek Dakar said that *Na'ase* refers to the mitzvot that one is obligated to do. In contrast, *Nishma* refers to *Gemilut Chasadim* those acts which go above and beyond the letter of the law. The ultimate kindness.

In this light, let's reread *נַעֲשֶׂה וְנִשְׁמָע* as we will do these mitzvot that God has commanded to us but we will also listen with the core of our souls, and the mitzvot and the values that they embody will enter us and as we do them and we will hear the values and mindfully incorporate them into ourselves. We accept and reaffirm the *brit* first established with Avraham but affirmed by the entire nation.



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