

Mishpatim 2004  
*Regulations: Is it Illegal to Pray for Someone?*

We all have heard horror stories describing the intrusive nature of government regulations, or the cumbersomeness of government bureaucracy. They were a mainstay of the political rhetoric of Ronald Reagan, and appeared frequently in anecdotes in his speeches.

In that context, the notice I received yesterday was especially alarming.

Someone wrote that we need to check to be sure that offering a meesheBerach prayer, the traditional prayer recited on behalf of the sick, is not in violation of the government's HIPPA policy.

My initial thought was that this is absurd, and it must be a joke. The government cannot regulate prayer, I thought to myself.

Just think about it: What government agent is going to be assigned that task? I could just picture someone coming up to the hazzan, and saying, "I'm going to have to pull you over. You were davening too fast. You were going 20 words per minute in the kedusha, which is a 15 word per minute zone... Let me check your id, as well as your tallis, tzitzit and tefillin. And by the way, I am going to have to check to make sure you didn't hit the wine in the kiddush before you got up on the bimah. See if you can walk a straight line from the amud to the aron haKodesh."

But upon further reflection, I realized that the concern is not totally preposterous, or as outlandish as it first appears to be, as it potentially touches upon issues of confidentiality. For the record, when someone asks me to say a meesheBerach prayer for them, but says that they do not want anyone to know they are sick, I ask them to give me their Hebrew name, assuming that is one way of preserving their anonymity while fulfilling the mitzvah of praying on their behalf.

We need not worry, however. Later in the day, I was reassured by our contingent of attorneys that it is still permissible to offer prayers for the sick.

But as most physicians and small business owners will attest, there is a considerable amount of government regulation. While it is designed to protect the innocent, to preserve the environment, to mandate fairness, to protect the rights of the workers and consumers, and so on, some of it can be tedious, onerous, and invasive.

All of which brings us to the title and subject of this week's Torah portion: Mishpatim, which means civil and criminal laws and regulations. We have in today's reading a myriad of rules pertaining to damages inflicted upon individuals as well as property, rules of interest and business practices, agricultural requirements, stipulations for judges, marital laws, the holidays and Shabbat, and so on.

Nahum Sarna notes that the unique thing about this week's Torah portion is that civil, moral and religious laws are all combined into one corpus of law. The integration is significant, for our rabbinic commentators noted that the rules which tell us how to create a just society immediately follow the instructions about the design of the altar. It is this integration of the laws which pertain to social and economic issues and which are designed to create a just society with the concept of Divine expectations which is one of Judaism's unique gifts to the world and is at the core and essence of Judaism's basic message.

As our Etz Hayim chumash writes, "Obeying the laws creates not only a harmonious society, but a just and holy one. Violations are seen as offenses against God, not just against the violated person. Unlike the secular legal traditions of other societies, the laws of the Torah are cited not as the products of human wisdom and experience but as a reflection of divine principles built into the world. Thus the dignity of a human being is as much a permanent part of God's creation as the law of gravity. "

So much attention is given to the Aseret Dibrot, the Ten Commandments, which we read in last week's parasha. But this week we get down to the nitty gritty. "Judaism is based not only on the major pronouncements of the Decalogue, but on the hundreds of minor ways in which we are called upon to sanctify our relationships with other people." (ibid) By listing a series of regulations, the torah portion is giving practical application to the Divine Revelation at Mt. Sinai. It is showing us the implication of the belief that every human being is created b'tzelem elohim, in the image of God.

Rashi and others observed that most of the laws in this week's parasha would have been instituted by human beings, even if God had not given them. Why, our sages ask, were these rules then part of the Torah? In other words, why didn't God just let us arrive at them independently?

There are two important reasons. First of all, by linking these rather mundane regulations to God and Sinai, it teaches that rationality itself was also implanted at Sinai. Human reason does not conflict with Torah or revelation, but is consistent with it, and is the very source of rational knowledge.

The second reason is because as I already indicated, it teaches that God is concerned not just with ritual, but with how we treat our fellow human beings. Holiness derives no less from halackhically ethical business dealings than from piety in matters of ritual.

Rabbi Moshe Lieber writes, "The way in which one treats his servants and the respect he accords to his fellow man's property are issues no less sanctified or sublime than the great principles of belief promulgated at Sinai." This then is the other reason why our sages teach the very first Divine injunctions to be issued after the revelation at Mt. Sinai relate to social and economic matters.

A famous verse in the Talmud sums up what I have been suggesting this morning: “One who wishes to be a devoutly religious person should be scrupulous in observing the laws of nezikin, Judaism’s civil and tort law.”

So, while I cannot state unequivocally that government regulations emanate from God, nor that they are always rational, nor can we be certain that they will necessarily make us better people. Nevertheless, that is the case with the passages in parashat Mishpatim. From this week’s Torah portion we learn about the affirmation of the connection between following the divine commandments as a means of expressing the Divine will. In so doing, we assert the association between God and morality, between the mitzvot and making the world a better place.

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