



Covenant & Conversation

Jonathan Sacks
THE RABBI SACKS LEGACY

MISHPATIM • משפטים

FROM THE TEACHINGS AND WRITINGS OF **RABBI LORD JONATHAN SACKS** זצ"ל

With thanks to the Schimmel Family for their generous sponsorship of Covenant & Conversation, dedicated in loving memory of Harry (Chaim) Schimmel.

"I have loved the Torah of R' Chaim Schimmel ever since I first encountered it. It strives to be not just about truth on the surface but also its connection to a deeper truth beneath. Together with Anna, his remarkable wife of 60 years, they built a life dedicated to love of family, community, and Torah.

An extraordinary couple who have moved me beyond measure by the example of their lives." — Rabbi Sacks

This year's series of essays and videos were originally written and recorded by Rabbi Sacks זצ"ל in 5771 (2010–2011). These timeless messages are accompanied by a new [Family Edition](#) (2023–2024), created to inspire intergenerational learning on the parsha.

God's Nudge

First in Yitro there were the Aseret Hadibrot, the "Ten Utterances", the Ten Commandments, expressed as general principles. Now in Mishpatim come the details. Here is how they begin:

If you buy a Hebrew servant, he is to serve you for six years. But in the seventh year, he shall go free, without paying anything . . .

But if the servant declares, 'I love my master and my wife and children and do not want to go free,' then his master must take him before the judges. He shall take him to the door or the doorpost and pierce his ear with an awl. Then he will be his servant for life.

Ex. 21:2–6

There is an obvious question. Why begin here, with this law? There are 613 commandments. Why does Mishpatim – the first full law code in the Torah – begin where it does?

The answer is equally obvious. The Israelites have just endured slavery in Egypt. There must be a reason why this happened, for God knew it was going to happen. Evidently He intended it to happen. Centuries before, He had already told Abraham it would happen:

As the sun was setting, Abram fell into a deep sleep, and a thick and dreadful darkness came over him. Then the Lord said to him, "Know for certain that for four hundred years your descendants will be strangers in a country that is not their own, and that they will be enslaved and mistreated there.

Gen 15:12–13

It seems that this was the necessary first experience of the Israelites as a nation. From the very start of the human story, the God of freedom sought the free worship of free human beings. But one after the other, people abused that freedom: first Adam and Eve, then Cain, then the generation of the Flood, then the builders of Babel.

God began again, this time not with all humanity, but with one man, one woman, one family who would become pioneers of freedom. Still, freedom is difficult. We each seek it for ourselves, but we deny it to others when their freedom conflicts with ours. So deeply is this true that within three generations of Abraham's children, Joseph's brothers were willing to sell him into slavery: a tragedy that did not end until Judah was prepared

to forfeit his own freedom so that his brother Benjamin could go free.

It took the collective experience of the Israelites, their deep, intimate, personal, backbreaking, bitter experience of slavery – a memory they were commanded never to forget – to turn them into a people who would no longer turn their brothers and sisters into slaves, a people capable of constructing a free society, the hardest of all achievements in the human realm.

So it is no surprise that the first laws they were commanded after Sinai related to slavery. It would have been a surprise had they been about anything else. But now comes the real question. If God does not want slavery, if He regards it as an affront to the human condition, why did He not abolish it immediately? Why did He allow it to continue, albeit in a restricted and regulated way, as described in this week's parsha? Is it conceivable that God, who can produce water from a rock, manna from heaven, and turn sea into dry land, cannot call for this change to human behaviour? Are there areas where the All-Powerful is, so to speak, powerless?

In 2008 economist Richard Thaler and law professor Cass Sunstein published a fascinating book called *Nudge*.¹ In it they addressed a fundamental problem in the logic of freedom. On the one hand freedom depends on not over-legislating. It means creating space within which people have the right to choose for themselves.

On the other hand, we know that people will not always make the right choices. The old model on which classical economics was based, that left to themselves people will make rational choices, turns out not to be true. We are deeply irrational, a discovery to which several Jewish academics made major contributions. The psychologists Solomon

Asch and Stanley Milgram showed how much we are influenced by the desire to conform, even when we know that other people have got it wrong. The Israeli economists, Daniel Kahneman and Amos Tversky, showed how even when making economic decisions we frequently miscalculate their effects and fail to recognise our motivations, a finding for which Kahneman won the Nobel Prize.

How then do you stop people doing harmful things without taking away their freedom? Thaler and Sunstein's answer is that there are oblique ways in which you can influence people. In a cafeteria, for example, you can put healthy food at eye level and junk food in a more inaccessible and less noticeable place. You can subtly adjust what they call people's "choice architecture."

That is exactly what God does in the case of slavery. He does not abolish it, but He so circumscribes it that He sets in motion a process that will foreseeably lead people to abandon it of their own accord, although it may take many centuries.

A Hebrew slave is to go free after six years. If the slave has grown so used to his condition that he wishes not to go free, then he is required to undergo a stigmatising ceremony, having his ear pierced, which thereafter remains as a visible sign of shame. Every Shabbat, slaves cannot be forced to work. All these stipulations have the effect of turning slavery from a lifelong fate into a temporary condition, and one that is perceived to be a humiliation rather than something written indelibly into the human script.

Why choose this way of doing things? Because people must freely choose to abolish slavery if they are to be free at all. It took the reign of terror after the French Revolution to show how wrong

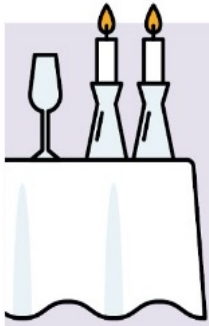
¹ Richard H. Thaler and Cass R Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, Penguin Books, 2008.

Rousseau was when he wrote in *The Social Contract* that, if necessary, people have to be forced to be free. That is a contradiction in terms, and it led, in the title of J. L. Talmon's great book on the thinking behind the French Revolution, to totalitarian democracy.

God can change nature, said Maimonides, but He cannot, or chooses not to, change human nature, precisely because Judaism is built on the principle of human freedom.

So He could not abolish slavery overnight, but He could change our choice architecture, or in plain words, give us a nudge, signalling that slavery is wrong but that we must be the ones to abolish it, in our own time, through our own understanding. It took a very long time indeed, and in America, not without a civil war. But it happened.

There are some issues on which God gives us a nudge. The rest is up to us.



Around the Shabbat Table

1. Can you think of examples in your life where "choice architecture" influences your own decisions?
2. In what ways do you think God "nudges" us towards certain paths? Can you think of any other time in the Torah when God guided Bnei Yisrael towards a certain moral choice?
3. If you could create a new rule for everyone to follow, what would it be, and why?

● These questions come from this week's **Family Edition** to Rabbi Sacks' Covenant & Conversation. For an interactive, multi-generational study, check out the full edition at www.RabbiSacks.org/covenant-conversation-family-edition/mishpatim/gods-nudge/