

JEWISH LAW IN SOCIETY TODAY

by Rabbi Berel Wein

Jewish civil law is a most complicated subject. The subjects that are most discussed, argued over and analyzed in Talmudic and rabbinic literature concern themselves with Jewish civil law - torts, contracts, evidence, real estate, inheritance, civil procedure, etc.

Almost every Jewish child will cut his first tooth in Talmudic studies in matters related to Jewish civil law. As important as observance and knowledge of ritual is in Jewish life and continuity, it is the understanding of Jewish civil law that forms the basic structure of the value system and lifestyle of Judaism. Therefore there is a strong admonition that Jews should not allow themselves to judge their civil disputes in non-Jewish courts or on the basis of non-Jewish law and ordinances.

It is not the laws alone that may differ - it is the moral underpinning of the legal decisions that are different. People are naturally very zealous about protecting their property rights. But seen in isolation from a general moral code of behavior and its important relationship to the welfare of the society as a whole, the primacy of property rights alone can destroy a nation and its society.

Jewish civil law is predicated on the idea that there must always be a balance between the welfare of society generally and the property rights of the individual personally. All of Jewish civil law and its attendant values attempt to strike this balance in a fair and practical manner. This is the skeleton of understanding that lies beneath the surface of all the detailed decisions and opinions that form Jewish Talmudic and rabbinic legal decisions.

The Torah provides the necessary wiggle room to decide exceptional cases and disputes on a more moral and correct basis than the strict interpretation of the law itself would indicate. This concept is called "lifnim meshurat hadin" - an almost extra-legal mechanism that goes "beyond the measure of the law itself" and empowers the Jewish court to decide matters with ultimate justice without being restricted by the pure letter of the law itself.

Naturally, such an extraordinary legal mechanism can only be used sparingly and most wisely, for otherwise it presages the destruction of the entire stability of the law and the legal system of Judaism itself. Nevertheless, the existence of such a mechanism itself is testimony to the balance and general considerations of society that are required in Jewish judicial decisions.

Therefore such difficult decisions regarding the right of governmental eminent domain, the displacement of human workers by advancing new technology and sophisticated money and investment schemes are all part of the scope of Jewish law. Jewish law is equipped to deal with all

possible questions and problems of human society.

I think that is what Justice Minister Yaakov Neeman meant when he stated that the basic principles of Israeli law should be based on the principles of Jewish law as derived from the Torah, the Talmud and the millennia-long challenges met by the rabbis of Israel to create a just legal system for the Jewish people. This is inherent in the opening words of this week's parsha: "And these are the laws that you shall place before them" - these laws and not other laws and legal systems.

Shabat shalom.

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Rabbi Berel Wein- Jewish historian, author and international lecturer offers a complete selection of CDs, audio tapes, video tapes, DVDs, and books on Jewish history at www.rabbiwein.com