

PARSHAS KI SEITZEI - XTREME LAW

by Rabbi Yitzchok Adlerstein

Xtreme Law¹

"Hard cases make bad law." So goes a familiar legal adage. Laws do best when they apply to the colorless, boring, uncomplicated cases that make up ordinariness. The wisdom of a law sparkles when it addresses the quotidian; special circumstances crowd out that wisdom, and make it seem inadequate.

Torah, as might be expected, works quite differently. The Torah seems to make a point of introducing important laws in the context of the extreme, not the ordinary. Perhaps it is only law of human manufacture that breaks down when the going gets rough. Divine law can take the heat. Its principles owe to their connection to a Truth more permanent than the vicissitudes of human experience. They remain true and applicable over a greater range of circumstances.

At the beginning of our parshah, we find the Torah moving away from the themes of Shoftim. Those dealt primarily with the general affairs of the Torah nation. Those affairs had to be put on sure footing, because the people were about to enter the Land and settle it. Now the Torah moves to affairs of family and interpersonal relationships. Until this point, Bnei Yisroel had lived a largely artificial existence, with all their needs miraculously addressed by Hashem Himself. The community was centralized, answering to the authority of Moshe, who received direct instruction from HKBH. Fewer problems arose, and Moshe was around to put out small fires.

This would all change. The people would fan out across the Land. They would have to tend to the needs of sustenance, while putting together a national and community framework. These dramatic changes would place great stress on families, and remove them from the positive influence of neighbors and community. (On the other hand, taking charge of family life is one of challenges that Hashem designed into the normal and expected course of every Jew's life. That challenge had been artificially suppressed until now. Coming into the Land, each head of a household would now have the opportunity to live the life Hashem designed for us as "normal" human beings.) It was now crucial to educate the people concerning the values and institutions that the Torah provides to guide the Jewish family. Our parshah therefore addresses family life itself, the relationship between the genders, marriage, the relationship between parents and children, and children to parents. All of these are put into the context of the Torah's expectations that we deal with all important matters through fealty to the demands of mitzvah-observance, to justice, to brotherly love, and to living on

an elevated moral plane.

How does the Torah introduce this mega-topic? Through an example in the extreme. The parshah begins with a consideration of the most vulnerable woman of all - the woman captured in battle. If the captive is not taken as a wife - after a long process that aims at cooling the Jewish soldier's passions and restoring some common sense to his decision - she must be set free. The Torah assures that she will not be kept around as an object to be trifled with. Effectively, the Torah proclaims the bodily and sexual integrity of every woman against the passions of men - and makes this statement by picking extreme circumstances.

The Torah acted similarly in Parshas Mishpatim, when it first set down the laws that crafted a stable society, bound and restricted by civil rules that would make social cohesion possible. The very first example that the Torah chose to present concerned the marginalized and forgotten members of society: the criminal (forced into long-term servitude to make restitution for his theft), and the poorest of the poor (the Jewish servant girl, apprenticed to a more well-off family in desperation by a father who cannot provide for her.) Here, too, by focusing on the extreme and unusual, the Torah makes a powerful point about the need for consistency in justice and compassion.

In the neighborhood of our parshah, two other examples fit into the same pattern. The Torah prohibits wanton destruction and even wastefulness. We are to cherish the utility of all things, and take nothing for granted. The Torah chooses to plant this lesson in the context of unusual and extreme circumstances - warfare^[2]. Cutting down fruit trees on the front becomes the instructional modality for teaching us about general destructiveness.

Similarly, the Torah later on will tell us about the need to keep our general conduct, dress and speech modest, free of provocative attraction and suggestiveness. We are to keep our immediate environment free of human wastes and spiritual contaminants when we turn to holier pursuits such as prayer and Torah study. Here, too, the Torah chooses to use the extreme example of the military camp^[3] - where such niceties are often ignored - to convey these laws.

The Torah chooses extreme cases to tell us that it will allow no compromise with its principles. It will not abandon those principles even in unusual circumstances. From this we are to understand how demanding it is of us in ordinary and usual circumstances. The Torah is demanding - in the extreme.

-
1. Based on the Hirsch Chumash, Devarim 21:10
 2. Devarim 20:19
 3. Devarim 23:10
-