

Good Shabbos.

I. Introduction

The parsha we just read, Mishpatim, extends in great detail the 10 commandments that we read last week. As such it is an inspiring testament to man's growing sense of justice.

Given that we are so proud of this accomplishment, I want to talk about a dark side to all this, namely the ways we undermine and violate the law, rules, social mores, and customs that we have created for ourselves. If we don't want to live by these rules, why don't we just change them? Why instead do we undermine them and in effect break them?

Unfortunately, I don't have the professional training to answer that question. If I had an answer I would offer it to you, but I don't. Instead, I will try this morning is to draw some the ways we do this, and suggest some of the ways we justify this to ourselves, rationalize if you will, recognizing that I have neither the legal training nor the Jewish scholarly Talmudic background to do this adequately. Finally some of the implications for my work as an economist interested in understanding when harmonization of laws is desirable and the obstacle to achieving it.

II. Some of the Ways we Evade the Law

1. Shabbos Goy. Hiring or somehow delegating an agent to do for us on Shabbos what we are not permitted to do. Example: Turning on lights, milking cows. Justification for using Shabbos goy? God created Shabbos and also created cows that need to be milked on Shabbos. What was god thinking? Clearly he must have had in mind a shabbos goy.
2. Legal fictions. Here we obey the letter of the law all the while eviscerating its spirit. Examples: a) engaging in a temporary sale/resale arrangement selling chametz for 8 days and then buying it back after Pesach is over. b) Israel cat story. A religious Israeli couple had a cat that they needed to neuter. Their Rabbi said that causing pain to an animal for their own convenience was not allowed. They were in a dilemma. They loved the cat but couldn't keep it. Their solution? They sold the cat to an Arab neighbor who had the cat neutered and then sold it back to them. In both cases the act was Justified by the fact that they satisfied the letter of the law.
3. Good arising from evil. The good that comes from breaking the law either justifies or can be used to gain credit for the good deed. Rabbis gave attention to this as Mitzvah Habah B'Averah. Many Bar Mitzvahs discussed this. Perhaps Larry will share what he remembers of his Bar Mizvah talk about observing the Lulav Mitzvah with a stolen Lulav. Contemporary Examples: a) Fetal tissue use allowed by Vatican because the act had already occurred and why not now save a life. b) Vatican was opposed to castrating boys for the voices but allowed their use in church choirs arguing that the deed having already been done why not glorify god with the boys beautiful voice? c) If a cure for cancer was discovered using horrible experiments would we not use the cure derived by horrible means? Justification: Good arising from evil.

III. Why Does all this matter to me?

As I have studied the new technologies, especially the biotechnologies, I've been worried that we will not be able to control them so that the good uses will occur and that the nightmarish uses will be avoided.

But I've become increasingly skeptical that we will be able to exercise this control because this will require harmonization, all people all countries will have to agree.

And here is where it gets tricky. Even if nearly all people and countries do pass the right laws, there will likely be some countries that don't share this value and with whom countries would be willing to trade and thereby seek to evade their own values.

Consider slavery. 19th century England banned slavery at home but traded with its colonies for slave-made goods. Similarly, the North banned slavery at home but traded with the South for slave-made goods. Think of the colonies/South as a Shabbos goy whose justification is described above.

In our day there are myriad ways we do this: under the term "Rendition" we torture prisoners abroad rather than violate our laws against torture; we ban child labor but import child-made goods from abroad. The same with environmental laws. Today's NY Times reports that US companies are sending spent lead batteries to recycling plants in Mexico that do not meet US environmental standards.

There may well be enormous trade between people and countries seeking comparative advantage on the basis of lower standards so that harmonization, if it occurs, will be at a lower level after a "race to the bottom" with countries serving as regulatory havens. These havens can be thought of as Shabbos goyim, that allow us to evade one's own rules.

Now my father was a Rabbi who delighted in the Jewish use of legal fictions. And I imagine that there are several people in this room who may share his delight and have even devoted their careers to "evading the law." But, as I have argued, these evasions, and the habit of mind they encourage, can have serious harmful consequences.

So I come back to my original question: why do we create laws that we intend to evade?

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