In 1982, the Yale Law School professor Robert Cover published an article in the Harvard Law Review that has inspired jurists and legal scholars ever since. Entitled, “Nomos and Narrative,” the work interrogates the ways in which legal systems are intertwined with collective stories, and demonstrates how our laws come out of the epic narratives we tell ourselves about who we are as a group. Now I should admit that I don’t typically read legal journals. I guess that’s obvious. But “Nomos and Narrative” is a text that has become as essential to rabbinic education as it is to law school curricula, in part because Professor Cover uses so many Jewish texts to craft his argument. His footnotes are as filled with rabbinic references as they are American history and law, and his teaching is uniquely instructive for us as American Jews to understand the legal frameworks in which we live.

He writes: “no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture.”[1]

In the case of our constitution, we tell a story of citizens coming together to establish a democracy based on Enlightenment ideals after declaring independence from the absolute power of a king. And thus, our legal system was born. In the case of our decalogue, the Ten Commandments, which we read in last week’s parsha, we receive those laws *after* the narrative about the Israelites being freed from slavery so that they could live as a nation under God, and not under Pharaoh.

Among the many reasons why Jews have flourished in America is the fact that these two stories – and the ethical norms they establish – dovetail so neatly with one another. And these days, as many of us are thinking anew about the Constitution, with executive orders and government shakeups that many believe are bumping up against constitutional norms and values, I found myself reading this week’s Torah portion, which in some ways feels like a constitution itself, with an eye toward the *story* it comes from.

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[1] HLL, 83-84, pg 4

In Parashat Mishpatim, we read the continuation of receiving commandments after the more famous Ten last week. And we see the ways in which the Israelites' story of fleeing degradation informs the laws that they receive.

It starts out with a twist. When you acquire a Hebrew slave, we read, that person shall serve six years and go free in the seventh. You might think that they'd abolish slavery altogether, after enduring the trauma of bondage in Egypt. But this is still an ancient legal code. And what follows are the ways in which the Torah *attempts* to temper the severity of slavery, given its own narrative of Egyptian persecution. The Etz Chayim Torah commentary puts it this way: "It would seem that the Israelites, newly freed from Egypt, could not imagine a society without slavery (any more than Plato or Aristotle could). But over the course of time, a more humane view of the slave evolved."[2] Though it falls short of how modern readers would understand the immorality of enslaving people, the Torah attempts to create a framework that emphasizes human dignity nonetheless, rooted in its own understanding of pain.

In general, that's how Parashat Mishpatim goes. With its lengthy list of laws, known by scholars as the Covenant Code, in which we get 53 different laws, many of which deal with the court system, in addition to personal injury, property rights, and matters of social justice. All of which come out of the story of a new covenant. That is, a relationship to God, and not to a despotic ruler. And it's in that context that I want to focus on one specific set of mitzvot that very clearly come out of the Exodus narrative. Precisely because I think they might inform our own decisions of how we approach this moment in our country's history.

In Exodus 22:21, we read a classic ethical mitzvah, Kol Almanah v'Yatom lo T'anun. You shall not mistreat a widow or an orphan. This immediately follows a much more familiar commandment, paraphrased 36 times in

[2] Etz Chayim commentary, 457

Torah, v'ger lo toneh, you shall not oppress a foreigner. For you were foreigners in the land of Egypt. That last phrase is "nomos and narrative" par excellence. And to get really granular…notice, for a moment, the difference between lo toneh and lo t'anun…the same verb, conjugated differently. Toneh, with the singular "you," and t'anun, with the plural.

It continues, Im aneh t'aneh oto, if you *do* mistreat them, again, back to singular, I will hear their cry as soon as they cry out to Me.

And then, finally, a dramatic flourish in the final verse of the section: "My wrath shall burn, and I will kill you with the sword, and your wives shall be widows and your children fatherless."

Nevermind the harshness of God's decree, this final verse employs two literary mic drops. It says that if you afflict a widow or orphan, then you can expect your own loved ones to one day become widows and orphans. And also…it returns us to the second person plural. V'haragti etchem. I will kill you *all*. Referring also to n'shei*chem*, your wives, u'v'nei*chem*, and your children.

It's pretty brutal, and the point is clear: we must be very careful NOT to harm a widow or orphan, the biblical idiom for all those who are powerless. No surprise, then, that the "stranger," or "foreigner" is also often included alongside them. And as for the back and forth between singular and plural, we might not notice it right away.

But the 12th century Abraham Ibn Ezra insisted that this discrepancy in nominal declension is telling us something important. He writes, "The text first states, "You shall not afflict" – in the plural and then switched to "if thou afflict him" [in the singular]." [We take this to mean that] "whoever sees a person afflicting an orphan or widow and does not help them, he also is accounted as an afflictor."

This is a consistent refrain in Jewish teachings: that if you witness a crime but do not protest, you are counted as an accessory to injustice. And it is often paired with the memory of our past.

But Ibn Ezra continues: The reason that the conclusion of the thought appears in the plural is that “the punishment given when one is guilty of afflicting and no one intervenes applies to all.” Meaning all of society. And for this reason the text says “I will kill you,” in the plural, meaning all of you.”

It’s pretty intense, this commentary. Examining a grammatical quirk and expanding it as a conditional that if you don’t protect the innocent, you will receive the worst possible punishment.

But why? Why does he read it in this way?

For one thing, this reading is informed by the way in which Jewish tradition demands that we “do not stand idly by the blood of our neighbor,” or, in the Talmud’s phrasing, “whoever can protest against the members of their household and does not, is held responsible for their household.” But also, I would imagine, for a medieval European Jew like Ibn Ezra, living under a monarchy that may or may not be favorable to the Jews on any given day, standing in solidarity with the powerless was an essential communal imperative. It was a norm emanating out of his lived experience.

So it has always been for us as Jews. Since the narrative of our powerlessness under Pharaoh 3,300 years ago, through millennia of persecution. Whether or not we are in power, our nomos and our narrative have always underscored empathizing with those who are not.

In this political moment, when we feel, at times, powerless to make any impact or to preserve the institutions and structures in which we believe, following Ibn Ezra and the Talmud, we must try to find some way to protect the vulnerable. And as we do that, as we establish some norms for this time, some ways forward or values to govern our next steps, we can

remember one last piece of that narrative we read, amidst the laws of this parsha. I mentioned it before, but you might've missed it. That if the widow and orphan are mistreated, God will hear their cry.

As we read the laws that emerge from a story of prior degradation, we also cling to a story in which God Godself hears the cries of the oppressed, and guides them, eventually to freedom. Surely there are things we can do, however small, to enact our Jewish values of protecting the vulnerable. And as we do them, may we continue telling a story – our story – that culminates in freedom.

Shabbat Shalom.