

PARASHAT HASHAVUA

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PARASHAT PARASHAT KI TISA

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This shiur is dedicated *le-zekher nishmot*  
Amelia Ray and Morris Ray  
on the occasion of their eleventh *yahrtzeits*  
by their children Patti Ray and Allen Ray

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The First Tablets and the Second Tablets -  
The Differences Between *Mishpatim* and *Ki-Tisa*<sup>1</sup>

By Rav Yoel Bin-Nun

I. "A Jealous God" vs. "God, Merciful and Gracious"

The Ten Commandments make no mention of God's attributes of mercy, "long-suffering," or forgiving "iniquity, sin, and transgression" (*Shemot*34:5-6), but only of the attribute of justice:

For I the Lord your God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate Me; and showing mercy unto the thousandth generation of them that love Me and keep My commandments. (*Shemot*20:4-5)

The attribute of justice dominates on the tablets of the covenant,<sup>2</sup> where we find that the sins of the fathers are visited upon the children for four generations and a distinction is made between those who hate God and those who love Him, with no intermediate states and with no possibility of forgiveness. According to this approach, there is no way to deal with the sin of the golden calf other than by imposing total punishment or by breaking the tablets. Moshe opts for breaking the tablets, thereby destroying the primary evidence in the trial concerning the violation of the covenant and saving the people of Israel.

By virtue of Moshe's prayer following the sin of the golden calf, God reveals to Moshe the secrets of mercy:

The Lord, the Lord, God, merciful and gracious, long-suffering, and abundant in goodness and truth; keeping mercy unto the thousandth generation, forgiving iniquity and transgression and sin; and that will by no means clear the guilty; visiting the iniquity of the fathers upon the children, and upon the children's children, unto the third and unto the fourth generation. (*Shemot*34:6-7)

An explicit connection to the Ten Commandments is made at the end of this list of God's attributes, in the reference to visiting the sins of the fathers unto the fourth generation. But there is no clear-cut distinction between those who hate God and those who love Him; there are infinite intermediate states, as God

delays punishment, and even sets it aside, and there is forgiveness and pardon of transgressions and even of sins. Instead of showing mercy to the thousandth generation, mention is made of keeping mercy to the thousandth generation, as mercy cannot always be shown; sometimes it is merely kept and preserved for future generations.

But if these are the ways of God with respect to forgiveness and mercy, why was this not written in the tablets?

Ostensibly, if God accepted Moshe's argument and revealed to him the secrets of mercy in the ways by which He governs the world, they should have been written in the second tablets. In this way, everyone would have understood that the first tablets were given with the attribute of justice, that they were broken by Moshe because the people of Israel could not survive with the attribute of justice alone,<sup>3</sup> and that the second tablets were given with the attribute of mercy. Why, then, did God instruct Moshe, "Hew you two tablets of stone like the first; and I will write upon the tablets the words that were on the first tablets, which you did break" (*Shemot*34:1)?

We must say that had God changed what was written on the tablets, it would seem that the Torah can change in its very foundations, that it can be broken and written anew in a different way, even with profound contradictions. However, since the Ten Commandments were written "according to the first writing" (*Devarim* 10:4), it became clear that the Torah can never be nullified or replaced.<sup>4</sup> Its interpretation in accordance with the Oral Law and in accordance with the secrets of prayer that were revealed to Moshe could be very different from the text, but the Written Law will be preserved as it had been given, as a heavenly truth.

This is the first time in the Torah that the necessity of a Written Law (= the Ten Commandments) alongside an Oral Law (= the attributes of mercy) is spelled out explicitly. The tablets will always reflect only the attribute of justice, which sharply distinguishes between those who love God and those who hate Him, with no mercy or forgiveness. Similarly, in the continuation in the section dealing with the covenant, the warning will be repeated, "For the Lord, whose name is Jealous, is a jealous God" (*Shemot*34:14), as a severe warning against the worship of idols. In contrast, prayer will preserve as an Oral Law in relationship to the written tablets, the secret governance of the attribute of mercy, with forgiveness and delay of punishment, with "clearing" and with "not clearing"<sup>5</sup> – where there are no haters and

<sup>3</sup> Both the *midrash* (*Bereishit Rabba* 12:15) and Rashi (*Bereishit* 1:1) say that the "world" cannot stand on the attribute of justice alone, but in the Torah itself this idea is stated explicitly with regard to the people of Israel at the sin of the golden calf – in reference to the tablets that were written with the attribute of justice.

<sup>4</sup> As stated in the Rambam's introduction to chapter *Chelek*, in the ninth principle, and in *Hilkhot Yesodei Ha-Torah*, chapter 9.

<sup>5</sup> The expression, "He will not clear" (*lo yanakeh*), reflects the attribute of justice, as is stated explicitly in the third commandment: "For the Lord will not clear (*lo yanakeh*) him that takes His name in vain." But together with "He will clear" (*yanakeh*), it can have the opposite meaning, for there is clearing that leaves no stain behind. Thus, it is stated in the consolations of Yirmeyahu: "For I will make a full end of all the nations where I have scattered you, but I will not make a full end of you; for I will correct you in measure, and will not utterly destroy you (*nakeh lo anakekha*)" (*Yirmeyahu* 30:11; 46:28). But in Yirmeyahu's prophecies of doom, the expression: "And should you be utterly unpunished? You shall not be unpunished" (*henakeh tinaku? Lo tinaku*; 25:29; 49:12) is used with respect to drinking from the cup of poison of the attribute of justice.

<sup>1</sup> Based on *Mikra'ot Le-Parashat Mishpatim*, pp. 543-548.

<sup>2</sup> On the other hand, there are no curses of "If you shall not hearken" in the book of *Shemot*, and only blessings are mentioned ("Now, therefore, if you will hearken to My voice, and keep My covenant"; *Shemot* 19:5). Is this a contradiction? Can the attribute of justice dominate and there be no curses? After additional consideration, this may be appropriate, for perhaps there is no need to describe the curses when the rule of justice dominates, just as there is no need to describe calamities stemming from the laws of nature, as they are known to all – fire burns and earth hurts those who fall down upon it. There is no need to describe this.

lovers, but only the thousands of people in whom good and evil intermingle, to the point that one cannot know who are the haters of God and who are His lovers.

This was the case when the Written Law was restricted to the written tablets, but even after the attributes of mercy were ultimately written in the whole Torah,<sup>6</sup> the main secret regarding the governance of mercy – that is to say, by way of which attributes will God lead His people at any given time or situation – remained oral. This is alluded to in the prayers of the prophets, in which always appear different combinations of attributes.<sup>7</sup>

In the description of the writing of the second tablets, it is explicitly stated: "And the Lord said to Moshe: Write you these words, for after the tenor of these words, I have made a covenant with you and with Israel" (34:27). From this verse *Chazal* learned that "the Holy One, blessed is He, only made a covenant with the people of Israel for the matters that were transmitted orally."<sup>8</sup> The *gemara* does not explain this interpretation, but the broader context of the verse explains that it includes the Written Law on the tablets together with the attributes of mercy of the Oral Law.

This then is the meaning of the verse: Write the attribute of justice on the second tablets exactly as they had been written on the first tablets, "which you did break" (*Shemot* 34:1); but you must teach the children of Israel the secrets of mercy and forgiveness through prayer, as an Oral Law, "for after the tenor of these words I have made a covenant with you and with Israel" (*Shemot* 34:27).

## II. The Passage Concerning the Covenant – *Mishpatim* (23:20-33) vs. *Ki-Tisa* (34:10-17)

*Mishpatim*:

Behold, I send an angel before you, to keep you by the way,  
and to bring you into the place which I have prepared.  
Take heed of him, and hearken unto his voice; be not rebellious against him;  
for he will not pardon your transgression; for My name is in him.  
But if you shall indeed hearken to his voice, and do all that I speak;  
then I will be an enemy to your enemies, and an adversary to your adversaries.  
For My angel shall go before you, and bring you in to the Amorite, and the Chittite, and the Perizzite, and the Canaanite, the Chivite, and the Yevusite;  
and I will cut them off.

<sup>6</sup> In accordance with the view of R. Bena'ah that "the Torah was transmitted in separate scrolls" (*Gittin* 60a).

<sup>7</sup> Each time the attributes of mercy are mentioned in the Bible, they appear in a unique combination, and even in the places where they appear very similar, there are differences. This is the case in Moshe's prayer following the sin of the spies (*Bamidbar* 14:17-18), following, "according as You have spoken, saying," which seems to be an exact quote: God's name is mentioned only once, there is no mention of "God, who is merciful and gracious," there is no mention of the attribute of truth, and also no "keeping mercy unto the thousandth generation." Yona says: "For I knew that You are a gracious God, and compassionate, long-suffering, and abundant in mercy, and You repent of the evil" (*Yona* 4:2), and in the fast day prayer in the prophecy of Yoel it says: "And turn to the Lord your God; for He is gracious and compassionate, long-suffering, and abundant in mercy, and You repent of the evil" (*Yoel* 4:13-14). And also there: "Who knows whether He will not turn and repent" (similar to *Yona* 3:9). In no two places in the prayers of the prophets are the attributes of mercy absolutely identical.

<sup>8</sup> The statement of R. Yochanan, *Gittin* 60b.

You shall not bow down to their gods, nor serve them, nor do after their doings;  
but you shall utterly overthrow them, and break in pieces their pillars.

And you shall serve the Lord your God,  
and He will bless your bread, and your water; and I will take sickness away from the midst of you.

None shall miscarry, nor be barren, in your land; the number of your days I will fulfill.

I will send My terror before you, and will discomfit all the people to whom you shall come,  
and I will make all your enemies turn their backs to you.

And I will send the hornet before you,  
which shall drive out the Chivite, the Canaanite, and the Chittite, from before you.

I will not drive them out from before you in one year,  
lest the land become desolate, and the beasts of the field multiply against you.

By little and little I will drive them out from before you,  
until you be increased, and inherit the land.

And I will set your border from the Red Sea even unto the sea of the Pelishtim, and from the wilderness unto the River;

for I will deliver the inhabitants of the land into your hand;  
and you shalt drive them out before you.

You shall make no covenant with them, nor with their gods.

They shall not dwell in your land, lest they make you sin against Me,

for you will serve their gods,  
for they will be a snare to you.

*Ki-Tisa*:

And He said: Behold, I make a covenant;  
before all you people I will do marvels,  
such as have not been wrought in all the earth, nor in any nation;

and all the people among which you are shall see the work of the Lord that I am about to do with you,  
that it is tremendous.

Observe you that which I am commanding you this day;  
behold, I am driving out before you the Amorite, and the Canaanite, and the Chittite, and the Perizzite, and the Chivite, and the Yevusite.

Take heed to yourself, lest you make a covenant with the inhabitants of the land

where you go,

lest they be for a snare in the midst of you.

But you shall break down their altars, and dash in pieces their pillars, and you shall cut down their Asherim.

For You shall bow down to no other god;

for the Lord, whose name is Jealous, is a jealous God;  
lest you make a covenant with the inhabitants of the land,

and they go astray after their gods, and do sacrifice to their gods,

and they call you, and you eat of their sacrifice;

and you take of their daughters to your sons,

and their daughters go astray after their gods, and make your sons go astray after their gods.

You shall make you no molten gods.

The parallels between the two passages are clear and obvious: the opening phrase of "Behold, I," the promise of conquering the land with great marvels, the six Canaanite nations in almost the same order (one change of "the Canaanite and the Chittites"), the warnings against foreign covenants, and defining the Canaanite worship as a snare.

The most striking differences are in the proportions: The descriptions of the blessing in the Land of Israel are more complete and comprehensive at the end of *Parashat Mishpatim*, and the warnings are shorter. The opposite is true in *Parashat Ki-Tisa*, where the blessing is short, and the warnings are very comprehensive and detailed, as might be expected after the sin of the golden calf. There is also an added warning against mixed marriages and the idolatrous effect that would be expected in their wake, as well as a warning against the "molten gods,"<sup>9</sup> which of course appears here in the wake of the sin of the "molten calf" (32:8).

There is a striking difference in the opening of the passage with the omission of the angel,<sup>10</sup> as Moshe had requested in his prayer for forgiveness: "Let the Lord, I pray You, go in the midst of us" (*Shemot* 34:9). Therefore, instead of, "Behold, I send an angel before you..." (*Shemot* 23:20), the passage concerning the second covenant opens with, "Behold, I make a covenant..." (*Shemot* 34:10). The parallelism between the openings once again proves that they are both passages of covenant from "the book of the covenant," which apparently had a place even with the second tablets, as the Ramban writes in his commentary to the Torah.<sup>11</sup>

### III. The Commandments Regarding Shabbat and the Festivals (23:10-19; 34:18-26)

Following the passage of the covenant, and without a break to mark a new section, we find the *mitzvot* of Shabbat and the Festivals, in an order the opposite of that which is found in *Parashat Mishpatim*, where these *mitzvot* appear before the passage of the covenant. Despite the additions and the differences, there is a strong parallelism, and it is clear that we are dealing with a repetition of the same passage.

The passage in *Mishpatim* begins with the Sabbatical year and Shabbat, continues with "Three times you shall keep to Me a feast in the year" and with the *mitzva* to appear "before the Lord, God," and concludes with *mitzvot* connected to the Festivals. The passage in *Ki-Tisa* opens with the Feast of Matzot, with the addition of the sanctity of the firstborns and their redemption, following the order of the exodus from Egypt,<sup>12</sup> perhaps as an expression of the repair that was required in the aftermath of the "feast" of the calf ("Tomorrow shall be a feast to

the Lord"; *Shemot* 32:5), with a return to the exodus from Egypt. Only afterwards is mention made of Shabbat and perhaps also the Sabbatical year.<sup>13</sup> The term "*regalim*"<sup>14</sup> is not mentioned, "the Festival of the Harvest" is called here "the Festival of Weeks," and there is a brief mention of the counting of the weeks,<sup>15</sup> which will be explained in *Vayikra* 23 and in *Devarim* 16. Scripture expands upon the *mitzva* of "Three times in the year all your males shall appear before the Lord God." The passage concludes with *mitzvot* connected to the Festivals, and the two passages end with the same verse: "The choicest first-fruits of your land you shall bring to the house of the Lord your God; you shall not see the a kid in its mother's milk" (23:19; 34:26).

Since the passages in *Ki-Tisa* appear in an order opposite to the order in *Mishpatim*, we might have expected that they continue with passages of absolute law, and even with conditional laws and the laws of a holy nation,<sup>16</sup> in full parallel (with illuminating differences) to the *parashiyot* regarding the revelation at Mount Sinai, and in opposite order, ending with the Ten Commandments, but the Torah writes in an abbreviated manner.

It cannot be argued that it would have been unnecessary to repeat all of *Parashat Mishpatim*, for the Torah repeats its account of the construction of the *Mishkan* to the last detail and does not write in an abbreviated manner.

Therefore, we must say that this abbreviation was an inseparable part of the renewal of the covenant, when it was necessary to read the words of the covenant before the people. This reinforces the conclusion that "the book of the covenant" itself was an abridgement<sup>17</sup> already the first time. When the covenant was renewed, it was written in an updated abridgement, which was read to the people when Moshe descended from the mountain (*Shemot* 34:32), similar to the first book of the covenant.

The rest of the passages in *Mishpatim* were regarded as an expansion of the Ten Commandments and were studied by the elders and the judges, as the full content of the covenant of Sinai, just as the passages in the book of *Devarim* (from chap. 6 onward) are an expansion and elaboration of the Ten Commandments,<sup>18</sup> and the passages of *Shema* are their concise summation.<sup>19</sup>

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<sup>9</sup> The word *masekha* means molten, from the root *nun-samekh-khaf*, as in: "The image per chance, which the craftsman has melted (*nasakh*), and the goldsmith spread over with gold" (*Yeshayahu* 40:19).

<sup>10</sup> Ramban (in his commentary to *Shemot* 23:20) raises an objection against this interpretation, asking how is it possible to explain that after the sin of the golden calf, the people of Israel were raised to the level of direct providence without an angel. He therefore explains that the "angel" in whom is the name of God is different than the "angel" who comes in place of the *Shekhina*. See our comments about the "angel" in *Mikra'ot Le-Parashat Mishpatim*, pp. 475-479.

<sup>11</sup> *Shemot* 34:27: "'Write you these words' – He commanded that he write a book of the covenant and read it to the people, and that they accept it upon themselves with 'we shall do and we shall obey,' as they did at first, for all that was done with the first tablets, He wishes to do with them a second time with the second tablets, and without a doubt this was done..."

<sup>12</sup> Chapter 13 in the book of *Shemot*, except for the first four verses ("And it shall be when the Lord shall bring you..." "And it shall be when the Lord shall bring you"), appears like a command from Sinai, and is similar to the passages in the book of *Devarim* (6) adjacent to the passage of *Shema*. Therefore, the juxtaposition of the sanctity of the firstborns to the keeping of the Festival of Matzot in *Ki-Tisa* appears perfectly natural, and the same is true of the passages dealing with the Festivals in the book of *Devarim*: The passage of "Every firstborn" (*Devarim* 15:9) is immediately followed by the passages of Pesach and the Festival of Matzot, Shavuot, and Sukkot (*Devarim* 16).

<sup>13</sup> According to R. Akiva, "in plowing time and in harvest shall you rest" (*Shemot* 34:21) refers to the Sabbatical year and not to Shabbat; see *Mikra'ot Le-Parashat Mishpatim*, pp. 425-429, concerning the view of R. Akiva in the Midrash Halakha, based on the parallels between the *parashiyot* (e.g., *Mishpatim-Ki-Tisa*).

<sup>14</sup> Regarding the meaning of the term *regalim*, see *Mikra'ot Le-Parashat Mishpatim*, pp. 416-421.

<sup>15</sup> For a detailed explanation, see my book, *Zachor ve-Shamor – Teva Ve-Historiya Nifgashim Be-Shabbat U-BeLuach Ha-Chagim* (Alon-Shevut, 2005), pp. 114-125.

<sup>16</sup> For the structure of the passages in *Mishpatim*, see *Mikra'ot Le-Parashat Mishpatim*, pp. 416-421.

<sup>17</sup> See *Mikra'ot Le-Parashat Mishpatim*, pp. 551-553.

<sup>18</sup> See my articles: "*Keri'at Shema Ha-Murchevet*," and "*Hat'amat Gushei Ha-Mitzvot Le-Aseret Ha-Dibrot*," in *Semukhin La-Ad* (Petach Tikva, 2002) and on my website.

<sup>19</sup> And therefore they were established as required reading every day, and at first, during the time of the Temple, together with the Ten Commandments (*Mishna, Tamid* 5:1).