

PARASHAT HASHAVUA

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Le-zekher Nishmat HaRabanit Chana bat HaRav Yehuda Zelig zt"l.

This parasha series is dedicated
in honor of Rabbi Menachem Leibtag and Rabbi Elchanan Samet.

This shiur is dedicated in memory of
Dr. William Major z"l.

In memory of Naftali Hertzke ben Mayer Eliezer v'Gitel z"l,
Nathaniel "Harry" Leiderman whose 9th yarzeit fell on the 11th day of Tammuz. Dedicated by Ira
Leiderman & Mindy Smith
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In honor of the birth of our daughter, Maya Margalit,
שנזכה לגדלה לתורה, לחופה ולמעשים טובים
-David and Shifra Waxman

PARASHAT EKEV

Love for the "Ger"

By Rav Yehuda Rock

The Problem

Towards the end of *Parashat Ekev*, Moshe contrasts God's power and mercy, deriving a moral lesson (10:17-19):

For Lord your God is the God of gods and the Lord of lords: the great, mighty, awesome God, Who does not show favor and does not take bribes; Who executes judgment for the orphan and the widow, and loves the stranger (*ger*), giving him food and garments. You shall love the stranger, for you were strangers in the land of Egypt.

In the terminology of the Sages, the word "*ger*," used alone, means a "*ger tzedek*" – i.e., a proselyte, someone who has joined himself to *Am Yisrael* (the Jewish people) through circumcision and immersion and has taken upon himself all of the Torah's commandments. In

the Torah, however, we find that the word *ger* is used to refer to a stranger, a person from a foreign land who is living in *Eretz Yisrael*, the Land of Israel – a land that is foreign to him. This is borne out by the verse cited above: "For you were strangers (*gerim*) in the land of Egypt." There is no question of a reference here to any sort of conversion or assumption of a new identity; the term "*gerim*" simply denotes living amongst a foreign people. There are also several other places in the Torah where *Am Yisrael* are referred to, during their time in Egypt, as *gerim*. Examples of the same meaning in different contexts include Avraham's words to the children of Chet - "I am a stranger and resident (*ger ve-toshav*) in your midst" (*Bereishit* 23:4); "He called him *Gershom*, for he said: 'I have been a stranger in a foreign land'" (*Shemot* 2:22). As Rashi (*Shemot* 22:20) notes, "Wherever the Torah uses the word '*ger*,' it refers to a person who was not born in that land, but rather comes from some other land to live there."

On this basis, the simple meaning of the commandment to "love the *ger*" is that one should love any person who comes to live in Israel. This meaning is connoted most strongly in another place (*Vayikra* 19:33-34) where the same commandment is reiterated:

If a stranger (*ger*) lives (*yagur*) with you in your land, you shall not wrong him. A stranger who lives (*ha-gar*) with you shall be for you like one born among you, and you shall love him as yourself, for you were strangers in the land of Egypt; I am Lord your God.

In other words, the Torah seems to be saying: if a foreigner comes and lives with you in your land, you must act towards him with love and show him equality.

However, according to Halakha, the commandment to "love the *ger*" is limited in its application to the *ger* as referred to in rabbinical literature, a *ger tzedek*. This we learn from the *Mekhilta* (*Nezikin* 18):

Beloved are the *gerim*, concerning whom God adjures in many places, "You shall not oppress a *ger*" (*Shemot* 23:9); "You shall not wrong a *ger*" (*ibid.* 22:20); "You shall love the *ger*;" "For you know the soul of a *ger*" (*Shemot* 23:9).

Similarly, the Rambam rules (*Hilkhot De'ot* 6:4):

Love for a *ger* who has come under the wings of the Divine Presence (i.e., converted) comprises two positive commandments: one, because he is now among those referred to as "fellow" [as in the commandment, 'You shall love your fellow as yourself' (*Vayikra* 19:19)]; and the other, because he is a convert, and the Torah says, "You shall love the *ger*."

The same is found *Sefer Ha-mitzvot* (Positive 207) and among the other codifiers of the *mitzvot*.¹[1] In fact, this is just one of many instances in which the Torah speaks about a *ger* and Halakha applies the law involved only to a *ger tzedek*. For this reason, the commentators have generally tended to propose that the word *ger* has another meaning in the Torah: it can also mean a person who has changed his religion, i.e., converted and become part of *Am Yisrael*. However, as noted, the Torah offers no clear instance of the word being used in this sense.² [2] Furthermore, in some of the instances where it is clear that Halakha applies only to a covert, the verse implies that what characterizes a *ger* in this context is not his new status as a Jew, but rather the fact that he is living amongst *Am Yisrael*. Thus, *Shemot* 12:48-49 equates the law "for the native-born and for the stranger who lives in your midst." If the *ger* here referred to someone who is part of *Am Yisrael*, what would be the significance of the qualification, "who lives in your midst"?

Hence it seems that there is constant discord between many verses in the Torah, on one hand, and Halakha, on the other. This contradiction demands some explanation; first, let us review the areas in which it arises.

The original topic concerns the obligation in *mitzvot*. In many different places, the Torah seems to suggest that the *ger* – a person who has come to live amongst *Am Yisrael* in their land – is obligated to observe the commandments. The most compelling example, from *Shemot*, we mentioned above:

If a *ger* lives with you – he shall perform the paschal-offering to God. Let all of his males be circumcised, and then he shall come near to perform it, and he shall be like the nativeborn... One law shall there be for the native-born and for the stranger who lives in your midst.

Ibn Ezra, in his *Long Commentary*, understands the verse not as a commandment, but as a description of a set of circumstances: a *ger* who comes to live among you and who wishes to perform the paschal-offering must be circumcised. However, aside from the fact that this goes against Halakha (see the Rambam, *Hilkhot Korban Pesach* 9:7), this interpretation undermines the continuity with the next verse, which sets forth the general rule that "One law shall there be for the native-born and for the *ger* who lives in your midst." A simple reading indicates that these verses mean to establish the *ger's* obligation with respect to circumcision, the paschal-offering, and the other commandments (as Rashi explains), and that this includes any *ger* who lives permanently with *Am Yisrael* (in contrast to Rashi's view). Only a "resident or hired laborer" (*toshav ve-sakhir*) – who, accordingly to the literal text, seems not to live in *Eretz Yisrael* on a permanent basis, but rather dwell temporarily – is exempt and excluded from the Pesach

¹ [1] Except for the Chafetz Chayyim in his *Sefer Ha-mitzvot Ha-katzar*, Positive 61, where he includes "anyone who comes to live," in contrast with the simple meaning of the *Mekhilta* and the accepted view among the Rishonim.

² [2] See Ibn Ezra's *Long Commentary* on *Shemot* 12:49.

sacrifices. Concerning these we are told, "a resident or hired laborer shall not eat of it" (ibid, verse 45).

However, this is not what Halakha teaches. Halakha awards a formal status to a person who comes to live amongst *Am Yisrael* in *Eretz Yisrael*: he is known as a *ger toshav* (literally, and somewhat paradoxically, "resident stranger"). "Concerning everything else he is like a non-Jew" (*Avoda Zara* 64b), in terms of his personal status, and he may dwell in the land (see the Rambam, *Hilkhot Avoda Zara* 10:6; *Hilkhot Issurei Bia* 14:7). Admittedly, a *beraita* (ibid.) does mention the view of the "Others," who state that a *ger toshav* must fulfill all mitzvot save one,³[3] but the *halakha* follows the majority opinion of the Sages, that he must merely fulfill the seven Noahide laws. All of this contradicts the plain meaning of the verses, instructing us that any *ger* who lives amongst *Am Yisrael* in their land is automatically obligated to perform the commandments, just like a native-born Jew.

Some further examples:

- For anyone who eats leavened food, that soul shall be cut off from the congregation of Israel, whether he is a stranger or native-born. (*Shemot* 12:19)

- And it shall be a statute for you forever: in the seventh month, on the tenth of the month, you shall afflict your souls, and you shall do no manner of labor, neither the nativeborn nor the stranger who lives in your midst. (*Vayikra* 16:29)

There are many more such instances.

The second area in which there is a contradiction between the plain meaning of the verses and Halakha in this regard concerns conduct towards *gerim*. We have already noted a contradiction between the plain verses and Halakha with regard to the commandment of loving *gerim*. Another similar commandment, which appears in several different places in the Torah, prohibits causing anguish to a *ger*. This prohibition appears in *Parashat Mishpatim* (*Shemot* 22:20):

You shall not cause anguish to a stranger, nor oppress him, for you were strangers in the land of Egypt.

It appears again in the verses cited above, from *Parashat Kedoshim* (*Vayikra* 19:33-34): "You shall not cause him anguish... You shall love him as yourself, for you were strangers in the land of Egypt." Concerning this prohibition, too, the halakhic *midrashim* apply the verses to a *ger*

³ [3] We will discuss this dispute at length below.

tzedek.⁴[4] This is borne out in the *beraita* in the *Mekhilta* that we cited above, "Beloved are the *gerim*..." Likewise, in *Torat Kohanim (Kedoshim 8:2)*, we find the abovementioned verse interpreted to mean: "You shall not say to him, 'You used to be an idolater, and now you have entered under the wings of the Divine Presence.'" The Rambam rules accordingly (*Hilkhot Mekhira 14:15; Sefer Ha-mitzvot, Negative 252*), as do other codifiers of the *mitzvot*.

Thus, in two areas⁵[5] there is a discrepancy between the Written Law and the Oral Law with respect to this *ger*, who has come to live among *Am Yisrael* in their land, but has not converted and become a Jew: the matter of his obligation in *mitzvot* and the issue of the proper treatment of him.

Proposed solutions

The commentators present various approaches to the question of the relationship between the Written Law and rabbinical interpretations as codified in Halakha. The Ibn Ezra consistently takes the approach that Halakha accords with the meaning of the verses, and therefore he always tries to interpret the verses in keeping with Halakha as he knows it. At the opposite end of the spectrum on this question, we find the Rashbam. To his view, it is quite possible for there to be some discrepancy between the Written Law and the Oral Law; for him, this presents no problem. In such instances, the Rashbam does not even address the relationship between the plain meaning of the verses and Halakha.

Somewhere in between these two approaches we find a group of Rishonim, particularly the Rambam and Ramban. These Rishonim unquestionably accept the possibility of some discrepancies between the Written Law and the Oral Law, but they attach importance to the understanding and explaining of these discrepancies. These two dimensions are not identical, but there is a direct relationship and connection between them. Concerning the extent of the discrepancy and the types of relationships between the Written Law and Halakha, there are obviously different possibilities and approaches.

It seems that the principles guiding the deviation of Halakha from the plain meaning of the text fall into three categories: formalization, concretization, and synthesis.

· Formalization – The Written Law formulates laws as instances and actions that have their source in the social reality, or in a manner that expresses and emphasizes the existential significance of the specific halakhic demand. The Oral Law, by contrast,

⁴ [4] It is possible that it is also forbidden, in practice, to cause anguish to a *ger toshav*, but this is apparently deduced from the verses that speak of a slave. See *Arakhin 29a*; Rabbeinu Gershom, ad loc.; *Yerushalmi Yevamot 8:1*. In any event, the verses that directly prohibit vexing the *ger* are interpreted as applying to a convert.

⁵ [5] In fact, there is also a third area, gifts to the poor, but we shall not address this here.

presents clear-cut rules and precise definitions, and it locates their exact fundamental conditions. It turns practical, illustrative descriptions into a formal legal entity.

As an example of formalization in the Oral Law, we may cite the laws of guardians. The Torah, in *Shemot* 22, describes two instances of guardians who have the deposited item stolen from them. One case is, "If a person gives his fellow money or vessels to watch over, and they are stolen from that person's house" (v. 6). The other case is, "If a person gives his fellow a donkey or an ox or a sheep or any animal to watch over... and if it is stolen from him" (vv. 9-11). In the first instance, the guardian is exempt from payment, while in the second instance he is liable. The Torah's description focuses on the type of deposit involved: belongings vs. animals. In contrast, Halakha makes the obligation of payment, in the event that the deposit is stolen, dependent on the category of guardianship: a person who is guarding the item for free is exempt, while one who is being paid for his services is liable.

The Rashbam, commenting on these verses, proposes an explanation for the distinction between objects and animals, but he does not bother to propose any bridge between the verses and Halakha of the Oral Law (even though such a bridge could be proposed, on the basis of his explanation). The Ramban, on the other hand, explains that objects are usually taken for safeguarding for free, while animals are given into the care of shepherds who are paid for their efforts. According to this view, the instance of "money or vessels" is depicted within a social context that is familiar as an instance of free guardianship, while the instance of "any type of animal" is depicted as an instance of paid guardianship. In other words, the Torah paints situations that are familiar from the existing social reality, without explicitly noting the relevant legal characteristic of the instances under discussion. The Oral Law, on the other hand, sets the laws upon the relevant formal, legal foundations.

· Concretization – The Written Law presents lofty principles and demands, aspiring to sanctify and elevate the reality of the material world and to implement Divine values. Sometimes, the Torah's lofty ideal is presented only in the form of general, abstract valuerelated principles. The Oral Law takes this theoretical aspiration and applies it, in practice, within concrete reality, supplying the law a tangible face.

As an example of halakhic concretization, let us consider the prohibition of erasing God's Name and of disassembling the Temple and its courtyards.⁶ [6] The Sages deduce these prohibitions from the verse, "You shall not do thus (*ken*) to Lord your God" (*Devarim* 12:4), by understanding the word "*ken*" as referring to the preceding description of eradicating idolatry in verses 2-3 (hence the prohibition of disassembling the Temple and its courtyards); they also explain the phrase, "And you shall erase their name from that place" as referring to a written name. However, as we explained in that *shiur* (based on the Rambam and Ramban), the command, "You shall not do thus to the Lord your God" simply means not to damage or obstruct

⁶ [6] See my *shiur* on *Parashat Re'eh* for an elaboration on this subject.

God's Presence and His impression in the world. Nevertheless, Halakha applies this principle to defined, concrete expressions of God's Name: His Name in writing and the place of the Divine Presence.

By means of these two principles – formalization and concretization – Halakha preserves and maintains the fundamental, essential character of the theoretical aspiration that is expressed in the Written Law, by altering or elaborating upon its external form.

· Synthesis – The Written Law, in its attempt to present the law in its purest and most refined form, may sometimes disregard other principles and laws which may cause some friction with the law in question when they are applied in reality. The Oral Law creates the bridge between the contradictory principles, awarding each its proper scope and boundaries.

The first two principles (formalization and concretization) are enlisted from time to time by the Ramban and other commentators. The third principle – synthesis – was invoked by my rabbi and teacher, Rabbi Mordekhai Breuer, z"l, in various contexts.⁷[7]

For the purposes of our discussion, it would seem that the principles of formalization and concretization offer only a partial solution. After all, Halakha does recognize the concept of a *ger toshav*. Thus, the category of *ger toshav* – someone who may live in *Eretz Yisrael*, amongst *Am Yisrael*, and towards whom our attitude is basically favorable, is well-defined, with certain practical obligations, as set forth by the Tanna'im mentioned above. Since this formal category exists, and its laws point in the same general direction that is required in our case, it would seem that in our case, too, even after formalization and concretization, the laws that we are discussing should apply to a *ger toshav*. Therefore, it appears that the solution must be sought within the realm of contradiction and synthesis. For this purpose, we must locate in Scripture some source that is at odds with the Torah's own general attitude towards the *ger* and then try to understand how Halakha bridges this contradiction.

The Sanctity of Israel

It seems that the Torah presents a different attitude towards a *ger* in the same place from which (according to one view) we learn the requirements for a *ger toshav*. The *beraita* (*Avoda Zara* 64b) teaches:

Who is a *ger toshav*? "Anyone who has accepted upon himself, before three members, that he will not worship idolatry" – these are the words of Rabbi Me'ir; but the Sages maintain: "Anyone who has accepted upon himself the seven commandments that were

⁷ [7] See, for instance, his article about the Jewish maidservant in *Megadim* 16.

accepted by the children of Noach." Others say: "Neither of the above is considered a *ger toshav*. Who is a *ger toshav*? A *ger* who eats carcasses, who has accepted upon himself to fulfill all of the commandments of the Torah, except for the prohibition of carcasses."

The last opinion, that of the "Others," is surprising. What does this specific prohibition, of eating the meat of an animal that has been killed in a way other than halakhic slaughter, have to do with the definition of a *ger toshav*? It seems that the connection is to be found in *Devarim* 14:21:

You shall not eat any carcass. You shall give it to the stranger who lives within your gates so he shall eat it, or sell it to a foreigner, for you are a holy nation to Lord your God.

The verse states clearly that there is a *ger* who is permitted to eat such meat. This verse, then, serves as the source for the status of a *ger toshav* as one "who lives within your gates," but is nevertheless permitted to eat carcasses. It appears further that in this regard the Tanna'im are unanimous. There is only one point of debate: according to the view of the "Others," a *ger toshav* is exempt only from this prohibition, while according to the majority opinion of the Sages, he is exempt from the commandments in general, and the sole condition for his residence in *Eretz Yisrael* is that he accept upon himself the seven Noahide laws — or, according to Rabbi Me'ir, only the prohibition of worshipping idols.

Thus, on the level of the plain text, there is a fundamental contradiction between the verses that we have seen above, obligating any *ger* who lives in *Eretz Yisrael* to fulfill all of the commandments, and this verse, which exempts him (from just one commandment, according to the "Others"; from most of the commandments, according to his disputants — and as codified in Halakha). Halakha bridges this contradiction by creating two types of *gerim*: there is a *ger tzedek*, who is obligated with regard to the commandments; and there is a *ger toshav*, who is exempt from the commandments (other than those which apply to all non-Jews).

What is the significance of this contradiction? The verses that obligate *gerim* to observe the commandments look towards a unification of all residents of the land, making the Torah incumbent upon all of them, as the law of the God of the land, "for the stranger and for the nativeborn alike."⁸[8] In *Devarim*, however, the law appears within a context that emphasizes the sanctity and special quality of *Am Yisrael*; not only does that very verse end with a declaration that "You are a holy nation to Lord your God," the chapter opens with the same phrase, stressing that the Jews are God's children "and God has chosen you to be a special nation for Him, from all of the nations upon the face of the earth."

There is tension between two conflicting values: on one hand, there is the ideal of all the inhabitants of *Eretz Yisrael*, God's land, being servants of God and sharing in *Am Yisrael's*

⁸ [8] Cf. *Melakhim* II 17:24-41.

obligations towards God and the Torah. This value is especially emphasized in the paschal offering, which symbolizes abandoning idolatry and committing to God's service. On the other hand, there is the ideal of God's relationship with *Am Yisrael*, His children, which is expressed in the uniqueness and sanctity of Israel and the separation between Israel and the nations.

As stated, the Oral Law forges a solution by defining two distinct tracks. All inhabitants of the land are obligated in *mitzvot* at some level; a person who is unwilling to accept even this most basic level should not be permitted to dwell in the land (Rambam, *Hilkhot Avodat Kokhavim* 10:6). The other commandments, however, apply only within the context of the sanctity of Israel, and the sanctity of *Am Yisrael* does not necessarily include everyone who lives in the land. It extends only to the native-born and to those who have undergone a process of sanctification (expressed mainly in the act of immersion) and entry into the covenant of Israel.

This explains the position of Halakha with regard to what the *ger* must do, but what about our behavior towards him?

As we have seen, there is a distinction in the Torah between a *ger* and a *toshav*. According to the plain text, a *ger* is someone who comes to dwell permanently in the land, while a *toshav* is a temporary resident. A *ger* is obligated with regard to the commandments (*Shemot* 12:48-49, *Vayikra* 16:29, et al.), while a *toshav* is exempt (*Shemot* 12:44). When it comes to the commandment of loving the *ger* and the prohibition against causing him anguish, the Torah mentions only the *ger* – although from the point of view of identification with the weak, with a stranger in a land foreign to him, it would seem that this should apply no less – and perhaps even more – to a *toshav*. Apparently, although the Torah demands identification with and love towards a stranger who comes from a different land, the formal obligation to show such fraternity applies only when the stranger concerned shares the obligation of the commandments. The Written Law, based on the assumption that a *ger* who lives in the land is obligated in *mitzvot*, mentions with respect to him the requirement of loving him and the prohibition against vexing him. However, according to Halakha, since this *ger* is not obligated to observe the commandments, the requirement to love him and the prohibition against vexing him do not apply. Their application is limited to *gerim* who are obligated in *mitzvot* – i.e., converts.

Whatever the Torah requires of us with regard to a *toshav*, however, does apply, according to Halakha, to a *ger toshav*. As opposed to the stricter requirement of "love" – which the Written Law applies to any *ger* living in the land but which Halakha restricts to converts – concerning a *ger toshav*, Halakha states, "You are commanded to sustain him" (*Pesachim* 21b).

The substance of this requirement is a matter of debate among the Rishonim. According to the Ramban (*Gloss to Sefer Ha-mitzvot*, Positive 16; *Commentary, Vayikra* 25:35), it refers to saving his life – along the lines of "You shall not stand by the blood of your fellow" (*Vayikra* 19:16). The Rambam views this requirement as the provision of support – i.e., communal responsibility

that facilitates the conduct of life, including also basic manners and acts of kindness (*Hilkhot Melakhim* 10:12). The Gemara does not state explicitly the source for this command "to sustain him," but the Rishonim (Rashi, ad loc; Rambam, *Hilkhot Zekhiyya* 3:11; Ramban, *ibid.*) point to a verse in *Parashat Behar* (*Vayikra* 25:35): "If your brother grows poor, and his means fail with you, you shall support him – a stranger (*ger*) or a resident (*toshav*) – that he may survive with you." The structure of this verse is somewhat opaque, but the message seems to be that the command to support and sustain a brother extends to include a "*ger* or *toshav*." The Sages explain (*Torat Kohanim*, ad loc), "'*Ger*' – this means a *ger tzedek*; '*toshav*' – this means a *ger* who eats carcasses." In other words, the *ger* mentioned in the verse is a convert, as the word is usually used by the Sages; the *toshav* mentioned in the verse is actually a *ger toshav*.⁹[9] This, then, is the source of the requirement to support and sustain even a *ger toshav*.

Translated by Kaeren Fish

⁹ [9] Concerning the term "*ger* who eats carcasses," cf. *Avoda Zara* 64b.