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PARASHAT HASHAVUA

PARASHOT BEHAR – BECHUKOTAI

The Prohibitions of *Ona'ah*, *Neshekh*, and *Ribit*

By Rav Yoel Bin-Nun

Parashat Behar opens with the words, “And the Lord spoke to Moshe at Mount Sinai, saying...” and goes on to set forth the *mitzvot* of *shemitta* and *yovel*. This prompts Rashi’s famous question – what is the connection between *shemitta* and Mount Sinai? – and his response – that just as these *mitzvot*, in all their detail, were given at Mount Sinai, so were all the other *mitzvot*, in all their detail. Unfortunately, in our time, the *mitzvot* of *shemitta* and *yovel* are observed in very minor, almost negligible form. On the other hand, there are other *mitzvot* mentioned in our *parasha* – the prohibitions on *ona'ah*, *neshekh*, and *ribit* – which apply at all times and are central pillars of Torah-based ethics. They will be the focus of this *shiur*.

a. *Ona'at Mamon vs. Ona'at Devarim*

And if you sell something to your neighbor, or buy anything from your neighbor, you shall not wrong/defraud (*lo tonu*) one another [literally, each his brother]; according to the number of years after the *yovel* shall you buy of your neighbor, and according to the number of years of the fruits shall he sell to you. According to the multitude of the years you shall increase the price, and according to the fewness of the years you shall diminish the price, for it is the number of crops that he sells to you. You shall not therefore wrong (*lo tonu*) your fellow (*amitekha*), but you shall fear your God, for I am the Lord your God. And you shall perform My statutes and keep My judgments, and do them, and you shall dwell in the land in safety. (*Vayikra* 25:14-18)

The Midrash Halakha (*Sifra, Behar*, ch. 4) deduces from this passage two distinct types of *ona'ah*: defrauding that involves money (*ona'at mamon*), and verbal wrongs (*ona'at devarim*). On the plain level of the text, the verse near the end of this unit – “You shall not therefore wrong one another, but you shall fear your God” – seems to be a sort of complement to or reinforcement of the verse at the beginning, “You shall not defraud one another.” However, in instances of such repetition or summary, the Midrash Halakha seeks some new element of *halakha*. In our case, the emphasis comes to teach that any sort of defrauding or wrong is forbidden.

According to the Midrash Halakha, the command, “You shall not defraud one another” refers to monetary transactions, since the beginning of the verse states specifically, “If you **sell** something to your neighbor, or **buy** anything from your neighbor.” This verse is thus interpreted as a reference to regular commerce involving merchandise that changes hands. Afterwards, the Torah moves on to focus on land, where the transaction effects only a temporary change of ownership. Here, there is no “deception” in the sense of regular commerce, since the price is fixed in accordance with the number of years of produce left for the buyer until the *yovel*.

Finally, the later verse, “You shall not therefore wrong your fellow (*amitekha*),” refers, according to the Midrash Halakha, to verbal wrongs.

It is interesting to note that the prohibition on *ona'at devarim* uses the word “*amitekha*” (your fellow), rather than “*akhiv*” (his brother), which appeared in the context of *ona'at mamon*. *Ona'at devarim* is something that is known only to the person himself; it is not something that can be proven in a *beit din*. This explains the Torah’s emphasis at the end of the unit. As the *gemara* teaches, any prohibition whose violation is the private knowledge of the person involved carries the warning, “You shall fear your God”:

Our Rabbis taught: “You shall not therefore wrong your fellow” – here the Torah is speaking about verbal wrongs. [One might question this:] You say, verbal wrongs, but perhaps in fact it refers to monetary deception? [The answer is that] when it says, “If you sell something to your neighbor, or buy anything from your neighbor, [you shall not wrong one another],” it [patently] refers to monetary deception; thus, how would I fulfill the [additional] commandment of “You shall not therefore wrong your fellow”? Through [avoidance of] verbal wrongs.

What would be an example? If a person is a *ba'al teshuva* (a penitent), you must not say to him, “Remember your former deeds.” If he is descended from converts, do not say to him, “Remember your forefathers’ deeds.” If he himself is a convert and comes to learn Torah, do not say to him, “Shall a mouth that ate forbidden foods, abominable and creeping things, now come and study Torah, which was uttered by the mouth of God Himself?!” If he suffers afflictions of disease or he has buried his children, do not say to him – as *Iyov*’s companions told him – “Is not your fear of God your confidence, and your hope the integrity of your ways? Remember, now, who that was innocent ever perished?” (*Iyov* 4:6-7). If donkey-drivers sought grain from a person, he should not say, “Go to so-and-so, who sells grain” – knowing that that person has never sold any. R. Yehuda said: One may also not pretend to be interested in a purchase when he has no money, since this is known only to the heart, and of everything known only to the heart it is written, “and you shall fear your God.” (*Bava Metzia* 58b)

To what degree must I take care not to deceive or wrong someone else with my words? If I have no intention of buying, I must tell the seller so at the outset. Otherwise, if the seller offers a price and I refuse, he might think I am applying pressure in order to bring down the price, and he will make an effort to do so – while in fact I never meant to buy the merchandise, at any price. This is “verbal wrong,” and the Torah prohibits it.

We might ask why the same term – *ona'ah* – is used in connection with these two seemingly different phenomena. *Ona'at mamon* involves deceiving another person; *ona'at devarim* causes sorrow and offense, but does not seem to fall into the category of “deception.” Why does the Torah use the same terminology – “*lo tonu*” (You shall not wrong) – in both instances?

Apparently, the Torah is teaching that *ona'at mamon* also causes offense and sorrow; the victim suffers hurt at having been deceived or taken advantage of. This pain is what underlies the prohibition of “Do not wrong one another,” even in the commercial context. Deception, just like discovering that one has paid an exorbitant price, causes anguish and sorrow.

In other words, the *ona'ah* is not the deception, but rather the hurt. Thus, *ona'at mamon* and *ona'at devarim* share the same foundation; it is the wrong or hurt caused to a person, whether through being led to pay a very high price or through exploitation of or dwelling on his unfortunate situation in the present or in the past.

Ona'at mamon can be rectified; the overcharge can be returned to the buyer. *Ona'at devarim*, on the other hand, has no repair: the hurtful words and their painful impact cannot be taken back. Hence the warning, “And you shall fear your God,” specifically in relation to the latter.

b. Is there *ona'ah* with regard to land?

The plain reading of our unit raises a difficult question. The Torah seems to be talking about a field when it says, “For what he sells you is a number of years of produce.” However, the law of *yovel* states that the land itself is not sold; what is sold is the number of crops or growing seasons that the land offers. Seemingly, there is no halakhic situation of *ona'ah* here at all. According to *Chazal*, there is no *ona'ah* when it comes to land.¹

Thus, we have a peculiar situation in which the *peshat* and the Midrash Halakha are far removed from one another. Indeed, Ramban comments:

We are forced to understand these verses in a manner other than their *peshat* (plain meaning). (Ramban, *Vayikra* 25:14)

However, this conclusion does not satisfy him, and he continues:

But I suggest a different understanding: Someone who knowingly causes affliction to his fellow unquestionably violates a prohibition, whether [the transaction] involved merchandise or land, concerning which the Torah says, “You shall not wrong one another; according to the number of years after the *yovel*...” – which stipulates that the sale and the purchase are based on the number of years, and the sides should not defraud each other.

However, our Sages taught that the leeway for pricing is up to a sixth of the value, while a sale is annulled over [a surcharge of] more than a sixth, but they excluded land transactions from this rule, since in this realm the seller might be forgiven a deviation of even more than a sixth, just as a surcharge of less than a sixth is forgiven when it comes to merchandise. Even though one may not knowingly deceive the other party, people would not usually cancel a sale [of land] on account of so paltry a deception. (Ramban ad loc.)

According to Ramban, the Torah's warnings, “Do not wrong/defraud each his brother” and “do not wrong each his fellow,” apply to all cases: merchandise that is passed from one hand to another, land transactions, and verbal wrongs. The hurt caused to the other person through these various offenses is a grave affliction, and it is prohibited.

Ramban adds:

¹ The *mishna* (*Bava Metzia* 56a) teaches that *ona'ah* applies only to “objects that are purchased [and pass] in exchange.”

And the Sages taught that since the Torah says, “If you sell something to your fellow, or buy something from your neighbor's hand” – i.e., something that is purchased [and passed] from one hand to another – “you shall not deceive each man his brother,” this teaches that *ona'ah* has a special circumstance with regard to merchandise, which does not apply with regard to land, and that is [the requirement of] returning the money. But **the negative command applies in all of these cases.** (Ramban, ad loc.)

Here the Ramban clarifies the distinction. While the laws of returning the money and annulling the transaction apply specifically where merchandise is involved, the prohibition of *ona'ah* – i.e., hurt caused to the other party – applies and is prohibited in each of these situations.

c. All the gates are locked – except for the gates of *ona'ah*

A review of the conclusion of the unit in our *parasha*, which speaks about *ona'at devarim*, directs us back to further excerpts from the *sugya* in *Bava Metzia*:

R. Yochanan said in the name of R. Shimon ben Yochai: Verbal wrong is even worse than monetary deception, for concerning the former, the Torah says, “And you shall fear your God,” while concerning the latter there is no warning of “You shall fear your God.” R. Elazar said: The former affects one's person, while the latter affects [only] his money. R. Shemuel bar Nachmani said: For the latter, restoration is possible, but for the former, there is no restoration. (*Bava Metzia* 58b)

All of these statements are codified as *halakha* almost without dissent, from the Rambam (Laws of Sale, chapters 12-14) to the *Shulchan Arukh* (*Choshen Mishpat* 227-228). Nevertheless, these laws are not very well known. Unfortunately, they are given far less emphasis than the laws of prayer and *berakhot*, Shabbat, and *kashrut*.

The problem becomes most acutely apparent when, for example, people try to explain various catastrophes as being the results of sin, as *Iyov's* companions did. These people fail to understand that in an age of open and instant communication, the mourners hear their explanations and are hurt by them. Even if there might be some measure of truth to what they say (and generally there is none), this still represents a grave transgression of *ona'at devarim*. It is with regard to such situations that the Torah commands, “And you shall fear your God.” According to the *gemara*, there is no restoration for the hurt caused by such explanations, and it is difficult, if not impossible, to atone for it. The prohibition is so severe that we are told, “The gates of *ona'ah* are never sealed,” – meaning that the anguish of someone who is hurt by *hona'ah* will always reach God's ears. Woe to someone who causes hurt to bereaved families by telling them why they earned their mourning (just like someone who causes hurt to converts or *ba'alei teshuva* by recalling their past)!

In this context, it is worth recalling the story of the stove of Akhnai and R. Eliezer. The conventional understanding is that the *sugya* ends with the affirmation of the *halakha* as decided by the earthly *Sanhedrin*:

“It is not in heaven”... for the Torah was already given at Mount Sinai, [and so] we do not pay attention to heavenly voices...” (*Bava Metzia* 59b)

However, the story continues, and the *gemara* concludes it by recording the terrible tragedy that befell R. Gamliel when R. Eliezer fell down in supplication. This tragedy occurred despite the fact that R. Gamliel had been correct in his ruling against the wonders produced by R. Eliezer, and despite the fact that R. Yehoshua had supported his ruling that “it is not in heaven.” Even the huge wave in the sea was calmed when R. Gamliel pleaded the justness of his ruling. R. Gamliel met his fate even though the Holy One, blessed be He, Who regarded R. Eliezer’s view as closer to the Supreme Truth, joyfully proclaimed (in the language of the *gemara*), “My children have defeated Me! My children have defeated Me!” Nevertheless, the gates of *ona’ah* are never sealed. The fact that the *halakha* was decided contrary to R. Eliezer’s view had nothing to do with the ban placed on him and the hurt caused to him. This caused great anger on that day, as the *gemara* goes on to describe:

R. Gamliel, too, was sailing in a ship when a huge wave arose to drown him. He said: It seems to me that this is on account of none other than R. Eliezer ben Hyrkanus. Whereupon he rose to his feet and said: Master of the universe, it is clear and known to You that I did not act for my own honor, nor did I act for the honor of my father’s house, but rather for Your honor, so that strife would not multiply in Israel! Whereupon the raging sea subsided.

Imma Shalom was R. Eliezer’s wife and the sister of R. Gamliel. From the time of that incident onwards, she did not allow R. Eliezer to fall upon his face in supplication. A certain day was Rosh Chodesh, but she mistook a full month (30 days) for a shortened one (29 days) [and she mistakenly thought that *Tachanun* was not recited on that day]. Others say, a poor man came and stood at the door, and she took out bread to him. [Upon her return,] she found him fallen upon his face. She said to him: Arise! You have slain my brother! At that same time, a proclamation emerged from the house of R. Gamliel that he had died. [R. Eliezer] asked [his wife]: How did you know it? She told him: I have it as a tradition from my grandfather’s house: All gates are locked, except for the gates of *ona’ah*.

The conclusion we learn from the *gemara* is therefore not only that the *halakha* is decided in accordance with the majority of the sages, but also that even when the decision is made in accordance with the majority, it is still forbidden to cause offense or hurt to the minority. A dissenting opinion should not be subject to excommunication or a ban; he should not be pushed into a corner.

We are obliged to protect “human rights,” as *Chazal* learn from our *parasha*. At the end of the unit on *ona’ah* (which is connected to the unit on *yovel*), mention is made of *ona’at devarim*, for which there is no restoration. Since “the gates of *ona’ah* are never shut,” we must be even more cautious concerning verbal wrong than we are in relation to the other laws mentioned here.

d. Atonement for verbal wrong

Is there atonement for *ona’at devarim*?

Since the *gemara* cites the insensitive remarks of *Iyov*’s companions in light of his suffering as an example of *ona’at devarim*, let us look to the end of *Iyov*’s story for an answer to our question:

And My servant, *Iyov*, shall pray for you, for to him I will show favor in doing you no disgrace... (*Iyov* 42:8).

Only if the injured party himself prays on behalf of those who hurt him will the gates of *ona’ah* be shut, and only then will God forgive the offenders. R. Eliezer himself could have saved R. Gamliel, had the latter come to him and asked him to pray on his behalf.

For this reason, *Chazal* instituted the obligation of going before Yom Kippur to ask forgiveness from anyone we may have hurt or offended. In the absence of such forgiveness and appeasement, Yom Kippur does not effect atonement (*Yoma* 85b); the *viduy* (confession) alone will not achieve its purpose. Not only should the offender ask for forgiveness, but – as we find in the *Tefilla Zaka*, recited just prior to *Kol Nidrei* – every person should resolve to forgive and also to pray for those who have offended him, with the hope and assumption that they regret their words.

e. *Neshekh and Ribit*

And if your brother grows poor, and his means fail with you, then you shall relieve him, [even] if he be a stranger or a sojourner – that he may live with you. Take no usury of him, nor interest, but fear your God, that your brother may live with you. You shall not give him your money upon usury, nor lend him your foodstuffs for increase. I am the Lord your God Who brought you out of the land of Egypt, to give you the land of Canaan and to be your God. (*Vayikra* 25:35-38)

As discussed in previous *shiurim*, there are two aspects or levels to the “ethical” *mitzvot* in the Torah. There are the *mitzvot* that define generally ethical or moral behavior, and there are *mitzvot* that are specifically associated with and recall the exodus from Egypt.

In the opening verse of the above unit, the Torah sets down a principle of general ethical behavior:

And if your brother grows poor, and his means fail with you, then you shall relieve him, [even] if he be a stranger or a sojourner – that he may live with you. (*Vayikra* 25:35)

You are obligated to help one of your brethren who finds himself in financial difficulty. The Torah specifies that even if he is a “stranger or a sojourner,” and not part of *Am Yisrael*, you are commanded to help him and sustain him.²

The *mitzva* to sustain the poor person is mentioned here twice – first in the expression “that he may live (*va-chai*) with you,” and then again, “that your brother may live (*ve-chei*) with you.” It applies both to “your brother” and to the “stranger or sojourner.”

This commandment involves, first and foremost, *pikuach nefesh* (saving a life). If we are commanded to help someone who is struggling financially, then we must certainly exert ourselves to save his life if he is in danger! And in these situations, a stranger and sojourner are treated in the same way as a fellow Jew.

From the expression “that your brother may live with you,” R. Akiva deduces a famous *halakha*:

If two people are walking on the way and one has a water canteen, and there is enough water to keep only one of them alive, then the law is that your life takes precedence over the life of your fellow. (*Bava Metzia*

² See Rashi on *Bava Metzia* 71a, as well as Ramban’s commentary on this verse.

62a).

Ben Petura arrives at a different interpretation:

Better that they both drink and [both] die, than that one [be forced to] witness the death of his fellow. (ibid.)

This difference of opinion as to the interpretation of the verse reflects a more fundamental difference in worldview, which might be summed up in the question: Is the right to life anchored in the principle of equality at any price, even if both parties will die? According to R. Akiva, whose opinion is ultimately the direction taken in the *gemara*, the obligation of sustaining and helping others extends outward from the individual. The *mitzva* is anchored in the primal human urge for survival; this quest for life then spreads to others.

Asher Tzvi Ginsberg, better known as “Ahad Ha-Am,”³ viewed R. Akiva’s teaching as the essence of the Jewish perception of equality, which places life before death – even if only a single life – in contrast to the false equality of the other nations.

However, it must be emphasized that R. Akiva’s words also hold profound logic in terms of the chances for both parties being saved. If one of the travelers drinks the water and manages to reach civilization, he will call for help, and there is a chance (albeit small) that thereby his companion will also be saved. If we imagine them walking through the desert, this scenario seems rather far-fetched, but we have all heard stories about people on hikes and journeys that manage to save each other. (Of course, there are also instances where one party went to call help and the other died in the meantime, or where the first party himself died on the way.)

It is interesting to note that R. Akiva does not state who should drink. From a plain reading of the story, it would appear that the owner of the water should be entitled to drink. However, in such situations, the two parties often agree that the younger or stronger party, who has the better chances of survival, should drink and then try to seek help.

The discussion here also suggests that the obligation to sustain or save someone does not apply when there is clearly no chance of saving him, or when it is clear that the savior himself will die in the process. Only where there is a chance of saving a life is there an obligation to exert possibly dangerous efforts for that purpose.

Admittedly, it is not easy to gauge the level of danger, but there are stories of people who have endangered themselves in order to save others, ultimately resulting in the death of both or all of them. The Torah does not want people to die. The law follows the opinion of R. Akiva: Your life takes preference over the life of someone else. The obligation to save a life applies where such a possibility exists.

f. The Prohibition of *Ribit* When it comes to “Your Brother”

All of the above falls under the principle of “that he may live with you,” which applies both to “your brother” and to “the stranger” and “the sojourner.” In contrast, the prohibitions on usury and interest are anchored in the experience of the exodus, and therefore apply only to “your brother.” The *gemara* (*Bava Metzia* 71a) draws this distinction from a precise analysis of the grammar of the verse:

And if your brother grows poor and his means fail with

you, then you shall relieve him; [even] if he be a stranger, or a sojourner, that he may live with you. Take no usury **of him**, nor interest....

If this law had applied both to fellow Jews and to non-Jews in their midst, the verse should have read, “Take no usury of them.” Why do these prohibitions apply only to Jews, by virtue of the exodus, rather than as universal ethical principles?

Ramban offers an explanation at the beginning of *Parashat Mishpatim*, in commenting on the verse,

If you lend money to any of My people (*ami*)... neither shall you lay upon him interest. (*Shemot* 22:24)

Ramban explains that in principle, there is nothing morally wrong with an agreement between two people involving interest on a loan. It is perfectly legitimate for someone to want to profit from the fact that his money is being used by someone else. Theoretically, it is no different from a regular sale. Admittedly, some people might raise the interest to exorbitant levels, but the same happens in many regular transactions. Thus, if someone is willing to pay interest in order to obtain a loan for whatever purpose he has in mind, why is this a problem?

The answer is that both parties were once slaves in Egypt. What God has given them, by virtue of and as a result of the exodus, should be shared between them in a spirit of fraternity. Brothers do not exploit each other’s distress and extend a loan with interest, certainly not at a rate that would be considered usury.

There is no problem with interest on the level of universal ethics; there is no theft or oppression involved. However, from the moral perspective of the Exodus, making a profit off someone else’s bad fortune or distress is exploitation.

For this reason, no such prohibition applies in transactions between Jews and non-Jews. A non-Jew may charge interest for a loan extended to a Jew, and vice versa. Among Jews, however, this violates a prohibition, which applies to all involved parties. First of all, it includes the borrower himself, as *Chazal* learn from the law in *Sefer Devarim*:

You shall not apply interest (*lo tashikh... neshekh*) to your brother – interest of money, interest of foodstuff, interest of anything that is lent upon interest. (*Devarim* 23:20)

Chazal understand the expression “*lo tashikh*” as being directed also towards the borrower: “do not borrow with interest.” From the verse in *Shemot* (22:24), “neither shall you lay upon him interest,” they learn further that the prohibition applies even to the scribe and the witnesses.

Why does our *parasha* state, “Take no usury from him, nor interest,” and then again, “You shall not give him your money upon usury, nor lend him your foodstuffs for increase”?

It is forbidden to charge interest even if this was not explicitly agreed at the outset. For instance, when the borrower comes to repay the loan, the lender may not say to him, “Now give me something in addition, in exchange for the fact that while my money was sitting with you I earned nothing on it. During the same time it could have been earning interest in the bank.”

The latter verse – “You shall not give him your money upon usury, nor lend him your foodstuffs for increase” – is a warning before the transaction is made, while the former verse – “Take no usury from him, nor interest” – is a warning after the fact.

³ *Al Parashat Derakhim*, vol. 4, “*Al Shetei Ha-Se’ifim*.”

g. Usury vs. Interest

What is the difference between usury (*neshekh*) and interest (*ribit*)? According to the plain reading of the verses in our *parasha*, *neshekh* applies to money, while *ribit* refers to foodstuffs. If you give your neighbor a certain quantity of produce and receive more than that in return, you violate the prohibition of “nor lend him your foodstuffs for increase.”

However, *Chazal* compare these two terms here to their appearance in the verse in *Devarim*:

You shall not apply interest (*lo tashikh... neshekh*) to your brother – interest of money, interest of foodstuff, interest of anything that is lent upon interest. (*Devarim* 23:20)

Ramban maintains that the plain understanding of the term *neshekh* is as derived from a snake's bite (*neshikha*). In other words, interest is the fixed, defined component of a loan, while *neshekh* is an obligation that accumulates and grows. This phenomenon is all too familiar from the sphere of bank loans (and all the more so, loans on the “grey market”), where some people end up being caught in a spiral of payments which they are ever further from being able to repay. Most of the time, they are paying compound interest – interest on the interest – while the original sum of the loan is deliberately left (by the lender) unpaid.

h. Heter Iska

All of this raises the question of how it can be permissible to conduct dealings with banks, which charge not only interest but also compound interest, while the Torah explicitly forbids such practice.

The classic halakhic response is the *heter iska*, whereby the bank trades in money, and anyone in need of money makes an agreement; someone who wants to invest money lends it to the bank, and this is then treated as a transaction like any other.

Close inspection of the original *heter iska* shows that it can apply to arrangements that are truly some sort of business agreement, but in the case of an out-and-out loan, which is not a business of any description, application of the *heter iska* is something of a pretense.

In addition, some important *poskim*⁴ maintain that the *heter iska* cannot be applied to consumer purposes. The license for the *heter iska* makes sense for the purposes of financing one's studies, or an apartment, a car, etc., that allow one to work and earn money – or, obviously, to establish a business. However, according to these opinions, regular interest at the bank – including both the interest paid on deposits and, all the more so, interest taken on loans – is forbidden.

On the other hand, the Rogachover Gaon, R. Yosef Razin (*Tzofnat Pa'aneach*, 184), writes that a bank is not a proper ownership, but rather a virtual one (“form rather than substance”). To this I might add that financial companies (Ltd.) and banks did not come out of Egypt, and therefore the ethical requirements based on the exodus do not apply to them.⁵ Therefore, the *heter iska*, which renders permissible the forms of interest that are forbidden *de-rabbanan* (by rabbinical law), can apply to connections with banks and companies, whose prohibition on interest is not *de-orayta* (biblical in origin).

Clearly, however, individual Jews are obligated to treat one another on a fraternal basis. Agreements for borrowing and lending on the grey market are strictly prohibited; such conduct is tantamount to a denial of the exodus. No *heter iska* can permit such arrangements.

A God-fearing Jew who loves the Torah and his fellow Jews may not, under any circumstances, be party to an interest-bearing transaction involving another Jew.

Translation by Kaeren Fish

Visit our website: <http://etzion.org.il/en>

⁴ See articles by R. Yaakov Ariel on the HaTzofeh website.

⁵ See my article, “*Issurei Ribit Be-Chevra Modernit*,” on my website and in my forthcoming book, *Mikraot – Parashat Mishpatim*.