BIBLE 365

Daily podcast with
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Exodus Weekly

Mishpatim and the Merchant of Venice

Parashat Mishpatim, Exodus, Chapters 21-24

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The quality of mercy is not strain'd,

It droppeth as the gentle rain from heaven

Upon the place beneath: it is twice blest;

It blesseth him that gives and him that takes:

'Tis mightiest in the mightiest: it becomes

The throned monarch better than his crown;

His sceptre shows the force of temporal power,

The attribute to awe and majesty,

Where in doth sit the dread and fear of kings;

But mercy is above this sceptred sway;

It is enthroned in the hearts of kings,

It is an attribute to God himself;

And earthly power doth then show likest God's

When mercy seasons justice. Therefore, Jew,

Though justice be thy plea, consider this,

That, in the course of justice, none of us

Should see salvation: we do pray for mercy;

And that same prayer doth teach us all to render

The deed of mercy.

- The Merchant of Venice, Act IV, Scene I

So says Portia, the wealthy heiress of Belmont, while disguised as a lawyer in the courts of Venice. The Jew she addresses is Shylock, who has come to claim his pound of flesh from the Gentile merchant Antonio. The implication in her words is that Jews care for justice and not for mercy. It is one of the most celebrated speeches about the law, and it is also one of the most anti-Semitic statements in the history of English literature, the source of one of the most catastrophic calumnies in the history of the West. It is our Torah portion that addresses both justice and mercy, and allows us to understand why Judaism truly treasures both.

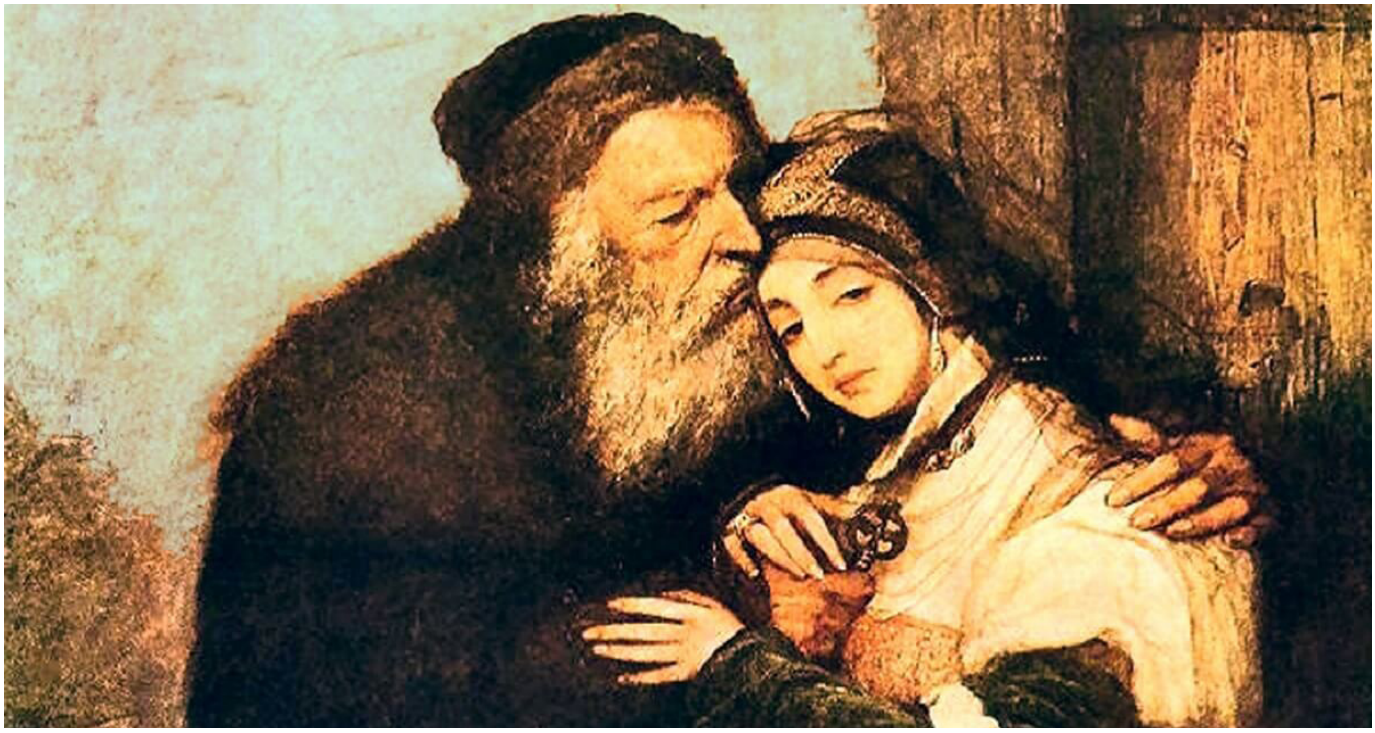
Following the dramatic scene at Sinai, Scripture suddenly shifts to what may seem prosaic: a host of laws that the Israelites are now obligated to obey. For the medieval sage Nahmanides, this is meant to be understood as having taken place in chronological order: after the declaration of the Decalogue, Moses delineates the details of the covenant to which the people enthusiastically assent, giving us words in that echo throughout the ages:

> *And he took the Book of the Covenant and read in the hearing of the people: and they said, All that the Lord hath spoken we will do and we shall hearken.* (Exodus 24:7)

Only then does Moses ascend Sinai, seeking to secure the two tablets that will embody the bond between Israel and the Almighty.

While some of the commandments he articulates here are ritualistic and cultic in nature, most are rules regulating torts, loans, land, sales, and much else relating to the social fabric of a society. What appears prosaic is actually profound. The Israelites are thereby informed, as commentators note, that the covenant they are about to forge with God will also profoundly impact how they treat their fellow man. These chapters, in the annual Torah reading cycle of traditional Judaism, are known as "*Mishpatim*," "Laws," the singular of which is "*mishpat,*" which also means "justice." Its root is "*shofet*," "judge," for it is the job of the judge to enforce justice.

One might therefore suppose, with Portia, that Judaism is all about justice, and not mercy. But even a cursory reading of these *mishpatim* illustrates how profoundly perverse a perspective like this is. Indeed, these passages seek to stress the point, millennia before Shakespeare, that mercy is an attribute of God



Himself, and "earthly power doth then show likest God's, When mercy seasons justice."

Let us take one example:

> *If thou take they neighbor's garment as a pledge, thou shalt restore it unto him by when the sun goeth down.*
>
> *For that is his only covering, it is his garment for his skin; wherein shall he sleep? And it shall come to pass, when he crieth unto me, that I will hear, for I am compassionate.* (Exodus 22:26-27)

The verse speaks here of a poor borrower who gives his garment as collateral. The lender is obligated to restore the garment in the evening to protect the poor person from the chill. By the standards of strict justice, the law makes no sense at all. Why should a pledge be returned if it was given to ensure payment of a loan, and that loan has not yet been repaid? But mercy, for Judaism, must be mixed with justice.

The late British Chief Rabbi and biblical commentator J. H. Hertz contrasts this verse with what is known as The Law of the Twelve Tables, one of the surviving copies of early Roman law, composed centuries after Moses. Rabbi Hertz writes:

> The chivalry to the poor ordained in these verses will appear even more striking when we recall the barbarous treatment of the debtor in ancient Rome. If the debtor was unable to make repayment within thirty days after the expiration of the term agreed upon, the Law of the Twelve Tables permitted the creditor to keep him in chains for 60 days, publicly exposing the debtor and proclaiming his debt. If no person came forward to pay the debt the creditor might sell him into slavery or put him to death. If there were several creditors they might cut him to pieces, and take their share of the body in proportion to their debt.

We are thus introduced to the ultimate irony. Shakespeare's play describes an anti-Semitic merchant of Venice named Antonio who seeks to borrow money from Shylock on behalf of his friend Bassanio. To this Shylock replies,

> You call me misbeliever, cut-throat dog,
>
> And spit upon my Jewish gaberdine,
>
> And all for use of that which is mine own.
>
> Well then, it now appears you need my help...

Antonio replies that he plans to continue to abuse Shylock this way, that he disdains Jews, and he says,

> I am as like to call thee so again,
>
> To spit on thee again, to spurn thee too.
>
> If thou wilt lend this money, lend it not
>
> As to thy friends; for when did friendship take
>
> A breed for barren metal of his friend?
>
> But lend it rather to thine enemy,
>
> Who, if he break, thou mayst with better face
>
> Exact the penalty.

So Shylock proposes what he calls a "merry bond": if Antonio cannot pay, then Shylock can collect from Antonio,

> ...an equal pound
>
> Of your fair flesh, to be cut off and taken
>
> In what part of your body pleaseth me.

Antonio's ships do not return, and Shylock comes to court to claim the pound of flesh. That is when Portia gives her speech, pleading with the Jew to season justice with mercy. And however the Twelve Tables of Rome were interpreted in ancient times,

"Long before Shakespeare, Hebrew Scripture proclaimed that mercy is an attribute of God Himself."

I have seen those who have suggested that it served as inspiration for the play. In stark contrast, there is nothing in the Hebrew Bible that parallels this notion of taking a pound of flesh as repayment of a debt. On the contrary, it is Scripture that introduced the notion of seasoning justice with mercy, all the while also emphasizing the impartiality of justice as an important virtue.

> *Thou shalt take no bribe; for a bribe blinds them that have sight, and perverts the words of the righteous.* (Exodus 23:8)

Rabbi Jonathan Sacks, drawing on some of the verses I have cited, puts his own response to Portia in this way:

> Why then is justice so central to Judaism? Because it is impartial. Law as envisaged by the Torah makes no distinction between rich and poor, powerful and powerless, home born or stranger. Equality before the law is the translation into human terms of equality before God. Time and again the Torah insists that justice is not a human artefact. "Fear no one for judgement belongs to God." Because it belongs to God it must never be compromised by fear, bribery, or favoritism. It is an inescapable duty, an inalienable right.

Judaism is about justice, but not only justice. As Rabbi Sacks further puts it, Judaism is:

> a religion of justice, for without justice, love corrupts (who would not bend the rules if he could to favor those he loves?). It is also a religion of compassion, for without compassion law itself can generate inequity.

Thousands of year before Shakespeare, Hebrew Scripture proclaimed that mercy is an attribute of God Himself. We are called to make manifest justice and mercy because that is what God does. It is the joining of these attributes that provides the premise for the following, striking exhortation:

> *And a stranger thou shalt not oppress; for ye know the heart of a stranger, for ye were strangers in the land of Egypt.* (Exodus 23:9)

The word *ger*, or stranger, according to the rabbis, at times refers to those non-descendants of Israel who become converts. At other times, it refers to those who profess monotheism, without full observance. Either way, in an agricultural society where land was tribally assigned, these individuals are economic and cultural outsiders. For Nahmanides, in warning "*a stranger thou shalt not oppress...for ye were strangers in the land of Egypt*," the Almighty is saying: if you oppress the stranger, the mercy I showed you in Egypt I will show to the stranger in the Land of Israel, and the justice I wrought upon Egypt will be wrought upon you. Thus in this verse, mercy and defense of the stranger are exquisitely combined.

This, in turn, brings us to perhaps the most painfully ironic line in the *Merchant of Venice*. In the play, Shylock invokes the Jewish Sabbath in seeking his pound of flesh.

> And by our holy Sabbath have I sworn
>
> To have the due and forfeit of my bond...

But for the Torah, it is the Sabbath that highlights how wrong Shakespeare is in his image of the Jews. Though already declared in the Decalogue, the

> "Shylock, like many Jews, was treated like a dog; so, Shakespeare assumed that he would act like a dog. The truth, however, was the opposite...our ancestors maintained their belief that life, gifted to us by the Almighty, lent us the capacity...to live lives of radiant sanctity."

Sabbath is emphasized again in *Mishpatim,* but here in Exodus 23:12, its purpose is explicitly so that "*the son of thy maidservant, and the stranger, shall rest*."

The Sabbath sustains both justice and mercy, for it is a reminder of creation, of the reality of man's Divine image, and, therefore, of human equality. Yeshiva University's Rabbi Zvi Sobolofsky, noting that some in society are more fortunate than others, puts it this way:

> This sense of inequality can lead to the taking advantage of less fortunate members of society. The message of *Shabbos* [Sabbath] is the remedy to this misconception. One who truly accepts his role in the world as a creature rather than a creator can never succumb to this error. Our equality with our fellow man derives from our common Creator.

The Merchant of Venice, then, provides an utterly unfair picture of Judaism. It was the Hebrew Bible that bequeathed to us notions of justice and mercy; yet, the calumny of Shylock lives on.

In 2011, London's Globe Theatre invited acting troupes from 67 countries to come to London and perform a Shakespearean play in their respective tongues. Israel's *HaBima* actors chose *The Merchant of Venice*. The costumes were Shakespearean; the actors were Jews. Meanwhile, leading British actors and directors publicly demanded the boycott of Israel's troupe, even as plays were performed by representatives of despotic tyrannies that rule in violation of the entire moral vision of Exodus, with nary a murmur from the English cultural elite. The legacy of Shylock endures; the history of anti-Semitism continues.

I have read many articles about *The Merchant of Venice*; they often decry its anti-Semitic aspects and offer insights into Shakespeare's literary technique. But in seeking to counteract *Merchant*'s legacy, we must focus not only on what Shakespeare got wrong, but also on what the Jews got right and gave the world. To better understand this, we look not to Shakespeare, but to another English Gentile, the historian Paul Johnson, who writes in his *History of the Jews* as follows:

> Certainly, the world without the Jews would have been a radically different place. Humanity might have eventually stumbled upon all the Jewish insights. But we cannot be sure. All the great conceptual discoveries of the human intellect seem obvious and inescapable once they had been revealed, but it requires a special genius to formulate them for the first time. The Jews had this gift. To them we owe the idea of equality before the law, both divine and human; of the sanctity of life and the dignity of human person; of the individual conscience and so a personal redemption; of collective conscience and so of social responsibility; of peace as an abstract ideal and love as the foundation of justice, and many other items which constitute the basic moral furniture of the human mind. Without Jews it might have been a much emptier place.

The civil laws known as *Mishpatim* were communicated to the Jews. They inspired Talmudic tractates, and rabbinic students devote years to engaging their intricacies. But these laws also changed the world. Considering all that *The Merchant of Venice* has wrought, it is inspiring as we conclude our discussion of these Biblical ideas that a non-Jew's history of the Jewish people has also given us one of the most sublime and significant summaries of Jewish existence that I have ever seen.

Discussion Questions:

1. Immediately following the miraculous revelation at Sinai, the Jewish people are given a long list of laws and regulations governing everyday social life. What can we learn from the fact that God and Scripture juxtapose the most transcendent moment in Jewish history with the most day-to-day rules governing Jewish living?

2. Rabbi Soloveichik, citing Rabbi Jonathan Sacks, makes the case that Jewish law aims to strike an appropriate balance between justice and mercy. We intuitively understand the dangers of justice not tempered by mercy. But what are the dangers of mercy not balanced with justice that Rabbi Jonathan Sacks alludes to?

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