

Zera Shimshon

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Chapter VIII: Vayishlach (Gen. 32:4–36:43)

Essay 4. Did Jacob give consecrated property to Esau?

מדְרָשׁ ילקוט על הפסוק "וַיֵּאָבֶק אִישׁ עִמּוֹ", לקח יעקב את כל מעֶשֶׂר מקנהו וְשָׁלַח בְּיַד עֲבָדָיו וְנָתַן לְעֶשָׂו. אָמַר לוֹ הַקָּב"ה עֲשִׂיתָ אֶת הַקֹּדֶשׁ חֹל. אָמַר לְפָנָיו רַבּוֹנוֹ שֶׁל עוֹלָם אָנֹכִי מְחַנֵּף לְרָשָׁע בְּשִׁבִיל שְׂלָא נְהַרְגֵנִי עַכ"ל. קָשָׁה לָמָּה לֹא שָׁלַח מִשְׁלוֹ וּמָה תִירוֹץ הוּא נְה?׃

There is a **midrash Yalkut Shimoni** (parshat Vayishlach, remez 132:5) **on the verse, “Jacob was left alone; and a man wrestled with him until the break of dawn” (Gen. 32:25): “Jacob took all of his tithe from his flock and sent it by the hand of his servants and gave it to Esau.” The Holy One, Blessed be He, said to him, “You have made what is consecrated into something unconsecrated.” [Jacob] said to Him, “Master of the Universe, I have flattered the wicked man so that he won’t kill me.” A question is why [Jacob] didn’t send him animals from his own property, instead of sending him animals that were consecrated to be given to charity? Also, what sort of excuse is this, i.e., “so that he won’t kill me”?**

וַיֹּשֶׁר לְוִי מִדְּמֵתֵי חֵלֶק כִּי הִיָּתָה דַּעְתּוֹ שֶׁל יַעֲקֹב לְעֶשֶׂר אֶת כָּל מְמוֹנָו שֶׁקָּנָה בְּחוּץ לְאֶרֶץ, לְפִי שֶׁהָיָה תַּסְחַת חֵלֶק הַשְּׂרִיִּים רְאוּי לְמַת לָהֶם חֵלֶק כְּדֵי שְׂלָא יִקְטָרְגּוּ עָלָיו. "גֹּרֵל אֶחָד לְה' וְגֹרֵל אֶחָד לְעֵזְרָאֵל", וְכַמוֹ שֶׁכָּתַב הַש"ך, וְנָהוּ הַכֶּפֶל שֶׁל "עֶשֶׂר אֲעֹשְׂרֵנוּ".

It can be said that from the beginning, it was Jacob’s plan to tithe all the money that he had acquired outside of the Land of Israel. As he was under the supervision of the guardian angels while outside the Land of Israel,¹ it was appropriate to give [the angels] a share in order that they not prosecute him for being uncharitable. “One lot for the L-rd, and one lot for Azazel” (Lev. 16:8), and as the Shach wrote, “This is [the reason] for the doubling of the root of the word “to tithe” in the verse, ‘And this stone, which I have set up as a pillar, shall be G-d’s house; and of all that You give me, I will surely give a tithe [*aser a’asereinu*] [אֲעֹשְׂרֵנוּ] unto You’ (Gen. 28:22).”²

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¹ The Ramban writes on Lev. 18:25 that G-d deals directly with inhabitants of the Land of Israel, but appoints angels to deal with inhabitants of other nations.

² Rabbi Mordechai Ha’Cohen of Safed (1523–98), *Siftei Cohen on Torah* (Venice 1605), Ki Teitzei.

משום הכי בעל הטעמים נתחכם להגיש טפחא תחת "עשר", כדי להפריד בין "עשר" שהוא חול ל"אעשרנו לך" שהוא קדש, שזה נתקיים בעישור הבנים דהיינו לוי, כדאיתא בגילקוט שם, ולא חטא יעקב לפי שפונתו היתה כה מתחלה, ועם כל זה הקב"ה אמר לו עשית את הקדש חול, שלא היה לך לקרותו בשם מעשר, ועוד לא היה לך להדביקו עם "אעשרנו לך", שלולי הטעמים היה נשמע שבין "עשר" ובין "אעשרנו" היתה לה דהיינו לה'. וכמו שדרשו ר"ל ל' שהפריש חומש וכו', ויש כאן מקום לעז לבריות שיאמרו שמה שפבר נדרת לה' חזרת לשולחו אל עשו.

Because of this, the one who established the cantillation signs was wise to place a disjunctive accent called a *tifcha* below the first word *aser* [עשר] of the phrase “I will surely give a tithe unto You” [*aser a'asereinu lach*] [עשר אעשרנו לך], in order to distinguish between *aser*, which is for an unconsecrated purpose and *a'asereinu lach* [אעשרנו לך], which is holy, i.e., consecrated. This was fulfilled by the tithing of the sons, [with the tithe] being Levi, as is brought in the Yalkut Shimoni there.³ That is, we know from Num. 3:11–12, “The L-rd spoke to Moses, saying: I hereby take the Levites from among the Israelites in place of all the first-born, the first issue of the womb among the Israelites: the Levites shall be Mine.” Scripture doesn’t tell us that Jacob made the selection, but the midrash does. Another midrash, Ex. Rabbah 5:16, says that the Levites were not enslaved in Egypt, and while this isn’t stated explicitly in the Torah, Rashi on Ex. 5:4 considers this to be implicit, as Aaron was able to come and go as he pleased. Thus, **Jacob didn’t sin, because this was his intent from the start.**

Despite all this, the Holy One, Blessed be He, said to him, “You have made what is consecrated into something unconsecrated,” for you had no right to call [the portion for Esau] “a tithe.”

Also, you had no right to connect it to the words, “I will give a tithe to You,” for perhaps the cantillation signs that were heard between *aser* and *a'asereinu* would be “for You,” that is, for G-d. As [the rabbis] of blessed memory have already explained (Ketubot page 50a), that one distributes up to but not more than one-fifth of his money to charity, and here there is room to speak ill of those people who say that what you have already pledged to G-d, you have gone back and sent it to Esau. I.e., the word “tithe” [*aser*] [עשר] is based on the word for the number “ten,” equating a tithe to a tenth of one’s property. Thus, by the duplication of “*aser*” in the term “*aser a'asereinu*,” one can interpret two times one-tenth, or one-fifth. The implication is that Jacob had pledged one-fifth of his money to G-d, and so he had no right to give any of it to Esau.

אמנם יעקב יש לו תירוץ על זה שאין כאן מקום ללעז כלל, שהדבר ידוע ששם מעשר אינו חל על דבר שלא בא ברשותו של אדם. אלא שבדמאי הקלו כמו שפסק הרמב"ם (בפרק ט' מהלכות מעשר), המזמין את חבירו שיאכל אצלו, והוא אינו מאמינו על המעשרות, אומר מערב שבת מה שאני עתיד להפריש למחר הרי הוא מעשר וכו', מפני שמוותר לאדם להתנות תנאים אלו על הדמאי אף על פי שאינו ברשותו. אכל בנדאי אינו מתנה אלא על דבר שברשותו עכ"ל.

However, Jacob had an excuse for this, for here there is no reason to speak ill at all, for it is known that the term “tithe” does not take effect for a matter that does not come into

³ Yalkut Shimoni (parshat Vayishlach, remez 132:5, 133); see also Pirkei DeRabbi Eliezer 37:5.

possession of a person. Rather, with doubtfully tithed produce [the rabbis] were lenient, as the Rambam ruled in the Mishneh Torah, Tithes, chapter 9, halacha 7. He wrote:

If a person invites a colleague to dine with him [on the Sabbath], and [the guest] does not trust [the host] with regard to the separation of the tithes, [the guest should do the following]: On Friday, he should say: “[The produce] that I will separate tomorrow is [part of] the tithes, as is the remainder of the tithes which are adjacent to it. That portion which I [first] designated as the tithes is *terumat ma'aser* for the remainder which is adjacent to it. The second tithe in its northern - or southern - portion, and its [holiness] is transferred to [this] money.” Because it is permitted for a person to make such stipulations with regard to doubtfully tithed produce, even though it is not in his possession. But if we are certain [that the tithes have not been separated], he may make stipulations only concerning produce that is in his possession.

- Mishneh Torah, Tithes, chapter 9, halacha 7

ואם כן מה נשאמר ויעלב "וכל אשר תתן לי עשר אעשרנו לך" עדיין אינו כלום עד שישפרישנו. ולכשיפרישנו כמו שחשב בדעתו בעת קריאת שם מעשר דהיינו ליתנו לעשו. איגלאי מילתא למפרע שלא נתפונן אלא להחניפו לתת לו חלק יפה שישמו מעשר אבל באמת לא חל עליו כלל, ודיוק הכתוב הוא כה, מה שאמרו לך אקזור לקרוא עליו שם מעשר בשעת ההפשה, מה שאין כן באותו שנתתי לעשו, וזהו "עשר אעשרנו לך".

If so, what Jacob said, “and of all that You give me, I will surely give a tithe unto You,” is meaningless until he separates it, i.e., which only happens after it is in his possession. From when he separates it, it is as he thought at the time that he called it by the term “tithe,” which was to give it to Esau. The matter was revealed afterwards that he only intended to flatter him by giving him a nice portion that he called a “tithe,” but in truth it did not apply to it at all. The accuracy of the Scripture is thus: What I will give to You, G-d, I will return to call it by the term “tithe” at the hour of its distribution, which isn’t true with what I give to Esau, and this is the meaning of the words, “I will surely give a tithe unto You.”

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