

Zera Shimshon

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Chapter XXXVI: Beha'alotecha (Num. 8:1–12:16)

Essay 2. Judging and issuing rulings

"**וַיָּהִי אֲנָשִׁים אֲשֶׁר הָיוּ טְמֵאִים**" וכו' "וַיִּקְרְבוּ לִפְנֵי מֹשֶׁה וּלְפָנֵי אַהֲרֹן", פֶּרֶשׁ רַש"י בְּבֵית הַמִּדְבָּר הָיוּ יוֹשְׁבֵימָם יחד כְּשֶׁנִּשְׁאַלְהָ שְׂאֵלָה זוּ בְּפָנֵיהֶם, וּבְפָרְשֵׁת פִּנְחָס גְּבִי בְּנוֹת צִלְפָּזָד פְּתִיב "וַתַּעֲמְדֵנָה לִפְנֵי מֹשֶׁה וּלְפָנֵי אֶלְעָזָר", וַתִּירָץ רַש"י שָׁם שְׂתֵי תִירוּצִים, בְּבֵית הַמִּדְבָּר הָיוּ יוֹשְׁבֵימָם וְעוֹד סָרַס הַמִּקְרָא וְכו' שֶׁבָּאוּ תַחֲלָה לְאֶלְעָזָר וְאַחֵר כָּדָּ לְמֹשֶׁה.

“But there were some people who were impure by reason of a corpse and could not offer the Passover sacrifice on that day, **and they appeared before Moses and Aaron** the same day. These people said to him, we are impure by a corpse; why are we barred from presenting the L-rd’s offering as its set time with the rest of the Israelites?”¹ **Rashi explained that the two of them were sitting together in the study hall when this question was asked before them.** I.e., Rashi wondered why both were mentioned, and indicates they were together. It’s not that the questioners sought both men, rather, they sought Moses, and Aaron happened to be there.

Elsewhere, **in parashat Pinchas, concerning the daughters of Zelophehad, it is written, “They stood before Moses and before Elazar** the priest, the chieftains, and the whole assembly, at the entrance of the Tent of Meeting, and they said, ‘Our father died in the wilderness. He was not one of the faction, Korah’s faction, which banded together against the L-rd, but died for his own sin; and he has left no sons. Let not our father’s name be lost to his clan just because he had no son! Give us a holding among our father’s kinsmen!’”² **There, regarding the daughters of Zelophehad, Rashi gave two explanations: First, [Moses and Elazar] were sitting in the study hall [but weren’t sitting together], and second, transpose the verse etc., that [the daughters] came first to Elazar and afterward to Moses.** I.e., Rashi wondered why both were mentioned. Here, he indicates they were both in the study hall, but not sitting together. The daughters first approached Elazar, who was unable to issue a ruling on their plea. They then approached Moses.

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¹ Num. 9:6–7. The men were upset that they weren’t able to participate in the Paschal offering. This led to the institution of Pesach Sheni, whereby those who were unable to participate in the primary Paschal offering would be able to bring the offering a month later, affording them a “second chance” to participate in the mitzvah.

² Num. 27:2–4.

מקשים העולם למה גבי שאלת טמאים לא תירץ גם כן ששאלו תחלה לאהרן, וקאור קרות תירץ שאותם טמאים היו מישאל ואלצפון, ואלצפון היה נשיא ואיתא בסנהדרין אין דגין לא את השבט ולא את הנשיא אלא על פי בית דין של שבועים ואחד, ומשום הכי אין סברא לומר שבאו לפני אהרן, אבל בבגות צלפחד שהיו הדיוטות אפשר שבאו קודם לפני אלעזר ועיי"ש שהאר"ה.

Everyone asks why concerning the question of those who were impure, [Rashi] didn't also explain, as he had done for the daughters of Zelophehad, that one should reverse the order of the verse, and understand that [those who were impure] first questioned Aaron and afterward Moses.

We understand that a student must not issue a ruling when he's in his teacher's presence.³ Thus, regarding the daughters of Zelophehad, Rashi decided that they had questioned first Elazar and then Moses, which meant that the two men had not been sitting together. But regarding the men who were impure, Rashi decided that Moses and Aaron had been sitting together, and as Aaron would not issue a ruling in front of Moses, that meant that only Moses issued a ruling. Why did Rashi have such different explanations?

The *Or Yekarot*⁴ solved this question that those who were impure were Mishael and Elzaphan, cousins of Moses, whom he commanded to remove the bodies of Aaron's sons Nadab and Abihu, who had died after bringing "strange fire."⁵ Elzaphan was leader of the tribe of Kohath,⁶ and according to the *Or Yekarot*, it's brought in tractate Sanhedrin that we don't judge a tribe, and not the leader of the tribe, unless it's by a court of 71, i.e., the Great Sanhedrin. Because of this, there was no logical basis for Rashi to say that [the people who were impure] came before Aaron. They would have required Moses to establish a court of judges (or to obtain direction from G-d). But for the daughters of Zelophehad, who were not leaders but rather ordinary citizens, it was possible that they first came to Elazar, and see there in the *Or Yekarot* where he details this.

ולא תכו, דבפרק קמא דסנהדרין לא תגון אין דגין את הנשיא, רק השבט והכהן גדול ונביא השקר, ואף אלו הגי מילי בדיני נפשות שאין דנים אותם אלא על פי בית דין של שבועים ואחד, אבל בדיני ממונות ובשאר הדינים הרי הם ככל ישראל ודנים אותם בשלושה, והכי פסק הרמב"ם (בפ"ה מהלכות סנהדרין) ועיי"ש.

However, this proposed solution of the *Or Yekarot* is not possible, for in the first chapter of Sanhedrin, we did not learn that one doesn't judge the leader of a tribe! Rather, we only learned about the tribe itself, and the High Priest, and a false prophet, which for matters of capital law, we only judge them with a court of 71.⁷ But for monetary matters and the remaining laws, [these parties] are like all of Israel, and they are judged by a court of three judges, and thus ruled the Rambam (in the fifth chapter of the Mishneh Torah, Laws of the Sanhedrin, halacha 1), and see there.

³ Eruvin 63a.

⁴ Aryeh Yehuda Leib ben Shmuel Gershon, *Livyat Chen v'Or Yekarot* (Venice 1742).

⁵ Lev. 10:1-5.

⁶ Num. 3:30.

⁷ Mishnah Sanhedrin 1:5; Sanhedrin 2a.

וימה שגראה לתרץ בסברת רש"י הוא שמצינו בגמרא שלפעמים נותנים רשות לדון אכל לא להורות כדאמרין יורה יורה ג' דין ג' דין, וכן פסק הרמב"ם (בפ"ד מהלכות סנהדרין) מי שהיא חכם יש לבית דין ליתן לו רשות לדון ולא להורות באיסור וקהיתר או להקפד, והכי נמי יתרו לא נתן עצה למשה אלא להעמיד דינים לדון דיני ממונות ולא להורות של איסור וקהיתר, וכן נראה מפשט הפתוב "הנה אתה לעם" וכו' "והנה אתה את החקים ואת התורות", ופרשו במכילתא את התורות אלו ההורות, ואם כן בדין הטמאים הנה דין של איסור וקהיתר והנה להם לילה דנקא לפני משה, ומשום הכי לא פירש רש"י על זה סרס המקרא וכו', אמנם בבנות צלפחד הנה דין ממונות ויכולות לילה בשאר בתי דינים והנה אפשר שקודם הלכו לאלעזר ואחר כך לפני משה.

What appears to solve Rashi's reasoning is that we find in the Gemara that sometimes permission is given to judge but not to issue rulings, as we said in tractate Sanhedrin:

When Rabba bar Chana descended to Babylonia, [his uncle] Rabbi Chiya said to Rabbi [Yehuda haNasi]: My brother's son is descending to Babylonia. **May he issue rulings** [regarding what is prohibited and what is permitted]? [Rabbi Yehuda haNasi said to him:] **He may issue rulings.** [Rabbi Chiya then asked:] **May he judge** [cases of monetary law]? [Rabbi Yehuda haNasi answered:] **He may judge.**

- Sanhedrin 5a

In other words, if judging and teaching went together, it would have been redundant for Rabbi Chiya to ask about each separately.

Similarly, the Rambam ruled (in the fourth chapter of the Laws of the Sanhedrin, halacha 8), [regarding] one who is wise, the court can give him permission to judge but not to issue rulings as to what is prohibited and what is permitted, or the court can do the opposite, and give him permission to issue rulings but not to judge.

So too, Jethro gave advice to Moses to establish judges only to judge monetary matters and not to issue rulings as to what is prohibited and what is permitted, and thus it appears from the plain meaning of the verse, "You represent the people before G-d: you bring the disputes before G-d, and enjoin upon them the laws and the teachings, and make known to them the way they are to go and the practices they are to follow."⁸ [The rabbis] interpreted in the Mechilta these "teachings" of Ex. 18:20 are the rulings,⁹ and if so, regarding the law of those who are impure there was the law of what is prohibited and what is permitted, and it was appropriate for them to go to Moses especially.

Because of this, Rashi did not explain "transpose the verse etc." for the daughters of Zelophehad. Indeed, [their question] was with regard to monetary laws and they were able to go to the other courts, and it was possible that they went first to Elazar and afterward appeared before Moses.

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⁸ Ex. 18:19–20.

⁹ Mekhilta d'Rabbi Yishmael 18:20:1–2.