

Zera Shimshon

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Published Mantua 1778*

Chapter XLIV: Devarim (Deut. 1:1–3:22)

Essay 3. Moses excuses himself from acting as judge

יְלִקוּט על פסוק "איכה אשׂא לבדי", מִשָּׁל לְמִטְרוּנָה שֶׁהָיוּ לָהּ שְׁלֹשָׁה שׁוֹשְׁבֵינֵינוּ, אֶחָד רָאָה אוֹתָהּ בְּשִׁלְוֹתָהּ, וְאֶחָד רָאָה אוֹתָהּ בְּפִתְחוֹתָהּ, וְאֶחָד רָאָה אוֹתָהּ בְּגִיּוּלָהּ. כָּךְ מִשָּׂא וְכוּ' עכ"ל.

There is a **Yalkut Shimoni on the verse**, “**How can I bear unaided** your trouble, and your burden, and your bickering?” (Deut. 1:12):

This is compared to a noble woman who had three friends. One saw her in her tranquility, one saw her in her recklessness, and one saw her in her degenerated state. Thus, Moses saw Israel in their complacency [when they were free of bondage in Egypt], and [then later] said, “How can I bear unaided [your trouble]? Isaiah saw her in her recklessness, and said, “How has she become a harlot!”¹ Jeremiah saw her in her degenerated state, and said, “How does she sit alone!”²

“How can I bear unaided your trouble” teaches that they were troublesome, that one of them saw that his opponent was defeated at trial, [but the opponent nevertheless refused to accept defeat and] said, “I have [yet more] witnesses to bring; I have [more] proof to bring tomorrow. If I am judged, I will add judges to you who are sitting [in order to pack the court to find in my favor].” To this it is said, “your troubles” to teach that there were troublesome.

And “your burden” teaches that they were *epikorosim* [a type of heretics]. If Moses went forth early [from his tent], they said, “What did the son of Amram see to [make him] go out [early]? Perhaps he is not at ease at home?” If he left late, they said, “Why did the son of Amram leave late? What do you think? He is sitting and devising evil schemes against you, and is plotting against you.” Even more so, the parable of the wife of On, in the matter of On, son of Peleth, sons of Reuben,

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¹ Isaiah 1:21: “How has she become a harlot, the faithful city that was filled with justice, where righteousness dwelt, but now murderers?”

² Lam. 1:1: “How does she sit alone, the city once great with people; she that was great among nations has become like a widow; the princess among states has become a slave.”

as it is known that his wife questioned him and advised him [and saved him from dying with the assembly of Korach].³

Therefore it is said, they were grumblers, one of them would expend a *sela* (only) to gain two; [expend] two to gain three, therefore it says, “your bickering,” to teach that they were grumblers.

- Yalkut Shimoni on Torah, 801:11

הטעם שרצה בעל המדרש לחבר ולקשר אלו הדיעות יחד, יש לומר דבגמרא דסנהדרין יש כמה חילוקים בענין הדיינים, ור' אהא סבירא ליה דחד פשר לדון מדאורייתא, דכתיב "בצדק תשפט צמיתד", וכן פירש הרמב"ם (בפרק ב' מהלכות סנהדרין), אבל בפשרה אינו פשר, וכן פסק הרב ז"ל (בפרק כ"ב מהלכות הנ"ל), ועיין שם בכסף משנה שגם הרי"ף סובר כן.

[Regarding] the reason that the author of the Midrash saw [fit] to connect and link these opinions together, it must be said that in the Gemara of Sanhedrin (3a), there are some disagreements regarding the number of judges needed for certain cases. Rav Acha's opinion is that one is fit to judge alone in certain monetary cases according to Biblical law, as it says, in the singular form, “in righteousness you shall judge your people” (Lev. 19:15). Thus explained the Rambam (in chapter 2 of the Laws of the Sanhedrin, halacha 10).⁴ But in arbitration leading to a compromise, one is not fit to judge alone, and thus ruled the Rabbi of blessed memory, i.e., the Rambam (in chapter 22 of the above Laws of the Sanhedrin), and see there the commentary of the Kesef Mishneh that also the Rif thinks thus.

ואם פן משה הנה רואה בעצמו שלא הנה יכול לעשות פשרה לפי סברת הרי"ף והרמב"ם. וגם פן הנה ירא מלעשות דין, דאיתא שם בסנהדרין קודם שתשמע דבריהם, או קודם שתדע להיכן הדין נוטה, או אם תתירא פן יהיה אחד חזק ואחד רפה שיתחייב החזק וירדף, תוכל לעשות הפשרה או להסתלק מן הדין.

If so, Moses would have seen for himself that he could not engage in arbitration leading to a compromise, for he could not engage in a compromise by himself, according to the opinion of the Rif and the Rambam. In addition, he was afraid to make a definitive judgment, for it is brought there in Sanhedrin (6b): Before you hear their statements, either before you know which way the judgment is leaning, or if you fear that because one is strong and one is weak that you will find the strong one liable, and that he will pursue you to harm you, you are able to make a compromise or to avoid taking the case. But once you have heard their statements

³ Sanhedrin 109b.

⁴ Rambam, Mishneh Torah, Laws of the Sanhedrin, chapter 2, halacha 10: “Although a court requires no less than three judges, it is permissible for one judge to adjudicate a case according to Scriptural Law, as Lev. 19:15 states [in the singular form]: ‘Judge your fellow countryman with righteousness.’ According to Rabbinic Law, however, there should be three judges. When two judges adjudicate a case, their ruling is not binding.”

and know which way the judgment is leaning, you can't tell them to compromise, and you can't refuse to take the case (to find one side liable) out of fear.⁵

ואמר משה היאך אני יכול לדון אתכם, אם אותם השלשה דברים שמזקקים הדין לעשות פשרה פולחיו איתנהו בכם? טרחכם שאמרו במדרש, שלעולם היו אמרים שיש להם ראיות להביא, ודומה לאהר שתשמע דבריהם ואי אתה יודע להיכן הדין נוטה, שלעולם לא היה יכול משה לידע את הדין.

Moses said, “How can I judge you and make a compromise, if these three things that a judge needs [to be absent in order] to make a compromise are entirely found within you?” These three things, as will be explained below, are that the people were troublesome, that they were *epikorosim*, and that they were grumblers. **“Your troubles,”** i.e., they were troublesome, **that it says in the Midrash (Yalkut Shimoni, Devarim, remez 801), that they were always saying they had another proof to bring. This is similar to the case that after you hear their statements, and you know which way the judgment is leaning.** In other words, Moses would have preferred to work out a compromise in every dispute, except that the law is that one judge can't officiate over a compromise. Not only that, but because these people were troublesome and would never admit to losing a case, but would instead keep arguing over and over, it would be as though the judge had heard enough of their statements to know which way the judgment was leaning, at which point a judge can't advise the parties to compromise. **Moses would never be able to know the law,** i.e., wouldn't be able to assist such parties to find a compromise because they were troublesome.

"וימשאכם" שאמרו במדרש, הקדים משה לצאת, אמרו מה רצה להקדים, או מאחר לצאת, הוא יושב ויועץ עליכם רעה, הא קמן שהיה ירא פן ירדפוהו כל מי שנתחייב בדין.

And “your burden,” [regarding] which they said in the Midrash: “If Moses went forth early [from his tent], they said, ‘What did he see to go out [early]’ ” or “If he left late, [they said], ‘He is sitting and devising [evil schemes] against you.’ ” Here he was afraid lest everyone he finds liable will pursue him [to harm him], and as discussed above, one can't refuse to render a judgement in a case out of fear, i.e., to instead suggest a compromise because of fear.

⁵ Sanhedrin 6b: “Rabbi Shimon ben Menasya says: If two [litigants] come before you for a judgment, before you hear their [respective] statements [and claims]; or after you hear their statements but you do not yet know where the judgment is leaning, [meaning that it is not yet clear to the judge which party is in the right], you are permitted to say to them: Go out and mediate. But after you hear their statements and you know where the judgment is leaning, you are not permitted to say to them: Go out and mediate . . . Before [the resolution of] the contention is revealed, you can cast it off. Once [the resolution of] the contention is revealed, you cannot cast it off.

“And Reish Lakish says: If two [litigants] come for a judgment, and one is flexible [and agreeable] and one is rigid [and contentious], before you hear their respective statements, or after you hear their statements but you do not yet know where the judgment is leaning, it is permitted for you to say to them: I will not submit to [your request to judge] you. [The judge may refuse the case out of fear that] perhaps the strong [and contentious one will] be [found] liable, and [it will] turn out that the strong [one will] pursue [the judge with intent to harm] him. But once you hear their statements and you know where the judgment is leaning, you may not say to them: I will not submit to your request to judge you, as it is stated: ‘You shall not be afraid before any man’ (Deut. 1:17).”

ועוד איתא בגילקוט, "ומשזאכם" מלמד שהיו אפיקורסים, ופירש שם המפרש שהיו חצופים שאפיקורוס הוא המבנה תלמיד חכם דהו מחצפו ומבזו את משה עכ"ל. "וריקכם" שאמרו במדרש שהיו מרגנין וכו'. והוא לא היה חייב לדונם ואפילו לשמוע דבריהם. ופשרה לא היה יכול לעשות, מפני שהפשרה אינה ביחיד.

It's also brought in the Yalkut Shimoni, "your burden" teaches that they were *epikorosim* [heretics], and the commentator interprets that they were insolent: that the *epikoros* is one who treats a Torah scholar with contempt;⁶ they were insolent and scorned Moses. "And your bickering," [regarding] which they said in the Midrash that they were grumblers, etc. He was not obligated to judge them or even to hear their statements. That is, it's a mitzvah to serve as a judge and help people resolve disputes; but a person isn't obligated to serve as a judge, and certainly isn't obligated to subject himself to abuse from people who are openly hostile toward him. He was also not able to conduct an arbitration, because an arbitration is not [conducted by] an individual.

ומשום הכי היה מוכיח את ישראל לומר מה אעשה לכם? ואם תומר שהיה אהרן עמי לעשות פשרה, מה צורך שהיו מומחים הבו לכם פרצונכם? אלא נדאי שכל פונתכם לתבוע הדין לא היתה אלא מפני שהייתם חצופים, נמצא שעיקר פונת משה היתה לומר שהם היו עני פנים וכנראה מהפך.

Because of this, he would reprove Israel, saying, "What can I do for you? If you'll say that Aaron will be with me to conduct an arbitration, what need is there for experts to 'provide for yourselves' according to your will. In other words, the next verse, Deut. 1:13, reads, "Provide for yourselves from each one of your tribes, wise men, and understanding, and full of knowledge, and I will make them heads over you." Therefore, it is proper to rely on such experts, and no need to pressure Moses to serve as a judge for every dispute. Rather, certainly your entire intent in demanding justice was only because you were insolent." It's found that the principal intent of Moses was to say that they were impudent, and it appears [they were impudent towards the idea of] compromise.

והשתא שמשא אמר שהם עני פנים, אף ישעיה אמר שהם עני פנים, באמרם שהקב"ה גירשם ואין להם על זה כלום, כדי שלא להיות נקראים בכלל זונה.

Further support for calling Israel insolent is provided in the midrash of the Yalkut Shimoni by the quotations of Isaiah and Jeremiah. These provide further support for the concept that Moses would not have to judge such people. **After Moses said that they were insolent, even Isaiah later said that they are insolent, by their saying that the Holy One, Blessed be He, had divorced them by sending them into Exile from the Land of Israel.⁷ They said that so that [G-d and Israel]**

⁶ Sanhedrin 99b: "Rav and Rabbi Chanina both say: [An *epikoros*] is one who treats a Torah scholar with contempt."

⁷ Isaiah 49:14: "Zion says, "The L-rd has forsaken me, My L-rd has forgotten me.""

would have no claim against each other, so that [Israel] wouldn't be considered to be in the category of a harlot. In other words, if G-d had divorced Israel, He would have no claim on Israel's later behavior. He couldn't say that any unfaithfulness on Israel's part was as if they had committed adultery.

דגריסינן בפרק ב' דמסכת כתובות, אמר רב המנונא האשה שאמרה לבעלה גירשתני, נאמנת, חזקה אין אשה מעיזה פניה לפני בעלה, והגי מילי היכא דליכא עדים דקא מסייעי לה, אכל היכא דאיכא עדים דקא מסייעי לה סמכת עליהו ומעיזה.

We read in the second chapter of tractate Ketubot (22b), Rabbi Hamnuna said, [regarding] a woman who tells her husband in front of a court, “You divorced me,” she is believed, a presumption that a woman is not insolent in the presence of her husband. This [presumption that she is not insolent] is only where there are no witnesses, however, in a case where there are witnesses who are supporting her, you can rely on it that she would be insolent.

ולכן אמר ישעיה לנסת ישראל, הקב"ה אומר שלא גירשך ואת אומרת גרושה אני, שנאמר "אי זה ספר פריתות אִמְכֶם וכו'. ולכאורה הנה מן הדין להאמין לה, שהרי אין לה עדים ובזמן שאין עדים הרי את נאמנת, אכל הואיל שהחזקתה היא להיות מעיזה, כמו שאמר משה "איכה אשא לבדי", שמע מינה שאין את נאמנת דאף פאן אימא דהעזת פניה.

Therefore, Isaiah said to the Congregation of Israel, “The Holy One, Blessed be He, has not divorced you, but yet you say, ‘I am divorced,’ as it is said, ;Where is your mother’s divorce certificate?’ (Isaiah 50:1). Apparently, the law is to believe you, for you have no witnesses, and in a time where there are no witnesses, you are believed. But since you have the presumption of being insolent, as Moses said, ‘How can I bear unaided your trouble, and your burden, and your bickering?’, we hear from this that you are not believed, for even here it is said that you are insolent.”

אמר ירמיה אם פן שהיא זונה שלא נתגרשה והיא נישאת לאחר, "איכה ישבה בדד ... היתה פאלמנה", מפני שצריכה לצאת מזה ומזה ואסורה לזה ולזה, היא פאלמנה ולא אלמנה ממש.

Jeremiah said, “if so, that she is a harlot, that she has not been divorced and yet has married another, “How lonely she sits . . . , she has become *like* a widow” (Lam. 1:1). He said that because [such a woman] needs to leave both this [man] and that [man], and she is forbidden to this [man] and to that [man]. She is *like* a widow but not precisely a widow.

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