



## נתק גורלי A Fateful Break

### ■ Appointing the Judges

The Book of D'varim comprises mainly the parting speech of Moshe Rabbeinu to the Nation of Israel, 37 days before his death (D'varim 1,3). This message, largely one of admonishment and exhortation to observe the Torah, is to accompany the people as they build their new national life in the Land of Israel.

The generation that left Egypt and was fated to die in the desert – punishment for the Sin of the Spies (D'varim 14,23) – is about to transmit the baton of its illustrious Divine-Nation mission onward to its children, who are about to settle and build up the Land of Israel.

Much of Moshe's speech is the recounting of major turbulent events that Bnei Yisrael experienced during their 40 years wandering in the desert. Looking back with a wide-angle, comprehensive view, Moshe Rabbeinu notes the watershed event that he felt was the main factor in the Desert Generation's failure to complete its mission and reach the Promised Land. This event, first to be mentioned in Moshe's words of rebuke, is none other than the appointment of judges.

We recall that the idea to appoint judges of various levels was that of Yitro, Moshe's father-in-law, after he saw Moshe totally enwrapped in hearing and judging the nation from morning to night. Moshe explains in his speech that he realized he would not be able, by himself, to take charge of the entire nation:



איכה אשא לבדי טרחכם ומשאכם וריבכם.  
*How can I bear alone your care,  
 your burden and your strife?* (D'varim 1,12)

He then relates how he implemented Yitro's idea:

הבו לכם אנשים חכמים ונבנים ויודעים לשבטיכם ואשימם בראשיכם.  
*Take for yourselves men who are wise, understanding and  
 known to your tribes, and I will appoint them over you.* (verse 13)

This is the first point mentioned by Moshe - the first link in the chain of events leading to the collapse of the entire Desert Generation. Let us see how.

On the surface, it appears that Yitro was quite correct. A national leader should not be involved all day long in hearing squabbles and disputes between neighbors. Perpetual involvement in small-minded arguments is liable to erode Moshe's own spiritual greatness, thus harming the nation itself. Judges of 1,000, of 100, and so on are a perfect way for Moshe to avoid "burn-out" and delegate some of his responsibilities to his underlings. Yitro thus advised Moshe to free himself to deal with the larger issues:

... הֲיִהְיֶה אִתָּךְ לְעַם מוֹל הָאֱ-לֹהִים וְהִבֵּאתָ אֹתָהּ אֶת הַדְּבָרִים אֲלֵהֶם-לְהִים.  
 וְהִזְהַרְתָּ אֹתָהֶם אֶת הַחֻקִּים וְאֶת הַתּוֹרָה וְהוֹדַעְתָּ לָהֶם אֶת הַדֶּרֶךְ יִלְכוּ בָּהּ  
 וְאֵת הַמַּעֲשֵׂה אֲשֶׁר יַעֲשׂוּן.

*... Be you G-d's representative for the people,  
 and bring their concerns to G-d.  
 Clarify the decrees and laws for them,  
 and show them the path they must take  
 and that which they must do.* (Sh'mot 18,19-20)

"Your main task," Yitro tells Moshe, "is to mediate between Hashem and Israel. On the one hand, you must pray for the nation and present its needs to Hashem, while on the other hand you must give over G-d's word to the people. But the every-day judging – a tiring, wearing-down task – you must leave for the worthy judges that you yourself will appoint!"

... וְאִתָּךְ תִּחַזֵּה מִכָּל הָעָם אֲנָשֵׁי חַיִּל יִרְאֵי אֱ-לֹהִים ...  
 וְשָׂמַתָּ עֲלֵהֶם שָׂרֵי אֲלָפִים שָׂרֵי מֵאוֹת שָׂרֵי חֲמִשִּׁים וְשָׂרֵי עֶשְׂרֵת.  
*You shall choose out of the entire nation men of valor, G-d-fearers...  
 and you shall appoint over Israel leaders over thousands,  
 leaders over hundreds, leaders over fifties, and leaders over tens.*



וְשִׁפְטוּ אֶת הָעָם בְּכָל עֵת וְהָיָה כָּל הַדְּבָר הַגָּדֹל יָבִיאוּ אֵלֶיךָ  
וְכָל הַדְּבָר הַקָּטָן יִשְׁפְּטוּ הֵם...

*They shall judge the people at all times;  
all major matters they shall bring to you,  
and minor matters they shall judge...* (verses 21-22)

In terms of normal government and political leadership, Yitro was right; this approach is vital for the leadership of a country, run by man-made law.

But the situation here is very different. Here we are talking about the Nation of Israel becoming a nation of G-d! The laws are of G-d, the nation is to be a Divine people, and the experiences they are to undergo will be supernatural and miraculous. Under such circumstances, direct contact with the Prophet of G-d is crucial and decisive. Unbroken and uninterrupted communication with him will empower the people's faith and desire to cleave to Hashem's leadership and His exalted goals.

In addition, direct and daily contact with Moshe will uplift the spirit of the nation from amid the tremendous hardships of desert life, and will imbue the people with a spirit of greatness, of mission, and of hope.

And it can also fulfill yet another vital mission, which we will now discuss.

### ■ A Listening Heart

Let us pay attention to a very significant word in Moshe's remarks about the judges:

וְאָצְוָה אֶת שֹׁפְטֵיכֶם בְּעֵת הַהוּא לֵאמֹר, שְׁמַע בֵּין אֶחֱיֶיכֶם וּשְׁפֹטֵתֶם צְדָק ...

*And I commanded your judges at that time, saying:  
Hear among your brothers,  
and deliver righteous judgment ...* (D'varim 1,16)

The first thing that Moshe emphasizes to the judges is the importance of *hearing*. Listening is a critical component in the process of meting out justice. The judge must listen carefully and truly hear both sides equally.

There is another thing that the judge must carefully "hear out:" He must sense what the people are feeling, including by listening to their simple, everyday conversations. The judge must be up-to-date on what interests the people around him, so that he can better understand the background of the disputes they bring before him.



King Solomon certainly understood the importance of this type of “hearing.” His lone request from G-d was this:

וְנָתַתָּ לְעַבְדְּךָ לֵב שׁוֹמֵעַ לְשִׁפֹּט אֶת עַמְּךָ לְהַבִּיחַ בֵּין טוֹב לְרָע ...

*Please grant your servant a **listening heart** to judge your nation, to differentiate between good and bad ...* (Kings I 3,9)

Yes, having a “hearing heart” generally means having an “understanding heart” – but only if one listens deeply. Attentive listening is the tool by which a judge can pass righteous judgment.

This is why, with the appointment of intermediate judges between himself and the nation, Moshe’s direct connection with the sectors of the populace was weakened. Their daily troubles never reached his ears, and his understanding of his people diminished.

Truly head and shoulders above the nation in terms of his spiritual greatness, Moshe Rabbeinu found himself distanced from the common man’s daily interests. This explains his great surprise when he abruptly found out how truly afraid the nation was to enter the Holy Land. The Spies had returned from their tour of the Land with a negative report:

לֹא נוּכָל לָעֲלוֹת אֶל הָעָם כִּי חֲזָק הוּא מִמֶּנּוּ.

*We will not be able to go up against the people, for they are stronger than we are.* (Bamidbar 13,31)

And the people responded in kind:

נִתְּנָה רֹאשׁ וְנָשׁוּבָה מִצְרָיִם.

*Let us appoint a leader and return to Egypt.* (14,4)

Moshe and Aharon were shocked and alarmed:

וַיִּפְּלוּ מֹשֶׁה וְאַהֲרֹן עַל פְּנֵיהֶם לִפְנֵי כָּל קְהַל עֵדֶת בְּנֵי יִשְׂרָאֵל.

*Moshe and Aharon fell on their faces before the entire community of Israel.* (verse 5)

The only ones who got up and responded firmly to the people were the two scouts who remained loyal to the Divine mission to enter the Land: Yehoshua bin Nun and Calev ben Yefuneh.

Here, in his final speech of rebuke to the nation, Moshe begins by saying: “It could be that if I had continued my earlier practice of sitting in judgment for you *‘from morning until night’* (Sh’mot 18,14), we would now be in a very



different situation. You would have reached a higher level of spirituality and faith, and I, too, would have been more aware of your difficulties and needs.”

### ■ Taking a Chance

Chazal, our Sages, alluded to this point in the Halakhic Medrash known as the Sifri. Penetrating the depths of Moshe’s emotions, they note that when he recounts how he proposed the idea of the judges to Israel, he was actually disappointed by their positive reaction. Moshe tells them:

וַתַּעֲנוּ אֵתִי וַתֹּאמְרוּ טוֹב הַדְּבָר אֲשֶׁר דִּבַּרְתָּ לַעֲשׂוֹת.  
*You answered me and said, “It is good,  
 that which you propose to do.”* (D’varim 1,14)

The Sages of the Medrash explain what Moshe was saying:

“You should rather have said, ‘Our teacher, from whom is it better to learn Torah - from you, or from your students? Is it not better that we learn from you, who went through such self-sacrifice to absorb the Torah for 40 days and 40 nights?’”

Moshe, according to this Medrash, was not completely at ease with his father-in-law’s suggestion, knowing that it would detract from the close contact he shared with the nation. However, he decided to take a chance and propose the idea to the people themselves – secretly hoping that they would refuse. He anticipated that they would express their admiration and confidence in him, and would want to continue to learn Torah directly from him and be judged directly by him, without the intervention of lower-level scholars. Moshe was thus disappointed at the nation’s acceptance of the idea to appoint intermediaries.

A similar chance was taken by Moshe when he sent the 12 Spies to scout out the Land of Israel. Moshe here recounts this story as well:

וַתִּקְרְבוּן אֵלַי כְּלֶכֶם וַתֹּאמְרוּ, נִשְׁלַחָה אַנְשִׁים לַפְּנֵינוּ וַיַּחְפְּרוּ לָנוּ אֶת הָאָרֶץ,  
 וַיָּשׁוּבוּ אֲתָנוּ דַּבֵּר אֶת הַדֶּרֶךְ אֲשֶׁר נֵעְלָה בָּהּ וְאֵת הָעָרִים אֲשֶׁר נָבֵא אֵלֵינוּ.  
*You all came to me and said, “Let us send men before us  
 and they will ferret out the land and return with a report  
 regarding the route we should take and the cities we will come to.”*  
 וַיִּיטֵב בְּעֵינַי הַדְּבָר וָאֶקַּח מִכֶּם שְׁנַיִם עָשָׂר אַנְשִׁים אִישׁ אֶחָד לְשִׁבְט.  
*And it was good in my eyes, and I took from among  
 you twelve men, one from each tribe.* (D’varim 1,22-23)



Here, as well, our Sages made a very penetrating observation into Moshe's thoughts:

**If the idea was good in Moshe's eyes, why did he include this story in his rebuke of Israel?**

**The situation is comparable to a donkey on sale. The would-be buyer asks the seller, "Will you give it to me for a trial run?" The seller says, "Yes, come with me and I will show you how much it can carry up the mountains, and how much in the valley." When the buyer sees that the seller has nothing to hide, he says, "I need no further proof; here's your money." (Yalkut Shimoni, D'varim 804)**

The seller's confidence that his animal could pass any test convinced the buyer that this was a good deal. Similarly, Moshe's immediate consent to send the scouts stemmed not only from his belief in G-d's gift to Israel, but also from his hope that when Bnei Yisrael would see that he had nothing to hide, this would imbue them with confidence and banish all doubts regarding the Land of Israel. However, once again, his hope turned out to be in vain, and they insisted on sending scouts.

Returning to the appointment of the judges, we must still ask: Wasn't Yitro correct in stating that Moshe simply would not be able to stand up to such an arduous, all-consuming task?

נָבַל תִּבֵּל גַּם אֶתָּה גַּם הָעַם הַזֶּה אֲשֶׁר עִמָּךְ  
כִּי כִבֵּד מִמֶּךָ הַדָּבָר לֹא תוּכַל עֲשׂוֹהוּ לְבַדְּךָ.

*You and your nation with you will wear away,  
for the task is too heavy;  
you will not be able to do it by yourself.* (Sh'mot 18,18)

How is it possible for one man to lead an entire nation all by himself, without delegating some of his authorities to underlings? Is there some kind of magic solution that would enable Moshe to remain a lone judge for so many people?

Yes, there is a solution – and it lies with the people themselves. They must not be small-minded; they must be willing to concede to one another and solve their minor disputes on their own, graciously and with brotherliness, without constantly troubling Moshe to referee their squabbles.

With great pain, Moshe tells the nation that if they would have acted this way, he would have had a lot less judging work – and he could have continued to be their judge and direct teacher, without having to sit *from morning til*



*night!* Thus Moshe could have uplifted the nation's spiritual level, on the one hand, and would have been more in touch with their weaknesses, on the other hand, before these turned into sins and rebellion.

### ■ Hillel Used to Teach

Echoes of Moshe's sorrow, and of the lessons he learned from his experiences, are found in the teachings of Hillel the Elder in the Mishna. In Pirkei Avot (Chapters of the Fathers 2,4), Hillel taught:

**Do not separate yourself from the community,  
and do not be sure of yourself until the day of your death,  
and do not judge your fellow until you have been in his place,  
and do not say that which can be heard and which will be heard in the  
end [Rashi's version],  
and do not say you will study "when you find the time," for you may  
not find the time.**

This Mishna has five seemingly unrelated teachings, yet all of them are interconnected like the links of a chain – the chain of lessons that Moshe Rabbeinu learned from his experiences with Israel in the desert, and which he now wishes to pass on to them:

1. ***Do not separate from the community:*** The appointment of intermediate-level judges enabled Moshe to close himself off in his tent and remain in constant connection with G-d – at the expense of severance from the people. This detachment distanced them from the basis of their faith; their inner strength was weakened, helping to pave the way for the catastrophic Sin of the Spies. Thus, Hillel warns: "Do not separate from the community."
2. ***Do not be sure of yourself until the day you die:*** This is an allusion to the grave incident in Moshe's very last year, Israel's final year in the desert, when he and his brother Aharon sinned at Mei Merivah: They did not speak to the boulder for water as G-d had commanded, but rather struck it.
3. ***Do not judge your fellow until you have been in his place:*** To strengthen and uplift the national spirit at a time of fear of war with the Seven Nations, the leaders must always be among and with their people, listening to their worries and concerns, so that these do not deteriorate into catastrophe.



4. *Do not say that which can be heard and which will later be heard:* A leader must not say, "I don't have to get involved with the people, because in any event, sooner or later I will end up hearing what is on their minds." Rather, sit amongst them and pay close heed to their words before it becomes too late.
5. *Do not say you will study when you find the time, for you may never find the time:* Moshe says to himself: "Though I thought I could free myself from the daily pressures of judging the people, and still renew my ties with the people whenever I would choose, the fact is I was unable to do this; the pressure of the difficult events grew even stronger."

There is no escaping the conclusion that when a leader wishes to steadily uplift a large community to ever-higher spiritual heights, he must accompany them throughout the process. This will help them maintain their spiritual level, and at the same time, he will be attentive and aware of the difficulties and doubts that constantly arise. He will thus be ready to deal with them in a timely fashion, before they become critical and unmanageable.

