

Parashat Pinchas

Kol Sasson 2023

Parasha Pinchas contains the inspiring story of the B'not Zelophechat, the daughters of Zelophechat. Despite many attempts and examples by Jewish apologists to say that the role of women is elevated above men within Halacha, Judaism is essentially a patriarchal system. There is no better example of this than Jewish inheritance laws, which favor the husband over the wife, and the male children over the female children. As Tikva Frymer-Kensky puts it in *Reading the Women of the Bible*, "the limitation of women's property rights is the economic lynchpin of patriarchal structure; it made women dependent first on their fathers, then on their husbands, and ultimately, on their sons. Even the humanitarian injunctions of the ancient world to care for widows and the fatherless were an outgrowth of this male monopoly; if widows could inherit land, there would be no need for humanitarian injunctions to care for them." The b'not Zelaphochat challenge the justice of the laws of inheritance rights, and they win; but not by directly challenging the patriarchy, rather in a very subtle way; one in which gives an insight into how change evolves within the Jewish halachik framework.

The process of determining when a creative interpretation can be considered a legitimate approach to address a practical problem in the Torah is fascinating to me. It appears that the ability to deviate from the law is conditioned on two principles.

The first principle is determining whether the law is a hok, an edah, or a mishpat. A hok is a law is something purely God given and could never be deduced from studying what rules would be needed to fairly structure the world. It is what some might think of as an irrational law. The most obvious example is shaatnez, separating wool from linen.

An edah is a law that you might call aspirational. We can understand why the torah prescribes this kind of law to us, it expresses a deeply important value. But often it functions better as something that defines our identity, than as a practical law, and thus they are often difficult to keep. An example of an edah are the rules for the Yovel; particularly the return to ancestral land. It is not clear how this law could ever be kept, but the idea of resetting the economic status of society every 50 years expresses the important idea that no family should be permanently rich or permanently poor.

Finally, there are mishpatim, laws that could be derived by any group of people who want society to function efficiently. We can have people stealing or murdering and have society function.

It is important to know what category a law falls into in order to determine whether it can be changed, and how to change it. A hok should never be challenged. These are a gift we have been given to show God our love by their adherence. Keeping hukim deepens our relationship with God. If you don't want to keep a hok, it is like not listening to your parents. You will live, but without the tight relationship with them you once had. If you want devekut, to cling to God, do what Hashem asks, even, and especially when it is most irrational.

An edah, or aspirational law, can be challenged, and work arounds can be found to accommodate their most difficult aspects. We can keep the law by honoring the values inherent in it, but find ways to make the actual restrictions easier to function with, by creating takanot, or fixes to the law. We will discuss an example of this shortly.

If a law is a mishpat, and it has a flaw in it in certain situations, it usually because the mishpat is advancing an important value, but it has come into conflict with other important values. This requires a careful balancing of competing values from inside the system, and creating creative adjustments to the law.

The second principle that needs to be discussed in whether a challenge to a law should be taken seriously is who is making the request to change the law, and what are their motivations. Are they like the wicked child in the Passover Hagaddah who only wants to point out hypocrisies, irrationalities, and inconsistencies as an attempt to delegitimize the tradition? Or are they motivated b'shem shamayim, in the interest of improving the world, and its efficient functioning.

Sefer Bamidbar, the book of In the Wilderness, might better be titled, the Book of Uprisings. Throughout the book, Parashat Pinchas included, gives us examples of challenges to Moses's authority and the legitimacy of God given laws. Parashat Korach and in the midrash, Korach presents first a challenge to a hok, the law of techelet, and then goes on to directly challenge to Moshe's authority. The challenge is an interesting one. Korach attempts to demonstrate that the laws of the Torah are irrational, or at least arbitrary, and therefore coming from the whim of Moses, and not from God. He asks Moses the following shayla: If I have a garment that is completely colored sky blue, the color of techelet, do I have to wear a single thread of techelet on the corner. We all know this kind of question. It isn't motivated in the desire to get a real answer; it is designed to trip up the teacher, and hopefully to cause embarrassment and diminish the teacher's authority. Moses takes the bait and says that if you wear a beged of techelet, don't worry about adding techelet to the tsitsis. Korach seizes upon this answer as proof that the laws are irrational, and therefore Moses's authority isn't based on a legitimate footing.

Korach is partially right, like the questions of many a smartypants. The laws of tsitsis and techelet are in fact hokim, laws that are not rationally based. But where he is wrong is that these laws are important to be kept by us meticulously, and are particularly dear to us, not in spite of their irrationality, but dafka because of their irrationality. We do them not because society will run better if we all keep them, we keep them to demonstrate our faith in Hashem. The Rambam called these hokim a “kiss” from God. He gave us these special laws to keep as a precious gift; one which we can return in kind by keeping them, cementing our unique relationship. Korach’s questioning of the Torah’s origin, is really a forerunner of his attack on Moses’ legitimacy as leader. What starts with schoolboy cheekiness, ends with insubordination and rebellion. It does not end well for Korach or his followers. They are swallowed up by the earth. While this may have really happened, it can also be seen as a mashal, or lesson. Those Jews who question the tradition and its legitimacy from the outside, not b’shem shamayim, those who ask, “what do these laws mean to you?” will be swallowed up by the earth, lost to assimilation from the Jewish story, our history and our future.

In our parasha today, we have other examples of hokim, seemingly irrational laws. We are given the law of the para aduma, the red heffer, in which an exceedingly rare animal, one that is completely red haired, and has never had a yoke put on its neck, which is then burned completely, with the ashes used to change the state of a person who has interacted with the dead and become tameh back to tahor. The irrational part is that those who participate in the preparation of this strange and purifying concoction themselves become tameh. Why would the process of making something that purifies make one impure? It is a hok, and asking the question isn’t particularly helpful, whereas the adherence to this law demonstrates a faith in the giver of this law.

There are more hokim, and gifts from God to Moses. Moses is told by God, in reaction to snakes biting and plaguing the Jews, to make a copper snake, and wrap it around a stick, put it in front of those who have been bitten, and use it as means to end the plague. On the one hand, the rationalists and scientists among us are tempted to shrug and ask why would you do this? On the other hand, God’s instruction, no matter how irrational, when followed in fact works. The copper snake on a stick ends the crisis. An organization no less rational and science based than the American Medical Association has adopted this very image of a snake wrapped around a stick as their logo. Belief in its effectiveness is not superstition, it is faith in the healing power of the divine and Hashem’s special relationship with those who follow his instructions. This seemingly strange connection between an irrational God-given talisman and people of science and knowledge is not alone in our culture. The logo of Yale University, our country’s second oldest, has as its logo the Hebrew “Urim v’ Tumim.” This is another example of a magical God-given means to achieve knowledge, this time the “magic

8 ball” worn on the breastplate of the Cohen Gadol, which has the power of providing advice to the Jewish People in time of war.

An edah, the law that has been given in order to transmit important values, and inspire the people to great heights of justice, has a different set of issues. These aspirational laws express our deepest values, and are used to motivate a certain behavior, but can be very hard for the entire population to keep. Laws of Shmittah fall into this category. Shmittah comes once every seven years, and in addition to the difficult requirement not to use any of the produce grown by Jews on the land of Israel for that year, it also requires the release of all debts. From a policy perspective, one can understand the instinct behind the important concept of debt release. Releasing debt against the poor gives them the ability to start over, something we all believe in, yet is difficult to keep this law as it applies to all debt and have economies function efficiently.

Those of us on the daf yomi cycle were treated a wonderful explanation of the origin of the prosbul initiated by Hillel the Elder on Gittin 36a. The prosbul is the rabbinic takana allowing a person to transfer a debt to a bays din, right before the shmittah, so the debt stays in place through the shmittah, and the lender can get repaid, without violating a d’oriysa law. The reason why this law needed a fix is because Jews were refraining from lending to the poor fellow Jews as the shmittah year approached, undermining an important value in Judaism, to help your fellow Jew. The solution, the prosbul, is a prime example of a tikkun, a fix to the law that allows us to keep the principle intact, while also preventing commerce from grinding to a halt. We are treated to a great story of how the release of debts actually played out on the in Hillel’s time in the Babvi in Gittin daf 37b. When the shmittah year came, the lender had to seek out the borrower and say to them, “mishmet ani” I abrogate your debt! But if the borrower wanted to repay the debt, he could nevertheless repay it. If the borrower, who is not a poor man, does not offer to repay the debt when told it is abrogated, the lender is allowed to lift his eyes and through unspoken gestures indicate to the borrower that he should offer to repay him. A story is then related about Rabba who lent Abba bar Marta some money before the shmittah. Rabba tells him “mishmet ani.” Abba bar Marta, not knowing this tradition well enough, said “thank you for forgiving my debt” and left without repaying Rabba. Abaye finds Rabba very sad that day and asks what happened. Abaye then tracks down that ignoramous Abba bar Marta and tells him to go back to Rabba and offer to repay the debt.

I tell you all of this as a background to the story of the B’not Zlafechat. Old Jewish law dictated that land was inherited only through the male line. If a man who had sons dies, then the son inherits from his father, and has an obligation to provide sustenance to his widowed mother, but If a man died without sons, then the rules of leverite marriage, Yibum kicks in as all of you on the daf yomi circuit will remember from Yevamot. A

living brother, in order to preserve the deceased brother's name, is required to marry his brother's widow, have a male child with her that becomes the property and heir of the dead brother. The other impact of levirate marriage is that the widow is protected from poverty, as since she cannot inherit from her dead husband, she is at risk of losing the ability to survive. By becoming the wife of her brother-in-law she is assured survival as he now has an obligation for her sustenance. Levirate marriage was the law despite the very serious violations of the taboo and law against sleeping with your sister-in-law.

Into this legal nightmare steps Mahlah, Noah, Hoglah, Milcha, and Tirzah, the daughters of Zelophechat. They appear before Moses and Eliezer, and all the other big shots in front of the ohel moed with the very legitimate complaint that their father has died without a son, adding that he was not one of the followers of Korach. They then ask for the right of inheritance of their father's land, in order to preserve their father's name and their own survival. This request violated a clear mishat in force at the time. Males were favored for inheritance so that they could continue the line of the father. If women inherit their fathers, then when they marry out of the tribe, they build the patrilineal line of their husband's family, not their father's. Moses didn't answer this challenge right away, and takes a minute to think and consult his magic 8 ball, Hashem. God tells him that of course that these women are right. On balance, it is more important to give the women an opportunity for survival, than to keep women from inheriting land to build their father's legacy. Whereas this decision could have been narrowed to the resolution of only the b'not Zelophechat, Moses creates a revised halakha. Whenever a man dies without leaving sons, the daughters should be allowed to inherit. The women are saved.

Two parshiot later, in Masei, Bamidbar 36: 1-12, a group of guys from the tribe of Manasse discover a problem with Moses' pragmatic solution. If the land of Israel is divided first by tribe and then by family, when the inheriting daughters marry outside of their tribe, the tribal land of Israel will end up becoming balkanized. The land will be all scrambled up, without clear tribal divisions on the map. When the time for the Yovel comes, this will really create a mess, as this land will be forever added to the tribe which they married into. Moses goes back to God who balances this new consideration into the juridical calculation and adds an additional proviso to the rule that brotherless orphaned daughters can inherit land. Every daughter that inherits must marry within her tribe. This way, no inheritance can pass from one tribe to another, and thus the problem of at the time of the Yovel is resolved. Tribes will keep the land they were originally allocated.

This progression from one set of laws, which allowed only males inheritance, to a revision that set up an order of inheritors, starting with sons, then to daughters, to a tikkun which required inheritor daughters marry within the tribe is a model for tikkun olam. Laws may not be perfect, because we are not perfect,

though the original purpose of the law may be an important Jewish value and can be preserved with creative interpretation. Torah is flexible enough to allow challenges to these kind of mishpatim, when they are challenged b'shem shamayim, and in order to advance that value, or another important value. In this case, there are midrashim that tell us that the daughters of Zelophechat loved the land of Israel and wanted to own a piece themselves, and truly wanted to continue their father's name, and not have it lost to the world. The rabbis may have needed to tell themselves this while the practical need of survival of orphan daughters due to the patriarchal system of inheritance may have been sufficient to motivate the need to change the law. They asked to look behind the reason for male inheritance, to keep the tribal land intact, and consider the value of preserving the father's name, and allowing for the sustenance of his surviving daughters and a compromise was devised. It was one that allowed society to continue to move forward efficiently, and increased justice, fairness, and also preserved both the name Zelophechat, and the names of his five courageous, smart, and merit worthy daughters. They may not have smashed the patriarchy completely, but their heartfelt approach to wanting to stay within the values of halacha and the Jewish family while increasing justice is a model for change we can learn from.

Shabbat shalom.