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EQUALITY UNDER HALAKHAH: A MORAL DIALOGUE ACROSS GENERATIONS

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Every once in a while a verse from Tanakh comes and just smacks you upside the head like a flounder. How could I not have known that? Why did the opposite always seem obvious?

This week I was fishsmacked by Yechezkel 47:21-23:

וְחִלְקֵתְמֶם אֶת־הָאָרֶץ הַזֹּאת לְכֶם לְשִׁבְטֵי יִשְׂרָאֵל:
וְהָיָה תְּפִלּוֹ אוֹתָהּ בְּנִחְלָהָ לְכֶם
וְלִהְגָּרִים הַגֵּרִים בְּתוֹכְכֶם אֲשֶׁר־הוֹלְדוּ בְּנֵים בְּתוֹכְכֶם
וְהָיוּ לְכֶם כְּאֶזְרַח בְּבֵנֵי יִשְׂרָאֵל
אֲתֶכֶם יִפְלּוּ בְּנִחְלָהּ בְּתוֹדַת שִׁבְטֵי יִשְׂרָאֵל:
וְהָיָה בְּשִׁבְטֵי אֲשֶׁר־גָּר הֵגֵר אִתּוֹ שָׁם תִּתְּנוּ נַחֲלָתוֹ
נְאֻם אֲ-דְבָרֵי יְקֻנִּים: 8

You must divide this land to yourselves, to the tribes of Israel.

*It will be that you will make it fall-by-lot as a homestead to you,
and to the gerim/converts who are gar/dwell among you, who
have sired children in your midst.*

*They shall be to you like the eзраch/citizen of the Children of
Israel;*

*with you they will fall-by-lot into homestead,
in the midst of the Tribes of Israel.*

*It will be in the tribe with which the convert dwells – there you will place his
homestead.*

The word of Hashem Elokim.

I always took for granted that converts did not have hereditary portions in the Land of Israel. How could they, when the Land was fully distributed in the time of Yehoshua?! Also, I knew that according to Mishnah Bikkurim 1:4, converts do not read the Bikkurim declaration “because they cannot say *that Hashem promised to our ancestors to give to us*”, and that Rabbeinu Tam went so far as to suggest that converts could not be obligated in Grace after Meals because the second blessing expresses gratitude for the Land. True, we rule against Rabbeinu Tam, and many hold against the Mishnah that converts read the Bikkurim declaration, on the ground that the Torah etymologizes Avraham as “*av hamon goyim*”, “*father of (converts from) many nation*”. True, the land is overall given to the collective Jewish people, including the converts among us. But converts don’t have hereditary homesteads that their children inherit, do they? Perhaps this is one of the contradictions between Yechezkel and Torah that Chananyah ben Chizkiyah stayed up all night resolving in order to keep it off the banned books list (Chagigah 13a).

None of the standard traditional commentaries seem bothered. See for example Metzudat David 47:22:

אתכם יפלו = עמכם יירשו בנחלה

with you they will fall-by-lot = they will inherit homesteads together with you.

As for the land being fully divided amongst the “original” clans - Abravanel spells out the standard resolution:

But why was this not also so in Yehoshua’s division of the Land? Because the *erev rav* that ascended with Israel from Mitzrayim did not join them in their exile, and did not suffer their sufferings; rather, when they saw their success and redemption, they mixed into them, as Shemot 12:38 says: *Also an erev rav/mixed multitude ascended with them*, because they joined them only in their time of ascension, not before then, and also because they became a stumbling rock and tripping block to the Children of Israel in the Golden Calf episode and the other occasions of sin in the wilderness, and therefore it was not fitting for them to merit gaining homesteads with them.

But regarding the Future-To-Come, the prophet did not say here that the converts who would join them in the time of Redemption would homestead with the Children of Israel, because the Sages already said (Yebamot 24b) that “we must not accept converts in the Days of the Messiah”; rather he commanded this regarding the converts who dwelled among the Jews in Israel’s time of exile and accepted the holy covenant and endured the suffering of exile, because it is fit for them, that just as they became Israel to endure suffering, so too they should be part of the homesteading of the land, and this is what (Yechezkel 47:21-23) means . . . that they will take their share of the good which Hashem will give-as-benefit to Israel = שמהטוב אשר יטיב השם לישראל יקחו חלקם

On this understanding, contemporary converts and their descendants will have full hereditary shares of the Land when it is reapportioned in Messianic times.

I read Abravanel’s last line as a deliberate allusion to Bamidbar 10:33, where Mosheh promises his in-laws that if they remain with the Jews,

וְהָיָה כִּי־תֵלֶךְ עִמָּנוּ

וְהָיָה הַטּוֹב הַהוּא אֲשֶׁר יִיטִיב יְקֻנֵּם עִמָּנוּ וְהִתְבַּנְּנוּ לָךְ:

It will be that if you travel with us,

*then it will be that the good which Hashem will give-as-benefit to us, we will
give as benefit to you.*

In other words, Mosheh promised them a share in the Land. This reading is borne out by a beraita (Yerushalmi Bikkurim 1:4) which holds that specifically the descendants of Yitro could recite the Bikkurim declaration in full. (This connection is made by Torah Temimah. Note also that Kapot Temarim to Sukkah 34a explains

that all converts can recite the declaration because it can be read as referring to the future - “to give to us” – and converts will have Hashem-given land in Messianic times.)

Or HaChayyim takes a slightly more limited approach, suggesting that Mosheh offered a share specifically in the “Lands of Sichon and Og”, i.e. TransJordan, which was not part of the original Divine promise. This approach requires Mosheh to know in advance that Sichon and Og will refuse Israel permission to cross.

Rashi, following Sifri, points to an even more limited approach. Mosheh offered Yitro the usufruct of a vast tract around Yericho, extending to Yerushalayim. According to some tannaim, this tract was left unapportioned so that the Temple could be built on unapportioned land. When the Temple was built, Yitro’s descendants were evicted after 440 years of tenancy.

These narrower approaches recognize that Bamidbar 10:32 is Mosheh’s second offer. His first offer is in 10:29:

וַיֹּאמֶר מֹשֶׁה לְחֹבַב בֶּן-רְעִיָאֵל הַמִּדְיָנִי חֵתֵן מִשָּׁה׃
בְּסַעֲיִם וְאֶנְחֵנוּ אֶל-הַמָּקוֹם אֲשֶׁר אָמַר יְקֹוֹם אִתּוֹ אֲתָנוּ לְכֶם׃
לְכֶה אִתָּנוּ וְהִטְבַּנּוּ לָךְ׃
כִּי-יִקְנֶה דָבָר-טוֹב עַל-יִשְׂרָאֵל׃

Mosheh said to Chovev ben Reuel the Midianite, Mosheh’s in-law:

*We are traveling to the place about which Hashem said “I will give it to you”;
go with us and we will give good-as-benefit to you
for Hashem has spoken of giving good to Israel.*

This offer is rejected in 10:30:

וַיֹּאמֶר אֵלָיו׃
לֹא אֵלֶיךָ׃
כִּי אִם-אֶל-אֶרֶץ צִי וְאֶל-מִוְלַדְתִּי אֵלֶיךָ׃

He said to him:

I will not go

rather I will go to my land and my culture.

Sifri records a position in which Mosheh’s second offer is also rejected, presumably because it still implies second-class citizenship.

Sifri also records positions that greatly narrow the implications of Yechezkel 47. “If the verses cannot relate to homesteading; then apply them to atonement”, meaning that converts are atoned for by the sacrifices of the tribes they accompany; “If the verses cannot relate to homesteading, then apply them to burial”, meaning that converts have a right to be buried in the Land. These positions begin by reading Mosheh’s first offer as specifically excluding any land rights: “the place about which Hashem said “I will give it to you” – and not converts.”

What sort of negotiation is taking place? Many commentaries understand Mosheh as interested in preserving Yitro’s status as a powerful symbol of the persuasive truth of Judaism: “If you leave now, everyone will say that your conversion was for gain, and you left when the gain was disappointing.” If that is correct, then perhaps Yitro’s reply should be understood as: “If your religion is true, then how can you not give converts’ genuinely equal status? Isn’t that both unjust and hypocritical, when your own Torah says *there must be one law for them, for the convert and the citizen*?”

Chizkuni seems to acknowledge the moral force of Yitro’s argument, with Mosheh’s first response being that his hands are bound by Halakhah.

והטבנו לך – מן השלל,

אבל לתת לו חלק בארץ, לא היה הרשות בידם

we will give good-as-benefit to you from the spoils we take,

but to give him a portion in the land – **they did not have the authority.**

But when Yitro rejects that offer, Mosheh finds a loophole – the verse excluding converts did not apply to lands conquered beyond G-d’s original grant. Maybe that was enough to satisfy Yitro – Ramban thinks so - but maybe not.

Keli Yakar adopts a wholly different approach.

ואח"כ הבטיחו בטובה רוחנית

שיהיה מכלל הסנהדרין

שנקראו עיני העדה

כמ"ש והיית לנו לעינים

After (Yitro rejected the first offer) Mosheh promised him a spiritual good

namely that he would be included in the Sanhedrin

which are called “the eyes of the congregation

”as 10:31 says “and you will be eyes for us

Mosheh’s second offer was not land but authority itself – he promised Yitro a seat on the Sanhedrin, a share in making the laws. (We will leave for another time how this promise can be squared with the halakhah excluding converts from positions of *serarah*.)

If Yitro accepted this version of the second offer, then he probably joined the Sanhedrin with the express ambition of modifying halakhah to give converts fully equal inheritance rights. Perhaps the verses in Yechezkel reflect his success. But then the Mishnah, and Sifri, and Rabbeinu Tam all pushed back against that outcome, and also met with some success. The moral history of halakhic interpretation is not linear.

Yitro accepted all of halakhah as binding even while maintaining his moral critique, and that is a powerful lesson for our generation. But we must also recognize that Yitro accepted only after Mosheh acknowledged that all those subject to halakhah must have seats at the highest tables of halakhic conversation and decisionmaking.

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