

Parashat Shelakh Lekha: Do We Need All the Answers?

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1. Does Moshe Have All the Answers?

Bemidbar 15:32-36	
<p>וַיְהִי בְּנֵי־יִשְׂרָאֵל בַּמִּדְבָּר וַיִּמְצְאוּ אִישׁ מִקִּשְׁשׁ עֵצִים בַּיּוֹם הַשִּׁבְעִי וַיִּקְרִיבוּ אוֹתוֹ הַמִּצְאִים אוֹתוֹ מִקִּשְׁשׁ עֵצִים אֶל־מֹשֶׁה וְאֶל־אַהֲרֹן וְאֶל כָּל־הָעֵדָה: וַיָּבִיחוּ אוֹתוֹ בַּמִּשְׁמֶר כִּי לֹא פָרַשׁ מִה־יַּעֲשֶׂה לוֹ: וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה מוֹת יָמֹת הָאִישׁ רְגוּם אוֹתוֹ בָּאֲבָנִים כָּל־הָעֵדָה מִחוּץ לַמַּחֲנֶה: וַיָּצִיאוּ אוֹתוֹ כָּל־הָעֵדָה אֶל־מִחוּץ לַמַּחֲנֶה וַיִּרְגְּמוּ אוֹתוֹ בָּאֲבָנִים וַיָּמָת כְּאֲשֶׁר צִוָּה יְהוָה אֶת־מֹשֶׁה:</p>	<p>Once, when the Israelites were in the wilderness, a fellow was found gathering wood on the sabbath day. Those who found him as he was gathering wood brought him before Moses, Aaron, and the whole community. He was placed in custody, for it had not been specified what should be done to him. Then GOD said to Moses, "The man shall be put to death: the whole community shall pelt him with stones outside the camp." So the whole community took him outside the camp and stoned him to death—as GOD had commanded Moses.</p>

Bemidbar 27:5-11	
<p>וַיִּקְרַב מֹשֶׁה אֶת־מִשְׁפָּטָן לִפְנֵי יְהוָה: וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה לֵאמֹר: כֵּן בְּנוֹת צֶלְפָּחָד דְּבַרְתְּ נָתַן תִּתֵּן לָהֶם אֲחֻזַּת נַחֲלָה בְּתוֹךְ אֶחָי אֲבֵיהֶם וְהִעֲבַרְתָּ אֶת־נַחֲלַת אֲבֵיהֶן לָהֶן: וְאֶל־בְּנֵי יִשְׂרָאֵל תִּדְבֹּר לֵאמֹר אִישׁ כִּי־יָמוּת וְיֵבן אֵין לוֹ וְהִעֲבַרְתֶּם אֶת־נַחֲלָתוֹ לְבָתּוֹ: וְאִם־אֵין לוֹ בֵּת וְנָתַתֶּם אֶת־נַחֲלָתוֹ לְאָחָיו: וְאִם־אֵין לוֹ אֲחִים וְנָתַתֶּם אֶת־נַחֲלָתוֹ לְאִמּוֹ: וְאִם־אֵין אֲחִים לְאִמּוֹ וְנָתַתֶּם אֶת־נַחֲלָתוֹ לְשֹׂאֲרֵי הַקָּרֵב אֵלָיו מִמִּשְׁפַּחְתּוֹ וַיִּרַשׁ אוֹתָהּ וְהָיְתָה לְבְנֵי יִשְׂרָאֵל לְחֻקַּת מִשְׁפָּט כְּאֲשֶׁר צִוָּה יְהוָה אֶת־מֹשֶׁה:</p>	<p>And Moses brought their cause before the Lord. And the Lord spoke unto Moses, saying: The daughters of Zelophehad speak right: thou shalt surely give them a possession of an inheritance among their father's brethren; and thou shalt cause the inheritance of their father to pass unto them. And thou shalt speak unto the children of Israel, saying: If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter. And if he have no daughter, then ye shall give his inheritance unto his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it. And it shall be unto the children of Israel a statute of judgment, as the Lord commanded Moses.</p>

2. Who Judges Whom? (And Why?)

Devarim 1:17	
<p>לֹא־תִזְכְּרוּ פָנִים בַּמִּשְׁפָּט כִּקְטָן כַּגָּדֹל תִּשְׁמָעוּן לֹא תִגְדֹּר מִפְּנֵי־אִישׁ כִּי הַמִּשְׁפָּט לֵאלֹהִים הוּא וְהַדְּבָר אֲשֶׁר יִקְשֶׁה מִכֶּם תִּקְרֹבוּן אֵלַי וְשָׁמַעְתִּיו:</p>	<p>You shall not be partial in judgment: hear out low and high alike. Fear no one, for judgment is God's. And any matter that is too difficult for you, you shall bring to me and I [Moshe] will hear it."</p>

¹ All translations are from Sefaria, unless otherwise noted.

Bavli Sanhedrin 8a	
<p>”וְהִדְבֵּר אֲשֶׁר יִקְשֶׁה מִכֶּם“. אָמַר רַבִּי חֲנִינָא וְאִיתִימָא רַבִּי יֵאֵשִׁיָּה: עַל דְּבַר זֶה נִעְנַשׁ מֹשֶׁה, שֶׁנֶּאֱמַר ”וַיִּקְרַב מֹשֶׁה אֶת מִשְׁפָּטוֹ לִפְנֵי ה'“. מִתְקִיף לֵה רַב נַחֲמָן בַּר יִצְחָק: מִי כְּתִיב ”וְאִשְׁמִיעֶכֶם“? ”וּשְׁמַעְתִּיו“ כְּתִיב! אִי גְמִירְנָא – גְּמִירְנָא, וְאִי לֹא – אֲזִילְנָא וּגְמִירְנָא.</p>	<p>The verse continues: “And the cause that is too hard for you, you shall bring to me, and I will hear it.” Rabbi Hanina, and some say Rabbi Yoshiya, says: On account of this matter, which displayed a degree of presumptuousness, Moses was punished, as it is stated: “And Moses brought their cause before the Lord” (Numbers 27:5). In this instance, when Zelophehad’s daughters presented their case to Moses, he did not know the answer himself and was compelled to ask God. Rav Nahman bar Yitzhak objects to this critique of Moses: Is it written: “And I will tell you,” which would indicate that Moses assumed the authority for himself? No, it is written: “And I will hear it,” meaning: If I have learned the halakha, I have learned it. And if not, I will go and learn it.</p>
<p>אֵלָּא, כְּדִתְנִיָא: רְאוּיָה פְּרֻשָׁת נְחִלּוֹת שְׁתִּיכְתֵּב עַל יְדֵי מֹשֶׁה רַבִּינוּ, אֵלָּא שֶׁזָּכָר בְּנוֹת צִלְפָּחַד וְנִכְתְּבָה עַל יְדֵי רְאוּיָה הֵיחָד פְּרֻשָׁת מְקוּשָׁשׁ שְׁתִּיכְתֵּב עַל יְדֵי מֹשֶׁה רַבִּינוּ, אֵלָּא שֶׁנִּתְחַיֵּב מְקוּשָׁשׁ וְנִכְתְּבָה עַל יְדֵי. לְלַמֵּד שֶׁמִּגְלָלִין חוֹבָה עַל יְדֵי חַיִּיב, וְזָכוֹת עַל יְדֵי זָכָא.</p>	<p>Rather, as it is taught in a baraita: It would have been fitting for the Torah portion about inheritances to have been written by attributing it to Moses, our teacher, i.e., to introduce the <i>halakha</i> with the standard formulation: And the Lord spoke to Moses, saying. But the daughters of Zelophehad achieved merit, and therefore the halakha was written by attributing it to them. Similarly, it would have been fitting for the Torah portion concerning the punishment of the wood gatherer (see Numbers 15:32–36) to have been written by attributing it to Moses, our teacher. But the wood gatherer was found guilty, and the halakha was written by attributing it to him. This serves to teach you that guilt is engendered by means of the guilty and merit by means of the innocent.</p>

Mishneh Torah, Hilkhot Sanhedrin 23	
<p>כָּל דִּין שְׁאִינוּ דִּן דִּין אֶמֶת לְאִמְתּוֹ גּוֹרֵם לְשִׁכְיָנָה שְׁתִּסְתַּלֵּק מִיִּשְׂרָאֵל...וְכָל דִּין שֶׁדִּן דִּין אֶמֶת לְאִמְתּוֹ אֶפְלוּ שְׁעָה אַחַת כָּאֵלוֹ תֵּקֵן אֶת כָּל הָעוֹלָם כְּלוּ וְגוֹרֵם לְשִׁכְיָנָה שְׁתִּשְׁרָה בְּיִשְׂרָאֵל...אֵין לְדִין אֵלָּא מֶה שֶׁעֵינִי רֹאוֹת:</p>	<p>Whenever a judge does not render a genuinely true judgment, he causes the Divine presence to depart from Israel....Conversely, when a judge adjudicates a case in a genuinely true manner for even one moment, it is as if he has corrected the entire world and he causes the Divine Presence to rest within Israel...A judge may only base his judgment on what his eyes see.</p>

3. Do We Need All The Answers?

Richard A. Posner, “The Role of a Judge in the Twenty-First Century” (2006)	
<p>...judges...[should be]...more conscious that the decisions which shape the law are rarely the product of an analytical process that can be evaluated in terms of truth and falsity, or right and wrong. They are personal in a broad sense that precludes objective assessment. One can feel something very strongly without believing that one's feeling is an adequate basis for constraining other people's behavior.</p>	
<p>Big Question: What might be at stake for the rabbis in analyzing when Moshe felt it was necessary to render judgment with or without God’s advice?</p>	