

A Drashah for Parashat Masei
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With this Shabbat's Torah portion we conclude the Book of Numbers - as the people of Israel are about to enter the Promised Land. The final Numbers parsha in its entirety encompasses quite a few stories of interest, including:

- a chronicling of the places in the Wilderness visited by the 12 tribes,
- the passing of Aaron,
- the dividing up of the land of Canaan among the Israelites
- the allocation of towns for the Levites,
- the definition of deliberate and involuntary homicide and the punishments associated with such crimes,
- and last but not least in Chapter 36, verses 1-11, a passage concerning the inheritance rights and marriage requirements of women.

For my part, I would like to focus on the final verses of Numbers where we again read about the daughters of Zelophehad and the concerns of the leadership of the Josephite clan. I say "again" because in Chapter 27 of Numbers we read in verses 1-4 that Zelophehad died in the wilderness, leaving no male heirs and only his four unwed daughters. These daughters petitioned Moses and the chieftains of the 12 tribes to be granted the holding in Canaan allotted to their father, as it is written..."so that his name may not be lost to his clan because he has no son."

It should be noted that this request ran contrary to Israelite practices at the time, namely: the strict patrilineal-agnatic principle of inheritance (often referred to as inheritance through primogeniture or inheritance of the first born male). All of which is set down elsewhere in the Torah. Therefore the arguments against the daughters of Zelophehad were strong. Their petition was clearly opposed by the leadership of the their clan who feared that if the women in question married outside the clan, their allotments of land would go with them to their husbands' family thus alienating the land from the holdings of the Josephites. The latter

practice where the property of the wife transfers to the husband's family is also referenced in the Torah.

But as the text in Chapter 27 of Numbers relates, Moses did not simply dismiss the claim of the daughters of Zelophehad. As the sages explain, the daughters' petition "was respectful and righteous in the sight of the Lord." Moses brought the case before the Lord and the Lord in turn ruled that their case was just. Elohim orders Moses to transfer the father's share to the daughters, saying, "If a man dies without leaving a son, you shall transfer his property to his daughter."

This now brings us to Chapter 36 and verses 1-11, where the context of the dispute is again raised by Gilead son of Machir who expresses concern that allowing the daughters to inherit their father's allotment of land poses the possibility that the Josephite clan will lose the land to some other clan. This is the same argument that the Josephites raised in Chapter 27. Here again Moses consults the Lord and is told that the "plea of the Josephite tribe is just." The ruling as it comes down from Elohim states that "every daughter among the Israelite tribes who inherits a share must marry someone from a clan of her father's tribe.....thus no inheritance shall pass over from one tribe to another, but the Israelite tribes shall remain bound each to its portion."

And the Torah reports that the daughters of Zelophehad did as the Lord commandedthey married their cousins. Thus, their share remained within the tribe of their father's clan.

Chapter 36, Verses 1-11 raises a number of questions – both in terms of the message of the original text, and in terms of this Torah portion's application today.

- Why, with the Torah's usual exactness and brevity is this story repeated?
- Do the two decisions as related in Chapters 27 and 36 of Numbers contradict one another?
- What is the significance of this story of Zelophehad daughters to the Jews of biblical times?
- And what is its significance today?

First, let us consider the passage itself. According to biblical scholars, there is sufficient evidence to suggest that Chapter 36 was written later than its sister

portion. Chapter 36 employs vocabulary that is different from that of Chapter 27 in its references to priestly texts, to clans, and to tribes. Furthermore, Chapter 36 employs the term “fathers” (meaning ancestral) in context – referring to the holding of land by the family for at least several generations – which means that the text cannot refer to the time of the case itself when the land was first allotted to each clan. Above all, this portion appears at the very end of the book of Numbers, suggesting that it is an appendix, added at the very end once the book was otherwise complete. Lastly, the passage in question involves a logical expansion of the argument found in Chapter 27.

In Chapter 36, the women are enjoined to marry within their clan and indeed it is reported that they married their cousins to ensure that the land stayed within a tight family grouping. All of this evidence would suggest that the closing portion of Numbers was added after the fact to further clarify the application of the Lord’s instructions regarding the inheritance of women within the family of Israel.

If we look at the laws of inheritance of other peoples in the Middle East – before, during, and immediately after the biblical period, we find that the limited rights of women to inherit as dictated in the Torah stand out as distinct from the practices in other ancient societies. For example in Sumeria an unmarried daughter could inherit when there was no son. Similarly in places as dispersed as Nuzi on the Tigris River and Ugarit on the Mediterranean coast, daughters inherited in the absence of sons. Similar laws are found in the codex of Hammurabi and in the recorded laws of ancient Elam in southwest Iran. In Egypt during the Middle Kingdom a woman could inherit from her husband if his will so stipulated, a practice later reinforced and extended in Ptolemaic Law, as practiced in Alexandrian Jewish law courts unmarried daughters with no fixed dowries could share equally in the inheritance with sons. Why then do the laws as set down in the Torah take a different, strictly patrilineal-agnatic path?

In considering this divergence of practice, it is perhaps important to consider the makeup of these ancient societies at the time. The Jews of the Bible were comprised of tightly knit clans, a structure whose importance becomes ever more relevant as they wandered through the desert on their way to Canaan. One of the foremost goals of their legal system was the preservation of this clan-based culture. Thus, in the circumstance of a marriage, the property of the wife transferred to the

husband and hence to his clan. By contrast, Israel's neighbors in the great river basins of the Nile, Tigris and Euphrates were already centralized urban societies when their earliest laws were promulgated. The importance of a clan structure had receded or disappeared in these communities. It stands to reason that in these cultures the patrilineal-agnatic principle of inheritance could not be rigidly maintained.

Not all scholars agree on what the actual process of land allocation in Canaan was as reported in the Torah, but it is clear that the ultimate distribution of land was based upon a population census, with the larger tribes receiving larger allotments than the smaller tribes. In this manner, the leadership hoped to promote fairness and to avoid disputes, especially violent ones, as the Israelites entered their new home land, and so that they might more readily collaborate in the face of determined resistance by those who occupied Canaan prior to their coming. Of all the tribes, it was the Josephites who complained much more than others about their portion which may explain why such particular attention is given in the Torah to the case of Zelophehad's daughters. As reported in the Torah, the settlement that Moses adjudicates, under God's direction, allows the daughters to inherit but also results in the land remaining within the Josephite Tribe. Midrashim concerning this Torah portion reinforce the primacy of patrilineal inheritance in Jewish law.

And yet, when all is said and done, the daughters of Zelophehad got just what they wanted. Why was that?

According to the Talmud, Zelophehad's daughters were wise, astute interpreters, and pious. *Wise* because they spoke in the precise moment and on the specific practical matter of the allotment when the decision was at issue. They did not raise some hypothetical case to challenge the law but a real and practical problem for them that required an immediate and fair resolution. *Astute Interpreters* because they in essence said: "if our father had a son, we would not have spoken – because he would have the inheritance." In this manner they did not challenge the basic tenets of well-established patrilineal inheritance practices. Rather they posed the need for an exception to the rule. And *pious* – because they did not want to marry men who were not worthy just to obtain their father's portion of the land. Indeed, the daughters were willing to wait for appropriate partners to come along. Moses

perceived the virtues of these petitioners immediately and became their advocate before the Lord.

Some have argued that the achievement of Zelophehad's daughters was a landmark in women's rights – from those days to the present. Clearly the historical record of other nations and bodies of law in the Middle East during that period would allow us to challenge such a statement. However, this story offers a compelling lesson for all those who doubt that they may have a hand in their own destiny. It encourages us to think outside the box and provides a message of hope for all those facing serious obstacles. As such today's parsha speaks to the malleability of the Torah's intent as new circumstances arise.

In closing, I would like to mention yet one more perspective that I found most intriguing as I did the research for this D'Var Torah, namely: that of the oral tradition of the Torah.

As a written document, the Torah and its revealed laws are awesome, comprehensive, and compelling but they are also fixed and final – at least in the literary sense. However, the Torah has never stood still (remained *in the box* as it were) because it is enveloped in an ongoing and tumultuous exploration and dialog engaging many of the greatest minds of our people – as well as those lesser lights, like yours truly. This oral consideration of the Torah is constantly evolving. Each generation of Jews has a role to play in this exploration and discourse. The daughters of Zelophehad are role models for this labor of applying the laws of the Torah to contemporary situations. And it is for me, at least, the magic and wonder of the Torah that even after millennia of use and examination, the Torah continues to help us to find new and creative answers to the vexing problems of our own day.

Shabbat Shalom.