

Parshat HaShavua  
Yeshivat Har Etzion

This parasha series is dedicated

in memory of Michael Jotkowitz, z"l.

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## PARASHAT BEREISHIT

### The Snake's Sin and Its Punishment

By Rav Yaakov Medan

#### THE SNAKE'S SIN

"The snake was the most cunning of all the beasts of the field that the Lord God had created...." (3:1)

What was the snake's sin? Rashi (3:14) explains, based upon the Gemara (Sanhedrin 29a), that it is considered a "mesit" - an inciter:

"Rabbi Shemuel bar Nachman said in the name of Rabbi Yonatan: From where do we learn that no arguments are presented for an inciter? From the primeval snake, as Rabbi Salmi taught: The snake had many arguments which it did not present. And why did the Holy One, Blessed be He, not argue for the snake? Because the snake itself did not argue".

Tosafot and Chizkuni have difficulty with this explanation, "for no one is called an 'inciter' unless he incites to idolatry." They go on to explain that the transgression of eating from the Tree of Knowledge bordered on idolatry, since the snake told Chava that eating of the tree would turn her and Adam into "gods, knowing good and evil".

It is possible that the idolatry of the snake involved not only its comparison between the creature and its Creator, but also its slander against the Creator.[1] The snake accuses God of fearing that man will become as wise as He, knowing good and evil, and therefore forbidding him to eat of the tree.

The idea that God "fears" man and therefore tries to curtail his activities is a familiar theme in various mythologies – from the Greek back to the Canaanite. The story of Prometheus, in Greek mythology, is an example. According to legend, life for man was bitter and difficult until Prometheus discovered fire. Since man did not know the secret of fire, he was forced to suffer from cold, he ate raw meat, and was unable to develop any sort of real industry. The secret of fire was known only to the gods, and they kept it to themselves so that man would never have the possibility of elevating himself from his lowly state and endangering their hegemony. Prometheus had mercy on man and violated the prohibition against publicizing the information: he revealed the secret of fire. As a result, he was punished with eternal torture by the chief god.

In the snake's view, God is incomparably strong and powerful, but He lacks moral stature. All the pettiness that afflicts man's heart is to be found in God's heart, too. And, just like any evil and petty ruler, with a little cunning he can be overcome. Since the snake passed on these perverted values to Chava, his act is considered incitement to idolatry. Although there is no incitement here to serve a different god, this view treats God Himself as a "different god," as it were – as something other than what He is.

This teaches us a general lesson about slander: it always reflects the subjective view and interpretation of the speaker, at the expense of the objective truth.

#### "IT PLACED ITS CONTAMINATION IN HER"

In the Midrash, Chazal stray far from this understanding and conclude that the snake and Chava sinned in an entirely different manner:

"For what reason are idolaters contaminated? Because they did not stand at Mt. Sinai. For when the snake conjoined with Chava, he contaminated her. When Israel stood at Mt. Sinai, their contamination ceased. Idolaters, because they did not stand at Mt. Sinai – their contamination did not subside." (Shabbat 145b)

The attempt to attribute to the snake the sin of sexual immorality rests upon the results of the sin:

"The eyes of both of them were opened and they knew that they were naked, and they sewed fig leaves and made themselves loincloths." (3:7)

Commentators with a linguistic bent have noted the connection between the Hebrew words "begeh" (garment) and "begeida" (infidelity, treason), and between "me'il" (coat, covering) and "me'ila" (duplicity, perfidy). The need to cover the genital area – especially for the woman – is connected to the most despicable of all sins: that of infidelity and adultery. It is from the results that Chazal deduce the sin; since, following the sin, Adam and Chava sewed themselves loincloths, the woman must have committed the sin of adultery, and Adam is likewise guilty of sinful sexual relations, since he does not separate from her despite her adultery with the snake.

Based upon our conception of a snake, it is difficult to conceive of any sort of "adultery" with Chava. Even if we imagine the snake as having legs (before his legs were chopped off and God commanded him, "You shall go about on your belly"), the distance between it and humankind remains enormous, and it is quite unclear how it would have enticed the woman to sexual relations. We are forced to conclude that the change undergone by the snake after the punishment was so drastic that the snake we know today is in no way similar to its primeval ancestor. Unless we attribute to Chava some perverse sexual orientation, we must accept that the snake resembled humankind, at least externally. It is perhaps for this reason that the snake also knows how to express itself so articulately, and perhaps his intellect was not inferior to that of man.

But man – and only man – was created in the image of God, and in my opinion, the "image of God" within man is his conscience. Man is created with an inner knowledge of which good traits are desired by God. Man did not need to learn ethics from some outside source, for his conscience – his inner truth, which is the image of God within him – would lead him to them.

It is possible that the snake had intelligence, but it certainly lacked conscience, for it was not created in God's image.[2]

### "I HAVE ACQUIRED A MAN FROM GOD"

There may be something attractive in the snake's determination, in its lack of doubts and pangs of conscience, and Chava is drawn after this temptation. When her first son is born, she derives his name, Kayin, from the expression, "I have acquired a man from God." It is interesting that there is not the slightest hint of the third partner in the child's creation – her husband, Adam. It is possible that she knows the real, hidden reason for this; she knows who Kayin's father really is.

Kayin and his descendants – Lemekh and his sons - are intelligent, strong and creative people, but they have no conscience. Concerning Hevel we know almost nothing; only when it comes to Shet does the Torah tell us, "He [Adam] bore in his image, as his likeness." Perhaps this implies that Kayin was not in Adam's image.

Science tends to divide prehistoric man into two species: the strong and violent type - homo erectus, and the weaker, gentler, more thinking type – homo sapiens. This categorization may parallel the division known to us from parashat Bereishit, between the sons of Kayin and the sons of Shet. The vulgar, violent descendants of Kayin ruled the world, as proved by Lemekh's declaration. They are the "children of elo-him" who snatched human women for themselves, and therefore the Holy One decides to wipe them from the face of the earth. But the contamination remains for many more generations, since Noah's wife, Na'ama, was a descendant of Lemekh (see Bereishit Rabba 23:3). Only among Bnei Yisrael, who stood at the foot of Mt. Sinai and accepted with the promise, "We shall do and we shall hear," the seventh Commandment – "You shall not commit adultery" – did the contamination subside, and they were purified from the source of living waters: "God is the 'mikveh' of Israel".

### "WE DO NOT SEARCH FOR THE MERIT OF AN INCITER"

"The Lord God called to Adam and He said to him, 'Where are you'?

And he said: 'I heard Your voice in the Garden, and I was afraid, for I am naked, and I hid'.

And He said: 'Who told you that you are naked? Have you eaten from the tree from which I commanded you not to eat'?

Adam said: 'The woman whom You put with me – she gave me from the tree, and I ate'.

The Lord God said to the woman: 'What is this yhave done'?

The woman said: 'The snake tempted me, and I ate'.

The Lord God said to the snake: 'Because you have done this, you are cursed above all the animals and above all the beasts of the field. You shall go upon your belly and eat dust all the days of your life. And I shall place hatred between you and the woman, and between your seed and her seed. They shall bruise your head, and you shall bruise their heel'.

To the woman He said: 'I shall surely increase your pain in childbearing; in sorrow shall you bring forth children, and you shall desire your husband, and he shall rule over you'.

To Adam He said: 'Because you listened to your wife and ate from the tree concerning which I commanded you, saying, "You shall not eat from it" – cursed be the land because of you; you shall eat from it in sorrow all your life. It shall produce thorns and thistles for you, and you shall eat the herb of the field. By the sweat of your brow shall you eat bread until you return to the earth, for from it you were taken; for you are dust and you shall return to dust.'" (3:9-19)

Reviewing the respective punishments of Adam, Chava and the snake, it is difficult not to be struck by the lack of symmetry between God's attitude towards Adam and his wife, who are questioned as to their motives for the sin, and His treatment of the snake, which receives an immediate punishment with no attempt to give him or his motives the benefit of the doubt. As we noted at the outset, Rashi (3:14) explains this on the basis of the Gemara (Sanhedrin 29a), teaching that "We do not make an effort to find merit for an inciter." From Rashi it would appear that we do not make an effort to find merit in the inciter precisely because he has a potential defense – he may claim that the "victim" need not have listened to him: "If the teacher says one thing and the student says another, to whom do we listen?!" [3] Alternatively, it is possible that we do not make an effort to find some defense for the inciter because of the severity of his offense, since he is considered as having "sinned in order to anger [God]." We seek defense only for someone who performed a transgression out of a desire, having been overcome by his evil inclination, but not for someone whose intention was specifically to anger God and to rebel.

It would seem that the actual principle according to which we do not make an effort to seek a defense for an inciter may be learned from the language of the text in the parasha dealing with an inciter:

"If your brother, the son of your mother, or your son or your daughter or the wife of your bosom or your neighbor who is as your own soul entices you secretly, saying, 'Let us go and worship other gods' – which you have not known, neither you nor your forefathers..." (Devarim 13:7)

According to the simple reading of the text, the "victim" – the person who is incited – is the witness. Proof for this conclusion lies in the fact that he is the first commanded to kill the inciter, as the Torah teaches explicitly: "Your hand shall be upon him first to kill him, and the hand of all the nation thereafter" (Devarim 13:10). Witnesses are generally commanded to be the first to put to death the person they have testified against: "The hand of the witnesses shall be upon him first to put him to death, and the hand of all the nation thereafter" (Devarim 17:7).

However, this gives rise to a simple question. The Torah tells us that the inciter tried to lead astray someone close to him: "Your brother... or your son or your daughter, or the wife of your bosom..." But a relative is invalid as a witness; he cannot testify that his relative enticed him! [4] From here Chazal learn that "We do not invest effort in finding a defense for an inciter": the reason for the invalidation of a family member for testimony is because of his tendency to try and find justification for his relative's act. Because of this, he is not invalid for testimony as to incitement, for we do not give the inciter the benefit of any doubt. Even a relative is considered a "witness" (at least for the purposes of "the hand of the witnesses shall

be upon him first to put him to death"), although a relative is invalid for any other type of testimony in Torah law.

We have hereby solved another difficulty posed by the Rishonim: the snake received no prior warning as to the prohibition of and punishment for incitement – so how could it be punished? It would seem that an inciter is punished even if there was no prior warning (as the Rambam writes explicitly – *Hilkhos Avodas Kokhavim* 5:3), because the need for warning prior to the deed is meant for the purposes of easing up on the suspect: perhaps he didn't know, or perhaps he forgot that it was forbidden. No attempt is made to find defense for the inciter – and therefore the snake is punished even though it received no warning.

Indeed, it appears that this very point explains the difference between man and the snake. At the beginning of the story of Gan Eden, we are told that God prohibits man from eating from the Tree of Knowledge, and warns him as to his punishment if he should eat:

"And from the Tree of Knowledge of Good and Evil – you shall not eat from it, for on the day that you eat of it you will surely die." (2:17)

The Gemara (*Sanhedrin* 40b) tries to derive the requirement of warning a sinner before his act (so that he will be liable if he commits it) from far-fetched sources and forced applications. Perhaps what Chazal viewed as the background to the law of warning was this difference between man and the snake: God forbade man from eating of the Tree of Knowledge and warned him as to what his punishment would be if he did so, while the snake received no explicit warning. From here we learn that an inciter is punished without having received warning, while any other transgressor is punished only after first having been warned.

#### ONE WHO SINS DELIBERATELY VS. ONE WHO SINS IN ORDER TO ANGER GOD

Moreover, the law of warning was implemented by Chazal so as render it all but impossible to mete out punishment:

"Both a scholar and an ignoramus need warning, for warning is given in order to distinguish between one who sins inadvertently and one who sins deliberately, in case he was acting inadvertently.

How is he to be warned? He is told, 'Desist, or do not do it, for it is a transgression and you will be deserving of death or lashes.' If he desists – he is exempt, and likewise if he was silent or lowered his head – he is exempt. Even if he says, 'I know' – he is exempt, unless he forfeits his life and declares, 'I am doing it because it is forbidden' - then he is put to death. And it is necessary that he performs the deed immediately after the warning, right after speaking; but if he performs it after the amount of time necessary to speak – he need a separate warning." (Rambam, *Hilkhos Sanhedrin* 12:2)

A warning so close to the deed, and accompanied by an explicit declaration that "I am doing it because it is forbidden," seems impossible, and it is quite illogical that this should be the distinction between one who sins inadvertently and one who sins deliberately. It is possible, however, that such a warning serves to clarify whether the person is performing the sin in order to anger God, or out of desire. Halakha does not allow a court to put a person to death unless he has sinned in order to anger God – i.e., only if he says, "I am doing it because it is

forbidden," and actually commits the sin as he says these words.[5] Thus a death sentence passed by a Jewish court became a very rare phenomenon, and a Sanhedrin that put a person to death once in seven years (or once in seventy years) was called a "Sanhedrin of Destruction" (Mishna, Makkot 7a) – for most sinners do not transgress in order to anger God.

This principle, too, would appear to have its source in the Torah. In all of the Torah there are only two instances of a death sentence being carried out by a court: the person who blasphemed (Vayikra 24), and the one who gathered wood on Shabbat (Bamidbar 15). It is obvious that the former transgressed in order to anger God, and therefore he was put to death.[6] From the context of the , it would seem that the latter, too, sinned with the intention of angering God, since we are told:

"A person who acts presumptuously, whether a native citizen or a stranger – he dishonors God, and that soul shall be cut off from among its nation. For he has despised the word of God and has violated His command; that soul shall surely be cut off, his sin is upon him.

And Bnei Yisrael were in the desert, and they found a man gathering wood on Shabbat. And those who found him gathering wood brought him to Moshe and Aharon and to all the congregation..." (Bamidbar 15:30-33)

The Torah tells us that a person who "acts presumptuously" is considered to "dishonor God," since he is acting knowingly, to anger God. There is some foundation for the theory that the man who gathered wood did so in response to the Divine decree following the sin of the spies. After it was decreed that Am Yisrael would wander in the desert for forty years, the wood-gatherer claimed that the acceptance of the Torah had been solely for the purpose of receiving an inheritance in the land, and if he was not to receive any inheritance – he would not fulfill the Torah. He also tried to lead the whole nation into a rebellion against Moshe; it is no wonder that this narrative is placed directly before the story of Korach. It is possible that Chazal learned from these two parashiot that the essence of the law concerning the death sentence referred only to one who sinned in order to God, whose whole intention is to rebel and to incite. In such a situation, his punishment is the same as that meted out to the primordial snake: there is no need to give him warning, nor is any attempt made to give him the benefit of the doubt.

## MAN'S ADVANTAGE

Perhaps the lack of attempt to seek merit for the snake can be understood in a different way than the one proposed by Rashi.

It would appear that there should be no benefit of the doubt for Adam and Chava, either. They were aware of the command and the prohibition, and they decided to transgress them in following the advice of the snake. How can this be justified?

Nevertheless, God addresses Adam with questions: "Where are you?" "Who told you that you are naked?" "Have you eaten from the tree from which I commanded you not to eat?" God expects an answer (teshuva) from man, but not necessarily the answer to His questions. He expects an act of teshuva (repentance): an admission of guilt, a request for forgiveness, a search for some way of making amends. God opens the door for Adam to say, "I have sinned" – but he does not use the opportunity. Instead of admitting the sin, he blames his wife. God goes on to question Chava, but she too – instead of admitting her guilt – blames the

snake. Thus, the first human act of teshuva failed to happen, and the continued stay in the Garden of Eden and the continued revelation of the Shekhina were consequently curtailed. Adam and his wife acted as did King Shaul, much later on, when confronted by the prophet Shemuel:

"Shemuel said: 'What is this sound of sheep in my ears, and the sound of cattle that I hear'?

Shaul said: 'They were brought from the Amalekites, for the people spared the best of the flock and of the cattle in order to sacrifice to the Lord your God; the rest we destroyed.'" (Shemuel I 15:14-15)

Shemuel begins with a question so that Shaul may confess, but the first king of Israel chooses to blame the nation instead of accepting responsibility himself, and thus the heroic moment of the first Israelite dynasty was likewise lost.

God does not address any questions to the snake. The snake is part of nature, and it is judged with the attribute of strict justice. The rigid laws of nature leave no room for teshuva. Sin brings punishment; there is no third option. Only man, God's friend, created in His image, merits the demonstration of the attribute of mercy – the ability to return to God, to make amends for the sin. Only to man does God extend the opportunity to confess and repair; He knocks on man's door and asks him questions. A similar lesson may be learned from the story of R. Elazar ben Dordaya:

"We learn: It was said of R. Elazar ben Dordaya that there was not a single prostitute in the world with whom he had not had relations. Once he heard that there was a certain prostitute over the sea, who demanded a bag of dinarim as payment. He took a bag of dinarim and went, and he crossed seven rivers to reach her. In the midst of their intercourse, she passed gas. She said, 'Just as that air cannot return to its place, so Elazar ben Dordaya will not be accepted as a penitent'.

He went and sat between two mountains and hills. He said: 'Mountains and hills, beg for mercy on my behalf'!

They said to him: 'Before we ask mercy for you, first we must ask for ourselves, as it is written, "For the mountains shall move, and the hills collapse"'.

He said: 'Heavens and earth, beg for mercy for me'!

They said: 'Before we ask for you, first we must ask for ourselves, as it is written, "The heavens shall vanish like smoke, and the earth shall expire as an old garment"'.

He said: 'Sun and moon, beg for mercy on my behalf'!

They said to him: 'Before asking for you, first we must ask for ourselves, as it is written: "The moon shall be confounded and the sun ashamed"'.

He said, 'Stars and constellations – beg for mercy on my behalf'!

They said: 'Before asking for you, we must first ask for ourselves, as it is written, "All the host of the heavens shall rot away"'.

He said: 'I have no one to rely on but myself.' He placed his head between his knees and wept and sobbed until his soul departed from him. A heavenly voice emerged and said: 'R. Elazar ben Dordaya is invited to Eternal Life.'" (Avoda Zara 17a)

There is no repair and no teshuva – not through the heavens and the earth, neither by the agency of the mountains and hills, nor any hope in the sun and moon or the stars and constellations, nor through the snake. Teshuva and repair exist only within man, and we have no one to rely on but ourselves.

#### NOTES:

[1]The words of this slander later became the source among Chazal and the poskim for the laws and concepts related to slander in general: see Arakhin 15b.

[2]In order to imagine such a phenomenon, let us recollect some images from children's literature. The dementors, who serve as wardens in the Prison of Azkaban in the "Harry Potter" series, are such creatures. Similarly, the dead who come back to life in Lloyd Alexander's "The Black Cauldron" have intelligence and strength, but have no will of their own.

It is possible that this represents a sort of prototype of science's future clones. It may well be that science will eventually be able to clone everything, except for man's Divine image. Science may thereby bring upon us automatons devoid of individual will, character and conscience, descendants of the primordial snake, who act in the service of the arbitrary will of their creator.

[3]The Rishonim debate the meaning of this 'merit' – see Tosfot on the Torah, Chizkuni and Sefer ha-Zikaron.

[4]The law is that valid witnesses must be installed in a concealed place in order to testify against him – see Sanhedrin 67 and Rambam, Hilkhhot Avodat Kokhavim 5:3.

[5]This law contradicts the opinion of R. Yossi bar Yehuda, who writes: "A scholar needs no warning, since warning is given only in order to distinguish between one who sins inadvertently and one who sins deliberately" (Sanhedrin 8b.)

[6]It is possible that he was brought before Moshe for judgment because he had not received any explicit warning.

Translated by Kaeren Fish