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— RABBI LORD JONATHAN SACKS



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Justice or Peace?

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The sedra of Yitro, which contains the account of the greatest Divine revelation in history, at Mount Sinai, begins on a note that is human, all too human. Yitro, priest of Midian, has come to see how his son-in-law Moses and the people he leads are faring. It begins by telling us what Yitro heard (the details of the exodus and its attendant miracles). It goes on to describe what Yitro saw, and this gave him cause for concern.

He saw Moses leading the people alone. The result was bad for Moses and bad for the people. This is what Yitro said:

“What you are doing is not good. You and these people who come to you will wear yourselves out. The work is too heavy for you; you cannot handle it alone. Listen now to me and I will give you advice, and may God be with you...Select capable men from all the people—men who fear God, trustworthy men who hate dishonest gain—and appoint them as officials over thousands, hundreds, fifties and tens. Have them serve as judges for the people at all times, but have them bring every difficult case to you; the simple cases they can decide themselves. That will make your load lighter, because they will share it with you. If you do this and God so commands, you will be able to stand the strain, and so too all these people will reach their place in peace.” (Exodus 18:17-23)

Moses must learn to delegate and share the burden of leadership. Interestingly, the sentence “What you are doing is not good (lo tov)” is one of only two places in the Torah where the phrase “not good” occurs. The other (Genesis 2:18) is “It is not good for man to be alone.” We cannot lead alone; we cannot live alone. That is one of the axioms of biblical anthropology.

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The Hebrew word for life, *chayim*, is in the plural, as if to signify that life is essentially shared. Dean Inge once defined religion as “what an individual does with his own solitude”. That is not a Jewish thought. However, it was the great nineteenth century scholar the Netziv (R. Naftali Zvi Yehudah Berlin) who made an unexpected, even counter-intuitive observation on this passage. He begins by raising the following question. It is easy to understand how Yitro’s advice helped Moses. The work was too much. He was becoming exhausted. He needed help. What is less easy to understand is his final comment: if, with God’s permission, you delegate, “so too all these people will reach their place in peace”. The people were not exhausted; Moses was. How then would they gain by a system of delegation? Their case would still be heard – but not by Moses. How was this to their advantage? (*Harchev Davar* to Exodus 18:23).

The Netziv begins by quoting the Talmud, Sanhedrin 6b. The passage is about what the sages called *bitzua*, or what later become known as *pesharah*, compromise. This is a decision on the part of a judge in a civil case to seek a solution based on equity rather than strict application of the law. It is not wholly unlike mediation, in which the parties agree to a resolution that they both consider fair, regardless of whether or not it is based on statute or precedent. From a different perspective, it is a mode of conflict resolution in which both sides gain, rather than the pure administration of justice, in which one side wins, the other loses. The Talmud wants to know: is this good or bad? To be adopted or avoided? This is part of the debate:

Rabbi Eliezer, son of R. Jose the Galilean, said: it is forbidden to mediate . . . Instead, let the law pierce the mountain [a saying similar to: “Let the chips fall where they may”]. And so Moses’ motto was: Let the law pierce the mountain. Aaron, however, loved peace and pursued peace and made peace between people . . . R. Judah ben Korcha said: it is good to mediate, for it is written (Zechariah 8:16), “Execute the judgment of truth and peace in your gates.” Surely where there is strict justice, there is no peace, and where there is peace, there is no strict justice! What then is the justice that coexists with peace? We must say: mediation.

The law follows R. Judah ben Korcha. It is permissible, even preferable, to mediate – with one proviso, that the judge does not yet know who is right and who is wrong. It is precisely this uncertainty

at the early stages of a hearing that allows an equitable resolution to be favoured over a strictly legal one. If the judge has already reached a clear verdict, it would be a suppression of justice on his part to favour a compromise solution.

Ingeniously applying this principle to the Israelites in Moses' day, the Netziv points out that – as the Talmud says – Moses preferred strict justice to peace. He was not a man to compromise or mediate. In addition, as the greatest of the prophets, he knew almost instantly which of the parties before him was innocent and which guilty; who had right on his side and who did not. It was therefore impossible for him to mediate, since this is only permitted before the judge has reached a verdict, which in Moses' case was almost immediately.

Hence the Netziv's astonishing conclusion. By delegating the judicial function downward, Moses would bring ordinary people – with no special prophetic or legal gifts – into the seats of judgment. Precisely because they lacked Moses' intuitive knowledge of law and justice, they were able to propose equitable solutions, and an equitable solution is one in which both sides feel they have been heard; both gain; both believe the result is fair. That, as the Talmud says above, is the only kind of justice that at the same time creates peace. That is why the delegation of judgment would not only help Moses avoid total exhaustion; it would also help “all these people” to “reach their place in peace.”

What a profound idea this is. Moses was the *Ish ha-Elokim* (Psalm 90:1), the supreme man of God. Yet there was, the Netziv implies, one thing he could not do, which others – less great in every other respect – could achieve. They could bring peace between contending parties. They could create non-violent, non-coercive forms of conflict resolution. Not knowing the law with the depth that Moses did, not having his intuitive sense of truth, they had instead to exercise patience. They had to listen to both sides. They had to arrive at an equitable verdict that both parties could see as fair. A mediator has different gifts from a prophet, a liberator, a law-giver – more modest perhaps, but sometimes no less necessary.

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It is not that one character type is to be preferred to another. No one – certainly not the Netziv – regarded Moses as anything less than the greatest leader and prophet Israel has ever had. It is, rather, that no one individual can embody all the virtues necessary to sustain a people. A priest is not a prophet (though a few, like Samuel and Ezekiel were both). A king needs different virtues than a saint. A military leader is not (though in later life he can become) a man of peace.

What emerges at the end of the train of thought the Netziv sets in motion is the deep significance of the idea that we can neither live nor lead alone. Judaism is not so much a faith transacted in the privacy of the believer's soul. It is a social faith. It is about networks of relationship. It is about families, communities, and ultimately a nation, in which each of us, great or small, has a role to play. "Despise no one and disdain nothing", said Ben Azzai (Avot 4:3), "for there is no one who does not have his hour, and nothing that does not have its place." There was something ordinary individuals (heads of thousands, hundreds, tens) could achieve that even Moses in all his glory could not achieve. That is why a nation is greater than any individual, and why each of us has something to give.

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