

Two Essential Lessons Before Receiving the Torah

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The Israel Koschitzky Virtual Beit Midrash

Special Holiday Shiur

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Based on a sicha by Harav Yehuda Amital

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Two incidents appear in Parashat Yitro before the account of the giving of the Torah, yet their actual chronology is nonetheless unclear. These two events are:

- a) the arrival of Yitro, Moshe's father-in-law (Shemot 18:1-12);
- b) Yitro's critique and improvement of the judicial system (Shemot 18:12-27).

There is a classical dispute about whether these incidents occurred prior to the giving of the Torah, and are thus written in their correct place, or whether they really happened after the giving of the Torah, and are for some reason written out of place. The Ramban (Shemot 18:1) cites this dispute, which has its roots in the Mekhilta and in the Gemara (Zevachim 116a). Rabbi Yehoshua says that Yitro arrived before the giving of the Torah, and thus has no problem with how the placement of these incidents. Rabbi Elazar Ha-modai, on the other hand, claims that Yitro arrived after the giving of the Torah. The obvious question is, according to Rav Elazar, why do these two incidents appear out of their natural place?

Let us turn to Rashi first in search of an answer. He claims (Shemot 18:13) that the dispute centers around only the first incident, Yitro's arrival; however, both Rabbi Yehoshua and Rabbi Elazar agree that the second incident, Yitro's advice regarding the legal system, must have occurred after the giving of the Torah. Rashi substantiates his claim thoroughly, and most clear is his position that, prior to the giving of the Torah, Am Yisrael had no set of either religious or civil laws, so there could be no way that the court system could be established before the Torah was received. According to Rashi, then, we must ask the same question of both Rabbi Elazar and Rabbi Yehoshua: if the section dealing with the law courts really took place after the giving of the Torah, why is it written here?

We have thus arrived at two critical questions. The first we ask only of Rav Elazar: why does Yitro's arrival appear before the account of matan Torah, when it really happened afterwards? The second we ask of both Rav Elazar and Rav Yehoshua: why does the incident of the courts appear out of place?

Let us begin with the first question. One of the most famous passages in Rashi's commentary on the Torah appears in our parasha (Shemot 19:17, based on Shabbat 88a). Regarding Bnei Yisrael when they were about to receive the Torah, we read, "And they stood at the base of the mountain." In Hebrew, the word for "base" is "tachtit," which can also be taken to mean "underneath," thus rendering, "And they stood underneath the mountain."

Rav Avdimi bar Chama bar Chasa said: This teaches us that God cupped the mountain over them like a barrel and said to them, "If you will receive the Torah, good; if not, there will be your burial place."

According to Rav Avdimi, the framework within which Am Yisrael accepted the Torah was one of coercion. We can understand the reality underlying this aggada not as physical coercion, but rather as intense psychological coercion. Could Am Yisrael have experienced the exodus and all its associated miracles, and still have had the freedom to choose whether or not to accept the Torah? They had met God face to face, to the extent that the Mekhilta comments on the verse from the Song of the Sea (Shemot 15:2), "This is my God and I shall glorify him" - "This means that God appeared to them in all His glory and they were pointing at Him with their fingers; a maidservant at the [Red] Sea saw that which all the prophets themselves never saw" (cited by Rashi). In such a context, is it possible to imagine Am Yisrael refusing the Torah?

There is, however, a serious problem with this model: we cannot relate to it. If we ask ourselves, how are we to accept the Torah, we cannot answer, "We shall do and we shall hear - just like Am Yisrael did then." We simply lack the context which was the basic framework for all of their actions and decisions. We require another model. This is where Yitro comes in.

There is indeed another precedent for accepting the Torah - that of Yitro. Yitro's acceptance of the Torah did not occur amidst fire and brimstone, amidst the raw power of God's hand exposed to human eyes; rather, "And Yitro heard ... everything that God had done" (Shemot 18:1). Yitro was not coerced at all: he heard from afar, he received the Torah through the mists of tradition, in an atmosphere of uncertainty - a reality exactly parallel to our own.

This, then, is the answer to our first question. Why, according to Rav Elazar, must we learn of Yitro, of his coming, and especially of his belief, before we read of the giving of the Torah? The answer is clear. Even if this event is out of place chronologically, it is vital in providing us, the later generations, with a means to relate to accepting the Torah, a means closer to our own realities.

Let us approach the second question - why do we learn of the court system prior to the giving of the Torah?

I think that the following sources point a direction for our answer. At the end of Parashat Yitro, we find an enigmatically phrased mitzva (one of three such mitzvot in the Torah): "If you build Me an altar of stones ..." (Shemot 20:21). The problem is that, like the other two mitzvot which begin with the phrase "If," this mitzva is not optional but rather compulsory. Why, then, does the Torah phrase it so strangely?

Rashi (ibid.) cites the other two instances of this strange phraseology but doesn't supply a rationale for it. The Gur Aryeh (the Maharal's supercommentary on Rashi) here does supply a reason, and it is profound. The Maharal claims that the reason that these three mitzvot are phrased as if they were not compulsory is because the basic human impulse for performing them should be different from that of all other mitzvot. These mitzvot, he claims, must be performed not because we are COMMANDED to, but because we WANT to, because we have a basic human urge to do these things since we think they are correct, because they are the RIGHT thing to do.

The Ramban (Shemot 15:25) supplies a similar idea in explaining the meaning of the verse, "There He (God) laid down laws and judgements." This verse is written prior to the giving of the Torah, raising the question: what laws could God have given to Am Yisrael prior to the giving of the Torah? The Ramban answers that God did not give them specific commandments but rather general rules of ethical behaviour.

In both the Ramban's and the Maharal's explanations, we can see a core idea: there is such a thing as a morality before Sinai, a human sensitivity to right and wrong which precedes the formal commandment and which exists alongside it as well.

This, then, is the answer to our second question. Why do we need to hear of Am Yisrael's having a court system, a system of justice, even before the giving of the Torah? In order to impress upon us that there is a morality, a basic system of right and wrong, even before the giving of formal commandments. This is a sensitivity we must strive to cultivate and develop, especially after we have received God's word, when there is a danger of losing it all in the face of excessive formalism.

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