''*Pinchas*: Why Moses referred the Tzelafchad case to God''

By Rabbi Dr Jeffrey M Cohen

The episode of the daughters of Tzelafchad is famous (Numbers 27:1-11; 36:1-13), so we'll take it as read. The difficulty is how it was that Moses, the lawgiver, was unable to give a ready and decisive response to the request of the five daughters of Zelafchad that, since their father left no male heirs, they should be permitted to be considered heirs to the family inheritance. Why did he have to bring their case to 'the Highest Authority!' Moses was, after all, the recipient of many divine communications at the Tent of Meeting. Surely God could have communicated the answer to him there by *Ruach Ha-kodesh*!

The Talmud (*San*. 8a) states that it was a divinely imposed punishment on him for the sin of hubris, when he was relating to the Israelites, in the last year of his life, how he had appointed the various heads of tribes as well as the judges of the nation (Deut.1:15-19). He also disclosed the advice he had given the judges at the time of their installation:

'Do not be in awe of any man, for the judgment is God's; and, as regards the cause that is too hard for you, bring to me and I will hear it' (v.17).

The sages asserted that Moses should have told them, 'the cause that is too hard for you, you shall present before the Lord'. And because of that act of pride, he was punished with forgetfulness in the Zelafchad case, and had to refer the matter to God for judgment.

But, it is surely not so straightforward, for, although Moses may have had access to God, his judges were not vouchsafed that privilege! The highest authority that they could consult was, indeed, Moses; so what was so heinous about the advice he gave his judges?

Furthermore, in relation to Bil'am's success in getting God to change His mind, and to allow him to go with Balak to attempt to curse Israel, a Talmudic sage, Rav Nachman, made the astonishing observation, *Chutzpa, afilu klapei shemaya, mehani* - 'impudence, even towards heaven may be advantageous' (Tal. San. 105a)! So, we may ask, if God was prepared to cave in to Bilaam's badgering, why did He not extend the quality of condescension to Moses, and overlook his ''chutzpah'' in telling the judges to submit the hard cases to him? It was, after all, in a cause that was indubitably 'in the name of heaven,' to ensure that justice was properly achieved!

An alternative approach to the question of why Moses desisted from judging the Zelafchad case himself is offered by R. Joseph Babad, the author of the celebrated work, *Minchat Chinukh* (1800–1874). He suggests that Moses disqualified *himself* from judging it on account of the way the daughters of Zelafchad introduced their case. They told Moses:

> *Our father died in the desert, but he was not among those who conspired together against the Lord in the company of Korach, but died for his own sin (Nu.27:3).*

R. Babad suggests that Moses might have felt that, to proceed after having heard those words, might be construed as *shochad devarim*, 'verbal bribery' (See Tal. *Ket*. 105b), since certain sentiments or gestures, however innocuous, directed to a judge, may subconsciously incline him to show favour to a claimant. The girls' words – it might be alleged - might be construed as an attempt to convince Moses that their father never had any sympathy with Korach, and that the family had always been staunch supporters of the leadership of Moses and Aaron.

Moses always displayed scrupulous impartiality and could put his hand on his heart and affirm that he had never sought or derived any personal benefit from his position of leader. Hence, when faced with Korach's bid to supplant him and Aaron, and succeed to national and priestly leadership (see Nu.16:10), Moses entreated God to frustrate those self-seeking rebels. He reminds God that, in sharp contrast to Korach, he could state, with clear conscience, that he had not accepted even the meanest gift from any individual Israelite: 'Not one ass have I taken from them, neither have I hurt one of them' (v. 15).

Significantly, at a later period, the prophet Samuel, towards the end of his ministry, clearly felt the need to rebut a similar false allegation, from some disgruntled quarters, that he had exploited his position for personal gain. Whereas Moses made his declaration of innocence to God alone, Samuel's was a public and more expansive rebuttal and declaration of innocence, though the phraseology was clearly influenced by that of Moses:

> ''I have been your leader from my youth to this day. Here I am! Testify against me, in the presence of the Lord and in the presence of His anointed one: Whose ox have I taken, or whose ass have I taken? Whom have I defrauded or whom have I robbed? From whom have I taken a bribe to look the other way, and I shall return it to you?'' And the people responded, ''You have not defrauded us and you have not robbed us, nor have you taken from anyone'' (I Sam. 12: 2-3).

Rashi's elucidation of the phrase, 'whose ass have I taken' has a contemporary resonance:

> When I was asked to travel to a place to conduct mediation between parties I used my own ass, even though it would have been the norm to have used theirs.

We, in the UK, are reminded of the long-running "cash-for-questions" political scandal of the 1990s; of the Parliamentary scandal of 2009, with its disclosure of widespread misuse of the allowances and expenses permitted to MP's; the row over the government's award of

contracts for PPE equipment, running into hundreds of millions of pounds, without open competition and the publishing of details in a timely way; and, most recently, over the source of payment for the refurbishing of the Prime Minister's Downing Street flat. Israelis will, no doubt, also be able to point to the 'occasional' political or financial scandal!

As barrister Jolyon Maugham observed, in the case of government contracts, "When government eschews transparency, it evades accountability.''

That was the crux of the rebellion of Korach. His folly was to challenge someone as humble, honourable, principled, and righteous, as Moses. What do they say about 'choosing one's battles wisely'? From so many angles Korach was woefully unsuited to leadership, and unequal to battling with a man like Moses who was so sensitive to any potential charge of partiality that he stood down from judging the plea of the daughters of Zelafchad!

Shabbat shalom,

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