Insights from the Meshech Chochma
רב מאיר שמחה הכהן מדווינסק זצ"ל
פָּרָשַׁת וַיֵּרָא תשפ"ז

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כִּי יְדַעְתִּיו לְמַעַן אֲשֶׁר יְצַוֶּה אֶת בָּנָיו וְאֶת בֵּיתוֹ אַחֲרָיו וְשָׁמְרוּ דֶּרֶךְ ה' לַעֲשׂוֹת **צְדָקָה וּמִשְׁפָּט**... (פרק יח' יט)
(Hashem says,) *"For I have loved (Avraham), because he commands his children and his household after him that they keep the way of Hashem, doing **charity and justice**..."*

Rav Meir Simcha's piece on this pasuk, which is one of several, seems to have been inspired by a discrepancy with a pasuk in שמואל ב ח' טו, וַיִּמְלֹךְ דָּוִד עַל כָּל יִשְׂרָאֵל וַיְהִי דָּוִד עֹשֶׂה **מִשְׁפָּט וּצְדָקָה** לְכָל עַמּוֹ/*Dovid reigned over all Israel; Dovid administered **justice and charity** to his entire people.* Why in our pasuk is it written צְדָקָה וּמִשְׁפָּט whereas with regards to Dovid HaMelech, it is reversed i.e., מִשְׁפָּט וּצְדָקָה?

To answer this, Rav Meir Simcha begins with the Biblical source for the seven Noahide laws which is based on an exegesis in סנהדרין נו: of a pasuk earlier in בראשית, **וַיְצַו** ה' אֱלֹקִים עַל הָאָדָם לֵאמֹר מִכֹּל עֵץ הַגָּן אָכֹל תֹּאכֵל.../*And the Hashem G-d **commanded** the man, saying: Of every tree of the garden, you may freely eat***...** R' Yochanan interpreted וַיְצַו as referring to "establishing דִּינִין-codes of civil law. As it states (in our pasuk), כִּי יְדַעְתִּיו לְמַעַן אֲשֶׁר **יְצַוֶּה** אֶת בָּנָיו... לַעֲשׂוֹת צְדָקָה וּמִשְׁפָּט." Continues the Gemara: "Were the descendants of Noach commanded to establish courts of judgment? But is it not taught in a Baraisa: 'Klal Yisrael was commanded to observe ten mitzvot when they were in *Marah*: Seven that the Noahites accepted upon themselves, to which were added three more: דִּינִין, שַׁבָּת וְכִיבּוּד אָב וָאֵם.' This would imply that דִּינִין *were not* part of the original Noahide laws?" Rava answers that what was added in *Marah* were קְנָסוֹת i.e., penalties. These laws were added to the Noahide system of civil law that they had already accepted. Rav Meir Simcha directs us to Rashi there who explains that Noahites are obligated to observe a system of civil law based on returning the exact amount owed to its rightful owner or arrange a suitable compromise. This is derived from (our Pasuk) where it was said of Avraham that he would command his children to conduct מִשְׁפָּט-צְדָקָה וּמִשְׁפָּט referring to exact judgements and צְדָקָה as פְּשָׁרָה, compromise decisions. Thus, וַיְצַו told to Adam refers to such a system. קְנָסוֹת-to penalize a person to pay more than the usual compensation, was not commanded to them. At *Marah*, the *Jews* were given additional דִּינִין-the penalty laws. And so, צְדָקָה וּמִשְׁפָּט is פְּשָׁרָה וְדִין.

Continues Rav Meir Simcha: There is a dispute in סנהדרין ו: regarding applying בִּיצּוּעַ, mediation, to settle disputes. "R' Eliezer (emphatically) says: 'It is prohibited to mediate a dispute; and anyone who mediates a dispute is a sinner; and anyone who blesses the mediator is cursing Hashem. Rather, the judge must assure that the true judgment will prevail at all costs and that it should, metaphorically, יְקוֹב הַדִּין אֶת הָהָר-pierce the mountain.' R' Yehoshua ben Korcḥa says, 'It is a *mitzva* to mediate a dispute... And similarly, with regards to Dovid, it says עֹשֶׂה מִשְׁפָּט וּצְדָקָה. How are we to understand these words? Is it not true that

wherever there is strict justice, there is no charity, and wherever there is charity, there is no strict justice? Rather, which justice *has within it* charity? You must say, 'This is בִּיצּועַ, mediation.'" According to R' Eliezer, why was Avraham praised for commanding his children to do מִשְׁפָּט וּצְדָקָה **פְּשָׁרָה** וְדִין-? Rav Meir Simcha answers that R' Eliezer's position applies only to Jewish courts. There he believes יִקּוֹב הַדִּין אֶת הָהָר-unless the Jewish court, for whatever reason, cannot reach a conclusion or, it is a דִּין מְרוּמֶּה, the judge deduces from the witnesses' words that their testimony is untrue-in these situations, בִּיצּועַ/פְּשָׁרָה is permitted. A non-Jewish court should judge based on moral, ethical and logical precepts and if they do so, as Rav Meir Simcha puts it, מוּתָּר **וּמִצְוָה** לְפַשֵּׁר אֲפִלּוּ אִם יוֹדֵעַ הַדִּין שֶׁלָּהֶם. Returning to his original "issue"-the reversed מִשְׁפָּט וּצְדָקָה by Dovid HaMelech, Rav Meir Simcha explains that Avraham at this point, before Matan Torah, was halachically a Noahide. His civil law should emphasize צְדָקָה-בִּיצּועַ/פְּשָׁרָה first and then מִשְׁפָּט. And that is what he was lauded for. In שמואל ב ח' טו, the pasuk is describing Dovid HaMelech's court, a Jewish Court-where בִּיצּועַ/פְּשָׁרָה is a fallback position for exceptional circumstances only-that is why וַיְהִי דָוִד עֹשֶׂה מִשְׁפָּט וּצְדָקָה i.e., first מִשְׁפָּט and צְדָקָה/בִּיצּועַ/פְּשָׁרָה only when יִקּוֹב הַדִּין אֶת הָהָר is not possible.

Next, he takes us to Ramban, who later, in פרק לד' יג, says: "In the Talmud Yerushalmi they discuss the law of דִּינִין: '…With regards to Jewish courts, the rule is that from any case about which שֶׁאַתָּה שָׁלֵם מִמֶּנּוּ i.e., you clearly know what the ruling should be, you are 'not permitted to flee,' but שֶׁאִי אַתָּה שָׁלֵם מִמֶּנּוּ i.e., if you have, for whatever reason, not reached a conclusion regarding the litigants' claims, 'you are permitted to flee.' With regards to the Torah law pertaining to non-Jewish courts, even when אַתָּה שָׁלֵם מִמֶּנּוּ, 'you are permitted to flee from it.'" Rav Meir Simcha tells us that we do not have this Yerushalmi in our texts, and although Ramban may understand it differently, he feels that this "phantom" Yerushalmi is agreeing with *him* i.e., in Jewish courts, only when אִי אַתָּה שָׁלֵם מִמֶּנּוּ is בִּיצּועַ/פְּשָׁרָה permitted. In Noahide courts, even if אַתָּה שָׁלֵם מִמֶּנּוּ, בִּיצּועַ/פְּשָׁרָה is permitted!

Finally, Rav Meir Simcha refers us to סנהדרין נז:, which discusses a woman's role in the Noahide judicial process. Rav Hamnuna raises an objection to the statement that a Noahide cannot be judged by a woman: "But isn't it written with regard to Avraham, who at that point had the status of a Noahide, לְמַעַן אֲשֶׁר יְצַוֶּה אֶת בָּנָיו וְאֶת בֵּיתוֹ אַחֲרָיו... לַעֲשׂוֹת צְדָקָה וּמִשְׁפָּט-the word בֵּיתוֹ is referring to women i.e., that they were also commanded to execute צְדָקָה וּמִשְׁפָּט?" R' Hamnuna answers that בָּנָיו לְדִין, בֵּיתוֹ לִצְדָקָה. According to Rashi's earlier explanation of צְדָקָה as פְּשָׁרָה this is very מַתְאִים, for although a woman cannot adjudicate in a Noahide court i.e., לְדִין **בָּנָיו**, Rav Meir Simcha tells us, she may mediate a compromise settlement, לִצְדָקָה **בֵּיתוֹ**! צְדָקָה וּמִשְׁפָּט-פְּשָׁרָה וְדִין.

לזכר נשמת אבי מורי ר' ישראל מנחם בן ר' שלום ז"ל
לזכר נשמת אמי מורתי רחל בת ר' אלחנן אביגדור ע"ה
לזכר נשמת חמי מורי ר' יעקב נתן בן ר' ישראל שלמה ז"ל
ולזכר נשמת הרב יהודה בן ר' אברהם שמחה (קופרמן) זצ"ל
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