



Parashat Devarim

A Generation's Judge

by Cynthia Hoffman on Friday July 24, 2009

3 Av 5769

Deuteronomy 1:1 - 3:22

Devarim is Moshe's book; quite explicitly it's his chance to tell the story of wandering the desert for 40 years to the next generation, the generation that didn't stand at Sinai for Revelation, the generation that was never enslaved in Egypt. On the one hand, 40 years, when we know that's how long the Children of Israel wander in the desert, means we're nearing the end of Moshe's life. There is a school of thought that states that what we hear from people toward the end of their lives we hear differently than words we hear from other people. This is why deathbed confessions, or *vidui*, are taken so seriously. But 40 years is something else. 40 years is a generation. And since the generation that will enter the Promised Land, the generation to which Moshe is speaking, is not the generation of whom God says "Not one of the men [counted in the census], this evil generation, shall see the good land that I swore to give to your fathers –" we must factor in the differences from one generation to the next: What does a generation mean in terms of change and growth amongst people?

In addition, this parsha always falls on the Shabbat immediately preceding Tisha B'Av and thus almost everyone who writes about this portion, tends to write about why it's set in that place, and about its relationship to Tisha B'av.

Other people look at this portion and start picking at the details: At *Devarim* 1:9, Moshe states "Thereupon I said to you, 'I cannot bear the burden of you by myself.'" And then Moshe continues to outline a plan for tribal governance that wasn't developed by Moshe, but rather by Yitro, Moshe's father-in-law (*Shemot* 18). At *Devarim* 1:37, Moshe states "Because of you the Eternal was incensed with me too, saying You shall not enter [the Promised Land] either." But wasn't the incident that cost Moshe entrance to the Promised Land the moment when he ignored God's instructions and hit the rock at *Meribah* (Numbers 20) instead of speaking to it?

What interests me most about this portion aren't the discrepancies between Moshe's stories and the stories we've read for the past six months; what interests me most is the position the *parsha* appears to take on the issue of rendering judgment, and the ways in which distance from certain events permits clearer judgment of the events themselves. Or, to connect this to



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the opening of my *drash*, what does it mean for the next generation to hear about the previous one? How does the current generation judge the generation that begat it?

According to Maimonides (*Hilchot Sanhedrin 2*), “Judges must exhibit seven qualities: they must be wise, discerning, and experienced; they must be capable, fear God, be trustworthy, and spurn ill-gotten gain.”

At *Devarim 1:16-17*: “I charged your magistrates at that time as follows, ‘Hear out your fellow Israelites, and decide justly between anyone and a fellow Israelite or a stranger. You shall not be partial in judgment; hear out low and high alike. Fear no one, for judgment is God’s. And any matter that is too difficult for you, you shall bring to me and I shall hear it.’ ”

No favorites here; impartiality is the word of the day.

What does any of this have to do with a Torah Query? As a resident of the late great state of California, I’m having a hard time with the justice system these days. I’m not going to get on a hobby horse here; gay marriage has never interested me personally (my partner and I are doing just fine without the state’s intervention in our lives, thank you kindly, and now you know which generation I’m from), but watching the justice system at work here where I live (in both senses of the word), has been pretty damned difficult this past year. If, as it says here in *Devarim* and earlier in *Shmot*, we’re supposed to judge impartially, then the most recent decision of the California Supreme Court makes legal sense (the way the California Constitution is currently set up, there was no other decision possible, without overturning the Constitution), even if it otherwise makes no sense at all to create two separate classes of people in the state: those who beat the clock and those who, due to whatever circumstances, did not. But what about how the next generation is going to see the one that came before it? I might claim that overturning those clauses in the State Constitution would be the most impartial rendering the Court could have decided, but clearly this Supreme Court wasn’t going to go there.

My father, who I’m blessed to say is still alive, once told me the story about how he asked my youngest sister (she is close to a full generation younger than I) what she thought about gay marriage. Her response was to shrug and say, “I don’t get what the problem is with it. Love is love.” Most people in my father’s generation have a pretty serious problem with it; my generation is probably the most conflicted. But the point here isn’t who knows best and who’s coolest, it’s that my sister’s generation will be making laws and rendering judgments long after our father is gone and for her, and most of her generation, marriage isn’t about gender, it’s about love. In other words, eventually the tides of change are with us.

But what do we do in the meanwhile about finding a judiciary that’s impartial? Maybe, like Moshe, we won’t make it to the Promised Land ourselves, but we will do the work that sets the ground for the next generation to do it. Maybe, it’s less about the judiciary than it is about us.



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My father almost certainly won't live to see gay marriage in his lifetime; it's debatable whether my generation will or not. But my sister's generation will live to see it in their lifetimes. And they won't have to wander 40 years in the desert beforehand.



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