

PARASHAT PINCHAS
Were the Daughters of Tzelofchad Early Jewish Feminists
By Rav Elchanan Samet

A.

The feminist movement in the Western world has undergone many changes during the 20th century, and even today there are several different feminine voices. Nonetheless, it would appear that there is a common idea that unites all the different voices within the movement - the demand for non-discrimination against women in our society, neither in law nor in the actual social circumstances.

Is it legitimate to view the struggle of the five daughters of Tzelofchad to inherit their father as an example of an ancient feminine struggle for equality? Can the feminist movement, in its search for roots within the Biblical world, adopt the characters of these five women and view them as harbingers of the feminine demand for equality and non-discrimination?

At first glance, the answer appears to be positive. In a world where the laws of inheritance allow only men to inherit, these five women appear and demand equal rights with men. Can there be a greater example for the demand for women's equality? Moshe stands before their revolutionary demand without an answer and brings their case before God. God, before whom all are equal, men and women alike, answers. "The daughters of Tzelofchad speak right; you shall give them a possession of inheritance among their father's brothers..." (pasuk 7).

On the other hand, conservative opponents of feminism could argue, correctly, that the daughters of Tzelofchad raise their demand only because their father does not have male children. As they say explicitly, "Our father...and had no sons...for he had no son...give us a portion" (pesukim 3-4).

In God's answer as well, he does not equate the rights of women to inherit with that of men but only gives them a portion in a case like that of Tzelofchad where there are no sons. God's answer to Moshe is: "If a man shall die without a son, you shall pass his inheritance to his daughter" (pasuk 8). So what sort of equality is this?

B.

We have to first examine the argument of the daughters of Tzelofchad. At the outset, in pasuk 3, they explain the background from which their demand arises. "Our father died in the desert and he was not in the congregation which gathered against God in the congregation of Korach, for he died in his sin, and he had no sons."

The important part of this background information is the statement that "our father died in his sin and he had no sons." Why do the daughters mention the sin of their father that was the cause of his death?

The Talmud in Bava Batra 117b derives from this that "the complainers in the congregation of Korach did not receive a portion in the land."

The question then is: What was the sin of Tzelofchad? If he did not die in one of the plagues that resulted from various sins of the people, he undoubtedly died in the general decree that followed the sin of the spies, as all of those who left Egypt died.

The Gemara (Shabbat 96b) quotes a disagreement between Rabbi Akiva and Rabbi Yehuda ben Beteira.

What was the sin of Tzelofchad? Rabbi Akiva said Tzelofchad was the woodcutter. Rabbi Yehuda ben Beteira said that he was from the ma'apilim (those who attempted to go to Israel after the Sin of the Spies without permission).

Why did they attempt to define a specific sin for Tzelofchad and not merely allow him to die as all those of that generation died, as a result of the sin of the spies? This is derived from the language of the daughters, "for he died in HIS sin." The implication is that he died as a result of a sin specific to himself. The Ramban, who declines to enumerate a specific sin for Tzelofchad, explains that the sentence "for he died" is a shortened version. The full version would read: "for he died in his sin in that he did not enter the land of Israel."

No specific sin is being mentioned here but rather an explanation, that just like all members of his generation, he, too, did not merit in his sins to enter the land of Israel. This leads to the explanation of Rav Yehuda Halevi, as quoted by his friend and contemporary, the Ibn Ezra.

"For he died in his sin" - Rav Yehuda HaLevi said: "He died in his sin is directly connected to "and he had no sons." Just as one would say today "because of his sins some calamity happened to so and so."

This explanation has a number of advantages:

1) It is not respectful for his daughters to say that Tzelofchad died for some specific sin if there is no need to enumerate what that was. It would have been sufficient for them to simply indicate he did not belong to the congregation of Korach. According to Rabbi Yehuda HaLevi, the verse does not refer to any sin of Tzelofchad. It is merely the common expression whereby any calamity is explained because of the sins of man.

2) One doesn't need to add words to the sentence as the Ramban does.

3) The trope of the verse, where a stop (etnachta) is found after the words "The congregation of Korach," would appear to support this explanation.

The explanation of Rabbi Yehuda HaLevi returns us once again to the question whether the daughters of Tzelofchad should be considered feminists. What sort of feminists would say about their father that because of his sins he had no sons but only daughters?!

3.

After the daughters of Tzelofchad explain the background to their request, they come to the main point. "Why should the name of our father be eliminated from his family because he had no son. Give us a portion within the brothers of our father" (pasuk 4).

The practical part of their demand: Give us a portion - is understood. But what is the meaning of the preceding explanation of their demand, with a rhetorical question, "Why should the name of our father be eliminated from within his family?" Unfortunately, these words are not explained by the ancient commentators.

The name of a man is a central concept in the world of Tanakh. There are a number of closely related explanations for this word but the most important one for our purposes is: that which continues a man's existence within the human context after his death. Man's physical existence ceases with his death but his "shem," his name, his metaphorical essence, continues to exist within our world in a certain sense. A man has an existential need to anchor his existence within eternity. A man who leaves the world without any continuity, without having left a mark on anything that stays after him, suffers a grievous loss. His name and memory disappear and he is cut off all eternity. The value of his short life is negated and he is like the dust blowing in the wind.

From earliest times, this necessity has concerned man. Ancient burial customs are connected to this need. Many other things that men do in their lives are of no other purpose than to perpetuate his name after his death. One might claim that the majority of human creations, both material and spiritual, derive from the need to deal with the feeling of temporality in man's life and to ensure the continuation of his "name" after he passes away. Many cultures have suggested solutions and the parasha of the Tower of Bavel does in fact deal with one of those solutions.

How does the Israelite man in Tanakh perpetuate his name? There are two ways that are necessarily combined - by having children and by passing over to his children his ancestral portion in land. Having children as a means of continuity is understood to contemporary man as well. But having one's family inhabit one's ancestral portion requires some explanation.

The land that a Jew inherits in the biblical era, that he inherits from his fathers and forefathers, was not understood by him merely as a material possession nor as a means of production. Having one's children live in the same portion while continuing to work the land was understood as a means of continuing the living connection of fathers to

children from generation to generation. The familial ancestral portion serves as the glue between the generations which pass over the land, as Kohelet said, "A generation comes and a generation goes, but the land always remains."

We must remember that the land was *nachalat Hashem*, the portion of God that was given to the forefathers in a covenant, and was conquered and divided at the time when God fulfilled His covenant with this very generation. Israel as a people is also called "God's portion." The Torah intends to create a permanent and eternal connection between the man, Israel, and the land of Israel.

When a man settles his ancestral portion, builds on it his family, and leaves it to his children after him, he succeeds in establishing "his name forever." The individual passes away but leaves a permanent mark for himself and his forefathers through his children and children's children, who will also inherit the same land. There is no greater evil in the life of such a man than if, when he passes away, he has no continuity and his name is lost. This evil can occur to a man in one of two ways - either by his being separated from his ancestral portion in one way or another, or by his death without children.

Two mitzvot are intended to prevent this evil. The mitzva of *yovel* and the laws dealing with the redemption of land sold for economic reasons are designed to ensure that the land should return to the family of the man whose portion it was. The mitzva of *yibum* is designed to provide children for one who has no children, so that "his name not be erased from Israel."

There is indeed a connection between these two mitzvot. The halakha states that a brother who performs *yibum* with the wife of his deceased brother, also inherits the portion in the land. This connection lies at the root of the story of Ruth and Boaz. When Boaz comes to redeem the field of Elimelech and his children who are his relatives, he states, (Ruth 4: 9-10): "You are my witnesses that I have acquired all that belongs to Machlon and Chilyon from the hands of Naomi. And also, Ruth, the Moabite, the wife of Machlon, I have acquired as a wife in order to establish the name of the deceased on his portion, so that the name of the deceased not be cut off from within his brothers and from the gate of his locale. You are my witness today."

These words of Boaz are the equivalent of the words of the daughters of Tzelofchad. Why should the name of Tzelofchad be eliminated ("gara") from within his family? The basic meaning of the root G.R.A. in Tanakh means "cut off," detached. Therefore, the daughters of Tzelofchad can say, "Why should the name of our father be cut off from within his brothers?" Why is the name cut off? Because his portion in the land is not being given to his descendants but to other relatives who are not descendants.

Tragic circumstances, whereby a man's name is cut off, could indeed happen in the ancient world. If a man died without children and for one reason or another his wife did not perform *yibum*, then, indeed, his portion would be passed on to distant relatives and

direct continuation of his line would be ended. Is this the case of Tzelofchad, who, in fact, has five daughters? That is exactly the argument of Tzelofchad's daughters. Our father DID leave descendants - five daughters - and those daughters are capable of continuing the familial continuity generation after generation by marrying and having children and grandchildren, all of whom will be direct descendants of Tzelofchad. They will not be without a portion. The husbands of the daughters of Tzelofchad will be the owners of the land and they will pass it on to their children.

But this will not continue "the name" of Tzelofchad because his portion in the land of God will not pass on to those direct descendants but will be given to other relatives, since the laws of inheritance recognize only male inheritors. Therefore, they ask: why should the name of our father be eliminated, be cut off, from within his family? Does not Torah strive to find a way to maintain the name of a man after his death, and should not that necessity take precedence over the laws of inheritance?

The sages present this argument in a dramatic legal dialogue (Bava Batra 119b). Benot Tzelofchad were wise. They spoke to the hour. That is what Shmuel bar Rav Yitzchak said: This teaches us that Moshe was teaching the parasha of yibum, as it is written, Devarim 25:7, "the brothers sit together." They said to him: if we are considered as a son (for the purposes of yibum), give us the portion of the son. And if not, then our mothers should perform yibum. Immediately, "Moshe brought their case before God."

4.

Now we can return to the question that we presented at the beginning of the shiur. Should we see the struggle of the five daughters of Tzelofchad to inherit their father as an example of an ancient feminine struggle? Now that we have uncovered their motivation, as expressed by the question "Why should the name of our father be eliminated?" - it is clear that the answer is negative. They were not motivated by their own rights, and their own welfare, nor was equality of inheritance rights for women what lay at the root of their demands, but something else entirely - the concern for the name, the memory, the continuity of their father, which will continue to exist through his daughters and grandchildren who will live on the land which he received from God. These five women are not trying to bring about a revolution, not even a small one. Their arguments arise deeply from within the conceptual world of the Tanakh concerning the establishment of a man's name over his land, and they are arguing for the extension of this biblical principle and its precedence over the general laws of inheritance. In fact, their whole argument - the basic right of a man to have his name continue after his death - is deeply rooted in a patriarchal social structure. Normally, a woman leaves her father's house and his estate and joins her husband's house and his estate. Her children will be called by the name of their father and will inherit his portion and thereby establish his name for one generations. What about the woman? In several instances, the halakha states: "A man's wife is like his person" (ishto ke-gufo). This is what applies here. Her joining her husband's family makes her an integral part of that family. Her continuity is established by the settling of her children on her husband's land.

The daughters of Tzelofchad do not challenge this social structure. On the contrary, they agree with it totally. The Talmud in Bava Batra 119b makes it clear that had there been a son, they would not have argued for their own inheritance, because the need of their father for the continuity of his name would have been full satisfied.

Only in the extraordinary case of Tzelofchad who had no sons would his daughters fulfill a dual role, by joining their husbands' families while maintaining a concurrent independent status, since they also serve as inheritors for their father. Their children will inherit a double portion, continuing the name both of their maternal grandfather and of their paternal grandfather.

5.

In several of the stories of Tanakh which revolve around the need to establish a "name," we find that women are at the front of the battle. We can mention several examples. Tamar struggled to fulfill the yibum obligation in the family of Yehuda. Ruth brought about the redemption of the lands of Machlon, which will serve to maintain Machlon's name. The woman of Tekoah who comes to complain before David is also an example, even though the story she presents is, in fact, fictional. "I am a widow and my husband has died. And his servant has two sons and they have fought in the field and no one could save them and one struck the other and he died. One struck the other and killed him. And all the family rose on me and said: give us he who struck his brother that we may kill him, in return for the soul of his brother whom he killed. And we will destroy his inheritor. And they will extinguish my ember which has left to me so that no name will remain for my husband nor a remnant on the face of the earth" (Samuel II 13:5-7).

The daughters of Tzelofchad join this distinguished gallery, struggling for the rights of the dead man in their family to have his name be established over his portion. What is special in this story as opposed to all the previous ones I mentioned, is that here we are dealing with single daughters fighting for their fathers' name. However, there is no real difference between them and Tamar and Ruth and the other women who struggled to establish the name of men in their families.

F.

Indeed, reading the story within the biblical context, eliminates any feminine hint. On the contrary, it shows the daughters of Tzelofchad completely accepting the laws of the patriarchal society in which they live. They are not fighting for their rights as women but for the rights of their father. Nonetheless, at the root of their argument, and in its acceptance by God, there does lie a basic principle connected to the inherent equality of the sexes. The daughters of Tzelofchad point out an injustice, that because of the laws of inheritance whereby only males inherit, their father's name will be eliminated from within his family. They argue that the principle of preserving a man's name should take precedence over the laws of inheritance. We can ask why? We have already pointed out that tragic circumstances can arise whereby a man's name will be cut off, if he dies without any children and his wife cannot perform yibum. Here too, the law should be paramount, since the daughters cannot inherit, and as far as the possibility of

establishing this dead man's name over his portion it is as though they do not exist. Tzelofchad will be one of those tragic cases. Why do they maintain, and why does God agree with them, that the laws of inheritance should be changed in this case. The answer is that on a basic human level, a man who has children, whether male or female, understands his circumstances (assuming he possesses common sense) as one who has in fact achieved continuity. This continuity is a fact stronger than any social order that gives precedence to one sex or the other. The contradiction between this basic human fact and the laws of inheritance creates a situation difficult to accept. A man raises a family, has children, feels that he has continued his existence and his name for the next generation, but will lose that because of a social arrangement which gives inheritance only to his sons. Those social arrangements, therefore, retreat in this case, by God's command, before the basic existential feeling of a man that, in terms of his continuity in this world, there is no significance to the difference between sons and daughters.

On the human existential level, therefore, there is an equality of value between men and women. Not always is this equality evident, because social arrangements, and the force of daily life which is based on those social arrangements, obscure it. The statement of the daughters of Tzelofchad sharpened the contradiction between the arrangements of the patriarchal society and that which is prior to any social arrangement - the basic human equality of man as created by God. In this case, the precedence of that equality over social arrangement becomes clear.

In conclusion, we should examine the statement of the Sifri on our parasha as explained by the Netziv in his commentary to the Sifri. First the words of the Sifri:

"The daughters of Tzelofchad came forward." When the daughters of Tzelofchad heard that the land was being divided among the males and not among the females, they all got together to confer. They said: The mercy of man is not like the mercy of God. The mercy of man feels more for males than for females. But He who has created the world is not that way. His mercy is for both males and females. His mercy is for all as is written: (Tehillim 145:9) "God is good to all and His mercy is for all His creations."

The Netziv comments:

It would appear that their logic was faulty because they also knew that women do not inherit wherever there is a male descendant. This does not represent a lack of mercy because the daughters will marry men and share in their inheritance. But the real explanation is as follows: There is a great sorrow for a man to see his inheritance given to strangers and his name be eliminated from the inheritance. When there is a son, the daughters are not distressed that they get it all; quite the contrary, the son represents the main portion of the father's house. But if there is no son and strangers eat the portion, it is a very great sorrow and this is the mercy (to which they referred). This is the meaning of their statement, "Why should the name of our father be eliminated?" They mention his name and his

memory, for the sorrow involved that his name should not be continued over his estate.

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