

Yeshivat Har Etzion Israel Koschitzky Virtual Beit Midrash  
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PARASHAT HASHAVUA

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PARASHAT DEVARIM

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THE TORAH OF MAN<sup>1</sup>

By Rav Yoel Bin-Nun

*Sefer Devarim* is the Torah of man included within the Torah of God. It is the realization of the Covenant between the Parts, with the boundaries of the Land including both sides of the Jordan. The Torah and the Land are linked through the opening formula which gives the book its name, "*Eleh ha-devarim*," "These are the words." *Devarim* begins (1:1): "These are the words which Moshe spoke to all of Israel (*kol Yisrael*) on the other side of the Jordan," and Moshe *Rabbenu* goes on to describe the appointment of judges and the journey from Chorev, also known as Sinai. This recalls God's declaration in *Shemot* (19:6) at Sinai, prior to the Revelation of the Torah: "And you shall be for Me a kingdom of *kohanim* and a holy nation; these are the words which you shall speak to *Bnei Yisrael*."

In Chapter 5 of *Devarim*, Moshe describes the Ten Commandments and the Revelation at Sinai, putting them at the heart of the book. The subsequent laws, statutes and judgments are set forth as derivations of God's Commandments, following the introductory speech (Chapters 1-4).

In *Sefer Devarim*, *Am Yisrael* is referred to as a "great nation" (4:7-8) and a "holy people" (14:2, 21), but the expression "kingdom of *kohanim*" does not appear here, nor is there attention paid to the sacrificial service, ritual purity, or the laws of the Temple and the *kodashim*,<sup>2</sup> other than the pilgrimage to "the place which God shall choose to cause His Name to dwell there" (12:11).

*Am Yisrael*, in *Sefer Devarim*, is a warrior nation. The verse notes that the book opens after the defeats of Sichon and Og (1:4), and in anticipation of the great battle for the land that is "on the other side of the Jordan" (*Devarim* 3:20), to the west. The laws pertaining to sanctity and purity are beyond the horizon of the period of conflict that awaits them: "For you have not yet come to the rest and to the inheritance which the Lord your God gives you" (12:9).

In the verses introducing different sections of *Sefer Devarim*, the nation is referred to as "all of Israel" (*kol Yisrael*) (*Devarim* 1:1, 5:1, 29:1, 31:1), and likewise at the end (32:45; 34:12); the *sefer*, in fact, concludes with this expression.

To my mind, the expression "*kol Yisrael*" is meant in exactly the same sense as Rav Kook's references to "*Klal Yisrael*," connoting a powerful sense of common concern and responsibility that unites the entire nation – a feeling and phenomenon that is familiar to us today, especially in times of war.

In light of this, we can understand Moshe's attitude towards the Land in *Sefer Devarim*. Moshe does not come across as someone who is standing outside of the Land; rather, he stands near its center, having merited to initiate taking possession of it by conquering its eastern half. Moshe enters the land at Wadi Arnon (2:24): "Rise up, take your journey, and pass over Wadi Arnon; behold, I have given into your hand Sichon the Emori, king of Cheshbon, and his land..."

Even the term "on the other side of the Jordan" (*ever ha-Yarden*), as used by Moshe, refers equally to both sides. Sometimes it refers to the eastern bank, as in the introductory verses; at other times, it refers to the western bank:

Until God gives rest to your brethren, as well as to you, and until they also possess the land which the Lord your God has given them on the other [western] side of the Jordan. (3:20)

And it shall come to pass, when the Lord your God has brought you in to the land into which you go, to possess it, that you shall put the blessing upon Mount Gerizim and the curse upon Mount Eival. Are they not on the other [western] side of the Jordan... (11:29-30)

There are two sides of the Jordan, and both are part of the Land.

Attention should be paid to the fact that when Moshe is instructed to look out over the land which he will not continue to conquer, he is told explicitly to look "westward and northward and southward **and eastward**" (3:27) – in other words, also towards the land which he himself has already conquered, which is an organic part of the Land as a whole. Therefore, the renewed forging of the covenant between God and Israel, undertaken by Moshe in the plains of Moav, also takes place in the Land.

One further important and decisive proof in this regard: in *Sefer Bamidbar* (Chapter 32) Moshe is initially angry with the tribes of Gad and Reuven, who ask to settle outside of the land of Kena'an. He fears that they are trying to mislead all of Israel as the Spies did, dissuading them from crossing over and conquering the sacred land of Kena'an. The question of why the territories of Edom, Ammon and Moav are not conquered does not arise anywhere in *Sefer Bamidbar* as requiring any explanation.

In *Sefer Devarim*, in contrast (Chapters 2-3), the perspective is reversed: Moshe explains for the first time why he did not conquer the land of Edom or the lands of Moav and Ammon. The impression arising from the text here is that, in principle, all of the eastern side of the Jordan is in fact included within the boundaries of the Land which *Am Yisrael* is commanded and obligated to

<sup>1</sup> Based on my column on *Devarim* 1 for the 929: *Tanakh B'yachad* website, and a chapter of my book, *Pirkei Ha-Avot, Sefer Bereishit*, 68-71.

<sup>2</sup> See Ramban's introduction to his commentary on *Sefer Devarim*.

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conquer; however, some parts of it have been bequeathed by God to the other descendants of Avraham, and nothing can be taken from them.

According to this understanding, the settling of the two-and-a-half tribes on the eastern side of the Jordan – and especially that of Makhir and Yair ben Menasheh (*Devarim* 3:13-15) – is entirely proper and natural, as part of the commandment to conquer the land and take possession of it. Moreover, Moshe's brief summary of the episode involving Gad and Reuven compares the eastern side of the Jordan to the western side, viewing them as two parts of the Land that must be conquered (3:18-20):

And I commanded you at that time, saying: **"The Lord your God has given you this land** to possess it; pass over armed before your brethren, Bnei Yisrael, all who are fit for war... Until God gives rest to your brethren, as well as to you, and until they also possess **the land which the Lord your God has given them on the other side of the Jordan**, and then you shall return, every man to his possession which I have given you." (*Devarim* 3:18-20)

When Moshe pleads to be permitted to cross over the Jordan, he draws a distinction between "this land" and "the good land that is on the other side of the Jordan" (*Devarim* 3:25; 4:22), but he is not contrasting between *Eretz Yisrael* and outside *Eretz Yisrael*; rather, he is distinguishing between two parts of *Eretz Yisrael*.

Accordingly, Moshe's setting aside of the cities of refuge on the eastern side of the Jordan (4:41-49) is mentioned as the completion of the conquest and taking possession of the eastern side of the Jordan, "toward the sun rising."

Therefore, *Sefer Devarim* is not – as the conventional view maintains – a preparation for *Bnei Yisrael's* entry into the Land. Rather, it is wholly "in the Land." The expression "land of Kena'an" does not appear anywhere in Moshe's words in *Sefer Devarim*.<sup>3</sup>

In the details of the *mitzvot*, too, *Sefer Devarim* speaks to *Am Yisrael* as a nation dwelling in its land, divided by inheritance, with *mezuzot* and judges "in (all) your gates" (*Devarim* 6:9; 10:20; 16:18). Thus, *Sefer Devarim* is in fact the "Torah of *Eretz Yisrael*."

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<sup>3</sup> It appears only once in *Devarim* (32:49), in God's words to Moshe, and in the language of *Bamidbar* (27:12-14).

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**“These are the words” – from leadership through miracles to leadership through speech** (From *Mikraot, Parashat Yitro*, 124-127)

In God's first command to Moshe after *Bnei Yisrael* arrive at Mount Sinai, He describes and explains an all-encompassing and revolutionary shift in the way in which God leads the nation: from leadership through miracles (*nissim*, singular: *nes*) to leadership through speech.

Leadership through miracles is exemplified in God's revelation in Egypt, by a strong hand and an outstretched arm, with signs and wonders. The staff in Moshe's hand, along with the pillar of cloud and of fire that go before the nation, are the manifest expressions of this manner of leadership.

God's leadership through miracles is revealed in the plagues upon Egypt and their climax, the death of the firstborn. It appears also in the pillar of fire and of cloud at the splitting of the Reed Sea. The water, the manna and the pheasants are all fruits of His leadership through miracles, whose final manifestation is the victory over Amalek, “For the **hand** is upon God's throne [i.e., God swears by His Throne] that God will have war with Amalek from generation to generation.” The name that Moshe gives to the altar commemorating the victory is “*Ado-nai niss*” – a concise formulation of this form of divine leadership at the end of its manifestation.<sup>4</sup>

This is also the last place mentioning the staff in Moshe's hand (or anywhere else) in all of *Sefer Shemot*!<sup>5</sup>

Leadership through miracles (*nissim*) is fundamentally bound up with the concept of *nisayon* (test): God tests Israel, and they test Him. This is stated explicitly in the unit introducing the manna: “So that I may test them, whether they will follow My Torah or not” (*Shemot* 16:4). At Refidim, when water issues from the rock, we are told:

And he called the name of the place Massa U-meriva, because of the strife (*riv*) of *Bnei Yisrael* and their testing (*nassotam*) of God, saying, “Is God among us, or not?” (Ibid. 17:7)

There is a lack of confidence associated with leadership through miracles: when the people witness a miracle they are deeply impressed and respond enthusiastically, but when there is no water, no food and no miracle, they weep and complain. This up-and-down

<sup>4</sup> See the article by my late father and teacher, Dr. Yechiel bin-Nun, z”l, explaining this name and the episode as a whole, in *Eretz Ha-Moriah: Pirkei Mikra Ve-lashon* (Alon Shevut, 5766), 89-105.

<sup>5</sup> This opens the door to an understanding of the fundamental difference between striking the rock and speaking to it, as interpreted by *Chazal* and Rashi in the episode of Mei Meriva (*Bamidbar* 20:7-13). It also explains why striking the rock was appropriate and proper in Refidim, prior to Sinai, but wrong in Kadesh: Moshe was supposed to bring *Am Yisrael* back to the divine leadership through speech associated with Sinai, while instead he brought them back to the divine leadership through miracles associated with the Exodus. Proof of this is manifest in the brass serpent that is set upon a pole (*nes*) (*Bamidbar* 21:8-9).

ambivalence is symbolized in the progress of the war against Amalek (17:11):

And it came to pass, when Moshe held up his hand, that Israel prevailed, and when he let down his hand, Amalek prevailed.<sup>6</sup>

This is infantile behavior: when a baby sees its father and mother, it laughs and gurgles; when it sees them leaving, it starts to cry. Likewise, a nation in its infantile stages lives from moment to moment, its experience molded by miracles and tests. The principle of reward and punishment is presented in these terms with the sweetening of the water at Mara:

There he made for them a statute and an ordinance,<sup>7</sup> and there he tested them, and he said, “If you will diligently obey the Lord your God, and do that which is right in His sight, and give ear to His commandments, and keep all His statutes, I will put none of these diseases upon you, which I have brought upon Egypt, for I am God Who heals you.” (15:25)

It is God as Healer Who instructs Moshe as to how to sweeten the water by casting a tree into it; it is He Who supplies pheasant meat for the people to eat by night, and heavenly manna for sustenance each morning (16:8). It is He Who instructs Moshe to extract water from the rock by striking it with his staff. The command not to leave manna over until the next morning is part of the same test as the command to keep some aside for Shabbat and not to go out to gather on Shabbat. Anyone who leaves manna over until the next morning on a regular day will find it full of worms; on Shabbat, however, no new manna falls, and that which is kept over from the previous day “did not rot, nor were there worms in it” (16:24). This is more of God's leadership through miracles and tests: sin brings in its wake an immediate, biological, material result, while obeying the command of God, the Healer, brings a different result.

The principle of reward and punishment within the dimension of leadership by divine speech is completely different, and it is not dependent on miracles or tests. Obeying God brings sanctification of the nation as a “kingdom of *kohanim* and a holy nation” – a result that expresses a fixed, unconditional state. The obligation to obey and fulfill God's command on the level of “the words” is not based on the provision of potable water or food that does not rot so long as the congregation obeys God, the Healer. Rather, it is a fixed, eternal moral obligation, whether or not there is food to eat, and even if the food is rotten and the people are hungry.<sup>8</sup> This is the stage of spiritual maturity for the nation that comes out of Egypt, and it is the foundation of the commandments of the Torah given at Sinai. The mode of leadership

<sup>6</sup> See Rambam, *Guide of the Perplexed* III: 24.

<sup>7</sup> See Ramban's commentary on this verse.

<sup>8</sup> This demands a revisiting of the idea of reward and punishment in the Torah: do the “blessings and curses” take us back, to some degree, to the lower level of divine leadership, that of miracles and tests? Is it the result of man's weaknesses, expressed in the fleeing of *Bnei Yisrael* from divine fire, or a result of sin, starting with the Golden Calf? We hope to address these questions in a later *shiur*.

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involving miracles and tests is temporary; it is a stage in the nation's maturation. The mode of leadership involving speech is fixed and eternal.

The switch is recorded in the Torah (19:3-6):

And they journeyed from Refidim, and they came to the wilderness of Sinai... And God called to him out of the mountain, saying... **"You saw what I did to Egypt, and [how] I bore you on eagles' wings, and I brought you to Me. And now therefore, if you will obey My voice and keep My covenant, then you will be My own treasure (*segula*) from among all peoples, for all the earth is Mine. And you shall be for Me a kingdom of *kohanim* and a holy nation; these are the words which you shall speak to *Bnei Yisrael*."**

The expression, "what I **did** to Egypt" is a concise summary of God's leadership through miracles with a strong hand, the plagues in Egypt, and the journey to Sinai/ Chorev, the Mountain of God: "And I brought you to Me."

The expression "and now" represents a transition to a new situation: listening to (obeying) God involves observing the covenant, the covenant of Torah from Sinai, which is the fixed and eternal mode of God's leadership of the nation.

The condition and result are presented in parallel form in the above verses, such that the "treasure from among all peoples" is itself the "kingdom of *kohanim*" and "holy nation."

The term *segula* means "special," like a treasured jewel.<sup>9</sup> Rashi comments, "The sort of treasured vessels and precious stones that royalty put away and hide." Ibn Ezra writes, "Something that is honoured and desired, there being none other like it." Ramban, in the same vein, writes, "The king would not hand it over to anyone else," but also offers another interpretation, invoking cleaving: as a king cleaves to a special jewel. R. Yehuda Ha-Levi offers a similar metaphor in his *Sefer Ha-Kuzari*.<sup>10</sup>

The summary, "These are the words which you shall speak to *Bnei Yisrael*," leads directly to the Ten Commandments, which are introduced with the words (20:1), "And God spoke all these words, saying."

Indeed, *Sefer Devarim*, commencing with the formula, "These are the words which Moshe spoke to all of Israel" and setting down as its foundation the Revelation at Sinai and the Ten Commandments (Chapters 4-5), is wholly grounded in the mode of leadership through speech. We find, later on, that a true prophet is tested by the words which he says (18:18-22) rather than through any signs or wonders that he might perform. "A sign or wonder" can also be produced in a pagan reality, and if a pagan prophet arises and performs an idolatrous sign or wonder (13:2-3), then (v. 4)

You shall not pay heed to the words of that prophet, or to that dreamer of dreams, for the Lord your God is testing you, to know whether you love the Lord your God with all your heart and with all your soul.

The desire to go back to leadership through miracles and tests, to signs and wonders, may lead to idolatry, and the test that God will subject us to is expressed in the fact that the pagan prophet succeeds in producing "a sign or wonder;" we must not pay heed to him.

The Rambam offers the following formulation of the principle of faith in the Torah (*Laws of the Foundations of the Torah* 8:1):

*Bnei Yisrael* did not believe in Moshe because of the signs that he performed. For one who believes on the basis of signs has a deficiency in his heart, as a sign can be performed through magic or sorcery. All the signs that Moshe performed in the desert were done to serve a purpose, not to serve as proof of his prophecy. It was necessary to drown the Egyptians, so he split the sea and sank them in it. We needed food, so he brought down manna. We were thirsty, so he split the rock. Korach's congregation rebelled against him, so the earth swallowed them up. And so on with regard to all the signs. So what made [Israel] believe in him? The Revelation at Sinai, where we witnessed with our own eyes, not via a second-hand report; our own ears heard, not someone else's. Through the fire and the thunder and lightning, he entered the thick cloud, and the Voice spoke to him, and we heard, "Moshe, Moshe! Go and tell them..." and so on. Likewise the text states, "Face to face God spoke to you" (*Devarim* 5:4), and it is written, "It is not with our forefathers that God made this covenant" (*Devarim* 5:3). And how do we know that the Revelation at Sinai alone is proof of Moshe's prophecy, that it is true and has no shortcoming? For it is written, "Behold, I will come to you in a thick cloud, so that the people will hear Me speaking to you, and they will believe in you forever" (*Shemot* 19:9). This suggests that prior to the Revelation, they did not believe in him with a faith that would last forever, but rather with a faith that left place for doubts and questions.

<sup>9</sup> As in *Kohelet* 2:8: "the treasure of kings and of the provinces."

<sup>10</sup> *Ma'amar* I: 27 onwards.

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**Yitro's advice or Moshe's initiative? *Shemot* vs. *Devarim*** (From *Mikraot, Parashat Yitro*, 80-82)

Yitro's advice	Moshe's words
<p>"Now, listen to my voice, I will give you counsel, that God may be with you: Be yourself the link between the people and God, That you may bring the cases to God, And you shall teach them the ordinances and the teachings, And shall show them the way in which they must walk, and the work that they must do. Moreover you shall provide out of all of the people able men, <b>such as fear God, men of truth, hating unjust gain,</b> and place such over them to be <u>rulers of thousands and rulers of hundreds, rulers of fifties and rulers of tens</u>, and let them judge the people at all seasons. And it shall be that every great matter they shall bring to you, but every small matter they shall judge..."</p>	<p>"Take men who are wise and understanding and known among your tribes, and I will make them heads over you..." So I took the heads of your tribes, <b>wise men and known</b>, and made them heads over you, <u>rulers of thousands and rulers of hundreds, rulers of fifties, and rulers of tens</u>, with officers among your tribes. And I charged your judges at that time, saying, "Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Do not respect persons in judgment, but hear the small as well as the great; do not be afraid of the face of any man, for judgment belongs to God, and the cause that is too hard for you – bring it to me, and I will hear it."</p>

The obvious question is, why does Moshe make no mention of Yitro in his speech,<sup>11</sup> giving the impression that the entire initiative was his own? Furthermore, we see that in Yitro's suggestion there is no command to the judges, and he emphasizes the qualities that a worthy judge should possess. Moshe makes only brief mention of the qualities that the judges should possess,<sup>12</sup> and his main emphasis is on the command to them.

These discrepancies hint to two different views of who and what a judge is. According to Yitro's view, it is important to choose the most worthy judges – "able men, such as fear God, men of truth, hating unjust gain;" they will know on their own that they must judge honestly and without showing favour to any side, treating all equally - great and small, native-born and stranger - to hear every suit without discrimination and not to fear the pressure which people of power might bring to bear.

People who "fear God" know by themselves, in their own hearts and minds, that "judgment belongs to God"; they do not require any command making this clear to them. In any case, Yitro has no source of authority for commanding the judges. However, Yitro understands the

great message of God's prophecy to Moshe: "Be yourself the link between the people and God... And you shall teach them the ordinances and the teachings," and therefore we must conclude that Moshe accepted the advice of Yitro, his father-in-law, and implemented it, in accordance with what God commands him for the nation and the judges (in *Parashat Mishpatim*):

You shall not raise a false report... nor shall you favour a poor man in his cause... Keep far from a false matter... and you shall take no bribe... (*Shemot* 23:1-9)

From God's judgments and from the commands to the judges, Moshe arrives at his own view – which is not the same as that of Yitro. Even the most wondrously capable and worthy men (who are not always easy to find) need a clear command that flows from fear of God, and from God's prophecy to Moshe:

Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Do not respect persons in judgment, but hear the small as well as the great; do not be afraid of the face of any man, for judgment belongs to God. (*Devarim* 1:16-18)

To this command that Moshe gives to the judges, Rashi (following in the footsteps of the Midrash and the Gemara<sup>13</sup>) adds a long list of instructions for the proper path that the judges are commanded to follow:

"And I commanded your judges' – I said to them, "Be deliberate in judgment. If you deal with a certain point of law once, twice, three times, do not say, 'I have already dealt with this point of law many times,' but discuss and analyse it [each time anew].

"At that time" – As soon as I appointed them, I said to them, "It will no longer be as it was in the past. In the past, you were your own masters; now, you are in the service of the community..."

"Do not respect persons in judgment" – This is directed to whoever is responsible for appointing judges. He should not say, "So-and-so is handsome, or strong; I shall make him a judge," or "So-and-so is my relative; I shall make him a judge in the city," where [the candidate] is not proficient in the laws and will end up condemning the innocent and acquitting the guilty. [For then] I shall consider the one who appointed him as having shown favour in judgment.

"But hear the small as well as the great" – A lawsuit over a tiny sum should be as important to you as a lawsuit concerning a hundred *maneh*. If

<sup>11</sup> See Ramban (*Devarim* 1:18), who offers different possible answers to this question.

<sup>12</sup> See in *Derisha Ba-Torah* the commentaries' views comparing the verses in *Shemot* and *Devarim* concerning the appointment of judges.

<sup>13</sup> See Sifrei on *Parashat Devarim* 16-18, concluding with the words of the *Midrash*: "Moshe said to them: 'It is not of my own initiative that I tell you this [i.e., the commands to the judges], but rather I tell it to you from God's mouth.'" See also *Sanhedrin* 6b-8a.

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[the smaller suit] comes before you first, you must not set it aside for after [the other suit].

Another explanation: "But hear the small as well as the great" – As the Aramaic translation has it, that you should not say, "This person is poor, and his opponent is rich, and is in any case commanded to support him; I will rule in favour of the poor man, such that he will obtain support in a respectable manner."

Another explanation: You shall not say, "How can I offend the dignity of this rich man for the sake of a *dinar*? I will rule in his favour now, and when he goes outside I will say to him, 'Give it to him, for in fact you owe it to him.'"

"Do not be afraid of the face of any man" - ... Another explanation: You shall not restrain (*te'egor* – literally, "store up") your words before any man. The word has the same meaning here as in, "He who gathers (*oger*) in the summer" (*Mishlei* 10:5).

"For judgment belongs to God" – Whatever you take from this person unjustly, you cause Me [God] to restore to him; it therefore turns out that you have perverted judgment against Me...

"And I commanded you... all the things that you should do" – This refers to the ten things that differentiate between civil cases and capital cases.

Rashi even goes so far as to detect a note of reproof to Moshe, who tells the judges, "and the cause that is too hard for you – bring it to me, and I will hear it," but finds himself unable to issue a ruling concerning the request by the daughters of Tzelofchad:

"Bring it to me" – Because he said this, he was at a loss concerning the case of the daughters of Tzelofchad. Similarly, Shemuel said to Shaul (*Shemuel* I 9:19), "I am the seer." The Holy One, blessed be He, said: "By your life, I hereby inform you that you are not the seer." And when did God make this known to him? When he came to anoint David (*Shemuel* I 16:6): "And he saw Eliav, and he said, 'Surely God's anointed is before him.'" Then the Holy One, blessed be He, said, "Did you not say, 'I am the seer'? Rather, 'Do not look at his countenance' (*Shemuel* I 16:7)."

All of this points to the profound difference between Yitro's advice and Moshe's act of leadership. Moshe makes no mention of Yitro's suggestion, which is based on a universal perspective: it includes no command to the judges, focusing instead on an intensive review of their suitability and their fear of God, which are assumed to be a solid basis for their work. In Yitro's view, a casuist legal system, giving the judges the authority and guidelines for judgment, is sufficient – but it includes no absolute directives from God. In the Torah, by contrast, casuist law is subservient to God's absolute commandments, with the most important point being the

command to each and every person, insofar as he is a servant of God, whether he be a simple person or even the judge. All are equal before the Judge of all the earth, and according to Rashi's interpretation, there is an allusion in this message even to Moshe himself.

Translated by Kaeren Fish

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