



Conveying the Subtlety

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Moshe is constantly subject to suspicion. Even when the people aren't actively trying to undermine his authority, even when they are not complaining to or about him, there is still a rumbling among them about Moshe and rumors about his behavior. In this week's *parashah*, Moshe commences his final speech to the people. In it, Moshe acknowledges his awareness of how he has been treated. He uses this moment of openness as an opportunity to not only deliver mild rebuke to the people, but also to provide guidance to future leaders about how to ameliorate such suspicion and its harmful effects.

In the Talmud, R. Yonatan describes one extreme form that the people's suspicion of Moshe took, the same leader whom God described as "the most trustworthy of My household":¹

תלמוד בבלי סנהדרין קיא.

וישמע משה ויפול על פניו (במדבר טז). מה שמועה² שמע? אמר רבי שמואל בר נחמני א"ר יונתן שחשדוהו מאשת איש שנאמר ויקנאו למשה במחנה (תהילים קו). א"ר שמואל בר יצחק מלמד שכל אחד ואחד קנא את אשתו ממה ששנאמר ומשה יקח את האהל ונטה לו מחוץ למחנה (שמות לג).

Talmud Bavli Sanhedrin 110a

Moshe heard [what Korah and his allies were saying], and he fell on his face (BeMidbar 16:4). What did he hear? R. Shmuel bar Nahmani said that R. Yonatan said: They suspected him of adultery, as it says, **they were jealous of Moshe in the camp** (Tehillim 106:16). R. Shmuel bar Yitzhak said: This teaches that every single person forbade their wives from being secluded with³ Moshe, as it says, **and Moshe would take the tent and pitch it outside of the camp** (Shemot 33:4).⁴

¹Cf. BeMidbar 12:7.

² It is possible that R. Yonatan is using the word *shemu'ah* in its more specific sense of a libelous rumor.

³ This is a reference to the initial stage of the *sotah* process. When a man forbids his wife from secluding herself with a specific man, this stage is called "jealousy."

⁴ It appears that R. Yonatan's teaching is based on the word *mahaneh* (camp) that appears in both verses.



R. Yonatan explains that Moshe was suspected of sexual impropriety by the men of his community and R. Shmuel bar Yitzhak explains why. His proof text for the fact that every single man would warn his wife against being alone with Moshe is not a verse that describes the behavior of the people of the camp, but rather the behavior of Moshe! Moshe's behavior was inscrutable to the people. They thought, if Moshe is their leader, what good reason could he possibly have for placing his tent outside of the camp's borders?! Therefore, it must be that Moshe is up to no good. They assumed, reasonably,⁵ if uncharitably, that he placed his tent in a secluded area in order to provide himself with the opportunity to act inappropriately with married women.

Lest you think that Moshe could have obviated this problem by moving his tent back into the camp, the Midrash Sifrei makes it clear that if Moshe would have responded to the slander and shifted his location, the people would have been suspicious of that too!⁶ In his final speech, Moshe describes how difficult and how great a burden judging the people by himself was,

דברים א"ב

אֵיכָה אֶשָּׂא לְבַדִּי טְרַחְכֶם וּמִשְׁאָכֶם וְרִיבְכֶם:

Devarim 1:12

How can I alone bear your troubles, your burdens, and your arguments?

The Sifrei explains that the true burden that so frustrated Moshe was the people's suspicious approach and impossible-to-please attitude:

ספרי דברים א"ב

משאכם - מלמד שהיו אפיקורסים: הקדים משה לצאת, אמרו מה ראה בן עמרם לצאת? שמא אינו שפוי בתוך ביתו? איחר לצאת, אמרו מה ראה בן עמרם שלא לצאת? מה אתם סבורים? יושב ויועץ עליכם עצות, ומחשב עליכם מחשבות...

Sifrei Devarim 1:12

Your burden—This teaches that they were irreverent. If Moshe left early, they would say, “What inspired the Son of Amram⁷ to leave? Maybe things aren't OK inside his house?” If

⁵ While it is the case that the reason why Moshe moved his tent outside of the camp was to be always available to God, the suspicion of the husbands sends a message to all who are in a position of power to be careful of how and where we meet with employees, students, congregants, and constituents.

⁶ Perhaps arguing that he is moving his tent closer for easier access to his victims.

⁷ “Son of Amram” is a pejorative way of referring to Moshe and is often placed in the mouth of the people in *midrashim* which describe them as being particularly disrespectful. As far as I know, Aharon is never referred to as “Son of Amram,” though it would be an equally apt epithet for him.



Moshe left late, they would say, “What inspired the Son of Amram not to leave? What do you think?! He’s probably sitting there making plans and devising schemes against you!...”

Moshe was in a lose-lose situation. The people were capable of reading evil intent into all of his behaviors. There was no easy solution. Moshe’s innocence did not affect the perception of his actions. He was always being watched and always being judged unfavorably.

Interestingly, Moshe does not protest. Moshe does not declare his innocence, but instead responds to the people’s concerns in a substantive way, by appointing additional judges.⁸ This neutralizes some of the suspicion directed toward him, because when there are many judges the people are exposed to many different types of behavior. They can see that Judge Miriam leaves her tent early and Judge Naftali leaves his tent late, so they can come to understand that no conclusions can be drawn from this behavior. They’ll notice that Judge Menashe always smiles at everyone and that Judge Shifrah is careful never to smile, and the people will see that every judge has a different way of relating to people. By distributing responsibility, Moshe also distributes celebrity and makes it less likely that people will be scrutinizing and drawing conclusions from his behavior—no matter how arbitrary or idiosyncratic.

However, appointing more judges does not entirely solve the problem of scrutiny and the misreading of subtle cues. Therefore, our legal tradition abounds with instructions to judges to not only strive for impartiality, but to appear completely impartial as well:

תלמוד בבלי שבועות ל.

ת"ר בצדק תשפוט עמיתך (ויקרא יט:טו). שלא יהא אחד יושב ואחד עומד, אחד מדבר כל צרכו ואחד אומר לו- קצר דבריך!

Talmud Bavli Shevuot 30a

Our rabbis taught: **Judge your fellow fairly** (VaYikra 19:15). So that one [litigant] will not be seated while the other stands, one allowed to speak to the fullest extent, while the judge tells the other—“Be brief!”

According to Massekhet Shevuot, a truly fair and righteous judge not only metes out proper decisions, but exhibits balanced behavior throughout the court proceedings. No litigant receives special treatment and no person who enters the court leaves with the impression that their voice was not fully heard. Even if the judge knows what the litigant is going to say, even if they judge in favor of that litigant, they still may not tell anyone in their court to “be

⁸ Moshe narrates the burden of the people in Devarim 1:12 and appoints judges in the very next verse, Devarim 1:13.



brief,” lest anyone get the impression that they matter less and that they are not equally entitled to justice.

In Massekhet Sanhedrin, there are even more admonitions to judges to be scrupulous to appear impartial and not to seem to show favor to either side in a dispute:

תלמוד בבלי סנהדרין ז.

לא תכירו פנים במשפט (דברים א:יז) רבי יהודה אומר- לא תכירוהו. רבי אלעזר אומר- לא תנכרהו.

Talmud Bavli Sanhedrin 7a

Do not show favor in judgment (Devarim 1:17). R. Yehudah says: Do not recognize him.

R. Elazar says: Do not be a stranger toward him.⁹

R. Yehudah and R. Elazar disagree on the method of conveying neutrality: should a judge be friendly toward everyone or be cool toward them? However, they are united in their understanding that impartiality is not only about the verdict but also about the tone of the proceedings. Both parties should feel that they are being treated in the exact same way by all members of the court.

The word that both R. Yehudah and R. Elazar’s teachings hinge upon is **תכיר**, **recognize**. This word is particularly resonant as it reminds us of a foundational story about the perils of showing favoritism. The theme of recognition is central to the story of Yosef and his brothers. When Ya’akov’s children try to trick him into thinking that his favorite son has been mauled by a wild animal, they bring Yosef’s special coat dipped in blood to their father and they ask him if he **recognizes** it:

בראשית לז:לא-לג

³¹וַיִּקְחוּ אֶת כְּתֹנֶת יוֹסֵף וַיִּשְׁחֲטוּ שְׂעִיר עִזִּים וַיִּטְבְּלוּ אֶת הַכְּתֹנֶת בַּדָּם: ³²וַיִּשְׁלְחוּ אֶת כְּתֹנֶת הַפָּסִים וַיָּבִיאוּ אֶל אֲבִיהֶם וַיֹּאמְרוּ זֹאת מְצָאנוּ הֵכֵר נָא הַכְּתֹנֶת בֶּנְךָ הוּא אִם לֹא: ³³וַיִּכְיֶרָה וַיֹּאמֶר כְּתֹנֶת בְּנִי חַיָּה רָעָה אֶקְלְתֶּהוּ טָרֵף טָרֵף יוֹסֵף:

Bereishit 37:31-33

³¹They took Yosef’s coat, and they slaughtered a male goat and dipped the coat in the blood. ³²They sent the fine coat and brought it to their father. They said, “We found this. Now, do you **recognize** it? Is it or is it not the coat of your son?” ³³[Ya’akov] **recognized** it and he said, “It is the coat of my son. A wild animal consumed him. Yosef has been torn apart!”

⁹ The root of both “to recognize” and “to be a stranger” is identical—ר,נ,כ—and the meaning is determined by the conjugation of the verb.

Yosef was hated by his brothers because of their perception that he was favored by their father, Ya'akov. The coat was the subtle—or not-so-subtle—sign that Ya'akov particularly loved the precocious son of his favorite wife. It is therefore fitting that the prohibition against showing favoritism should remind us of this harrowing story. Hurt feelings are terrible in and of themselves, but they can also lead to truly devastating consequences.

Treating everyone equally is so critical that it is not only judges who are enjoined to behave with impartiality. It is not only parents who are enjoined to act fairly. The Midrash Tannaim employs this same verse to extend the requirements of neutral behavior from the courtroom to the classroom:

מדרש תנאים לדברים טז:יט

לא תכיר פנים (דברים טז:יט) - והלוא כבר נאמר: לא תכירו פנים במשפט (דברים א:יז)! אלא זו אזהרה לחכמים כשהתלמידים יושבין לפניהם, לא יהיו מלמדין לאחד ומניחין לאחד.

Midrash Tannaim on Devarim 16:19

Do not show favoritism (Devarim 16:19). But it already said, **Do not show favoritism in judgment** (Devarim 1:17)! Rather [the second verse] is a warning to the sages that when students are sitting before them, they should not teach one and leave the other.

This Midrash understands the importance of recognizing every person in a class. If one student feels ignored, like their comments aren't relevant and their questions do not deserve to be recognized, they will be devastated. Students remember every slight, they'll pick up on a pattern of exclusion that the teacher themselves might not even notice, let alone intend. In the courtroom, there is a structure that ensures that every litigant is heard. In the classroom, a teacher has to be even more vigilant to make sure that no voices are excluded and no one feels that they are subtly being told that they do not belong.

And in fact, this obligation, to be aware of who is or is not in the room, to be sensitive to the subtle signals our conduct sends, devolves on everyone. As the Talmud explains,

תלמוד בבלי סנהדרין ז.

שמע בין אחיכם ושפטתם (דברים א:טז). אמר רבי חנינא- אזהרה לבית דין שלא ישמע דברי בעל דין קודם שיבא בעל דין חבירו. ואזהרה לבעל דין שלא יטעים דבריו לדיין קודם שיבא בעל דין חבירו.

Talmud Bavli Sanhedrin 7b

Listen to what is between your brothers and judge (Devarim 1:16). R. Hanina said: This is a warning to a court that it should not listen to the claims of one litigant until his fellow litigant arrives. And it is a warning to the litigant that he should not justify himself to the judge before his fellow litigant arrives.



R. Hanina states unequivocally that no litigant should have a private audience with the judge. This is in line with all of the prohibitions extending to a judge regarding demonstrating preferential treatment in even the smallest way. What is unique about R. Hanina's formulation is that he places the responsibility to maintain an unbiased court on the shoulders of the individual litigants as well. Not only does the judge have to be careful to distribute their attention fairly, each of the litigants has to be careful that they do not demand or invite what is not rightfully theirs.

We live in a time of a high *quantity* of communication and a low *quality* of communication. Because we can say so much, on so many different platforms, it's even harder to pay attention to how we are speaking. Moshe's leadership is a cautionary tale. We should always remain aware that we are constantly sending subtle cues to everyone we encounter. People feel judged and criticized by us; people feel validated and encouraged by us. Our words, actions, lack of words, and lack of actions are constantly being interpreted as affection, hatred, warmth, or hostility. This danger of miscommunication becomes even more pronounced when we communicate by text and email which invites people to look for clues in what we've written, which they would not need to guess about if the words were spoken face to face.

We are called on to be aware of the fact that we are constantly communicating—even unintentionally—and to take responsibility for what we have “said.” Rather than tell others not to “read into” things, we have to understand that it is inevitable that they will. We need to be as clear as possible in our communication, and we need to do so with the proper tone. Everything: how long it takes us to reply, whether we use exclamation points, what kind of salutations we use, and so on, will be read, and we must expend effort on trying to minimize the chances that we will be read incorrectly.

And yet, we also need to relax. Moshe had to leave his house. If he left early, someone would be insulted, and if he left late, someone else would read that timing as a slight. There's only so much we can do to control how we are perceived. And we also need to cut others some slack. Sometimes your friend didn't respond because they were swamped at work, not because they hate you. Sometimes your boss doesn't say hi to you because they don't want to interrupt you, not because they don't value you or your work. Sometimes an exclamation point is just punctuation and not a referendum on your relationship. Sometimes a period is just that. As we invest in expressing ourselves more clearly, may we also come to read others more generously.

Wishing you a Shabbat of fairness and generosity.

