YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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"My Children have Defeated Me"

Fundamental questions in the study of the Oral Law

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**Shiur #03:**

**Chapter One (Part II)**

**The Antiquity of the Oral Law**

**III. The Oral Law After the Revelation at Mount Sinai**

The first time that a written text, containing statutes and commandments, was given to Israel was at the revelation at Mount Sinai. There are, however, differing opinions in the Gemara in *Gittin* (60a) as to the manner in which the Torah was written and transmitted to the people of Israel. According to Rabbi Shimon ben Lakish, "the Torah was transmitted complete (*chatuma*)," meaning,

it was not committed to writing until the end of the forty years, after all of the sections had been stated, and those that had been stated in the first and second year were arranged for him orally until he wrote them. (Rashi ad loc., s.v. *chatuma*)

According to this approach, the people of Israel did not possess a written document while in the wilderness, other than the tablets with the Ten Commandments written on them.

In contrast, Rabbi Yochanan said in the name of Rabbi Bena'a: "The Torah was transmitted scroll by scroll (*megila megila*)." The *Rishonim* disagree about how to understand his position. Rashi explains:

When a section was told to Moshe, he would commit it to writing. At the end of the forty years, when all of the sections were finished, he joined them with threads of dried tendons and sewed them. (Rashi *Gittin* 60a, s.v. *megila*)

Rashi interprets the words "*megila megila*" in the sense of many:[[1]](#footnote-1) over the course of forty years in the wilderness, many sections were told to Moshe, and he wrote each one of them in a scroll; he joined the scrolls at the end of the forty years, and in this way the "Torah" was created. The Ramban, on the other hand, writes in his introduction to the book of *Bereishit* that the reference is to only two scrolls:

And when he descended from the mountain, he wrote from the beginning of the Torah until the end of the story of the *Mishkan*, whereas the end of the Torah he wrote at the end of the forty years.[[2]](#footnote-2)

Either way, all agree that during the period of the wilderness, the people of Israel were not in possession of the Torah in its entirety. Even if part of it was already committed to writing, there were large sections that were not yet written and had not even been transmitted to Moshe orally. At this stage, the people of Israel encountered from time to time a phenomenon that became more and more prominent, in the framework of the Oral Law’s development in the aftermath of the giving of the Written Law: the necessity to address new situations that do not appear in the Written Law that already existed or that was transmitted orally up to that point. This phenomenon is inseparable from the very existence of a written or orally-transmitted framework of laws and statutes, for it is impossible to give an explicit response to every new situation that might arise, to every detail that can change the picture, and to every complex occurrence that requires contending with differing values. It seems that for this reason, the Torah describes cases concerning which no clear answer had been written or transmitted until that point, and in which it was therefore necessary to learn the law for the situation that arose. The Torah recounts four such cases:

1. The blasphemer: The Torah relates that two men quarreled in the camp of Israel, and then suddenly: "And the son of the Israelitish woman blasphemed the Name, and cursed" (*Vayikra* 24:11). The people of Israel did not know what was to be done with a person who acted in that manner; "and they brought him to Moshe… and they put him under guard, that it might be declared to them at the mouth of the Lord" (*Vayikra* 24:11-12). God spelled out the punishment of the blasphemer, not only for this case but also as a law that would apply from that point on: "Bring forth him that has cursed outside the camp; and let all that heard him lay their hands upon his head, and let all the congregation stone him. And you shall speak to the children of Israel, saying: Whoever curses his God shall bear his sin. And he that blasphemes the name of the Lord, he shall surely be put to death; all the congregation shall certainly stone him, as well the stranger, as the home-born, when he blasphemes the Name, shall be put to death" (*Vayikra* 24:14-16).

2. *Pesach Sheni*: In the second year after the exodus of the people of Israel from Egypt, there were certain people who could not offer the *korban Pesach* owing to their ritual impurity, and they argued before Moshe, saying: "We are unclean by the dead body of a man; why are we to be kept back, so as not to bring the offering of the Lord in its appointed season among the children of Israel?" (*Bamidbar* 9:7). Moshe answered them: "Stay, that I may hear what the Lord will command concerning you" (*Bamidbar* 9:8). Here too, God gives a general answer that goes beyond the particular case under discussion: "Speak to the children of Israel, saying: If any man of you or of your generations shall be unclean by reason of a dead body, or be on a journey afar off, he shall keep the Passover to the Lord; in the second month on the fourteenth day at dusk they shall keep it; they shall eat it with unleavened bread and bitter herbs" (*Bamidbar* 9:10-11).

3. The sticks-gatherer: The people of Israel found a man "gathering sticks on the Sabbath day" (*Bamidbar* 15:32), and once again, they did not how he was to be punished: "And they put him under guard, because it had not been declared what should be done to him" (*Bamidbar* 15:34). God then said to Moshe: "The man shall surely be put to death; all the congregation shall stone him with stones outside the camp" (*Bamidbar* 15:35), and so it was done.

4. The daughters of Tzelofchad: There were two stages in this case. In the first stage, the daughters of Tzelofchad came to Moshe and asked to receive the inheritance that would have been given to their father, who had died without sons: "Why should the name of our father be done away from among his family, because he had no son? Give to us a possession among the brothers of our father" (*Bamidbar* 27:4). Here too, Moshe did not know what to answer, "and Moshe brought their cause before the Lord" (*Bamidbar* 27:5). In this instance as well, God did not only give a particular solution to the case under discussion, but rather He offered a broader determination in the laws of inheritance: "The daughters of Tzelofchad speak right; you shall surely give them a possession of an inheritance among their father's brothers; and you shall cause the inheritance of their father to pass to them. And you shall speak to the children of Israel, saying: If a man dies, and has no son, you shall cause his inheritance to pass to his daughter. And if he has no daughter, you shall give his inheritance to his brothers. And if he has no brothers, you shall give his inheritance to his father's brothers. And if his father has no brothers, then you shall give his inheritance to his kinsman that is next to him of his family, and he shall possess it. And it shall be to the children of Israel a statute of law, as the Lord commanded Moshe" (*Bamidbar* 27:7-11).

In the second stage, the members of the tribe of the daughters of Tzelofchad expressed their concern that if the daughters receive their father's inheritance and then marry men of other tribes, this would diminish the inheritance of the tribe. Moshe responded to this argument as well after receiving the word of God, and here too the matter was made into a general law: "And Moshe commanded the children off Israel according to the word of the Lord, saying: The tribe of the sons of Yosef speak right. This is the thing which the Lord has commanded concerning the daughters of Tzelofchad, saying: Let them be married to whom they think best; only into the family of the tribe of their father shall they be married. So shall no inheritance of the children of Israel remove from tribe to tribe; for the children of Israel shall cleave everyone to the inheritance of the tribe of his fathers. And every daughter, that possesses an inheritance in any tribe of the children of Israel, shall be wife to one of the family of the tribe of her father, that the children of Israel may possess every man the inheritance of his fathers" (*Bamidbar* 36:5-8).

There may be room to distinguish between the various cases with respect to the influence of the people of Israel on the establishment of the halakha. Let us compare two of the four cases: the section dealing with *Pesach Sheni* and the request of the daughters of Tzelofchad. The Torah highlights the parallel between these two passages through the use of similar language. In both passages, the discussion begins with the same wording. In the section dealing with *Pesach Sheni*, it is stated: "There were certain men, who were unclean by the dead body of a man, so that they could not keep the Passover on that day; **and they drew near before Moshe and before Aharon** on that day" (*Bamidbar* 9:6). And in the section dealing with the daughters of Tzelofchad, it is stated: "**Then drew near the daughters of Tzelofchad…** and they stood **before Moshe, and before Elazar** the priest" (*Bamidbar* 27:1-2). A similar formulation is also used for the claim of discrimination that is brought in the two places: "Why are we to be kept back **[*lama nigara*]**, so as not to bring the offering of the Lord in its appointed season among the children of Israel" (*Bamidbar* 9:7); "Why should the name of our father be done away **[*lama yigara*]** from among his family, because he had no son? Give to us a possession among the brothers of our father" (*Bamidbar* 27:4). And in both cases, it turns out that the claimants are correct, and Moshe is commanded to teach the people of Israel the new laws that were learned in the wake of their claims: **"Speak to the children of Israel, saying: If any man** of you or of your generations shall be unclean by reason of a dead body" (*Bamidbar* 9:10); **"And you shall speak to the children of Israel, saying: If a man** die…" (*Bamidbar* 27:9).

However, these similarities in wording emphasize the difference between the two stories. In the account of the daughters of Tzelofchad, even before God commands Moshe to relate to the people of Israel the section dealing with inheritance, he prefaces by saying: "The daughters of Tzelofchad speak right; you shall surely give them a possession of an inheritance among their father's brothers" (*Bamidbar* 27:7). Only after the specific answer to the daughters of Tzelofchad was the entire passage stated to the people of Israel. We can conclude that the daughters of Tzelofchad were in fact right, but they did not bring about any halakhic innovations. They merely caused Moshe to notify the people of Israel about the existence of the laws of inheritance, in the framework of whichthe estate of a man who dies without a son passes to his daughter. "The daughters of Tzelofchad have claimed well, for this is the section written before Me on high" (*Sifrei Bamidbar* 134, p. 177).

In the section regarding *Pesach Sheni*, on the other hand, there is no such statement, and the passage begins immediately with a command to teach the people of Israel. It is possible that the sincere desire of that group of people brought them, and the entire people of Israel, a new law, exceptional in character as compared to the rest of the Torah: the granting of a second chance to those who missed the first date. If this interpretation is correct, it is indicative of an additional dimension of the Torah, regarding man's place in the framework of the Torah and his ability to bring about halakhic innovations – provided that they accord with the will of God.[[3]](#footnote-3)

The notion that man is capable of bringing about innovations in the framework of Halakha emerges explicitly from another passage. Following the deaths of the sons of Aharon on the eighth day of the *Mishkan's* dedication, Moshe expected that Aharon and his remaining sons would continue with the sacrificial service and that, among other things, they would eat of the he-goat sin-offering that had been slaughtered earlier. When Moshe learned that the he-goat had been burned, and not eaten, he became angry and noted that the law of burning applies only to a sin-offering whose blood is brought inside the area of the *Mishkan* known as the Holy, and not to a sin-offering whose blood is sprinkled on the altar in the courtyard, such as this he-goat:

And Moshe diligently inquired about the goat of the sin-offering, and, behold, it was burnt; and he was angry with Elazar and with Itamar, the sons of Aharon[[4]](#footnote-4) who remained, saying: Why have you not eaten the sin-offering in the place of the sanctuary? For it is most holy, and He has given it to you to bear the iniquity of the congregation, to make atonement for them before the Lord. Behold, the blood of it was not brought into the sanctuary within; you should certainly have eaten it in the sanctuary, as I commanded. (*Vayikra* 10:16-18)

Aharon, however, answered that following the death of his sons, it would not have been right to act in that manner:

Behold, this day have they offered their sin-offering and their burnt-offering before the Lord, and there have befallen me such things as these; and if I had eaten the sin-offering today, would it have been well-pleasing in the sight of the Lord? (*Vayikra* 10:19).

Moshe was persuaded and accepted his argument: "And when Moshe heard that, it was well-pleasing in his sight" (*Vayikra* 10:20). Here too, it was a new halakhic situation – the case of a mourning father, who had just then lost his sons – only that Aharon did not turn to Moshe to ask God what he should do. Rather, he exercised human logic and concluded that in his state he could not eat of the sin-offering. Moshe's agreement effectively confirmed that human judgment can be a significant factor in determining Halakha for future generations.

In all of these instances, a challenge arose from the fact that it is impossible to establish a set of rules that will spell out all possible situations and all the details. As long as Moshe was alive, the solution was simple: Moshe would appeal directly to God. Of course, this solution was possible only for Moshe: "Happy the woman's son who was so confident that whenever he wished He would speak with him!" (*Sifrei Bamidbar* 68, p. 63). After Moshe's death and the sealing of the Written Law, other ways would be required to deal with this challenge. These solutions would also have to be based on human judgment, as is evident already in the story of Moshe and Aharon on the eighth day.

Indeed, in his oration concerning the *mitzvot*, which he delivered before he died, Moshe outlines the path for the future and indicates that this challenge would be directed toward the teaching and justice systems of the people of Israel:

If there arise a matter too hard for you in judgment, between blood and blood, between plea and plea, and between stroke and stroke, even matters of controversy within your gates; then shall you arise, and get you up to the place which the Lord your God shall choose. And you shall come to the priests the Levites, and to the judge that shall be in those days; and you shall inquire; and they shall declare to you the sentence of judgment. And you shall do according to the tenor of the sentence, which they shall declare to you from that place which the Lord shall choose; and you shall observe to do according to all that they shall teach you. According to the law which they shall teach you, and according to the judgment which they shall tell you, you shall do; you shall not turn aside from the sentence which they shall declare to you, to the right hand, nor to the left. (*Devarim* 17:8-11)

This directive is an outgrowth of the above: In the future, there will be different and complex situations, regarding which it will be impossible to reach a decision based on the written material alone. Therefore, appropriate bodies will be required, to know how to act in accordance with the will of God in the specific case under discussion.[[5]](#footnote-5) The Written Law itself is clearly and emphatically aware of the need for an Oral Law.

(Translated by David Strauss)

1. This is the accepted meaning of phrases having a similar grammatical form, such as: "*yom yom*," "*shana shana*," and "*ish ish*." [↑](#footnote-ref-1)
2. Proof may be adduced for Rashi's understanding, that we are dealing with many scrolls that were given over the course of the years, from various places in the Torah that note that Moshe wrote different things. After the war against Amalek, Moshe is commanded: "Write this for a memorial **in the book**, and rehearse it in the ears of Yehoshua: for I will utterly blot out the remembrance of Amalek from under heaven" (*Shemot* 17:14); it may be concluded that it was then that Moshe wrote the first passage dealing with Amalek. In the account of the revelation at Mount Sinai, it is stated: "And Moshe **wrote** all the words of the Lord, and rose up early in the morning… and he took **the book of the covenant,** and read in the hearing of all the people; and they said: All that the Lord has spoken will we do, and obey" (*Shemot* 24: 4, 7). The Torah does not say what was written in the "book of the covenant," but it may be inferred from the people's response that it included *mitzvot*. The journeys of the people of Israel were also committed to writing: "And Moshe wrote their goings forth, stage by stage, by the commandment of the Lord" (*Bamidbar* 33:2). These *pesukim* all indicate that Moshe wrote small passages – scroll by scroll. Perhaps it may be inferred that the rest of the sections of the Torah were also written in this manner, until the entire Torah took form. [↑](#footnote-ref-2)
3. It should be noted that this understanding runs contrary to what is stated in the *Sifrei*: "It were fitting that the section regarding the ritually impure people be related [independently] by Moshe. Why was it related through them? For merit is conveyed through the meritorious and liability through the liable" (*Sifrei Bamidbar* 68, p. 63). According to the *Sifrei*, the two passages are consistent with each other, and even the passage dealing with *Pesach Sheni* should have been told through Moshe. It was told through those ritually impure people only because merit is conveyed through the meritorious. This is also stated explicitly in tractate *Semachot*, chap. 8: "Merit is conveyed through the meritorious… Fitting it was that the section dealing with *Pesach Sheni* be stated, even had the ritually impure people not arisen; fitting it was that the section dealing with inheritance be stated, even had the daughters of Tzelofchad not arisen." As stated, however, the plain sense of the verses allows for the possibility that a distinction be made between the two passages. [↑](#footnote-ref-3)
4. Moshe's argument applies in the same measure to Aharon as well, but "out of respect due to Aharon, he turned toward his sons and showed himself angry with them [instead of with Aharon]" (Rashi). [↑](#footnote-ref-4)
5. *Chazal* also noted this source as the source of all of their decrees: "All the ordinances of the Rabbis were based by them on the prohibition of 'You shall not turn aside'" (*Berakhot* 19b and elsewhere). Of course, this does not blur the court's authority to decide on Torah matters as well, as is stated in a *baraita*: "'A thing' refers to a [traditional] halakha; 'in judgement' – this refers to [a law deduced by] a *din* [an argument based on verbal similarity]; 'between blood and blood' – whether the blood of *nida*, of childbirth, or of *ziva*; 'between ruling and ruling' - whether capital or civil cases, or cases involving flagellation; 'between [leprous] plague spots and plague spots' — whether leprosy in man, houses, or garments; 'matters' – this refers to *charamim*, valuations, and sanctifications; 'contentions' – this refers to the water ordeal administered to a *sota*, the beheading of the heifer, and the purification of a leper; 'within your gates' — this refers to the gleanings, forgotten [sheaves], and the corner [of the field]" (*Sanhedrin* 86a). [↑](#footnote-ref-5)