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**

**Rav Amnon Bazak**

**Shiur #16: Chapter Three (IV)**

**Creative Midrash (*Midrash Yotzer*), Sustaining Midrash (*Midrash* *Mekayem*), and Scriptural Support (*Asmakhta*)**

**3. The distinction between the two types of *midrashim***

As noted earlier, distinguishing between a creative *midrash* and a sustaining *midrash* essentially comes down to a simple question: Is it really possible to see that the law could have been derived by analyzing the verse?[[1]](#footnote-1) In many cases, the connection between the law and the verse is very flimsy. It is, therefore, reasonable to assume that the law did not come into being based on study of the verse, but rather it was based on a tradition or a logical argument and the connection to the verse was made only at a later stage, as an allusion.

Here, for example, is an interpretation whose connection to the verse seems to be very distant. The Torah establishes the order of inheritance as follows:

And you shall speak to the children of Israel, saying: If a man dies and has no son, then you shall cause his inheritance to pass to his daughter. And if he has no daughter, then you shall give his inheritance to his brothers. And if he has no brothers, then 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 (*sh’eiro*) that is next to him of his family, and he shall inherit it. And it shall be to the children of Israel a statute of judgment, as the Lord commanded Moshe. (*Bamidbar* 27:8-11)

According to the plain sense of the passage, if a person dies without sons or daughters, his inheritance passes to other heirs, in accordance with the degree of familial closeness: first, to his brothers;[[2]](#footnote-2) if he has no brothers, to his father's brothers; and if his father has no brothers, he is inherited by "his kinsman that is next to him of his family," that is to say, the relative who has the closest familial connection to him.

*Chazal*, however, attached to the last verse the law that a husband inherits from his wife:

For our Rabbis taught: "His kinsman" – this refers to his wife. This teaches that a husband inherits his wife. (*Bava Batra* 109b)

This interpretation is very surprising: According to its plain sense, the verse deals with the question of who inherits from a person, and not with the question of from whom a person inherits. How is it possible to derive from the verse something that is not written in it at all?

The Gemara itself has difficulty with this question: "But surely the Scriptural verses are not written like that!" (*Bava Batra* 111b), and in the end it explains: "Rather, Rava said: This is what the text implies: 'You shall give the inheritance of his kinswoman to him.' [Rava] holds the view [that prefixes and suffixes] may be detached from [words] and added to [others], and [a new] interpretation may [then] be given [to the Biblical text]" (ibid.). That is to say, the midrashic exposition is based on altering the wording of the verse, which reads: "Then you shall give his inheritance to his kinsman [*nachalato li-she'eiro*]," as if it read: "Then you shall give the inheritance of his kinsman to him [*nachalat she'eiro lo*)."

The Ibn Ezra comments on this exposition:

I propose a principle that there are specific places in the Torah that our Sages established as a type of *asmakhta* [support], while knowing the primary [meaning]. For example, "And he shall inherit it/her." For it was known by tradition [*ha'ataka*][[3]](#footnote-3) that a husband inherits his wife, but they expounded this verse to be like a reminder. For all of Israel knew the meaning of the verse, which is its literal and plain sense. For it is impossible that one should say: Give Reuven's inheritance to Shimon, when he wants to say the opposite: Give Shimon's inheritance to Reuven… The correct understanding is that the verse is like its plain sense, and they added to it a matter known by tradition. (Ibn Ezra, short commentary, *Shemot* 21:8)

In effect, the Ibn Ezra is saying that this midrashic exposition is a sustaining *midrash*. It is absolutely clear that this is not the intention of the verse, according to its simple understanding; therefore, the necessary conclusion is that the law that a husband inherits from his wife was known by tradition, and the Sages attached it to the verse as an allusion. In his opinion, this model is found also in other places where there is a similar phenomenon.[[4]](#footnote-4)

Such an interpretation is in fact found already in Rav Hai Gaon’s discussion of a different *midrash*. In that case as well, it is difficult to understand the source of the law in the verse:

From where [do we know] about a Hebrew slave whose ear had been pierced [to extend his time as slave], whose term of service is ended [by the arrival of the Jubilee year], if it so happened that his master, while insisting upon him to leave, injured him by inflicting a wound upon him, that he is exempt? The verse states: "And you shall take no ransom [for one who fled to his city of refuge, that he should come again to dwell in the land]" (*Bamidbar* 35:32) – implying that we should not adjudicate compensation for him that is determined to "come again" [as a slave]. (*Bava Kama* 28a)

This passage presents a scenario in which a Hebrew slave refused to leave his master’s house when the Jubilee year arrived, and in the course of attempting to remove him by force, the master caused his slave an injury. The Gemara determines that he is exempt, but it bases this law on a verse from an entirely different context, in the section dealing with an unintentional murderer. That verse prohibits taking a ransom in place of exile to a city of refuge: "And you shall take no ransom for him that is fled to his city of refuge, that he should come again to dwell in the land, until the death of the priest" (*Bamidbar* 35:32). The derivation is difficult to understand. Commentators suggest various ways to understand this exposition,[[5]](#footnote-5) but Rav Hai Gaon writes: "Regarding that which you asked about: "From where [do we know] about a Hebrew slave whose ear had been pierced…."; what proof is there in that verse that the master is exempt for the injury that he caused him? We see that it is not a proof, but a midrashic exposition, and the essence of the matter is a received law, and the Gemara attached [the verse] to it."[[6]](#footnote-6) Rav Hai Gaon agrees with the questioner that the law is not connected to the plain sense of the verse cited in the Gemara, and therefore the obvious conclusion is that this is a sustaining *midrash*, that is to say, the law was already known by way of tradition and the connection to the verse was made at a later stage as an allusion, not as the actual source of the law.[[7]](#footnote-7)

Rabbi Yehuda Halevi explicitly writes the same about a different midrashic exposition. *Chazal* expounded the verse: "And the Lord God commanded the man, saying: Of every tree of the garden you may freely eat" (*Bereishit* 2:16), in reference to the seven Noachide laws:

"And he commanded" – this refers to [the observance of social] laws, and similarly it is stated: "For I know him, that he will command his children [and his household after him, and they shall keep the way of the Lord, to do justice and judgment]" (*Bereishit* 18:19); "The Lord" – this refers to [a prohibition against] blasphemy, and similarly it is stated: "And he that blasphemes the name of the Lord shall surely die" (*Vayikra* 24:15); "God" – this refers to [a prohibition against] idol worship, and similarly it is written: "You shall have no other gods before Me" (*Shemot* 20:2); "The man" – this refers to bloodshed, and similarly it is stated: "Whoever sheds man's blood, [by man shall his blood be shed]" (*Bereishit* 9:6); "Saying" – this refers to prohibited sexual relationships, and similarly it is stated: "Saying: If a man put away his wife, and she go from him, and become another man's, [may he return to her again]" (*Yirmeyahu* 3:1); "Of every tree in the garden" – and not of stolen property; "You may freely eat" – and not an organ from a living animal. (*Sanhedrin* 56b)

Rabbi Yehuda Halevi comments on this passage:

There is a wide gap between these injunctions and the verse. It is rather that they had received the matter of these seven laws as tradition, and they connected them with the verse as a symbol to facilitate observance of the commandments. (*Sefer Ha-Kuzari* III, 73)

These examples illustrate how it is possible, in principle, to distinguish between creative *midrashim* and sustaining *midrashim*. Whenever it is difficult or impossible to understand how a law was derived from the midrashic exposition, the reasonable conclusion is that in fact the law was not derived from it; rather, it was known by way of tradition or logical argument, and was attached to a verse only at a later stage. In contrast, when the exposition seems logical, and one can understand how the law was derived from an analysis of the verses, it is reasonable to assume that we are dealing with a creative *midrash* unless it is explicitly stated otherwise.[[8]](#footnote-8)

Of course, in some cases there is room to discuss whether or not a particular derivation emerged from the verse, and this question is often open to subjective judgment. There are, however, cases where the clear conclusion is that we are dealing with a sustaining *midrash*. This distinction is important on two levels:

1. First, it is important for understanding the *midrash*. Sometimes we encounter forced attempts to demonstrate how a midrashic exposition stems from the plain sense of the verse. Such attempts are liable to cause more harm than good: they are not convincing, as noted by the Ralbag (as cited above; they are not “settling to the soul”), and therefore they create an impression of insincerity and dishonesty. If we understand that there is no need to force a midrashic exposition on a verse, and that sometimes the exposition comes merely to find an allusion in the text for a law that was already known beforehand, we have gained both with regard to the matter itself and from an educational and moral perspective.

2. And of course, this distinction has significance with respect to the fundamental question of the source of each law. If we understand a law to be derived by way of an exposition of the verse, its source is clear. But when it is evident that the law is not based on the plain meaning of the text, the door is open to understand it as being based on a tradition or on logical argument. And if in fact it is based on logical argument, it is necessary to investigate that argument and try to understand its essence.[[9]](#footnote-9)

(Translated by David Strauss)

1. We will not be able to address here the precise distinction between *peshat*, "the plain sense" of a verse, and *derash*, its midrashic exposition, over which much ink has been spilled. A broad overview of the issue is found in B. Lifschitz, *Ha-Halakha – Al Da'at ha-Makom o Al Da'at ha-Kahal*, Jerusalem 5779, pp. 382-415, and in note 1 on p. 382. We will proceed with the assumption that the term *peshat* represents an attempt to understand the original intention of the author, whereas *derash* refers to additional meanings that are not based on that intention. [↑](#footnote-ref-1)
2. The Ramban (ad loc.) notes: “Our Rabbis received [a tradition] that a father inherits his son when he dies without offspring. The verse does not mention this… because it speaks of blessing, and not about those who are cut off." [↑](#footnote-ref-2)
3. The term *ha'ataka* as it is used by the Ibn Ezra denotes a tradition. The Ibn Ezra also designates *Chazal* as *ma'atikim*, that is to say, transmitters of the tradition. [↑](#footnote-ref-3)
4. The Ibn Ezra notes two more places:

   a. Regarding a *yevama*, a widow who enters into levirate marriage with her deceased husband's brother, the Torah states: "And it shall be, that the firstborn that she bears shall succeed in the name of his brother that is dead" (*Devarim* 25:6). The plain sense of the verse, as noted by the Ramban, the Rashbam, and others, is that the firstborn son born to the widow after her levirate marriage shall succeed in the name of her deceased husband. (The Ramban emphasizes that this does not mean that he shall be given the name of the deceased husband, but apparently that he shall be considered his son.) *Chazal*, however, expounded (*Sifre Devarim*, no. 289, p. 307; *Yevamot* 24a, and elsewhere) that the verse refers to the brother of the deceased: "This teaches that there is a *mitzva* for the eldest [brother] to perform levirate marriage." This exposition, as well, is far from the plain sense of the verse. The Ibn Ezra notes: "They also had a tradition that it is the eldest brother who performs the levirate marriage, but they expounded it from the verse as an aid to memory and as an *asmakhta*."

   b. The Torah says about a Hebrew maidservant who was sold to an Israelite master: "If she please not her master, who has espoused her to himself, then shall he let her be redeemed; to sell her to a foreign people he shall have no power, seeing he has dealt deceitfully with her" (*Shemot* 21:8). The plain sense of the verse is that the master is forbidden to sell the maidservant to a foreign people, and that if he does not want her, he must release her. However, the Midrash learns from this verse that a father cannot sell his daughter twice (*Kiddushin* 18a-b). The Ibn Ezra writes about this as well: "They had a tradition that a person cannot sell his daughter twice, and they set this verse as a sign and as an aid to memory." (It should be noted that, according to the Ibn Ezra, the plain meaning of the verse relates to a prohibition against the father selling his daughter to a non-Jew, not to a prohibition cast upon the master.) [↑](#footnote-ref-4)
5. Rashi (ad loc., s.v. *lo tikechu*) suggests two ways to understand the exposition: 1) "They expounded 'that he should come again' – someone who wishes to go back to his sinful state and be a slave"; 2) "'That he should come again' – someone whose law is that he should return to his family but he does not want [to do so]." [↑](#footnote-ref-5)
6. S. Assaf, *Teshuvot ha-Geonim mi-tokh ha-Geniza*, Jerusalem 5689, p. 102. [↑](#footnote-ref-6)
7. Y. N. Epstein, *Mevo'ot le-Sifrut ha-Tannaim*, Jerusalem 5757, p. 511, note 103, cites Rav Hai Gaon's responsum as proof for his general position that all *midrashim* are merely sustaining *midrashim*. As we have seen, however, Rav Hai relates to a particular *midrash* that is indeed very likely a sustaining *midrash*, but nothing in his words indicates a fundamental position about all *midrashim*. [↑](#footnote-ref-7)
8. It is, of course, possible that a law which was passed down by tradition can also be derived by analyzing a verse. But explicit testimony about a tradition is exceedingly rare, as we saw at length in the previous chapter. [↑](#footnote-ref-8)
9. In the yeshiva world, it is customary to define certain laws as *gezeirat ha-katuv*, a "Scriptural decree." However, this definition is correct only if in fact the law is derived from Scripture. When the midrashic exposition is a sustaining *midrash* and the law is not one that was received by way of a tradition that goes back to Sinai, we cannot say that the law is a "Scriptural decree"; it is very possible that it stems from an ancient logical argument, which must be understood. [↑](#footnote-ref-9)