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 #22: Chapter Three (X)**

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

**7. *Gezera shava* (verbal analogy): A tool for creative *midrash* or a tool for sustaining *midrash*?**

To conclude our study of the issue of creative *midrash* versus sustaining *midrash*, we will now examine one of the most common of the thirteen hermeneutical rules by way of which the Torah is expounded: the rule of *gezera shava*, "verbal analogy," which deserves special discussion due to its fairly high prevalence, on the one hand, and because of its complexity, on the other. Is this instrument a logical tool for analyzing the text, and so the laws derived by applying of it fall into the category of "creative *midrash*"? Or is it perhaps not backed by compelling logic, but simply serves as a means of uncovering hints to the law, as "sustaining *midrash*"?

In order to answer this question, it should first be noted that there are different types of *gezera shava.* We will begin with the first type, which includes logical and reasonable expositions that are used as a tool for analyzing words and phrases in the text. For example, the Torah determines the valuation (*erekh*) of each person, which varies according to age:[[1]](#footnote-1)

1. "And if it be from a month old to five years old, then your valuation shall be for the male five shekels of silver, and for the female your valuation shall be three shekels of silver." (*Vayikra* 27:6)

2. "And if it be from five years old to twenty years old, then your valuation shall be for the male twenty shekels, and for the female ten shekels." (Ibid. v. 5)

3. "Then your valuation shall be for the male from twenty years old to sixty years old, your valuation shall be fifty shekels of silver, after the shekel of the sanctuary." (Ibid. v. 3)

4. "And if it be from sixty years old and upward: if it be a male, then your valuation shall be fifteen shekels, and for the female ten shekels. (ibid. v. 7)

Based on these statements, what is the law governing the seam years between the various periods, i.e., in the fifth year, in the twentieth year, and in the sixtieth year of the person's life? Do the words "to… years old" include the last year mentioned, that is to say, "up to and including," or is the last year included in the following period, that is to say, "up to and not including"? The Mishna works with the premise that the sixtieth year (law no. 3) is in fact included in that period, for regarding the period that follows (law no. 4), it is explicitly stated that it begins only after the age of sixty: "And if it be from sixty years old and upward." But what is the law regarding the fifth year and the twentieth year (laws no. 1 and 2)?

The fifth year or twentieth year is accounted under this age, for it is stated: "And if it be from sixty years old and upward"… Therefore the verses state "years," "years," to establish a *gezera shava*: Just as with the sixtieth year, the word "years" means that it be reckoned under age, so the word "years" with the fifth and with the twentieth year means that it is to be reckoned under age, no matter whether it bears leniently or stringently. (*Arakhin* 4:4)

This derivation is well understood. If in one place in the passage the meaning of the phrase "to… years old" is "up to and including," as is evident from the context, it is reasonable to assume that this is also the meaning of the phrase in different places in that same passage. In this example, the rule of *gezera shava* is a familiar and useful literary tool: We can understand the meaning of an ambiguous term in one place based on its meaning somewhere else, which can be deduced from the context. This is an interpretative approach that commentators utilize countless times.[[2]](#footnote-2) In light of this, it is reasonable to assume that the *gezera shava* served as a tool of creative *midrash*.[[3]](#footnote-3)

However, there are also cases of *gezera shava* where the underlying interpretative comparison is not well founded. Thus, for example, in the *gezera shava* that teaches that a marriage can be effected by way of money:

And how do we know that money effects betrothal? By deriving the meaning of "taking" from the field of Efron. Here it is written: "If any man **take** a wife" (*Devarim* 24:1), and there it is written: "I will give you money for the field; **take** it of me" (*Bereishit* 23:13). (*Kiddushin* 2a)

Here the exegetical dimension is not clear. The root *lamed-kof-chet* has various meanings in Scripture, and is not reserved solely for the taking of money. The verse that speaks of taking a wife uses that root in the sense of marriage; it is in no way connected to the word "take" in the verse in *Bereishit*, which denotes taking something from another person.

Sometimes a *gezera shava* is not connected in any way to verbal interpretation. In its broadened form, the exegetical approach of a *gezera shava* is that if a particular word appears in two particular sections, one can take the laws stated in the one section and apply them to the other section as well, simply because the same word appears in both. Thus, for example, in the following *gezera shava*:

For it was taught: Rabbi Eliezer said: From where do we know that the preliminaries of the two loaves set aside Shabbat? "Bringing" is stated in connection with the *omer*, and "bringing" is stated in connection with the two loaves: just as with the "bringing" stated in connection with the *omer*, its preliminaries set aside Shabbat, so with the "bringing" stated in connection with the two loaves, their preliminaries set aside Shabbat. (*Shabbat* 131a)

The premise of the *baraita* is that not only is the waving itself of the *omer* offering permitted on Shabbat, but all of the preliminary activities are permitted as well; that is to say, it is also permitted to harvest the wheat, to grind it, and to sift the flour.[[4]](#footnote-4) Now, since the word "bringing" appears both in the passage dealing with the *omer* offering ("then you shall bring the sheaf of the first-fruits of your harvest to the priest"; *Vayikra* 23:10) and in the passage dealing with the two-loaves offering ("You shall bring out of your dwellings two wave-loaves"; ibid. v. 7), we learn by way of a *gezera shava* that even the preliminaries of the two loaves set aside Shabbat, and they may be baked even on Shabbat. This derivation is not at all connected to the meaning of the word "bringing," but rather it is learned from the very presence of the same word in the two sections. The interpretative logic in this form of derivation is more difficult to understand.

What is the nature of the different types of *gezera shava*? How is the same hermeneutical rule used in such different ways?

To answer this question, we will first address another fundamental question regarding *gezera shava*. On the one hand, in two places in the literature of *Chazal*,mention is made of an exceptional limitation with regard to this rule: "A man cannot put forward a *gezera shava* of his own accord" (*Pesachim* 66a;[[5]](#footnote-5) *Nida* 19b). According to this rule, what is the source of *gezera shava*? Rashi writes (*Pesachim* 66a, s.v. *ve-chi*):

A man cannot put forward a *gezera shava* of his own accord, but only if it was received and came from Sinai.[[6]](#footnote-6)

However, the assertion that every *gezera shava* was given to Moshe at Sinai raises certain difficulties. First, in several places there is another limitation on using a *gezera shava*, namely, that the terms in question must be "free for interpretation" in both passages, meaning that nothing else is learned from the term. If the term is "free for interpretation" in only one passage, but in the second passage some law is derived from the term in question, then according to the Sages, a *gezera shava* can be put forward but can also be refuted:

For Rav Yehuda said in the name of Shmuel, who said in the name of Rabbi Yishmael: Any *gezera shava*, neither of whose terms is free for interpretation – no deduction may be made from it. If one of the terms is free for interpretation, then according to Rabbi Yishmael, a deduction may be made and no refutation may be offered, whereas according to the Rabbis, a deduction may be made but a refutation may be offered. If both terms are free for interpretation, all agree that a deduction may be made and no refutation may be offered. (*Nida* 22b)

If the source of every *gezera shava* is from Sinai, as in Rashi’s interpretation, then how can it be said that one cannot deduce anything from a *gezera shava* whose terms are not free for interpretation? Even more difficult, how is it possible to refute a *gezera shava*,one of whose terms is free for interpretation? Surely, that *gezera shava* was given to Moshe at Sinai!

Second, the assertion that every *gezera shava* was given to Moshe at Sinai contradicts the Rambam's determination, discussed at length in the previous chapter (section 4b), that "whenever there arises a difference of opinion with regard to a matter, that shows that it was not received in the tradition from Moshe our teacher" (*Hilkhot Mamrim* 1:3) – for we find many disagreements regarding *gezerot shavot.* For example, the *Tannaim* disagree as to the size of the grant that the master must give his Hebrew slave when he releases him in the seventh year, and according to the Gemara, the different opinions are based on different applications of *gezera shava* to the verses in the section dealing with that grant:

And when you let him go free from you, you shall not let him go **empty**. You shall furnish him liberally out of your flock, and out of your threshing-floor, and out of your winepress; of that with which the Lord has blessed you, you shall **give** to him. (*Devarim* 15:13-14)

Our Rabbis taught: With how much is he [the freed slave] presented? With five selas [worth] of each kind, which is fifteen selas in all; these are the words of Rabbi Meir. Rabbi Yehuda says: Thirty, as the thirty [paid] for a [heathen] slave. Rabbi Shimon says: Fifty, as the fifty of valuations… What is Rabbi Meir's reason? He learns the meaning of "**empty**" from a firstborn: just as there, five selas is meant, so here too five selas is meant[[7]](#footnote-7)… What is Rabbi Yehuda's reason? He learns the meaning of "**giving**" from a slave: just as there, thirty is meant, so here too, thirty is meant.[[8]](#footnote-8) But let us learn the meaning of "giving" from valuations: just as there, fifty, so here too, fifty?[[9]](#footnote-9) Firstly, because if you seize much, you cannot hold; if you seize little, you can hold.[[10]](#footnote-10) Moreover, one should rather deduce slave from slave. Rabbi Shimon said: Fifty, as the fifty of valuations. What is Rabbi Shimon's reason? He learns the meaning of "**giving**" from valuations: just as there, fifty, so here too, fifty. (*Kiddushin* 17a)

According to this passage, the *Tannaim* disagree about matters relating to *gezera shava*, and so, at least according to the view of the Rambam, it is impossible to say that the disputed *gezera shava* was given to Moshe at Sinai.

Moreover, the Gemara asks why a particular *Tanna* learned one *gezera shava*, and not another, and it answers based on logical considerations. From here too, it is clear that the *gezera shava* was not transmitted by tradition, for were this the case, there would be no room for the question, and the answer would be self-evident: The Tanna could not have learned a different *gezera shava*, because he received a particular *gezera shava* by way of a tradition.

There are also even more extreme cases, where the law itself is in dispute and each side to the controversy learns a different *gezera shava*. For example, the Mishna brings a Tannaitic dispute regarding the prohibition: "And whether it be cow or ewe, you shall not kill it and its young both in one day" (*Vayikra* 22:28):

If a person slaughtered [an animal] and it was found to be a *tereifa*, or if he slaughtered [it as an offering] to idols, or if he slaughtered a [red] heifer of purification, or an ox which was condemned to be stoned, or a heifer whose neck was to be broken, Rabbi Shimon says: He does not thereby transgress [the law of "it and its young"]; but the Sages say: He does thereby transgress [it]. (*Chullin* 81b)[[11]](#footnote-11)

The Gemara (*Chullin* 85a) explains that the "Sages" in the Mishna represent the position of Rabbi Meir, and that the disagreement is rooted in different *gezerot shavot.* Here too, the Gemara clarifies why each Tanna learned the *gezera shava* in a particular manner, and not in a different way:

What is Rabbi Meir's reason with regard to the law of "it and its young"? Rabbi Yehoshua ben Levi said: He derives it by an inference made from the term "slaughtering," used both here and in connection with the slaughtering of consecrated animals outside [the Sanctuary]; as in the latter case, a slaughtering which does not render [the animal] fit for food is deemed a slaughtering, so here [in connection with "it and its young"], a slaughtering which does not render [the animal] fit for food is deemed a slaughtering.[[12]](#footnote-12) And what is Rabbi Shimon's reason? Rabbi Mani bar Patish said: He derives it by analogy from the verse: "And slay the beasts and prepare the meat" (*Bereishit* 43:16); as there the slaughtering rendered [the animals] fit for food, so here the slaughtering must render [the animal] fit for food. Why does not Rabbi Meir infer it by analogy from "And slay the beasts"? One may infer "slaughtering" from "slaughtering," but one may not infer "slaughtering" from "slaying"… And why does not Rabbi Shimon infer it by analogy from the law of consecrated animals slaughtered outside the Sanctuary? One may infer by analogy unconsecrated animals from unconsecrated animals, but not unconsecrated from consecrated.

How then can one understand the contradiction between the argument that all *gezerot shavot* are rooted in a tradition from Sinai, on one hand, and the possibility of refuting a *gezera shava*, the existence of disputes relating to *gezerot shavot*, and the Gemara's suggestions about learning different *gezerot shavot* based on logical argumentation, on the other?

And finally: Why does the rule that a person may not put forward a *gezera shava* of his own accord appear in only two contexts in all of the literature of *Chazal*, while it is completely absent from dozens of passages and discussions regarding the matter of *gezera shava*?

(Translated by David Strauss)

1. These valuations bear significance with respect to obligations assumed toward the Temple treasury: A person might say: "My valuation is upon me," or, "The valuation of a certain person is upon me," and become obligated to pay to the Temple treasury the sum that the Torah determined to be the valuation of that person. [↑](#footnote-ref-1)
2. Rashi often uses this approach. For example, when he wishes to undertand the meaning of the word "*hishi'ani*" in the verse "The serpent *hishi'ani*, and I did eat" (*Bereishit* 3:13), he writes: "He deceived me, as in: 'Now therefore let not Chizkiyahu deceive (*yashi*) you' (II *Divrei Ha-Yamim* 32:15)." Rashi draws a *gezera shava* and explains the word *hishi'ani* in *Bereishit* based on the meaning of that verb in *Divrei Ha-Yamim*, where the meaning is clear from the context. [↑](#footnote-ref-2)
3. Sh. Lieberman, *Yevanit ve-Yavnut be-Eretz Yisrael*, Jerusalem 5723, pp. 193-195, writes that the term *gezera shava* is derived from a parallel Greek term that means analogy, or comparison between two things. His comments accord with what has been stated thus far, that a *gezera shava* is based on a comparison between two concepts. The meaning of *gezera shava* as an analogy also emerges from the words of *Chazal*, who in several places use this term in the context of a comparison made between two realms between which there is no linguistic connection, as in the Mishna: "Bet Shammai say: One may not take to the priest *challa* or priestly dues on a festival, whether they were set aside on the day before or on the same day. But Bet Hillel permit it. Bet Shammai said to Bet Hillel: A *gezera shava* [supports our view]: *Challa* and priestly dues are a gift to the priest, and likewise *teruma* is a gift to the priest; just as one may not take *teruma* [to the priest], so one may not take priestly dues [to him] " (*Beitza* 1:6). It is clear that the term *gezera shava* in this Mishna does not refer to a linguistic comparison based on verses, for the Mishna is dealing with a Rabbinic law; rather, the term denotes a logical comparison and analogy. [↑](#footnote-ref-3)
4. The source for this, as noted by Rashi, ad loc. (s.v. *ma*), is a midrashic exposition of a different verse: "Six days you shall work, but on the seventh day you shall rest; in plowing time and in harvest you shall rest" (*Shemot* 34:21), from which Rabbi Yishmael learns: "Just as plowing is an optional act, so too harvesting [is forbidden only] when it is an optional act, to the exclusion of the harvesting of the *omer*, which is a mitzva" (*Makkot* 8b and elsewhere). [↑](#footnote-ref-4)
5. And the parallel passage in Yerushalmi *Pesachim* 6:1, 33a. [↑](#footnote-ref-5)
6. Rashi offers a similar explanation in *Sukka* 11b, s.v. *lo yalfinan*: "A man cannot put forward a *gezera shava* of his own accord, but only if he learned it from his teacher, and his teacher from his teacher, going back to Moshe Rabbeinu," and in other places. Many *Rishonim* follow the same path, including: Ramban, in his strictures to the Rambam's *Sefer Ha-Mitzvot*, principle 2; Rashba, *Rosh Ha-Shana* 34a, s.v. *hakhi garis Rach z"l*; Ran, *Novellae*, *Bava Metzia* 87b, s.v. *atya kama*. [↑](#footnote-ref-6)
7. That is to say, a *gezera shava* from a firstborn who is redeemed with five selas (as is stated in *Bamidbar* 18:27), as the word "empty" is used in that context: "All the firstborn of your sons you shall redeem. And none shall appear before Me empty" (*Shemot* 34:20). [↑](#footnote-ref-7)
8. The derivation is from the word "giving" used in connection with an ox that killed a slave: "If the ox gore a slave or a maidservant, he shall give to their master thirty shekels of silver, and the ox shall be stoned" (*Shemot* 21:32). [↑](#footnote-ref-8)
9. That is to say, why not learn a different *gezera shava*,from the word "giving" in the section dealing with valuations: "And he shall give your valuation in that day, as a holy thing to the Lord" (*Vayikra* 27:23), where, as we saw earlier, the highest valuation is fifty shekels. The Gemara there adds that had Rabbi Yehuda derived the matter from valuations, there would have been reason to derive it specifically from the highest valuation, because in the section dealing with the grant given to a Hebrew slave, an expansive phrase is used: "of that with which the Lord has blessed you, you shall give to him." [↑](#footnote-ref-9)
10. According to this rule, when there are two ways to expound a verse, we opt for the more restrictive alternative. [↑](#footnote-ref-10)
11. The cases that appear in the Mishna are defined as "slaughtering that does not render the animal fit for food"; the animal is in any event forbidden to be eaten, for reasons unrelated to the slaughtering. In such cases, there is room to discuss whether the practical act of slaughtering is defined halakhically as "slaughtering" for other purposes, as in the Mishna: Does a person who slaughters "it and its young" with such slaughter transgress the prohibition? [↑](#footnote-ref-11)
12. The term "slaughtering" is used also in connection with consecrated animals that were slaughtered outside the Sanctuary: "What man there be of the house of Israel, that slaughters an ox, or lamb, or goat… and has not brought it to the door of the tent of meeting, to present it as an offering to the Lord before the *Mishkan* of the Lord, blood shall be imputed to that man; he has shed blood; and that man shall be cut off from among his people" (*Vayikra* 17:3-4). There we see that even though the slaughtering does not render the animal fit for food, for no benefit may be derived from an animal slaughtered outside the Sanctuary, nevertheless it is considered "slaughtering" for all purposes, and it leads to liability for the punishment of *karet.*

    present it as an offering unto the LORD before the tabernacle of the LORD, blood shall be imputed unto that man; he hath shed blood; and that man shall be cut off from among his people.  [↑](#footnote-ref-12)