

**Fundamental Issues in the Study of *Tanakh*
By Rav Amnon Bazak**

Shiur #10f: *Peshat* and *Midrash Halakha*

II) Contradictions between Different *Parshiot*

So far we have looked at contradictions between *peshat* and *derash* that arise from the authority of the Sages to interpret the verses in a way that differs from their plain meaning (whether out of moral or practical considerations). Now we will turn our attention to tensions between *peshat* and *derash* that arise from prior contradictions between different *parshiot* in the Torah itself.¹

Previously we discussed the contradiction in the text concerning the freeing of the *eved ivri*, the Hebrew indentured servant. *Sefer Vayikra* (25:40-42) states explicitly that a Hebrew servant is always freed in the Jubilee year, but *Sefer Devarim* (15:17) states that after the servant's ear is bored through, he remains in his master's house "forever" (*le-olam*). The plain meaning of the latter verse is that he remains as a servant to his master until his death.²

We explained that the contradictions between the two textual units arise from the fact that each expresses a different perspective on the master-servant relationship. *Sefer Vayikra* adopts a theocentric perspective, emphasizing God's sovereignty and direct "ownership" of *Am Yisrael*. From this point of view, a Jew cannot be a true servant to another Jew, since fundamentally the Jew is God's servant, and so the *eved ivri* will always go free in the Jubilee year. In *Sefer Devarim*, in contrast, the focus is an anthropocentric one. Within this framework, once the master has fulfilled his moral obligation to free the servant in the seventh year, and the servant has refused this freedom and asked to remain in his master's house, then, **according to this perspective**, the servant must indeed remain forever.

In light of this, we can understand why *Chazal* interpret even the verses in *Shemot* and in *Devarim*, which speak of serving "forever," as meaning "until the Jubilee." "For all time" is thus defined as "for all the time until the Jubilee." This is not meant as an interpretation of the word "forever" (*olam*),³ but rather

¹ In an earlier chapter, we treated at length the phenomenon of contradictions within the text, and the "aspects approach" of Rabbi Mordechai Breuer that attempts to explain them, and so we will limit our discussion here to such contradictions as they influence and affect *midrashei halakha*.

² As explained, for example, by Rashbam (Shemot 21:6): "According to the plain meaning, this means 'for his whole life,' as it is written concerning Shmuel, 'and he will abide there forever (*ad olam*)' (Shmuel I 1:22)."

³ Admittedly, Ibn Ezra, who – as we have noted – regards the *midrash halakha* as the decisive interpretation of the text, argues that "*olam*" actually means "*yovel*" (Jubilee): "We

as an interpretation of the *parshiot* in the Torah as a whole which deal with the topic, each of which expresses a independent value or ideal, and which together must be synthesized into a single coherent instruction on the practical halakhic level.

Rabbi Breuer viewed this as a model for many instances of contradiction between *peshat* and *midrash halakha*:

"Many contradictions between different *parshiot* in the Torah may be resolved in a similar way. In each case, we must first seek the starkly contrasting objectives [of the different *parshiyot*]. Then we must seek that which they share, which bridges the aforementioned contrasts. It will usually turn out that the *midrashei Chazal* which resolve the contradictions actually sit well with a deeper understanding of the plain meaning of the text. They do not accord with the separate plain meanings that contradict one another, but they do accord with the plain meaning that bridges the contradictory units."⁴

Let us consider another example. Concerning a firstborn animal, we read in *Sefer Devarim* (15:19-20):

"Every firstborn male of your herd and of your flock shall you sanctify to the Lord your God; you shall do no work with the firstborn of your bullock, nor shear the firstborn of your sheep. You shall eat it before the Lord your God year by year in the place which the Lord shall choose, you and your household."

According to the plain meaning of the verse, every person who has a firstborn male born in his herd or his flock must consume it before God.⁵ Why, then, do Rashi, Ibn Ezra, and others explain that the verse is actually addressing itself to the *Kohen*, based on *Chazal's* teaching that "the firstborn is eaten by the *kohanim*" (Mishna *Zevachim* 5:8)?⁶ It seems that the reason for this is that *Sefer Bamidbar* (18:17-18) does indeed state explicitly that it is the *kohanim* who eat the firstborn animals:

"But the firstborn of an ox, or the firstborn of a sheep, or the firstborn of a goat, you shall not redeem, for they are holy. You shall sprinkle their blood upon the altar, and you shall burn their fat as a fire offering, a pleasing aroma unto God. And their flesh shall be yours, as the wave breast and as the right thigh shall be yours."

know that the word '*le-olam*' in the holy tongue means a [defined] time... and likewise 'he shall serve him forever' means – 'for all the time until the Jubilee,' for there is no Jewishly-defined period of time longer than that."

⁴ *Shitat ha-Bechinot shel Ha-Rav Mordekhai Breuer*, Alon Shevut 5765, pp. 69-70.

⁵ This is also the plain meaning arising from the verse in Devarim 12:17 – "You may not eat within your gates the tithe of your corn or of your wine or of your oil, or the firstborns of your herds or of your flocks..."

⁶ In this instance there is no explicit *midrash halakha* that explains the verse in this way, but the interpretation offered by Rashi and Ibn Ezra (that the verse is talking about the *Kohen*) is the unavoidable conclusion of the mishna.

Here, too, the contradiction is not between *Chazal's* teaching and the verses, but rather between the two textual units themselves. The contradiction arises from the different perspectives that find expression in *Sefer Bamidbar* and *Sefer Devarim*, with regard to the relative statuses of the *kohanim* and *Am Yisrael*.⁷ The halakhic ruling is thus a combination of the two perspectives, and thus in practice only the *kohanim* are permitted to eat the firstborn animals, even though the plain meaning of the verse in *Sefer Devarim* indicates that *Am Yisrael*, too, may eat of the firstborn animals.

In conclusion, this category of contradictions includes instances where *Chazal* implement an overall view that takes into account the different *parshiot* that are written in the Torah, and thus establish a system of unified halakhic behavior.

III) Different approaches to the '*peshat*' of the text

The third category might be illustrated with reference to the textual unit dealing with guardians. In *Shemot* we read:

"If a man gives his neighbor money or vessels to keep for him, and it is stolen from that man's house, then if the thief is found, he pays double. If the thief is not found, then the master of the house is brought to the judges [to swear] that he did not put his hand to his neighbor's goods." (*Shemot* 22:6-7)

And shortly after this we read the following:

"If a man gives his neighbor a donkey or an ox or a sheep, or any animal, to keep for him, and it dies, or is hurt, or is taken away, with no one seeing, then an oath of God shall be between both of them that [the guardian] did not put his hand to his neighbor's goods, and the owner shall accept this, and [the guardian] shall not pay. But if it was stolen from him, he shall make restitution to its owner." (*Ibid.* 9-11)

In the first unit, the guardian swears that the object was stolen from him, and he is exempt from payment. In the second unit, the guardian is obligated to pay even in the event that the object was stolen; he is exempt,

⁷ This is a subject worthy of extensive discussion in its own right, but suffice it to mention briefly that the general view of *Sefer Devarim* is that *Am Yisrael* as a whole was worthy of being a "holy nation... a nation chosen from among all nations" (*Devarim* 14:2), as indeed was promised before the Revelation at Sinai: "And you shall be for Me a kingdom of *kohanim* and a holy nation" (*Shemot* 19:6). Therefore, according to *Sefer Devarim* there are prohibitions that apply to the nation as a whole, by virtue of its status as a holy nation – even though in the other Books of the Torah these prohibitions are specified as applying only to the *kohanim* or the *leviim* (such as the prohibition of making a bald patch and eating a carcass; cf. *Vayikra* 21:5 and 22:8 with *Devarim* 14:1, 21). On the other hand, *Sefer Devarim* presents a reality in which all of *Am Yisrael* eat the firstborn animals, as well as the tithes (14:22-23). Similarly, the title of *Sefer Devarim* is referred to by *Chazal* as "*ma'aser sheni*" which is different from the "*ma'aser rishon*" referred to in *Bamidbar* 18:21. The title of *Sefer Bamidbar* is given to the *leviim*, while *Sefer Devarim* mentions only the *ma'aser* that is eaten by *Yisraelim*.

following his oath, only where what happened was unavoidable. What is the difference between the two types of guardians? The *beraita* explains:

"The first unit is talking about an unpaid guardian, while the second refers to a paid guardian... Thus, it must be that the second instance refers to a paid guardian, for he is liable in the case of both theft and loss." (*Bava Metzia* 94b)

However, the plain meaning of the text seems to indicate that the difference between the two units pertains not to whether the guardian is being paid for his services (a matter that is not explicitly mentioned at all), but rather to what it is that he is watching over: the first unit starts with the words, "If a man gives his neighbor money or vessels to keep for him," while the second speaks of "a donkey or an ox or a sheep or any animal." Thus, the difference would seem to center on whether it is objects or animals that are being watched over. This is stated explicitly by Rashbam, in his explanation of the discrepancy between the verses:

"The first unit exempts the keeper in the event of theft or loss, while the second unit obligates him in the event of theft or loss. Our Sages taught that the first unit refers to a keeper without pay, while the second refers to a paid keeper. [But] the difference between the two units on the plain level of the text is that the first says, 'If a man gives his neighbor money or vessels to keep...' – these are movable objects, and the neighbor will keep them in his house, together with his own possessions. Therefore, if they are stolen from his house, he is exempt – for he guarded them as he guards his own possessions. But the second unit says, 'If a man gives his neighbor a donkey, or an ox, or a sheep, or any animal, to keep...' – and animals graze in the field, so when the owner gave him the animal to watch over, he certainly meant for him to protect it from thieves. Therefore, if they are stolen, he is obliged to pay restitution."

According to Rashbam, a person who is watching over some objects and keeps them together with his own possessions is exempt in the case of a burglary, because he took with them the same care as he did with his own possessions.⁸ But if someone is asked to watch over animals, he takes them from the outset with the intention of keeping them outside, and therefore a higher level of protection is required of him.⁹

⁸ Rashbam's criterion, according to which it suffices that a person take the same care of the object that he does of his own possessions, is not a simple one; there are many authorities who demand a higher level of protection for objects that he is keeping for someone else. See Lockshin, p. 262, n. 96.

⁹ Rashbam's comment here differs from its citation in the Tosafot on *Bava Metzia* 41b: "And Rabbeinu Shmuel (Rashbam) explained that we can logically deduce that the first section (verses 6-7), which speaks of guarding 'money or vessels', is speaking about an unpaid guardian since people do not usually take money for looking after these sorts of objects, since guarding them does not require much exertion. In the second section (verses 9-11), which speaks of an 'animal', we can deduce that this is speaking of a paid guardian since greater exertion is involved in guarding animals."

Rashbam's explanation appears to be a straightforward and compelling reading of the verses. This brings us back to the question of why *Chazal* do not likewise differentiate between the two units on the basis of the object that is being guarded, rather than drawing the distinction instead on the basis of whether or not payment is made to the guardian.¹⁰

It would seem that the explanation pertains to the question of what, in fact, represents the "*peshat*." In between the two verses cited above, there is another verse that seems to blur the distinction between watching over objects and watching over animals:

"For all manner of wrongdoing – whether it be for an ox, for a donkey, for a sheep, for a garment, or for any lost thing concerning which one might say, 'This is it' – the cause of both parties shall come before the judges, and whoever the judges condemn – he shall pay double to his neighbor." (*Shemot* 22:8)

It seems, then, that *Chazal* did indeed view this verse, which treats objects and animals in the same light, as definitively negating any categorical distinction between different types of possessions given for keeping:

"The text is speaking about two kinds of keepers. [Do we conclude that it is speaking about two kinds of keepers,] or that the text means to draw a distinction between money and vessels, on the one hand, and animals, on the other? The key here lies in the word 'garment' – a 'garment' would seemingly be included in the first category (money and objects), but it is singled out – to teach that just as the text is talking about two kinds of keepers with regard to a garment, which is a singular object, so likewise the text is talking about two kinds of keepers with regard to any object; the text does not mean to draw a

This explanation suggests that there is in fact no discrepancy between the plain meaning of the text, as set forth above, and the *midrash halakha*, because guarding money or vessels means (or may be defined as) guarding for free, while guarding animals is called (or may be defined as) guarding for payment. This approach is adopted by many of the commentators, including Ramban, Chizkuni, and Seforno. However, Rashbam, in his Commentary on the Torah, maintains that according to the plain level of the text, if a person is guarding objects – even if he is receiving payment for his services – he is exempt in the event of a burglary, in contrast to his opinion as cited by the Tosafot. Likewise the corollary – if he is guarding animals, he will always be obligated to pay restitution in the event of burglary, even if he was guarding them for free.

¹⁰ Shadal, in his commentary on this verse, adopts the same view as Rashbam, and adds – in keeping with his general approach, which we have discussed previously: "Our Sages rule leniently, stating that he is not guilty of any wrongdoing if he was not paid [for guarding]." This suggests that *Chazal* did indeed deliberately introduce a change in the law, rendering it more lenient – but he offers no explanation as to why they would do this. It must be remembered that a leniency in the obligations of the guardian entail, at the same time, greater stringency concerning the rights of the person who deposits the object with the guardian; for this reason, I find this explanation problematic.

distinction between money and vessels, on the one hand, and animals, on the other."¹¹

Rashbam, of course, addresses this verse, and explains it in a different way:

"For all manner of wrongdoing... any lost thing' – where the deposit is lost, whether it be an ox, a sheep, a garment, or any other lost thing, and the depositor (owner) says that this money was stolen from him, then either the thief or the keeper – whoever the judges find guilty – shall pay double to his neighbor."

Rashbam understands the point of the verse not as ruling on who pays, but rather as stipulating that wherever the owner claims that a certain object belongs to him, and the court accepts his claim, then the guilty party must pay double, whether it is the keeper or a thief.

This would suggest that the difference between the *peshat* (as Rashbam understands it) and the *midrash halakha* arises from different ways of understanding the literal meaning of the text. Indeed, verse 8 can be understood in different ways, and while *Chazal* view it as blurring the distinction between a keeper of objects and a keeper of animals, such that a different distinction must be sought between the two types of keeping in order to justify the two different verdicts, Rashbam views verse 8 as a sort of parenthetical addition that does not affect the main distinction between the two cases in any way.

Therefore, in any instance of contradiction between the plain meaning of the text and *midrash halakha*, we must ask whether it is indeed these two elements that constitute the discrepancy, or whether there is some earlier tension between different parts of the Biblical text to which the *midrash halakha* is responding.

4. Summary

There are some commentators who draw a distinction between the plain meaning of the text and *midrashei halakha*, and who sometimes interpret a verse in accordance with what they consider to be *peshat*, even where this contradicts the halakha. It goes without saying that these commentators all regarded themselves as committed to halakhic practice, yet they did not view *Chazal's* interpretation underlying the practical halakha as binding on the exegetical level. At the same time, these commentators offer no direct

¹¹ Mekhilta de-Rabbi Yishmael, *Mishpatim, massekhta de-nezikin parasha 15*; Horowitz-Rabin edition, p. 301.

discussion of how they understand the nature of, or the reason for, the gap between the *peshat* and the *midrash halakha*.

We have addressed three types of instances of such gaps, with an attempt to explain them using three different models. In the first model, we propose that as a living law, the Torah was not given in a fixed and one-dimensional form, but rather embodies – from the outset – "forty-nine aspects indicating ritual purity and forty-nine aspects indicating ritual impurity" (Yerushalmi), with the Sanhedrin possessing the authority to interpret the verses "in accordance with what is needed for that generation" (Degel Machaneh Efraim). Their decision may be based on moral considerations – "For in accordance with moral principles it would seem... that this law was given within conditions that no longer exist" (Rav Kook), or practical considerations. The second model sees the midrash as offering a practical resolution of contradictions between different textual units in the Torah that present conflicting ideals. The third model views the discrepancy as arising from different exegetical approaches to the plain meaning of the text.

Hence, it is very important to understand the plain level of the text in its own right – "Therefore one must understand the plain meaning of the text, in order to be able to make sense of the 'seal'" (Vilna Gaon). Once we are able to distinguish between the *peshat* and the *derash*, we can go on to try and understand why, in each separate instance, the discrepancy exists.

Translated by Kaeren Fish