YESHIVAT HAR ETZION

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**"My Children have Defeated Me"**

**Fundamental questions in the study of the Oral Law**

**Rav Amnon Bazak**

**Shiur #12: Chapter Two (VII)**

**Sinaitic Tradition or Theoretical Analysis**

**VII. Were the Thirteen Hermeneutical Rules Given to Moshe at Sinai?**

To conclude this chapter, let us examine the question of whether the thirteen hermeneutical rules by way of which the Torah is expounded were given to Moshe at Sinai. These rules are the foundation for the derivation of laws from the Biblical verses, as we will see at length in the next chapter, but we must determine their source.

The earliest source in which these rules appear is the well-known *baraita* brought at the beginning of *Torat Kohanim* (1a) and called the Baraita of Rabbi Yishmael:

Rabbi Yishmael said: The Torah is expounded by way of thirteen hermeneutical rules: 1) *kal va-chomer* (*a minori ad maius* – an argument that denotes an inference from smaller to bigger or vice versa); 2) *gezeira shava* (a verbal analogy; drawing an inference from one verse to apply to another); 3) *binyan av* (rules deduced from a single passage of Scripture and rules deduced from two passages); 4) *kelal u-perat* (generalization and specification); 5) *perat u-kelal* (specification and generalization); 6) *kelal u-perat u-kelal* (generalization, specification, and generalization); 7) a generalization which requires elucidation by the specification, and a specification which requires elucidation by the generalization; 8) a specification implied in the generalization, and excepted from it for pedagogic purposes, elucidates the generalization as well as the specification; 9) a specification implied in the generalization, and excepted from it on account of a special regulation which corresponds in concept to the generalization, is thus isolated to decrease rather than to increase the rigidity of its application; 10) a specification implied in the generalization, and excepted from it on account of some special regulation which does not correspond in concept to the generalization, is thus isolated either to decrease or to increase the rigidity of its application; 11) a specification implied in the generalization, and excepted from it on account of a new and reversed decision, can be referred back to the generalization only when the passage under consideration makes an explicit reference to it; 12) deduction from context; 13) when two Biblical passages contradict each other, the contradiction must be resolved by reference to a third passage.

The Rambam writes in the introduction to his commentary on the Mishna (pp. 28-29):

And regarding that which he did not hear anything about from the prophet, peace be upon him,[[1]](#footnote-1) concerning the branches,[[2]](#footnote-2) he deduced by way of logical reasoning, by way of the thirteen rules **which were given to him at Sinai,** namely, "the thirteen rules by way of which the Torah is expounded."

The plain meaning of the Rambam's words is that the thirteen hermeneutical rules were given to Moshe at Sinai. This approach follows from the words of other *Rishonim* as well, including Rashi in several places. For example: "*Gezeira shava* is one of the thirteen hermeneutical rules that were given to Moshe at Sinai" (Rashi, *Ta'anit* 20a, s.v. *atya*); "And *gezeira shava* was stated at Sinai, and all the thirteen hermeneutical rules" (Rashi, *Yevamot* 90b, s.v. *amar leh*).[[3]](#footnote-3)

However, there are several difficulties with accepting these statements in their plain sense. First, the hermeneutical rules are cited in the name of Rabbi Yishmael, while later in that *baraita* (ibid. 3a), seven rules are attributed to Hillel the Elder, who lived three generations before Rabbi Yishmael:

Hillel the Elder expounded seven hermeneutical rules before the elders of Beteira: 1) *kal va-chomer*; 2) *gezeira shava*; 3) *binyan av*[[4]](#footnote-4) [from one Biblical passage]; 4) [*binyan av* from] two Biblical passages; 5) *kelal u-perat*; 6) *ka-yotzei bo mi-makom acheir* (similarity in content to another Biblical passage); 7) deduction from the context. These are the seven hermeneutical rules that Hillel the Elder expounded before the elders of Beteira.

It seems that Hillel recognized seven fundamental hermeneutical rules, and Rabbi Yishmael divided the rule of "*kelal u-perat*" into several additional rules.

Furthermore, we have seen over the course of this chapter that the Rambam maintains there can be no dispute about matters that were taught to Moshe at Sinai. However, there is clear disagreement between Rabbi Yishmael and Rabbi Akiva regarding some of the hermeneutical rules:

Rabbi Yochanan said: Rabbi Yishmael, who ministered to Rabbi Nechunya ben Hakana, who expounded the whole Torah on the principle of *kelal u-perat* (generalization and specification), also expounded it on the principle of *kelal u-perat*; Akiva, who ministered to Nachum of Gamzu, who expounded the whole Torah on the principle of *riba u-mi'et* (amplification and limitation), also expounded it on the principle of *riba u-mi'et.* (*Shevu'ot* 26a)[[5]](#footnote-5)

 Similarly, the Rashbatz notes in his commentary to the Baraita of Rabbi Yishmael:

This *baraita* was taught in accordance with the opinion of Rabbi Yishmael, but there are *Tannaim* who disagree with him concerning some of these rules, which are not accepted by all.

 The fact that there are disputes concerning some of the rules indicates that not all of the rules were given to Moshe at Sinai.

 The Netziv,[[6]](#footnote-6) in his commentary *Ha'amek Davar* to the verse, "You shall do My statutes, and keep My ordinances" (*Vayikra* 25:18), explains that the first part of this command refers to creating rules for expounding the Torah:

To come up with novel Torah insights based on the rules that had already been taught does not require as much study as creating a rule for expounding the Torah based on laws that had already been received, as the *tanna* of the school of Rabbi Yishmael added thirteen hermeneutical rules, for at first there were the seven rules brought by Hillel the Elder… After the *tanna* of the school of Rabbi Yishmael, more rules were added, based on renewed study in every generation… Therefore, Scripture cautions here: "You shall do My statutes," to make rules based on deep study.

According to the Netziv, there is an obligation in every generation to delve into the rules for expounding the verses and develop them. In the days of Hillel, there were only seven such rules; in the days of Rabbi Yishmael, new rules were added, which had not been stated explicitly before. Elsewhere, the Netziv writes that Hillel as well had developed the first seven rules through his own study:

When Ezra came up from Babylonia and came to the Temple, they no longer had to make as much use of this degree of reasoning… When sins took their toll in the Second Temple period, and the merits of the Temple no longer sufficed to achieve illumination… and for this reason the Torah was almost forgotten from Israel, until Hillel came up from Babylonia and re-established it… And by studying the traditions that had been received until then, he came up with the seven hermeneutical rules by way of which the Torah is expounded… And they became like flooding streams of water… And this is what stood for them to raise up the yoke of the Torah. (*Ha'amek She'eila*, *Kidmat ha-Eimek* 1, 10)

 It should be noted that nothing here indicates that Hillel innovated those seven hermeneutical rules. The first rule, *kal va-chomer*, appears many times in Scripture itself; there was no need to innovate it in a later generation.[[7]](#footnote-7) Regarding the other rules as well, the *baraita* states only that Hillel "expounded" them before the elders of Beteira, but not that he innovated them on his own.[[8]](#footnote-8) It stands to reason then that it was Hillel who gathered the rules together and presented them as a cohesive method of expounding the Torah. Several generations later, Rabbi Yishmael formulated more detailed rules, and presented them as the thirteen rules by way of which the Torah is expounded.[[9]](#footnote-9)

 This position of the Netziv did not prevent him from writing elsewhere: "Included in 'had given him in commandment' are the traditions that Moshe received from God about how to expound the Torah, namely, the thirteen hermeneutical rules by way of which the Torah is expounded" (*Ha'amek Davar*, *Devarim* 1:3). There is, however, no contradiction between his two statements. It seems the Netziv means to say that the very possibility of expounding the Torah and drawing new conclusions from it, with the aid of hermeneutical rules, was received by Moshe at Mount Sinai – this being the foundation of the Oral Law. However, the tools of analysis and inference change in each generation. It is possible that the seemingly unambiguous formulations of the Rambam, Rashi, and others should also be understood in this spirit.

 We return here to the question of the relationship between Sinaitic tradition and intellectual understanding. If one sees mental capacity as a virtue that is in no way inferior to tradition, there is room to say that the Sages derived even the tools themselves through their own reasoning and analysis of Scripture, and that a tradition was needed only for the authority to interpret verses and derive laws from them that are not explicitly stated.[[10]](#footnote-10)

**VIII. Summary of Chapter Two**

 In this chapter, I have attempted to clarify whether the thousands of laws that the Sages derived through the hermeneutical rules are rooted in a tradition from Sinai, or whether the Sages created them through their own intellect and reasoning. As noted, contradictory approaches appear to emerge from various *midrashim*: Some *midrashim* express the idea that the entire Torah, with all its details and minutiae, was given to Moshe at Sinai, while others imply that the Sages can introduce innovations that were not handed down by way of a tradition going back to Moshe. We then considered the possibility that there is no contradiction between the different *midrashim*, and that a distinction can be made between the principles that were given to Moshe at Sinai and the details that were derived by the Sages through their analysis of Scripture.

 The Rambam's position on this issue proposes a distinction between the two types of laws that were handed down "by way of the oral tradition" ("accepted interpretations received from Moshe," which have a basis in Scripture, and "laws given to Moshe at Sinai," regarding which there is no proof from Scripture) and the laws derived by the Sages "on the basis of their own reasoning" through one of the hermeneutical rules by way of which the Torah is expounded. The salient feature of all the laws that were passed down "by way of the oral tradition" is that they are undisputed, and the salient feature of "accepted interpretations received from Moshe" is that they deal with "principles." As for the laws derived by the Sages on the basis of their own reasoning, they are subject to dispute, and they deal only with "branches." Admittedly, the distinction between "principles" and "branches" remains somewhat vague.

 As opposed to the Rambam's approach, we saw the approach of the Maharshal, that the laws derived by the Sages based on their own reasoning are no less important than the laws based on an oral tradition. It seems from his remarks that the vast majority of laws appearing in Rabbinic literature were derived by the Sages based on their own reasoning, and the laws handed down by way of an oral tradition are just those exceptional laws about which the Sages explicitly testified that they fall into that category. This approach is supported by the simple fact that the many discussions found in Rabbinic literature about the source of various laws almost always conclude that they stem from an analysis of the verses, and only rarely propose that a particular law is a tradition going back to Moshe at Sinai.

 We also examined the very concept of a "law given to Moshe at Sinai," and saw that there are places where it is clear that this expression should not be taken literally, but rather as symbolizing a clear and permanent law.

Lastly, we considered the source of the thirteen hermeneutical rules. Some of the *Rishonim* imply that the thirteen rules were given to Moshe at Sinai, but this approach, if understood literally, raises various difficulties. The Netziv explicitly states that the hermeneutical rules crystalized over the course of generations. It is possible that there is in fact no substantive dispute between the two approaches: the authority itself of the Sages to innovate laws with the help of interpretative tools is, indeed, based on a tradition going back to Sinai, but some of these tools came into being over the course of the generations.

(Translated by David Strauss)

1. That is to say, matters that Yehoshua did not explicitly hear from Moshe Rabbeinu. [↑](#footnote-ref-1)
2. As we saw earlier, the Rambam maintains that Moshe handed down the "principles" from Sinai, and that derivations from the text by way of the thirteen hermeneutical rules were necessary only for the "branches." [↑](#footnote-ref-2)
3. In more general terms, Rashi writes in *Pesachim* 24a (s.v. *ve-im*): "And all the hermeneutical rules are laws given to Moshe at Sinai."

*Midrash ha-Gadol* (*Shemot* 21:1, p. 459) states: "'Now these are the ordinances that you shall set before them' (*Shemot* 21:1) – these are the thirteen hermeneutical rules by way of which the Torah is expounded, that were given to Moshe at Sinai." *Midrash ha-Gadol* was compiled in Yemen in the fourteenth century by Rabbi David Ha-Adani, who gathered material from many sources, including the words of the *Rishonim.* The statement brought here, which attributes the hermeneutical rules to Sinai, has no source in the Rabbinic literature that is known to us, and therefore it may be assumed that its source is later, and perhaps influenced by the words of the Rambam himself. [↑](#footnote-ref-3)
4. The words "*binyan av*" are not found in the Weiss ed. of *Torat Kohanim*, but they are found in the Finkelstein ed., p. 8, and also in the parallel passage in Tosefta *Sanhedrin* 7:11, p. 427. [↑](#footnote-ref-4)
5. The next chapter (section IV) will address the difference between generalization and specification, and amplification and limitation. [↑](#footnote-ref-5)
6. Rabbi Naftali Tzvi Yehuda Berlin, Russia-Poland, 1816-1893, *Rosh Yeshiva* of the Volozhin Yeshiva. [↑](#footnote-ref-6)
7. The Midrash lists ten instances of *kal va-chomer* in Scripture: "Rabbi Yishmael taught: This is one of the *kal va-chomer* arguments found in the Torah: 1) 'Behold, the money, which we found in our sacks'; *kal va-chomer*, 'how then should we steal' (*Bereishit* 44:8); 2) 'Behold, the children of Israel have not hearkened to me'; *kal va-chomer*, 'how then shall Pharaoh hear me' (*Shemot* 6:12); 3) 'Behold, while I am yet alive with you this day, you have been rebellious'; *kal va-chomer*, 'and how much after my death' (*Devarim* 31:27); 'And the Lord said to Moshe: If her father had but spit in her face'; *kal va-chomer*, 'let her be shut up seven days' (*Bamidbar* 12:14); 5) 'If you have run with the footmen, and they have wearied you'; *kal va-chomer*, 'how can you contend with horses' (*Yirmeyahu* 12:5); 6) 'Behold, we are afraid here in Yehuda'; *kal va-chomer*,'how much more then if we go to Ke'ila' (I *Shmuel* 23:3); 7) 'And though in a land of peace you are secure'; *kal va-chomer*, 'yet how will you do in the thickets of the Jordan" (*Yirmeyahu* 12:5); 8) 'Behold, the righteous shall be requited in the earth'; *kal va-chomer*, 'how much more the wicked and the sinner' (*Mishlei* 11:31); 9) 'And the king said to Esther the queen: The Jews have slain and destroyed five hundred men'; *kal va-chomer*, 'what then have they done in the rest of the king's provinces' (*Esther* 9:12)” (*Bereishit Rabba*, *parasha* 92, 7, pp. 1145-1146). The tenth *kal va-chomer* is missing in this version; see notes of Theodor-Albeck, ad loc., who complete the list with the verse: 'If Kayin shall be avenged sevenfold, truly Lamekh seventy and sevenfold' (*Bereishit* 4:24), based on the text in *Avot de-Rabbi Natan* (version 2, chap. 44). In any event, this list is incomplete, and there are other instances of *kal va-chomer* in Scripture, including: *Shoftim* 14:16; I *Shmuel* 14:29-30; 21:6; II *Shmuel* 4:10-11; 16:11; I *Melakhim* 8:27 (and the parallel verse in II *Divrei Ha-yamim* 32:15); II *Melakhim* 5:13; 10:4; *Yechezkel* 14:21; 15:5; 23:40; *Yona* 4:10-11; *Mishlei* 15:11; 17:7; 19:7, 10; 21:27; *Iyov* 15:16. [↑](#footnote-ref-7)
8. See Y. N. Epstein, *Mevo'ot le-Sifrut ha-Tannaim*, Jerusalem 5717, p. 510; S. Lieberman, *Yevanit ve-Yavnut be-Eretz Israel*, Jerusalem 5723, p. 190; M. Elon, *Ha-Mishpat ha-Ivri*, Jerusalem 5792, p. 269. [↑](#footnote-ref-8)
9. Lieberman (see previous note), p. 210, notes the similarity between the thirteen hermeneutical rules by way of which the Torah is expounded and the interpretative principles that were commonly accepted in Greece during that period. He concludes that there is no proof that the Sages borrowed the hermeneutical rules themselves from the Greeks, but the formulation of the rules, their names, their divisions, and their order, are primarily the work of the Greeks, and it is almost certain that the Jews did not refrain from taking them and applying them to their own hermeneutical rules. [↑](#footnote-ref-9)
10. A. A. Finkelstein, "*Ha-Dei'a ki Yod-Gimmel ha-Midot hen Halakha le-Moshe mi-Sinai*," in Sh. Y. Friedman (ed.), *Sefer Zikaron le-Rabbi Shaul Lieberman*, New York-Jerusalem 5753, pp. 79-84, argues that the Rambam retracted what he wrote in the introduction to his commentary on the Mishna, and that he maintains in the *Sefer ha-Mitzvot* and in the *Mishneh Torah* that the hermeneutical rules are the product of human logic and reasoning, and that there was no need to receive them at Sinai. However, his remarks stem from a manifest misunderstanding of the Rambam's words in *Hilkhot Mamrim* (1:2) that were mentioned above: "We are obligated to heed their words whether they… derived them on the basis of their own knowledge through one of the rules by way of which the Torah is expounded." As we have seen, there is no doubt that the words "derived them on the basis of their own knowledge" refer to the laws that the Sages derived by way of the hermeneutical rules, but Finkelstein understands them as referring to the thirteen hermeneutical rules themselves. [↑](#footnote-ref-10)