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 #17: Chapter Three (V)**

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

**4. The difference between Rabbi Yishmael and Rabbi Akiva**

The difference between the two approaches finds expression in the fundamental difference regarding midrashic methodology between the two main schools in the period of the *Tannaim*: the school of Rabbi Yishmael and the school of Rabbi Akiva.[[1]](#footnote-1)

The school of Rabbi Yishmael advocated using the principles of reason to analyze the text of the Torah. As discussed in the previous chapter (section 7), it was Rabbi Yishmael who expanded the seven fundamental hermeneutical rules of Hillel the Elder, and turned them into thirteen rules that are based on reason and logic. Each of the thirteen rules has a logical basis,[[2]](#footnote-2) and thus judicious use of the rules will lead to a logical analysis of the plain sense of the Scriptural text.

Rabbi Yishmael's underlying premise, as he himself formulated it, is: "The Torah speaks in human language" (*Sifrei Bamidbar* no. 112, p. 121, and elsewhere). It follows from this assumption that verses of the Torah should be analyzed in the same way that human language is analyzed; logical principles that are used to analyze human speech are also valid for analysis of Scripture. The conclusion that emerges from this view is that the Midrash can create laws from the verses themselves, without needing a tradition or a logical argument. The school of Rabbi Yishmael did in fact allow much room for creative *midrashim* of this sort.

We will demonstrate this approach with respect to three of the hermeneutical rules by way of which the Torah is expounded:[[3]](#footnote-3)

1. *Kal va-chomer* (*a minori ad maius* – an argument that denotes an inference from smaller to bigger or vice versa). This rule, which appears many times in Scripture (as was noted in the previous chapter, section 7), makes it possible to draw conclusions that stem directly from the text, even though they were not explicitly stated in it. The logic behind this rule is simple: When there are two things, one more severe than the other, and we find a particular leniency in the less severe of the two, then it certainly exists in the more severe of the two as well.[[4]](#footnote-4) For example, according to the Midrash, the Torah section dealing with bailees (*Shemot* 22:6-14) lists three main types of bailees: the unpaid bailee, the paid bailee, and the borrower.[[5]](#footnote-5) The unpaid bailee is liable only if he was negligent in safeguarding the object. A paid bailee is also liable for theft or loss of the object: "But if it be stolen from him, he shall make restitution to its owner" (v. 11), though he is exempt in a case of loss in circumstances beyond his control: "If it be torn to pieces, let him bring it for witness; he shall not make good that which was torn" (v. 12). A borrower is liable even in a case of loss in circumstances beyond his control: "And if a man borrow something from his neighbor, and it be hurt, or die, its owner not being with it, he shall surely make restitution" (v. 13). The Torah does not explicitly state that the borrower is liable for theft and loss, but this is inferred by way of a *kal va-chomer*: "If a paid bailee, who is not responsible for injury and death, is nevertheless liable for theft and loss; then a borrower, who is liable for the former, is surely liable for the latter too! And this is a *kal va-chomer* argument which cannot be refuted" (*Bava Metzia* 95a). That is to say: There is no need for a tradition to say that a borrower is liable for theft or loss; this conclusion follows from the simple logic of a *kal va-chomer* argument. A *kal va-chomer* argument can serve as an excellent tool for extracting laws from Scripture.[[6]](#footnote-6)

2. The specification implied in the generalization and excepted from it for pedagogic purposes elucidates the generalization as well as the specification. One example of this hermeneutical rule relates to the seeming contradiction between different verses regarding the time for eating matza on Pesach. Most of the Scriptural passages dealing with the festival indicate that matza should be eaten for seven days. For example: "Seven days shall you eat unleavened bread" (*Shemot* 12:15). However, one verse reads: "Six days you shall eat unleavened bread; and on the seventh day shall be a solemn assembly to the Lord your God" (*Devarim* 16:8), implying that there is no *mitzva* to eat matza on the seventh day. Regarding this, a *baraita* states: "Just as [on] the seventh day [the eating of unleavened bread] is voluntary, so [on] the six days it is voluntary. What is the reason? Because it is a specification implied in the generalization and excepted from it for pedagogic purposes, and so it elucidates the generalization as well as the specification" (*Pesachim* 120a). Once it becomes clear from the verse in *Devarim* that the seventh day is excluded from the general law, and the eating of matza on that day is voluntary, perforce we must understand in that manner the other verses that include the seventh day with the other six days. Since we can no longer say that the eating of matza on the seventh day is an obligation, for that would contradict the verse in *Devarim*, we must conclude that eating matza is voluntary on all seven days. Thus, following simple logic, that which is excluded from a general law in one place was not excluded to teach only about itself, but rather it necessarily influences our understanding of the entire general law in other places as well. This conclusion stems, then, from a logical analysis of the plain meaning of the verses, and here too there is no need for a tradition or a logical argument in order to reach the conclusion that the Torah does not obligate eating matza for seven days.[[7]](#footnote-7)

3. Deduction from context. This rule is based on inferring the meaning of a word or expression, which has more than one possible meaning, from the context. Thus, for example, it is stated in *Parashat Tazria*: "And if a man's hair be fallen off his head, he is bald; he is pure" (*Vayikra* 13:40). One might have understood from the words "he is pure" that when a person is bald, he is entirely purified from all types of impurity, but the *baraita* teaches us that this is not so: "Can it be that he is clean of all impurity? Therefore the verse states: 'But if there be in the bald head, or the bald forehead, a reddish-white plague' (v. 42). The matter is learned from the context: he is not purified of all impurity, but only from the impurity of *netakim* (scaly eruptions of the scalp)" (*Baraita de-Rabbi Yishmael* at the beginning of *Torat Kohanim* 2d). This method of interpretation, understanding a word based on its context, is well known. In this case as well, the conclusion stems from a simple analysis of Scripture.

The approach of the school of Rabbi Akiva is completely different. In the previous chapter (section 3), we mentioned the famous midrashic portrayal of Moshe's descent to Rabbi Akiva's *beit midrash*, which picturesquely describes Rabbi Akiva’s methodology: he would "expound upon each tittle heaps and heaps of laws." It is clearly impossible to analyze in a logical manner the meaning of the "coronets" affixed to the letters in a Torah scroll and infer from them "heaps and heaps of laws." However, we do not find anywhere that Rabbi Akiva actually derived a law from such a coronet, and it seems that the intention here is to describe his way of deriving laws from each word or letter that appears superfluous,[[8]](#footnote-8) as we shall see below. In a general sense, his expositions do not seem to stem from the plain meaning of the verses.

This emerges, among other things, from the following story:

Nechemya Imsoni ministered to Rabbi Akiva for twenty-two years, and he taught him that the words *et* and *gam* are terms of inclusion and that the words *akh* and *rak* are terms of exclusion. He said to him: What is the meaning of that which is written: "You shall fear [*et*]the Lord your God" (*Devarim* 10:20). He said to him: Him and His Torah. (*Yerushalmi Berakhot* 9:5, 14b)[[9]](#footnote-9)

According to Rabbi Akiva, wherever the words *et* or *gam* appear, they must come to add something[[10]](#footnote-10) to what is stated in the verse itself,[[11]](#footnote-11) for it would have been possible to write the verse even without these words. The *Yerushalmi* speaks of the difficulty in a verse which would seem to have left no room to add anything to it – for whom should one fear other than God? – but ultimately, Rabbi Akiva decides that it is possible to include fear of the Torah. It is clearly impossible to know from the verse itself what should be included from these words, and so this exposition is not only a literary analysis of the verse.

From here we may conclude that Rabbi Akiva broadly developed the “sustaining *midrash*” approach. In many cases, it is strikingly apparent that Rabbi Akiva’s halakhic conclusion does not follow from an analysis of the text itself, for the hermeneutical tools that he uses are not necessarily logical tools for analyzing words and sentences. It must, therefore, be assumed that Rabbi Akiva seeks to establish a law that he already knew by way of a tradition or a logical argument – and he does this by connecting it to a verse, as a symbol and allusion but not as the exclusive source of the law. However, there may also be cases in which Rabbi Akiva finds a hint in Scripture – such as the word *et* – where there is room to consider an additional law that expands upon what is stated explicitly in the verse, even if he does not know what that law is, and derivation of the law stems from a logical argument that comes into being only after it is understood from the verse that there is room to expand.

As is only natural, many disputes have arisen between these different approaches of Rabbi Yishmael and Rabbi Akiva, on several levels:

a. Sometimes, the different methods of midrashic exposition have led to disputes regarding Halakha. For example, the Torah states: "And the daughter of any priest, if she profane herself by playing the harlot, she profanes her father; she shall be burnt with fire" (*Vayikra* 21:9). The *Tannaim* disagree whether this punishment applies only to a woman who was betrothed, or even to one who was married:

Rabbi Akiva said: [A priest's daughter], whether she is betrothed or she is married, is punished with fire. I might think that this applies even to an unmarried woman: but her father is mentioned in this passage, and her father is also mentioned elsewhere (*Devarim* 22:21);[[12]](#footnote-12) just as elsewhere the reference is to harlotry by one who is bound to a husband, so here too. Rabbi Yishmael said to him: If so, just as the second passage refers to a young woman [*na'ara*] who is betrothed, so this verse [regarding a priest's daughter] should be taken to refer to a young woman who is betrothed[[13]](#footnote-13) [but if she is married, her punishment should be different]. Rabbi Akiva said to him: Yishmael, my brother, I expound "the daughter" "and the daughter"! He said to him: Because you expound "the daughter" "and the daughter," we should take her out to be punished with fire? (*Sanhedrin* 51b)

Rabbi Akiva maintains that since the letter *vav* in the word *u-vat* ("and the daughter") is superfluous, we may derive from it that the verse refers not only to a betrothed woman, but also to a married woman. Rabbi Yishmael responds with irony: "Because you expound 'the daughter' 'and the daughter,' we should take her out to be punished with fire?"[[14]](#footnote-14) Of course, once again we are dealing with a fundamental dispute: According to Rabbi Akiva, there was presumably reason to think that the law regarding the daughter of a priest who played the harlot does not distinguish between a betrothed woman and a married one, and he attached this rule to the superfluous letter *vav*. Rabbi Yishmael, whose midrashic methodology involves analysis of the verses and whose fundamental approach is that "the Torah speaks in human language," was not prepared to accept a midrashic exposition that is not based on the plain sense of the text, and thus he rejected the approach of Rabbi Akiva.[[15]](#footnote-15)

(Translated by David Strauss)

1. Much has been written about the differences between the two schools with respect to their methods of midrashic exposition. See, among others, *Mishneh le-Melekh*, *Hilkhot De'ot* 6:7; Rabbi D. Tz. Hoffman, "*Le-Cheker Midrashei ha-Tannaim*," in: *Mesilot le-Torat ha-Tannaim*, Tel Aviv 5688, pp. 5-12; Y. N. Epstein, *Mevo'ot le-Sifrut ha-Tannaim*, Jerusalem 5757, pp. 521-536; A. J. Heschel, *Torah min ha-Shamayim be-Aspaklariya shel ha-Dorot*, vol. I, London and New York 5722, pp. 3-23; E. Tz. Melamed, *Pirkei Mavo le-Sifrut ha-Talmud*, Jerusalem 5733, pp. 172-180; M. Elon, *Ha-Mishpat ha-Ivri* I, Jerusalem 5752, pp. 310-320; A. Reizel, *Mavo le-Midrashim*, Alon Shevut 5771, pp. 26-31. [↑](#footnote-ref-1)
2. Much has been written over the years about the logic underlying the various hermeneutical rules. For a survey of the commentaries and bibliographical literature about them, see A. Ravitzky, *Logika Aristotalit u-Metodologiya Talmudit*, Jerusalem 5770, pp. 1-25. A systematic application of the subject in the *parashiyot* of the Torah may be found in the book series of G. Chazot and M. Avraham, *Mida Tova* 1-4, 5765-5766. [↑](#footnote-ref-2)
3. Regarding the rule of *gezeira shava*, which at times appears to deviate from this direction, see below, section 7. [↑](#footnote-ref-3)
4. And similarly in the opposite direction: If we find a certain leniency in the more severe of the two, it is certainly found also in the less severe of the two. Regarding the relationship between *kal va-chomer* and ordinary rules of logic, see M. Avraham, "*Ha-Kal va-Chomer ke-Silogizem – Model Aritmeti*, *Higayon* 2, 5753, pp. 29-46; G. Chazot, "*Kal va-Chomer ve-Dayo be-Sifrut ha-Tannait*," *Kfar Chassidim* 5776. [↑](#footnote-ref-4)
5. See *Bava Metzia* 94b. Regarding the difference between the plain sense of the Torah section dealing with bailees and its midrashic exposition, see the next chapter (section 4, 2). [↑](#footnote-ref-5)
6. Nevertheless, it is clear that a *kal va-chomer* argument must have logical basis, and therefore it requires caution. At times, using a structure that looks like a *kal va-chomer* argument is liable to lead to an absurd conclusion, as is emphasized in the following story: "This is the question that Rabbi Yose ben Tad'i of Teverya asked Rabban Gamliel: If in the case of my wife who is permitted to me, I am nevertheless forbidden to her daughter, then in the case of a married woman who is forbidden to me, I should certainly be forbidden to her daughter!" (Tractate *Derekh Eretz*, chapter dealing with forbidden sexual relationships, law 6, ed. Higger, pp. 266-267; and with slight variations, *Yalkut Shimoni Emor* no. 631, ed. Mosad ha-Rav Kook, p. 657). This argument is logically incorrect, because "my wife" and "a married woman are not two things, one of which is more "severe" than the other, but rather each of them has its own laws: It is precisely because a man's wife is permitted to him that her daugher is forbidden to him; as for a married woman who is forbidden to him, there is no reason that her daughter should be forbidden to him. [↑](#footnote-ref-6)
7. In fact, wherever the Torah mentions the eating of matza over the course of the festival, it mentions it together with the prohibition of eating *chametz*. For example: "Seven days shall you eat unleavened bread; but the first day you shall put away leaven out of your houses; for whoever eats leavened bread from the first day until the seventh day, that soul shall be cut off from Israel" (*Shemot* 12:15). The eating of matza is proposed then as a voluntary substitute for *chametz*, the eating of which is forbidden. [↑](#footnote-ref-7)
8. See Sh. Z. Havlin, *Mesoret ha-Torah she-be-al Peh*, Jerusalem 5772, p. 170. [↑](#footnote-ref-8)
9. The Babylonian Talmud (*Pesachim* 22b) records this story in a slightly different form: "As it was taught: Shimon Imsoni, and some say it was Nechemya Imsoni, would expound every *et* in the Torah. When he came to 'You shall fear *et* the Lord your God,' he desisted. His disciples said to him: Master, what is to happen with all the *ets* which you have interpreted? He said to them: Just as I received reward for the exposition, so will I receive reward for retracting. Subsequently, Rabbi Akiva came and taught: 'You shall fear *et* the Lord your God' – to include Torah scholars." [↑](#footnote-ref-9)
10. Rabbi Akiva learned the methodology of expounding every instance of the word *et* from his teacher, Nachum of Gimzo, as we find elsewhere: "Rabbi Yishmael asked Rabbi Akiva when they were going on a journey together, saying to him: You have ministered for twenty-two years to Nachum of Gimzo, who used to expound all [instances of the word] *et* in the Torah. [Tell me] what exposition did he give of '*et* the heaven and *et* the earth' (*Bereishit* 1:1)?" (*Chagiga* 12a). Regarding the relationship between Nachum of Gimzo and Rabbi Akiva, see B. Tz. Rosenfeld, "*Nahum Ish Gimzo – Rabbo ha-Muvhak shel Rabbi Akiva*," *Talpiot* 11, 5759-5760, pp. 84-88, and see also below. [↑](#footnote-ref-10)
11. And similarly in the opposite direction: Wherever the words *akh* or *rak* appear, they come to exclude something, beyond what is stated in the verse itself. [↑](#footnote-ref-11)
12. The reference is to what is stated regarding a young woman [*na’ara*] who played the harlot: "Then they shall bring out the young woman to the door her father's house, and the men of her city shall stone her with stones that she die" (*Devarim* 22:21) – that she is liable for stoning only if she played the harlot when she already had some kind of a marital relationship with another person, and not if she was single. [↑](#footnote-ref-12)
13. That is to say, if the source for the fact that we are not dealing with a single woman is a *gezeira shava* from the verse dealing with a young woman who played the harlot, we should learn from it that this law applies only to a betrothed woman, and not to one who is married. [↑](#footnote-ref-13)
14. This response sounds as if he is arguing about a fundamental point: Because of a precise reading of a single letter, you wish to condemn the young woman to be punished with fire? It should be remembered, however, that the *Tannaim* only disagree about whether the married young woman is executed by fire or by strangulation; according to all, she is subject to capital punishment. [↑](#footnote-ref-14)
15. Later in the passage, the Gemara asks: "Now, how does Rabbi Yishmael expound 'the daughter' 'and the daughter'?" and it answers that Rabbi Yishmael also derives a law from this, which would seem to imply that there is no fundamental dispute between Rabbi Yishmael and Rabbi Akiva regarding the manner of midrashic exposition. Thus the Ramban writes in his strictures to the Rambam's *Sefer ha-Mitzvot*, principle 2: "This indicates that had he not had a different exposition, even Rabbi Yishmael would send her to the fire based on this inclusion, even though he did not have a tradition about her being sent to the fire." The *Tosafot* (*Yevamot* 68b, s.v. *keman*), however, note that the Gemara presents Rabbi Akiva's approach, that every superfluous instance of the letter *vav* must be expounded, as unique ("Like Rabbi Akiva, who expounds every instance of *et*"); therefore, they raise the possibility that in fact Rabbi Yishmael does not expound the letter *vav*, and the Gemara's intention is only to reconcile his position even according to those who maintain that we do expound a seemingly superfluous letter *vav*. [↑](#footnote-ref-15)