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 #23: Chapter Three (XI)**

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

We ended the previous *shiur* with a series of questions: How 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*?

The Ramban offers a unique understanding of the hermeneutical rule of *gezera shava*, which can help us answer these questions. He first explains that a tradition is necessary in order to invoke the rule of *gezera shava* because the great number of similar words in the Torah could otherwise allow for *gezerot shavot* that would change the entire understanding of the Torah:

For a *gezera shava*,they [the Sages] required an explicit tradition, because it is a rule by which a person could expound all day long and contradict all the laws of the Torah. This is because words are repeated many times in the Torah, it being impossible for such a long book to be written in its entirety with new words. (Ramban, strictures to the Rambam's *Sefer ha-Mitzvot*, principle 2)

However, because of the above questions, the Ramban limits the tradition needed to invoke the rule of *gezera shava*:

Know that when the Sages said that a person may not put forward a *gezera shava* of his own accord, *they did not mean to say that every gezera shava was explained to them from Sinai and handed down to them from the mouth of Moshe Rabbeinu [as if he said]: “Learn [the meaning of] a certain word in a certain verse from [the meaning of] the same word in a different verse, and compare the law in the two case for a certain purpose.”*This is not the case, for we find them disagreeing all the time in many places about this matter, like that which we learned that that they said in the Gemara *Chullin*: "What is Rabbi Meir's reason with regard to the law of 'it and its young'?"… And they asked: "Why does not Rabbi Meir infer it by analogy from 'and slay the beasts'?"… And if Rabbi Meir had a tradition from Sinai that a slaughtering that does not render an animal fit for food is deemed a slaughtering, and that the matter is learned from consecrated animals slaughtered outside the Sanctuary, and Rabbi Shimon had a tradition from his teachers that it is not deemed a slaughtering, and that this is learned from "and slay the beasts," there would be no room for these questions or for the answers stated in the Gemara! And there are many other similar instances in the Gemara.

And they further said about *gezera shava*: "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… [according to the Rabbis], a deduction may be made, but a refutation may be offered." …

But what they meant [when they said about] a *gezera shava* that it is from Sinai is that they had a tradition that [the law regarding] a slaughtering that does not render an animal fit for food is learned by way of a *gezera shava* between "slaughtering" and "slaughtering." And it was Rabbi Meir's position that it is right to learn it from consecrated animals slaughtered outside the Sanctuary, and that it is deemed a slaughtering. And Rabbi Shimon was of the opinion that it is more correct to learn it from "and slay the beast," and that a slaughtering that does not render an animal fit for food is not deemed a slaughtering. And similarly in all such cases.

According to the Ramban, the tradition was not about the specific content of the *gezera shava*, nor even about the precise way of invoking the rule. Tradition merely indicated that certain laws (e.g., the law governing the grant given by the master to his Hebrew slave upon completion of his term of servitude and the law governing a slaughtering that does not render an animal fit for food) are learned by way of a *gezera shava* from a certain word, but there were still different opinions as to how to properly apply the principle of *gezera shava* to that word. Therefore, there is room for rules and limitations regarding *gezerot shavot*, such as that the terms be free for interpretation, and it is also understandable that there are different *gezerot shavot* that disagree with each other.[[1]](#footnote-1)

However, a question can be raised against this approach: What is the value of a tradition that a particular law is supposed to be learned by way of a *gezera shava*, if the *gezera shava* itself is not specified and it can be used in different ways that may lead to entirely opposite conclusions? If there is a tradition, why does it not teach the law explicitly? And if tradition leaves the derivation to the Sages, why limit the derivation specifically to the rule of *gezera shava*?

This seems to be the reason that the Ramban also raises the possibility that this phenomenon was not intentional, but rather the result of parts of the tradition having been forgotten when the people were grieving the death of Moshe.[[2]](#footnote-2) According to this approach, tradition was originally precise concerning the *gezerot shavot*, but after the mourning period for Moshe, there remained only a tradition that a *gezera shava* exists about a particular matter; what exactly stands behind it was forgotten.

But even this approach does not remove all the difficulties, as there are disputes in which one *Tanna* derives a law by way of a *gezera shava* while his colleague derives it in some other way. For example, the *Tannaim* disagree whether one is permitted to derive benefit from mixtures of meat and milk. Rabbi Yehuda HaNasi learns by way of a *gezera shava* that this is forbidden: "It is written here: 'For you are a holy people to the Lord. [You shall not cook a kid in its mother's milk]' (*Devarim* 14:2), and it is written elsewhere: 'There shall be no consecrated prostitutes of the sons of Israel' (*Devarim* 23:18). Just as there, the prohibition refers to the benefit derived, so too here, it is regarding the benefit derived" (*Chullin* 115b). Rabbi Shimon permits deriving pleasure from mixtures of meat and milk, and he too derives the matter by way of a *gezera shava*: "A mixture of meat and milk may not be eaten, but pleasure may be derived from it, for it is written: 'For you are a holy people to the Lord your God; [you shall not cook a kid in its mother's milk]' and it is written elsewhere: 'And you shall be holy me to Me; [therefore you shall not eat any flesh that is torn of beasts in the field; you shall cast it to the dogs' (*Shemot* 22:30). Just as there, it may not be eaten but benefit may be derived from it; so too here, it may not be eaten but benefit may be derived from it" (*Chullin* 116a). However, many *Tannaim* prohibit deriving benefit from a mixture of meat and milk, like Rabbi Yehuda HaNasi, but learn this prohibition in other ways – not by way of a *gezera shava*.[[3]](#footnote-3) If there is indeed a tradition that the law is derived by way of a *gezera shava*, why did some suggest learning the matter in other ways?

Rabbeinu Tam offered a solution to this difficulty as well: "They had a tradition about the number of *gezerot shavot* in the entire Torah, and this was in excess of the sum; therefore they did not accept it" (*Tosafot*, *Shabbat* 97a, s.v. *gezera*). According to this approach, the tradition was even more restricted; there was a tradition that a particular number of laws are derived by way of a *gezera shava*, and therefore it is possible for the Sages to disagree about whether any particular law must be derived by way of a *gezera shava* or not. This is a very novel idea, for nowhere in the writings of *Chazal* do we find a statement concerning a specific number of *gezerot shavot*. Furthermore, this approach still leaves us with a question regarding the value of a tradition that does not significantly promote knowing the law or the method of its derivation.

It may be possible to offer another solution to the problems that have arisen in the matter of *gezera shava*. The rule that "one may not put forward a *gezera shava* of his own accord" appears in the *Yerushalmi* as an assertion of Rabbi Abba bar Memel, who wishes to demonstrate where the concept of *gezerot shavot* can lead without a tradition:

Rabbi Yose bar Rabbi Bun said in the name of Rabbi Abba bar Memel: If a person puts forward a *gezera shava* of his own accord, he can make a creeping animal impart ritual impurity by way of a tent, and [he can make] a corpse impart ritual impurity if it has the size of a lentil, by expounding "garment skin" "garment skin" by way of a *gezera shava*.[[4]](#footnote-4) (*Yerushalmi*, *Pesachim* 6:1, 33a).

 From here Rabbi Abba bar Memel reaches the conclusion:

Rabbi Yose bar Rabbi Bon said in the name of Rabbi Abba bar Memel: A person may put forward a *gezera shava* to sustain what he has learned, but he may not put forward a *gezera shava* to cancel what he has learned.

In other words, Rabbi Abba bar Memel, an *Amora* of the second and third generations, establishes that a *gezera shava* can only serve as a sustaining *midrash*, and not as a creative *midrash*. However, we should bear in mind that Rabbi Abba bar Memel is the first to mention the limitation that a person may not put forward a *gezera shava* of his own accord, and no *Tanna* explicitly mentioned this before him. If this was a well-known and universal position, why did Rabbi Abba bar Memel have to repeat and explain it?

All of these difficulties can be resolved with the proposal suggested by Y. Gilat:[[5]](#footnote-5)

It seems, therefore, that the rule that "a person may not put forward a *gezera shava* of his own accord" was established only at the end of the Tannaitic period or at the beginning of the Amoraic period, with the purpose of totally abolishing *gezera shava* as a hermeneutical rule by way of which we learn new laws….[[6]](#footnote-6)

It stands to reason, then, that in the early days, *gezera shava* was a rule that was founded on reasoning and logic, and served both as an exegetical *midrash* for obscure passages and as an analogous *midrash*, as a creative factor of halakha for the finding of solutions to problems of law that arise from time to time as life develops. Over time, the rule of *gezera shava* focused on the formal verbal analogy in it, and concentrated on the external discussion of its words. As a result, the logical element in it was undermined, and the fear that *gezera shava* would be improperly exploited increased. In order to prevent its arbitrary use, Rabbi Yishmael and his school established the rule that "a person may not put forward a *gezera shava* unless it is free for interpretation." However, since this limiting rule was not accepted by all, and there were still many who used *gezera shava* in strange ways, it was established in the generation of transition between *Tannaim* and *Amoraim* that one may not derive any new laws at all based on *gezera shava*; that is to say, a person may put forward a *gezera shava* of his own accord only to sustain a teaching already in his hand, but for nothing else.

According to this proposal, the assertion that "a person may not put forward a *gezera shava* of his own accord," does not include the claim that all *gezerot shavot* must have been received by way of a tradition from Sinai. It does not reject the notion that it was possible in the generations of the *Tannaim* to expound *gezerot shavot* even without a tradition going back to Sinai; it simply maintains that from a certain generation on, it was established that *gezerot shavot* may no longer be put forward to create new laws. Now we can understand why there are disagreements in matters of *gezera shava*, and why there is no mention of this limitation anywhere in Tannaitic literature or in the overwhelming majority of passages dealing with *gezera shava* – for during the time of the *Tannaim*, this hermeneutical rule was used fairly freely.

Thus one can also understand the manifest duality in *gezerot shavot*, some of which seem to represent creative *midrash*, while others appear to be only examples of sustaining *midrash*. It seems that the creative *gezerot shavot* characterize the original use of this hermeneutical rule, as a tool to identify the meaning of words and phrases in one place based on their meaning somewhere else, where they can be understood from their context. The *gezerot shavot* that do not belong to this category are more appropriate for the later period, when *gezera shava* ceased between used as a tool for creative *midrash* and became an exclusive tool of sustaining *midrash*.[[7]](#footnote-7) During this period, *gezera shava* was used primarily as an allusion or *asmakhta* for known laws, and therefore there was no need to base it on a precise analysis of the verses.

8. **Summary**

This chapter addressed the question of how to understand the phenomenon of the *midrashim* of *Chazal* that connect laws to verses: Does the *midrash* create the law based on an examination of the verse itself, or could it be that the law already existed beforehand, based on a tradition or a logical argument, and was joined to a verse in order to sustain it and to connect it to the Written Law even though the verse itself is not the exclusive source of the law?

After seeing various proofs in both directions, it seems that there are two types of *midrash*: there are creative *midrashim* and there are sustaining *midrashim*, and in general it is possible to distinguish between them based on the degree of connection between the law and the verse. When the *midrash* deduces the law from the verse in an understandable manner, it is likely a creative *midrash*, and the source of the law is indeed the examination of the text. When the derivation is not easily understood, and it is very difficult to see the law as flowing exclusively from an analysis of the verse, this indicates that we are dealing with a sustaining *midrash*, which was familiar with the law even before joining it to a verse.

The question of whether a *midrash* creates or sustains is of twofold importance: it is important for understanding the *midrash* itself, and for the possibility of not requiring a logical connection between every *midrash* and the law connected to it, when such a connection is not evident to the best of our understanding; and it is also important for examining the fundamental sources of the many laws appearing in the *midrash* and determining whether they stem from a deep understanding of the Written Law or are the product of logical reasoning and tradition. Furthermore, we have seen that not infrequently, logical reasoning determines how to expound a verse, and the sustaining *midrash* is the result of a determination that is founded on reason.

We also explored the possibility that the two main schools – that of Rabbi Yishmael and that of Rabbi Akiva – adopted different approaches. Rabbi Yishmael uses the thirteen hermeneutical rules by way of which the Torah is expounded, in accordance with his approach that "the Torah speaks in the language of men," and therefore he analyzes Scripture in a logical manner. Rabbi Akiva, who "expounds upon each tittle heaps and heaps of laws," represents in many places the approach of sustaining *midrash*, according to which the laws that are connected to Scripture do not stem exclusively from its analysis. Nevertheless, the force of a sustaining *midrash* is no less than the force of a creative *midrash*. Joining laws to the Written Law by way of a sustaining *midrash* expresses their status as Torah laws for all purposes; therefore, these *midrashim* are of great importance, and they are worthy of the extensive and detailed study that we dedicated to them.

We have seen that even though a sustaining *midrash* has much in common with an *asmakhta* – for in both cases a law was already known previously, and was attached to a verse only afterwards, which is not the verse's original intention, according to the prevalent opinion – nevertheless, there is a fundamental distinction between a sustaining *midrash*, which relates to a law that has the force of Torah law, and an *asmakhta*, which relates to a law that is explicitly identified as "a Rabbinic injunction, and the verse is merely a support to it."

At the end of the chapter, we examined the hermeneutical rule of *gezera shava*, and saw that it is used both in creative *midrash* – explaining the meaning of a word or phrase found in one place based on its appearance somewhere else, where it can be understood from the context – and in sustaining *midrash*, which is not bound by exegetical logic of this sort. We learned that the two ways this rule is used may reflect a transition between different periods, and thus it is possible to resolve many difficulties regarding the need for a tradition to expound a *gezera shava*.

(Translated by David Strauss)

1. Many other *Rishonim* took the same approach, e.g., the Meiri in *Shevuot* (33b, s.v. *kevar yadata*:"A person may not put forward a *gezera shava* unless he has a tradition from his teacher that a *gezera shava* is to be expounded on that word. But if he has such a tradition, *even if he does not have a tradition regarding which word should be expounded with the* gezera shava**,**he can put it forward, and it is in his hands to choose the word that he sees to be most similar to it." This explanation does not answer the question of how it is possible that the Sages sometimes disagree even about which word in the passage in question should be expounded by way of a *gezera shava*, as in the example cited above from the law of a parapet. Other *Rishonim* maintain that the tradition is even more general, and that it relates only to the very existence of a *gezera shava* regarding a certain issue, but with no tradition even regarding the precise word to which it is connected, as the *Tosafot* in *Ketubot* 38b (s.v. *eima*) write: "Because he had a tradition that there is a *gezera shava*, but he didn't know regarding which word, and he said by way of logical reasoning that it is based on the two instances of the word *hazada*." [↑](#footnote-ref-1)
2. This is rooted in the *midrash* that says: "It has been taught: A thousand and seven hundred *kal va-chomer* and *gezera shava* and specifications of the Scribes were forgotten during the period of mourning for Moshe. Rabbi Abahu said: Nevertheless, Otniel the son of Kenaz restored [these forgotten teachings] as a result of his dialectics" (*Temura* 16a). [↑](#footnote-ref-2)
3. For example: "The school of Rabbi Eliezer taught: 'You shall not eat of anything that dies of itself… [you may sell it. You shall not cook a kid in its mother’s milk]’ (*Devarim* 14:21). The Torah here implies that when you sell, it you may not first cook it [in milk] and then sell it. The school of Rabbi Yishmael taught: 'You shall not cook a kid in its mother's milk,' is stated three times: one is a prohibition against eating it, one a prohibition against deriving benefit from it, and one a prohibition against cooking it" (*Chullin* 115b, where additional sources are also brought). [↑](#footnote-ref-3)
4. The words "garment" and "skin" appear in the section dealing with the ritual impurity of creeping creatures: "And upon whatsoever any of them, when they are dead, does fall, it shall be impure; whether it be any vessel of wood, or **garment**, or **skin**, or sack" (*Vayikra* 11:32). They are also mentioned in the section dealing with the impurity of a corpse: "And as to every **garment**, and all that is made of **skin,** and all work of goats' hair, and all things made of wood, you shall purify" (*Bamidbar* 31:20). Rabbi Abba bar Memel says that one might have argued based on a *gezera shava* that a creeping creature imparts ritual impurity by way of a tent, like a corpse, and that a corpse imparts ritual impurity if it has the size of a lentil, like a creeping creature, but both of these assertions are incorrect: A creeping creature does not impart impurity by way of a tent, and a corpse imparts immunity only if it has the size of an olive. [↑](#footnote-ref-4)
5. Y. Gilat, *Perakim be-Hishtalshelut ha-Halakha*, Bar Ilan 5752, pp. 372-373. [↑](#footnote-ref-5)
6. The two contexts where this rule appears in the literature of *Chazal* do discuss the positions of *Tannaim*, but the explanation that hangs the disagreement on this question is found in the anonymous portion of the Gemara, and does not appear as a direct quote of a particular *Tanna* (as is noted by Gilat, ibid., note 40, and see below). In the passage in tractate *Pesachim*, in both the *Bavli* (66a)and the *Yerushalmi* (6:1, 33a), it is related how Hillel the Elder was appointed *Nasi* when the sons of Beteira did not know whether or not the Paschal offering sets aside Shabbat. Both Talmuds relate that Hillel adduced proof that the Paschal offering sets aside Shabbat both from a *gezera shava* and from a *kal va-chomer*. The *baraita* in the *Bavli* states: "Its appointed time' is stated in connection with the Paschal offering (*Bamidbar* 9:2), and 'its appointed time' is stated in connection with the daily offering (*Bamidbar* 28:2). Just as 'its appointed time' which is stated in connection with the daily offering sets aside Shabbat, so 'its appointed time' which is stated in connection with the Paschal offering sets aside Shabbat. Moreover, there is a *kal va-chomer* argument: If the daily offering, [omission of] which is not punished by excision, sets aside Shabbat, then the Paschal offering, [neglect of] which is punished by excision, it is not logical that it sets aside Shabbat?" Later, the Gemara asks: "But since he had received the tradition of a *gezera shava*, what was the need for a *kal va-chomer*?" And it answers: "Rather he said it for them: It is well that you do not learn a *gezera shava*, because a person cannot put forward a *gezera shava* of his own accord. But a *kal va-chomer*, which a person can put forward of his own accord, you should have argued!" In the passage in *Nida* (19b) as well, it is the Gemara that explains that Rabbi Meir derived his law from a *gezera shava*, while according to the Sages, "a person may put forward a *kal va-chomer* of his own accord, but he may not put forward a *gezera shava* of his own accord." Moreover, it is possible in both contexts that the assertion itself is in dispute: In the passage in *Nida*, the Gemara does not explain how Rabbi Meir contends with the Sages' argument that a person may not put forward a *gezera shava* of his own accord, and it is not impossible that he disagrees, as was noted by Rabbi Yaakov Emden in his comments there, 22b, s.v. *vayitzer*; in the *Yerushalmi* *Pesachim*, the assertion is voiced by the elders of Beteira, but the implication is that Hillel did not adopt this approach. Only in the passage in the *Bavli* in *Pesachim* is it implied that all parties accept the assumption that a person may not put forward a *gezera shava* of his own accord.

Even though Gilat's proposal resolves all the difficulties raised above, Rav Sh. Ariel (*Nata be-Tokheinu – Perakim bi-Yesodot Torah she-be-Al* *Peh*, I *– Masoret ve-Yetzira*, Otniel 5778), p. 341, strongly rejects it. In my opinion, his claims are not justified. He puts forward three main arguments, and all three can be refuted:

1) According to him, "In the *Yerushalmi* in *Pesachim*, the rule appears even in the *baraita* itself." This argument is not incontrovertible, for in the *baraita* brought in the Tosefta (*Pesachim* 4:14, p. 165) there is no mention of the rejections of Hillel’s words by the sons of Beteira, and thus there is also no mention of the rule that "a person may not put forward a *gezera shava* of his own accord," just as it is not mentioned in any other Tannaitic work. It is possible that the rule is an addition of the passage in the *Yerushalmi*, as in the *Bavli* – the source of which is in the stage of the *Amoraim*.

2. Another argument of Rav Sh. Ariel is that not only from the words of the *Tannaim*, but even from the Amoraic passages, it is clear that it is possible to expound a *gezera shava* in an independent manner. However, the passage that Rav Sh. Ariel adduces as proof, in *Shabbat* 131, does not prove this at all, for the Gemara there discusses a dispute between the Sages and Rabbi Eliezer, and explains the position of the Sages as relating to the possibility of a certain *gezera shava*; the passage includes no proposal on the part of an Amora to create a new *gezera shava*.

3. We are left then with Rav Sh. Ariel's main argument: that it is impossible that the editors of the passages would have explained the Tannaitic controversy or the underlying premise in the story of Hillel on the basis of a later determination, which did not historically exist at the time of the controversy. Indeed, Gilat's approach involves a novel idea in this respect that is inconsistent with the plain meaning of the Talmudic text. However, this point relates to a broader question, which will be discussed in chapter 6, regarding the relationship between the Tannaitic sources and the way they are interpreted in the Gemara. There we will cite *Rishonim* and *Acharonim* who noted that the Gemara's interpretation is not necessarily the original meaning of the Tannaitic source. Thus, it is possible that the same is true here, and the fact that the Gemara interprets the dispute in terms of the rule that "a person may not put forward a *gezera shava* of his own accord" does not necessarily mean this was its original interpretation.

In any case, even if Gilat's approach is novel, we must not ignore its clear advantages –especially the fact that it explains in a satisfactory manner how it is possible that a seemingly fundamental rule is mentioned in only two contexts, and presented by Rabbi Abba bar Memel as a novel idea. [↑](#footnote-ref-6)
7. Of course, this does not mean that there is an absolute dichotomous distinction between the two types of *midrash*. It is quite possible that already at an early stage, before the rule was established, *gezerot shavot* were used as a tool of sustaining *midrash* as well; it is also possible that there were still *gezerot shavot* at a later stage that were based on interpretive analysis, as had originally been the case. However, it is clear that once the rule was established, the prevalent use of *gezerot shavot* was for sustaining *midrash*.

 [↑](#footnote-ref-7)