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 #31: Chapter Four (8)**

**Contradictions Between Midrash Halakha and the Plain Sense of Scripture**

**IV. Conclusions Stemming from an Analysis of the Text**

In this section, we will explore other reasons for what appears to be a gap between the Midrash Halakha and the plain meaning of the Scriptural text – reasons that stem from an understanding of the text itself. These cases as well can be divided into two categories.

1. Contradictions within Scripture

In some cases, the contradiction stems not from a gap between the Midrash and the plain meaning of the text, but from a contradiction between different passages in the Torah itself. Often, different passages express different perspectives on the same story or law, and the midrashic expositions of *Chazal* are intended to integrate the different accounts and reconcile them with respect to practice. Here are two examples of this phenomenon:

a. The laws regarding Hebrew slaves appear in the Torah in three places: In *Parashat Mishpatim* (*Shemot* 21:2-7), in *Parashat Behar* (*Vayikra* 26:39-46), and in *Parashat Re'eh* (*Devarim* 15:12-18). There are significant differences between the different passages, but for our purposes we will focus on one apparent contradiction between *Parashat Behar* and *Parashat Re'eh*.

The passage in *Parashat Re'eh* states that if a slave does not want to be released in his seventh year, an awl shall be thrust through his ear by his master, and then he shall serve him forever:

If your brother, a Hebrew man, or a Hebrew woman, be sold to you, he shall serve you six years; and in the seventh year you shall let him go free from you. 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 wherewith the Lord your God has blessed you, you shall give to him. And you shall remember that you were a bondman in the land of Egypt, and the Lord your God redeemed you; therefore I command you this thing today. And it shall be, if he say to you: “I will not go out from you,” because he loves you and your house, because he fares well with you; then you shall take an awl, and thrust it through his ear and into the door, and he shall be your bondman forever [*eved olam*]. And also to your bondwoman you shall do likewise.

The word “*olam*” appears in the parallel text in *Shemot* as well, and as the Rashbam explains (in his commentary to *Shemot* 21:6): "According to the plain meaning of the text – all the days of his life, as it is stated regarding Shmuel: 'And he shall abide there forever [*ad olam*]' (I *Shmuel* 1:22)."[[1]](#footnote-1) *Chazal*, however, established that "*olam*" means "until the termination of the Jubilee cycle" (*Mekhilta de-Rabbi Yishmael, masekhta de-nezikin, parasha* 2, p. 254), for thus *Parashat Behar* states explicitly that it is impossible for an Israelite to be sold to his brothers forever:

And if your brother be waxen poor with you, and sell himself to you, you shall not make him to serve as a bondservant. As a hired servant, and as a settler, he shall be with you; he shall serve with you to the year of jubilee. Then shall he go out from you, he and his children with him, and shall return to his own family, and to the possession of his fathers shall he return. For they are My servants, whom I brought forth out of the land of Egypt; they shall not be sold as bondmen. 

It turns out that the apparent contradiction between the Midrash Halakha and the verses in *Parashat Re'eh* is in fact a contradiction between the different passages in the Torah. How can we explain this contradiction?

According to the plain meaning of Scripture, the source of the contradiction seems to lie in the fact that each passage expresses a different aspect of the master-slave relationship. In the book of *Vayikra*,the perspective is religious: God is the master of the people of Israel, and therefore it is impossible that an Israelite should be sold forever to another person; the slave will always be released in the Jubilee year, "For they are My servants, whom I brought forth out of the land of Egypt; they shall not be sold as bondmen." In the book of *Devarim*, the perspective is social-moral: "And you shall remember that you were a bondman in the land of Egypt" – and from this perspective, as long as the master fulfills his responsibility to release his slave in the seventh year, and it is the slave who refuses his offer and asks to remain in his master's house, he should in fact remain there forever. Since the Torah includes both passages and both perspectives, in practice, the slave is released in the Jubilee year.

In light of this, we can understand why *Chazal* explained that the slavery "forever [*olam*]" mentioned in *Shemot* and in *Devarim* extends only to "the termination [*olam*] of the Jubilee cycle." This is not a literal interpretation of the word *olam*,[[2]](#footnote-2) but rather an explanation that relies on seeing all of the Torah's passages on the issue, each of which on its own expresses a unique conceptual perspective, but all of which should lead to one coherent directive on the practical halakhic level.

We can summarize this approach in the words of Rav Mordechai Breuer:

It is according to this that we should understand the new meaning that *Chazal* assigned to the concept of "*eved olam*": "*Olam* means until the termination of the Jubilee cycle." This explanation does not accord with the plain sense of Scripture in *Parashat Re'eh*; but it accords with the plain meaning that joins *Parashat Behar* to *Parashat Re'eh*. For the master on his part will not release the slave "*le-olam*," i.e., ever, and therefore the slave returns to his old work "*ad olam.*" But that slavery was from the outset only until the Jubilee year. Therefore, the slavery cast on the slave is only until "the termination of the Jubilee cycle."

Many contradictions between different passages in the Torah can be reconciled in similar fashion. In all of them, one must first seek out the contradictory trends – with all of the polar contrast between them. Only afterwards should the common ground, which mediates between the contrasts, be examined. It will usually turn out that the *midrashim* of *Chazal* that reconcile the contradictions accord with the deeper level of the plain sense of Scripture. They do not accord with the plain sense of the contradictory verses, but they do accord with the plain sense of Scripture which embraces the contradictory verses.[[3]](#footnote-3)

b. Regarding firstborn animals, it is stated in *Devarim* (15:19-20):

All the firstling males that are born of your herd and of your flock you shall sanctify to the Lord your God; you shall do no work with the firstling of your ox, nor shear the firstling of your flock. You shall eat it before the Lord your God year by year in the place which the Lord shall choose, you and your household.

It would seem from the plain sense of these verses that *anyone* to whom a firstling animal was born must eat that firstborn before the Lord.[[4]](#footnote-4) Why then do Rashi, Ibn Ezra, and others understand the verse as directed specifically to a priest, in keeping with what *Chazal* say: "A firstborn is eaten by the priests" (*Zevachim* 5:8)?[[5]](#footnote-5)

It seems the reason is that in the book of *Bamidbar* (18:17-18), firstborn animals are in fact explicitly included in the list of gifts given to the priests:

But the firstling of an ox, or the firstling of a sheep, or the firstling of a goat, you shall not redeem; they are holy: you shall dash their blood against the altar, and shall make their fat smoke for an offering made by fire, for a sweet savor to the Lord. And the flesh of them shall be yours; as the wave-breast and as the right thigh, it shall be yours.

Here, too, the contradiction is not between the words of *Chazal* and the verses, but between the verses themselves. This contradiction stems from the different aspects expressed in the books of *Bamidbar* and *Devarim* regarding the relationship between the standing of the priests and the standing of the people of Israel.[[6]](#footnote-6) *Chazal*’shalakhic conclusion is a practical combination of these two aspects, in which only the priests eat the firstborn animals – against the plain meaning of the passage in *Devarim*.

To summarize, this category includes cases in which *Chazal* expounded the Biblical text based on an overall perspective of the various passages written in the Torah, which in the end leads to a single halakhic "bottom line."

2. Different approaches to the plain meaning of Scripture

There seems to be another category of gaps between the plain meaning of a verse and its midrashic exposition, which is also not connected to a deliberate change made by *Chazal*. One example is in the section dealing with bailees. The Torah mentions two types of bailees:

If a man delivers to his neighbor money or utensils to keep, and it is stolen out of the man's house; if the thief be found, he shall pay double. **If the thief be not found, then the master of the house shall come near to God,** to see whether he has not put his hand to his neighbor's goods. (*Shemot* 22: 6)

If a man deliver to his neighbor a donkey, or an ox, or a sheep, or any beast, to keep, and it die, or be hurt, or driven away, no man seeing it; the oath of the Lord shall be between them both, to see whether he has not put his hand to his neighbor's goods; and the owner thereof shall accept it, and he shall not make restitution. **But if it be stolen from him, he shall make restitution to the owner thereof.** (*Shemot* 22:9-11)

In the first section, the bailee swears that the object was stolen from him, after which he is exempt from making payment; in the second section, the bailee is liable to pay for the stolen object, and he is exempt only if the object was lost due to circumstances beyond his control. What is the difference between the two types of bailees? A *baraita* explains:

The first section refers to an unpaid bailee; the second section refers to a paid bailee… It stands to reason that the second section refers to a paid bailee, for he is responsible for theft and loss. (*Bava Metzia* 94b)

However, a study of the plain meaning of Scripture seems to indicate that the difference between the two sections depends not on whether the bailee is paid or not – an issue that is not explicitly mentioned in the verses – but rather on the question of what he has been entrusted to watch: The first section opens with the words: "If a man deliver to his neighbor **money or utensils** to keep," whereas the second section opens with: "If a man deliver to his neighbor **a donkey, or an ox, or a sheep, or any beast,** to keep" – that is to say, the difference is between guarding inanimate objects and guarding animals. This is how the Rashbam explains the verses, and he even adds an explanation:

In this section, [the Torah] exempts the bailee in [cases of] theft and loss, whereas in the second section, it makes him liable for theft and loss. Our Rabbis explained that the first refers to an unpaid bailee, and the second to a paid bailee. According to the plain meaning of Scripture, however, the first section, in which it is written: "If a man delivers to his neighbor money or utensils to keep" – this is movable property, and [the owner] gave it to him to keep it in his house like the rest of his property. Therefore, if it was stolen from his house, he is exempt, because he guarded it the way he guards his own property. But the second section, in which it is written: "If a man deliver to his neighbor a donkey, or an ox, or a sheep, or any beast, to keep," and it is the way of animals to pasture in the field – when [the owner] deposited them by him, it was certainly so that he should guard them against thieves; therefore, if they were stolen, he is liable.

According to the Rashbam, a bailee who watches over objects belonging to another person along with his own household utensils is exempt, for he watched over them as he watched over his own property.[[7]](#footnote-7) In contrast, one who cares for another’s animals receives them from the outset with the assumption that he will watch over them outside his house; therefore, a higher level of protection is required of him.[[8]](#footnote-8)

The Rashbam's explanation is quite persuasive, and it gives rise to the question: Why in fact did *Chazal* distinguish between the sections based not on the object to be watched, but on whether or not the bailee was paid?[[9]](#footnote-9)

It seems that the answer is related to the question of what, in fact, is the plain meaning of the verses. Between the two sections cited above, there is another verse that seems to blur the distinction between watching over inanimate objects and watching over living creatures:

For every matter of trespass, whether it be for ox, for donkey, for sheep, for raiment, or for any manner of lost thing, whereof one says: This is it, the cause of both parties shall come before God; he whom God shall condemn shall pay double to his neighbor. (*Shemot* 22:8)

Indeed, *Chazal* saw this verse, which includes both inanimate objects and living creatures, as decisive proof for negating any distinction between objects handed over for safekeeping:

Scripture distinguishes between bailee and bailee. [You say Scripture distinguishes between bailee and bailee,] or perhaps Scripture comes only to distinguish between money and utensils and a beast? Therefore the verse states: "raiment." "Raiment" was included in the generalization, and it was removed from the generalization to teach: Just as raiment is special, in that Scripture distinguishes between bailee and bailee, so regarding all things Scripture distinguishes between bailee and bailee. Scripture does not come to distinguish between money and utensils and a beast. (*Mekhilta de-Rabbi Yishmael*, *masekhta de-nezikin* 15, p. 301)

The Rashbam, in keeping with his own position, explains this verse in a different manner.[[10]](#footnote-10) It seems that the difference between the plain meaning of the verse according to the Rashbam and the Midrash Halakha reflects a difference in the very understanding of the plain meaning of the verse. Indeed, verse 8 is subject to various different interpretations. *Chazal* saw it as blurring the distinction between guarding inanimate objects and guarding living creatures; therefore, they were forced to find a different distinction between the two types of bailees. The Rashbam, on the other hand, saw it as a parenthetical statement that does not affect the key distinction between the two sections.

To summarize, whenever we find a contradiction between the plain meaning of a verse and the Midrash Halakha, we must examine whether we are dealing with an essential difference between the plain meaning of the verse and its halakhic exposition, or merely with different ways to understand the plain meaning.

**V. Summary**

Some commentators noted the distinction between the plain meaning of Scripture and Midrash Halakha. They did not refrain from interpreting the text in accordance with its plain meaning, even when that interpretation contradicted the Halakha. Obviously, even those commentators were halakhically committed to *Chazal*’s determinations, but they did not see them as binding from an interpretive point of view. At the same time, they offered no explanation of the gap between the plain meaning of Scripture and the Midrash Halakha.

We have seen two main types of cases in which this gap seems to exist. The first type includes deliberate changes from the plain meaning of Scripture that were introduced by *Chazal* through various midrashic means. The Torah, being a Torah of life, was not given in a "decided" manner, but rather was given to be expounded "forty-nine ways [to declare a person] pure and forty-nine ways [to declare him] impure" (*Yerushalmi*). The High Court was granted the authority to expound Scripture, and thereby expose the Torah's desire "in accordance with the needs of that generation" (*Degel Machaneh Efrayim*), whether based on moral considerations – "which according to the concepts of morality it would seem… that this verse was stated only in reference to conditions that no longer exist" (Rabbi Kook) – or based on social and practical considerations. Cases of this kind illustrate the power of Halakha, and the role of the High Court, in dealing with changes in reality that require halakhic adaptation.

The second type includes cases in which there is no deliberate change from the plain meaning of the verse. On the contrary, the Midrash Halakha stems from the plain meaning of the text. In such cases, the apparent gap between the plain meaning and the midrashic exposition stems either from the fact that the Midrash reconciles contradictions between different passages in the Torah which themselves present contradictory aspects of the same law or from the fact that *Chazal* read the verses in a manner different from the way we read them, and from their perspective, there is no contradiction between the plain meaning and the midrashic exposition.

Understanding the plain meaning of Scripture is of great importance in itself – "Therefore one must know the plain meaning of Scripture, so that one may know the seal" (Gra). After noting the difference between the plain meaning of the text and its midrashic exposition, we must try in every case to explain the nature of the gap between the plain meaning and the Midrash Halakha.

(Translated by David Strauss)

We will continue with this series after the Chagim.

1. So also writes the Rashba (*Respona*, I, 9): "The intention according to the plain meaning of the verse is that he should serve him forever, that he should not go out from him to freedom as long as they live… Do not raise an objection from the tradition according to which they said: *'Le-olam* – until the termination of the Jubilee cycle' – for that is true according to tradition, but I am talking about the plain meaning of the verse." [↑](#footnote-ref-1)
2. The Ibn Ezra, who, as stated earlier, generally saw the Midrash Halakha as a binding interpretation, argues that the word "*olam*" actually *means* "Jubilee": "We know that the word '*le-olam*' in Hebrew means time… and similarly: 'And he shall serve with you *le-olam*' – until the time of the Jubilee year, there being no time among the times of Israel longer than it" (Ibn Ezra, long commentary, *Shemot* 21:6). [↑](#footnote-ref-2)
3. *Shitat ha-Bechinot shel Ha-Rav Mordechai Breuer*, Alon Shevut 5765, pp. 69-70. In this way, Rav Breuer reconciled many contradictions between different passages, both narrative and halakhic. Thus, he established a method and paved the way for dealing with such phenomena, which preoccupied the Biblical critics. For more on this issue, see at length my book, *Ad ha-Yom ha-Zeh*, Tel Aviv 5773, pp. 109-121. [↑](#footnote-ref-3)
4. So it would appear also from the plain meaning of *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 firstlings of your herd or of your flock." [↑](#footnote-ref-4)
5. In this case, there is no explicit Midrash Halakha that interprets the verse in this manner, but the halakhic approach of *Chazal* on this issue requires interpreting the verse like Rashi and Ibn Ezra, that the verse speaks to the priest. [↑](#footnote-ref-5)
6. This subject requires a lengthy discussion, but in brief: we find in the book of *Devarim* a perspective according to which the entire people of Israel are fit to be "a holy people… His own treasure out of all the peoples" (*Devarim* 14:2), as was promised to them before the revelation at Mount Sinai: "And you shall be to Me a kingdom of priests, and a holy nation" (*Shemot* 19:6). For this reason, we find prohibitions in *Devarim* applying to all of Israel, by virtue of their being a holy people, even though in other books they apply only to the priests or the Levites (e.g., the prohibition of making baldness or of eating an animal that died of itself; compare *Vayikra* 21:5 and 22:8 to *Devarim* 14:1, 5). Similarly, the book of *Devarim* presents a reality in which the entire people of Israel eat firstborn animals, as well as tithes (14:22-23). Of course, the tithe of the book of *Devarim* is called by *Chazal* "second-tithe," and it is different from the "first-tithe" mentioned in *Bamidbar* 18:21 as a tithe that is given to the Levites. However, we should not disregard the very fact that *Bamidbar* only mentions the tithe for the Levites, while *Devarim* only mentions the tithe that is eaten by all of Israel. [↑](#footnote-ref-6)
7. The Rashbam's assertion that it suffices for a person to watch over inanimate objects "the way he watches over his own property" is not simple. Many halakhic authorities require a higher level of safekeeping. See M. Y. Lockshin, *Peirush ha-Rashbam al ha-Torah*, Jerusalem, 5769, p. 262, note 96. [↑](#footnote-ref-7)
8. The explanation of the Rashbam here is different from the position attributed to him in *Tosafot*, *Bava Metzia* 41b (s.v. *karna*): "Rabbi Shmuel explained that we know this by way of a logical argument, for in the first section, it is written 'money or utensils,' and it is common to watch over them for free, as they require no effort, while in the second section, it is written 'beast,' which requires effort, and it is common to watch over it for pay." According to this, there is no gap between the plain meaning of the verse, as presented above, and the Midrash Halakha, for watching over money or utensils implies unpaid baileeship, and watching over animals implies paid baileeship. Many commentators adopted this approach, including Ramban, Chizkuni, and Seforno. However, the Rashbam in his commentary to the Torah maintains that according to the plain sense of Scripture, when a person watches over inanimate objects, even for pay, he is exempt for theft, unlike what the *Tosafot* cite in his name. And similarly in the reverse case: when a person watches over animals, he is always liable for theft, even if he is not paid. [↑](#footnote-ref-8)
9. Shadal, in his commentary on these verses, agrees with the Rashbam, and adds, in accordance with his position noted earlier: "Our Rabbis were more lenient, and said that he is not liable for negligence if he did not take payment." His words imply that *Chazal* deliberately changed the law that arises from the plain meaning of the verse, in order to be lenient, but he does not explain why they did this. Of course, leniency regarding the obligations of the bailee means stringency regarding the rights of the owner, and therefore, in my opinion, this position is difficult. [↑](#footnote-ref-9)
10. "'For every matter of trespass… or for any manner of lost thing' – that the deposit was stolen, whether it be an ox, or a sheep, or raiment, or any manner of lost thing, when the owner says that this is the property stolen from him, *either the thief or the bailee*, whom the judges shall condemn based on witnesses, shall pay double to his neighbor." According to the Rashbam, this verse does not deal with who pays, but merely establishes that in any case where the owner claims that a certain object belongs to him, and the court decides in his favor, the guilty party pays double, whether it is the bailee or a thief. [↑](#footnote-ref-10)