

Fundamental Issues in the Study of *Tanakh*
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Shiur #10c: *Peshat* and *Midrash Halakha*

d. Rabbinic Interpretations that Contradict the *Peshat*

In previous *shiurim* we noted that many traditional commentators frequently understand there to be tension and contradiction between the simple, *peshat* interpretation of the text, and the halakhic conclusions derived from it. While many instances of the phenomenon are noted by a wide range of commentators, none of them provides a detailed explanation for the existence of the phenomenon. In order to attempt such an explanation, let us distinguish between four different types of such contradiction.

The first category we will look at concerns instances where the contradiction between *peshat* and *derash* arises from **the authority of the Sages to interpret the verses in a way that differs from their plain meaning**. Cases in which the Sages employ this authority can themselves be divided into two sub-categories: (1) reinterpretation stemming from moral considerations; (2) reinterpretation stemming from practical considerations. In this *shiur* and the next, we shall examine the first of these two subcategories.

(1) Re-interpretation Motivated by Moral Considerations

The first group pertains to differences between *peshat* and *derash* where moral considerations are involved. For instance, let us consider one of the best-known examples of a discrepancy between the *peshat* and the *midrash halakha*: "an eye for an eye," *lex talionis*. This law is stated explicitly in the Torah in several places, including *Vayikra* 24:19-20:

"If a man maims his neighbor, then as he has done, so shall be done to him: a breach for a breach; an eye for an eye; a tooth for a tooth; as he has caused a man to be maimed, so shall it be caused to him."

The Talmud interprets the verse to mean that the person who inflicted the injury must provide monetary compensation, rather than actually receiving a physical punishment that parallels that injury he himself inflicted.¹

¹ The Talmud indeed questions, "Why [pay compensation]? God said, 'an eye for an eye,' so why not take this literally to refer to his actual eye?" (*Bava Kama* 83b), and then goes on to list no less than ten ways of explaining *Chazal's* interpretation, including teachings derived from the verses

However, the plain meaning of the verse does indeed suggest a physical punishment, as the Rambam notes:

"One who has caused a limb to be lost, will lose the same limb; 'as he has caused a man to be maimed, so shall it be caused to him.' Do not occupy your mind [for now] with the fact that we actually impose a monetary punishment, for my aim here is to explain the reason for the verse [appearing as it does], and not to explain reasons for the halakha – even though concerning [the reason for] this halakha, too, I have an opinion, which I shall express orally."²

The Rambam's son, Rabbi Avraham, likewise wrote in his Bible commentary (*Shemot* 21:24):

"The plain meaning of the text is clear, and the traditional interpretation is that the text calls for the monetary value of a tooth as payment for a tooth, and so on concerning each instance."³

The Rambam asserts that he has an explanation for the discrepancy between the plain meaning of the text and the Oral Law, but he prefers not to set it down in writing. Intriguingly his son, too, notes (*ad loc.*):

"Also my father and teacher, of blessed memory, in his *Guide*, hinted at an oral interpretation with a wondrous resolution between the received tradition and the plain meaning of the text, but it may not be written down, because he concealed it."

and proofs based on logic. Out of the ten answers offered, five are rejected on the basis of questions which are not answered. Shamma Friedman, "Hosafot ve-Kit'ei 'Sevara' be-Perek ha-Chovel (*Bava Kama* chapter 8)," *Tarbiz* 40, 5731, p. 423, argues that all of the rejected answers are based on logic, while those that are accepted are derived from the verses themselves. N. Zohar, *Be-Sod ha-Yetzira shel Sifrut Chazal*, Jerusalem 5767, pp. 123-139, questions this assertion and argues instead that common to the rejected answers is that they formulated by way of negation.

² *Moreh Nevukhim* III:41; Schwartz edition, Jerusalem 5763, p. 578. Onkelos, who often interprets verses in accordance with midrash halakha, also adheres to the plain meaning in this instance. For discussion of a systematic relationship between *peshat* and *midrash halakha* in Onkelos's translation, see R.B. Posen, *Ha-Akivut ha-Tirgumit be-Targum Onkelos*, Jerusalem 5768, pp. 114-119.

³ A similar phenomenon is to be found in relation to the law, "If men strive together, one against the other, and the wife of one of them draws near to deliver her husband from the hand of he who smites him, and, in sending forth her hand, takes hold of his private parts, then you shall cut off her hand; your eye shall have no pity" (*Devarim* 25:11-12). Here, too, the plain meaning of the text suggests a bodily punishment, but *Chazal* teach that she is to pay monetary damages: "Rabbi Yehuda said: Here the text says, 'your eye shall have no pity,' and there (*Devarim* 19:21) it said, 'your eye shall have no pity.' Since the latter instance refers to monetary payment, so the same phrase here also refers to monetary payment" (Sifri *Devarim* 293, Finkelstein edition p. 312).

What is this secret that was concealed by the Rambam? Why, in fact, is there a discrepancy – even a contradiction – between the *peshat* and the midrash halakha in this regard?⁴ In order to answer this question, we will need to review the relevant passages concerning the law of ‘an eye for an eye’ both in the Talmudic context as well as in the writings of the Rambam and other commentators.

It must be noted at the outset that elsewhere in the Rambam's writings, a different impression arises. In his *Mishneh Torah* he writes:

"How do we know that when the Torah states, concerning the limbs, 'an eye for [*tachaf*] an eye' etc., it refers to financial restitution? For it is written, 'a blow for [*tachaf*] a blow' (*Shemot* 21:25), and [concerning the administering of a blow] it states explicitly, 'If a man strikes his fellow⁵ with a stone or a fist... he shall pay for his idleness, and he shall surely be healed' [i.e., he pays also for his medical expenses] (*ibid.* 18-19). Since we learn that the word '*tachaf*,' mentioned with regard to a blow, indicates financial restitution, we conclude that the same word used in relation to the eye and other limbs has the same meaning." (*Hilkhot Chovel uMazzik* 1:5)⁶

⁴ Admittedly, according to the second derivation in the above-cited passage in *Bava Kama*, it is possible that the *peshat* and the *midrash halakha* are not necessarily contradictory. According to this teaching, the source of the law that monetary compensation is to be made, rather than bodily punishment, is the verse, "You shall take no ransom for the life of a murderer, who is guilty of death; rather, he shall surely be put to death" (*Bamidbar* 35:31). Here *Chazal* explain, "For the life of a murderer' you do not take a ransom – but you do take a ransom for the various types of limbs that cannot be restored." According to this understanding, the punishment in principle is indeed a physical one, but it may be exchanged for monetary payment, which is viewed not as compensation to the victim, but rather as a "ransom" for the limb of the offender. However, further on the Gemara explains that it is precisely for this reason that this explanation alone cannot suffice, for it would seem to suggest that the choice of the alternative rests with the offender: "If he wishes he may pay with the loss of his eye, or if he desires otherwise he may pay the value of the eye" – and this is a reality that the Gemara cannot accept. It is interesting to note that Ibn Ezra – who, as noted, views halakha as binding even on the exegetical level, interprets the verse in this spirit: "Thus, 'an eye for an eye' means that the offender should indeed pay an eye for an eye, if he does not pay its ransom," and he offers a similar interpretation of the law that "you shall cut off her hand": "If her hand is not ransomed, it is cut off" – even though the Gemara categorically rules out the possibility of severing limbs, even if there is no payment of a ransom.

⁵ The wording of the verse as we have it is, "If men strive together and one smites another with a stone or with a fist...."

⁶ It is not clear why the Rambam goes to the trouble of making this argument (to prove that the intent of the verse is financial restitution), which does not appear in the Talmudic discussion, rather than simply bringing one of non-rejected arguments that does appear there. Just prior to this (1:3) he does in fact cite the second argument that appears in the Talmudic discussion: "The meaning of the Torah's statement, '...as he has caused a man to be maimed, so shall it be caused to him,' is not that the offender should actually be injured in the same way that he injured his fellow. Rather, it means that he is deserving of losing a limb, or to suffer the same injury that he inflicted – and therefore he should make financial restitution to him. Support for this is to be found in the fact that the verse states, 'You shall not take a ransom for the life of a murderer' (*Bamidbar* 35:31) – meaning that only a murderer has no ransom, but when it comes to the loss of a limb, or an injury, a ransom is paid." However, as noted, the Talmud goes on to reject this

The Rambam then goes on to add:

"Although these interpretations are implicit in the Written Law, they are all also set forth in the tradition handed down by Moshe from Mount Sinai, and they are all accepted as the practical ruling. This is what our ancestors saw [carried out] in the court of Yehoshua, and in Shmuel's court in Ramah, and in each Jewish court that has functioned from the days of Moshe until the present time."⁷

The Rambam seems to be contradicting himself: in *Moreh Nevukhim* he writes that the plain meaning of the text is that the offender's eye is actually to be put out, while in *Mishneh Torah* he writes that *Chazal's* conclusion that the reference is to monetary restitution is "implicit in the Written Law."⁸ Moreover, the author of *Dor Revi'*⁹ raises a difficulty concerning what the Rambam writes in the

derivation as a sufficient source for the law. See *Lechem Mishneh*, ad loc., who concludes that "the matter requires further study."

⁷ The Rambam sets forth the same idea in the introduction to his Commentary on the Mishna:

"This is a fundamental principle that you should know: the interpretations that have been handed down from Moshe are not subject to any dispute, because until now we find no dispute among the Sages at any time in all the period from Moshe until Rav Ashi, with one side claiming that someone who blinds someone else must be [punished by being] blinded himself, in accordance with God's word, 'an eye for an eye,' and the other side arguing that this entails only monetary restitution."

But perhaps the matter is not so simple. At the end of the discussion in the Gemara, following the ten proofs that the punishment specified in the Torah actually refers to monetary restitution, a *beraita* is cited: "It was taught – Rabbi Eliezer said, 'An eye for an eye' refers to an actual eye." The Gemara rejects a literal understanding of this statement – "Do you mean this literally? Does Rabbi Eliezer then go against the view of all the Tannaim [whose various explanations have already been discussed]?" It concludes with Rav Ashi's explanation: "This teaches that the value that is paid is calculated not in accordance with the victim, but rather in accordance with the offender." According to this view, the payment that Rabbi Eliezer has in mind is indeed not a matter of monetary compensation, calculated in accordance with the reduced value of the victim, but rather a payment made in accordance with the value of the offender. Hence, the payment does indeed function as a ransom. But in Midrash Lekach Tov (Pesikta Zutarta) on *Shemot* 21:24, Rabbi Eliezer's approach is presented differently: "Since he [the perpetrator] sought to maim his fellow, he does not pay money, but rather has an actual injury inflicted on him." Addressing the relationship between the midrash and the discussion in the Gemara, Rabbi Yerucham Fischel Perlow explains that Rabbi Eliezer's approach is indeed that a ransom is paid, and therefore if the money is not actually handed over, the law reverts to the original bodily punishment: "The law requires an actual 'eye for an eye,' but the Torah offers [the offender] the possibility of paying a ransom. If there is no way of getting the offender to pay the ransom, then the basic law remains that he pays an actual eye for an eye" (*Commentary on Rav Sa'adia Gaon's Sefer Ha-mitzvot*, part III, *parasha* 29). This suggests that there was indeed some dispute over the question of whether the Torah is commanding a physical punishment with the option of a ransom, or whether the punishment is a monetary one in the first place. Hence, the Rambam's claim that there was never any dispute in this regard is problematic.

⁸ There is no room to draw a distinction between "what the verses mean" and that which is "implicit in the Written Law," as Y. Levinger shows in *Ha-Rambam ke-Filosof u-ke-Posek*, Jerusalem 5770, pp. 63-64, n. 8.

⁹ Rabbi Moshe Shemuel Glasner (1856-1924) chose the title "*Dor Revi'*" for his well-known work on Massekhet Chullin and for his book of responsa because he was the eldest great-grandchild of

Mishneh Torah: what is the source for the assertion that the law stating "an eye for an eye [means] monetary restitution" is a law handed down from Moshe at Sinai (*Halakha le-Moshe mi-Sinai*)?

"I find the claim that at no time in history did the court's sentence ever involve the [perpetrator's] actual eye very difficult to understand. The Rambam himself writes that with regard to all rabbinical interpretations it is possible to rule contrary to the ruling of a previous court, but [argues that] this [particular law] is a law handed down by Moshe from Sinai – which, according to the opinion of the Rambam, cannot be disputed. But *Chazal* taught their interpretation [that the reference is to monetary restitution] based on a logical deduction from 'a blow for a blow,' as the Rambam himself writes there. And in such an instance some court at some point in time must surely have had the power [to rule differently]?" (Introduction to *Dor Revi'i* on *Massekhet Chullin*, Jerusalem 5764, p. 7)¹⁰

To understand the Dor Revi'i's argument, we must preface his words by noting that the Rambam (in his introduction to the Commentary on the Mishna, as well as in *Hilkhot Mamrim* 1:2-3) divides *Chazal's* teachings derived from verses through *midrashei halakha* into two types:

a. the less common type consists of "interpretations received from Moshe, for which there is some allusion in the text" – concerning this group there is no dispute;

b. the more common type – "The laws derived through one of the hermeneutical laws, and concerning these there is dispute" (ibid.) – in other words, "laws which the Sages derived through their own logic, using one of the methods by means of which the Torah is to be interpreted, and [in these instances] it seems to *Chazal* that their understanding of the text is its proper interpretation" (*Hil. Mamrim* 1:2).

While the laws belonging to the first type are absolute, those belonging to the second type are subject to change in accordance with the decision of the High Court, the *Beit Din Ha-gadol*: "If the *Beit Din Hagadol* derives, through one of the hermeneutical laws, that which they believe to be the law, and they rule

the Chatam Sofer. Rabbi Glasner was the rabbi of Klausenberg, and was one of the few religious leaders in Hungary who supported Zionism, going so far as to join the Mizrachi movement. Towards the end of his life he moved to Palestine and developed strong ties with Rav Kook, who supported him against the tide of opposition that he faced from the rabbis of Hungary (see "Perek be-Hilkhot Tzibbur" in *Maamarei ha-RAY"H* 1, Jerusalem 5744, pp. 55-61). He was not afraid to publish original opinions, and in the introduction to his book he wrote, "I have been greatly scorned during my life, but thanks to the blessed God I have found no wrongdoing in myself or in the members of my household; they rose up against me to oppose me – but only because my way of study was not to their liking, and it was difficult for them to accept my reasoning, which went against those who came before me, with no prejudice. Therefore many joined together to oppose me, with no justification."

accordingly, and later on there arises a different court, which views the matter in a different light that contradicts the ruling, then that court may go against the previous opinion and rule in accordance with what it believes to be correct" (*Hilkhot Mamrim* 2:1).

How is it possible to know whether a law derived through *midrash halakha* belongs to the first group or to the second? The Rambam answers that if the halakha is subject to dispute, then clearly it must belong to the second group. However, it would seem that the question remains unresolved in an instance where there is no recorded dispute concerning a particular law. The Rambam addresses this question in the introduction to his *Sefer Ha-mitzvot* (*shoresh* 2), and at greater length in a responsum (#355), where he asserts that, in principle, all of *Chazal's* teachings belong to the second group (which he refers to as "*divrei sofrim*" – the teachings of the scribes), unless *Chazal* state explicitly that a particular halakha belongs to the first group (which he refers to as "*din Torah*"): "There is no matter that is arrived at through *hekesh*, or through *kal va-chomer*, or through *gezera shava*, or through any of the thirteen hermeneutical laws for interpretation of the Torah, that is considered *din Torah* unless *Chazal* state explicitly that it is from the Torah." He notes there that the first type includes only "something concerning which *Chazal* state that it is from the Torah, and there are only three or four such instances."

What the *Dor Revi'i* is arguing, then, is that if the halakha concerning "an eye for an eye" belongs to the second category, then it is certainly possible that in some generation a court ruled in accordance with the plain meaning of the text – like any other law belonging to this category, which is subject to the ruling of the judges in every generation. Indeed, the Rambam's words show clearly that he believed that this law belonged to the first type, but this raises the question of what his source was for this assertion, for nowhere do we find that *Chazal* regard this law as possessing any special status.

Hence, the *Dor Revi'i* raises the possibility that at some stage the law of "an eye for an eye" was indeed practiced in accordance with the literal interpretation, and only later did *Chazal* rule that the reference is to monetary restitution. If we accept this possibility, then there is room to ask why, at some stage, *Chazal* moved away from the plain meaning of the text and interpreted the verses in such a way that the punishment imposed is monetary rather than physical.

We may approach the answer to this question by examining an important principle laid down by Rav Kook. We shall explore Rav Kook's idea next week.

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