

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

a. Introduction

Having established, in previous *shiurim*, that the biblical commentators saw fit to draw a distinction between the *peshat* (plain meaning) of the text and *midrashim*, we will now go on to examine a more complicated issue: the relationship between *peshat* and *midrash Halakha*,¹ which is to say between the simple reading of the text and the readings of classical works which mine the Biblical verses for their practical halakhic significance.² This complexity arises from the fact that the way in which we interpret "halakhic" verses would appear to have practical, normative significance.

The instances of discrepancies between the *peshat* and *midrash halakha* can be divided into two groups.

a. The more common scenario is where the midrash derives a certain law which is not necessarily suggested by the plain meaning of the text. In such instances, we might well ask whether we may also interpret the verse in accordance with *peshat* – in a way that does not match the *midrash halakha*.

b. There are instances where the halakhic instruction indicated by the text is not merely different from the one established in accordance with the *midrash halakha*, but actually contradicts it. Here the question of the legitimacy of exegesis in accordance with *peshat* becomes more acute, and also gives rise to a different question: if indeed we may understand the verse on the basis of *peshat* even in these cases, as some of the greatest commentators indeed did, then why does the discrepancy between *peshat* and *midrash halakha* exist, and how are we to relate to this phenomenon?

¹ *Midrash Halakha* refers to the Talmudic works which explains the Biblical verses for their practical halakhic import. The central works are the *Mekhilta* on *Shemot*, the *Sifra* on *Vayikra*, the *Sifri* on *Bamidbar* and *Devarim*. Excerpts from *midrashei halakha* are regularly quoted throughout the Talmud.

² Much has been written on this topic and I will refer to some of the literature below. Important reviews are to be found in M. Ahrend, "Al Peshuto shel Mikra u-Midrash ha-Halakha," in: S. Vargon et al (eds.), *Iyyunei Mikra u-Parshanut* 8, Ramat Gan 5768, pp. 19-32; M. Lockshin, "Iyyun be-Gishot Shonot le-Pitron Ba'ayat ha-Yachas she-Bein ha-Peshat le-Vein Midrash ha-Halakha," *Ibid.*, pp. 33-45.

We will first examine *midrashei halakha* that merely differ from the *peshat*; afterwards we will deal at greater length with the complex issue of *midrashei halakha* that contradict the *peshat*.

b. *Midrashei halakha* that differ from *peshat*

Among the early biblical commentators we find two main approaches in explaining the gap between *midrashei halakha* and the plain meaning of the text.

i. The majority approach adopts *Chazal's* well-known teaching concerning the verse, "Is not My word like fire, says the Lord, and like a hammer that shatters the rock?" (*Yirmiyahu* 23:29) – "Just as a hammer produces many sparks, so a single verse has many interpretations" (*Sanhedrin* 34a). According to this principle, the nature of the Divine word is such that it contains many different meanings. Thus, the Torah, which is God's word, has many valid interpretations and meanings, rather than a single one.

In the previous chapter we saw how Rashi uses this principle to justify explaining a verse in accordance with *peshat* as well as citing a *midrash aggada*. Similarly, the principle of textual polysemy is also widely accepted among the commentators with regard to *midrashei halakha*.³ Ramban sets forth this principle very clearly. He proposes a straightforward understanding of the verse, "Any *cherem* that has been banned from man shall not be redeemed; he shall surely be put to death" (*Vayikra* 27:29), indicating that the king, or the Sanhedrin, is entitled to declare certain items *cherem*, and anyone who violates this dedication is to be put to death, as in the story of Shaul and the honeycomb (*Shmuel I* 14:24-45). Ramban notes that *Chazal* propose other possible ways of understanding the *peshat*, and writes:

"Do not silence this explanation just because our Sages interpreted this verse in a different way – some understanding it (*Arakhin* 6b) in the context of estimating the value of someone who is condemned to death, while others understand from it that those deserving of *karet* (spiritual excision) and those sentenced to death at the hands of the court cannot

³ Rashi himself often explains verses in accordance with *peshat* and then in accordance with *derash*, even in matters of halakha. One example concerns the verse, "If an ox gores a man or a woman, that they die, then the ox shall surely be stoned, and its flesh shall not be eaten, but the owner of the ox shall be acquitted" (*Shemot* 21:28), Rashi cites *Chazal* (*Pesachim* 22b) who conclude from the words '*ba'al ha-shor naki*' (literally, 'the owner of the ox is clear' – i.e., acquitted) that the carcass of the ox cannot be used for any benefit, "Like someone telling his friend: So-and-so has been cleared of (i.e., lost) his assets and cannot enjoy any benefit from them." However, Rashi goes on to add that this interpretation follows the *derash*, but according to *peshat* the verse comes to establish that the owner of the ox is not deserving of death – in contrast to the situation of a 'goring ox' (i.e. one known already to be dangerous): "Its plain meaning is as it says. Since in the case of the goring ox, the Torah states, 'its owner, too, shall be put to death' (ibid. 29), it is therefore necessary to stipulate here that 'the owner of the ox is acquitted.'"

be redeemed with money, as taught in *Ketubot* (35a). Despite these interpretations, this verse cannot be stripped of its plain meaning – as it is written, 'God spoke one utterance; yet two things have I heard' (*Tehillim* 62:12). **The verse supports both interpretations.** Take note that our Sages teach (*Sanhedrin* 27b), concerning the verse, 'Fathers shall not be put to death for sons' (*Devarim* 24:16) – 'at the testimony of their sons'; and similarly 'sons shall not be put to death for fathers' (*ibid.*) is understood to mean, 'at the testimony of their fathers'... Nevertheless, a verse cannot be stripped of its plain meaning,⁴ as it is written, 'But he did not put to death the children of the murderers, as it is written in the Torah of Moshe, "Fathers shall not be put to death for sons, and sons shall not be put to death for fathers"' (*Melakhim* II 14:6). Thus we learn that **the Torah has several facets of truth.**" (Ramban, *Mishpat ha-Cherem*)

The conventional approach among the commentators is thus that all of *Chazal's* interpretations are halakhically binding, but they do not void the validity of the *peshat* reading of the text.⁵

ii. For those who do not accept the principle of polysemy, and believe that the text has one authoritative meaning, a different approach must be sought. Ibn Ezra explains the gap between *peshat* and *derash* as arising from the fact that the *derash* is not meant as an interpretation of the verse, and the halakha is in fact not derived from the verse. Rather, the source of the halakha is the oral tradition, while its attachment to the verse came at a later stage, as an "*asmakhta*."⁶ This principle is stated explicitly in his short commentary on *Shemot* 21:8:

"And I state here the general rule in the Torah there are instances where the Sages are known to utilize an *asmakhta*, but they know the essence of the matter."

⁴ In the previous chapter we addressed this principle and the two approaches to understanding it: one maintains that it shows a preference for the plain meaning of the text, while the other approach understands it as merely granting legitimacy to the plain meaning, alongside the midrashic interpretation. Clearly, Ramban here tends towards the second approach.

⁵ *Chazal* note an exception where the plain meaning of the text is not to be understood as its message. In the case of a man entering a levirate marriage, the Torah states, "And it shall be that the firstborn that she [the widow] bears shall stand in the name of his brother who is dead, so his name will not be erased from Israel" (*Devarim* 25:6). Rabba states: "Although throughout the entire Torah the text never loses its plain meaning, here the '*gezera shava*' comes and removes the text entirely from its plain meaning" (*Yevamot* 24a). Rashi explains: Although the plain meaning of the verse would seem to suggest that the son born from the levirate marriage should be named for the brother who has died, in this case we do not do so. Ritva explains at greater length: "In any place where there is not an outright contradiction (between the simple reading and that derived from an exegetical principle) we fulfill both interpretations, yet in this case although it would be possible to fulfill both, we are not obligated to fulfill the simple reading of the text at all." This would seem to indicate that in all other cases, the *peshat* is also binding.

⁶ An *asmakhta* traditionally refers to an independent teaching which is nevertheless associated with a verse. This association can serve as a memory aid, as an indication of the truth of the teaching, or some other purpose.

Ibn Ezra cites a few examples of this principle, the first concerning the verse, "And if his father has no brothers, then you shall give his inheritance to his kinsman who is next to him of his family, and he shall possess it..." (Bamidbar 27:11). According to the plain meaning of the verse, the Torah states that if the deceased has no first-degree relatives (sons, daughters, or brothers), nor even second-degree (fathers' brothers), then his inheritance passes to even more distant family members. *Chazal* arrive at a completely different understanding of the verse: from the words, "of his family, and he shall possess it," they conclude that a husband inherits his wife (Bava Batra 111b and elsewhere).⁷ This teaching is not based on the plain meaning of what the verse says, but rather on the seemingly redundant phrase, "and he shall possess it" (*otah* – the feminine form, seemingly referring to the inheritance – *nachala* – which is a feminine noun).

Ibn Ezra has no argument with the law that a husband inherits his wife; he simply disagrees with the manner in which this law is derived, since it does not sit well with the plain meaning of the text:

"It was known through the oral tradition that a husband inherits his wife, and *Chazal* interpreted this verse as a hint. For all of Israel knows that the verse should be understood in accordance with its plain meaning, for it is impossible that someone should say, 'Give Reuven's inheritance to Shimon' while intending exactly the opposite – that Shimon's inheritance be given to Reuven... So the proper understanding of the verse is in accordance with its plain meaning, while *Chazal* add another layer of meaning that is part of the oral tradition."

Since the midrash here indeed contradicts the plain meaning of the verse – which deals with the question of whom a person *leaves his inheritance to*, and not with *whom he inherits from*, it should not be regarded as an interpretation of the verse, but rather as an already-known law relying upon the verse only⁸ as *asmakhta*.⁹

⁷ Rashi (commenting on this discussion in Ketubot 83a) explains this in accordance with his own approach, discussed above, according to which the teaching of *Chazal* is an expression of the multiple facets of textual meaning: "Although the word 'family' here does not mean to indicate his wife..."

⁸ See Ibn Ezra ad loc. for more examples, and also in his commentary on Vayikra 19:20; 23:40; and elsewhere. Ralbag adopts a similar approach. In the introduction to his commentary on the Torah he writes:

"In our explanation of the commandments and the roots from which all their particular laws emerge, as set forth in the Talmudic wisdom, we shall not consistently associate those roots with the textual verses which the Sages of the Talmud associated with them, through one of the thirteen hermeneutical principles, as was their custom. For they associated the truths that had been handed down to them concerning the commandments of the Torah, to those verses, with a view to the verses serving as allusions, or *asmakhta*, to those truths. **They did not mean to suggest that these specific laws were actually derived from those verses** – for a person could in fact turn all the laws of the Torah on their head on the basis of such logic... Rather, we shall associate them with the plain meaning of the verses from which

From this perspective it becomes clear how it is possible to understand verses in accordance with their plain meaning, contrary to the *midrash halakha*. In the realm of exegesis, the *peshat* is the only way of understanding the text, but when it comes to halakha, the Oral Law is binding – even where it does match the plain meaning. The source and authority of the halakha do not arise from the verse, but rather from the oral tradition; the connection to the verse serves only as an *asmakhta*.¹⁰

In summary, we have seen two broad approaches to the relationship between *peshat* and *midrash halakha*. The first, championed by Rashi, Ramban and others, focuses on the multiple valid interpretations of the text, thus making room for both the *peshat* and the legal inference. The second, put forward by Ibn Ezra and others, maintains that the *peshat* is the only correct way to read the text, and that the conclusions of the *midrash halakha* are not to be viewed as readings of the text in and of themselves, but rather as independently received traditions which are then hinted at or alluded to in the Biblical verses.

(to be continued)

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these laws might in fact arise, for this is more easily accepted by the mind. This does not represent any deviation from the teachings of our Sages, for, as stated, their intention was not that those laws are derived from the verses which they associate with them; rather, the laws were handed down to them, from one person to another, all the way back to Moshe – and they simply sought allusions to them in the text."

⁹ Ibn Ezra is innovative in his use of the expression '*asmakhta*,' with broader reference than *Chazal's* use of it, as Lockshin points out, p. 38.

¹⁰ In recent generations this approach has been broadened even further. Rabbi Yitzchak Isaac ha-Levi (Rabinowitz) (1847-1914) wrote: "For all the disputes among the Tannaim arose only from the fundamental understanding of each of them, and the traditions that had been received. But the *midrashim* themselves are merely allusions to these... For in all their teachings they use midrash only for one of two purposes: either to associate the received tradition with a verse, with the understanding that 'there is nothing that is not alluded to in the Torah,' or to support the position they had arrived at on the basis of their understanding of the fundamental principles set forth in the Mishna, or received tradition, or logical deduction, or knowledge of the foundations of the Torah" (*Dorot Rishonim* I part 5, p. 244). Today this approach is referred to as "*midrash mekayem*" ("preservative/restorative midrash"); see M. Elon, *Ha-Mishpat ha-Ivri* 1, Jerusalem 5733, pp. 243-263.