

**Fundamental Issues in the Study of *Tanakh*  
By Rav Amnon Bazak**

**Shiur #10d: *Peshat* and *Midrash Halakha***

**d. Rabbinic Interpretations that Contradict the *Peshat* (cont.)**

(1) Re-interpretation motivated by moral considerations (cont.)

In the previous *shiur* we noted that “an eye for an eye” may well have been originally understood to require commensurate physical punishment for the infliction of injury. We concluded by asking why, from the time of *Chazal* onwards, Jewish tradition has interpreted the verse to be referring to financial restitution.

It would seem that we can understand the reason for the change in light of a principle set forth by Rav Avraham Yitzhak Ha-kohen Kook:

"What I say is that the Divine knowledge which sees everything, from the beginning to the end of time, encompasses the entire Torah. This belief is the true acceptance of God's absolute sovereignty: that all the causes which form and influence understanding, and the feelings leading to decisions in every generation, were prepared from the beginning, in the proper and correct way. Therefore, the truth of the Torah can be revealed only when the entire nation of God is in its land, perfected in all its spiritual and physical manners. Then the Oral Law will regain its essential condition, according to the understanding of the Great Court [Sanhedrin], which will sit 'in the place that God will choose,' and deal with matters too difficult for lower courts to judge. At that time we may be certain that any new interpretation will be crowned with might and holiness, because Israel is holy to the Lord. **And if a question arises about some law of the Torah, which ethical notions indicate should be understood in a different way, then truly, if the Sanhedrin decides that this law pertains only to conditions which no longer exist, a source in the Torah will certainly be found for it.** The conjunction of events with the power of the courts and interpretation of the Torah is not a coincidence. They are rather signs of the light of the Torah and the truth of the Oral Law, for we are obligated to accept [the rulings of] the judge that will be in those days, and this is not a negative "development."

But whoever wishes to judge in these times<sup>1</sup> – when we are in a poor state and our economic life is not ordered as it would be were the state of the nation in its proper form – according to the same exalted requirements, "it is ready for those whose foot slips." May God save us from such a view." (*Iggerot ha-RAY"H* vol. 1, letter 90, Jerusalem 5737, p. 103)

Rav Kook raises a number of important principles here:

1. The multiplicity of potential readings of the text means that the Torah in advance offers different possibilities for interpretation in accordance with changing circumstances. This is because the Torah proceeds from the assumption that over time, Halakha may change in accordance with the circumstances of each generation, and no single criterion of practice can be applied to all generations and to all circumstances. In fact, this fundamental principle is set forth explicitly in the *Talmud Yerushalmi*:

"Had the Torah been given in the form of clear-cut instructions, the world would have been unable to exist. What does this mean? 'And the Lord said to Moshe' – [Moshe] said to Him: 'Master of the universe, tell me the halakha!' [God] said to him: 'Incline in accordance with the majority' – if there are more who favor acquittal, he is acquitted; if there are more who favor conviction, he is convicted. Thus the Torah may be explained in forty-nine ways to arrive at a conclusion of ritual impurity and in forty-nine to arrive at a conclusion of ritual purity." (*Yerushalmi, Sanhedrin 4:2, 22a*)

According to the *Yerushalmi*, God refused to give Moshe a Torah that was unequivocal in its interpretation, for if He had, it would have not been fit for "eternal existence" (*Penei Moshe*, ad loc.). Instead, God gave him an eternal Torah of life, in which there are many different interpretative possibilities, all of them correct, and the decision as to what to interpret and how lies with the Sanhedrin in each generation.

2. The possibility of interpreting the Torah in accordance with the manner appropriate to it in each and every generation rests exclusively with the *Beit Din Ha-gadol* (Sanhedrin), in the ideal situation and conditions of Am Yisrael dwelling in the land.

3. In this situation, the Sanhedrin may rule, in accordance with their "ethical notions," that a certain law of the Torah "pertains only to conditions which no longer exist," and in light of changed circumstances, will reinterpret the verses and God's will in a manner that is appropriate to the new conditions that have arisen. It is the conjunction of the interpretation of the text and the decision of the Sanhedrin in view of contemporary events that allows for changes in Halakha that are made on the basis of moral considerations in step with changes in

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<sup>1</sup> I.e. prior to the re-establishment of the Sanhedrin.

human society.<sup>2</sup> Thus Rav Kook maintained faith in the Divine source of the Torah along with its ability to be changed by the Sanhedrin in every generation, in accordance with changing circumstances. Rav Kook, who was well aware of the potential risks of stating such a view, saw fit to emphasize that no such possibility exists at this time, in the absence of a Sanhedrin, and "May God save us from such a view."<sup>3</sup>

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<sup>2</sup> Rav Kook mentions this principle elsewhere, too. His approach to the biblically-prescribed animal sacrifices was that in a future period, all of humanity might revert to vegetarianism, and then animal sacrifices would be annulled and only plant-based sacrifices would remain, such as the *mincha* (see, for example, *Otzarot ha-RAY"H 2*, Tel Aviv 5748, pp. 755-756; *Olat Re'iyah 1*, Jerusalem 5749, p. 292). Rav Kook raises the possibility that the Sanhedrin will then see fit, in keeping with their power to uproot from the Torah in the form of *shev ve-al ta'aseh* (omission of a certain action), to find an exemption from the mandatory animal sacrifices, since the killing of animals will already have ceased as a voluntary practice. And the text supports this, for the Torah calls a sacrifice "*lechem*" (literally, "bread") – "My offering, the provision (*lechem*) of My sacrifices made by fire..." (*Bamidbar 28:2*), but then it goes on to say, "the one lamb..." (ibid. 4). How can this be? So long as animals are killed for personal consumption, they should be offered as sacrifices to God. But when animals are not consumed voluntarily – then bring sacrifices of bread. (Rav Kook, *Kevatzim mi-Ketav Yad Kodsho 2*, Jerusalem 5768, p. 15)

In this context Rav Kook employs a different mechanism – that of *shev ve-al ta'aseh* (which may indeed be invoked here with no need for or possibility of interpreting the verses in any other way) – but here too he cites the principle that the Written Law already hints at the possibility of changing the halakha such that only plant-based sacrifices are to be brought.

<sup>3</sup> Rav Kook's reservation here is, of course, an allusion to Reform Judaism's assertion that certain laws of the Torah are no longer relevant and must be reinterpreted. Rav Kook's argument with this position is that it is not tenable without the mechanism of the Sanhedrin whose authority permits to base their changes upon reinterpretation of the Biblical verses.

It should be noted that Rav Kook's words here, concerning the possibility of interpreting verses in a different way in light of moral considerations, express a most audacious view that was not generally accepted and had never been stated explicitly by the Rambam or any other great authorities over the course of the generations. It seems that fear of the possible effects of this view, leading to practical ramifications in keeping with the Reform approach, is what led to a new exegetical school in the 19<sup>th</sup> Century which rejected outright the distinction between *peshat* and *derash*, thereby nullifying Rav Kook's point of departure.

An outspoken representative of this school was the Malbim (Rabbi Meir Leibush Weiser, 1809-1879), who sets forth his theoretical approach to this question in the introduction to his commentary on *Sefer Vayikra*:

In this commentary I have trodden a new path, clothed in sanctity, to explain the teachings of the Sages and their wisdom, the words of our teachers as handed down to them, in accordance with the rules of language and in accordance with the laws of rhetoric and logic, in wondrous new ways... I have shown and clarified with reliable proofs that **the midrashic teaching is the simple *peshat*** which is the inescapable meaning anchored in the depth of the language and the foundation of the Hebrew tongue. And all of the Oral Law is written explicitly in the Book of God's Torah. Application of the intellect leads to an understanding, through the text, of all the traditions handed down at Sinai, in accordance with the rules of language... With this I have built a strong edifice to God's Name in which righteous and lofty ones may run; where the commanders of the forces might wage war against the Karaites and those who deny the traditions of *Chazal*. There they may refute the enemies of the tradition, confronting them face to face, bringing their claim and arguing their case, disputing and discerning and hearing and speaking the truth: Moshe is truth and his Torah is truth, and his tradition is truth – all given from a Single Shepherd."

In line with Rav Kook's approach, we can view the changing understanding of "an eye for an eye" as follows: during the biblical period there was no compunction about severing limbs as a form of corporal punishment,<sup>4</sup> and hence it is possible that "an eye for an eye" was indeed followed literally at that time – along the lines of the suggestion raised by the *Dor Revi'i*, mentioned in the previous *shiur*. However, as the generations progressed, it seems that in light of moral norms it was no longer possible to arrive at a practical ruling that someone who had maimed his fellow had to have his own limb removed, and for this reason the Sanhedrin used its authority to interpret the verses in a different way, with the faith that this was God's will and that the Torah had permitted this change from the outset.<sup>5</sup>

Rav Kook's argument that halakha can and must change in accordance with the circumstances of each generation is unquestionably shared by the Rambam in his *Guide of the Perplexed*. He writes:

"Since God knew that in every time and place the laws of the Torah will always require an extension in some cases and curtailment in others, in keeping with the variety of places, events, and circumstances... He permitted the Sages of each era – i.e., the Sanhedrin, to make fences around the laws... And likewise they were licensed temporarily to dispense with some religious acts prescribed in the Torah, or to allow some acts that are forbidden by it, under exceptional circumstances. But none of the laws can be abrogated permanently, as we have explained in the Introduction to the Commentary on the Mishna concerning temporary injunctions. In this way the Torah remains always the same, yet is applied at every time and in relation to every circumstance as appropriate... Therefore God prohibited involvement in this to all sages except for the Sanhedrin alone."<sup>6</sup>

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Malbim makes no attempt to conceal the fact that his commentary is directed against "the Karaites and those who deny the traditions of *Chazal*" – i.e., Reformers who argue for development of Halakha. His approach to dealing with them was to prove that there had never been any development, and that the *midrashei halakha* are themselves the *peshat* of the text. This approach, which goes against the path of the Rishonim that we have previously examined, arose from the reality in which Malbim lived and the religious struggles of his era. For more about Malbim's approach see E. Touitou, "Bein Peshat le-Derash – Iyyun be-Mishnato ha-Parshanit shel Malbim," *De'ot* 48, 5740, pp. 193-198; A. Frisch, "Parshanuto shel ha-Malbim la-Mikra," *Machanayim* 4, 5753, pp. 370-379.

<sup>4</sup> Inter alia, we see such behavior in a number of instances in *Tanakh*. Thus do Am Yisrael act towards Adoni-Bezek (*Shoftim* 1:6); the Philistines put out the eyes of Shimshon (*Shoftim* 16:21), and the Babylonians blind Tzidkiyahu (*Melakhim* II 25:7).

<sup>5</sup> Thus it would seem that the Sadducees, who interpreted the verse "an eye for an eye" in the literal sense (see *Megillat Ta'anit*, 4 Tammuz, Noam edition, Jerusalem 5764, pp. 78-79), did not accept the principles of polysemy of the text and authority of the Sages to interpret the text, and therefore they believed that the law arising from the plain sense of the verses should be upheld for all generations.

<sup>6</sup> *Guide* III:41.

Here the Rambam addresses the need for the Sanhedrin to apply the Torah in changing circumstances, but he explicitly mentions only the mechanism of rabbinic enactments ("fences" or "temporary measures"), which does not include the possibility of the reinterpretation of verses, as mentioned by Rav Kook.<sup>7</sup> It may be this mechanism that the Rambam was referring to when he stated regarding "an eye for an eye" that he had an opinion which "I shall make known orally," for fear of possible misunderstanding.<sup>8</sup>

If, indeed, this was the "secret" view of the Rambam in his *Guide*, then it differed most radically from his words in the *Mishneh Torah*,<sup>9</sup> and this phenomenon occurs in other places, too.<sup>10</sup> Thus, according to the *Mishneh Torah*, the original intention of the Torah was that monetary restitution be given for bodily injury, while in the *Guide* he explains that the plain meaning of the verses is indeed corporal punishment – and it may be that he alludes to the idea

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<sup>7</sup> The Rambam's fundamental approach concerning the adaptation of *mitzvot* to changing circumstances also finds expression in his well-known views concerning the Temple and its sacrifices. The Rambam insists that many laws in the Torah were given to Israel at the time, since "it is impossible to move from one extreme to the other in a single jump. Accordingly, man's nature will not allow him to abandon all that he is used to, all at once." Thus, since at the time of the Exodus "the accepted practice throughout the world at that time, and the conventional manner of worship that we were accustomed to, involved sacrificing different types of animals in those temples," therefore God did not require "the rejection of these manners of worship, to abandon them and nullify them, for in those days this would have been unthinkable, in terms of human nature – which is always comfortable with that which it is accustomed to" (*Guide* III:32). This suggests that the commandments concerning the Temple and the sacrifices were given to Am Yisrael against the background of their particular time and place. The Rambam himself was aware of the radical nature of this theory, and he writes there: "I know that you will at first thought reject this idea and find it strange..." Indeed, his explanation is attacked most vehemently by Ramban, in his commentary on *Vayikra* 1:9, as well as many other commentators. On this issue and its connection to our discussion, see Aviram Ravitzky, "Ha-Rambam ve-Alfarabi al Hitpachut ha-Halakha," in: Aviezer Ravitzky and A. Rosnak, *Iyyunim Chadashim ve-Filosofia shel ha-Halakha*, Jerusalem 5768, pp. 228-229.

<sup>8</sup> The importance of presenting the halakhic approach in all its complexity, on the one hand, balanced against the danger of presenting apologetic explanations that may collapse when challenged by other world-views, on the other, is the "justification" for our efforts to suggest what it was that the Rambam sought to keep hidden.

<sup>9</sup> See especially the end of his *Hilkhot Me'ila* (8:8): "The decrees (*chukkim*) are those laws whose rationale is not known. Our Sages taught, 'I ordained decrees for you, and you have no license to question them'... All of the sacrifices are in the category of decrees. Our Sages said: 'The world exists for the sake of the sacrificial service.' For it is through the performance of the decrees and the judgments that the righteous merit the life of the World to Come." There are many sources that address this contradiction; see, e.g., Rabbi Y. Epstein, "Le-Shitat ha-Rambam be-Ta'amei ha-Korbanot," in: Rabbis Y.Y. Weinberg and P. Bieberfeld (eds.), *Yad Shaul*, Tel Aviv 5713, pp. 145-152; Rabbi Y. Cherlow, "Ta'amei ha-Korbanot shel ha-Rambam be-Mishnat Ha-Rav Kook," *Da'at* 39, 5757, pp. 123-148.

<sup>10</sup> It should be noted that there are many places in which we find differing attitudes towards the *mitzvot* between *Mishneh Torah* and the *Guide*. A review of twelve such instances is undertaken by Y. Levinger, *Ha-Rambam ke-Filosof u-ke-Posek*, Jerusalem 5752, pp. 177-181. Levinger lists instances where it would seem that "the Rambam justifies – or seems to justify – the commandments of the Torah in a manner that is different from their interpretation in Talmudic halakha."

proposed by Rav Kook, according to which the halakhic exegesis is part of the Torah's way of responding to changes in moral sensibility.<sup>11</sup>

We conclude this part of our discussion with a quote from one of the most important works of chassidut, *Degel Machaneh Efraim*,<sup>12</sup> which likewise reflects the view that *midrashei Chazal* are intended to adapt the Torah to every generation in accordance with its conditions and needs:

"The Written Law, without the Oral Law, is not a complete Torah; is it like a half of a book – until *Chazal* came and interpreted the Torah, revealing its hidden matters. Sometimes they uproot something from the Torah, as in the matter of [the punishment of] lashes, concerning which the Torah says 'forty,' but the Sages came and removed one,<sup>13</sup> all through the Divine inspiration they received, which enabled them to do this... The homiletic teachings of *Chazal* complement the Torah, such that it may be called a whole book. And likewise in every generation with its sages, they complete the Torah. For the Torah is interpreted in each and every generation in accordance with that which is needed for that generation, and in accordance with the root of the soul of that generation. Thus God illuminates the eyes of the Sages of that generation with His holy Torah."<sup>14</sup>

In summary, we have discussed instances in which the Sanhedrin used its authority to reinterpret verses, so as to arrive at a broader understanding of what the Torah demands of us as circumstances change. This assumes that laws were bound to the social and historical realities in which they were given and are subject to reinterpretation as those conditions change.

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<sup>11</sup> Rabbi Mordekhai Breuer, "Ayin Tachat Ayin," *Megadim* 24, 5755, pp. 21-25 rejects this sort of explanation. He argues, "We find no other instance where the Oral Law deviates from the Written Law solely out of compassion and human consideration." Instead, he raises a different possible resolution of the contradiction: "The Written Law expresses the punishment that is 'appropriate' to administer for the physical maiming, while the Oral Law expresses the compensation for the monetary loss. Since it is impossible to carry out both judgments simultaneously, the Sages ruled that the monetary restitution takes preference over the corporal punishment" (p. 23). However, this explanation raises the obvious question: if the Written Law stipulates that corporal punishment takes preference, then why do *Chazal* reverse this? According to the explanation we have proposed, the reason for their innovation is understandable, since it is a response and reflection of changing circumstances, as described by Rav Kook.

<sup>12</sup> Written by Rabbi Moshe Chaim Efraim of Sadilkov (c. 1742-1800), grandson of the Ba'al Shem Tov. His work is one of the primary texts of *chassidut*, in general, and of the teachings of the Ba'al Shem Tov in particular.

<sup>13</sup> See above. Intriguingly, this position of the grandson of the Ba'al Shem Tov echoes the words of the Vilna Gaon, the arch-opponent of the Chasidic movement.

<sup>14</sup> *Degel Machaneh Efraim*, Jerusalem 5745, p. 5.