

DIMENSIONS IN CHUMASH

PINCHAS

The Explicated and the Expounded: Halachos Derived from Pshat and Halachos Derived from Drash

אַתְּ הַכֶּבֶשׂ אֶחָד תַּעֲשֶׂה בַבֹּקֶר וְאֵת הַכֶּבֶשׂ הַשֵּׁנִי תַעֲשֶׂה בֵּין הָעֶרְבָיִם

*The one lamb you shall offer in the morning and the second lamb you shall offer in the afternoon.*¹

INTRODUCTION: A NON-PRACTICING DISPUTE?

The opening verses of chapter 28 in our parsha describe the two daily *tamid* offerings, one which was brought in the morning and the other in the afternoon. Verse 7 discusses the *nesech* (wine libation) that accompanies this offering:

וְנִסְכּוֹ רְבִיעֵת הַהִין לְכֶבֶשׂ הָאֶחָד

And its libation is a quarter of a hin for the one lamb.

There is a most interesting dispute recorded in the Gemara² regarding this verse. Given that there are two daily offerings, to which of them does the verse refer when mandating “its libation”? The matter is debated by the Sages and R’ Yehuda Hanassi:

- ▷ According to the Sages, the verse is referring is to the afternoon offering. However, they add that since the two offerings are mentioned together in the introductory verse, this serves to halachically equate them, and hence we derive the *nesech* of the morning korban from the afternoon one.
- ▷ According to R’ Yehuda Hanassi, the opposite is true. The reference is to the morning offering, but since the two offerings are equated, we learn the afternoon *nesech* from the morning one.

¹ Bamidbar 28:4.

² Yoma 34a-b.

Needless to say, this dispute is somewhat mystifying, as we are moved to ask: What exactly are they disputing? Seeing as all agree that on a practical level, the *nesech* requirement for both offerings is ultimately identical, what difference does it make which offering is the one referred to in the verse and which is the one derived from it? Either way, the end result is exactly the same!

TOSAFOS: ESTABLISHING PRIMACY

Commenting on the above question, Tosafos offer the following answer:

It appears to me that there would be a practical difference between these two opinions in a case where there was only enough wine for one nesech. According to the opinion that we derive the afternoon obligation from the morning one, the morning obligation is thus primary and they would offer the nesech in the morning. By contrast, according to the one who derives the morning obligation from the afternoon, they would offer it in the afternoon.

What emerges from Tosafos is a most profound idea regarding the relationship between laws that are written explicitly in the verse and those that are derived from midrashic exposition. On the one hand, it is absolutely clear that laws derived through the principles of drash have the status of D'oraysa (Torah obligation) in every respect. Indeed, the Gemara in one place³ states emphatically regarding one of these principles:

אל תהי גזירה שוה קלה בעיניך שהרי נסקלין הן הן גופי תורה ולא לימדה הכתוב אלא
מגזירה שוה

Let not a gezeirah shavah⁴ be a light matter in your eyes, for those who are killed by stoning are a basic matter of Torah and the Torah only taught some of them through a gezeirah shavah.

At the same time, Tosafos inform us that *within the realm of d'Oraysa laws*, there exists an internal hierarchy, whereby a law that is explicitly stated in the verse enjoys primacy over one that is derived through midrash halachah. The explanation of this idea, as presented by R' Elchanan Wasserman Hy"ד,⁵ is that the very fact the Torah mentions this law explicitly is an indication of its importance. He draws an analogy to the statement of the Midrash⁶ regarding Eliezer's mission as discussed in Parshas Chayei Sarah, that the fact the Torah repeats that episode demonstrates how beloved is the conversation of the servants of the patriarchs. Here, too, when the Torah devotes space to presenting a law explicitly, it is a sign of its significance within the realm of d'Oraysa laws.

ROOTS: IN THE MISHNAH – CHATAS BEFORE ASHAM

The commentators point out that this idea can be perceived from the Mishnah itself. In the beginning of the tenth chapter of Maseches Zevachim,⁷ the Mishnah states that when there are two or more offerings available to be brought, the one with greater sanctity is offered first. One of the examples mentioned there

3 Kerisus 5a. See also Ramban, *Hasagos to Sefer Hamitzvos*, shoresh 2, and commentary *Kinas Sofrim* ibid.

4 One of the thirteen principles of drash, whereby the same word that appears in two sections in the Torah allows for the flow of halachic information between them.

5 *Kuntres Divrei Sofrim* 1:19.

6 Bereishis Rabbah 60:8, cited by Rashi ibid. 24:42 s.v. *va'avo*.

7 89a.

is when both a *chatas* (sin-offering) and an *asham* (guilt-offering) are available. In this case, the Mishnah states that *chatas* is offered first, for it possesses greater sanctity than the *asham*, as expressed in two of its laws:

1. Its blood is sprinkled on all four corners atop the *mizbeyach*.
2. Its leftover blood is poured out on the *yesod* – the base of one cubit that exists on certain sides of the *mizbeyach*.

Rashi⁸ provides the contrasting laws of the *asham*:

1. Its blood is sprinkled only twice, and on the lower part of the *mizbeyach*.
2. We do not find that pouring out the leftover blood on the *yesod* was stated regarding it.

The Tosafos Yom Tov, in his commentary to that Mishnah, is most perplexed by this second point. The halachah is that the *asham*, too requires its leftover blood to be poured out on the *yesod*.⁹ How, then, can the Mishnah cite this as a difference between these two offerings? He answers that although this halachah applies to both *chatas* and *asham*, it was only stated in the verse regarding *chatas*, while the *asham* is derived from *chatas* through midrash halachah. As such, the *chatas* is considered to possess greater sanctity!

REVERBERATIONS: IN THE ACHARONIM – ANNULMENT OF VOWS

It is very interesting to see this idea echoed in the writings of later halachic authorities as well. As we know, if one has accepted a vow upon himself, it is possible to annul it, a concept known as *hataras nedarim*. Rashi in the beginning of Parshas Matos,¹⁰ citing the Midrash, presents the options for obtaining annulment:

- A: He can approach a single expert judge
- B: If such an expert is not available, he can approach a panel of three laymen.

It is clear from Rashi that even though both options are effective, the first option – the expert judge – is the preferred one, for he specifically mentions the option of three laymen if there is no expert judge available. R' Yair Chaim Bachrach¹¹ explains that the reason for this preference is based on where these two options come from and the way in which they are derived:

- ▷ The expert judge is derived from the Torah mentioning “**רֹאשֵׁי הַמִּטּוֹת** – *the heads of the tribes*” in the beginning of that section.¹²
- ▷ The panel of three laymen is derived from a *gezeirah shavah*.¹³

Therefore, says Rav Bachrach, since the expert judge is mentioned explicitly in the verse, it enjoys the status of the preferred option, even though both options are fully d'Oraysa, exactly as Tosafos stated regarding the wine libations discussed in our parsha.

8 Zevachim ibid.

9 See Rambam, *hilchos maaseh korbanos* 5:6.

10 Bamidbar 30:2.

11 Responsa *Chavos Yair* sec. 129, cited by R'Yosef Engel, *Gilyonei Hashas*, Yoma 34a.

12 Bamidbar 30:2.

13 As set forth in Nedarim 78a, cited in Rashi to Bamidbar loc. cit.

This idea reflects the fascinating balance that exists between the worlds of pshat and drash in the realm of halachah. On the one hand, halachah is determined primarily through the midrash – sometimes even in contrast to the straightforward reading of the verse.¹⁴ Yet at the same time, when the midrash expands and extrapolates based on what is written in the verse, that which is written retains primacy even from a halachic standpoint.¹⁵

14 E.g. the punishment of “an eye for an eye,” and placing tefillin “between the eyes.”

15 For further examples and discussion of this idea, see Tosafos Yoma 44a s.v. *mai*, and Yevamos 7b s.v. *v'amar*, Rambam, *hilchos shechitah* 5:2-3, *Kessef Mishneh*, *hilchos avodah zarah* 12:14, Shulchan Aruch, Orach Chaim 608:2, Pri Megadim, *Pesichah Koleles* 3:1-2, *Haamek Davar* to Vayikra 19:19 and 27, R'Yehoshua Heller, *Maoz Hadas* chap. 1 and Commentary of R'Yerucham Fischel Perlow to R' Saadia Gaon's *Sefer Hamitzvos*, Vol 2 Negative Mitzvah 183 (pp 434-5).