

PSHUTO SHEL MIKRA

From the Teachings of Rav Yehuda Copperman zt"l

PARSHAT MASEI

The Element of Netzach in a Mitzvah LeSha'ah

וְלֹא תִסָּבֵב נַחֲלָה לְבְנֵי יִשְׂרָאֵל מִמַּטֵּה אֶל מַטֵּה

An inheritance of B'nei Yisrael shall not be diverted from Tribe to Tribe (Bamidbar 36:7)

The **Ramban** writes in his **Introduction to Chumash Bamidbar** that in the main this Chumash contains mitzvot which were stated “*lesha’ah*,” only for a specific time, that is, specifically for B’nei Yisrael in the *Midbar*. The question we would like to raise is: How is the concept of “a mitzvah stated for a specific time only” to be reconciled with the fact that everything written in the Torah has the status of “*netzach*” — permanence? Are these two ideas not directly opposed to each other?

In this chapter, we would like to illustrate one response to this question by discussing a mitzvah *lesha’ah* which appears in our *parsha*.

Hasavat Nachalah — The Prohibition against Diverting Inheritance

In *Parshat Pinchas* (27:11–8) we were told about a man named Tzelafchad, who died leaving five daughters and no sons. Hashem informed Moshe that in such a case the halachah is that it is the daughters who inherit the father. The end of our *parsha* presents the follow-up question to that case: If a woman from one *Shevet* who has inherited her

father marries someone from a different Shevet, her children who inherit her will likewise belong to her husband's *Shevet*, and the inheritance which she received will effectively have been transferred through her from one *Shevet* to another. The question therefore is, is it acceptable for a woman in this situation to marry someone from a different *Shevet*?

Hashem's response to this question is communicated by Moshe in *pesukim* 6–7:

זה הדבר אשר צוה ה' לבנות צלפחד לאמר לטוב בעיניהם תהיינה לנשים אך
ממשפחת מטה אביהם תהיינה לנשים. ולא תסוב נחלה לבני ישראל ממטה אל מטה

This is the word that Hashem has commanded regarding the daughters of Tzelafchad, saying: Let them be wives to whomever is good in their eyes, but only to the family of their father's tribe shall they become wives. An inheritance of B'nei Yisrael shall not be diverted from tribe to tribe.

We see that in a situation where the woman has inherited her father, she may not marry someone from another *Shevet*, in order that the inheritance not be diverted from one *Shevet* to another.

Tu B'Av and the Drashah of “זה הדבר”

Although in terms of *pshat*, the *pesukim* would seem to indicate that this mitzvah applies *ledorot* — to all subsequent generations — the Gemara (*Bava Batra* 120a) informs us that it was in fact a mitzvah *lesha'ah*, for it was only stated concerning people in that generation who were about to enter into Eretz Yisrael. As the Ramban (*Bamidbar* 36:7) explains, the Torah's insistence that the territories apportioned to each *Shevet* belong entirely to that *Shevet* was specifically for the time when they were initially given. Subsequent to that time, there were no such restrictions.

What is the basis for saying that this mitzvah applied only to that generation? The Gemara explains that it is based on the opening words in *pasuk* 6: “זה הדבר — *This is the matter*,” which are expounded through *midrash halachah* to mean:

דבר זה לא יהא נוהג אלא בדור זה

This matter shall only pertain to this generation.

There is a most fascinating discussion which takes place among the *mefarshim* regarding this *drashah* of “זה הדבר.” The background to this discussion is a statement found in the Gemara (*Bava Batra*, *ibid.*) that this *drashah* was actually the cause of a Yom Tov for B'nei Yisrael! The Mishnah (*Taanit* 26b) informs us that Tu B'Av (the Fifteenth of Av) was one of the two happiest days in the history of Am Yisrael. Among the reasons given is that it was the day when members of the different *Shevatim* became permitted to marry one another. The Gemara proceeds to explain that this permission is based on the *drashah* of “זה הדבר.”

What is it that connects the Fifteenth of Av to this *drashah*?

The **Rashbam** (*peirush* to *Masechet Bava Batra*, *ibid.*) explains that it was on that day that the Generation that entered Eretz Yisrael was reckoned as having come to its end, at which point the prohibition against *hasavat nachalah* no longer applied, as per the *drashah* of “זה הדבר.” It is clear from the words of the Rashbam that in his understanding, this *drashah* was known from the outset. The significance of the Fifteenth of Av lies in the fact that this was the day that this *drashah* was considered applicable, as it signified the transition to a new generation.

Rav Aryeh Leib of Metz, author of the *Sha’agat Aryeh*, in his *peirush Gevurat Ari* to *Masechet Taanit* (30b), differs and explains that it was on this day they first expounded the *drashah* of “זה הדבר”! In other words, whereas the parameters for making *derashot* were transmitted at Sinai as part of *Torah SheBaal Peh*, not all of the *derashot* themselves were expounded at Sinai.

As a precedent for this idea, the *Gevurat Ari* cites the Midrash (*Rut Rabbah* 5:3) regarding the marriage of Rut to Boaz, whose permissibility was based on the *drashah* of “— מואבי — ולא מואבית,” i.e. that the Torah’s prohibition against someone from Moav marrying into B’nei Yisrael¹ applies only to the males and not to the females. The Midrash states that the Beit Din informed Boaz and Rut: “Had you come at an earlier time they would not have accepted you, since the *drashah* of ‘מואבי — ולא מואבית’ had not yet been expounded.”

Rabbeinu Bachye: Halachah LeSha’ah and Minhag LeDorot

Having noted the *drashah* of Chazal to the effect that this prohibition applied the first generation only, we need to confront a basic question in *pshuto shel mikra*. The prohibition against the daughters of Tzelafchad marrying men from a different *Shevet* and thereby diverting the inheritance from their father’s *Shevet* is expressed in *pesukim* 6–7. However, the Torah then proceeds (*pesukim* 8–9) to restate this prohibition in general terms:

... וכל בת יורשת נחלה ממתות בני ישראל לאחד ממשפחת מטה אביה תהיה לאשה ...
ולא תסוב נחלה ממטה למטה

Every daughter who inherits an inheritance of the Tribes of B’nei Yisrael shall become the wife of someone from the family of her father’s Tribe ... An inheritance shall not be diverted from one tribe to another tribe.

How are we to understand the idea that the Torah restated a prohibition which, according to *derashat Chazal*, only applied to that generation?²

In his *peirush* to *pasuk* 8, **Rabbeinu Bachye** writes as follows:

1 [See *Devarim* 23:4.].

2 See *peirush* of the Ramban to *Bamidbar* *ibid.*, who explains this restatement as referring to additional similar situations that may have existed in that generation.

It is for this reason, the practice (מנהג) in Yisrael regarding a woman who stood to inherit her father and nonetheless violated this prohibition and married someone from a different Shevet, would be referred to as a “zonah,”³ and she would forfeit the inheritance from her father. And this is the meaning of the pasuk written in connection with Yiftach (Shoftim 11:1): “וְהוּא בֶן אִשָּׁה זֹנָה.” This does not mean to say that his mother was a harlot; rather, she stood to inherit from her father and married someone from a different Shevet.

The Radak, in his peirush to Sefer Shoftim, similarly writes:

In the Targum to this pasuk we find the following: “This was the practice (נימוסא) in Yisrael from early times, that inheritance should not be diverted from one Shevet to another, and hence a man could not marry a woman⁴ who was not from his Shevet. If it happened that a woman in this situation desired to marry a man who was not from her Shevet, she would forfeit her inheritance, and people would refer to her as ‘a zonah who desired to marry a man who was not from her Shevet.’ And this was the situation as pertained to Yiftach’s mother.”

It appears to me that what caused the Targum to explain (the word “zonah”) in this way is what is stated,⁵ “לֹא תִנְחַל בְּבֵית אָבִינוּ כִּי בֶן אִשָּׁה אַחֶרֶת אֶתָּה — You will not inherit in the household of our father, for you are the son of **another** woman.” And indeed, the Targum there explains, “For you are the son of a woman **from a different Shevet.**”⁶

We see from these Rishonim that while *midrash halachah* informs us that the prohibition of *hasavat nachalah* applies only to the first generation, B’nei Yisrael still persisted in refraining from such marriages as a matter of practice. This means that although it was no longer forbidden in subsequent generations, they nevertheless felt it was not desirable. We would like to suggest that the basis for this feeling is rooted in *pshuto shel mikra* which, through its restatement of this matter in general terms, serves to indicate that this is not something which is desirable in Hashem’s eyes.

This, then, is a way of understanding that even a *mitzvah lesha’ah* can have the quality of *netzach*. There are times when a matter is commanded as a **mitzvah** for a certain time (*lesha’ah*), while its **message** persists in subsequent times (*ledorot*). This message will exist not in the form of a *d’oraita* requirement, but in the form of an expression of *retzon Hashem*, which then becomes the basis of a *derabbanan* requirement at some later point.

3 [Which normally means “a harlot.”].

4 [Who stood to inherit her father.].

5 [The words of Yiftach’s paternal brothers, mentioned in the next *pasuk*.].

6 In other words, Yiftach’s brothers were claiming (albeit incorrectly) that in the same way they would not inherit his mother — seeing as she forfeited her inheritance though marrying someone from a different *Shevet* — so, too, he was not eligible to inherit their father together with them.

Rav Perlow: Two Mitzvot

In concluding this discussion, it is worthwhile mentioning a most fascinating approach to the *sugya* of “*hasavat nachalah*” which is found in the *peirush* of Rav Yerucham Fischel Perlow to the *Sefer HaMitzvot* of Rav Saadia Gaon (vol. 3, *parsha* 27). He notes that the *Baal Halachot Gedolot* (*Behag*) lists the prohibition against *hasavat nachalah* in his count of *Taryag Mitzvot*. This, of course, presents a difficulty, since only mitzvot which apply *ledorot* are to be counted within *Taryag*, while, as we have discussed at length, the Gemara explicitly says that this prohibition applied only to the first generation that entered Eretz Yisrael!

The background to Rav Perlow’s explanation is the fact that the *pasuk* which contains the limiting phrase of “*זה הדבר*” (*pasuk* 6) only mentions the requirement that these women marry within their *Shevet*. The prohibition against diverting inheritance is mentioned in the following *pasuk* (*pasuk* 7).

Rav Perlow writes:

Chazal expounded the words “זה הדבר” to mean that this matter applies only to the first generation. This being the case, it is appropriate to say that these words only exclude the first mitzvah mentioned in that section, namely, the requirement that these women marry within their Shevet. For in order not to separate the shevatim one from the other, the Torah only forbade this for the first generation who first entered Eretz Yisrael. However, the (second) prohibition against diverting inheritance applies to future generations as well; for since there is only one limiting phrase in the pasuk (“זה הדבר”), we are only entitled to limit the first prohibition, which is mentioned in that same pasuk. However, regarding the prohibition against diverting inheritance, which is written in the following pasuk, we should conclude that it applies to future generations as well. This means that the Beit Din must see to it that if a woman who stands to inherit her father marries someone from a different Shevet — which she is fully entitled to do — the inheritance from her father will stay within his family and be apportioned among his relatives.

According to Rav Perlow, our *parsha* contains two distinct mitzvot, one of which applied *lesha’ah*,⁷ and one which applies *ledorot*.⁸ [According to this approach, Yiftach’s inability to inherit his mother — to which his brothers reacted by barring him from inheriting their father — represented the actual *halachah d’oraita*].

7 A woman who stands to inherit her father not marrying someone from another *Shevet*.

8 Not diverting the inheritance in the event that she marries into a different *Shevet*.