

# PSHUTO SHEL MIKRA

From the Teachings of Rav Yehuda Copperman zt"l

## PARSHAT KI TAVO

### Prohibitions and Declarations

לֹא אָכַלְתִּי בְּאֲנִי מִמֵּנוּ

*I did not eat of it in a state of bereavement (Devarim 26:14)*

We have discussed on a number of occasions the difference between the Torah's "own" words, and words it quotes someone as saying (e.g., Lavan, Pharaoh or, *lehavdil*, Avraham, Yitzchak, and Yaakov). We have seen that a *halachah d'oraita* can only be derived from something which the Torah itself says, since the statements it quotes individuals as saying will inevitably contain a subjective element which renders them incapable of serving as a source for a mitzvah, the basis of which is absolute truth.

We have also discussed the question of *signon hakatuv*, the way something is expressed in the Torah, noting that a *d'oraita* obligation<sup>1</sup> can only be derived from something phrased as a *tzivui* (imperative), not something phrased as a *sippur* (narrative).<sup>2</sup>

Based on these two discussions, it would certainly stand to reason that if we should encounter a situation in the Torah where a person (direct speech) is narrating (*lashon sippur*), that *pasuk* would be incapable of serving as the source for a mitzvah — on two separate

<sup>1</sup> Whether positive (*aseh*) or negative (*lo taaseh*).

<sup>2</sup> See *Parshat Ekev*, Chapter 102.

counts! However, as we will see from the teachings of the Rambam, it is possible to derive a mitzvah from just such a case.

## Kosher Consumption of Maaser Sheini

In our parsha, which deals with the mitzvah of *Maaser Sheini*, the Torah requires a person to make a declaration regarding the manner in which he consumed the *maaser sheini* produce. One of the things he must declare is “לא אכלתי באני ממונו” — *I did not eat of it while in a state of aninut (bereavement).*”<sup>3</sup>

Rashi comments:

מכאן שאסור לאונן

*From here we see that it (maaser sheini) is forbidden to an onein.*

Rabbeinu Eliyahu Mizrachi, the foremost among the *mefarshei Rashi*, adds the following words of clarification regarding this inferred prohibition:

*However, one could not infer from here that there would be a liability of malkot,<sup>4</sup> since the phrase “I did not eat” is not an expression of prohibition, rather, it is one of declaration. It is for this reason Rashi writes, “From here we see that it is forbidden,” which implies that we cannot infer anything more than the fact it is forbidden ... and this is indeed appropriate, for every Torah prohibition<sup>5</sup> takes the form of Hashem addressing people and forbidding something to them. And I am astonished by the Rambam who wrote (Mishneh Torah, Hilchot Maaser Sheini 3:5), “One who eats of Maaser Sheini while in a state of aninut receives malkot, as it says לא אכלתי באני ממונו” — I did not eat of it while in a state of aninut”!*

## Understanding the Rambam’s Position

The Mizrachi maintains that our *pasuk* — being phrased as a narrative and not a prohibition — contains insufficient basis to make one liable for *malkot*, and hence registered his surprise at the Rambam who does in fact see these words as the basis for a *malkot* liability. However, while the Mizrachi is astonished by the words of the Rambam, we, in turn, are astonished by the Mizrachi, who is apparently unaware that the Rambam himself has discussed this very question.

In the eighth of his fourteen introductory *Shorashim* to his *Sefer HaMitzvot*, the Rambam asserts that in order for a *pasuk* to be considered a *lo taaseh*, it has to be phrased as a negative prohibition **commanding** that something may not happen, and not as a negating statement **stating** that something will not happen. The Rambam explains in this regard that some

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3 [“Bereavement” (*aninut*)] is defined by the halachah as the day of bereavement.].

4 [Lashes, which is the standard punishment for violating a *lo taaseh*.].

5 [I.e., whose violation could render a person liable to receive *malkot*.].

words can denote only one of these possibilities, while others can denote either, as follows:

- ▷ The word “אל” always connotes a prohibition.<sup>6</sup>
- ▷ The word “אין” always connotes a negating statement.<sup>7</sup>
- ▷ The word “לא” can denote either.<sup>8</sup>

Towards the end of that *Shoresh*, the **Rambam** raises the question of our *pasuk* dealing with *Maaser Sheini*:

*However, there is one matter which remains for us to clarify, through which we will have completed our intended discussion in this section, and that is as follows: Whenever the Torah requires that we declare “we have not done such and such,” that action will be enumerated among the negative prohibitions, even though the matter was stated as a negating statement and not a prohibition. For, having made it incumbent upon us to state that we did not do that act, we can know with certainty that to have done so would have been a violation of a prohibition. Thus, for example, the Torah required us to declare, “לא אכלתי באני ממנו ולא בערתי ממנו בטמא ולא נתתי ממנו למת” — I did not eat of it while in a state of aninut, nor did I consume it while tamei, nor did I give of it for the needs of the dead,” — which implies that each of these acts constitute the violation of a Torah prohibition.*

A person’s words mentioned in the Torah are insufficient basis for a mitzvah when they come from the person’s own initiative. However, when the Torah itself commands the person to say those words, they are the equivalent of the Torah prohibiting those things, and constitute the basis for a *lo taaseh d’oraita*!

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6 For example, the prohibition against eating a *korban Pesach* that has been only partially roasted — “ממנו נא אל תאכלו” (*Shemot* 12:9).

7 For example, the statement that a girl who was coerced into forbidden physical relations bears no culpability — “אין לנערה חטא מית” (*Devarim* 22:26).

8 For example, the words “לא תרצח” (*Shemot* 20:13) are a prohibition against murder, while the words “קצאת לא תצא” (*ibid.* 21:7) are a statement that a Jewish girl sold into servitude does not leave her master’s jurisdiction through the same means in which an *eved Canaani* would leave (see Rashi there, s.v. *lo*).