

The Thirteen Middos - Shiur 3

15 Cheshvan (2 November, 2009)

This is the third in our series of lectures on the thirteen middos, the principles of exegesis by which our sages interpret scripture.

In the last two lectures we discussed the emergence of the seven middos which Hillel expounded upon in front of B'nei Beseira. There is an important change in paradigm from the *hekeish*, logical equation of two passages, to the *g'zeira shava* which Hillel used in front of B'nei Beseira.

Based upon this, our assertion is that behind every *g'zeira shava* lies a *hekeish*, a logical connection between two subjects. A *hekeish* equates two matters, making them equal with regard to specific laws. The *hekeish* was transformed into the new middah, the *g'zeira shava*. On the basis of the *g'zeira shava* Chazal could go on to utilize the hermeneutical principles to derive new halachos which would not otherwise have been derived using only the *hekeish*. We looked at a Gemara in Rosh Hashana to see an example of this.

I now want to go deeper into this idea. The main text I will use is Bava Kamma 83b-84a.

The Gemara in Bava Kama is looking to establish a very famous law based on pesukim. We know that the Torah says in Shemos "ayin tachat ayin" - an eye for an eye. We know that the tradition that we have from Chazal, which is undisputed anywhere, is that the Torah is not telling us to take out the perpetrator's eye, but rather to pay monetary compensation to the one who sustained damage.

The Gemara devotes almost two sides of a page to bringing scriptural sources to show that "an eye for an eye" refers to monetary compensation rather than physical harm.

At the end of 83b the Talmud brings a series of baraisas which use rational argument to show that this verse cannot refer to physical harm, because no two limbs are equivalent.

The Gemara discusses many opinions of Tanaim and Amoraim until we come to Rav Ashi who brings a *g'zeira shava*. He says:

We have a *g'zeira shava* using the word *tachas* ('under' or, in this case, 'in place of'). The word *tachas* is used regarding an ox and also regarding a human being. Regarding a human being it says "an eye in place of an eye", and regarding an ox it says "an ox in place of an ox". If someone kills your ox he must pay you the monetary value of an ox. Clearly regarding the ox the word *tachas* refers to monetary payment, so too regarding the eye it must refer to monetary payment.

The Gemara brings the verse, “then the rapist must give the girl's father 50 [shekels] of silver. He must then take the girl as his wife ‘in place of’ (*tachas*) [the damage done because] he violated her, and he may not send her away as long as he lives” (Devarim 22:29). It then asks, why do we learn a *g’zeira shava* on the word *tachas* from the case of an animal rather than from a case involving a person? The answer is that we equate two incidents of damages rather than an incident of murder with a case of damages.

Why not compare a case involving a person to another case involving a person rather than comparing a case involving a person with one which involves an animal?

One could draw the parallel either with the crime that took place, or with the type of being that sustained injury. When Rav Ashi finds the word *tachas*, he satisfies both of these conditions. He refers to both the action and the object.

Rav Ashi is the first person in this discussion of ‘eye for an eye’ to bring a *gzeira shava*. Tosefos asks, why did the other Tanaim and Amoraim not have this *g’zeira shava* if it is *halacha l’Moshe miSinai*?

Let us look at the Nimukei Yosef at the end of the Gemara (p. 30a in the pages of the Rif).

Like the Tosefos, the Rif asks why did the other Tanaim and Amoraim not learn this *gzeira shava*? Is it possible that only Rav Ashi had this tradition from Sinai, but not all his illustrious predecessors?

They claim that according to the other Rabbis, this *g’zeira shava* is necessary to teach me a different halacha regarding the details of payment. It is not a strong enough *g’zeira shava* to change the meaning of our verse from its simple meaning. A *g’zeira shava* can only be made, according to the other Rabbis, if it fits with the context of the Torah.

The Nimukei Yosef, however, offers a different explanation. He summarizes the discussion in the Gemara: Rav Ashi learns a *g’zeira shava* with the word *tachas* resulting in the halacha that “*ayin tachas ayin*” refers to monetary compensation and not any other form of compensation.

The Nimukei Yosef says: “In a case where we know something is rationally true, but we don’t have a direct proof from a verse, we are allowed to create a *gzeira shava*. But how does this fit with what we have learned, that a *g’zeira shava* must be learned from tradition? I must first know that something is empirically true before I can make the *g’zeira shava*. The tradition from the previous generation is necessary only where one wants to create a new halacha.” (See Chidushei Anshei Shem who explain the difficulty in the wording here).

What the Nimukei Yosef is saying is really the simple meaning of the Talmud.

We have a list of Tanaim and Amoraim who show rationally why the verse must mean monetary payment. Rav Ashi is able to make a *g’zeira shava* because he knows the halacha to be true based on logical arguments from his teachers, but not based on a source from pesukim.

The Meiri says here that we can use the word “*me-tachas*” even though it is not exactly the same word. Perhaps that is why none of the earlier Rabbis made this *g’zeira shava*.

By pairing the word “*me-tachas*” with the word “*tachas*” we see the equation of two subjects as well as the equation of two words.

The Nimukei Yosef is explicitly stating what we have said for the past two weeks. When we say that a *g’zeira shava* requires a kabbalah, we do not necessarily need a tradition for the actual exegesis; rather we can establish a *g’zeira shava* on anything that we know to be true on rational or empirical grounds.

The Nimukei Yosef is stating a general rule, using this Gemara as a precedent for other *g’zeira shavas* in the Talmud which follow the same principle. The actual *g’zeira shava* is not a kabbalah from previous generations, but a *hekeish*, a rational equation, had been established previously and based on that, the *g’zeira shava* emerged at that point in time. Therefore this does not violate the principle that we must have a received tradition in order to establish a *g’zeira shava*.

Here the precedent is clear rational argument about the meaning of the verse. Nobody brings proofs from the text itself.

The Nimukei Yosef proves what we have been claiming; the actual *g’zeira shava* does not need to be the kabbalah from a teacher, rather the kabbalah from the teacher is the logical equation of the two matters which is true, independent of the exegesis. The *g’zeira shava* provides the method for deriving halacha. The *g’zeira shava* creates the exegesis.

The Tosefos make two arguments. The *g’zeira shava* can be used to understand the simple meaning of the verse. The Tosefos say that the *g’zeira shava* of Rav Ashi is not a genuine *g’zeira shava* because it does not follow the simple meaning of the verse.

The meaning of Tosefos here is based on Tosefos in Shabbos (97a, *dibbur hamatchil ‘gzeira shava’*) discussing who the ‘woodgatherer’ was. Tosefos there implies that there is a limited list of *g’zeira shavas* that can be used.

Therefore Tosefos argues with the Nimukei Yosef although there is a common conceptual agreement between the opinions that the *g’zeira shava* is established with logic. Tosefos claims that there is a limited number of *g’zeira shavas*.

Nimukei Yosef says anyone who knows something to be rationally true can create a *g’zeira shava* themselves. The Nimukei Yosef states that he concurs with the commentators; his is not a lone opinion.

Now that we have established that it is rational argument that is the basis of *g’zeira shava* let us move on to a fuller discussion of the text in Bava Kamma 84a.

It is very interesting that the Talmud brings so many proofs to teach us that “*ayin tachas ayin*” refers to money. It is very rare for the Talmud to bring more than one or two cases to prove something.

Where else in the Talmud do we find so many proofs brought to clarify a point? In Menachos 65-66 there is an argument between the Sadducees and the Rabbis about whether to bring the Korban Omer (Shavuot) on a Sunday (*mochoras haShabbos* – the day after Shabbos) or whether the word ‘Shabbos’ in that context refers to Pesach. The Talmud states many opinions on this topic and discusses which opinions are more solid than others.

Rambam says in chapter two of Hilchos Shabbos in discussing a situation when a person’s life is in danger that it is imperative to save the person and Rambam states “Not like the Sadducees who argue on this principle.” How does Rambam know there is an argument about this? It is not recorded anywhere in the Talmud. It must be that he sees a parallel between the Talmud in Yoma which discusses saving lives on Shabbos and the Talmud in Menachos which is explicitly arguing with the Sadducees. In both texts many opinions are stated and the refutability of these proofs is discussed.

Therefore we can say that any time the Talmud brings so many proofs of something that there must have been opposition to that concept. Presumably this is also true of our case in Bava Kama – there must have been a claim that the text refers to physical punishment of a hand for a hand (the Muslims still do this today in certain places).

So the Nimukei Yosef is claiming that the *g’zeira shava* is introduced to counter the arguments of the Sadducees. He is using this sugya as a basis for making a klal, a principle regarding the *g’zeira shava*. This sugya acts as a precedent, a key example of the function of a *g’zeira shava*.

Would the Sadducees agree with the *g’zeira shava*?

In the Gemara Sotah 33b we see a *g’zeira shava* not used in a legal discussion, but rather to prove that Elonei Mamreh is Shechem. “Rabbi Eliezer bar Rabbi Yossi says... On this matter I disproved the Kusim. I said to them “You have invented a false interpretation of the Torah, yet it has not helped you at all. You say ... is Shechem. We learn this from a *g’zeira shava*, but where do you learn it from?”

This illustrates the major difference between the way Chazal learn from the verses and how the Kusim or the Sadducees, who did not recognize the Torah she b’al peh, create their laws.

The Talmud doesn’t just say this coincidentally, it seems that the Kusim did not accept the concept of a *g’zeira shava*.

I want to claim that the *g’zeira shava* of Hillel was not something that the Sadducees would have accepted. They would have to find some other scholarly method of deriving laws from the text.

In my opinion this leads to the conclusion that Hillel’s establishment of a new text came about as a reaction to the Sadducees.

The establishment of Rebbi’s Mishna put an end to the derashos. This is perhaps because people were making derashos against the authority of Chazal, and so there was a need to consolidate the derashos to define the correct ones and the incorrect ones.

In Bava Metziah 33b Rashi says that Rebbi checked out which derashos were legitimate and authentic, and which were not. By formalizing the legitimate derashos, Rebbi ensured that in the next era, which was the era of the Gemara, the Gemaras would be rooted in authentic derashos from Sinai.

Perhaps it is the same thing here. There was a need to establish the *g'zeira shava* to remove legitimacy from the arguments of the Sadducees. The text of the *g'zeira shava* is not subject to critique; it is kabbalah from Sinai. If I use logic there is room for argument and dissent. The creation of the new text preserves, consolidates and inoculates the Torah from logical or hermeneutical critique. Fixing the text makes it impervious to attack, and solidifies the halacha and authority of the Oral Torah. Thus the *g'zeira shava* saved the Oral Law from being distorted by those who deny it.

We see this clearly in this sugya. Many opinions that are brought to prove that "*ayin tachas ayin*" refers to monetary compensation and not its literal meaning. We already knew this was what the verse meant, but the Gemara raises many points that put the meaning of the verse into question. Once Rav Ashi made the *g'zeira shava*, the meaning is sealed. The sugya ends there because the *g'zeira shava* is a model which is not subject to attack: two words are equal, and we have a mesorah for this - there ends the argument.

The list of arguments proofs shows that each point can be argued against. But once Rav Ashi makes his *g'zeira shava* there can be no more argument. The claim of tradition and fixing in the text means that there is no possibility of challenge.

Why was it necessary for Hillel to establish the seven middos?

Perhaps at the time of Hillel and B'nei Beseira the Sadducees were challenging the authority of the Rabbis and therefore the Rabbis had to resort to Hillel's middos to answer their attacks. Had they used the *kal v'chomer*, the Sadducees could have responded the same way as B'nei Beseira had, which did not resolve the issue. The *g'zeira shava* answered them in a way that could not be debated. The *g'zeira shava* sets the mesorah in a permanent mold. The *g'zeira shava* makes the mesorah credible.

There are two factors which are important here:

In the emergence of a new genre there are always two opinions which generate the change. For example, when the Chazon Ish responds to Rav Elchonon Wasserman he says that the reason we cannot argue on the Talmud is not because we cannot get all of Israel together but rather because there was a *yeridos hadoros* which could possibly be similar to what we have been discussing; that logical reasoning is open to attack.

The earlier generations were capable of equating things using their intellect. This was frozen into the *gzeira shava*.

You could say that writing down the Mishna was an attempt to preserve the Oral Torah. One could say this is why the 13 middos, which have undisputed, empirically based, internal rules, were established. Once I create a model which has its own rules nobody argues on the legitimacy of the rule, only on how to apply it. I can argue on how to use the rules, but not on the concept of rules themselves. I am not

subject to an empirical critique – in order to debate my claim you have to work within my model and utilize my rules.

Therefore, based on the text in Bava Kama, my claim is that the role of the *g'zeira shava* is an internalizing bastion to insulate the Oral Law from any empirical critique, which ensures its survival.

This is what Hillel was doing by using the *g'zeira shava* in front of B'nei Beseira. B'nei Beseira may have needed to answer the arguments of the Sadducees.

What about *kal v'chomer* which is rational? *Kal v'chomer* becomes a *binyan av*. Once it is a *binyan av* it is no longer a *kal v'chomer*.

I want to make another point about the Gemara in Sotah 33b:

I have shown your Torah to be false. We learn from *g'zeira shava*— how do you learn it?

It could be that he is just asserting that we have techniques that the Kusim lack. But perhaps there is another way of understanding it, that the Kusim don't have changes in paradigm. They remain fixed with tradition.

At the very end of *Seder Olam Rabba* (chapter 30) it is written that Alexander of Macedonia came to Yerushalayim. "Until now you listen to the prophets, from here on incline your ear to listen to the words of the Sages".

The change from prophecy to chochma came at the same time as Alexander of Macedonia came to introduce the new culture of the Greeks in an attempt to revolutionize the whole world. See Rav Tzadok of Lublin's concept of *zeh le-umas zeh* (*Tzidkus Ha-Tzadik* 90 and many other places).

We see that the Kusim are primitive. They only knew one way. In Judaism there is a concept of dynamism, of changing paradigms. *Seder Olam Rabba* is making commensurability between the introduction of Greek culture and the shift from prophecy to chochma.

This leads us to a very interesting issue. Prophecy does not require the use of the middos (as in Pesachim – they are either prophets or sons of prophets). Prophecy works on inspiration and tradition and not on interpretation. A prophet cannot make a derasha.

Here we see clearly the *yeridos hadoros*, the decreasing greatness of each new generation. We see the provision of answers to the Sadducees. Israel was inundated with Hellenistic culture. The Greeks had their ways of interpreting scripture. Chazal formulate the 13 middos at this point in history and there are clearly analogies of these appearing in Greek and Roman rhetoric. There are several distinguished scholars who have written articles which show that there seem to be parallels between the thirteen middos and the works of Cicero, to a historian interpreting scripture.

We will look further into this to try and understand the thirteen middos in light of the surrounding culture.