

DIMENSIONS IN CHUMASH

PARSHAS TZAV

Permitted as Stated

Concept: The Interplay between the Words of the Torah and the Enactments of the Sages

הוא העֹלָה על מוקְדָה על המִזְבֵּחַ כָּל הַלַּיְלָה עַד הַבֶּקֶר

It is the burnt-offering [that stays] on the pyre on the Altar, all night until the morning.¹

INTRODUCTION: RASHI PERPLEXES US FROM THE BEGINNING

Our verse has the distinction of being part of a discussion that takes place on the very first page of the Talmud. The opening Mishnah in *Maseches Berachos* deals with *mitzvos* of the Torah that apply throughout the night, stating that the Sages made an enactment which required that those *mitzvos* be fulfilled specifically before *chatzos* – halachic midnight. This was to ensure that a person not rely on that fact he has all night and, then, the next thing he knows, it is already the following morning. Among the *mitzvos* listed in the Mishnah is the one mentioned in our verse – burning the parts of *korbanos* from the previous day's service. In his commentary to that Mishnah, Rashi says a most remarkable thing. He states that this mitzvah was the *exception to the Mishnah's rule*, and that no enactment was made to limit it to the first half of the night.

Understandably, many are perplexed by Rashi's comment. Why should this mitzvah be any different from all the others mentioned in that Mishnah, which apply throughout the night on a Torah level, and yet, concerning which the sages made their enactment that they be performed before *chatzos*?

INTRODUCING THE TAZ

A number of commentators explain Rashi's statement based on a fundamental principle propounded by one of the classic commentators on Shulchan Aruch, the *Turei Zahav* (Taz) which is, interestingly, also based on a verse in our parsha.

¹ Vayikra 6:2.

The Talmud² states regarding foods that are forbidden for consumption, yet permitted for benefit, that it is nonetheless rabbinically forbidden to actually conduct business with those items. The reason for this is the concern that a person's ongoing involvement with these items may lead him inadvertently to partake of some of them. The Shulchan Aruch³ writes that an exception to this rule is the *chelev* (various fats of an animal that the Torah has forbidden for consumption), mentioned later in our parsha, since the verse says concerning *chelev*, “עשה לכל מלאכה” – [it] *may be put to any use.*⁴

The Taz⁵ asks a simple question: Why should the fact that these fats are permitted on a Torah level for all use result in the sages not applying their general prohibition against doing business with non-kosher food? After all, doesn't every rabbinic prohibition – by definition – apply to something that is permitted on a Torah level?

The Taz answers that indeed, the Sages have a mandate to impose preventative prohibitions on items beyond that which the Torah itself forbade. However, in a case where the Torah *explicitly stated that a certain item is permitted*, this serves to place that item off-limits from any rabbinic prohibition! Therefore, in the case of *chelev*, where the Torah didn't merely “not forbid it” from benefit, but rather explicitly stated that it can be used for any beneficial (non-eating) purpose, the sages did not impose their general restriction against doing business with non-kosher food.

Applying this principle to our verse, we can arrive at an understanding of Rashi's comment in the Mishnah. Since, regarding the burning of the sacrificial parts, the verse explicitly says that it should take place, “the entire night until the morning,” the sages, accordingly, did not apply their general restriction of night-*mitzvos* to the first half of the night.⁶

FURTHER INTRIGUE: “WHEN ROSH HASHANAH FALLS ON YOM TOV”

However, there is an interesting follow-up to this discussion, based, in fact, on another statement of the Taz. As is well-known, in a year when Rosh Hashanah falls on Shabbos, the Sages decreed that the shofar not be blown, lest a person inadvertently carry his shofar in the public thoroughfare on his way to performing the mitzvah. Some commentators raise the following disarming question: There is a standing enactment of the Sages against sounding a musical instrument on Shabbos and Yom Tov, lest a person come to repair it. As such, seemingly, the mitzvah of shofar should be suspended by rabbinic decree *every year*, as Rosh Hashanah is also a Yom Tov! Why, then, did the Sages only establish this decree when Rosh Hashanah falls on Shabbos?

To this, the Taz answers⁷ that since the Torah explicitly says to blow the shofar on Rosh Hashanah, to suspend the mitzvah of shofar on all occasions would place the sages categorically at odds with the Torah's words. However, by only suspending the mitzvah in a year when Rosh Hashanah falls on Shabbos, there is no categorical conflict: in principle, the mitzvah applies, it is just in certain specific situations that the Sages suspended it.

2 *Pesachim* 21b.

3 *Yoreh Deah* 177:1.

4 7:24.

5 Commentary to *Yoreh Deah*, *ibid.*, and to *Choshen Mishpat* 2:4.

6 Commentaries *Rosh Yosef* (by R'Yosef Teumim, author of *Pri Megadim*) and *Nitzotzei Ohr* (R' Reuven Margolios), *Berachos* loc. cit.

7 *Orach Chaim* 585:5. Later commentators point out that this answer can also be found in the commentary of the Meiri to *Megillah* 4b.

In light of this qualification, let us return to our parsha and ask: Why did the sages feel unable to apply the enactment against doing business with non-kosher food to *chelev*? Since there are plenty of other ways from which to benefit from *chelev*, that enactment would not be in total opposition to the permission given by the Torah and, as we have seen, in cases such as this, the sages will indeed apply their enactments to certain specific scenarios!⁸ Similarly, if the sages were to ban the burning of the sacrificial parts on the *mizbeach* during the second half of the night that would still leave the first half during which to burn them, so that there, too, the enactment would not be in total opposition to the words of the Torah!

RESOLUTION: WHEN THE TORAH SAYS IT ALL

It would appear that the answer lies in paying particular attention to the specific way the Torah presents each mitzvah. In the case of Shofar, the Torah states that it is to be blown on Rosh Hashanah. That message remains essentially intact even if the sages will suspend the mitzvah in certain limited cases. However, when it comes to the two *mitzvos* in our parsha, the Torah explicitly describes the scope of those *mitzvos* as encompassing the *entire range of possibilities*. With regards to *chelev*, the Torah does not merely say that it is permitted “for use,” it says that it is permitted “for *all* use.” As such, to restrict even one avenue of benefit would be in contravention of the verse having permitted every form of benefit; therefore, no such restriction was made. Likewise, the Torah states that the sacrificial parts may be offered over the course of “*the entire night until the morning*.” Hence, to bar the second half of the night from this mitzvah would be in contravention to the Torah allowing “the entire night,” and, therefore, the Sages did not restrict this mitzvah to the first half of the night!

This discussion gives us a fascinating insight into the relationship between the laws of the Torah and the enactments of the Sages. We see that, in every case, attention was paid not only to what is commanded, forbidden or permitted in the Torah, but also in the way that the Torah expressed its permission in the cases where it did so.⁹

8 This question is raised by R’ David Pardo, in responsa *Michtam le’David*.

9 For further discussion of this concept, see *Pri Megadim*, Pesicha Kolleles Part I sec. 9, *Yad Malachai* klal 295, *Responsa R’ Akiva Eiger* sec. 74, *Responsa Chasam Sofer* 6:52 and glosses of *Maharatz Chajes* to Niddah 58b.