

PSHUTO SHEL MIKRA

From the Teachings of Rav Yehuda Copperman zt"l

PARSHAT SHELACH

Explicit Statements and Implicit Messages in the Torah

וַיִּהְיוּ בְנֵי יִשְׂרָאֵל בְּמִדְבָּר וַיִּמְצְאוּ אִישׁ מְקַשֵּׁשׁ יַעֲצִים בְּיוֹם הַשַּׁבָּת

B'nei Yisrael were in the wilderness, and they found a man gathering wood on the day of Shabbat (Bamidbar 15:32)

Identifying the Mekoshesh

The end of our *parsha* discusses the episode of the *Mekoshesh*, the person who violated Shabbat while B'nei Yisrael were in the *Midbar*, and whose case was referred first to Moshe, and then to Hashem Himself.

Regarding the identity of the *Mekoshesh*, we find the following discussion in the *Sifrei* (*siman* 113):

ומי היה? צלפחד, דברי ר' עקיבא. נאמר כאן "במדבר", ונאמר להלן (כז, ג) "אבינו מת במדבר". מה "מדבר" האמור להלן צלפחד, אף מדבר האמור כאן צלפחד. אמר ר' יהודה בן בתירא, עקיבא, בין כה וכה אתה עתיד ליתן את הדין. אם כדבריך — מי

שאמר והיה העולם כיסה ואתה מגלה! ואם לאו — אתה מוציא לעז על אותו צדיק!

*And who was he? Tzelafchad. These are the words of R' Akiva. It says here¹ “(B'nei Yisrael were) **Bamidbar** — in the wilderness,” and it says later on (27:3)² “Our father died in the **Midbar**,” Just as in that case the reference is to Tzelafchad, so too here the reference is to Tzelafchad. Said R' Yehudah ben Beteira, “Akiva! Either way you will need to give a reckoning in the future.³ If it is as you say — the One Who spoke and brought the world into being concealed his identity and you reveal it?” And if it is not as you say — you are slandering that tzaddik!⁴*

This entire exchange is quite fascinating. On the one hand, R' Akiva's could respond to R' Yehudah ben Beteira's criticism by saying simply that the Torah did not in fact “conceal” the identity of the *Mekoshesh* at all, rather, it “revealed” it by means of a *gezeirah shavah*, which is one of the principles of midrash through which the Torah is to be expounded! For his part, it is quite clear that R' Yehudah ben Beteira maintains that something negative which the Torah did not write explicitly should not be mentioned explicitly **in any capacity**. What will R' Akiva say in response to this objection?

Torah SheBichtav and Torah SheBaal Peh

In order to understand R' Akiva's position, let us consider another case where the Torah conceals someone's identity. The end of *Parshat Emor* (*Vayikra* 24:10–23) discusses the case of the *Mekalel* — the one who cursed Hashem's Name. The Torah relates (*pasuk* 10) that the event which caused the *Mekalel* to curse was an argument between him and an “*Ish Yisraeli* (Israelite man).” Commenting on this description, the *Ohr HaChaim* writes (s.v. *v'ish*):

*Perhaps the reason the pasuk does not mention his name⁵ is that it does not wish to reveal his identity, since it was through him the Mekalel cursed Hashem's Name, and it is known that positive things are brought about through the agency of worthy people, and the negative things through unworthy people.⁶ For Hashem does not wish to embarrass a person, and certainly not **in the Torah where the mark (רושם) will remain for all time.***

With these concluding words, the *Ohr HaChaim* is touching on a fundamental principle regarding the learning of *Chumash*. There is a difference between something that is written

1 [R' Akiva now presents the basis of his identification of Tzelafchad as the *Mekoshesh*.].

2 [When Tzelafchad's daughters approach Moshe regarding their inheritance.].

3 [I.e., before *Beit Din Shel Maalah* (the Heavenly Court).].

4 [I.e., *Tzelafchad*, by mistakenly identifying him as the *Mekoshesh*.].

5 [I.e. the name of the *Ish Yisraeli* who argued with the *Mekalel*.].

6 [מגלגלין זכות על ידי זכאי, וחובה על ידי חייב] (*Sifrei, Parshat Ki Tetzei*, cited in Rashi *ibid.* 22:8 s.v. *Ki*). In other words, the fact this *Ish Yisraeli* was instrumental in someone else cursing Hashem's Name reflects negatively on him as well.].

explicitly in the *pasuk* and something which is derived through *midrash halachah*, even though both are *d'oraita*! This is something that expresses itself not only in the narrative sections of the Torah — as the *Ohr HaChaim* demonstrates here⁷ — but also features in the realm of halachah as well.

For example:

- ▷ There is no punishment of *malkot* for violating a prohibition that is derived through a *kal vachomer*, even though that prohibition is *d'oraita* (*Makkot* 5b).
- ▷ Something which is known purely through Halachah L'Moshe MiSinai, but is not based on a *pasuk*, cannot serve as the basis for a *kal vachomer* (*Pesachim* 81b)
- ▷ The **Rambam** does not include in his list of *Taryag Mitzvot* a mitzvah that is not mentioned explicitly in the *pasuk*. This is true even if the mitzvah is *d'oraita*, e.g. if it was transmitted to Moshe Rabbeinu as part of *Torah SheBaal Peh* (see *Sefer Hamitzvot*, *Shoresh* 2).
- ▷ One of the main areas of *halachah derabbanan* is that of “*siyag laTorah*,” i.e., to prohibit certain actions which are permitted *d'oraita* in order to protect against the violation something which is forbidden *d'oraita*. However, the **Turei Zahav** (*Orach Chaim*, *siman* 588, *Yoreh Deah*, *siman* 117) writes that if there is an action that is explicitly permitted in the Torah, Chazal cannot forbid it even for purposes of enacting a protective measure for a *din d'oraita*.⁸
- ▷ The *sefer Yad Malachi* (*klalei hadinim*, *se'if* 122) writes: “A prohibition which is mentioned explicitly in the *pasuk* is more stringent than one which is not mentioned explicitly in the *pasuk*, even though it is derived through a full-fledged *drashah*.”⁹

Evaluating Tzelafchad's Act

This, then, is the basis of R' Akiva's position, whereby he is not guilty of “revealing that which the Torah concealed.” When the Torah “conceals” the identity of the *Mekoshesh* and does not mention his name in the *pasuk*, it is because he does not deserve for his shame to be recorded in *Torah SheBichtav*, with all that that entails. However, this does not preclude identifying him through *midrash halachah*, whereby his identity — and hence his degradation — will be known on the level of *Torah SheBaal Peh*.

The idea here is that the Torah determines with great precision the exact level of shame (or praise) that a person deserves for his deeds, and this is reflected in the way the Torah presents that information.

7 [See also *Parshat Toldot*, Chapter 16.].

8 See *Pshuto Shel Mikra*, sec. 2, chap. 5, where this idea is discussed at length.

9 See *Pshuto Shel Mikra*, sec. 2, chap. 6, where this idea is discussed at length.

In the case of Tzelafchad, perhaps we may suggest that the reason the Torah “judged” that he did not deserve to have his name mentioned explicitly in connection with his *aveirah* is because his intention in violating it was *leshem Shamayim*. Many *mefarshim* explain that the motivation for Tzelafchad’s act was the fact that in the wake of the *Chet HaMeraglim*, when it was decreed that B’nei Yisrael should stay in the *Midbar* for forty years until that first generation died out, there was a feeling among the people that they were no longer part of the Torah’s “program,” and no longer bound by the mitzvot. In order to emphasize that this was not the case, Tzelafchad deliberately brought capital punishment on himself, so that the people should realize that they were still absolutely bound by the mitzvot. The lack of evil intent within the *aveirah* meant that he did not deserve to have his name associated with his *aveirah* in *Torah Shebichtav*.¹⁰

10 [The idea that Tzelafchad was guilty of some wrongdoing is itself mentioned in the *pasuk* (*Bamidbar* 27:3), where his daughters say “**בְּחַטָּאוֹ מוֹת**” — *He died on account of his sin*.” Perhaps we may explain this situation based on the principle which the Rav discussed many times throughout the *sefer*, namely, that words which the Torah quotes someone as saying differ in certain respects from the words of the Torah “itself.” In this case, since Tzelafchad did in fact violate a prohibition for which he deserved to be killed, this is mentioned explicitly in the *pasuk*. However, in recognition of the fact that his intentions were *leshem Shamayim*, the criticism comes in the form of the words of others (his daughters), and not through the words of the Torah itself.] .