

Meshech Chochmah Parshas Mishpatim

From Seven Mitzvos to Taryag

מִכָּה אִישׁ וְמֵת מוֹת יוֹמָת... וְכִי יִזְדּ אִישׁ עַל רֵעֵהוּ לְהָרְגוֹ בְּעֶרְמָה

One who strikes a man who then dies, shall surely be put to death... If a man shall act intentionally against his fellow to kill him (21:12, 14)

Commenting on the mention of the word “אִישׁ - man” in the second pasuk, the Mechilta¹ states that from the non-specific phraseology of the first pasuk – “*One who strikes*” – one might have thought that even if the killer is a minor (i.e. under bar mitzvah) he is liable to be punished with death for his act. Therefore, the second pasuk emphasizes “a man,” in order to exclude a minor from punishment.

This situation is quite perplexing: children under the age of bar mitzvah are exempt from *all mitzvos* of the Torah, as well as from its punishments. If this is always the case, then why did the Torah deem it necessary to reiterate this exemption specifically within the context of punishment for murder?

When Does a Ben Noach Become “Bar Mitzvah”?

For his answer to this question, the Meshech Chochmah refers us to his commentary Ohr Sameach on the Rambam,² where he prefaces with two points:

1. Bar (or bas) mitzvah as the minimum age for obligation and liability in mitzvos belongs to the category of “*shiurim*” (halachic quantities)³ which the Gemara⁴ says are “*Halachah le’Moshe mi’Sinai*” (an oral tradition from Hashem to Moshe at Har Sinai).
2. The concept of “*shiurim*” does not apply to the Mitzvos of Bnei Noach.⁵

¹ Mishpatim, parsha 4.

² Hilchos Issurei Biah 2:3.

³ E.g. the minimum volume of a *kezayis* in order to be liable in Beis Din for eating something forbidden by the Torah.

⁴ See e.g. Succah 5b.

⁵ Therefore, a Ben Noach who eats even less than a *kezayis* of something forbidden to him (e.g. *ever min hachai*) will be liable.

In light of these two ideas, it will emerge that the age from which a Ben Noach is obligated in the seven mitzvos that apply to him – as well as being liable for their consequences – is not thirteen, for that belongs to “*shiurim*,” which do not apply to a Ben Noach. Rather, it will be based on an assessment of his maturity, which may pertain even prior to the age of bar mitzvah.

How does this relate to our question?

The prohibition against murder is one of the seven mitzvos of Bnei Noach. In keeping with the above points, a Ben Noach could be liable for murder even below the age of thirteen. This brings us to a third point, namely, that the mitzvos we received at Sinai are *in addition to* those which we already had beforehand as Bnei Noach. This means that, all things being equal, any obligation or liability which already exists for a Ben Noach continues to exist for a Yisrael. Putting all these ideas together, the Ohr Sameach propounds a most striking halachic principle, namely, that even with regards to Yisrael, when it comes to mitzvos that also apply to Bnei Noach (such as not stealing), they too will be obligated in those mitzvos from a Torah standpoint from when they reach basic maturity, *even before bar mitzvah!*

All of this leads us to a fascinating possibility, for we can now consider that perhaps the age from which one can be punished for an act of murder should be lower than that of other mitzvos of the Torah! After all, murder is forbidden for Bnei Noach, and they are liable for their mitzvos even earlier than bar mitzvah. If so, the same should be true for Yisrael, whose mitzvos only come to add to those of Bnei Noach, not to detract from them!

We can now understand the basis of the Mechilta’s comment, for it was in order to counter this notion that the Torah saw it as necessary to stipulate that the punishment for murder is only incurred by “a man,” i.e. over bar mitzvah.⁶

Chag HaSuccos and Chas Ha’asif

⁶ Indeed, the Mechilta itself on our pasuk expresses surprise that the situation for Yisrael should be more lenient in this respect than that of Bnei Noach and responds that even a minor who kills is in fact liable in *Dinei Shamayim* (the Heavenly Court). As the Ohr Sameach explains, the basis for that liability are the points which we have raised.

שְׁלֹשׁ רִגְלִים תַּחַג לִי בַשָּׁנָה... וְחַג הָאָסִף

Three foot-festivals shall you celebrate for me during the year... and the festival of the ingathering at the close of the year, when you gather in your work from the field (23:14, 16)

We note that of the three times the festival of Succos is referred to by name in the Torah, the first two times it is called “*Chag Ha’asif* – the festival of the ingathering,”⁷ and only on the third time it is called “The festival of Succos.”⁸ What is behind this allocation of names?

Succos and the Clouds of Glory

The Meshech Chochmah explains that the key to this matter lies in noting that the first two mentions appear prior to Moshe descending from the mountain after receiving the second *luchos* on Yom Kippur. In a very well-known comment, the Vilna Gaon⁹ explains that the mitzvah of Succah which commemorates the Clouds of Glory is actually in commemoration of them returning to the Jewish People after having been removed due to the sin of the Golden Calf. This occurred together with the beginning of the construction of the Mishkan on the fifteenth of Tishrei, as follows:

- Moshe returned from Mount Sinai on the day after Yom Kippur, the eleventh of Tishrei, and told the people of Israel to build the Mishkan.¹⁰
- The pasuk describes the people bringing donations of materials for the Mishkan “בבוקר בבוקר”, which literally translates as “in the morning, in the morning,” which the Vilna Gaon explains to mean “on the following two mornings,” i.e., the twelfth and the thirteenth.¹¹
- On the next day, the fourteenth, they announced that they had enough materials to make the Mishkan.
- On the fifteenth, they began building.

⁷ Shemos 23:16 and 34:22.

⁸ Devarim 16:13.

⁹ Commentary to Shir Hashirim 4:16.

¹⁰ See Rashi to *Shemos* 35:1.

¹¹ *Shemos* 36:3.

At this point, on this day, the Clouds of Glory returned, signifying the resumption of the special intimate relationship between us and Hashem. Indeed, the Vilna Gaon explains that this is why we celebrate Succos in Tishrei, for we wish to commemorate the Clouds of Glory not when we originally got them, but when we got them back!

Based on this idea, the Meshech Chochmah explains why, on the first two occasions, this festival was not called "Succos." Since these two mentions preceded the building of the Mishkan, the Clouds of Glory had not yet returned and therefore there was no concept of commemorating them; therefore, this festival did not yet contain the element of Succah! Rather, it is referred to simply as "*Chag Ha'asif*," in celebration of Hashem's blessing of the year's harvest. Only the third mention, which occurs in Chumash Devarim, is it called "Succos," for by that stage the commemoration of the return of the Clouds of Glory is in place and indeed, becomes the dominant element within the festival.¹²

With this approach, the Meshech Chochmah aligns himself with the school of mefarshim¹³ who see the nuances of pshuto shel mikra as reflecting the particular circumstances pertaining to the Bnei Yisrael during their time in the midbar, over the course of which they received the mitzvos of the Torah from Hashem via Moshe Rabbeinu.

¹² In a stunning follow-up comment, the Meshech Chochmah refers us to a discussion in Rosh Hashanah 13a where the Gemara seeks to present a drasha on the word "האסף" in our pasuk. The basis for making this drasha is the fact that this word is redundant, for since the pasuk proceeds to say "באסף – when you gather in," it did not need to refer to the festival as "חג האסף – the festival of the ingathering." However, the Gemara records R' Chanina who objected to this idea, for since the word "באסף" (Devarim 16:13) teaches us the requirements of *sechach* (i.e. that it grow from the ground and not be susceptible to *tumah*), the words חג האסף can no longer be viewed as redundant, for they are simply another name for the festival, equivalent to calling it "Succos"! Although the Gemara accepts this answer, the Meshech Chochmah notes that, according to his approach, the question is resolved. It is only in Chumash Devarim, after the mitzvah of Succah is part of the Festival, that the word "באסף" can be taken as a reference to the sechach, and hence, to the festival itself. In our pasuk, however, the only aspect of the festival is the ingathering of the harvest and hence, the words חג האסף are indeed redundant and available for a drasha exposition.

¹³ Notably among them, the Seforno, the Vilna Gaon and the Netziv.