Midrashic Exegesis and Biblical Interpretation in the Meshekh Hokhma

by Yitshak Cohen

In honor of Yitshak Cohen’s just-published book, “Or Sameah” Halakhah u-Mishpat: Mishnato shel Ha-Rav Meir Simhah ha-Kohen al Mishneh Torah le-ha-Rambam, the Seforim Blog is happy to present this post in English, which is taken from a longer article to appear in the Jewish Law Annual.

Introduction

R. Meir Simhah Hacohen (henceforth: RMS) was born in 1843 in the village of Butrimonys, in the Vilnius district. Gaining renown as one of his generation’s leading scholars, in 1888 he was appointed rabbi of the city of Daugavpils (Dvinsk), a post he held until his death in 1926.[1] He was most active during the period spanning the late nineteenth and early twentieth centuries, a period in which the Lithuanian yeshivot were ascendant in Eastern Europe.[2] His literary output was unique and varied as his writings fall into many rabbinic-legal genres. He spent most of his life writing a work on Maimonides’ Code of Jewish Law (henceforth: Code), the Or Sameah (henceforth: OS).[3] He also wrote a second literary work, published in
Riga, approximately a year after his death, entitled *Meshekh Hokhmah* (henceforth: MH). In his one line introduction to MH, he characterized it as “elucidations and interpretations, insights and homilies, comments and novellae on the five books of the Pentateuch.”[4] In addition to these, R. Meir Simha wrote novellae on the Babylonian and Jerusalem Talmuds and a volume of responsa. In my book I demonstrated that the rabbinic legal decisors (poskim) regarded OS not only as a collection of novellae but also as a halakhic work, containing legal rulings.[5] Should this also prove true of RMS’ commentary on the Torah, the MH, this would be an even more surprising and significant discovery, for RMS does not hint at this role in his introduction and since the closing of the Talmud there are almost no instances of halakhists offering midrashic exegeses of biblical verses as the basis for normative rulings.[6] If RMS took this path and the rabbinic decisors accepted it as the basis for establishing normative law, the roots of this phenomenon are worth exploring. Therefore, in this article, I will study RMS’ unique midrashic exegeses in MH and explore their legal status and the extent of their influence on later rabbinic decisors: Did these decisors attribute legal standing to MH in light of the midrashic exegeses it contains, or did they relegate it to the biblical commentary or novellae genres. Did they also rely on the conclusions RMS reached through his midrashic exegesis when the laws he deduced strayed beyond what were deemed the boundaries of the normative halakhic framework? Did they also rely on his novel
interpretations when ruling on especially weighty matters, such as marital law, the release of agunot, and more? This article will present some of the findings RMS reached via his midrashic exegesis, and discuss the extent of their impact on the rabbinic decisors. Building upon this analysis, it will examine why RMS’ midrashic exegesis’ had such a remarkable impact on later decisors.

A.

RMS and His Use of Midrashic Exegesis as a Legitimate Tool for the Development of Jewish Law

A.1. The Traditional Reticence to Engage in Midrashic Exegesis as a Means for Developing the Law

Gilat wrote that in the post-talmudic period, we find almost no evidence of Jewish law being created through midrashic exegesis, not in the period of the Early Authorities (Rishonim, medieval authorities spanning the 11th-15th centuries CE) and certainly not in the period of the Late Authorities (Aharonim, 15th century CE and on).[7] Thus, legal creativity stemming from the Torah and the rest of Scriptures, as a rule, atrophied.[8] These sources were only used to provide a basis for laws already promulgated in the Talmud. Indeed, a decisor must display tremendous judicial boldness and courage to “skip over” or ignore the classical literary sources of antiquity, the Geonim, and the Early Authorities and create original, legal precedents based on the source text, itself. Indeed, it is natural that as time goes on and rabbinic decisors find themselves further
and further from the “source”, those willing to turn their backs on the customary and the conventional, bravely opting to engage in midrashic exegesis to render new rulings will be few and far between. Urbach[9] conducts a lengthy inquiry into the problematics of accepting midrashic exegesis as the basis for Jewish law. He quotes the opinion of Rabbi Yitzhak Isaac Halevy,[10] who contends that only masoretic transmission can function as the source for Jewish law; the Rabbis never relied on midrashic exegesis as the source for legal innovation. Epstein also adopts this approach. [11] In contrast, Albeck argues that when a case reached the High Court of Law (Beit Din Hagadol) on a point of law that had no extant tradition, the judges engaged in midrashic exegesis, plumbing the depths of the biblical text and deriving from it alone the legal verdict. [12] However, both Epstein and Albeck agree that the laws transmitted to us from the periods of the “The Pairs” (Zugot) and the Tannaim were only handed down in the following ways: decrees, enactments (which derived from the authority invested in the established institutions), tales, testimony, and tradition (transmitted to us in the form of custom). In light of this historical background, the extraordinary boldness of a rabbinic decisor who innovates Jewish law based on his midrashic exegesis of the Bible becomes clear. The rabbinic decisors’ reticence throughout the generations regarding deriving Jewish law from Scriptures stems from several fears: firstly, the stories in the Torah and even more so in the Prophets are told with a wealth of detail; they may unintentionally promote certain modes of behavior or
action that the biblical “author” did not intend to teach; indeed, specific
details may be
mentioned merely to set the historical stage and possess no
normative
implications whatsoever. Secondly, there is an even
more complex problem: even if the biblical author meant to
impart halakhic
rulings, the rabbinic decisors will have grave difficulty
deciding which of the
myriad details is relevant and foundational, crucial to
informing the very
nature of the law, and which is mere background, having no
impact on the law’s
formulation.[13] Therefore, RMS’ midrashic exegesis is a
phenomenon
demanding study in and of itself, and all the more so, if it
influenced later
rabbinic decisors.

A.2.
RMS as Groundbreaker, Adopting Midrashic Exegesis as a Means
to Develop the Law
Gilat
cites four examples taken from the Late Authorities in which
midrashic
exegesis was used to develop normative Jewish laws, this,
de spite the
traditional opposition to doing so. Surprisingly, three of the
four examples
were taken from RMS’ oeuvre. A thorough analysis of RMS’ work
reveals that
these are not the only instances. Some of these instances are
widely cited in
later works and by the academy as possessing original and
surprising positions.
Without a doubt, RMS’ work on the Bible, an unusual
undertaking for a
halakhist, presents us with ample opportunity for
investigating this matter.
Creative Midrashic Exegesis: The Midrash, Its Rejection and Its Influence

In order to emphasize the complexity involved in creating Jewish law via midrashic exegesis, I have chosen to begin with three cases[14] where the rabbinic decisors reject RMS’ midrashic exegesis, instead of adopting it. RMS’ boldness will become even more evident, in the context of this rejection.

B.1. Rejecting Creative Midrashic Exegesis – One Who Murders a Person in his Death Throes

After the Israelites’ defeat in their war against the Philistines, a fugitive reaches David and tells the following tale:

I happened to be at Mount Gilboa and I saw Saul leaning on his spear, and the chariots and horsemen closing in on him … Then he said to me, ‘Stand over me, and finish me off, for I am in agony and barely alive.’ So I stood over him and finished him off, for I knew that he would never rise from where he was lying…. [15]

The following dialogue ensues after David laments:

David said to the young man who had brought him the news, “Where are you from?” He replied, “I am the son of a resident alien, an Amalekite.” “How did you dare,” David said to him, “to lift your hand and kill the Lord’s anointed?” Thereupon David called upon one of the attendants and said to him, “Come over and strike him!” He struck him down and he died. And David said to him, “Your blood be on your head! Your own mouth testified against you when you said, ‘I
Maimonides in Laws concerning Murder and the Preservation of Life (2:7) writes:

Whether one kills a healthy person or a dying invalid or even a person in his death throes, he must be put to death on this account. But if the death throes are humanly caused, for example, if one who has been beaten to the point of death is in his throes, the court may not put his slayer to death.

Commenting on this section, RMS deduces a halakhic norm from the story about King David:

And note, that there was a dispute regarding whether one who killed a person in his death throes should be punished as a murderer. And our Rabbi [Maimonides] ruled in accord with the Rabbis to exempt him. It seems that in this case as well, he is liable by the law of the king of Israel, so the king may slay him. And proof for this may be adduced from the case of David who killed the Amalekite proselyte based on his own admission of guilt; and this was authorized by the king’s law...even though he [King Saul] had fallen on the spear and [the Amalekite] stated “for I knew that he would never rise from where he was lying”... and so we learn that in the case of one who kills a person in his death throes, the murderer is punishable by death, by the king’s law.

RMS agrees that the court cannot execute an individual who killed a person in his death throes; however, he adopts the novel position that the king has the
authority to do so. In doing so, RMS improves upon Maimonides’ code by adding a halakhic component that stems from midrashic exegesis.[16] RMS strives to prove that Maimonides would also agree with this ruling:

And our Rabbi demonstrated sensitivity to this point in his holy words: “and if the death throes are humanly caused ... the court may not put his slayer to death.” He inferred: the court, but by the law of the king he is condemned to death,

It would be interesting to examine whether RMS’ success at finding support for his innovation in Maimonides’ language led later rabbinic decisors to accept it. What did RMS hope to achieve by pointing out the consonance between Maimonides’ wording and the results of his own midrashic exegesis?

B.1.A. The Tzitz Eliezer’s Opposition to the Specific Midrash concerning the Law of the King

Rabbi Eliezer Waldenberg (1917-2006), in his book Tzitz Eliezer, disputes the halakhic norm derived by RMS from Scriptures:

And so, apparently, we must study the source brought by the OS [to establish the law] in the case of one who killed a person in humanly caused death throes from the case of the Amalekite proselyte, from the language used by Scriptures therein ... and this implies that David condemned him to death based on the authority of the special law delineating the punishment due one who defaces and murders the LORD’s anointed one. So he invoked the law of the king in this case wherein the murderer killed the LORD’s anointed one,
even though the victim was already dying from humanly caused death throes. And therefore this does not provide proof that the law of the king would be invoked in a similar case if an ordinary human being was slain.

The Tzitz Eliezer argues that the victim being “the LORD’s anointed one” was a crucial element in the Amalekite proselyte’s transgression, and, indeed, played a critical role in David’s decision to execute him. In his opinion, had the killing not fulfilled this condition, the murderer could not have been subject to execution by order of the king. RMS apparently believed that this detail was only of historical import and was not a factor in David’s legal ruling; therefore, he concluded that one who kills a person in his death throes – no matter what the dying man’s stature may be – is condemned to death by the authority of the king. This discussion highlights the complexity involved in deriving Jewish law from Scriptures and aptly demonstrates the fundamental reason underlying the Late Authorities’ reticence to do so. Implicitly, however, it also demonstrates RMS’ daring in utilizing midrashic exegesis as a legitimate tool for developing or innovating Jewish law.

B.1.B. Paving the Way for Sanctioning the Use of Midrashic Exegesis as a Tool for Developing the Law

Reading between the lines of R. Waldenberg’s ruling, an astonishing phenomenon comes to light: while R. Waldenberg rejects the halakhic ruling innovated via this midrashic exegesis, he, himself, adopts such a methodology. That is to say, he is influenced by
RMS. He does not disagree with RMS’ means but with the conclusion he reached, for he also engages in midrashic exegesis, but arrives at a different reading. RMS pioneered the use of midrashic exegesis as a legitimate tool for developing the Halakha and the Tzitz Eliezer followed in his footsteps; however, in this case, he disputed RMS’ conclusions and limited the ruling to apply exclusively to one who killed the LORD’s anointed one. The Tzitz Eliezer could have stood upon principle and issued a categorical denunciation of such a methodology, as we will see others do below. The Tzitz Eliezer did not do so. He looked and was hooked.

B.1.C. Creative Midrashic Exegesis: Amalekite Proselyte
RMS also understands the transgressor’s identity, as an Amalekite proselyte, to be of import and grants it legal weight. In the Torah portion of Ki Tetze, RMS notes the Mekhila in which God swears that no Amalekite will ever be converted.[17] Ipso facto, there can never be an Amalekite proselyte, and the individual mentioned in the verse must be an ordinary Noahide. King David ordered his execution, as he would have for any Noahide; for Noahides are subject to execution based on self-incrimination. This in contradistinction to the law applying to Jews, who cannot be executed based on their own testimony: “no man may incriminate himself.”[18] This law which RMS seems to have innovated almost as an aside in the course of his pursuit of a greater innovation is not at all obvious; indeed, it is quite novel.
The Tzitz Eliezer objects to this midrashic exegesis offered by RMS.[19]
In his opinion, Maimonides, himself, did not read the verse this way.[20]
In fact, the opposite seems to be true; Maimonides seems to explicitly state
that an Amalekite proselyte is a righteous convert who can be accepted into the
ranks of nation of Israel. As proof of this, note that Maimonides finds it
necessary to justify David’s decision to execute the proselyte based his own
self-incrimination by explaining that it was either a horaat shaah
(emergency ruling specific to that time and place) or stemmed from the
authority of the king. Had the Amalekite proselyte been considered a Noahide,
as RMS declares, there would have been no need to justify his execution.

[1]
B.Tz. Eizenstadt, Dor rabbanav vesofrav [no official English title], 6,
(New York: 5665) 39.

[2]

[3]
This work is generally classified as a commentary on the laws contained in
Maimonides’ Code; see, for example, M. Elon, Jewish Law: History,

[4]
This work was edited and published in more than sixteen different editions and
was reprinted numerous additional times, including in expanded editions
produced by A. Abraham, S.H. Domb, Z. Metzger, and Y. Cooperman.

Responsa Maharik, Root 139, p.156; R. Elijah Mizrahi in his commentary on the Torah, beginning of Parashat Matot, s.v. vayedaber, notes that the authority to do so was only granted to the mishnaic sages; Sedei Hemed, Kelalei Haposkim 16, n. 50; Responsa Beit Avraham remarks that we have not found this approach adopted by any rabbinic decisor, neither the early nor the late ones; and for an academic perspective, see: Z. Frankel, The Way of the Mishnah (Hebrew; Berlin: 1859), 18.


See B. Lifshitz, “Aggada and Its Role in the Unwritten Law” (Hebrew), Shenaton Hamishpat Haivri 22 (2004), 233, 295, regarding the Written Law becoming a canonical work that does not function as the basis for legal creativity, even as it plays the role of authoritative source for all such creativity.


Y.N. Epstein, Prolegomena ad Litteras Tannaiticas (Hebrew;


[13] Thus writes A. Grossman, *The Early Sages of Ashkenaz* (Hebrew; Jerusalem: 1988), 157: “There is no need to mention that usually such deductions from the Bible are not necessitated by the plain sense of Scriptures and oftentimes are not even required by the methods adopted by the halakhic midrashim; they are only cited as asmakhta, to bolster the law.”

[14] [Only one case is mentioned in this post. For the others, see the forthcoming article in *Jewish Law Annual*.]


[16] In my article, “The Or Sameah’s Objectives and their Halakhic and Jurisprudential Implications” (Hebrew) *Shenaton Hamishpat Haivri* 25 (2008), 97, I demonstrated that RMS’ primary goal in composing the OS was improving Maimonides’ code and expanding its contents to include additional cases that had not been incorporated originally. RMS performed this task by adopting a variety of methods described in the article. Here, we witness RMS adopting another method that allows him to innovate and improve the law; this time, innovations based on
midrashic
exegesis.
[20] Maimonides, *Code*, Laws of Kings 6:1-4. Kesef Mishneh comments that if they agree to observe the seven Noahide laws, they are no longer classified as Amalekites and they are to be treated like any other kosher (ritually unobjectionable) Noahides.