

CHAPTER AW: THE BIBLICAL GENERALIZATION PRINCIPLE

<https://www.Rashiyomi.com/rule3322.pdf> Adapted from The Rashi Newsletter,

(c) Rashiyomi.com Aug 2020, Dr. Hendel, President,

Ki TaYTZaY

Full statement of copyright is found at www.Rashiyomi.com/copyrights.htm

AW.1 – Overview: We study a Rashi today illustrating the important *generalization* principle of Jewish law, known in Hebrew as *banyan av*, one of the 13 exegetical principles of Rabbi Ishmael. which we pray every day. In Law, the idea of *generalization* underlies the *case* method also known as *casuistic law*.

To illustrate the principle and its wide applicability I cite an example from the late 90s, a conversation that happened between me, a lawyer named Neil, and a student of mine, Benjy that I occasionally homeschooled. Benjy had asked Neil to explain what a lawyer does; but Neil did not fully succeed. I asked Neil if he minded my attempting to answer. Here is the dialogue

Me: Benjy what Mishnah are you learning.

Benjy: Talmud Bavli, Baba Kamma, 1st Chapter

Me: Ok. Suppose Neil and I are each yanking a book in are hands. Each of us claims ownership. What do you decide

Benjy: Well you each take an oath and then divide the book in two (or sell it and divide sales)

Me: How do you know that

Benjy: Because the Mishnah says so

Me: But the Mishnah does not say that at all

Benjy: Yes it does [This went back and forth several times]

Me: The Mishnah speaks about two people holding on to a garment and claiming ownership. In the case of the garment, not the book, the oaths are taken and the object (or its value) is divided. I asked what happens in the case of the book

Benjy: Blank face; he looked totally perplexed

Me: That is what law is about. Taking cases and applying them to new situations.

You have in the above anecdote the essence of the *generalization* method.

AW.2 A Biblical Example: Dt25-04 is a four-word verse. Remarkably, none of the four words are interpreted literally. Three of the words are interpreted using *generalization*; the 4th word is interpreted using principles of *case law*.

Biblical Text: Don't muzzle threshing oxen

Rashi/Ralbag: The biblical text speaks about the typical case. The law is similar for every animal, beast, and bird who perform work with earth-grown edibles (TB BM 89a). [More in Rashi will be discussed below)

Rambam: Hires (Sechiruth) 13-1:2. Animals may eat while they are doing [acts] with earth-grown [items] whether they are *attached or cut*. ..2) Whoever *prevents* an animal from eating at the time of working, incurs flogging [the punishment for violating a biblical prohibition] as it says (Dt25-04) *don't muzzle threshing oxen*. The law applies equally to oxen and species of animals and beasts whether they are kosher or not kosher [more from the Rambam in coming paragraphs]

So we have an explicit statement from both Rashi and Rambam that Dt25-04 is interpreted casuistically, as case law; the law does not just apply to oxen as literally stated, but applies to animals and beasts. There were three words in the verse besides *don't*; we see here generalization in one of these words.

AW.3 Generalization in Two More Words: We cite the Rambam here who explicitly uses the generalization principle

Ralbag/Rambam: Hires (Sechiruth) 13:2 The law equally applies to *threshing* and to *other activities involving earth-grown* [items]; The biblical text only states *threshing oxen* because it uses typical examples.

Thus we see that just as *oxen* is generalized, so too *threshing* is generalized. We will discuss how Rashi deals with *threshing* in future paragraphs. First let us deal with the rest of the words in the verse.

Rambam: Hires (Sechiruth) 13:2 The law applies equally whether the *muzzling* was done directly to the threshing oxen, *or*, a sitting oxen was muzzled, and *then* you worked with it while the animal is already muzzled. *Even* if you muzzled it by [use of] voice, floggings are received.

The Rambam does not as in the previous cases use the phrase *the biblical text uses typical examples*, but clearly after having used the phrase twice and invoked the mighty *generalization* principle, the Rambam *appears* to apply the *generalization* principle a third time.

This observation will help us prepare for dealing with Rashi. The observation is simply the observation that it may be clear that someone is applying a principle without that principle being explicitly stated.

AW.4 The 4th Word, Don't: What about the word *don't*. If we interpreted the word literally, it would say *in all cases*, *don't muzzle threshing oxen*. Here is the Rambam's treatment of *don't*

Rambam: Hires, Sechiruth, 13:5 If the [edible] matter that she [the animal] is working in is bad for her insides and would damage her, *or*, if the animal is sick and eating would cause vomiting-diarrhea, it is permissible to prevent her [the animal], [from eating]. The reason being that the Torah only cared about [prohibiting muzzling when it is for] her benefit and in this case she is not benefiting.

Thus the *don't* is not interpreted literally; it is interpreted *casuistically*, based on the case law, the case law of the *typical case*; based on this case law, it is *clear* that the Torah only forbade interfering with an animal eating in a beneficial manner but the Torah did not intend to interfere with preventing an animal from eating something harmful.

The Rambam does not say how he arrived at the underlined passage, the reason being that the Torah only cared about prohibiting muzzling when it is for the animal's benefit. Apparently it is something logical, something clear to anyone reading the text. The law mentioned by the Rambam is not found in Rashi nor in most other commenters. The Talmud cites a similar ruling but does not anywhere derive it. The law is not mentioned in the exegetical compendiums such as the Sifrey.

Thus we are forced to perceive the *generalization* method or the case law method as requiring bringing our own understanding of the typical case to the law's interpretation. This differs dramatically from the typical picture of Talmudic law as involving nit-picking and hair-splitting.

AW.5 Rashi's Account: Let us see how Rashi deals with the word *muzzling*. The following commentators deal with the law that to use the Rambam's language it is equally prohibited to muzzle the ox while threshing *or* to muzzle a sitting ox and then thresh it.

The literal biblical text says

Biblical text Dt25-04: Do not muzzle an ox *while* threshing

It seems only natural, *if we don't use generalization* to use restrictive readings:

While threshing it is prohibited too muzzle; doesn't this teach that muzzling before threshing is permitted since the person has not literally threshed *while threshing*?

Here are the commenters' comments on the word *while* which comes from the prefix *beth* which can also mean *on* or *when*.

Rashi: Can you muzzle while sitting? It says *don't muzzle* implying under any circumstance

Ibn Ezra: Ex12:15 In the following verse On the first day destroy leaven from your household the word *on* does not just mean *on that day destroy leaven*; on the contrary it means *prior to that day*. [We would therefore interpret *in the period related to that day*]

Bechor Shor/Rabbaynu Bechayey: Lv10-09 In the following verse, Do not drink wine and liquor when you come to [serve in] the Temple clearly does not only prohibit drinking *on the job* but also prohibits drinking *just prior to the job and then working without drinking*

Interestingly, we, following the Rambam, have approached the verse using the *generalization* principle, *the biblical text follows the typical case*; generalization is an interpretive principle of grammar. Ibn Ezra, Bechor Shor, and Rabbaynu Bechayey, approach the verse using a principle

of conjugational grammar: The prefix *beth* can mean *on, while, when*, and can also mean *in the period surrounding*.

But what about Rashi? Rashi who previously cited the *generalization approach*, does not, like the Rambam use it here; he does not give the cutting grammatical insights of Ibn Ezra, Bechor Shor and Rabbaynu Bechayay. Instead to prove a point he mis-cites a verse: He proves that *don't muzzle while threshing* starts with *don't muzzle* and therefore must apply in all circumstances even not *during* threshing! Clearly there is nothing logical about this

Fortunately, Rashiomi has an important interpretive category: Rashi *form* vs. *content*. Rashi is allowed to give fanciful statements, not as reasons, but as catchy phrases to help us remember a comment. Still it appears strange. Let us investigate more fully.

AW.6 The Obscure Rashi Justifying Generalization: Before giving our source we review some other commenters who are also perplexed.

Rabbi Samson Raphael Hirsch: Rabbi Hirsch who cites the various Talmudic sources in TB BK 89-92 notes that the Rambam totally ignores them and say *this requires investigation*

Malbim: The Great Malbim is totally baffled by the rule underling the generalization. He incorrectly assumes that it is some obscure rule in generalization and specification.

Bechor Shor, Torah Temimah: These commenters do not even mention the generalization principle. Based on the Talmud, BK 54b they point out the following parallelism

Ex20-10 Don't do any work (on the Sabbath) ...you your children...your animals
Dt05-14 Don't do any work (on the Sabbath)...you your children, your ox and donkey,
your animals

The extra words, ox and donkey, imply by the parallelism that *ox and donkey* are typical examples *throughout the bible* to always *represent animals*

Our issue with Rashi is strengthened. The Talmud itself does not list the *generalization principle* but gives an obscure parallelism. Other commenters like Bechor Shor, Torah Temimah follow suit. The analytic Malbim throws his hands up and Rav Hirsch is bewildered that the Rambam had a different path then the Talmud.

But two things unequivocally point to Rashi's belief that the *generalization* principle underlies all his exegesis. First, is the fact that he opens his commentary on the verse with the famous phrase

The text speaks about the usual

However, the most important source of *generalization* comes from an obscure statement by Rashi (TB Pesachim 6)

All biblical texts are intended to be generalized *unless* there is an indication of restriction for example by a general-specification style.

This is a clear and explicit statement in Rashi that *generalization* is an assumed method used by him unless we are told otherwise. In passing, the idea of *generalization* is the *banyan av* rule of Rabbi Ishmael.

Returning to our Rashi texts:

On the word oxen, Rashi did not need the parallelism cited above. It is clear; *oxen* generalizes because all words do

Similarly, *while threshing* did not require a repeat of this principle since Rashi had just stated it and it was known that this is his principle. So Rashi played a word game and said *since the first two words are don't muzzle we infer that it is always true whether during muzzling or not*. In a certain sense this answers why Rashi did not give grammatical conjugational rules like the Ibn Ezra, Bechor Shor, and Rabbaynu Bechayay; he didn't need to. Why use an obscure grammatical rule when the generalization rule applies universally.

As to the other two words, *don't* and *muzzle* Rashi is silent on the laws. Rashi unlike Rambam was not writing a comprehensive legal code. If a principle applied in a paragraph half a dozen times Rashi might suffice with mentioning the first 2 or 3. This is true generally.

We think the Rashi is highly defensible. We believe Malbim overlooked this Rashi source in Pesachim. We believe Rav Hirsch did also.

Finally, we point out that all this is *peshat* since it is the *instant understanding of a native speaker of the spoken text*; indeed, as Rashi points out, this approach (generalization) *is* the way native speakers heard all biblical verses

AW.6 An Additional Point in Rashi- Ox but not Humans: Rashi says

Don't muzzle an *ox*; why is ox mentioned? To exclude the prohibition applying to humans

First let us clarify what this means. If you have a human worker helping you with threshing and you muzzle him, you have not violated the biblical law at Dt25-04 (You violate other biblical laws such as the laws prohibiting interfering with workers *munching* while working (Dt23-25:26)).

But what is the derivation? Here we use hypernymy, discussed in a previous chapter. Just to recall, color is a *hypernym* a general category, while red, blue, green,...are *hyponyms*. We can understand the *generalization* method of Rashi to mean that

all *hyponyms* are interpreted using the figure of speech synecdoche, the tendency of any language to use good illustrations as the name for the general category, the classical example being *honey* referring to anything *sweet*.

So here, *ox* is perceived as a *hyponym* that can refer, using the synecdoche *good example* method to any *animal or beast creature*. The Sifray which Rashi cites, points out that *ox* can at most name the *hypernym* of all animals and beasts. It can't refer to everything living and cannot refer to man.

This approach using *hypernymy* avoids the Talmudic picky like derivations that focus on twisted obscure alternate readings (e.g. Why didn't the bible say *don't muzzle during threshing* a very unnatural sentence). The simple explanation is that when you generalize you can't generalize to everything such as in this example when you generalize to animals and beasts but not to humans.

AW.7 – Birds: It is interesting to compare the formulations of the Rashi and the Rambam

Rashi: all animals, beasts, birds,

Rambam: All animals, beasts whether kosher or not.

Do the different formulations point to style or an actual difference of opinion in law such as

Rashi: The law does not apply to non-kosher animals since the biblical exams *ox* is kosher

Rambam: The law does not apply to birds

It is hard to form an opinion. The point of Rashiyomi is that we are not just reading texts. We are also reading derivations. If the *generalization* method is used by Rashi and Rambam then it would include all animals and beasts whether kosher or not.

What about birds. We can approach this in two ways. The Gur Aryeh points out that the Gemarrah which derives *any animal* from the parallelism of the Decalogues, also derives *birds* from the word *all* in the Deuteronomic Decalogue, *don't do work you your children...oxen, donkey and all your animals*. Rambam would not have a basis for overriding an explicit Talmudic derivation.

On a deeper level, and as the Ralbag explicitly notes, the generalization method simply states *don't exercise cruelty by preventing the natural tendency of an ox to munch while threshing*. But that would apply to birds also *and* the Rambam like Rashi endorses the *generalization* method.

It might be argued that Rashi was talking theoretically and Rambam was talking about practice: After all who uses birds to do work?

Accordingly, there is a charming recent article (Science 22 Jul 2016:Vol. 353, Issue 6297, pp. 387-389; Authors: Claire N. Spottiswoode¹, Keith S. Begg³, Colleen M. Begg³), *Reciprocal signaling in honeyguide-human mutualism*, which describes how the Yao people of Mozambique communicate with birds during their hunting. The birds help the hunters discover hidden honey hives. The hunters obtain honey; the birds obtain the leftover wax (sealing the honeycomb). According to Rashi (and I guess to Rambam) these birds should not be muzzled by Jewish hunters.

This example points to the importance of not just applying Talmudic analytic methods when reading the Rambam and legal codes; one must apply biblical exegetical methods and possibly fill in missing rare cases.

AW.8 One more Rashi comment: Bizarre Rashi comment: The following bizarre comment is the last of the comments made by Rashi.

Why is *threshing* mentioned: To teach you just as threshing is a work on a) earth-grown items and b) items that are not yet processed (you can't use the wheat till threshed), so too the no-muzzling laws apply to work with earth-grown items that are not yet processed: That means, the no muzzling laws do not apply to milking (because it is not earth-grown), ...(other technical examples are given)

The bizarre thing about this comment of Rashi cited from the Talmud is that it is *not* the law for muzzling oxen! It is rather applicable to the prohibitions of preventing humans from *munching* while cutting grain or gathering grapes (Dt 23:25-26). In *that* law (to cite the Rambam), a human working on anything a) earth-grown, ii) not yet processed, and but iii) the human's work completes processing, then the human may eat of it (Otherwise the human worker may not eat of it)

Examples and source: Some examples should clarify: If a human gathers grapes he may *munch* while working since the grapes are earth-grown, not yet processed, but when plucked they are processed. On the other hands if humans are working by milking cows, they may not drink of the milk (because it is not earth-grown). The Talmud learns this from the biblical text at Dt23-25:26

When you come into your neighbor's vineyard, then you may eat your fill of grapes at your own pleasure; but you shall not put any in your utensil.

When you come into the standing grain of your neighbor, then you may pluck the ears with your hand; but you shall not put a sickle to your neighbor's standing grain.

In other words *by generalizing grapes and standing grain* the Talmud and the Rambam arrive at the law. The Rambam formulates the worker-no-muzzle laws in Chapter 12 of *Hires* and the *animal-no-muzzle* laws in Chapter 13. They are different laws with different biblical verses justifying them.

Flimsy reason for bizarrrity: To get back to our theme, the Rashi is bizarre. Rashi is citing a Talmudic derivation from the animal-no-worker laws and applying them to the human-no-worker laws (without telling us). This is what the Talmud does. In fact the Talmud thinks this bizarre to create an analogy between the prohibitions of muzzling humans and animals. The Talmud in fact cites flimsy reasons to justify the need for this. In response to the question: Don't animals and humans each have their own verse, the Talmud states:

(Flimsy reason for needing the animal-no-muzzle law to support the human-no-muzzle law) The word for grain is *standing grain*. Maybe it could refer to *anything standing* (including non-earth-growth) Therefore we need support from the animal-no-threshing verse mentioning threshing

Rabbi Hirsch notes how the Talmud goes one way and remarkably the Rambam goes another way. Rav Hirsch seems surprised and says *it requires justification*.

Rashiyomi anatomy: But this should not bother us. A fundamental distinction in the 10 components of the Rashi anatomy is between *derash as research (activity)* and *derash outcome*. Rav Hirsh and Rashi can simply be answered by pointing out that the Talmud in addition to the *straightforward* derivation from *the generalization* method, also described in detailed some *derash research* based on the fundamental concept of *analogy* the analogy of *animal-no-muzzling* and *human-no-muzzling*. We can then say that the derash-research attempt is nice but gives twisted results which are not true (*derash outcome is not true*) The *true* law is based on generalization.

AW.9 Summary- Color Coded Rashi statement: We can summarize this entire digest by presenting a color coding of the entire Rashi comments.

The verse *don't muzzle an ox while threshing* speaks about the usual case.

The law is the same for any animal, beast, or bird, working in earth grown items

If so why does it say *ox*; to exclude humans [using the *metonymy* principle]

While it is threshing: Can you then muzzle prior to threshing and work with a muzzled animal.

[Elliptical answer: The text speaks about the usual case]

Therefore it says *don't muzzle*: In any event

Why is threshing mentioned: To teach you just as threshing is a work on a) earth grown items and b) items that are not yet processed (you can't use the wheat till threshed), so too the no-muzzling laws apply to work with earth grown items that are not yet processed: That means, the no muzzling laws do not apply to milking (because it is not earth grown), ...(other technical examples are given)

Color coding:

Blue-green: The four pillars used: In this case we use the grammar pillar since the rules of grammar govern style, in this case the casuistic style The second blue-green uses the meaning pillar with the emphasis on figures of speech

Green: The *peshat* or simple meaning of the text

Yellow: Rashi *form*, to help you remember. This is not intended as a real derivation nor content

Grey: *Derash-research* with faulty *derash outcome*. Rashi cited this to show that analogy is a valid method of researching law which in this case didn't work out so well because of the powerful but simple generalization method.

AW.10 Concluding Remarks: This chapter showed how a simple 4-word verse can powerfully generate many laws and do so using simple methods. However, the methods must be understood and used properly; other methods must be recognized as flimsy, mnemonical, or *attempts*.