



HALACHA

Pouring the Water

Rabbi Hershel Schachter

The Mishnah (Sukkah 4:9) records that the Sadducees did not observe the practice of *nisuch hamayim* (pouring of the water) in the Beit HaMikdash on Sukkot, for they believed only in the Written Torah and did not accept the traditions of the Oral Torah. On one occasion, a certain Sadducee Kohen, refusing to perform the *nisuch hamayim*, poured the water on his feet instead of on the *mizbe'ach*. The enraged onlookers pelted him with *etrogim*, causing the *mizbe'ach* to become damaged and unfit for use.

The biblical source for *nisuch hamayim* is a matter of dispute among the Tanna'im (Ta'anit 2b-3a). One opinion holds that it is a *Halachah LeMoshe MiSinai*, a tradition of the Oral Torah that has no source in the Written Torah. It cannot be derived through any of the exegetical principles through which the Torah is expounded. Other Tanna'im disagree and do find a source in the Written Torah for *nisuch hamayim*. Rabbi Yehudah ben Beteirah learns that the three letters, מ, י, and כ in the words, וְנִסְחֵיָהֶם, וְנִסְחֵיָהָ, and כְּמִשְׁפָּטָם, respectively (Bamidbar 29:18, 31, 33), are extra and were added for exegetical purposes. The resulting word, מַיִם, is an allusion to *nisuch hamayim*. Rabbi Akiva's source is the use of the plural term וְנִסְחֵיָהָ, "and its libations," a reference to a *nisuch hamayim* and a *nisuch hayayin*.

Maimonides interprets another Tanna'itic dispute on the basis of this debate. The Gemara (Zevachim 110b) discusses which of the Beit HaMikdash

services one would be punished for performing if he did so outside of the Beit HaMikdash. According to Rabbi Elazar, not only is one who slaughters or offers a sacrifice outside the Beit HaMikdash liable for *karet*, but also one who performs the *nisuch hamayim* outside during Sukkot. The Gemara states, "Rebbi Elazar said [this ruling] according to the opinion of Rabbi Akiva, his teacher, who said that *nisuch hamayim* is of biblical origin," but the Gemara does not explain the interdependence of these two teachings.

Maimonides explains that if we were to derive *nisuch hamayim* from the Oral Torah exposition of Rabbi Akiva, reading in between the lines of the Written Torah, the punishment of *karet* would be appropriate if *nisuch* were to be performed outside. Maimonides writes that since, instead, *nisuch hamayim* is a *Halachah LeMoshe MiSinai*, we do not accept the opinion of Rabbi Elazar, and one who performs the *nisuch hamayim* on Sukkot outside the Beit HaMikdash would not be liable.

The Rosh makes a similar comment regarding the *Halachah LeMoshe MiSinai* of half-payment for damages due to pebbles sent flying in the normal course of an animal's activity. Rava questions whether the damage caused by the force generated by the animal is generally treated as if it was caused directly by the body of the animal itself so that the owner should have been obligated in full damages, or if generally one's force is *not* like his body and the owner should therefore have been totally exempt from payment for damages. Rava concludes that the former explanation is the correct one; one's force is considered like his body. The

Halachah LeMoshe MiSinai that the rabbis have received as part of the Oral tradition serves to reduce the owner's liability to *half-damages* in this case.

The Rosh explains that Rava realized that the nature of *Halachah LeMoshe MiSinai* is always to be *lenient*, to reduce one's obligation. The Gemara (Sukkah 6b) employs a similar logic in discussing how many walls are required in the construction of a *sukkah* – three full walls plus a *tefach* to serve as the fourth wall, or two full walls plus a *tefach* to serve as the third wall. The Rosh explains that the *Halachah LeMoshe MiSinai* always comes to detract from the requirement of one of the full walls. Thus, the discussion revolves around whether a *sukkah* starts with a four-wall or only a three-wall minimum; the final wall is then reduced by the *Halachah LeMoshe MiSinai* to measure only the size of a *tefach*.

The Kabbalists explain that the Oral Torah was given with the *Middat HaChessed* (Attribute of Mercy), and leans towards more lenient positions. In contrast, the Written Torah was etched in stone, given with the *Middat HaDin* (Attribute of Judgement). Thus, while the Written Torah demands "an eye for an eye," the Oral Torah is more tolerant, requiring of the assailant only a monetary penalty.

● Adapted from Rav Schachter on the Parsha.

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