

## פרשת אחרי-קדשים

“לא תקפו פאת ראשכם...” (ויקרא יט, כז) בענין שאם מוזהר קטנים במצוות הרב דוד רוזנבוים

In this week's parsha, אחרי-קדשים, there are many mitzvos to talk about and I would like to discuss the לא תקפו פאת ראשכם of איסור. The gemara : נזיר brings the machlokes whether one is חייב for cutting the peyos of a קטן. ר' הונא holds חייב because the דין of תקיף applies to the מקיף whereas בר אהבה holds פטור because the מקיף follows the ניקף who is not a עונשין.

The שאלה bring this gemara as a ראייה to the following famous אחרונים. The ר' עקיבא איגר and אור שמח discuss the status of a קטן: Is his status that of the תורה speaking the מצוות to him also but there is a הלכה למשה מסני which makes him פטור or is the תורה not talking to him, meaning that he is not even a מצווה in a certain sense? The ערוך לנר brings this gemara to show that he is not a בר חיובא. The אור שמח brings the gemara : סנהדרין נד as a ראייה the opposite way. In the sugya of רובע בהמה, the gemara discusses a קטנה that was מביא בהמה and says we kill the animal. The Mishna said two reasons why in a regular case the animal is killed- either because of תקלה (it caused a sin) or because of קלון (that people will point to it and tell the story). The gemara comes out that the case was מזידה and in fact she should have been מחויב but מיתה brings this as a ראייה that קטנים are indeed מצווה but this is a case of העונשין איגר. ר' עקיבא איגר disagrees and learns the gemara differently and is לשון מדחיק, which we won't get into. He holds that for sure קטנים are not מוזהר and it's not עבירה. To support this, he brings a ראייה from דין that one need not intervene and stop a קטן from eating נבילות. If it's חטא בעצם, why aren't we מחויב to stop him? Must be that he is not a בר חיובא. This is the basic מחלוקת in סנהדרין.

Back to our gemara in נזיר, it seems to be saying clearly like ר' עקיבא איגר - just as the ניקף [קטן] is not חייב, so too the מקיף is פטור. The ערוך לנר brings a ראייה from סך בשמן המשחה that seems to be a סתירה to this gemara. In discussing נזיר, the gemara says that one is פטור if he smeared it onto כלים because they are not included in אדם. Then the gemara makes a derasha to learn that only if one is חייב in סך can he have the איסור of ייסך and therefore no עבירה for one who isn't included in the מצווה. This is why כלים וגוי are excluded. The ערוך לנר speaks out that there is a big נ"מ between the two reasons when the case is על הקטן - according to the first לשון, for sure he is אדם and one would be חייב. But according to the derasha, the קטן is not a בר חיובא so one should be פטור! However, the ערוך לנר rejects this understanding of קטן being פטור because, if it were true, the ברייתא should have mentioned the קטן alongside כלים וגוי as it is a bigger חידוש than עכו"ם! Then he references the gemara from נזיר to point out that it seems a קטן is a בר חיובא and

therefore ends with a צריך עיון. The מנחת חינוך in קח מצוה asks this outright and asks why סך שמן is different than מקיף פאות on a קטן?

I would like to propose the following מהלך: The Steipler in שבועות has a whole סימן about the question of קטן being a בר חיובא or not. There are brackets there where he says that the whole discussion is only לגבי איסור גברא but by איסור חפצא one can say that it is more חמור and for sure the קטן is included and מוזהר. He doesn't give any מקור, any סברא, nor any ראיות. We can explain the Steipler in two ways. One way is that maybe a קטן is not מוזהר by an action that is אסור. However, once the Torah identified in object of איסור, like נבילות וטרפות that have a real effect on a person, then maybe the קטן is included in the מוזהרה of staying away from. But maybe we can understand it with the following: The gemara נדרים says that one can only do התפסה on a דבר הנדור but not דבר האסור, and the example of דבר האסור given is נבלה. The ר"ן explains the difference as being able to make item x אסור just like the דבר הנדור was made אסור by man. Whereas when Hashem made something else a דבר האסור, I cannot compare item x to it by making it אסור myself- they are not comparable. The ריטב"א learns differently and explains that דבר הנדור is an איסור חפצא and therefore one can only compare it to another חפצא. However, דבר האסור is an איסור גברא! The אבני נזר asks on this that the gemara clearly said one cannot be מתפס to נבלה, but according to the ריטב"א it should work because it is an איסור חפצא? To answer, he learns the ריטב"א as saying נבלה was made אסור, an איסור חפצא, because it is bad for a Jew to eat. There is another חפצא, a korban, which is אסור because of the קדושה in it. By terumah, there is a צווי of משמרת קדשי, to safeguard the קדושה which means a זר is bad for the חפץ. So, the ריטב"א means that making a התפסה can only be done on something comparable which is another item that you put קדושה into and not on something that already had an inherent קדושה מן ה'. We see from this that there are two different types of חפצא- one that is bad for me and another which is bad for the חפץ. Tying this back in to the Steipler, maybe he was saying that an אסור action does not apply to קטנים but an איסור חפצא, where the קדושה would be trampled, then the קטן is indeed מוזהר.

With this second פשט, I think we can answer the ערוך לנר's קשיא of why בל קטן doesn't apply on a קטן but סך בשמן does. By הקפה, there is no איסור to the קטן so the מקיף is not חייב for doing it. On the other hand, the שמן המשחה has קדושה in it so that makes the קטן equally מוזהר, thereby causing סך בשמן to apply.

I want to add another piece. That same gemara in נזיר adds that even according to ר' הונא, who holds the מקיף would be חייב, if a woman cut off the קטן's peyos she would not be חייב. This is because she has no מצוה of בל תקיף and therefore does not have a דין of a מקיף. The Acharonim ask why shouldn't it be אסור for her to do because of לא תאכילם? Even though one doesn't need to stop a קטן from eating נבילה it is still אסור to give it to him. So too by בל תקיף, she should not be allowed to do it to the קטן! There's not enough time to go through all of the ראיות but we can say a vort like this: The gemara יבמות קיד, in discussing whether ב"ד חייב to stop the קטן from eating נבילה (the father must but that's מדרבנן), brings three pesukim to find a

טומאת דם, אכילת שרץ, אכילת דם, and טומאת כהנים, where the Torah is מזהיר קטנים על הגדולים. The gemara is מדחה each one as being only למאכל בידים, therefore they are not necessarily a ראיה to be מפריש as well. The pashtus of the gemara is that it is not a situation of גי פסוקים הבאין כאחד ואין מלמדן so we learn to כלה כל התורה כולה that one cannot be מאכל בידים but also need not be מפריש. This is how the רמב"ם paskens. The טור however, paskens in these three cases that one must be מפריש and the בית יוסף asks why when the gemara seemingly says there is no need. So, the בית יוסף is מדחיק the whole gemara and learns in the טור that the gemara was saying to be מפריש by these three cases and are not a לימוד because it is a גי פסוקים הבאין כאחד ואין מלמדן לכל התורה כולה. The נודע ביהודה asks on the ב"י, where then is the מקור לכל התורה כולה? He says that must be the ב"י learns it through a סברא. לכאורה, it is the same מחלוקת as we had before- either מצוה מצווה, קטן בעצם מצווה, in which case you certainly cannot give it to him but maybe שב ואל תעשה is OK, versus even the מאכל בידים being a ספק because the מצווה is not קטן.

The פרי מגדים, in his הקדמה, brings a לבוש who learns the שיטת רמב"ם as similar to the טור that these three pesukim are talking about מאכל בידים and are גי פסוקים הבאין כאחד ואין מלמדן. If in the rest of the Torah the מצווה קטן is not מצווה, why should these three cases be any different in that one cannot be מאכל בידים? One could say that these three have a גזירת הכתוב to be חייב for מאכל בידים. Or maybe we can say like this: If we look at the לשון in תורת כהנים, פרשת שמיני, it says that one is מוזהר on קטנים - "להזהיר המאכל כאוכל". Giving it to the קטן is a חלק of one's own אכילה. Maybe according to everyone one cannot give it to a קטן because of one's own עבירה, regardless of the קטן being מוזהר or not. If this is true, we can say this פשוט in the gemara נזיר: A woman can cut off the peyos of a קטן while a man cannot because she does not have the איסור, the קטן himself is not מצווה, and there would not be an issue of לא תאכילם because we are saying that the גדר of לא תאכילם is an extension of one's own איסור which does not apply to her.