Who Gets to Say What Torah Means?

Your 18Forty Parsha Guide is a weekly newsletter exploring five major takeaways from the weekly parsha. Receive this newsletter every week in your inbox by subscribing here. Questions or feedback? Email Rivka Bennun Kay at Shabbosreads@18forty.org.

Sarah is 22, a philosophy major at a secular university, raised observant by Shabbat-keeping parents and 12 years of day school. Home for spring break before her last semester, she has spent the year answering a classmate in her comparative religion seminar pressing her on why a rabbi gets to decide Kashrut details outside the Chumash's plain text. Underneath the surface question Sarah hears a harder one she has turned over since freshman year. Her secular education has opened subjects her religious education did not engage with, like biblical criticism, evolution, and the age of the universe, and philosophy questioning premises she was taught to accept. Sarah wonders whether her religious education was honest about what it did not know. Her parents and her day school can no longer compel her observance, and across senior year Sarah will decide whether the observance she was raised inside becomes the observance she chooses.

In Parshat Shoftim, Moshe sets up a court of appeals for hard cases. Devarim 17:8-11 walks the procedure step by step. A hard case comes before a local court that cannot resolve it, the local court sends the case to the central court at the place God will choose, and the local court is bound by what the central court rules. Read straight, Moshe lays out a procedure for cases the local court cannot decide, not instructions for every later generation to follow whatever the rabbis rule.

The Sifrei reads the verse much wider than its plain reading. Sifrei Devarim 154 takes the closing clause "do not turn aside to the right or to the left" as the Chumash's command to follow Torah's authorized interpreters even when their reading runs past the original case. Sarah hears the same move the Sifrei made on the same passage 2,000 years ago.

Sarah knows Jews on each side who collapse the gap between the plain reading and the rabbinic reading. A Reform Jew steps outside and accepts that each generation hands down less of the practice. A Haredi Jew stays inside and accepts the limits on intellectual range that come with staying. From the harder middle Sarah will defend an observance that does not rest on the plain Chumash, questioning from inside the rabbinic system rather than walking away from the inheritance. Sarah begins her honest defense where her classmate began, with what Devarim 17:8-11 plainly says.

1. The verse is narrower than we think

The plain reading speaks to cases exceeding local jurisdiction, nothing wider, and Ibn Ezra reads the passage on its *peshat* as appellate authority for cases the local court cannot decide.

H.L.A. Hart, in *The Concept of Law*, gives Sarah the academic vocabulary for what the passage is structurally doing. Hart distinguishes primary rules of conduct from secondary rules that confer powers, including judicial interpretation. The verse is a secondary rule, since Moshe tells Israelites which court holds the authority when the primary rules cannot decide. Hart observes that secondary rules expand in scope as an interpretive tradition applies them, so a clause authorizing one court for one kind of case becomes the basis for a much wider authority over time.

In Devarim 17:9, Moshe describes the central court as "the Levitical priests and the judge who will be in those days." Moshe does not say "the rabbis" but refers to judges in addition to priests. The Levitical priesthood shared with judges, i.e. rabbis, the judicial authority Moshe describes but lost that authority over time. Prof. Chaim Saiman reads Devarim 17:8-11 as the Torah's constitutional clause, and the room left for the central court is exactly the room a continuous interpretive tradition fills.

2. The rabbis read this as Torah's constitutional clause

Sifrei Devarim 154 reads the closing clause "do not turn aside to the right or to the left" as the Chumash's command to follow Torah's authorized interpreters even when their reading runs past the original case. Rashi famously requires you to follow the central court even if they tell you that right is left. Rambam consolidates the midrashic reading into binding halacha across three categories of rabbinic ruling, each rooted in the same clause. The Talmud extends the same clause to authorize blessings on rabbinic mitzvot like Chanukah candles.

The rabbinic reading does not depend on Devarim 17:8-11 alone. The rabbis hold that Sinai produced two Torahs at once, the Written Torah and the Oral Torah, with the interpretive methodology of the Oral Torah included in what Moshe received. This is an article of faith rather than historical proof. No one alive can verify what Moshe received orally. Some Jewish movements, ancient and modern, accept only the written Torah and read the rabbinic interpretation as developed over time. However, accepting the traditional position, that the methodology came with the text at Sinai, is part of accepting the rabbinic tradition's account of itself. Rabbi Yehuda HaNasi codified the Mishna around 200 CE as the recording of the oral tradition the Tannaim had carried forward, and the Gemara developed over the next several centuries around the Mishna. The do-not-turn-aside clause expresses, in the Chumash's own words, what the Oral Torah always authorized.

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The chain runs through four transitions, from the Levitical priesthood in partnership with judges, as Moshe describes in Devarim 17:9, to today's rabbis. The Temple's destruction in 70 CE ended the priesthood's judicial function, Rabban Yochanan ben Zakkai's academy at Yavneh carried the authority forward, and a diminished Sanhedrin dissolved by the early fifth century with the rabbis developing the Talmud becoming the new bearer until the Talmud closed and subsequent rabbis became its interpreters.

Herman Wouk, in *This Is My God*, drew the constitutional analogy directly. The Chumash, like the United States Constitution, is a terse foundational text whose binding force depends on its authorized interpreters. The rabbis read their own interpretive authority into the Sinai narrative the same way the U.S. Supreme Court read judicial review into a Constitution that did not grant the power explicitly. Robert Cover, in "Nomos and Narrative," called the rabbinic tradition the strongest jurisgenerative legal community he studied. Rabbi Dr. Yosef Bronstein draws on Rav Kook's account that each generation's interpretive work continues drawing out what Moshe received at Sinai. Sarah's classmate has the next obvious question. If the rabbis hold authority on this scale, are they effectively infallible?

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3. Authority does not mean infallibility, and the system corrects itself within bounded methodology

Moshe's own phrase two verses earlier marks the limit: The Talmud reads "in those days" as the Chumash's acknowledgment that judicial authority belongs to the duly-constituted judges of each generation, with the formulation that Yiftach in his generation is like Shmuel in Shmuel's generation. The rabbis do not claim every generation's judges match Moshe, only that they hold the seat the Chumash assigns. The *Sefer HaChinuch* argues that a system demanding perfect rabbinic judgment would have failed in the second generation.

The same rabbinic system that demands obedience corrects itself within its own methodology. The Tannaim and Amoraim preserved minority opinions in the Mishna and Gemara so a later beit din could revisit them when conditions changed, and the *takana*, a rabbinic enactment issued by a recognized *beit din* with the community's acceptance, lets the rabbis adjust the practical halacha without revising the tradition or the text. The modern halachic prenup that addresses the *agunah* crisis was developed by recognized Modern Orthodox poskim under existing *kiddushin* rules, and the same procedural pattern produced Shabbat-mode appliances, fertility rulings, and organ donation rulings for situations the talmudic rabbis never had to face. In *People of the Book*, Prof. Moshe Halbertal describes this as a bounded interpretive community that keeps its canon alive by interpreting under canonical constraints, and the distinction between this self-correcting work and Reform Judaism is load-bearing for any honest defense of Modern Orthodox practice. Reform Judaism rejects rabbinic interpretive authority as a matter of principle, while rabbinic self-correction operates inside the system's methodology.

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Rabbi Aryeh Lebowitz describes what living inside the bounded discipline feels like, refusing both the pretense that rabbis cannot make mistakes and the dismissal of their rulings as polite suggestions. Sarah can stay inside the rabbinic tradition's own categories while keeping her questions alive, with disagreement running in-system rather than against the tradition. Sarah's classmate has a sharper question now. If rabbinic authority is bounded by methodology, what authorizes the rabbis to bind Sarah's observance in the first place when no Sanhedrin still sits?

4. Torah was given into human hands

The Talmud's self-portrait of interpretive authority is the oven of Achnai story in Tractate Bava Metzia. Rabbi Eliezer ben Hyrcanus, defending a halachic position against the majority of the sages, brings four supernatural proofs in succession. Rabbi Yehoshua ben Hananiah answers: "*lo bashamayim hi*" (it is not in heaven), and the Sages rule by majority against Rabbi Eliezer. In the aggadic continuation, God laughs and says "My children have defeated Me" twice. The rabbis tell the Achnai story as their transparent account of the move they are making. The Talmud puts the words "my children have defeated me" in God's mouth, with God conceding to the rabbis on the page.

Sarah faces a three-part choice. The first is closed engagement, the Haredi stance in which the modern world is mostly excluded. It will not suit Sarah, who values the intellectual freedom that brought her to a comparative religion seminar. The second is the Reform exit, easier in the short term and harder in the long term, because Sarah would give up what gives Shabbat its weight and what ties her, through her grandmother, to a specific people. The third is open engagement with the tradition, harder than the first two paths because the institutional fit varies and the answers will not always meet every objection. Some shuls and rabbis are more open to honest questioning than others, and Sarah will have to find a community that keeps halacha with room for her questions. The first step is walking through the door with confidence in her own background. Sarah does not need to be the most observant person in the room to belong there, and she can absorb what the community offers while staying honest about her practice. Dr. Moshe Koppel argues that halacha is a language the Jewish community speaks together, with rabbis as native speakers whose authority comes from communal recognition. Without a central court, Sarah is answering every day, not in one reasoned moment but in what she eats, when she keeps Shabbat, and what halachic questions she puts to which rabbi, across years of choices.

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5. What binds us now

After the Sanhedrin dissolved by the early fifth century, Jewish observance remained unified through the rise of the Talmud as the authoritative record of the tradition. Rambam explains how the Talmud became binding on all of Israel. The acceptance functioned in practice without a single central institution. The Geonim of Sura and Pumbedita issued responsa to communities across the diaspora, and the communities widely accepted the Talmud's authority over the following centuries, becoming the rabbinic tradition Sarah was raised inside. Rambam treats communal acceptance as binding in its own right, on a par with a sitting court's ruling and a *beit din*'s *takana*.

Contemporary halachic life works through four categories of binding force. In *Halakhah*, Chaim Saiman lays out the four at the level Sarah's family actually lives. Sarah's commitment to the Kashrut of her family's kitchen rests on interpretation, her older sister's modern halachic prenup rests on legislation, the *minhag* of her shul that women can serve as synagogue president rests on custom, and her parents' commitment to follow the *psak* of their rabbi on a question the Chumash leaves open rests on communal acceptance.

The structural mode Rambam describes, with communal acceptance binding halachic life across Saiman's four categories, has not changed in the last 100 years, but Sarah's family lives inside it differently than her grandmother did. Rabbi Dr. Haym Soloveitchik describes the felt change in transmission. Sarah's grandmother learned halacha at the kitchen table from her mother and in the rhythm of village life where the community's everyday observance was the law. Sarah learned halacha first at her parents' table and in day school, and as she grew the *sefarim* her parents bought online and the rabbis she met through podcasts joined the picture. Text is stricter than lived observance because it does not carry the exceptions and tolerances the kitchen-table tradition carried for 1,000 years. The change is bigger than transmission. Sarah's grandmother kept Shabbat in a community where everyone did the same, and what lay beyond did not press against her every Friday night. Sarah keeps Shabbat in a world where her phone shows her every alternative her friends are living, and her Shabbat competes for attention with the entire visible world. The challenge differs from her grandmother's in kind, not only in degree. What keeps Sarah committed is not an argument she has won, but the way Shabbat has worked on her over the years, in the family dinner, in the quiet when her phone is off, and in the friends who keep Shabbat alongside her every week.

Sarah's classmate finally presses the honest question. Why would anyone with her education still choose the rabbinic system? Proof of revelation is not the answer. None of us were at Sinai. But Sarah cannot prove what happened to her great-grandparents either, and she accepts the inheritance of family without proof. The lack of proof is the universal condition of all inheritances.

The deeper case runs through unchosen identity. None of us are blank slates. We are born into circumstances we did not choose, like family, genetic, and financial inheritance. When those help us, we accept them gratefully. No one born into a good family refuses the benefits on the grounds that the family was unchosen. The "I did not choose this" complaint surfaces only when an unchosen identity makes demands, and that complaint is special pleading. Sarah's question is by what principle anyone rejects this inheritance when they accept all the others.

A secondary argument runs alongside. Daily mitzvah practice can produce a knowledge no argument from outside can match, with the limit that this knowing cannot always be told apart from habituation. Sarah enters on the unchosen-identity grounds and judges from inside whether the system lives up to its claims.

Sarah will go home from her last semester to her parents' Shabbat table by June. She will sit at the table where she sat every Friday night until she left for college, knowing for the first time that she sits there by her own decision. Each path costs something: the Reform exit loses the chain across generations, the Haredi path trades away the freedom of mind that brought Sarah to a comparative religion seminar, and the Modern Orthodox path she is choosing keeps both—at the price of a question about rabbinic authority that never fully resolves. The years of obligation through her parents and her day school have ended, and Sarah is choosing whether to keep the rabbinic system as her own decision.

Questions for Reflection

1. **Where does your own defense of observance rely on more than what the text plainly says?**
2. **Reform, Haredi, and Modern Orthodox each cost something. Which cost would be hardest for you to accept?**
3. **Is "*lo bashamayim hi*" God limiting Himself, or the rabbis limiting themselves? Does your answer change how you see rabbinic authority today?**

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