

What Are the Origins of the Oral Torah?



This essay is the first in the author's five-part series for 18Forty's explorations of the origins of Judaism. To receive his weekly essays on the origins of Judaism right in your inbox, sign up for our email list [here](#).

Rabbi Adin Steinsaltz was one of the towering Torah personalities of our times. He was gifted with the ability to explain even the most complicated Jewish concepts in simple terms. But his ideas did not meet with universal approval. In 1990, Rabbi Joseph Elias, a distinguished member of the German Jewish community in Washington Heights, NY, criticized Rabbi Steinsaltz in the pages of *The Jewish Observer*, the long-running magazine of the Agudath Yisrael of America. The problem? Rabbi Steinsaltz entertained the possibility that the *Torah she-Ba'al Peh*, or Oral Torah, had evolved over time.

"The inseparable oneness of the Written Law and the Oral Law, *given at the same time at Sinai*, is the indisputable foundation of Torah Judaism," Rabbi Elias wrote. "What was given at Sinai," he continued,

was a complete, specific and binding oral law code, explaining, in full and beyond possibility of misunderstandings, the teachings of the Written Law. In the course of the generations, much was added to this law code: further clarifications, in response to new circumstances, or to misunderstandings that arose, based on the rules of interpretation given at Sinai, and rabbinic elaborations and ordinances (clearly labelled as such). But this is certain—the Oral Law was not a set of vague

traditions from ancient times that slowly evolved into the law we know.

The basic contours of Rabbi Elias' approach are instantly familiar. A bedrock principle of Orthodox Jewish faith is that at Sinai, the Jewish people received not just the Written Torah, but also the oral one (see Sifrei Devarim 351). Many of us are taught this in grade school. The Rambam explains this in the introduction to his Mishneh Torah: Moshe transcribed the entirety of the Written Torah before his death. But God also gave Moshe an explanation for the Written Torah, and that was transmitted orally by Moshe to the seventy elders. The Oral Torah, although ultimately committed to writing in works like the Mishna and Gemara, was transmitted from generation to generation in an unbroken line of tradition.

Of course, the Oral Torah, as manifested in the *halacha* we follow, is not entirely static. As Rabbi Elias alluded to, new circumstances arise in every generation. There was no electricity before the 20th century, so rabbis had to decide whether it was permitted on Shabbos and Yom Tov.

Yet, one might argue that decision was made by applying eternal principles of law to the new reality. The Oral Torah grows but does not change. As Rabbi Chaim Eisen, an educator in Israel, wrote in a 1997 issue of *Jewish Action*, the magazine of the Orthodox Union:

The myth that Jewish law “changes with the times,” subject only to “rabbinic will,” is an outrageous fabrication without a shred of credible historical evidence. Of course, we realize that the world changes, and with it, the situations in which Jewish law is applied. Obviously, such circumstances can lead to what superficially appear to be novel and even revolutionary solutions. But any deeper understanding of the actual nature of such solutions belies such facile conclusions. One does not tinker with a legal system whose source one believes is divine. It is essentially the same traditional law, both Mosaic and rabbinic, which is continually applied and reapplied anew (emphasis added).

But not everyone will find this approach satisfactory.

Broadly speaking, people tend to question the notion of a revealed and mostly unchanging Oral Torah for two reasons: (1) the lack of consensus in *halacha* and (2) historical questions about its transmission and development.

In light of these questions, I'm writing a series of essays exploring what it means when we say that “the Oral Torah comes from Sinai.” I take it as a given that *halacha* is the revelation of God's will and a reflection of how God wants us to conduct our lives. But I hope to show that our tradition contains much room to debate *how halacha* was revealed. The words of Rabbi Elias and Rabbi Eisen are a good place to start, but they are far from everything that has been said on this weighty matter.

Let's turn to the problems.

I. The Debates of *Halacha*

Every page of the Mishna and Gemara is littered with *machloket*, or debate. If nearly everything was given to Moshe at Sinai—and faithfully transmitted—why is there disagreement about nearly every aspect of *halacha*? And it often seems like the Sages of the Mishna and Gemara don't have a tradition, but instead create law—even Torah-level law—by creatively reading the text of the Torah, making *derashot*. Did God grant the rabbis authority to create new laws?

Further, Judaism venerates creativity and robust debate. The printed page of the Gemara is crowded with commentaries vociferously disagreeing with each other, each jockeying for its position on the page. The Rambam intended his Mishneh Torah to be the final word on Jewish law, but it was not to be. Supercommentaries sprang up around the text, dissecting every word. The Shulchan Aruch, the modern code of Jewish law, arguably became accepted only because the Rema and others wrote glosses on it, turning its pages into a lively *beit midrash* of differing opinions. The Oral Torah we know today is not a static body of law, dutifully transmitted, but a living, wriggling corpus that cannot be contained. Sometimes the revealed portion of the Torah seems drowned out by all that's been added. In what sense do we understand this expanded Oral Torah as divine or Sinaitic?

II. The History of *Halacha*

Then there are historical problems. No one in Tanach seems particularly concerned with *halacha* in general, let alone its details. The first time someone worries about *kashrut* is Daniel in Nevuchadnezzar's palace (Daniel 1:8-16), despite the fact that it wasn't the first time a Jew had found themselves in a foreign place. The prophets complain about people's non-observance, but somehow, even what the prophets want people to do seems quite different than the *halacha* of today. The lack of observance in most of Tanach makes one wonder about the idea of an unbroken oral tradition from Sinai. It doesn't help that modern academic scholars note that there's no evidence for a robust Oral Law before the Mishna. Some even say that the rabbis invented the idea that the Oral Torah came from Sinai to grant legitimacy to their new enterprise. Simply put, it can be hard to square the authenticity of a divinely revealed *halacha* with a process of historical development.

These are not easy questions, and they don't yield simple answers. The solutions weighed in this series may not satisfy everyone, and in fact, they're not intended to. We certainly won't be able to cover everything that's been said on this vast topic. But by giving a taste of some of the major positions and debates over the centuries, I hope to engage the questions seriously, providing food for thought and broadening our intellectual horizons.

We will learn that throughout history, there have been fundamental differences of

opinion. After addressing the ambiguities in Chazal's statements on the matter, we will see that the meaning of Oral Torah from Sinai was debated by the *rishonim*, or medieval Jewish scholars; was reconsidered in the 19th century as part of the polemics between Orthodox and Reform; and was wholly reimagined by a cadre of more mystically inclined thinkers in the early decades of the 20th century.

I invite you to join me.

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Divinity and Humanity: What the Jewish Sages Thought About the Oral Torah



This essay is the second in the author's five-part series for 18Forty's explorations of the origins of Judaism. The first can be found [here](#).

The Sages of the Mishna and Gemara, commonly known as Chazal, were the great codifiers of Jewish law. The Mishna lays out *halachic* rules in an orderly and systematic fashion: Such is prohibited, such is permitted; this is pure, but this is impure. There is one tractate for blessings, another for the laws of Pesach. So it's rather surprising that Chazal have nothing systematic to say about Jewish theology. You'll find agreement on basic principles—such as a revelation at Sinai or a coming messianic age—but for the most part, one will only glean Chazal's theology from a snippet here or a terse statement there. Some of their proclamations are cryptic, and there's very little agreement on anything but the basics.

Such is the case with Chazal's treatment of the idea that an Oral Torah was given at Sinai. As I noted in the introduction to this series, various texts, like the Sifrei, state that two Torahs were given at Sinai. But there are widely divergent opinions on what exactly was handed down and the interplay between the divine and human elements in the Oral Torah.

There are many sources to consider, but we'll get a general picture by looking at just

a handful.

I. The Maximalists: 'Moshe Got It All'

First, let's consider what I'll call the maximalist position. The Gemara in *Berachot 5a* reports that the sum total of the Oral Law—up to and including the Gemara!—was given to Moshe at Sinai:

מאי דכתיב ואתנה לך את לחת האבן והתורה והמצוה אשר כתבתי להורותם, לחות אלו עשרת הדברות, תורה אלו מקרא, והמצוה אלו משנה, אשר כתבתי אלו נביאים וכתובים, להורותם אלו זה תלמוד; מלמד שכולם נתנו למשה מסיני

What is the meaning of that which is written: “[Ascend to me on the mountain and be there,] and I will give you the stone tablets and the Torah and the mitzva that I have written that you may teach them” (Exodus 24:12)? The “tablets” are the ten commandments, the “Torah” is the five books of Moses, The “mitzva” is the Mishna, “That I have written” refers to the Prophets and Writings, “That you may teach them” refers to the Talmud.

Likewise, *Megillah 19b* suggests that Moshe was shown all future developments in the Oral Law at Sinai:

מאי דכתיב ועליהם ככל הדברים אשר דבר ה' עמכם בהר אלו מלמד שהראהו הקדוש ברוך הוא למשה דקדוקי תורה ודקדוקי סופרים, ומה שהסופרים עתידין לחדש

What is the meaning of that which is written: “[And the Lord delivered to me two tablets of stone written with the finger of God;] and on them was written according to all the words which the Lord spoke with you in the mountain” (Deuteronomy 9:10)? This teaches that the Holy One, Blessed be He, showed Moshe all the inferences that can be derived from the words of the Torah; and all the inferences that can be derived from the words of the Scribes, and also all that the Scribes were destined to introduce.

II. The Minimalists: 'Moshe Got Only General Principles'

But *Shemot Rabbah* (41:6) makes pretty much the opposite claim—that Moshe only learned general principles at Sinai, not everything in the Oral Torah:

וכי כל התורה למד משה כתיב בתורה (איוב יא) ארוכה מארץ מדה ורחבה מני ים ולא רבעים יום למדה משה אלא כללים למדהו הקב"ה למשה

Could Moshe have learned the entire Torah? It says (Iyov 11:9), “Its measure is longer than the land and wider than the sea”; could Moshe have learned it all in 40 days? Rather, God taught him general principles.

According to the Midrash, God taught Moshe certain principles of interpretation (we'll discuss what those might be later), and presumably, those principles were used by later generations to derive the rest of the Oral Law.

Yet one might argue that the maximalist position in the Gemarot should not be taken at face value. Rereading the Gemara in Megillah carefully, it states that God *showed* Moshe everything that later rabbis would deduce. Rabbi Yom Tov Lipmann Heller, in his 17th-century commentary to the Mishna called Tosafot Yom Tov, suggests that the Gemara here might be positing that Moshe only got a glimpse of what was to come, but did not transmit it to the next generation. *Halacha* still unfolded via rabbinic interpretation.

One also wonders about the Gemara in Berachot's position that even the Mishna and Gemara were revealed at Sinai. It might mean that every law in the Gemara literally came from Sinai and was passed down through the generations. But not every story or statement in the Gemara is meant to be taken literally, and it could be that the Gemara is taking a bit of poetic license here. Perhaps it is stressing that every part of the Oral Torah is imbued with the authority of Sinaitic revelation, even if composed later.

III. 'The Torah Is Not In Heaven'

Aside from defining the scope of Sinaitic revelation, Chazal also address the role of human beings in transmitting or even shaping the Oral Torah. Many may be aware of the story of the Oven of Achnai in *Bava Metzia 59a-b*. In this episode, the Sages and Rabbi Eliezer vigorously debate the ritual purity of an oven. But even after God announces that the oven is pure as Rabbi Eliezer maintained, the Sages state, "*Lo ba-shamayim hi* - the Torah is not in heaven" (see Devarim 30:12), and contend that God doesn't get a vote. God approves and says, "My children have triumphed over me."

The principle of *lo ba-shamayim hi* also appears in the Gemara in *Temurah 16a*, but there it concerns what happens when laws are forgotten:

שלשת אלפים הלכות נשתכחו בימי אבלו של משה. אמרו לו ליהושע: שאלו! א"ל: לא בשמים היא . . . במתניתין תנא: אלף ושבע מאות קלין וחמורין, וגזירות שוות, ודקדוקי סופרים נשתכחו בימי אבלו של משה. אמר רבי אבהו: אעפ"כ החזירן עתניאל בן קנז מתוך פלפולו

3,000 halachot were forgotten during the mourning period for Moshe. They said to Yehoshua: ask [God]! He told them: it's not in heaven. ... In a Beraita we learned: 1,700 a fortiori inferences, verbal analogies, and minutiae of the scribes, were forgotten during the mourning period for Moshe. Rabbi Abahu said: even so, Otniel the son Kenaz restored them through his sharp analysis.

This Gemara adds another layer to the idea that the Oral Torah isn't in heaven. It doesn't only mean that the rabbis have the prerogative to decide the law when faced

with a new legal question such as the purity of an oven. Rather, once the Torah was given, it was entirely in human hands, and prophetic inquiry is verboten. When laws are forgotten, we don't ask God, but reconstruct them through human reason.

IV. What Did Moshe Learn from Rabbi Akiva?

But perhaps the Talmudic discussion that best highlights the tension regarding the Oral Torah's divine and human elements is found in *Menachot 29b*. Moshe ascends on high and finds God tying crowns to the letters in the Torah scroll. When he asks why, God shows him the classroom of Rabbi Akiva thousands of years in the future, who expounds *halachot* from the crowns. But Moshe is disappointed because he can't understand what Rabbi Akiva is teaching:

הלך וישב בסוף שמונה שורות, ולא היה יודע מה הן אומרים, תשש כחו; כיון שהגיע לדבר אחד, אמרו לו תלמידיו: רבי, מנין לך? אמר להן: הלכה למשה מסיני, נתיישרה דעתו

Moshe went and sat at the end of the eighth row in Rabbi Akiva's study hall and did not understand what they were saying. Moshe's strength waned. When Rabbi Akiva arrived at the discussion of one matter, his students said to him: My teacher, from where do you derive this? He said to them: It is a halakha transmitted to Moshe from Sinai. When Moshe heard this, his mind was put at ease.

The Gemara is somewhat hard to understand. Why is Moshe placated upon learning that Rabbi Akiva traces his teachings back to him? Presumably, Moshe still couldn't comprehend Rabbi Akiva's ideas. Rashi, commenting on this passage, suggests that Moshe was appeased because once he was told the matter was transmitted at Sinai, he figured he would learn it before his death, even though he hadn't learned it yet.

But one might alternatively suggest that Moshe was satisfied because he realized that Rabbi Akiva's creativity stemmed from what he had transmitted. This meant that even many generations later, the *halachic* process remained intact. Sinai was still important. Perhaps, then, this Gemara highlights a paradox: when later rabbis teach new laws and concepts, it is as if Moshe received and transmitted them. Even modern-day applications of halacha are clothed in Sinaitic authority.

At this point, it should be clear Chazal did not speak in one voice regarding the origins and transmission of the Oral Torah. Competing and complementary views share space. Was everything in the Mishna and Gemara given at Sinai? Was it telegraphed to Moshe but not transmitted? Perhaps Moshe only learned general principles of interpretation. In many of these discussions, the rabbis have a central role in the transmission, reconstruction, and creation of the Oral Torah.

In next week's installment, we will explore a pivotal debate between the Geonim and Rishonim about the roots of *machloket* and how there came to be so much disagreement about *halacha*.

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Why the Confusion? On Disputes in the Oral Torah



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One expects a legal code to say what the law is. On this count, the Mishna is less like a legal code than a record of disagreements about the law. In it, the Sages will say one thing and Rabbi Yehuda might say another. If all these *halachot* were transmitted at Sinai, why is there so much *machloket*?

In other Tannaitic works like the Mechilta, Sifra, and Sifrei, there is even more dispute, which seems to arise from Chazal's disagreements about how to interpret, or *darshen*, verses in the Written Torah. The Tannaim—the sages whose words are recorded in the Mishna and other rabbinic works of the early common era—*darshen* based on various textual cues and exegetical principles, such as the 13 Middot of Rabbi Yishmael. These 13 principles are found in a *beraita* (Tannaitic teaching) by Rabbi Yishmael that may be familiar from the Siddur—it's said right before *Pesukei de-Zimra*. The principles include, among others, *kal-vachomer* (a fortiori) and *gezerah shavah* (identical words used in different Torah passages). But why do the Sages engage in linguistic jousting matches over the Written Torah to derive the Oral Torah's laws? Weren't the laws passed down from Sinai orally?

In this installment, we will explore four answers to this question.

I. The Geonim: The Sages Innovated Nothing

The Geonim, rabbinic leaders who flourished in academies in Babylonia (modern-day Iraq) from around the years 600-1000, were the first to systematically address this problem. Their answer is straightforward: Everything was given to Moshe at Sinai, but *machloket* exists because, over time, people forgot what Moshe received and

had to reconstruct it. The Oral Torah was not transmitted as diligently as it should have been.

The Geonim's position is most clearly expressed in a later work, the introduction to the *Sefer ha-Kabbalah, The Book of Tradition*, by the 12th-century Spanish thinker Abraham ibn Daud. He writes (originally in Arabic), "Never did the Sages of the Talmud, and certainly not the Sages of the Mishna, teach anything, however trivial, of their own invention, except for the enactments which were made by universal agreement in order to make a hedge around the Torah." Chazal were not innovators but only bearers of tradition.

So how did *machloket* arise? "Our rabbis of blessed memory," Ibn Daud writes, "never differed with respect to a commandment in principle, but only with respect to its detail; *for they had heard the principle from their teachers, but had not inquired as to its details since they had not waited upon their masters sufficiently*" (emphasis added). Ibn Daud believed that rabbinic disputes are quite limited in scope and were due to errors in transmission.

The Geonim's position about *machloket* being due to a breakdown in transmission derives some support from a Gemara in *Sanhedrin 88b* that speaks of *machloket* increasing when the students of Shammai and Hillel were insufficiently attentive to their teachers. And Ibn Daud's other point, that the Sages invented nothing of their own, is in line with the maximalist Gemarot in *Berachot* and *Megillah* ascribing the entire Oral Torah to Sinai. But this view is also difficult. What about all the *derashot* where it seems like the rabbis' exegesis creates new law?

The Geonim responded that midrashic exegesis is something of an illusion. Chazal were not generating new law from their creative readings of the Torah. Rather, they were finding scriptural supports on which to hang the traditions that had been passed down to them. (The fact that those traditions were disputed was merely a function of a breakdown in transmission.)

In the 1300s, the French philosopher Rabbi Levi ben Gershon, Ralbag or Gersonides, put the matter as follows in the introduction to his Torah commentary:

וזה שהם סמכו אלו הדברים האמתיים המקובלים להם במצות התורה לפסוקים ההם להיותם
כדמות רמז ואסמכתא לדברים ההם לא שיהיה דעתם שיהיה מוצא אלו הדינין מאלו המקומות . .
. אבל הם אצלם מקובלים איש מפי איש עד משה רבינו ובקשו להם רמז מן הכתוב .

[Chazal] supported the true traditions about the Torah's commandments with verses that are like hints and supports to these things, but they were not actually deriving the laws from those places . . . rather, they were passed down from person to person back to Moshe our teacher and [Chazal] merely sought a hint from the written Torah.

This approach is all well and good for some *derashot*. When Chazal *darshen* the verse about using a *pri etz hadar*—"a fruit of a beautiful tree"—on Sukkot and,

based on certain linguistic features, conclude that it refers to using an etrog (*Sukkah* 35a), I can readily accept that they had a pre-existing tradition to use an etrog and were only interpreting the verse to support their tradition. Otherwise, what did they use last year on Sukkot?

But in other cases, it seems like Chazal's *derashot* generate new laws. In *Sanhedrin* 51b, the Gemara discusses instances when the daughter of a kohen who committed adultery is put to death by *seraifah*, burning, instead of *chenek*, strangulation. The former is considered a more severe type of death penalty. Rabbi Yishmael imposes the stricter penalty only when she is an *arusah*—when *kiddushin*, the first stage of marriage, has been completed, but not the second stage. Rabbi Akiva extends the punishment to when the marriage has been consummated—when she is a *nesuah*. The Gemara records why they disagree:

אמר ליה רבי עקיבא: ישמעאל אחי בת ובת אני דורש. [אמר ליה: וכי מפני שאתה דורש בת ובת נוציא זו לשריפה]

Rabbi Akiva said to him: Yishmael, my brother, I derive it from the fact that the verse could have stated: "The daughter of a priest," but instead states: "And the daughter of a priest," [with an extra vav]. Rabbi Yishmael replied: And because of this derivation from an extra vav we should take out this woman for burning?

It does not appear that Rabbi Akiva and Rabbi Yishmael received different traditions from their teachers that they were trying to support with a Torah verse. Rather, it seems like they were faced with a blank canvas as to the appropriate punishment and reached different conclusions because they differed over whether a *derasha* from the *vav* was appropriate. Thus, they seem to agree in principle that new *halachot* can be derived directly from the Written Torah.

For this reason, the Geonim's view—that everything was received at Sinai, *derash* never created *halacha*, and *machloket* is due only to forgetfulness or inattention—is somewhat difficult to subscribe to in full. Some scholars have suggested that the Geonim's position was in part polemical. In those times, the Karaites, a non-rabbinic group who believed only the Written Torah but not the Oral Torah, posed a threat to the Geonim's hegemony in Babylonia. The Geonim's maximalist view of the Oral Torah established them as the authentic bearers of tradition and denied the Karaites' legitimacy.

II. The Rambam: The Sages Innovated a Great Deal

Over time, as the Geonim's influence declined, new voices formulated different conceptions of the Oral Torah. Most important is the view of the Rambam (Maimonides), the towering rabbinic scholar of the 12th century who spent much of his life in Egypt. In his introduction to his commentary on the Mishna (also originally in Arabic), the Rambam writes:

סברת מי שחשב שגם הדינים שיש בהם מחלוקת קבלה ממשה, ונפלה בהם מחלוקת מחמת טעות בקבלה או שכחה, ושהאחד צודק בקבלתו והשני טעה בקבלתו, או ששכח, או שלא שמע מרבו כל מה שצריך לשמוע. . . הנה זה חי' דבר מגונה ומוזר מאד, והוא דבר בלתי נכון ולא מתאים לכללים, וחושד באנשים שמהם קבלנו את התורה

Those that say that the laws about which there is machloket were also received by Moshe, and debate occurred because of a mistake in transmission or forgetfulness—such as one correctly receiving the law and one mistakenly doing so, or that he didn't hear from his teacher everything that needed to be heard ... this is, as God lives, a very strange and unpleasant idea, and it's not correct or acceptable at all and it casts aspersions on the men from whom we received the Torah.

The Rambam forcefully disagrees with the Geonim, arguing that allowing for forgetfulness casts doubt on the Oral Torah's entire chain of transmission.

So how did *machloket* develop? The Rambam explains:

וכל מה שקבל ממנו הוא או אחד הזקנים אין בו משא ומתן ולא נפלה בו מחלוקת, ומה שלא שמעו מן הנביא ע"ה יש בסעיפיו משא ומתן, ונלמד בו הדין בדרכי העיון בשלש עשרה המדות שניתנו לו בסיני, והן י"ג מדות שהתורה נדרשת בהן

There is no dispute about anything received from [Yehoshua from Moshe] or from one of the elders, but there can be machloket regarding what was not heard from the prophet and but was learned through extrapolation from the 13 principles that were given to Moshe at Sinai—these are the 13 Middot that the Torah can be darshened with [from the beraita of Rabbi Yishmael] (emphasis added).

The Rambam describes several categories where there can and can't be *machloket* depending on how the law was received. Over the centuries, people have raised all kinds of difficulties with some of the Rambam's categorizations. Yet, for our purposes, the principle is simple enough: There can be no *machloket* about received Sinaitic traditions. But many laws were not said to Moshe at Sinai and were extrapolated from the Written Torah using exegetical principles, namely, the 13 Middot of Rabbi Yishmael. There can be debate about those matters.

In fact, according to the Rambam in his *Sefer ha-Mitzvot*—where he counts all 613 commandments—*most* of the Oral Torah was derived from the 13 Middot. This means that there could in theory be a great deal of dispute in the Oral Torah, and indeed there is. The Rambam's position sounds akin to what we saw in *Shemot Rabbah*—that Moshe was not given the entire Oral Torah at Sinai, only principles of interpretation.

The Rambam's position is revolutionary and explanatory. But he raises a cautionary flag. The Rambam limits Chazal's authority to create new law by saying that the laws generated through the 13 Middot are rabbinic-level obligations (*de-rabbanan*) and

not Torah-level obligations (*de-oraita*). (That said, some have recently disputed that the Rambam said this.)

III. The Ramban: The Oral Torah Was Driven by Rabbinic Interpretation

The Ramban (Nahmanides), the great 13th-century Catalonian scholar, disagreed. I'll call his position a third approach, even though it is something of a hybrid position that has similarities to both the Rambam's approach and the fourth approach of the Ritva below. The Ramban writes:

ואנו לא מצינו דעת חכמים בזה. שהמדות כולן אצלם כדבר מפורש בתורה ודורשים אותן מדעתם. . . שכל דבר הנדרש בתלמוד באחת מכל שלש עשרה מדות הוא מדאורייתא עד שנשמע אותם שיאמרו שהוא אסמכתא

And we do not find that the Sages [agreed with the Rambam]. For the principles of interpretation were as if they were written explicitly in the Torah, and [the Sages] darshened them at will. . . . Everything in the Talmud darshened from one of the 13 Middot is de-oraita unless we hear them say that the Scriptural proof is merely a peg (asmachta).

Unlike the Rambam, the Ramban felt no need to place limits on *derash* because, in his view, the rabbis are the Torah's authoritative interpreters. Commenting on the Torah's command (Devarim 17:11) not to deviate to the right or left from a judge's rulings, the Ramban writes:

אפילו תחשוב בלבך שהם טועים, והדבר פשוט בעיניך כאשר אתה יודע בין ימינך לשמאלך, תעשה כמצותם

Even if you think in your heart that [the rabbis] are mistaken, and the matter is as straightforward to you as the difference as between your right and left, do as they command.

He emphasizes that this applies:

בין שקבלו פירושו עד מפי עד ומשה מפי הגבורה, או שיאמרו כן לפי משמעות המקרא או כוונתה

Whether they received [the Torah's] interpretation by means of witness from witness until Moses [who heard it] from the mouth of the Almighty, or whether they said so based on the implication [of the written words] of the Torah or its intent (emphasis added).

Thus, according to the Ramban, there is no difference between a law passed down from Moshe or a law generated by the rabbis from a *derasha*. They are both part of the Oral Torah because God granted Chazal the authority to create new laws via the 13 Middot. The rabbis' interpretations must be respected, even if they spawn many

debates. One hears echoes of the talmudic principle of *lo ba-shamayim hi*—the Torah is not in heaven, but for the rabbis to interpret and expand.

The Ramban's view is akin to the Rambam's in its focus on the 13 Middot but differs in its more robust conception of rabbinic authority.

IV. The Ritva: *Machloket* In The Oral Torah Is God's Will

Our fourth and final approach goes further in emphasizing the rabbis' Sinaitic authority to create the Oral Torah. It's exemplified in a comment of Rabbi Yom Tov ben Avraham Assevilli, or Ritva, a student of the Ramban's school. The Ritva writes in his commentary to *Eruvin 13b*:

אלו ואלו דברי אלהים חיים. שאלו רבני צרפת ז"ל היאך אפשר שיהו שניהם דברי אלהים חיים
וזה אוסר וזה מתיר, ותירצו כי כשעלה משה למרום לקבל תורה הראו לו על כל דבר ודבר מ"ט
פנים לאיסור ומ"ט פנים להיתר, ושאל להקב"ה על זה, ואמר שיהא זה מסור לחכמי ישראל שבכל
דור ודור ויהיה הכרעה כמותם

These and these are the words of the Living God. The French rabbis asked: how is it possible for two opinions to be the words of the Living God if one prohibits and one permits? And they answered that when Moshe went up on high to receive the Torah, God showed him about each and every thing 49 ways to prohibit and 49 ways to permit. When Moshe asked God about this, He said that this is given over to the Sages of Israel in every generation, and the decision [as to prohibit or permit] will be according to them.

The Ritva is building off a statement in *Masechet Sofrim*, one of the Minor Tractates, compiled in the 8th century, which describes God giving to Moshe 49 ways to declare something impure and 49 ways to declare it pure. According to the Ritva, Moshe was shown how the Oral Torah *could* develop, but nothing was firmly decided. Chazal could choose which way to go. This flexibility in how the Oral Torah could unfold gave rise to *machloket*.

In this approach, God didn't just hand down a toolbox full of interpretive principles. Rather, there is a multiplicity inherent in revelation. One could read the Ritva's approach as more conservative than the Ramban's—that all the options to permit and prohibit were known to Moshe and perhaps even passed down, but with the rabbis getting to make the final decision. (Think of the Gemara in *Megillah* which states that everything the rabbis will teach was already shown to Moshe at Sinai.)

Yet, I prefer to think that the Ritva agrees with the Ramban. The rabbis created new *halachot* that were not heard at Sinai, but all their opinions, even if diametrically opposed to one another, are subsumed within the framework of revelation. *Machloket*, then, is God's will. It's part and parcel of how God intended the Oral Torah to develop.

The Four Opinions, Summarized

In these four views about the origins of *machloket*, we see different conceptions of rabbinic authority. For the Geonim, Chazal have authority because they are the bearers of a tradition that although not perfectly preserved, remained largely intact. According to the Rambam and Ramban, Chazal are the sanctioned interpreters of the 13 Middot. For the Ramban in particular, God authorized the rabbis to create new law using divinely ordained exegetical principles. Finally, for the Ritva, Chazal's authority is not based on the 13 principles as much as on the multifaceted nature of revelation. Revelation itself encompassed multiple views and God granted the rabbis the flexibility to decide what the *halacha* should be.

In the next installment, we will explore how the Rishonim's views were reformulated in the 19th century to face challenges posed by the German Reform movement and the intellectual revolutions of the Enlightenment.

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Recommended Reading



People of the Book: Canon, Meaning, and Authority

Moshe Halbertal

Chapter 2 of this compact but insightful book by Dr. Halbertal, a professor at Hebrew University and NYU School of Law, addresses the views among the Rishonim sketched in this article. Halbertal formulates three models: He calls Ibn Daud's view the retrieval model, the Rambam's the cumulative model, and the Ramban and Ritva's approach the constitutive model. A version of Dr. Halbertal's chapter is available online here.



The Understanding Machlokes: How and why disputes developed in the times of the Mishnah and Gemara

Zvi Lampel

I encountered the first edition of this book, titled *The Dynamics of Dispute: The Makings of Machlokes in Talmudic Times*, in Yeshivat Shaalvim, where I studied for

a year and a half after high school, and it was my first introduction to the questions and answers raised by this series. Rabbi Lampel provides a remarkably detailed and well-sourced account of the roots of machloket. But Lampel deals primarily with the nuances of the Rambam's approach, and in my opinion, tries too hard to minimize the differences of opinion between the Rishonim in an effort to establish the Rambam's approach as the definitive one. A new, retitled edition (pictured and linked here) has just been released.

The Reform Movement Challenged the Oral Torah. How Did Orthodox Rabbis Respond?



This essay is the fourth in the author's five-part series for 18Forty's explorations of the origins of Judaism. The third can be found [here](#).

The Enlightenment that swept the Western world in the 18th century brought with it a new fervor for scientific and rational thought. Some of its intellectuals were fascinated by the search for the essence of things. What, for example, made fire burn? Scientists suggested that a weightless, undetectable element called phlogiston was the secret to combustion, or the essence of fire. Although the discovery of oxygen and its role in enabling fire disproved phlogiston by the end of the 18th century, the search for essences was not limited to science. Could there also be an essence to each religion, a moral principle that animated it? Perhaps, through historical inquiry, one could strip away religion's accretions, its senseless rituals, and be left with pure, rational devotion to God.

Predictably, there were scholars who sought Judaism's essence. Abraham Geiger (1810-1874), one of the German Reform movement's most important theologians, wanted to modernize Jewish liturgy and relax *halachic* norms. To justify his approach, he looked for Judaism's moral core. Peeling back the historical layers, Geiger pinned much of the blame for Judaism's excessive attention to *halacha* on the Oral Torah, particularly Chazal's irrational *derashot* that expanded *halacha* beyond its original bounds and outside the realm of reason. In 1841, Geiger complained (in German) that in the Gemara, through *derash*, "Words and letters were interpreted in

the most arbitrary way” and “analogies were found in the most accidental and contingent similarities.” Geiger wanted to return Judaism to the days of the Bible and its earliest sages. The Talmudic rabbis stood in the way.

Samuel Holdheim (1806-1880), perhaps the most radical of the early reformers, wanted (in good Enlightenment fashion) to maintain only those few *halachic* principles that rested on reason and conscience alone. In his 1860 *Ma’amar ha-Ishut*, which contrasted the approaches of the rabbis and the Karaites to the laws of marriage, he writes that “the rabbis are concerned with the law; the Karaites, with the legislator.” Holdheim suggested that *halacha*, by focusing on textual minutiae, had lost sight of God.

If we are honest with ourselves, some elements of this critique find their mark. Last time, we explored the rabbinic authority to create *halacha* and how debate could be sanctioned or even encouraged within the *halachic* framework. The Rambam and Ramban believed that at Sinai, God handed down 13 exegetical principles for the rabbis to *darshen*—known as the 13 Middot of Rabbi Yishmael. But we didn’t address whether the rabbis’ interpretations of the Torah made logical sense. Some seem irrational and far from the plain sense of the verse. Why should an extra *vav* make an adulterous daughter of a kohen subject to a different punishment? Every student of Gemara can think of numerous *derashot* that seem illogical and hard to unpack. This did not sit well with 19th-century rationalists, and in truth, many of us today have the same questions.

In this installment, we will explore four ways traditional rabbis in the 19th century responded to Reform’s critique. Orthodox defenders including Rabbi Samson Raphael Hirsch, the Malbim, Rav Yitzchak Yaakov Reines, and the Netziv, employed different strategies to scale back reliance on the 13 Middot and ground the Oral Torah in something more intellectually satisfying.

I. Rav Hirsch: The Written Torah Is ‘CliffsNotes’ to the Oral Torah

Rabbi Samson Raphael Hirsch (1808-1888) was broad-minded in his acceptance of aspects of Western culture but advocated for clear divisions between Reform and Orthodox communities, campaigning against Reform for his entire career. He responded to Reform’s critique of the Oral Torah by backpedaling on the question of rabbinic creativity. Rav Hirsch notes that the Torah often addresses highly specific and exceptional *halachic* cases while ignoring more basic scenarios necessary for daily living. The reason for this, he writes in his commentary to *Parshat Mishpatim* (originally in German), is that the Written Torah was never meant to be self-sufficient:

What a mass of laws and principles of jurisprudence must have already been said and fixed, considered, laid down and explained, before the Book of Law could reach these, or even speak of [the laws of the Jewish slave - eved ivri], which,

after all, are only quite exceptional cases. . . . [T]he total and complete law had been given over to the people in its complete form, and had been impressed upon them, and explained to them and lived by them for full forty years, before Moses, just before his death, was to hand them this written book. . . . This book was to be given into the hands of those who were already well informed in the Law . . . so that the written sentences lying before them would make it easy for them to recall to their minds the knowledge they had received orally. . . . The Written Torah is to be to the Oral Torah in the relation of short notes on a full and extensive lecture on any scientific subject. (emphasis added)

The written Torah contains but a small portion of the comprehensive oral tradition handed down at Sinai and cannot be understood without it. To Geiger's accusations that Chazal's *derashot* are illogical and casuistic, Rav Hirsch responds, like the Geonim, that *derashot* never made new law.

As we've noted, however, a perusal of rabbinic literature suggests that Chazal often interpreted the Written Torah creatively and that the Oral Torah was not handed down at Sinai in its entirety. Moreover, Rav Hirsch's approach is somewhat radical. In suggesting that the Oral Torah is not an interpretation of the written, but rather is the main attraction, he reverses the primacy of the written and oral law. Some might find the idea that the written Torah is merely secondary—a set of lecture notes or "CliffsNotes"—rather unsettling.

II. The Malbim: The 13 Middot Are Rules of Language and Grammar

It certainly would have been unsettling to Rabbi Meir Leibush ben Yechiel Michel Weiser (1809-1879), known as the Malbim. Another Orthodox combatant of Reform, he served as the rabbi in several Eastern and Western European cities throughout his career. (He was even considered for the position of Chief Rabbi of New York.) Unlike Rav Hirsch, the Malbim believed that Chazal derived *halachot* from the text of the Torah. Why else would the Gemara contain so much back-and-forth over the appropriate *derasha*, "refining them to a hairsbreadth"? *Derashot* were not just guideposts to help recall an oral tradition, but the very source of the laws.

So why do Chazal's *derashot* often seem far from the Torah's plain meaning, or *peshat*? The Malbim contends that we often misunderstand the true *peshat* in the Torah because we lost Chazal's interpretive tools. In his introduction to Vayikra, he writes that Chazal were privy to:

כללים גדולים ויסודות קבועים בדרכי הדקדוק ויסודי הלשון וההגיון אשר רובם נעלמו ונסתרו מעין כל חכמי לבב הבאים אחריהם, וע"כ נעלמו דרכיהם ונתיבותיה לא נודעו. הראיתי ובררתי במופתים נאמנים כי הדרוש הוא הפשט הפשוט המוכרח והמוטבע בעומק הלשון וביסודי השפה העבריה. וכל התורה המסורה בע"פ הלא כתובה על ספר תורת אלקים מפורש

Great principles and established fundamentals in the ways of grammar, language,

and logic that were mostly hidden from all wise people who came after them. Their ways were forgotten and their paths unknown. I have shown and clarified—wondrously and reliably—that the derash is the simple peshat that is evident and contained in the text and the fundamentals of the Hebrew language. Behold, the Oral Torah is written explicitly in God's Torah.

According to the Malbim, Chazal had grammatical rules unknown to most that they used to *darshen* the Torah. If one understands these linguistic principles, Chazal's *derashot* no longer seem so strange or farfetched. The Malbim believed he had rediscovered these lost rules, and he applies all 613 (!) of them throughout his commentary, attempting to demonstrate that Chazal's midrashic derivations are *peshat* in the verses—sound and grammatical.

The Malbim's response to Geiger is incredibly clever, grounding the Oral Torah not in interpretive rules passed down from Sinai as the Rishonim suggested, but in timeless principles of language. But perhaps it is too clever. Instead of 13 Middot, the Malbim gives us 613 grammatical rules known to Chazal but only rediscovered by *him*. (It's also somewhat implausible that there are exactly 613 of them like the number of mitzvot in the Torah.)

III. Rav Reines: The 13 Middot Are Rules of Logic

Our third thinker, Rabbi Yitzchak Yaakov Reines (1839-1915), criticized the Malbim's approach for precisely these reasons. The Chief Rabbi of Lida, Belarus, Rav Reines was unafraid to take controversial positions. In 1902, he founded the Mizrachi movement in Theodor Herzl's Zionist Congress, and in 1905, he opened the first yeshiva in Eastern Europe to offer secular studies alongside a Gemara education.

In his book *Chotem Tochnit*, Rav Reines rejects the Malbim's approach (although Rav Reines doesn't name him), arguing that he invented grammatical rules to fit particular *derashot*, and further that "grammatical principles are not always rational, but are rooted in the unique properties of each and every language."

Instead, Rav Reines posits that the 13 Middot by which Chazal extracted the Oral Torah from the written were based not on language, but on logic. He writes:

כי ע"פ הכללים ההגיוניים המקובלים שאבו חז"ל כל משפטי ההלכות ממעין הקדוש של תושב"כ [1] דע כי היסוד הראשי בכל תורה שבע"פ וביחוסה לתורה שבכתב ורוח החיה בכל אופניה הוא הידיעה להפשיט הכוחות הפנימיים. ולמוד מלאכת ההפשטה בתכליתה היא, לעשות מן הפרטים כללים [2] וזאת היא תכלית המידות שנמסרו למשה מסיני, כי הם ילמדו באיזה אופן נוציא המושגים הפנימיים ואיך לעשות מן הפרטים כללים

By way of logical, transmitted principles the Sages obtained all the halachic rules from the holy spring of the written Torah ... The cornerstone of the entire Oral Torah and its relationship to the written Torah is the ability to determine the inner

sustaining forces [of a particular norm]. And the point of this method of extraction is to make principles from the particulars. ... The purpose of the hermeneutic principles transmitted to Moshe at Sinai is to instruct in the ways of deriving the internal ideas, and how to make principles from particulars.

Rav Reines suggests that the 13 Middot were part of a toolkit of logical, rational rules passed down from Moshe's time enabling Chazal to extract the Oral Torah from the written. I can't do Rav Reines' ideas justice here, but he envisioned the Sages as similar, in certain ways, to modern-day judges. A judge decides a case based on its specific, narrow set of facts, but sometimes, in coming to a decision, the judge creates broader legal rules that can then be applied to other cases. So too, the Oral Torah consists of Chazal's logical derivation of general principles from the Torah's more specific examples. (If you want to explore Rav Reines' ideas further, read my article [here](#).)

Both Rav Reines and the Malbim respond to Geiger's claim that *halacha* became irrational over time by removing the Oral Torah from the realm of history and grounding Chazal's exegesis in eternal principles of logic or language. But their attempts are more creative than convincing. How come no one knew of the Malbim's grammatical rules until he came along? And Rav Reines never gave a systematic account of exactly how Chazal derived the Oral Torah based on logic.

IV. The Netziv: The 13 Middot Developed Over Time

Our final thinker brings history back into the equation. Rabbi Naftali Zvi Yehuda Berlin (1816-1893), the Netziv, was the *rosh yeshiva* of the great Volozhin Yeshiva in Lithuania in its final years. While he did not battle Reform directly, he was aware of the currents of *Haskalah*, or Enlightenment, sweeping Eastern Europe as much as the West. Even in Volozhin, students were attracted to "*maskilic*" literature that sought to overturn traditional conceptions of rabbinic authority. In his response to these challenges, the Netziv leans further into rabbinic authority to respond flexibly to changing circumstances.

In the introduction to his commentary on the Torah, *Ha'amek Davar*, the Netziv notes something curious: If there were 13 principles of interpretation given at Sinai, how come Hillel, a sage living many generations before Rabbi Yishmael, taught only seven? And how come Rabbi Eliezer ben Rabbi Yosi HaGelili, a later *tanna*, had 32? The Netziv explains by way of another curiosity. The Torah says, "You should keep (*ve-shamarta*) and do (*ve-asita*) these laws" (Devarim 16:12). But *ve-asita* can also mean "make," which is odd. Doesn't God make the laws? The Netziv writes as follows:

וכמו שיש כללים להוציא הלכות לאור ע"פ שבע המדות שדרש הלל וְאֵחָדָם הוֹסִיפוּ עֲלֵיהֶן תִּדְרֹשׁ וְשֵׁנָה יִגְמְדוּ. כִּי יֵשׁ לְהוֹצִיא כִלְלִים בְּפִי הַמִּקְרָא כִּמוֹ ל"ב כִלְלִים שֶׁל ר"א בְּנוֹ שֶׁל רִיב"ג

באגדה שהוציא מדיוק המקראות שמצא מקרא שא"א לפרש באופן אחר אלא ע"פ זה הכלל^א. כך יש להוסיף ולבאר בכל דור. אע"ג שלא נתפרש מקודם. וכ"ז בכלל מ"ע לשמור ולעשות

Just like there are methods to bring halachot to light based on Hillel's seven principles ... and after that the school of Rabbi Yishmael added to them and taught 13 principles ... so too one can uncover new principles for interpreting scripture like the 32 principles of Rabbi Eliezer the son of Rabbi Yosi Hagelili for Aggadah [non-halachic matters]. These [32] were uncovered from careful study of verses that could not be explained other than by that [new] principle. ... So too one can add and clarify in every generation, even though it was not explained before. And all of this is included in the positive commandment to guard (lishmor) and make (la-asot). (emphasis added)

To the Rambam and Ramban, the 13 Middot were from Sinai, making them the backbone of the Oral Torah and the source of Chazal's authority to make new law. The Netziv suggests, however, that even Chazal's interpretive principles grew over time as needed. The Netziv sees rabbinic authority more broadly than his predecessors: It is inherent in the divine imperative to guard and perform the Torah's commands. The Torah can only be preserved if we sometimes add not only new *halachot*, but also new methods for deriving *halachot*.

For the Netziv, unlike the Malbim and Rav Reines, there is no fixed body of rational, Enlightenment-friendly Sinaitic principles grounding the Oral Torah. (In fact, the Netziv once sent a letter to Rav Reines criticizing his attempt to systematize *halacha* using logic.) And in contrast to Rav Hirsch, the Netziv responds to Geiger not by cabining rabbinic creativity, but by enlarging it. The Oral Torah developed in history, and as the Ritva already hinted to in positing a multiplicity inherent in Sinaitic revelation, its development is dependent on the needs of the time. (See also the comments of the 15th-century Spanish philosopher Rabbi Yosef Albo in his *Sefer ha-Ikkarim* explaining that the Oral Torah must be amenable to expansion through *derash* "because the law of God can not be perfect so as to be adequate for all times, because the ever new details of human relations, their customs and their acts, are too numerous to be embraced in a book.")

The Netziv does not respond to Geiger explicitly, but we can construct the following argument for him. Chazal's interpretive principles may not be paragons of rationality; they are human, after all. But they developed over time because the rabbis inherited a living textual and oral tradition that needed to be interpreted.

One might argue that this is no answer at all, but an admission of the Oral Torah's messy development. Geiger would still counter that we should return to an essential, refined Judaism. Yet I wonder: Can we acknowledge the Oral Torah's humanness, even its imperfections, but also recognize that God played a role in how it came to be?

This is a question we will discuss in our final installment, which will explore the idea

of the Oral Torah as a partnership between God and the Jewish people that developed in response to dramatic changes that upended Jewish history.

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Recommended Reading



How Do We Know This? Midrash and the Fragmentation of Modern Judaism

Jay Harris

In this foundational study, Dr. Jay Harris, a Judaic studies professor at Harvard, provides a comprehensive English account of how traditional and non-traditional Jewish scholars, from Chazal through the 19th century, grappled with the issues surrounding the origins of the Oral Torah. Several chapters explore the thinkers discussed in this essay, from Geiger to the Netziv.

The History of Halacha, from the Torah to Today



This essay is the last in the author's five-part series for 18Forty's explorations of the origins of Judaism. The fourth can be found [here](#).

Tanach is the origin story of the Jewish People. It chronicles the Israelites' encounters with God, teaching the consequences of allegiance or disobedience to His commands. Epic showdowns pit prophets against kings: Natan the prophet confronts King David about his sin with Batsheva while Eliyahu bests the prophets of Baal assembled by King Achav. Tanach also teaches religious values and presents theological questions. We learn of Ruth and Naomi, devoted to each other in kindness, but also of Iyov, the man of faith who lost it all, and Yonah, who ran from God.

But missing from this origin story are central aspects of Jewish life today—the study of Torah and adherence to a detailed halachic system. Prophets call for repentance and justice for the widow and orphan, but never tell anyone to go learn more Torah. And no one in Tanach seems to be keeping halacha in a way that the modern Jew would recognize.

In the time of King Yoshiyahu, the people hadn't offered the Pesach sacrifice since the days of the *shoftim* (judges) who ruled Israel hundreds of years earlier (Melachim 23:22). No one seems to have worried about keeping kosher until Daniel in Nevuchadnezzar's palace during the Babylonian exile (Daniel 1:12). Worse, the prophet Yechezkel contradicts *halachot* in the Torah, implying that all *kohanim* can't marry widows (a prohibition limited to the *Kohen Gadol* in Vayikra) and that only *kohanim* can't eat torn animals, or *tereifot* (Yechezkel 44:22, 31).

At the commencement of the Second Temple period, Ezra tells the people to build and dwell in *sukkot*, something that the verse tells us had not been done since the days of Yehoshua, Moshe's direct successor. The entire holiday of Sukkot appears to have been forgotten for generations. But matters get stranger. The people travel to all the towns proclaiming the following (Nechemiah 8:15):

צְאוּ הָהָר וְהָבִיאוּ עֲלֵי-זֵית וְעֲלֵי-עֵץ שָׁמֹן, וְעֲלֵי הָדָס וְעֲלֵי תְּמָרִים וְעֲלֵי עֵץ עֵבֶת לַעֲשׂוֹת סֻכּוֹת, כַּכָּתוּב

“Go out to the mountains and bring leafy branches of olive trees, pine trees, myrtles (hadass), palms and [other] leafy trees (alei etz avot) to make booths, as it is written.”

Yes, you heard that right. The people build *sukkot* out of *hadassim* and *aravot* (called *anaf etz avot* in the Torah), which are among the Four Species. We wave the Four Species during *hallel*; we don't build *sukkot* from them. So where did the tradition from Sinai go wrong? Why are the people of Ezra's time doing something completely different than what we do today?

Of all the issues I've addressed in this series, several people have confided in me that the lack of halacha in early Judaism vexes them most. And that's understandable. When it comes to questions of how much was transmitted at Sinai and how to square the existence of *machloket* with an Oral Torah, we've seen that there is a lot of wiggle room. Some among Chazal said that only general principles were given to Moshe, and several Rishonim relied upon Chazal's authority to expand the Oral Torah as needed, which necessarily led to much debate about halacha. Last time we noted that the Netziv even suggested that the interpretive principles that ground the Oral Torah developed over time. But acknowledging Chazal's authority to interpret the Torah won't solve the basic historical conundrum: What happened to the Torah after it was given at Sinai? Halacha is nearly absent in Tanach and perhaps for some time beyond. So how can we draw a straight line between the era of our ancestors and our own?

In this final installment, I will sketch a path through this historical quagmire, guided by the writings of several 19th- and 20th-century thinkers. These thinkers, paying keen attention to the fundamental changes in the Jewish People's relationship to God when they were exiled from the land of Israel, provide a theology for acknowledging halachic evolution—perhaps even revolution—between Tanach and now. I can't guarantee this approach will work for everyone, but I hope it inspires further reflection.

Rav Kook: Halacha Was the Second Stage of God's Plan

Last time, we saw that the Netziv acknowledged that halachic reasoning developed over time. In his introduction to a work called *Ha'amek She'eila*, he further suggests that in the First Temple era, halachic rulings were based either on received

traditions or were ad hoc and prophetically inspired. In later periods, however, when divine inspiration and prophecy waned, halachic analysis became more systematic and rigorous.

Two essays by Rabbi Avraham Yitzchak ha-Kohen Kook (1865-1935), the great religious Zionist mystic and Ashkenazi Chief Rabbi of British Mandatory Palestine at the turn of the 20th century, take the Netziv's ideas further in a way that addresses our question. In *le-Mahalach ha-Ideot be-Yisrael*, Rav Kook writes that during the First Temple period, a Jew's religious experience was centered on the palpable presence of God and the fulfillment of national goals, not individual *mitzvah* performance. But after exile, matters changed:

כל אותה הפרטיות המעשית¹ של שמירת תורה ומצוות ודקדוקיהן הפרטיים² ולא היתה נכרת
ובולטת כלל בפני אורה הכללי הגדול של זוה³האידיאה האלוקית הישראלית⁴ כנר לפני אבוקה
וכשרגא בטיהרא⁵ היא החלה עתה בסלוקו של האור הכללי הגדול בימי הבית השני, להקבע
ולהתבלט באפיה הפרטי המיוחד. אז באה תחת האידיאה האלוקית בעצם רוממותה, ועל ידי
גניזתה של זוה⁶תולדתה האידיאה הדתית

All of those practical details of keeping Torah and mitzvot, and care about the particulars ... [that] were not recognizable [in the First Temple period] and did not protrude at all in the face of this great universal light—the Jewish Godly idea—like a lamp is outshone by a torch or a candle in broad daylight, began now, with the receding of the great universal light in the Second Temple period, to be established in their special individual character. When the Godly idea at its apex was hidden, the result was the religious idea.

Two pages earlier, he writes:

התכנסה האידיאה האלוקית בכל ימי הגלות בקן הקטן והדל, במקדש-מעט שבבתי-כנסיות ובתי-
מדרשות, בחיי הבית והמשפחה הטהורים, ברשמי- שמירת דת ותורה

The Godly idea in all the days of exile entered a small and low vessel, in the mikdash me'at of the synagogues and study halls, into home life and the purity of the family, in the confines of keeping the Torah and religion.

To Rav Kook, halacha's lack of centrality in Tanach is not a bug, but a feature. During the First Temple period, the whole nation was suffused with the refulgent light of prophecy and was close to God. There was little place for a detailed system of halacha like we have today in such a rarefied atmosphere, especially because people could receive guidance directly from the prophets. Rav Kook believes that halacha existed in its general principles; there's no reason to assume he would disagree with the approach of the Rambam and others that parts of the Oral Torah were revealed at Sinai and other parts developed later. Nevertheless, during the First Temple period, halacha's details were outshone "like a candle in broad daylight (*ke-shraga be-tihara*)." It's only when the Jews sinned and were exiled that God began to relate to them as individuals. With the light of prophecy dashed, each

person now had to approach God through Torah and *mitzvot*. Halacha thus became far more central.

In another essay, *Chacham Adif mi-Navi*, Rav Kook explains that the detailed halachic system that developed was more successful than prophetic admonitions in bringing the Jewish nation toward God:

הנבואה ראתה את זרם הקלקלה הגדולה של עבודה-זרה בישראל ומחתה נגדו בכל עז אלה המה המסתרים הצפוניים מעין כל נביא וחווה. המצות המעשיות כולן ופרטי הלכותיהן, בכל דיוקם הנמרץ והוצריכה עבודת הכללים להמסר לנביאים ועבודת הפרטים לחכמים. וחכם עדיף מנביא, מה שלא עשתה הנבואה, בכלי מלחמתה החוצבים להבות אש לבער מישראל עבודת אלילים ולשרש אחרי עיקרי ההשפלות היותר הגרועות של עשק וחמס עשו החכמים בהרחבת התורה, בהעמדת תלמידים הרבה ובשנון החקים הפרטיים ותולדותיהם במשך הזמן הרב נתגבר עסק החכמים על עסק הנביאים והנבואה נסתלקה

Prophecy beheld the perverse stream of idolatry in Israel and powerfully protested against it ... Hidden from the prophetic, visionary eye are all the practical mitzvot with the meticulous precision of their detailed laws. ... It was thus necessary to assign to the prophets the task of generalities, and to the Sages the task of particulars. "A sage is superior to a prophet" [Bava Batra 12a]; that which prophecy did not accomplish with its fiery arsenal—namely to purge Israel of idolatry and to uproot the worst degradations of oppression ... the Sages accomplished through the expansion of Torah, by raising up many students and by constant review of particular rules and their applications. ... In the course of time, the work of the Sages superseded the work of the prophets, and prophecy ceased.

In prophetic times, halacha was on the sidelines due to the people's high spiritual level and direct access to prophets. But when prophecy ended (notably, it had failed to root out idolatry), halacha with all its details became essential.

In these essays, Rav Kook acknowledges the gap between Tanach and our times. But he suggests that this gap is less troubling when we understand that God guides history. God ensured that the Oral Torah, with its attention to and expansion of halachic observance, began to flourish when its time was ripe. Prophecy had its day. Now it's halacha's turn.

Rav Tzadok: Oral Torah Was Our (Human) Response To Exile

Our second thinker, Rabbi Tzadok ha-Kohen Rabinowitz (1823-1900), was a Litvak turned Chasid who wrote several significant works and had a penchant for out-of-the-box ideas. His writings about the disconnect between Tanach and our times are similar to Rav Kook's and help us better understand the development of the Oral Torah as an unfolding human process guided from above.

Like Rav Kook, Rav Tzadok distinguishes the eras of prophecy and halacha. In his

book *Resisei Layla*, Rav Tzadok explains that when people could go to prophets for religious guidance, there was less need for the Oral Torah:

וזהו כל חכמת תושבע"פ להשיג האמת מצד האופל והעלם. וזהו בזמן ההעלם אבל בזמן שהיה השראת השכינה בישראל לא היו נכנסים להשגות של מחשכים כלל כי היה אז כל ההנהגה ע"פ נבואה דהיו נביאים כפלים כיוצאי מצרים

All the wisdom of Oral Torah is to apprehend truth from darkness and hiddenness. And that is in a time of hiddenness, but when the Divine Presence rested on Israel, they did not condescend to perception through darkness at all, for all guidance was through prophecy. For the [number of] prophets were twice that [of the Jews] who left Egypt.

Yet matters changed in exile:

וכן בגלות נשכח לגמרי התורה מהם בכלל האומה עד שמצאו כתוב לעשות סוכות ולא ידעו מזה. ואע"פ שלבבם נכון עם ה ביותר מ"מ עסק התורה היה שם בבחינת שינה והעלם ומהם והלאה שייך הקבלה פה אל פה

And so in exile the Torah was completely forgotten among the nation to the point where they saw it written to make Sukkot and they knew nothing of it [Nechemiah 8:17]. Even though their hearts were faithful to God, nonetheless the study of Torah was as though in hibernation. ... [30 pages later] And from then on the Oral Torah became relevant.

For Rav Tzadok, the flowering of the Oral Torah was historically contingent. It is also unequivocally a human endeavor. In *Kometz ha-Mincha* he writes:

ותושבע"פ היא מה שחדשו חכמי ישראל וכנ"י ע"י השגת לבם ומוחם מרצון השי"ת

Oral Torah is what the sages of Israel and the people of Israel innovated by their own perception of heart and mind of the will of God.

But if the Oral Torah is a human innovation, in what way does Rav Tzadok understand it as stemming from Sinai? In *Likkutei Ma'amarim*, he explains that the Oral Torah is latent in the Written Torah, waiting for the right generation to reveal it:

וכך התורה שבכתב היא כוללת בהעלם כל מיני חכמה וְ שכל מין חכמה דאמרי אינשי רק שהוא חכמה אמיתית ושפת אמת היא רמוזה בתורה אבל הכל ברמז והעלם רק אח"כ בהמשך הדורות הוא יוצא לאור ע"י חכמי דור ודור ודורשיו וע"י כל הנפשות פרטיות אשר כל אחד מחדש דבר חכמה אשר אליה הוכן בפרט. וזהו הנקרא תורה שבע"פ שהוא מה שחדשו סופרים ונובעים מליבות בני ישראל

The Written Torah includes in hidden form all types of wisdom ... [Thus,] all types of wisdom uttered by people—so long as they are true—are hinted at in the Torah,

but all are hidden in hints, and only in the course of the generations are they brought to light by the sages of each generation and its interpreters and through each individual soul which reveals the innovations in Torah that have been prepared for it. This is called “Oral Torah,” which is what the Sages innovate and which flows from the hearts of Israel.

Rav Tzadok believes that the Oral Torah is revealed progressively. In the time of Tanach, halacha was dormant. Over time, the Jewish people and their Sages brought the latent Oral Torah to light.

Like Rav Kook, Rav Tzadok sees a divine plan at work in the Oral Torah’s move from the sidelines to dominance. But more so than Rav Kook, Rav Tzadok stresses the role of human beings in revealing the Oral Torah through creative interpretation. Revelation is a divine-human partnership—not only top-down but also bottom-up, from the Jewish People back to God. Rav Tzadok thus links Chazal’s role as curators and creators of the Oral Torah with the notion that God intended the Oral Torah to be revealed piecemeal through history.

The Oral Torah In History

I believe that Rav Kook and Rav Tzadok’s theological account of the rise of the Oral Torah and the flowering of halachic Judaism provides a way to harmonize a traditional religious viewpoint with historical conclusions about the gradual development of rabbinic Judaism. It also provides a powerful religious message about the value of the Oral Torah.

One might put it in these terms: Exile and the end of prophecy ruptured and irrevocably altered the bond between God and the Jews. The Oral Torah was the attempt of a battered nation to reconstruct that relationship. In one of his essays on the Haggadah (see pp. 14-15 here), Rabbi Jonathan Sacks, of blessed memory, calls this shift “one of the great, if quiet, dramas of history.” It is after the fall of the First Temple that “the study of Torah replaced prophecy,” and “a succession of scribes, scholars, and sages began to reshape Israel from the people of the land to the people of the book.” Only through the Oral Torah did the Jewish people survive.

I find it particularly remarkable that in Rav Kook and Rav Tzadok’s vision, the revelation of the Oral Torah takes place within history, not outside of it. Recall that Geiger challenged the Oral Torah as a corruption of the Written Torah and the ethical monotheism of the prophets. Some Orthodox defenders responded by rejecting history’s role in the Oral Torah’s development. Rav Hirsch doubled down on its Sinaitic pedigree. The Malbim tried to ground the Oral Torah in eternal principles of language. Rav Kook and Rav Tzadok, on the other hand, acknowledge, like Geiger, that the Oral Torah emerged in history. Yet they suggest that history is not corrupting, but sanctifying. It is the arena upon which the Jewish people turned over a new leaf in their relationship with God.

Rav Hutner: God Wants Our Imperfect Torah

Rav Kook and Rav Tzadok help us explain the disconnect between the prophetic days of Tanach and our own more halachically conscious age. We could stop here, but there's one lingering issue to address.

The Oral Torah often seems quite messy. It developed in a quintessentially human way—through arguments, splitting hairs, and the making of books without end. Halachic literature is littered with rejected opinions, customs that never took hold, and stringencies we might wish never caught on. Unlike an orderly top-down revelation, the bottom-up revelation of the Oral Torah is full of fractures, zigzags, and bends in the road.

This messiness can be troublesome because it contradicts how we might imagine a divine Torah should be. Geiger's questions about irrationality still loom large. But I want to leave you with the following thought: Perhaps there is value to an imperfect and ever-expanding Oral Torah.

In an essay about Chanukah in *Pachad Yitzchak*, Rabbi Yitzchak Hutner (1906-1980), the *rosh yeshiva* in Yeshiva Rabbi Chaim Berlin in New York who was a student of Rav Kook and was influenced by Rav Tzadok, writes the following:

פעמים שביטולה של תורה זה הוא קיומה שנאמר אשר שברת יישר כוחך ששברת ^א למדים אנו מכאן חידוש נפלא כי אפשר לה לתורה שתתרבה על ידי שכחת התורה, עד כי באופן זה יתכן לקבל יישר כוח עבור השכחת התורה. ופוק חזי מה שאמרו חכמים כי שלש מאות הלכות נשתכחו בימי אבלו של משה והחזירו עתניאל בן קנז בפלפלו. והרי דברי תורה הללו של פלפול החזרת ההלכות, הם הם דברי תורה שנתרבו רק על ידי שכחת התורה. ולא עוד אלא שכל ענין המחלוקת בהלכה אינו אלא מצד שכחת התורה, ואף על פי כן הלא כך אמרו חכמים ^ב אלו ואלו דברי אלוקים חיים. ונמצא דכל חילוקי דעות וחילופי שיטות הם הגדלת התורה והאדרתה הנוולדות דוקא בכוחה של שכחת התורה

Sometimes one upholds the Torah by nullifying it—as it says: “[the luchot] that you broke” [Exodus 34:1], [and as the Gemara comments]: “Yasher koach for breaking them.” ... We learn from here an astounding thing—that Torah can grow when it is forgotten, until it is possible in such a case to get a yasher koach for forgetting Torah. And go and see what the Sages said: 300 halachot were forgotten during the mourning period for Moshe and Otniel ben Kenaz returned them through his analysis [Temurah 16a]. And behold these Torah ideas that returned the halachot, they are words of Torah that grew only through forgetting the Torah. And what's more, the entire notion of debate in halacha only came about through forgetting Torah, and even so the Sages say: ... “These and these are the words of the Living God”; and we find that all differences of opinion are expansions and glorifications of Torah that came to be through the power of forgetting Torah.

Rav Hutner suggests that forgetting Torah is not a tragedy. To the contrary, it makes the Torah stronger, because in an attempt to recapture what was lost, there's

now more Torah.

It's true that as First Temple Judaism evaporated, Chazal reconstructed the religion around a different axis, teasing latent ideas out of the Written Torah, leading to reams of *machloket* and uncertainty. But if we apply Rav Hutner's framework, maybe that's not a bad thing. God desires the back-and-forth of our debate, the glorious dialogue that attempts to catch sparks of the Divine.

So even if we can't draw a straight line between Sinai and the here and now, perhaps we can celebrate the crooked path by which we have come to God. For God wants our Torah—which is just as much God's Torah—as fractured, imperfect, and human as it may be.

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Recommended Reading:

“R. Zadok HaKohen on the History of Halakha”

Yaakov Elman

In this article from the journal *Tradition*, which is available online for free, Dr. Elman, a longtime professor at Yeshiva University before his passing, explores Rav Tzadok's novel view regarding the origins of the Oral Torah with citations to many of his works. He closes with a short discussion of Rav Hutner as well.