

THE SYSTEM OF HALACHAH PART VI

Rabbinic Authority

We have already maintained that passing judgment on the accuracy of the Oral Torah is impossible without knowing how it was transmitted, which we addressed in the previous two shiurim in this series. Equally important is understanding the role of the rabbis who carried this tradition throughout the generations. In this class we will therefore focus on the authority and reliability of the bearers of the Oral Torah – the Sages. The Sages of Israel throughout Jewish history assumed three parallel responsibilities. They were at once 1) the carriers of the explanations of Torah laws, 2) interpreters of the Torah, and 3) legislators of rabbinical law. The Torah authorizes the Sages with a mandate to assume these roles. In this class we will explain how the Torah envisioned the role of the Sages and how that has played out practically in Jewish history.

This class will address the following questions:

- How reliable were the Sages in transmitting the Oral Torah accurately? What were their qualifications?
- What empowered the Sages to interpret and apply the laws of the Torah the way they did?
- By what right did the Sages create new legislation? Why are rabbinical laws binding?

Class Outline:

- Introduction. The Three Hats of Rabbinic Attire

- Section I. The Qualifications of the Sages
 - Part A. Wisdom
 - Part B. Integrity
 - Part C. Character Refinement
 - Part D. Divine Inspiration

- Section II. Sages as the Carriers of the Explanations of Torah Law
 - Part A. The Mandate to Carry Explanations of Torah Law
 - Part B. Received Explanations of Torah Law
 - Part C. Halachah leMoshe miSinai (Laws Transmitted Orally to Moshe at Sinai)

- Section III. The Sages as Interpreters of the Torah to Establish Laws
 - Part A. The Mandate to Interpret the Torah to Establish Law
 - Part B. The Torah Left Room for Innovation
 - Part C. The Torah is No Longer in Heaven
 - Part D. Principles of Exegesis and Talmudic Reasoning
 - Part E. Examples of Laws Based on Exegesis and Talmudic Reasoning

- Section IV. The Sages as Legislators of Rabbinic Law and Decrees
 - Part A. The Mandate to Legislate Rabbinic Law and Decrees
 - Part B. Types of Rabbinic Law and Decrees
 - Part C. The Parameters of the Sages' Authority over Torah Law

INTRODUCTION. THE THREE HATS OF RABBINIC ATTIRE

1. Rabbi Avraham Edelstein, *The Oral Law*, pg. 68, www.nerleef.com/books/orallaw.pdf – The interpretation of the rabbis of any generation becomes the Torah which God commanded at Sinai.

The Ramban (Commentary on Sefer HaMitzvot, Shoresh 1) stresses that there is no difference between laws determined by our Sages and those which were received by Moshe (Moses) at Har Sinai (Mount Sinai), for the Torah was given in such a way that it required the Sages to interpret it. In fact, most of the laws in the Torah cannot be understood from the words of the Torah alone. Without this mandate, the Torah would be a mysterious document for us. Thus, the interpretation of the Sages of any generation becomes the Torah which God commanded us to keep at Mount Sinai (Drashot HaRan 11). Even if by the highest standards of our own human logic they appear to be wrong, as wrong as confusing left with right, God testifies through this mitzvah that this is not so (Devarim/Deuteronomy 17-11). For, if we were all left to make our own interpretations of the Torah, a thousand individual religions would bloom, and none would be Judaism.

The responsibility of rabbis throughout Jewish history is ultimately the transmission and application of the Oral Torah. In the third Morasha class on the System of Halachah, we discussed Rambam's five categories of the Oral Torah: (1) explanations of the written text of the Torah received and transmitted by Moshe, (2) Halachah leMoshe miSinai – laws transmitted orally by Moshe that have no basis in the Written Torah, (3) laws derived through the rules of exegesis or Talmudic reasoning, (4) *gezeirot* (decrees) enacted by the Prophets and Sages to safeguard Torah laws, and (5) legally binding *minhagim* (customs) and *takanot* (institutions) for the benefit of the Jewish people.

An alternative way to classify this content of the Oral Torah is: (1) laws taught by Moshe and transmitted through the generations (i.e., his explanations of the Written Torah and Halachah leMoshe miSinai), (2) laws derived from the Torah through the rules of Biblical exegesis, and (3) rabbinical legislation (*gezeirot* and *takanot*). Hence, the Sages of Israel throughout Jewish history really wore three hats. They were at once 1) the carriers of Torah Law, 2) interpreters of the Torah, and 3) legislators of rabbinical law. The Torah authorizes the Sages with a mandate to assume these roles. In this class we will explain how the Torah envisioned the role of the Sages and how that has played out practically in Jewish history.

Section I describes the qualities of the Sages and rabbis that qualify them to be the carriers, interpreters and legislators of Jewish law. Section II addresses the types of Torah laws the Sages transmitted from Moshe Rabeinu (our teacher) since Har Sinai. Section III describes how the rabbis are empowered to establish laws by interpreting the Torah. Section IV explores the ability of the rabbis to legislate new rabbinic laws and institutions.

SECTION I. THE QUALIFICATIONS OF THE SAGES

In assessing the reliability of the Sages to faithfully transmit the legal traditions passed down to them from previous generations on to future generations, one needs to examine more than just the authenticity of the chain of transmission (as we did in the previous class). A chain is only as strong as its weakest link, and therefore we need to examine the transmitters themselves. Who were the Sages that transmitted the Oral Torah?

The term "Chazal" is an acronym for "**Ch**achameinu **Z**ichronam **L**ivracha" – Our Sages of Blessed Memory.

This epitaph is used mainly regarding those Sages whose teachings comprise the works of the Oral Torah, namely the Mishnah, Talmud and Midrashim. These Sages lived from the beginning of the Second Temple until the publication of the Talmud, around 500 C.E. (coinciding with the end of the formal institution of *Semicha* [rabbinic ordination that had started from Moshe Rabeinu]). Below we identify four major characteristics exemplified by Chazal and expected of every master of the Oral Torah: wisdom, integrity, character refinement, and Divine Inspiration. It is important to point out that the ability to serve as a Sage did not end in 500 C.E.; in every generation there are rabbis who possess the attributes below and are empowered to issue Jewish law.

1. **Rabbeinu Nissim ben Yaakov, Derashot HaRan #11 – Whatever the Sages of each generation determine is God's will.**

Since God has authorized the Sages with decision-making power, whatever they decide is God's command regarding that matter. And it is on this basis that we are confident that in following the laws of the Torah we are observing God's will, so long as we rely on what the leading Sages of the generation have decided.

שאחר שהשם יתברך מסר ההכרעה אליהם, מה שיסכימו הם, הוא מה שצוה ה' בדבר ההוא. ועל זה אנו בטוחים במצות התורה ובמשפטיה, שהם מקיימים רצון השם יתברך בהם, כל זמן שנסמוך על מה שהסכימו גדולי הדור.

PART A. WISDOM

1. **Devarim 33:10 – Sages teach Torah to the public.**

They shall teach Your ordinances to Yaakov (Jacob), and Your Torah to Israel...

יורו משפטיך יַעֲקֹב וְתוֹרַתְךָ לְיִשְׂרָאֵל...

2. **Rema, Shulchan Aruch Yoreh Deah 243:2 – One must have breadth and depth of Torah knowledge to have the status of a true Torah scholar.**

Only someone who is deemed a Torah scholar (*talmid chacham*) according to his generation's standards, who is capable of debating a Torah subject, who understands most of the Talmud and its commentaries and the halachic decisions derived from them, someone whose sole occupation is Torah study [has the status of a *talmid chacham*].

... רק שהוא מוחזק לת"ח בדורו שיודע לישא וליתן בתורה, ומבין מדעתו ברוב מקומות התלמוד ופירושו ובפסקי הגאונים, ותורתו אומנותו.

3. **Sefer Chassidim – Judges had to be Torah scholars par excellence.**

A Torah scholar who cannot answer questions on any Torah subject that he might be asked is not fit to serve on the Sanhedrin.

תלמיד חכם שאינו יודע להשיב בכל מקום שישאלוהו אינו ראוי לישב בסנהדרין.

4. **Makkot 22b – The Torah scholar is an embodiment of the Torah itself.**

Rava observed: How uninformed are those who stand up to honor a Torah scroll but do not stand up in honor of a great scholar.

אמר רבא: כמה טפשאי שאר אינשי דקיימי מקמי ספר תורה ולא קיימי מקמי גברא רבה.

5. Eiruvין 13b – An example of Chazal's intellectual prowess.

Rabbi Abahu, citing Rabbi Yochanan, stated: Rabbi Meir had a disciple named Sumchos. For every example of something ritually impure, he provided forty-eight reasons for its being impure; for every example of something ritually pure, he provided forty-eight reasons for its being pure.

A *Bereita* (a part of the Oral law) states: There was a veteran scholar at Yavne who came up with one-hundred-fifty proofs to rule that a [dead] creeping animal is a pure item [were it not that the Torah states overtly that it is impure].

אמר רבי אבהו אמר רבי יוחנן: תלמיד היה לו לרבי מאיר וסומכוס שמו, שהיה אומר על כל דבר ודבר של טומאה ארבעים ושמונה טעמי טומאה, ועל כל דבר ודבר של טהרה ארבעים ושמונה טעמי טהרה.

תנא: תלמיד ותיק היה ביבנה שהיה מטהר את השרץ במאה וחמשים טעמים.

6. Sukkah 28a – Chazal had an extremely broad range of knowledge not only of Torah but of all matters of the spiritual world.

Hillel the Elder had eighty disciples, thirty of whom were worthy of the Divine Spirit resting upon them as it had rested on Moshe Rabeinu (Moses our teacher) and thirty who were worthy of making the sun stand still as did Joshua the son of Nun. Of the twenty “mediocre” students, the greatest was Yonatan ben Uziel and the least of them was Rabban Yochanan ben Zakkai. It is said of Rabban Yochanan ben Zakkai that he did not omit from his studies any passage of the Written Torah, the Mishnah, the Gemara, the Halachot, the Aggadot (philosophic part of the Oral Law), the details of Torah and of the Sages, all examples of *a fortiori*, all examples of *gezeirot shaava* (a legal rule for determining Halachah), astronomy, interpretations based on the letters' numerical values... great matters and small matters. Great matters refer to the makeup of the Heavenly Chariot (a deep mystical concept); small matters refer to the discussions debated by Abaye and Rava.

שמונים תלמידים היו לו להלל הזקן, שלשים מהם ראויים שתשרה עליהן שכינה כמושה רבינו, ושלשים מהן ראויים שתעמוד להם חמה כיהושע בן נון, עשרים בינונים. גדול שבכולן - יונתן בן עוזיאל, קטן שבכולן - רבן יוחנן בן זכאי. אמרו עליו על רבן יוחנן בן זכאי שלא הניח מקרא ומשנה, גמרא, הלכות ואגדות, דקדוקי תורה ודקדוקי סופרים, קלים וחמורים וגזרות שוות, תקופות וגימטריאות..., דבר גדול ודבר קטן. דבר גדול - מעשה מרכבה, דבר קטן - הויות דאביי ורבא.

PART B. INTEGRITY

Scholarly erudition alone is not enough to qualify a learned person as a Talmid Chacham. He must also fulfill the practices of the Torah and perfect his moral fiber according to the Torah's highest standards.

1. Sifri, Devarim 1:13 – A Torah scholar must fulfill the Torah that he learns.

Set forth for yourselves men who are wise and possess understanding... Who is a wise man? Someone who fulfills the laws that he studies.

הבו לכם אנשים חכמים ונבונים - איזהו חכם... המקיים תלמודו.

2. **Yoma 72b – A Torah scholar must be the same inside and out.**

Any Torah scholar whose inner feelings do not match his external appearance is not a genuine Torah scholar.

כל תלמיד חכם שאין תוכו כבדו - אינו תלמיד חכם.

3. **Shulchan Aruch, Yoreh Deah 243:3 – A Torah scholar must observe the Torah meticulously.**

A Torah scholar who belittles mitzvah observance and lacks the fear of Heaven is equal in stature to the most ignorant member of the community.

ותלמיד חכם המזלזל במצוות ואין בו יראת שמים, הרי הוא כקל שבצבור.

4. **Bava Kama 41b – The Sages of the Talmud had pure intellectual honesty.**

Shimon HaAmsuni (some say it was Nechemyah HaAmsuni) explained how each indicative (אֵת) “et” found in the Torah comes to add to the subject of the sentence. When he reached the verse, “Thou shall fear (אֵת-et) God your Master,” he ceased this method of explanation [since it is forbidden to fear any power other than God]. His disciples said to him: Rabbi, what will become of all the explanations you have given for the term (אֵת) “et” up to now? He said to them: Just as I have received reward for giving these explanations, I have received reward for retracting them.

שמעון העמסוני, ואמרי לה נחמיה העמסוני היה דורש כל אתין שבתורה, כיון שהגיע לאת ה' אלהיך תירא (דברים ו') פירש; אמרו לו תלמידיו: רבי, כל אתין שדרשת מה תהא עליהן? אמר להם: כשם שקבלתי שכר על הדרישה, כך קבלתי שכר על הפרישה.

To appreciate the magnitude of this intellectual honesty, consider the fact that the word “et” appears 3597 times in the Torah! Meaning, even though this Rabbi's explanation worked 3596 times, he admitted his lack of accuracy based upon one exception.

PART C. CHARACTER REFINEMENT

Integrity is just one of the character traits a Torah scholar must perfect. In reality, he must possess all-around character refinement, including humility and fear of Heaven.

1. **Rambam, Hilchot De'ot 5:1, 6, 7 – A Torah scholar must conduct himself with the utmost refinement.**

A Torah Sage must not be gluttonous. Rather, he should eat only nourishing foods that will maintain his body's health. Even these foods should be eaten sparingly without gorging himself... Torah Sages conduct themselves with exceptional modesty. They do not act in a self-demeaning manner, nor do they bare their heads or their bodies...

תלמיד חכם לא יהיה גרגרן אלא אוכל מאכל הראוי להברות גופו ולא יאכל ממנו אכילה גסה... צניעות גדולה נוהגים תלמידי חכמים בעצמן לא יתבזו ולא יתגלו ראשן ולא גופן...

A Torah Sage should not shout or shriek while speaking, as cattle or wild beasts do, nor should he raise his voice more than necessary. He should speak in a quiet tone to all people...

תלמיד חכם לא יהא צועק וצווח בשעת דבורו כבהמות וחיות ולא יגביה קולו ביותר אלא דבורו בנחת עם כל הבריות.

2. **Rambam, Hilchot Sanhedrin 2:7 – Torah scholars who served on the Sanhedrin (Supreme Court) were held to the highest moral standards.**

Each [judge] had to possess these seven traits: wisdom, humility, fear of Heaven, contempt for money, a love of truth, love for all people and a good reputation.

צריך שיהא בכל אחד מהן שבעה דברים ואלו הן חכמה וענוה ויראה ושנאת ממון ואהבת האמת ואהבת הבריות להן ובעלי שם טוב.

The Ramban writes (Shemot/Exodus 18:21) that just as Moshe Rabeinu was humble, so too every judge needs to be humble. Yitro instructed Moshe Rabeinu to choose judges who possess fear of Heaven (ibid.). Judaism teaches that wisdom goes hand-in-hand with character refinement. This is one of the reasons that the wisdom of the Oral Torah was not meant to be taught in written form – God entrusted this wisdom only with those of high moral caliber.

3. **Midrash Tanchuma, Vayeira 5 – God reveals His secrets only to the righteous.**

Rabbi Yehuda bar Shalom said: Moshe requested that the Mishnah be written as well, but God foresaw that the non-Jews would translate the Written Torah into Greek and claim that they were equal to the people of Yisrael. God said to Moshe, "If I will write for you most of my Torah then they (the Jewish people) will be like outsiders" (Hosea 8:12). Why so? Because the Mishnah is one of God's secrets, and God only reveals His secrets to the righteous, as it says, "God's secrets are meant for those who fear Him" (Tehillim/Psalms 25:14).

אמר ר' יהודה בר שלום בקש משה שתהא המשנה אף היא בכתב, וצפה הקב"ה על שעתידין אומות העולם לתרגם את התורה ולקרות אותה יונית, והן אומרים אף אנו ישראל, א"ל הקב"ה למשה אכתוב לך רובי תורתך (הושע ח יב) ואם כן כמו זר נחשבו (שם), וכל כך למד, אלא שהמשנה היא מסטורין של הקב"ה, ואין הקב"ה מגלה מסטורין שלו אלא לצדיקים, שנאמר סוד ה' ליראיו (תהלים כה יד).

4. **Chullin 133a – Torah may be taught only to a worthy student.**

Rabbi Zeira said, citing Rav, "Whoever teaches an unworthy disciple is like someone who throws a stone at Markulis [an idol]."

אמר רבי זירא אמר רב כל השונה לתלמיד שאינו הגון כזורק אבן למרקוליס.

The prescribed method of worshiping the Markulis idol was to throw stones at it, which may seem to be a display of disrespect for the idol. Nonetheless, one who does so is guilty of idol worship. In the same way, a person might think that he is accomplishing something worthwhile by teaching Torah to the unworthy disciple, but in reality he is damaging the chain of the tradition.

The prerequisite of character refinement as a companion to Torah knowledge explains a tragic event in Jewish history.

5. **Rabbi Zelig Epstein, Jewish Observer, October 1990 – The case of Rabbi Akiva's students shows the high ethical standards of the bearers of tradition.**

It is essential that the Tradition be not compromised in any way through the distorting intrusion of personal weaknesses. A dramatic example of this is the death of the 24,000 students of Rabbi Akiva during the Sefirat Ha'Omer period, when Divine justice was incurred because "they did not deal respectfully with one another." In the wake of their death, the world was left with a void due to the loss of so much Torah knowledge. (Rabbi Akiva subsequently taught five new students, who then served as the primary vehicle for transmitting the Tradition to the next generation.)...[Surely] the Torah that these 24,000 scholars had mastered should have been enough...to earn these men a reprieve. But the contrary is the case, according to the commentaries. The men's lack of perfection in character traits disqualified them as transmitters of the Tradition. It was for this very reason that they died.

PART D. DIVINE INSPIRATION

There is no natural equation that could produce a true Torah scholar. Beyond wisdom, integrity, and impeccable character, Chazal possessed another quality that was more than the sum of its parts – Divine Inspiration.

1. **Bava Batra 12a – The Sages possess a form of prophecy.**

From the day the Temple was destroyed, prophecy was taken from the Prophets and given to the Sages.

מיום שחרב בית המקדש נטלה נבואה מן הנביאים וניתנה לחכמים.

But if the Sages possess prophecy, does that not then make them prophets in their own right? What does it mean that prophecy was taken from the Prophets? We must realize, however, that there are two kinds of prophecy:

2. **Ramban, Commentary to Bava Batra 12a – The prophecy of Sages is a subconscious, intellectual revelation of Divine truth.**

Since the day the Temple was destroyed, whereas prophecy was taken from the Prophets, it was not taken from the Sages...The Prophets' prophecy, which consisted of visions and Divine communication, ceased to be available. But the "prophecy" of Sages, which is attained through their wisdom, was not taken away. Rather, they know the truth by virtue of the Divine Inspiration within themselves.

מיום שחרב בית המקדש אע"פ שנטלה נבואה מן הנביאים מן החכמים לא נטלה... הכי קאמר אע"פ שנטלו נבואת הנביאים שהוא המראה והחזון נבואת החכמים שהיא דרך החכמה לא נטלה אלא יודעים האמת ברוח הקודש שבקרבם.

3. **Rabbi Simcha Wasserman, Glosses on "The Oral Torah" by H. Chaim Schimmel, pg. 19 – Divine Inspiration helped the Sages reach the truth through their own intellectual and spiritual efforts.**

It is not that the Sages issued legal rulings on the basis of Divine Inspiration. Rather, it was by virtue of their toil in Torah and all the manners of discipline by which Torah is acquired that they merited the Divine Inspiration to be able arrive at sound halachic rulings and align themselves with God's Will.

4. **Rabbi Avraham Edelstein, The Oral Law, pg. 67, www.nerleef.com/books/orallaw.pdf – Divine Inspiration continues with each generation until today.**

Rav Wolbe (Aley Shur Vol. I, pg. 75) writes that we have an unbroken chain of *Ruach HaKodesh* (Divine Inspiration) in all the Sages of each generation to this very day. Although it is hard to know who has or does not have this quality, it is apparent that some people who have mastered Torah were nevertheless not integrated enough to receive *Ruach HaKodesh* and therefore were not accepted by the nation as a Sage. In combining all of these qualities [discussed above], we portray a depth of insight and wisdom so beautiful and fitting of the Sages of the Jewish Nation. (See also Michtav M'Eliyahu Volume I, p. 75).

KEY THEMES OF SECTION I.

- ⌘ The first function of Sages of the Talmud was that of faithful transmitters of the Oral Torah. In this role they not only had to be exemplars of scholastic achievement but also were required to embody all the other qualities expected of Torah scholars throughout the generations.
- ⌘ The Sages needed not only to be learned, but also to practice what they preached, being fully committed to the observance of every detail of the Written and Oral Torah.
- ⌘ To qualify as bearers of the tradition, they also had to have refined character traits.
- ⌘ A true Torah scholar merits Divine Inspiration by virtue of his scholarship, devotion to mitzvah observance and character refinement.

SECTION II. SAGES AS THE CARRIERS OF EXPLANATIONS OF TORAH LAWS

The first hat to be donned by the Sages was that of carriers of the Oral Torah explaining certain portions of the written Torah law. They transmitted 1) the explanations of Biblical passages as well as 2) laws that had been taught to Moshe by God without any textual basis in the Torah (Halachah leMoshe miSinai). From where did they derive this ability?

PART A. THE MANDATE TO CARRY EXPLANATIONS OF TORAH LAW

The basis for the Sages' authority to formulate laws and for the Jewish people to accept and respect that authority is the following:

1. **Devarim 17:8-11 – The Torah empowers the Sages with the authority to rule on matters of Torah law and commands us to obey their decisions.**

If you are uncertain of the Halachah regarding the purity of menstrual blood, monetary issues, or leprosy marks, and the local courts dispute the correct decision, you must go up to the place that God your Master will choose. You must approach the Levitical priests and the judge who presides at

כי יפלא ממך דבר למשפט בין דם לדם בין דין לדין
ובין נגע לנגע דברי ריבות בשעריך וקמת ועלית אל
המקום אשר יבחר ד' אלוֹקֶיךָ בו. ובאת אל הכהנים
הלוֹים ואל השופט אשר יהיה בימים ההם ודרשת
והגידו לך את דבר המשפט. ועשית על פי הדבר אשר

that time. You shall ask, and they will tell you the correct halachah. You must act in accordance with the ruling that they tell you from the place that God shall choose; you must take care to follow their every instruction. You must follow the directives that they teach you; you must proceed according to the rules that they tell you. Do not stray right or left from whatever they tell you.

יגידו לך מן המקום ההוא אשר יבחר ד' ושמרת לעשות ככל אשר יורוך. על פי התורה אשר יורוך ועל המשפט אשר יאמרו לך תעשה לא תסור מן הדבר אשר יגידו לך ימין ושמאל.

The Rambam below codifies rabbinic authority for all the categories which we address in this class: 1) carriers of the explanations of Torah laws, 2) interpreters of the Torah, and 3) legislators of rabbinical law:

2. **Rambam, Hilchot Mamrim 1:2 – The Torah empowers the Sages as the carriers and interpreters of the Written Law and as establishers of rabbinic law. Likewise, the Torah commands the Jewish people to obey their authority.**

Whoever does not listen to the Sage's authority transgresses the negative commandment of "Do not stray right or left from the thing that they tell you" [Devarim 17:11]. This responsibility applies to 1) those laws that they heard from previous Sages, which constitute the Oral Torah, 2) those laws they derived by using the laws of Torah exegesis and interpretation, and 3) those laws that the rabbis instituted to safeguard the Torah for whatever purpose; this included decrees, institutions and customs. There is a positive commandment to listen to the rabbis for each category, as well as a negative commandment for disregarding any of these categories.

Therefore, the Torah writes, "You must follow the instruction that they teach you"; [ibid.] – these are the decrees, institutions, and customs that the rabbis instruct the people in order to strengthen Judaism and maintain the world.

[And therefore the Torah writes,] "According to the statutes that they say" [ibid.] – these are the laws that they learn from one of the rules of Torah exegesis and interpretation, [and therefore the Torah writes,] "[Do not swerve] from whatever they will tell you" [ibid.] – these are the laws that have been transmitted from Sage to Sage.

כל מי שאינו עושה כהוראתן עובר בלא תעשה שנאמר לא תסור מכל הדבר אשר יגידו לך ימין ושמאל (דברים יז:יא)... אחד דברים שלמדו אותן מפי השמועה והם תורה שבעל פה, ואחד דברים שלמדום מפי דעתם באחת מן המדות שהתורה נדרשת בהן ונראה בעיניהם שדבר זה כך הוא, ואחד דברים שעשאו סייג לתורה ולפי מה שהשעה צריכה והן הגזירות והתקנות והמנהגות, כל אחד ואחד מאלו השלשה דברים מצות עשה לשמוע להן, והעובר על כל אחד מהן עובר בלא תעשה.

הרי הוא אומר "על פי התורה אשר יורוך" (דברים שם) אלו התקנות והגזירות והמנהגות שיורו בהם לרבים כדי לחזק הדת ולתקן העולם.

"ועל המשפט אשר יאמרו" (דברים שם) אלו דברים שילמדו אותן מן הדין באחת מן המדות שהתורה נדרשת בהן, ("מכלל") מן הדבר אשר יגידו לך" (דברים שם) זו הקבלה שקבלו איש מפי איש.

The rabbinic mandate to carry the explanations of Torah law is derived from, "מן הדבר אשר יגידו לך", "From the thing that they tell you" [Devarim 17:11]. The mandates for interpreting the Torah and legislating rabbinic laws will be discussed below in Sections III and IV, respectively. The overarching responsibility for the Jewish

people to listen to the rabbis in regard to all three categories is grounded in **לא תסור מכל הדבר אשר יגידו לך ימין ושמאל**, “Do not stray right or left from whatever they tell you” [ibid.].

PART B. RECEIVED EXPLANATIONS OF TORAH LAW

The Sages transmitted the accepted understanding of the written Torah (*Peirush ha-Mekubal*). A famous verse in the Torah relates to what is seemingly harsh retribution. Is that in fact the proper understanding of the verse?

1. **Shemot 21:24 – The language of the Torah implies corporal retribution for damages.**

An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot.

עין תחת עין שן תחת שן יד תחת יד רגל תחת רגל.

2. **Talmud Bavli, Bava Kamma 83b – The Talmud tells us that “an eye for an eye” means monetary compensation.**

Mishnah: One who damages his fellow is obligated to pay for five types of damages: harm, pain, medical treatment, worker's compensation, and embarrassment.

Talmud: Why [does the damager have to pay]? The Torah says, “an eye for an eye.” Perhaps it really means an eye? No, do not even let such a thought enter your mind... “An eye for an eye” means monetary restitution.

מתני': החובל בחבירו - חייב עליו מושום חמשה דברים: בנזק, בצער, בריפוי, בשבת, ובושת.

גמ'. אמאי? עין תחת עין אמר רחמנא, אימא: עין ממוש! לא סלקא דעתך... עין תחת עין – ממוון.

The Talmud then goes on to cite many textual and logical proofs that “an eye for an eye” is not literal but refers to the monetary value of the damage caused. In stating this understanding of the verse, the Sages were not making Judaism more progressive by offering new, non-literal interpretations of the Torah. No Jewish court in history had ever poked someone's eyes out as punishment for blinding someone else. Rather, the Sages were explaining how the verse had always been understood, contrary to its literal connotation.

PART C. HALACHAH LEMOSHE MISINAI (LAWS TRANSMITTED ORALLY TO MOSHE AT SINAI)

A number of laws were taught to Moshe by God that have no source within the text of the Written Torah. These are referred to as “Laws to Moshe at Sinai” (*Halachah leMoshe miSinai*). These laws were carefully preserved from generation to generation, and for this reason the Sages of the Talmud never disputed them.

1. **Rambam, Introduction to Commentary on the Mishnah – The Oral Torah contains legal information that has no reference in the Written Torah.**

“Halachah leMoshe miSinai,” laws which have no [scriptural] source... These halachot remain uncontested.

הם הדינים שבזהם אמרו שהם הלכה למשה מסיני, ואין עליהם ראיה... וגם זה ממה שאין בו מחלוקת.

A prime example of this category of halachah is the description of how a Torah scroll is made; the type of parchment, the type of ink and other details pertaining to Torah scrolls were transmitted orally from the

time of Moshe. There is no reference to these laws in the text of the Written Torah (see Talmud Yerushalmi, Megillah, Perek I, Halachah 9).

KEY THEMES OF SECTION II

- ⌘ The Sages transmitted both the accepted understanding of the written Torah (*Peirush ha-Mekubal*) and laws taught to Moshe that have no scriptural basis (*Halachah leMoshe miSinai*).
- ⌘ An example of an accepted understanding of the Torah is the verse, “An eye for an eye” referring to monetary compensation for personal injury.
- ⌘ Examples of laws that were transmitted orally from the time of Moshe that have no scriptural basis include the type of parchment and ink required to write Torah scrolls.

SECTION III. THE SAGES AS INTERPRETERS OF THE TORAH TO ESTABLISH LAW

As demonstrated in the System of Halachah classes III and IV, without an oral tradition to give a practical interpretation of the Written Torah, it would be a closed book. The Sages not only transmitted the authentic explanation of the Torah, they also applied Talmudic reasoning and interpretive tools to derive laws from the Torah. Such interpretations were often needed in applying Biblical Law to new situations as they arose. This was the job of the *Beit Din HaGadol*, the Halachic Supreme Court.

Judaism maintains that the Sages, as keepers of the tradition, are empowered to determine the intent and application of the Written Law. In a similar fashion, qualified Rabbis today interpret and apply the codes of Jewish law and their commentaries to modern situations.

In this section we will investigate how and why this system of interpretation and application works. We will discover that it is not at all a departure from God's Will; on the contrary, it is the most profound expression of His Will in giving us the Torah.

PART A. THE MANDATE TO INTERPRET THE TORAH TO ESTABLISH LAW

The entire concept of an Oral Torah is a philosophic enigma. The Torah is an expression of God's infinite intellect. How is it possible for mankind to fathom and interpret the word of God as He meant it? Who are we to determine the meaning of the Torah? What gives us the right to decide how to apply it to our lives?

As we saw above, Jewish Sages throughout the generations are a trustworthy group. They possess scholarship, integrity, character refinement, and Divine assistance. What's more, they have been empowered by the Torah to adjudicate its laws. The mandate laid out by the Torah for a legislative body authorizes every authentic rabbi, be he Moshe Rabbeinu, Rabbi Moshe ben Maimon (Rambam) or Rabbi Moshe Feinstein.

The Torah's command to obey the directives of Torah Sages is the source for their authority in determining the application of the Torah. This is the basis for the system of law that we call Halachah.

1. **Rabbi Aryeh Kaplan, Handbook of Jewish Thought, Volume 1, pp. 231-2 – God has provided guidelines to maintain the Torah's uniformity.**

It is God's Will that there be uniformity in Jewish practices, as well as in the interpretation of the Law. It is thus written, "There shall be one Torah and one law for you" (Bamidbar/Numbers 15:16).

Therefore, even when no formal central authority, such as the Sanhedrin, exists, God has provided guidelines to ensure the continuance of Judaism as a unified way of life. These guidelines provide the basis for the system of Torah law known as Halachah (literally, "the way").

Moreover, it was impossible to include every possible case in the Oral Torah. It would also be impossible for the Sanhedrin to decide in every possible case. Therefore, God gave each qualified Torah scholar the right to decide questions of Torah law. Then, even if laws were forgotten, they could be restored through the halachic process.

The unique relationship between God and Israel guarantees that we will always be able to ascertain His will. It is thus written, "You will seek God your Master and you will find Him, if you search for Him with all your heart and all your soul" (Devarim 4:29).

The system for determining God's will referred to here is the process of halachic decision-making that has continued until today. Below we see that the Torah in Devarim 17:11 gives the Sages the authority to interpret and apply its laws. (See also the Rambam above, Hilchot Mamrim 1:2.)

2. **Ramban, Commentary to Devarim 17:11 – God intended the Torah to be interpreted and applied by the Sages.**

He gave us the Torah according to the way they would interpret it – even if it appears in your eyes as faulty as if they have switched the right side for the left – and all the more so since you are obligated to believe that they call the right the right. God's spirit rests within those who serve His sacred Abode, and He shall not abandon His pious ones. They have always been guarded from error and misguiding.

כי על הדעת שלהם הוא נותן לנו התורה, אפילו יהיה בעיניך כמחליף הימין בשמאל, וכל שכן שיש לך לחשוב שהם אומרים על ימין שהוא ימין, כי רוח השם על משרתי מקדשו ולא יעזוב את חסידיו, לעולם נשמרו מן הטעות ומן המכשול.

The same mandate handed to the Bet Din HaGadol (Supreme Court) to determine Torah law also empowers modern-day halachic authorities to issue rulings.

3. **Rosh Hashanah 25b – One must rely on the Sages of the generation.**

The Torah states [Devarim 17], "You must approach the priests from the tribe of Levi and the judge *who presides in those days*." Would you think that someone was meant to go to a judge who did not live during his days? Certainly, he could go only to a judge who lives in his time. [We learn from here the intention of] the verse, "Do not say, 'What has happened? The earlier days were better than these'" (Kohelet/Ecclesiastes 7).

ואומר [דברים יז] ובאת אל הכהנים הלויים ואל השופט אשר יהיה בימים ההם. וכי תעלה על דעתך שאדם הולך אצל הדיין שלא היה בימיו? הא אין לך לילך אלא אצל שופט שבימיו... ואומר [קהלת ז] אל תאמר מה היה שהימים הראשונים היו טובים מאלה.

4. **Sefer HaChinuch, Mitzvah 495 – The mitzvah to heed the Sages applies to Sages of the Sanhedrin and also to the Torah Sages in each generation.**

It is a Torah commandment to obey the rulings of the Supreme Court (Sanhedrin) that is appointed for the people of Israel in every generation.

This mitzvah includes the obligation to obey the rulings of the leading scholar existing in each generation, just as one would obey the judge [of the Sanhedrin]. This is what our Sages taught (Rosh Hashanah 25b) “to the judge who will be in those days – Yiftach in his generation is like Shmuel in his generation.” This means that there is a mitzvah to obey the rulings of Yiftach in his generation just as it was for Shmuel in his generation (Shmuel lived and issued rulings 100 years after Yiftach).

מצוה לשמוע בקול בית דין הגדול שייעמדו להן
לישראל בכל זמן...

ובכלל המצוה גם כן לשמוע ולעשות בכל זמן וזמן
כמצות השופט, כלומר החכם הגדול אשר יהיה בינינו
בזמננו, וכמו שדרשו זכרונם לברכה [ראש השנה כ"ה
ע"ב] ואל השופט אשר יהיה בימים ההם: יפתח בדורו
כשמואל בדורו, כלומר שמוע עלינו לשמוע בקול
יפתח בדורו כמו לשמואל בדורו.

PART B. THE TORAH LEFT ROOM FOR INNOVATION

From the above it is clear that the Torah foresaw the need for judges and Sages to interpret its rulings as they apply to changing times. But Chazal went beyond simply applying the Oral Torah to practical cases; they interpreted the Torah in a way that brought to light new laws that until then had remained latent in the Torah's text. How were they able to do this?

1. **Talmud Yerushalmi, Megillah 28a – Moshe was taught all of the Oral Torah.**

Rabbi Yehoshua ben Levi said [about the verse “and upon them there are all the words that God spoke with you (Devarim 9:10)] – it does not say “upon them,” but rather “*and* upon them”; it does not say “words,” but rather “*the* words”; it does not say “all,” but rather “*there* are all.” The Scriptures, the Mishnah, the Talmud and Aggadah, and even the laws that a veteran scholar would innovate in the future were already taught to Moshe at Sinai. That is the meaning of the verse (Kohelet 1:10): “Is there a matter about which one can say ‘See! This is new?’” His colleague will reply, “It has already existed long ago.”

אריב"ל עליהם ועליהם דברים הדברים כל בכל מקרא
ומשנה ותלמוד ואגדה ואפי' מה שתלמיד וותיק עתיד
לחדש כבר נאמר למשה מסיני הדא הוא דכתיב יש
דבר שיאמר ראה זה חדש הוא וחבירו משיבו כבר היה
לעולמים אשר היה לפנינו.

The above passage appears to be self-contradictory. It states that Moshe was taught everything, even what scholars would discover in the future. Well, if it was already taught to Moshe, how could it be an original discovery? Doesn't “original discovery” imply that no one had known it before?

Moshe was not told everything in detail, just the principles. So in a sense anything that would be innovated by future scholars was contained *in potential* in all that Moshe was taught. When new ideas were brought to light, they were only novel in the application. Moshe himself would have come to the same conclusion

since this is the method taught to him by God at Sinai. The scholars' discoveries were really extensions of the principles already revealed to Moshe.

2. **Midrash Tehillim 12:4 – Moshe was shown many conceivable halachic rulings, but the final decision was left for the Sages of future generations.**

Rabbi Yanai said: The laws of the Torah were not given as clear-cut rulings. Rather, in each instance, God taught Moshe forty-nine arguments to rule that something is *tahor* (pure) and forty-nine arguments to rule that it is *tamei* (impure).

Moshe said, "Master of the Universe! When will we find a final decision? God answered him, "*You will decide according to the majority*: if the majority [of the Sanhedrin] decides it is *tamei* then it will be *tamei*; if the majority decides it is *tahor* it will be *tahor*.

אמר ר' ינאי לא ניתנה דברי תורה חתוכין, אלא על כל דבור שהיה אומר הקב"ה למושה היה אומר מ"ט פנים טהור, ומ"ט פנים טמא.

אמר לפניו, רבונו של עולם עד מתי נעמוד על בירורו של דבר, אמר ליה אחרי רבים להטות, רבו המטמאין טמא, רבו המטהרין טהור.

In a different Midrash we find that in fact Moshe was taught the principles, but not each and every application of them.

3. **Midrash Tanchuma, Ki Tisa 16 – Moshe was taught the general principles of how to apply the Torah to any situation that might arise in the future.**

Did Moshe really learn the entire Torah (from God)? But, as the verse attests, "its breadth is wider than the Earth," (i.e., it is not humanly possible)?! Rather, God taught Moshe all the principles for the halachah, as it states, "kechaloto, [lit.: when he finished speaking with him]," (Shemot 31:18). [This is a play on words, since this word appears similar to the word "k'lal," which means a general rule.]

... וכי כל התורה למד משה והלא כתיב (איוב יא) ארוכה מארץ מדה אלא כללים כללים למדה הקב"ה למושה שנאמר ככלתו (שמות פרק לא:יח: ויתן אל משה ככלתו לדבר אתו).

4. **Rabbi Yosef Albo, Sefer Ha'ikarim 3:23 – The Torah received by Moshe contained the general principles to be applied by future Sages to new situations as they arose.**

It is impossible that the Torah would have been given in complete form, suitable for every generation, because new situations of human interaction and modes of conduct are constantly arising and they are too vast in scope to be included in any one book. Therefore, at Sinai Moshe was taught the general principles orally, things that are hinted to briefly in the Written Torah, so that the Sages of each generation would be able to extract the newly needed details of practical halachah.

אי אפשר שתהיה תורת השם יתברך שלמה באופן שתספיק בכל הזמנים. לפי שהפרטים המתחדשים תמיד בעיני האנשים, כמשפטים והדברים הנפעלים הם רבים מאוד משיכללם ספר, על כן נתנו למושה בסיני על פה דברים כוללים נרמזו בתורה בקצרה, כדי שעל ידם יוציאו החכמים שבכל דור ודור הפרטים המתחדשים.

We could say then that what was passed down as the Oral Law was not just a body of law – it was a system of law. The methodology borne out of the principles of the Oral Law – the application of its rules of interpretation, its nuanced analysis of the Torah's language, and its unique form of logic – made it possible for those with mastery of the tradition to legislate Torah law.

PART C. THE TORAH IS NO LONGER IN HEAVEN

Although the Torah was given by God in its perfect form, He attached with it a human system developed and maintained by people. This system would be maintained without the benefit of prophecy or Divine revelation. The halachah in practice is decided by human beings with their human intellect. In fact, even were the Sages to err in interpreting the Torah's intentions, their decision would be binding according to the halachah until the Sages themselves discovered their error. In Talmudic terms, the Torah is no longer in Heaven!

1. Bava Metzia 59b – The Torah is in the responsible hands of the Sages.

On that day Rabbi Eliezer presented countless arguments to prove that he was correct, but [the Sages] did not accept them... [Finally] he said to them, "If the halachah is as I say, it will be proven from Heaven!" A Heavenly Voice pronounced: "What do you want from Rabbi Eliezer; the Halachah agrees with his opinion in all matters!" Rabbi Yehoshua then rose to his full height and proclaimed: "The Torah states, 'It is not in Heaven' (Devarim 30:12)." What is meant by this verse? Rabbi Yirmiyah said, "It means that once the Torah was given at Mount Sinai, we pay no attention to Heavenly Voices. You [God] already wrote at Mount Sinai, 'Decisions follow the majority [of the judges]' opinion' (Shemot 23:2)." Rabbi Natan met Eliyahu [the Prophet] and asked him: What did the Blessed Holy One do at that time? He replied, "He laughed and said, 'My children have overcome me, my children have overcome me.'"

תנא באותו היום השיב רבי אליעזר כל תשובות שבעולם ולא קיבלו הימנו... אמר להם אם הלכה כמותי מן השמים יוכיחו יצאתה בת קול ואמרה מה לכם אצל ר"א שהלכה כמותו בכל מקום. עמד רבי יהושע על רגליו ואמר (דברים ל"ב) לא בשמים היא מאי לא בשמים היא אמר רבי ירמיה שכבר נתנה תורה מזהר סיני אין אנו משגיחין בבת קול שכבר כתבת בהר סיני בתורה (שמות כ"ג) אחרי רבים להטות. אשכחיה רבי נתן לאלהיו אמר ליה מאי עביד קוב"ה בההיא שעתא אמר ליה קא חייך ואמר נצחוני בני נצחוני בני.

You might infer from this that even when the Rabbis are wrong, they are still right, as if they have some kind of infallibility clause. But that would be a superficial reading. The point is that the "system" is far more important than any individual ruling; it is what protects the integrity of the Torah through the generations. The primary will of God is that we follow the rules set by the Torah. (See Maharal, Be'er HaGolah #4.) And whatever the Sages determine is in fact God's will! (See the quote of Rabbeinu Nissim ben Yaakov, Derashot HaRan #11 at the beginning of Section I.)

PART D. PRINCIPLES OF EXEGESIS AND TALMUDIC REASONING

The method of extrapolation of laws from the Torah using the rules of biblical interpretation is called *derash*. The laws derived in this manner are called *divrei sofrim* – matters of Scribes. While these laws appear to be created by the Sages, they are nevertheless the Word of God and possess the same authority as the laws written explicitly in the Torah.

As we noted in the second class in this series, Rambam's third category of the Oral Torah are laws that the Sages derive from the Torah using the rules of biblical exegesis.

1. **Rambam, Introduction to Commentary on the Mishnah – The rules of exegesis comprise the Rambam's third category of the Oral Torah.**

The third category includes laws extracted through one of the rules of exegesis...

החלק השלישי, הם הדינים שנלמדו באחת המדות...

The principal thirteen rules of exegesis are described in the Midrash below.

2. **Sifra 1a (translation from the Complete Artscroll Siddur, pp. 49-53) – There are thirteen main rules of exegesis for deriving laws from the Torah.**

Rabbi Yishmael says: Through thirteen rules is the Torah elucidated: (1) Through *kal va-chomer* – a conclusion inferred from a lenient law to a strict one, and vice versa; (2) through *gezeira shavah* – a tradition that similar words in different contexts are meant to clarify one another; (3) through a general principle derived from one verse, and a general principle derived from two verses; (4) through a general statement limited by a specification; (5) through a specification broadened by a general statement; (6) through a general statement followed by a specification followed, in turn, by another general statement – you may only infer whatever is similar to the specification; (7) when a general statement requires a specification or a specification requires a general statement to clarify its meaning; (8) anything that was included in a general statement, but was then singled out from the general statement in order to teach something, was not singled out only to teach about itself, but to apply its teaching to the entire generality; (9) anything that was included in a general statement, but was then singled out to discuss a provision similar to the general category, has been singled out to be more lenient rather than more severe; (10) anything that was included in a general statement, but then was singled out to discuss a provision not similar to the general category, has been singled out both to be more lenient and more severe; (11) anything that was included in a general category, but was then singled out to be treated as a new case, cannot be returned to its general statement unless Scripture returns it explicitly to its general statement; (12) a matter elucidated from its context, or from the following passage; (13) similarly, two passages that contradict one another – until a third passage comes to reconcile them.

רבי ישמעאל אומר: בשלש עשרה מדות התורה נדרשת בהן (א) מקל וחומר, (ב) מגזרה שוה, (ג) מבנין אב מכתוב אחד, מבנין אב משני כתובים, (ד) מכלל ופרט (ה) מפרט וכלל, (ו) מכלל ופרט וכלל אי אתה דן אלא כעין הפרט, (ז) מכלל שהוא צריך לפרט ומפרט שהוא צריך לכלל (ח) כל דבר שהיה בכלל ויצא מן הכלל ללמד לא ללמד על עצמו יצא אלא ללמד על הכלל כלו יצא, (ט) כל דבר שהיה בכלל ויצא מן הכלל לטעון טען אחד שהוא כענינו יצא להקל ולא להחמיר, (י) כל דבר שהיה בכלל ויצא מן הכלל לטעון טען אחר שלא כענינו יצא להקל ולהחמיר, (יא) כל דבר שהיה בכלל ויצא מן הכלל לידון בדבר חדש, אי אתה יכול להחזירו לכללו, עד שיחזירו הכתוב לכללו בפרוש (יב) דבר הלמד מענינו, ודבר הלמד מסופו, (יג) וכן שני כתובים המכחישים זה את זה, עד שיבוא השלישי ויכריע ביניהם.

Additionally, Rabbi Yossi HaGalili composed a list of thirty-two rules of exegesis. One can find this list printed as an appendix to the Talmud Bavli, tractate Brachot. The laws derived by exegesis have authority equal to those written explicitly in the Torah.

3. **Talmud Bavli, Sanhedrin 99a – Denial of the Sages’ interpretations of the Torah is tantamount to denying the Divine origin of the Torah itself.**

Even if someone agrees that the entire Torah is of Divine origin but he denies one particular extrapolation, one particular *kal va-chomer* (a *fortiori* reasoning), or one particular *gezeira shavah* (textual analogy), he is guilty of “despising the word of God.”

ואפילו אמר: כל התורה כולה מן השמים, חוץ מדקדוק זה, מקל וחומר זה, מגזרה שוה זו - זה הוא כי דבר ה' בזה.

4. **Maharal, Be'er HaGolah 1 – Extrapolated laws are just as “Biblical” as the Torah text itself.**

The Sages’ interpretations of the mitzvot of the Torah are called “matters of Scribes.” This does not mean that these words originated with the Sages. They are absolutely an integral part of the Torah, and we are just as obligated in them as we are in the laws written explicitly in the Torah. They are called “matters of the Scribes” only because the Scribes, or Sages, taught us these interpretations of the mitzvot.

מה שפרשו חכמים המצוה שבתורה, וזה שנקרא דברי סופרים. ואין הכוונה כלל שיהיה זה מדבריהם בלבד, כי תורה הוא לגמרי וחייב עליו כמו שמחויב על הדבר המפורש בתורה, ונקרא דברי סופרים בשביל שפי' המצוה מדברי הסופרים:

Not all forms of *derash* (extrapolation) are based on the 13 hermeneutical principles. Many are based on sensitivity to a nuance in the wording of the Torah.

5. **Rabbi H. Chaim Schimmel, The Oral Torah, pp. 36-37 – The Sages had a tradition regarding the linguistic rules of the Torah.**

Derash is by definition an interpretation of a Biblical passage. It is, however, an interpretation which may not be in accordance with the plain meaning of the passage. For example, the plain meaning of the biblical verse, “Fathers shall not be put to death on account of children, nor shall children be put to death on account of their fathers” (Devarim 24:16), is that people are not to be punished for the transgressions of their fathers or those of their children. By means of *derash*, however, the Sages (Sanhedrin 27b) derived from this verse that someone cannot testify for or against a close relative, as if “on account of” meant “by the testimony of.” These interpretations do not necessarily follow the plain meaning of Biblical passages nor even the rules of logic, but it is important to stress that they follow real rules of construction and of language that the Sages received by tradition from Sinai.

Yet other laws derive from none of the categories mentioned so far. They are not explanations of Biblical verses, they are not unwritten laws passed down from Sinai, and they are not derived through Biblical exegesis. Rather, they are laws founded on principles of reasoning according to the astute minds of the Sages.

6. **Rabbi Tzvi Hirsch Chajes, Mevo La-Talmud, Chapter 4 – Talmudic reasoning is on par with exegesis.**

We also find that there are many cases in the Oral Law that belong to none of the previously

עוד יש לנו הרבה ענינים בתורה שבעל פה אשר לא באו אלינו אופנים, רק דרך סברה משיקול דעת האדם.

mentioned three categories (i.e. neither accepted explanation, oral tradition from Sinai, nor derash). Rather their basis is in the (Talmudic) reasoning (*sevara*) by human intellect. These laws also carry the same force as Biblical laws, as is stated in the beginning of the tractate of Zevachim (2a), “If you prefer I can derive the law with Talmudic reasoning, or if you prefer I can derive it from a verse.” We see therefore that Talmudic reasoning is of equal weight to a verse. That which originates in human reason or by logical inference is as authoritative as that which is derived from a verse, as if [that law] itself were derived from a verse.

וכחן של הלכות אלו גם כן דין תורה ממש להם כמו
דאמרינן ריש זבחים אי בעית אימא סברא ואי בעית
אימא קרא. ראינו דקרא וסברא שניהם שקולים הם.
הדברים הנטבעים בשכל אנושי ובהקש הדעת שווים
בדרכי הלמוד והמתלמד כאלו נלמדו מקראי.

PART E. EXAMPLES OF LAWS BASED ON EXEGESIS AND TALMUDIC REASONING

Below we see examples of laws derived by exegesis and Talmudic reasoning.

i. Exegesis

As we noted in the third class in this series, it is not always apparent whether a particular derash is actually creating the law in question or if just comes to corroborate a previously known law, like the derivations offered for *pri etz hadar* (fruit of a beautiful tree) referring to the etrog. To avoid this complication, here we will cite a derash that (at least according to most commentators) is actually creative and not just supportive of the law in question.

This particular derash is well known from its presence in the Passover Haggadah. It discusses the mitzvah to recall the Exodus from Egypt, which we fulfill daily when we recite the third paragraph of the “Shemah” prayer. A Mishnah cites that there had been a dispute as to whether or not this mitzvah only applies during the day, when we recite Shemah in the morning prayers, or whether it also applies at night, when we recite Shemah in the evening prayers.

1. **Mishnah, Brachot 1:5 – The obligation to recite the third paragraph of Shemah in order to fulfill the mitzvah to recall the Exodus is derived from the superfluous word “all.”**

The Exodus from Egypt is to be mentioned [in the Shema] at nighttime. Said Rabbi Eleazar ben Azariah: Behold I am about seventy years old, and I was never worthy enough to prove that the Exodus from Egypt must be mentioned at nighttime – until ben-Zoma derived it. For it says, “You will then remember the day you left Egypt all the days of your life” (Devarim 16:3). Had the text said just “the days of your life,” it [“days”] would have meant only the daytime [to the exclusion of nighttime]; but “all the days of your life” comes to include the nighttime as well. The Sages, however, say that “the days of your

מזכירין יציאת מצרים בלילות אמר ר' אלעזר בן עזריה
הרי אני כבן שבעים שנה ולא זכיתי שתאמר יציאת
מצרים בלילות עד שדרשה בן זומא שנא' (דברים טז)
למען תזכור את יום צאתך מארץ מצרים כל ימי חיך
ימי חיך הימים כל ימי חיך הלילות וחכ"א ימי חיך
העולם הזה כל ימי חיך להביא לימות המשיח.

life” refers to this world; “all the days of your life” comes to add the days of the Messiah as well.

ii. Talmudic Reasoning

The Sages of the Talmud sometimes derive the source of a law from Talmudic reasoning. As we saw above, this is done when the reasoning is so compelling that it is as if it had actually been written in the Torah. In the source below, the Talmud first offers a verse stating that the plaintiff is responsible for proving that the defendant owes him money, i.e. that the defendant is innocent until proven guilty. But then the Talmud challenges the need for a verse to prove this principle seeing as it can be derived by way of reasoning.

1. Talmud Bavli, Bava Kamma 46b – It is logical that the burden of proof should rest upon the plaintiff.

Rabbi Shmuel bar Nachmani stated: Whence can we derive that the burden of proof falls on the plaintiff? It is said: “Whoever has a problem can go to them [the Elders],” implying that it is up to him to bring evidence before them. But Rav Ashi demurred, saying: Do we really need a verse to tell us this? Is it not logical that “the one who has the pain goes to the doctor”?

א"ר שמואל בר נחמני: מניין להמוציא מחבירו עליו הראיה? שנאמר: (מי בעל דברים יגש אליהם, יגיש ראיה אליהם. מתקיף לה רב אשי: הא למה לי קרא? סברא הוא, דכאיב ליה כאיבא אזיל לבי אסיא!

The reasoning behind the demand that the plaintiff bring proof of damages is that since he is the one with the problem, he must be the one to make the effort to rectify that problem. Rav Ashi's statement, “the one that has the pain,” means that in this sense the role of a judge is similar to that of a doctor – just as a patient must point out his pain to the doctor and not simply make the doctor guess what is wrong with him, so too must the plaintiff prove to the judge that the defendant caused him a loss (see Shitah Mikubetzet in the name of Rabbi Yehonatan).

KEY THEMES OF SECTION III

- ≈ The Sages were much more than mere transmitters of a body of knowledge known as the Oral Torah; they also discovered many of its laws through the principles taught to them from Sinai.
- ≈ From the very outset God had conferred to the Sages tools for interpreting the Torah and extrapolating new applications of the law in the future. They did so by means of interpretive rules handed down from Sinai as well as by virtue of linguistic sensitivity acquired through training in the Oral Torah.
- ≈ Many details of the law were not openly determined at the time the Torah was given to Moshe. Rather, it was left in the hands of the Sages of future generations to bring them to light.
- ≈ God granted the Sages of each generation the authority to rule on matters of Torah law.
- ≈ When a halachic decision is made by someone qualified, that decision reflects God's will. That is not because a Rabbi cannot be wrong; he can. It means that God wants us to apply our intellects and follow the rules that the Torah itself laid out for applying its laws. That is God's higher will.

- ≈ God has ensured that we will always have a way of knowing His will. That is what we call Halachah.
- ≈ Although the Torah was given by God in its perfect form, He set it up with a human system developed and maintained by people, without the benefit of prophecy or Divine revelation; in Talmudic terms, the Torah is no longer in Heaven.

SECTION IV. THE SAGES AS LEGISLATORS OF RABBINIC LAW AND DECREES

Besides their role as transmitters of the Oral Torah, the Sages also had the authority and mandate to institute their own laws. Here we will explore the different types of rabbinical law, and their motives and justification. We will also explore some of the limits placed on the Sages when instituting new laws.

PART A. THE MANDATE TO LEGISLATE RABBINIC LAWS AND DECREES

From where did the Sages receive the authority to legislate new laws above and beyond what the Torah already commanded? As we will see, the Torah itself empowers the Sages and rabbis to legislate laws, and instructs the Jewish people to listen to their enactments. This legislative ability is derived in the context of the rabbis' establishment of the festival of Chanukah. The Talmud asks which blessing is recited upon lighting the Menorah? After answering with the words, "...[God] has commanded us to kindle a Chanukah lamp," the Talmud effectively exclaims, how can God have commanded this mitzvah when it was established 1,100 years after the giving of the Torah, and 150 years following the close of prophecy!

It should be noted, however, that since the closing of the Talmud no one has had the necessary authority to establish new laws binding on the entire Jewish people. Local rabbis and halachic decision-makers issue binding rulings for their own constituencies only, not for the whole nation. The reasons for this and the process by which it works will be explored in depth in "The System of Halachah – VIII: The Halachic Process."

1. **Shabbat 23a – There are two Torah verses that empower the rabbis with the authority to establish laws.**

Rabbi Hiya bar Ashi said in the name of Rav: When someone kindles the Chanukah lamp he must recite a blessing...What blessing does he recite? He recites, "...Who has sanctified us with His commandments and commanded us to kindle a Chanukah lamp." Where did He command this to us? Rabbi Avya cited [the verse]: "You must not swerve from the words that the judges tell you..." [Devarim 17:11]. Rabbi Nechemiah cited: "Ask your father and he will relate it to you, your elders and they will tell you" [Devarim 32:7].

אמר רב חייא בר אשי אמר רב: המדליק נר של חנוכה צריך לברך... מאי מברך? מברך אשר קדשנו במצותיו וצונו להדליק נר של חנוכה. והיכן צונו? רב אביא אמר: (דברים יז:יא) מלא תסור. רב נחמיה אמר: (דברים לב:ז) שאל אביך ויגדך זקניך ויאמרו לך.

Therefore, the festival of Chanukah itself intrinsically testifies to rabbinic authority.

2. **Rambam, Hilchot Mamrim 1:2 – The Torah empowers the rabbis to legislate law; likewise, it commands the Jewish people to obey their authority. (See full quote, above, Section II, Part A.)**

Whoever does not listen to the Sages' authority transgresses the negative commandment of, "Do not stray right or left from the thing that they tell you" [Devarim 17:11]...

כל מי שאינו עושה כהוראתן עובר בלא תעשה שנאמר
לא תסור מן הדבר אשר יגידו לך ימין ושמאל (דברים
יז:א)...

(See Chidushei Chatam Sofer, Talmud Bavli, Shabbat 23a, who explains the position of Rabbi Nechemiah, "Ask your father..." in line with the Ramban: the specific source which empowers the rabbis to make enactments to *protect* the Torah are based on Devarim 17:11, whereas the ability to establish *new* rabbinic laws, such as Chanukah, is based on Devarim 32:7.)

The fact that the Torah itself directs us to listen to the rulings of the rabbis shows that God Himself endorses their enactments.

3. **Midrash Tanchuma, Parashat Naso 29 – God agrees with the words of the Sages.**

A person must not say, "I will not observe the mitzvot instituted by the Sages because they are not sourced in the Torah." God says to such people, "My children, you must not say such a thing! You must fulfill everything that they decree for you, as the verse states, 'You must act in accordance with the directives that they instruct you' (Devarim 17:11). Why? Because I endorse their enactments."

לא יאמר אדם איני מקיים מצוות זקנים הואיל ואינן מן
התורה, אמר להם הקב"ה בני אין אתם רשאים לומר
כך אלא כל מה שגוזרים עליכם תהיו מקיימין שנא'
(דברים יז:א) ועשית על פי התורה אשר יורוך, למה
שאף על דבריהם אני מסכים.

4. **Maharal, Be'er HaGolah 1 – Just as there are laws not written in the Torah but delegated to the realm of nature, so too there are laws delegated to man to reveal and promulgate.**

Something that can be thought of only through God's wisdom must be commanded by God, but God arranged that the Sages would rule on matters that do not require God's wisdom. This is akin to the way He arranged for nature to follow its course. Through these two (Torah and rabbinical laws), man can come to perfection.

הדבר שהוא שכל אלוקי לגמרי, ראוי שיהיה פועל זה
השם יתברך, והדבר שאינו שכל אלוקי סדר הש"י את
החכמים כמו שסדר הטבע לפעול אשר שייך לפעול,
ועל ידי שניהם התורה היא שלימות האדם.

5. **Rabbi Elchonon Wasserman, Kuntres Divrei Sofrim, Sections 17-18 – The Sages' institutions are expressions of God's will!**

When the Sages instituted mitzvot and imposed prohibitions, they aligned their minds with the will of God... This is the reason that we are obligated to obey their institutions. By doing so, we fulfill God's Will, since it agrees with their decisions.

... בכל המצוות ואיסורין של דבריהן הסכימה דעתן
לדעת המקום... ומה"ט אנו חייבין לעשות דבריהן
שהרי אנו מקיימין בזה רצון השי"ת שהסכימה דעתן
לדעתו.

PART B. TYPES OF RABBINIC LAW AND DECREES

As discussed in the second class in this series regarding the content of the Oral Torah, there are essentially two types of rabbinical legislation: *gezeirot* and *takanot*.

i. *Gezeirot* (Decrees)

The Sages instituted laws to protect people from coming to a situation in which they would desecrate Biblical laws.

1. **Rambam, Introduction to Commentary on the Mishnah – One of the areas of Oral Torah includes rabbinical amendments to distance people from transgressing Torah law.**

The fourth category encompasses laws that the Prophets and Sages instituted throughout the generations as a “protective fence” for the Torah’s laws.

והחלק הרביעי הן הגזרות שתקנו הנביאים והחכמים בכל דור ודור כדי לעשות סוג לתורה.

A classic example of this is the rabbinical institution forbidding the consumption of chicken with milk, which is designed to protect people from transgressing the Biblical prohibition of eating milk with meat.

2. **Rambam, Hilchot Ma’achalot Asurot 2:9 – The prohibition of eating chicken with milk is based on the possibility that people might err in their interpretation of the Torah’s laws.**

[The Torah prohibits only the meat of a domestic mammal cooked with the milk of a domestic mammal.] The meat of a wild mammal or of fowl is not prohibited by the Torah, not when cooked with the milk of a wild mammal nor if cooked with the milk of a domestic mammal. Therefore, it is permissible to cook these combinations and to benefit from the cooked product.

Based on a rabbinical institution, it is forbidden to eat such combinations of foods. This prevents people from making a mistake and transgressing the Torah’s prohibition of “meat and milk.” [If these combinations were permitted] people might permit themselves to eat the meat of a domestic mammal cooked with milk of a domestic mammal, saying that the Torah forbids only a goat’s meat cooked with its mother’s milk. Therefore they forbade all types of meat with all types of milk.

וכן בשר חיה ועוף בין בחלב חיה בין בחלב בהמה אינו אסור באכילה מן התורה לפיכך מותר לבשלו ומותר בהנייה. ואסור באכילה מדברי סופרים כדי שלא יפשעו העם ויבואו לידי איסור בשר בחלב של תורה ויאכלו בשר בהמה טהורה בחלב בהמה טהורה. שהרי אין משמע הכתוב אלא גדי בחלב אמו ממש לפיכך אסרו כל בשר בחלב.

ii. *Takanot* (Institutions)

The Sages also enacted institutions that go beyond safeguarding the letter of Biblical Law; these enactments ensure that society functions in accord with the spirit of that law as well. In his work, *Melechet Machshevet*, Rabbi Nachman Shlomo Greenspan enumerates four distinct categories of rabbinical institutions.

3. **Rabbi Nachman Shlomo Greenspan, Melechet Machshevet, pg. 135 – There are four categories of rabbinical institutions.**

There is a variety of institutions aimed at ensuring better functioning [of Jewish society]. We find four categories of such institutions: religious, national, familial, and social.

התקונים החיוביים ביחס להמטרה החיובית, שאליה שאפו המתקנים, שונים הם ובכללם אתה מוצא ארבעה: תקונים בחיים הדתיים, בחיים הלאומיים, בחיי משפחה ובחיי החברה.

4. **Ibid. – Rabbinical institutions to strengthen religious life.**

The religious enactments include all those instituted by the prophets and Sages of each generation to strengthen and purify the people's spiritual strivings, such as public Torah readings, instituted by Moshe and Ezra (Bava Kama 82a).

לתקונים בחיי הדת מתיחסות כל התקנות שתקנו הנביאים והחכמים שבכל דור ודור כדי לחזק ולזכך את רגשי קדש אשד"ת, כמו קרה"ת בצבור, שנתקנה על ידי משה ועזרא (ב"ק פ"ב ע"א).

5. **Ibid. – Rabbinical institutions commemorating events of national significance.**

The enactments concerning national life include all those mitzvot instituted by the Sages to commemorate important events in our nation's long history, especially the instances when God rescued us, such as Chanukah, Purim, and all the dates recorded in Megillat Ta'anit (see Shabbat 13b).

לתקונים בחיינו הלאומיים שייכות כל התקנות והמצוות דרבנן שנתקנו לזכרון המאורעות החשובים שאירעו לעמנו בדברי ימיו הארוכים והישועות שעשה לנו ה', כמו חנוכה, פורים וכל הכתובים במגילת תענית (ראה שבת י"ג ע"ב).

6. **Ibid. – Rabbinical institutions designed to strengthen family life.**

Those enactments whose purpose is to improve family life include those instituted to strengthen and improve the marital bond, such as the institution of the *ketubah* (marriage contract).

לתקונים שתכליתם היא הטבת חיי המשפחה מתייחסות התק' שנתקנו כדי לחזק ולשפר את קשר האישות כתיקון הכתובה וכיוצא בה...

7. **Ibid. – Rabbinical institutions to facilitate the functioning of society.**

The enactments instituted for the sake of improving society include all the rules of debt collecting and the judicature of claims between plaintiffs and defendants.

אל התקונים שמטרתם היא הטבת החיים החברתיים שייכות כל התקנות הקבועות בדיני גביית חוב, טוען ונטען.

PART C. THE PARAMETERS OF THE SAGES' AUTHORITY OVER TORAH LAW

The authority of the Sages sometimes usurps the authority of the Torah itself when they felt it necessary to protect Torah law.

1. **Yevamot 90a. The Sages are empowered to forbid us from performing a mitzvah of the Torah.**

The end result is that the Sages forbade the consumption of the meat [of the sacrifice] while

סוף סוף קמתעקרא אכילת בשר וכתוב ואכלו אתם אשר כפר בהם מלמד שהכהנים אוכלים ובעלים

the Torah commands us that the meat be eaten. He explained that the Sages are empowered to override the Torah's command in a passive form [by demanding that the action of eating not be performed]. Regarding the mitzvot of shofar and lulav [where the Sages have decreed that when the festival occurs on Shabbat we may not perform the mitzvot, and the Sages have this right] also because they are empowered to override the Torah's command in a passive form.

מתכפרים א"ל שב ואל תעשה שאני... שופר ולולב ...
נמי שב ואל תעשה ניהו.

i. The Prohibition of Adding to or Subtracting from the Torah

One might think that the Sages are forbidden from adding man-made mitzvot or prohibitions, since the Torah prohibits "adding" to its mitzvot.

1. Devarim 4:2 – One must not add to the mitzvot of the Torah or subtract from them.

Do not add to what I command you and do not subtract from it, so that you will observe all the commandments of God your Master that I command you.

לא תספו על הדבר אשר אנכי מצוה אתכם ולא תגרעו
ממנו לשמר את מצות יקוק אלהיכם אשר אנכי מצוה
אתכם:

2. Devarim 13:1 – The Torah repeats the prohibition of adding and subtracting.

You must carefully observe all that I command you. Do not add to it and do not subtract from it.

את כל הדבר אשר אנכי מצוה אתכם אתו תשמרו
לעשות לא תסף עליו ולא תגרע ממנו:

ii. Defining this Prohibition

What is meant by adding to the Torah's laws?

3. Sifri ad loc. – The Torah meant adding on to an existing mitzvah.

From where do we know that it is forbidden to add to (the four species of) the lulav or to (the number of strings in) tzitzit, or to use less than the prescribed number? This is what the verse teaches, "Do not add to it and do not subtract from it."

מונין שאין מוסיפין על הלולב ועל הציצית ואין פוחתין
מהן, ת"ל לא תוסף עליו ולא תגרע ממנו.

iii. The Torah Wants Rabbinical Institutions

The Torah instructs the Sages of all generations to institute laws to protect the Torah's laws. If so, it must be that such institutions do not violate the prohibition of adding to the Torah.

4. **Vayikra 18:30 – God commands the Sages to guard His commandments.**

And you shall guard My prohibitions so that you will not commit any of the abominable practices that were done before you, and so that you will not become defiled by them. I am God your Master.

ושמרתם את משמרת לבלתי עשות מחקות התועבת אשר נעשו לפניכם ולא תטמאו בהם אני ה' אלהיכם:

5. **Yevamot 21a – The Sages were instructed by the Torah itself to institute protective amendments.**

“And you shall guard My prohibitions” (Leviticus 18:30) – meaning, make preventive measures to guard My prohibitions.

ושמרתם את משמרת, עשו משמרת למשמרת.

6. **Rabbi Shmuel ben Aderet (Rashba), Commentary to Rosh Hashanah 16a – The prohibition of adding to the Torah applies to individuals, not to the Sages acting on behalf of the nation.**

The prohibition of adding to the Torah applies to things that individual people add on their own initiative, like adding a blessing to Birkat Kohanim or sleeping in the sukkah for an eighth day, intending it to be a mitzvah... But when the Sages instituted commandments out of necessity, this is not an infringement on the prohibition to add to the Torah. The Torah itself states, “you must obey the instructions that they instruct you” (Devarim 17:8). This must be so, since in our times there is a rabbinically-ordained mitzvah to eat and sleep in the sukkah on the eighth day... It must be that whenever it is necessary, the rabbinical court may institute and add to the mitzvot.

... דלא אמרו התם דאיכא משום בל תוסיף אלא במה שהוא מוסיף מדעת עצמו כגון כהן שהוסיף ברכה משלו ואי נמי ישן בשמיני בסוכה במתכוין למצוה... אבל במה שעמדו חכמים ותקנו לצורך אין כאן בל תוסיף דכבר אמרה תורה על פי התורה אשר יורוך. ותדע לך דהא שמיני של סוכה בזמן הזה מצוה של דבריהם וישנן ואוכלין בה... אלמא כל לצורך ב"ד גוזרין ומוסיפין והרשות בידן.

iv. **The Prohibition is to Present Rabbinical Law as Biblical**

The prohibition against adding to the Torah applies only to adding a law as if it were a Biblical mitzvah.

7. **Ramban, Commentary to Devarim 4:2 – Rabbinical institutions must not be recognized as Biblical laws.**

Whatever the Sages instituted as a protective measure... is itself a fulfillment of the Torah's commandments, but it must be clear that the law is merely a protective amendment and not a command stated by God in the Torah.

ומה שתקנו חכמים משום גדר... זו היא מצוה מן התורה, ובלבד שידע שהם משום הגדר הזה ואינם מפי הקב"ה בתורה:

KEY THEMES OF SECTION IV

- ⌘ Aside from the laws which the Sages extrapolated from the Torah, they also created a new body of Rabbinic law, instituting protective measures for the maintenance of the letter of the Torah's laws and ensuring that society would function according to its spirit as well.
- ⌘ Here too the Sages derived their authority from the Torah itself, which gives them a mandate to create new laws.
- ⌘ In doing so they were not illegally adding to the Torah but rather furthering its cause. The laws which they created reflect God's will just as much as those derived from the Torah or written there explicitly.

CLASS SUMMARY:

HOW RELIABLE WERE THE SAGES TO TRANSMIT THE ORAL TORAH ACCURATELY? WHAT ARE THEIR QUALIFICATIONS?

A chain is only as strong as its weakest link. Regarding the transmission of the Oral Torah, there were no weak links. The qualifications for becoming an authorized link in this chain, a transmitter of the Oral Torah, were extremely high. Scholarly erudition, outstanding personal character and integrity were all required.

Such Torah scholars have to be fully committed to the observance of Jewish law in all its details.

By virtue of all these characteristics, these Torah scholars received a special gift of Divine assistance to master the Torah's wisdom.

WHAT EMPOWERED THE SAGES TO INTERPRET AND APPLY THE LAWS OF THE TORAH THE WAY THEY DID?

It is clear from the Written Torah itself that God placed tools for interpreting the Torah in the hands of the Sages, enabling them to bring new rabbinic laws into existence in the future. They did so by means of rules of Biblical exegesis handed down from Sinai as well as by virtue of linguistic sensitivity acquired through training in the Oral Torah. Many such Biblical laws were discovered by the Sages of generations long after the Torah was given.

BY WHAT RIGHT DID THE SAGES CREATE NEW LEGISLATION? WHY ARE RABBINIC LAWS BINDING?

The Torah authorized the Sages to institute laws to protect the observance or the spirit of the Torah. In doing so they were not only acting with God's permission but actually revealing His will.

FURTHER READING:

H. Chaim Schimmel, The Oral Torah, pp. 36-49, 59-77, 166-173

Rabbi Avraham Edelstein, The Oral Law, www.nerleef.com/books/orallaw.pdf, Chapters C, D, F, G

Yonatan Kolatch, Masters of the Word, Volume 1, Chapter 2

Zvi Lampel, The Dynamics of Dispute, Chapter 5. See also his discussion of the Tractate Menuchot 29b when Moshe Rabeinu was distressed by Rabbi Akiva explaining the Taggim on the letters of the Sefer Torah – a halachah leMoshe Mi'Sinai.