

## An analysis of the Role of the Oral Torah

Rabbi Elisha Friedman, Keshet Israel Congregation - Harrisburg, PA

The Torah we have is composed of two distinct parts: the Written Torah - including the 24 books of the Tanach (Bible), and the Oral Torah - which includes everything else, but primarily refers to the Mishna, Talmud and the many collections of rabbinic traditions in the Tosefta and Midrashim. As the Talmud (Gittin 60b) pointed out, percentage-wise most of the Torah is Oral, the Written in fact constitutes the smaller section.

Thus did Rabbinic law and the Oral Torah become largely synonyms.

According to Jewish tradition, these two sections were both given to Moshe at the Revelation at Mt. Sinai. Rashi (**Vayikra 25:1**) records a rabbinic tradition which finds allusion to this in the words of the Torah itself.

### Rashi, Vayikra 25:1

1 בהר סיני. מה ענין שְׁמִטָּה אֶצֶל הַר  
 סִינַי? וְהֲלֹא כָּל הַמִּצְוֹת נִאֶמְרוּ מִסִּינַי?  
 אֲלֵא מֵה שְׁמִטָּה נִאֶמְרוּ כְּלֻמָּתָהּ  
 וּפְרָטוֹתֶיהָ וְדִקְדוּקֶיהָ מִסִּינַי אִף כֵּן  
 נִאֶמְרוּ כְּלֻמָּתֶיהָ וְדִקְדוּקֶיהָ מִסִּינַי, כִּי  
 שְׁנוּיָהּ בְּת"כ; וְנִרְאֶה לִּי שֶׁכֵּן פְּרוּשָׁה:

*[And the Lord Spoke unto Moses] on the Mount Sinai — What was the matter of the Sabbatical year to do with Mount Sinai that Scripture fell compelled to expressly state where it was commanded? Were not all commandments given on Sinai? But this statement is intended to suggest the following comparison: How is it in the case of the law of Shemittah? Its general rules, [its specific prescriptions] and minute details were ordained on Mount Sinai! So, also, were all commandments with their general rules and their minute details ordained on Mount Sinai. Thus it is taught in Torah Cohanim (Sifra, Behar, Section 1 1) (Translation from Sefaria.org)*

Rashi explains the technical

exegesis of this Midrashic statement, but the meaning is clear:

The details to the Torah's text were related, not written, to Moshe at Sinai and he passed them along orally.

But it was not just the books of the Torah and the major compendiums of rabbinic commentary and halacha, which were given at Mt. Sinai. An intriguing comment from the fifteenth century Italian rabbi, Rav Ovadia Bartenua, whose Mishna commentary is considered one of the most important of them all, indicates that Moshe received theological and ethical insights at Revelation as well. Bartenua wrote this in his first comment on Pirkei Avot - a tractate which deals not with halacha, but entirely with ethics and theology.

## Bartenura, Avot 1.1

מִשֶּׁה קִבַּל תּוֹרָה מִסִּינַי. אָמַר אָנִי, לְפִי  
 שְׂמִסְכָּת זוֹ אֵינָה מִיִּסְדֹּת עַל פְּרוּשׁ מִצְוֵה  
 מִמִּצְוֹת הַתּוֹרָה כְּשֶׁאֵר מִסְכָּתוֹת  
 שֶׁבַּמִּשְׁנָה, אֲלֵא כֻּלָּה מוֹסְרִים וּמִדּוֹת,  
 וְחֻכְמֵי אַמּוֹת הָעוֹלָם גַּם כֵּן חִבְרוּ סִפְרִים  
 כְּמוֹ שֶׁבָּדוּ מִלְּבָבם בְּדַרְכֵי הַמוֹסֵר כִּי־צַד  
 יִתְנַהֵג הָאָדָם עִם חֵבְרוֹ, לְפִיכֶךָ הִתְחִיל  
 הַתַּנָּא בְּמִסְכָּת זוֹ מִשֶּׁה קִבַּל תּוֹרָה מִסִּינַי,  
 לִוְמַר לָךְ שֶׁהַמִּדּוֹת וְהַמוֹסְרִים שֶׁבָּדוּ  
 הַמִּסְכָּתָא לֹא בָּדוּ אוֹתָם חֻכְמֵי הַמִּשְׁנָה  
 מִלְּבָבם, אֲלֵא אַף אֵילוּ נֶאֱמְרוּ בְּסִינַי:

*Moshe received the Torah from Sinai: I say: Since this tractate is not founded on the exegesis of commandments from among the Torah's commandments, like the rest of the tractates which are in the Mishna, but is rather wholly morals and principles, and whereas the sages of the (other) nations of the world have also composed books according to the fabrication of their hearts, concerning moral paths, how a person should behave with his fellow; therefore, in this tractate the tanna began "Moshe received Torah from Sinai," to tell you that the principles and morals which are in this tractate were not fabricated by the hearts of the Mishna's sages; rather, they too were stated at Sinai.*

*(Translation from Sefaria.org)*

The Oral Torah then consists of commentary on the Written Torah, halachic rulings and ethical guidance.

One of the great divides throughout our history has always been concerning this dogma. Many groups have broken with the Rabbis over the years over the issue of whether the Oral Torah in fact originated at Mt. Sinai or was it a creation of the Rabbis. The Karaites were the best-known historical group who rejected the authority of the Oral Torah, and for centuries throughout the medieval period they were a dominant force in the Jewish world, although in the contemporary world their numbers and influence are hardly noticeable. Some historians believe the Karaites developed out of an earlier sect, the Sadducees, an ancient group who had defected from Rabbinic Judaism in Mishnaic times. But this is not certain. Either way, the point remains the same: the Karaites were hardly the first Jews to question the Rabbinic tradition, and certainly not the last either. In the modern world, Conservative Judaism has inherited the mantle of those who question the authority of Rabbinic law.

Of course, the Rabbis themselves did not claim that every law they formulated or every line in the Talmud was Divine in origin. There were many *takanot*, or decrees, which were unquestionably Rabbinic in origin, and still included in the Oral Torah. When the Rabbis disagreed, which was a

common occurrence, it seems likely that not every opinion had originated at Sinai, although a minority school of thought argued precisely that. Even when the rabbis based their rulings on a careful reading of the Biblical text, a *drasha*, there is some debate amongst medieval authorities whether all of those instances originated with God or not.

The important point for us is not whether every Rabbinic law or statement was given at Sinai, but that some of it was given at Sinai. Even if the rabbis added to it, or disagreed over the exact tradition, traditional Judaism is clear that in addition to the written texts of Judaism, Moshe was given a Divine supplement to the Written text, and that was the Oral Torah. In addition, God had given the Rabbis the authority to add to the Torah as they saw fit in their generations, and so that too was included in the scope of the Oral Law.

One of the great medieval Jewish thinkers and anti-Karaite polemicists, Yehuda Halevi (*Sefer Ha-Kuzari* 3:35), pointed out how obvious this dogma becomes once you reflect on the matter.

### Sefer HaKuzari 3:35

רְצוֹנִי לְהִשְׁתַּדֵּל וְשִׁיבוּנִי תְּשׁוּבָה  
 מִסִּפְקַת כְּאֲשֶׁר אֲשַׁאֲלֶם עַל מֵה שְׂיִיתִיר  
 הַחֵי לְאֹכֵל, וּמֵה עֲנִין הַזְּבִיחָה, וְשִׁמָּא  
 הִיא נִחְרָה אוֹ הֶרֶג כְּאֲשֶׁר יִזְדְּמוּ, וְלָמָּה  
 נֶאֱסְרוּ זְבָחֵי גוֹיִם, וּמֵה הוּא שְׂיִישׁ בֵּין  
 זְבָחוֹ וְהַפֶּשֶׁט וְשִׁאָר מְלֵאכְתּוֹ, וְהִייתִי  
 רוֹצֵה שְׂיִבְאָר לִי הַחֵלֶב הָאֵסוּר, וְהוּא  
 דָּבֵק עִם הַמֶּתֶר בְּמַעֲמֵם וְהַקִּיבָה, וְזוּלַת  
 זֶה מִנְקוֹר הַבָּשָׂר, וְשִׁמְסֵר אֵלַי הַגֶּדֶר  
 שְׂבִין הַמֶּתֶר וְהָאֵסוּר, כְּדִי שְׁלֵא יְהֵא  
 חֲלוּף בּוֹ עִם חֲבֵרוֹ, וְכֵן הָאֵלִיָּה הָאֵסוּרָה  
 אֲצִלָּם, הֵיִשׁ לָהּ גֶדֶר? וְשִׁמָּא הָאֶחָד יִסִּיר  
 קֶצֶת הַזֵּנֶב וְאֶחָד יִסִּיר הַכַּף כְּמוֹ שֶׁהוּא.  
 וְהִייתִי רוֹצֵה שְׂיִבְאָר לִי הָעוֹף הַטָּהוֹר מִן  
 הַטָּמֵא, זוּלַת הַמְּפָרְסָמִים, רְצוֹנִי לֹמַר:  
 בְּיִוֵּנָה אוֹ תוֹר, וּמֵאֵין הוּא אוֹמֵר שְׂאֵין  
 הַתְּרַנְגְּלַת וְהַאֲזוֹ וְהַקּוֹרָא וְאֵלְבְּרַכְיָהּ  
 מֵהַטָּמֵאִים. וְהִייתִי רוֹצֵה שְׂיִתֵּן לִי גְבוּל

*I further wish to be instructed on the question as to what makes an animal lawful for food; whether 'slaughtering' means cutting its throat or any other mode of killing; why killing by gentiles makes the flesh unlawful; what is the difference between slaughtering, skinning, and the rest of it. I should desire an explanation of the forbidden fat, seeing that it lies in the stomach and entrails close to the lawful fat, as well as of the rules of cleansing the meat. Let them draw me the line between the fat which is lawful and that which is not, inasmuch as there is no difference visible. Let them explain to me where the tail of the sheep, which they declare unlawful, ends. One of them may possibly forbid the end of the tail alone, another the whole hind part. I desire an explanation of the lawful and unlawful birds, excepting the common ones, such as the pigeon and turtle dove. How do they know that the hen, goose, duck, and partridge are not unclean birds?*

Kuzari's point here is straightforward. The Torah issues many commandments which provide no real details as to how they are to be performed. In this example he wonders how to observe the laws of kosher with only the scanty statements recorded in the Written Torah. One would have so many questions that they could not possibly perform the ritual properly. The same applies to making tefillin, building a Succah, the prohibited activities of Shabbat, and many other laws of the Torah which appear in brief, terse commands in the Torah, but which require pages of elucidation to perform properly. We are then left with the choice between either accusing God of irrationally giving us a written work which was woefully inadequate for practical purposes or acknowledging there must have been a commentary which came together with the Written text.

This proof points to the existence of a commentary but does not resolve the question of why God set it up this way. Could not God, in His infinite genius, have figured out a way to give the Torah perfectly complete, so that it would be a self-contained document and not require any oral commentary or elaboration? In explanation of this, many approaches have been offered. But most of all, we should not make the mistake of thinking that God gave an Oral Torah out of weakness. In fact the halacha originally was that one was not permitted to write down the Oral Law (Gittin 60b). It was by design, not accident or imperfection, that God introduced an oral component to the Torah, and this has much to teach us about the essential nature of Torah study.

If we were to choose one approach to reflect on to explain why the Oral Torah is of central importance, I suggest the one offered by Rav Samson Raphael Hirsch (**Rav S.R. Hirsch Commentary on the Torah, Shemot 34:27 and earlier commentaries**):

*God did not want people to study Torah through books, but from a human being. As the proverb quoted by Kuzari (2:72) states: "From the mouths of scholars, but not from the mouth of books." The Torah is not for autodidacts, it is geared at those who seek to form another chain in the historical transmission of the tradition from generation to generation, connecting us all directly back to the moment of Revelation at Sinai. One approach to guard against self-study is for it not to be recorded, to force the student to seek out a rebbe (Torah teacher) in order to be initiated.*

This is a radically new way to think about Torah study. In our world where this model has fallen apart, everything has been written down and many people are Torah scholars through their own book study, it is hard to imagine the alternative. When we think of Torah scholars we imagine large volumes of print Hebrew works, with someone studying for hours a day. Our impression of Torah study and Torah greatness is completely intertwined with the image of immersion in books and printed pages.

To be a Torah giant in the age of the Oral Law one had to know not books, but people, one spent their day not with printed pages, but with living, breathing mentors and colleagues. The *rebbe*

passed on to his students not only information and modes of analysis, but also how to be a human being, how to be a *mensch*. And the *rebbe* had discretion over who he taught, so a student who asked for only facts but was not interested in ethical guidance, would not be taught either. The idea of a Torah scholar who was not also a *mensch* and a fully developed social personality would have been foreign to them.

It was this ideal which allowed Rav Chaim of Volozhin, the father of the modern yeshiva system which stressed the near constant study of books, to interpret the Mishna (**Avot 6:6**) which states that Torah must be studied “with a listening ear” to mean that Torah is better studied through audio than reading books. “Because the sense of hearing [and] what you hear from a person, will accomplish more than what you read in books.” (*Ruach Chaim Commentary on Avot*) Of course almost the entirety of the yeshiva curriculum is based on reading printed Talmud and commentaries, not listening. But Rav Chaim understood that was not the ideal, the printed volumes were a concession. Ideally, we study Torah from another human being by listening.

Had the ideal continued we would think of Torah scholars as some of the most socially advanced humans, spending their days and nights immersed in relationship building with teachers of Torah, imbibing their living tradition. But alas, the original model was not to be. As with so much lost throughout Jewish history, it was primarily anti-Semitism at fault. When the Romans occupied Israel, it became apparent that the Oral Torah would not survive those difficult times, and so the leader of Israel at the time, Rabbi Judah Hanasi (the Prince) committed the Mishna to writing (Rashi, Baba Metzia 33b, Rambam, Introduction to Mishneh Torah). The Mishna was not thorough, but rather contained broad legal principles, and so some centuries later the rest was recorded in the Talmud.

From now on the Oral Torah would all be written down, available for anyone willing to commit the time and energy to study it. Of course, we still encourage people to seek a *rebbe* as much as possible, but the halacha recognizes that practically this rarely happens. The books are now our primary teachers, say modern halachic authorities (*Lechem Mishna, Laws of Torah Study 5:4, Pitchei Teshuva, Yoreh Deah 242:3, and others*). Some things have improved, such as the ease of access to the Oral Law, which is now readily available, and growing even more accessible through translations and commentaries and online classes. And, by extension, there are now more people than ever studying it, so there have been improvements.

In any case it is totally different.