YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PRINCIPLES OF FAITH**

**By Rav Joshua Amaru**

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Shiur #16: Torah She-be'al Peh, Part I

**1. Introduction**

Alongside the Written Torah, we also have an Oral Torah, which is also, in some way (though exactly what way is controversial), of divine origin. The Rambam in his exposition of the 13 principles puts it like this:

Similarly its interpretation as it has been handed down is also “from the mouth of the Almighty.” That which we observe today, such as the form of *Sukkah*, the *Lulav*, the *Shofar*, the *Tzitzit*, the *Tefilin*, and other such forms, are the actual forms which God told to Moses and which he told to us. He is the transmitter of the Message, faithful in its transmission. The verse on the basis of which the eighth foundation is attested is his [i.e. Moses'] saying, "By this shall you know that the Lord has sent me to do all these things." (*Bemidbar* 16:28)[[1]](#footnote-1)

This brief passage is no more than a reference to the Rambam's extensive discussion of the nature of the Oral Torah in his introduction to the *Commentary on the Mishna*. That position was further developed in later works, most notably in the *Shorashim[[2]](#footnote-2)* of *Sefer Ha-mitzvot* (particularly the first two), in the introduction to the *Mishneh Torah* and in *Hilkhot Mamrim*. As a deeply (even awesomely!) systematic thinker, it was of great concern to the Rambam that he be able to account for the nature of the Oral Torah and to explicate the sources of its authority. This was a particularly challenging prospect given the radically unsystematic nature of the Rabbinic source material. In one sense the Rambam was successful – the introduction to the *Commentary on the Mishna* is studied in Jewish high schools and *yeshivot* to this day as a basic resource for teaching about *Torah she-be'al Peh*. At the same time, I do not believe that the Rambam's actual understanding of the nature of *Torah she-be'al Peh* has been widely accepted, for reasons I will elaborate below.

As I am sure is clear to all, this topic – the nature of *Torah she-be'al Peh*, is vast and there is no way that I can do it justice in a couple of internet *shiurim*. I will not even try to be comprehensive. Instead, I will sketch two different classical approaches, that of the Rambam and that of the Ramban, with the hope that in that way my readers can gain a grasp of the range of possible understandings and appreciate what is at stake in leaning in one way rather than another. This week I will focus on the Rambam, whose approach is by far the most comprehensive and systematic. Next week I will turn to the Ramban's critique of that approach and outline his alternative. There are many other approaches to these questions that I am going to ignore, with the hope that these *shiurim* will give you a taste for exploring this topic independently.

**2. Torah She-be'al Peh in Chazal**

Before delving into the Rambam, I want to at least mention what the discussion of this issue looks like in *Chazal*. The Rabbis of the Talmudic period did not feel a need to elaborate a systematic notion of *Torah she-be'al Peh* and the sources of its authority. *Torah she-be'al Peh* was the medium in which they lived, thought and taught, and perhaps because they did not feel challenged or threatened by the more systematic Hellenistic ways of thinking, they never saw a need to draw a picture of their activity from the outside.[[3]](#footnote-3) Yet the Rabbis were far from unreflective, and Talmudic and Midrashic literature abounds with comments, *aggadot*, and homilies that are essentially reflections on the nature of the Oral Torah. These reflections are not all consistent, nor do they aspire to be. I want to present two such conflicting ideas simply as a way of showing how broadly based the discussion is.

The first source is a famous one from the *Sifra* (*midrash halakha* on *Vayikra*) that Rashi quotes. The *midrash*, in response to the fact that the Torah emphasizes that the laws of *shemitta* were given at Sinai[[4]](#footnote-4), asks:

How is *shemitta* relevant to Mount Sinai? Were not all of the *mitzvot* said at Sinai? Rather [it comes to teach that] just like all of *shemitta's* principles and details are from Sinai, so too all the other *mitzvot's* principles and details are from Sinai.[[5]](#footnote-5)

It is important to appreciate that *midrashic* quality to this passage. The author of the *midrash* is well aware that many *mitzvot*, particularly those preceding this passage, were given to Moshe in the *Ohel Moed* rather than at Sinai, as the Torah explicitly states. One could perhaps claim that the *midrash* is claiming that all the times that the Torah reports God commanding Moshe from the *Ohel Moed* are merely reiterations, but I do not believe that that is the main point the author of this *midrash* is trying to make. He really interested in *how* the *mitzvot* were given rather than when. His claim is that just like the Written Torah goes in to great detail with regard to the laws of *shemitta*, the same is the case with other *mitzvot*, though that detail is not necessarily written. The Oral Torah, in this context, functions as an expansion and completion of the Written Torah, filling in the detail where it is missing. All of the content, written and oral, is "from Sinai", i.e., part of the Torah revealed to Moshe.

In contrast, consider the following *midrash*, this time from *Shemot Rabba*. The *midrash* is a comment on the verse that describes God giving the tablets to Moshe:

"He gave them to Moshe"… How could Moshe learn the whole Torah? It says in the verse, "Its measure is longer than the earth and its width is wider than the sea," (*Iyyov* 11:9) and in forty days Moshe learned it? Rather, the Holy One, Blessed Be He taught Moshe principles…[[6]](#footnote-6)

The author of this *midrash* recognizes that the scope of the Oral Torah is greater than what any single individual, even Moshe, can encompass. When God gave the Torah to Moshe, it was in the form of general principles from which Moshe and his students (and their students, etc.) can derive the endless content of the Torah.

These two *midrashim* neatly reflect a tension which is an essential part of *Chazal's* self-understanding. On the one hand, the Oral Torah is divine and gains its provenance from the revelation at Sinai. The role of the Rabbis, the teachers of Torah, is to preserve and pass on that inheritance. On the other hand, the process of learning and interpreting the Torah is a constantly creative one, in which new insights are achieved and new ideas are discovered. As Rabbi Yehoshua teaches elsewhere, "there can be no *beit midrash* without new insights."[[7]](#footnote-7)

**3. The Rambam's Positivist Understanding of Halakha**

I cannot hope to do justice to the Rambam's understanding of Halakha in a few short paragraphs. What follows is merely a sketch, so concise that it borders on caricature.[[8]](#footnote-8)

According to the Rambam, and in accordance with the *midrash* from the *Sifra* quoted above, the content of the Oral Torah given at Sinai was halakhic, organized in the form of the 613 *mitzvot*. This conception of the Torah is more or less explicit in the *Introduction to the Commentary to the Mishna* and receives additional support from the tremendous emphasis the Rambam places on specifying the *mitzvot* and organizing the Halakha around them in *Mishneh Torah.*[[9]](#footnote-9) Here is how the Rambam opens the *Introduction to the Commentary to the Mishna:*

Know that every mitzva that the Holy One, Blessed Be He gave to Moses our teacher, He gave with its interpretation. The Holy One, Blessed Be would tell him the [Torah] verse and then tell him its interpretation and explanation and everything that was included in that deep text…[[10]](#footnote-10)

As an example the Rambam cites the explanation of the mitzva of *sukka*:

Here is an example: God told him [Moshe] "You shall dwell in booths for seven days" (*Vayikra* 23:42) and also God, may He be praised, informed him that *sukka* is an obligation for males and not for females; it is not an obligation for the sick or the travelers; the covering [*sekhakh*] must only be something that grows from the earth; the covering may not be wool, silk or utensils, even those made from something grown in the ground such as mats or clothing; eating and drinking and sleeping are to be in it [the *sukka*] all seven days; its space should not be less than 7 *tefachim* wide by 7 *tefachim* long; it should not be less than 10 *tefachim* high…and so too with all 613 *mitzvot* with their explanation. The text [of the Torah was written] on scrolls while the interpretation was oral.[[11]](#footnote-11)

The Rambam's claim is that the revealed Oral Torah contains the basic halakhic content of the 613 *mitzvot*. Any *halakha* that is "from the Torah", i.e., that has the legal status of *“de-orayta,”* is, according to the Rambam, an explicit part of the original revelation to Moshe *Rabbeinu*. That is not to say that the *Torah she-be'al Peh* does not include a creative element. According to the Rambam, the authority granted to the Sages of every generation includes 3 powers: to make *takkanot*, to make *gezeirot*, and to interpret the Torah in accordance with the 13 *middot* (rules or principles) of interpretation. *Takkanot* are positive commandments instituted by the Rabbis, such as the celebration of Purim. *Gezeirot* are negative commandments whose role is to "make a fence around the Torah" like, for example, the prohibition to drink gentile wine. Neither of these is controversial. But the Rambam's claim that interpretations in accordance with the 13 *middot* are also *de-rabbanan* was very controversial.[[12]](#footnote-12) According to the Rambam, most of what we call *Torah she-be'al Peh* is the product of this Rabbinic interpretive activity.[[13]](#footnote-13)

The Rambam's position raises a significant question. The Rambam is concerned to establish a theory of Halakha in which every particular *halakha* is grounded in a source of authority. Every *halakha* is either a product of the Rabbis' authority, as granted to them by the Torah, or is a product of revelation, with revelation constituting the core content of all of the *mitzvot*. However, the pervasiveness of *machloket*, of *halakhic* dispute and disagreement, makes it difficult to understand how the basic content is part of an unbroken chain of tradition going back to Moshe at Sinai. If that is the case, then any *machloket* about a seemingly core halakhic concept (about which there are thousands) necessarily depends upon one side being in error. *Machloket*, in this context, involves a terrible tragedy of the loss of the word of God. To make matters worse, the tradition at times seems to embrace *machloket* as legitimate phenomenon: the Talmud famously reports of a voice from heaven declaring about the disputes between Beit Shammai and Beit Hillel that "both [sides of the dispute] are the words of the living God," "*eilu va-elu divrei Elokim chayim*."

The Rambam is well aware of these problems and offers a radical, almost impossible solution. According to the Rambam, the tradition contains no *machloket*, no disputes at all, about anything that was received at Sinai.[[14]](#footnote-14) Any dispute that appears in the tradition of the Oral Torah is not part of the core content of the mitzva but rather the more peripheral issues that are determined by the Sages' interpretations of the Torah.[[15]](#footnote-15) Interpretive disputes on this level, though not desirable, are unavoidable given that interpretation is a human activity.[[16]](#footnote-16) Furthermore, the Torah itself prescribes a decision-making procedure for deciding such disputes in the Halakha – halakhic disputes are decided in accordance with the majority. But the core, the actual revelation which contains the form of all 613 *mitzvot*, remains pristine; it was never threatened, either by error, forgetfulness, or differences in interpretation.

The Rambam's understanding of *Torah she-be'al Peh* has some great strengths. He offers us a very clear theory of *Torah she-be'al Peh* in which the sources of the validity of every *halakha* are explicit. The notion of *Torah mi-Sinai* including the Oral Law has a clear unequivocal meaning and the phenomenon of *machloket* is explained without that phenomenon threatening the notion that the Oral Law is fundamentally the will of God.

The difficulty of this position, however, is also very great, as many have pointed out. The center of the problem lies with the Rambam's bold assertion that there was never a *machloket* in the core content of Halakha. First of all, given that we are discussing a three-thousand year old tradition, in the first half of which the Oral Torah was preserved exclusively orally, it seems very unlikely that no mistakes were made, nothing was forgotten or that no disputes arose. There are even Rabbinic stories to the effect that parts of the *Torah she-ba'al Peh* were forgotten![[17]](#footnote-17) I do not think that this issue, by itself, presents too great a problem for the Rambam. What he offers is an idealized conception of how the Halakha works. It is true that such an account ignores the possibility of errors creeping in, but that is because the Rambam considers them to be peripheral phenomena that have minimal impact. His description of how the Halakha works does not deny the possibility of human weakness but rather offers us an account of the grounds of the validity of a revealed Halakha. Error, when it occurs, does threaten the validity of Halakha, but the Rambam believes that we can trust the *ba'alei ha-mesora* the maintainers of the tradition, to have kept error to a minimum.

However, there is a much greater difficulty that has led to the fact that most of our Sages, since the Rambam, have not fully embraced his theory of *Torah she-be'al Peh*. That difficulty can be put simply: it is very difficult to match the phenomenology of the *Torah she-be'al Peh*, the way it works and has expressed itself in practice over the generations, to the Rambam's theory. It is nigh impossible to defend the claim that there is no *machloket* in the core explanations of *mitzvot*, without reducing the core content to close to zero. There are even disputes with regard to the examples of core content that the Rambam himself uses![[18]](#footnote-18) I do not know how to resolve this issue in the Rambam, but it does motivate us to look for an alternative conception of *Torah she-be'al Peh*. That, however, will have to wait until next week.

1. Rambam, *Commentary on the Mishna, Introduction to Perek Chelek*. Translation from Kellner, Menachem (1986), *Dogma in Medieval Jewish Thought*, pp. 14-15. [↑](#footnote-ref-1)
2. The *Shorashim* (lit. roots) is the programmatic introduction to the Rambam's listing of the 613 *mitzvot* in which he elaborately describes his system for determining what counts as a mitzva. [↑](#footnote-ref-2)
3. The earliest attempts to do so, that I am aware of (it is possible that there are earlier sources that I am not aware of), are from the period of the late Ge’onim, most notably Rav Sherira Gaon's famous letter and Rav Shmuel HaNagid's Introduction to the Talmud. This may have to do with the degree to which philosophical thinking had penetrated into both Geonic and Spanish Jewish culture. It may also have to do with a response to the Karaite movement's denial of the authority of *Torah she-be'al Peh*. [↑](#footnote-ref-3)
4. On a *peshat* level the mention of "*be-har Sinai*" presumably serves to *contrast* the upcoming passage about *shemitta* with the previous passages which were the products of God speaking to Moshe in the *Ohel Moed*. [↑](#footnote-ref-4)
5. *Sifra Behar* 1:1. [↑](#footnote-ref-5)
6. *Shemot Ragba Parashat Ki Tisa, parasha 4.* [↑](#footnote-ref-6)
7. *Chagiga* 3a. The story told there, if one reads the continuation through the exchange between Rabbi Eliezer and Rabbi Yosi ben Dormiskat on 3b, perfectly captures this tension. Rabbi Eliezer and Rabbi Yehoshua seem to represent, in many places, the tension between the role of the Rabbi as a preserver and teacher of tradition and the role of the Rabbi as a creative producer of new ideas. For example, they also appear as the protagonists of the famous *Tanur shel Akhnai* story (*Bava Metzia* 59a-b). [↑](#footnote-ref-7)
8. There is a great deal that has been written about this, almost all in Hebrew. Anyone interested is welcome to contact me and I can provide bibliography. [↑](#footnote-ref-8)
9. In "*Sefer Ha-mitzvot*: the Architecture of the Halakha and its Interpretative Theory" (Hebrew) Moshe Halbertal convincingly argues that *Sefer Ha-mitzvot* should be understood as the architectonic prelude to the *Mishneh Torah*, as is evidenced by the fact that every unit of *Mishneh Torah* is prefaced by a list of the relevant *mitzvot*. [↑](#footnote-ref-9)
10. My translation from the Kapach edition of the *Introduction to the Commentary to the Mishna,* p. 1. [↑](#footnote-ref-10)
11. Ibid. p.2, my translation. [↑](#footnote-ref-11)
12. See the Rambam in the second *Shoresh* to *Sefer Ha-mitzvot* and the Ramban's harsh polemic on this point in his *Hassagot*. This issue is discussed at length in both Rabbinic and academic literature, usually in the context of the Rambam's conception of *divrei sofrim*, focused around the Rambam in *Hilkhot Ishut* 1:2. There are many competing interpretations of the Rambam in this area and I cannot hope to do justice to this topic in these brief comments. All I can do is provide you with my own understanding of the Rambam's position. [↑](#footnote-ref-12)
13. *Sefer Ha-mitzvot, Shoresh* 2 [↑](#footnote-ref-13)
14. *Hilkhot Mamrim* 1:3. [↑](#footnote-ref-14)
15. See *Sefer Ha-mitzvot Shoresh* 2. [↑](#footnote-ref-15)
16. See the Introduction to the *Commentary on the Mishna*, p. 2: "… this one interprets and understands [one way] and the other interprets and understands [another way], since in the ways of rhetorical interpretation results like this will occur. When [such] a dispute arises, we follow the majority as it is written ‘lean towards the majority’" (my translation of the Kapach text). It is worth noting that the decision in accordance with the majority thus only applies to *halakhot* that are fundamentally human creations. The authority of the majority does not extend to establishing the core content. [↑](#footnote-ref-16)
17. See, for example, *Yoma* 80a. [↑](#footnote-ref-17)
18. Even with regard to the example from the *halakha* of *sukka* cited above there is a dispute recorded in *Sukka* 3a about the minimal area of a *sukka*. In addition, the Rambam lists, in the *Introduction to the Commentary on the Mishna* a comprehensive list of *Halakhot le-Moshe mi-Sinai*. R. Yair Bachrach, in his collection of responsa, *Chavvot Yair*, 192, systematically goes through the list and shows how nearly all of them are subject to dispute. [↑](#footnote-ref-18)