YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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RAV KOOK’S LETTERS

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Lecture #20b

Development of Halakha – Part II (continued)

The Written Law and the Oral Law

Rav Kook’s position cannot be summed up merely through a comparison to R. Yehuda Ha-Levi. His main argument concerning new revelations in Torah is based on the idea that *Kenesset Yisrael* manifests the will of God through its life and through its Sages. The Torah from heaven, the Written Law, is a manifestation of God’s will from outside of reality; it is an exalted Divine ideal that is revealed in human reality. But God’s will is also revealed from within reality; the Torah is also manifest through *Kenesset Yisrael*, whose genuine desires and aspirations are an expression of Divine will. This understanding emphasizes the metaphysical essence of *Kenesset Yisrael* and its identification with the Oral Law. Rav Kook addresses these principles in the first paragraph of *Orot Ha-Torah*:

We receive the Written Law through the most Divine and expansive image of our souls.[[1]](#footnote-1) Through it, we sense the glory (*Tiferet*)[[2]](#footnote-2) of the living light of all of creation. Through it, we rise above all logic an intellect; we sense the spirit of God hovering above us – touching and not touching, floating above our lives and enlightening them with its lights. This brilliant light penetrates everything under the Heavens. It is not the spirit of the nation that creates this light,[[3]](#footnote-3) but rather the spirit of God. The Torah of life is the foundation of the creation of all of the worlds.

Through the Oral Law, we descend to life itself. We sense that we receive the divine light through a second channel in the soul, a channel that is closer to practical life.[[4]](#footnote-4) We sense that the spirit of the nation, which is connected to the light of the true Torah like a flame to a coal, causes in her unique way that the Oral Law is fashioned in its unique way.[[5]](#footnote-5) Certainly, the Torah of Man is included in the Torah of God. The eye that sees with a clear lens,[[6]](#footnote-6) which is the most faithful in the House of God, cannot possibly produce life influence while ignoring its gates.[[7]](#footnote-7) Even what a great scholar will innovate in the future was revealed to Moshe at Sinai.

These two lights create a complete world in which the heavens and earth kiss.[[8]](#footnote-8) (*Orot Ha-Torah* 1:1)

There are two Torahs: the Written Law, which is the heavenly, supreme, ideal revelation of God's will, and the Oral Law, the Torah of man, which is connected to life, to reality, to history. These two Torah essences are connected by a single principle: *Kenesset Yisrael*. It is the soul or essence ("*atzmiut*") of *Kenesset Yisrael* that is the source of the Oral Law. Nevertheless, its source remains in the Written Law from two perspectives:

* The essence of *Kenesset Yisrael* is built on commitment to the Written Law, which the nation accepted upon itself and which molds its world-view and its conduct.
* The mechanism of revelation of the Oral Law is the *midrash* and exegesis of the Written Law. In other words, the spiritual essence of the nation is not the source of new, independence creations, but rather the source of the truths and norms that are concealed in the Written Law.

**"The Words of the Sages are More Beloved than the Words of Torah"**

Let us continue with the second paragraph of *Orot Ha-Torah*:

The Oral Law is rooted in the nature of the nation,[[9]](#footnote-9) which was blessed through the heavenly revelation of the Oral Law.[[10]](#footnote-10) In its revelation, the Oral Law is lower than the Written Law. For the primary route of finding its paths is the Written Law, the nation’s lofty relationship with the Divine, the purpose of all purposes, with *Netzach* and *Hod* in the worlds and above all of them.[[11]](#footnote-11) But in its inner form, the Torah was given to Yisrael because of her inner specialness, and this hidden divine chosenness caused the Torah from Heaven to descend upon them. Thus, the Oral Torah is rooted in higher roots than the Written Torah: “The words of the Sages are dearer than the words of Torah.”[[12]](#footnote-12)

On the basis of kabbalistic principles, Rav Kook inverts the conventional perception. We usually assume that there is a clear hierarchy whereby the Written Law comes before the Oral Law – both chronologically and also in terms of its status. The legal significance of this hierarchy is the absolute commitment of the Sages of the Oral Law to the Written Law.

However, this represents only the outward aspect or appearance of the relationship between the parts of the Torah. The unique national essence of Israel has its own source, which is not dependent on revelation of the Torah. The nation, Avraham and the other forefathers, and the spirit of the nation in general reveal within reality the Divine aspirations and will, with no tangible connection to the Written Law. The revelation of the Written Law in reality is therefore dependent on the metaphysical precedence of the nation's existence, prior to the Written Law. Had *Kenesset Yisrael* not, through its historical life, revealed the Divine will in the Torah, the Torah would have remained concealed in God's treasury. From this point of view, it is actually the Oral Law – the revelation of the unique essence of Israel – that is superior to the Written Law.

**Exile of the Torah**

The Oral Law draws in concealment from the Heavens and is revealed on earth.[[13]](#footnote-13) When the Land of Israel is built up and all of Israel dwells upon her, organized properly with a Temple and monarchy, priesthood and prophecy, judges and officers and all there accoutrements, then the Oral Law lives in all its glory, sprouting and blossoming and joining with the Written Law to the full degree of its greatness. In the exile, the twins were separated; the Written Law was raised to the heights of holiness, while the Oral Law descended to the depths.[[14]](#footnote-14) Nevertheless, the Oral Law received secret influence from the light of the Written Law of the past, which suffices to allow it to live in a condensed fashion. It continues to descend day by day, until the day breaks and the light of life will come from the treasury of the redemption of worlds. Then, Yisrael will do great things, will be implanted in its land, and will enjoy the glory of its arrangement. Then, the Oral Law will begin to sprout from the depths of its roots, rising higher and higher, and the light of the Written Law will shine the rays of her light once again, anew each day. The “Lover” and the “Beloved” will unite,[[15]](#footnote-15) and the light of the soul of the God who gives life to all worlds,[[16]](#footnote-16) which is revealed through the revival of Yisrael and its elevation, will illuminate with the light of the seven days,[[17]](#footnote-17) the light of the sun and the moon together.[[18]](#footnote-18) And they will draw light from one another and respond to the land and the nation. And the light of the moon will be like that of the sun, and the light of the sun will be seven times brighter than the light of the seven days – on the day that God bandages the injury of His nation and heals its wound. (Ibid. 3)

Here the picture begins to become clearer. The Halakha created during the period of exile is not an authentic, full revelation of God's will, as explained above. The divine influence in exile is dulled; the nation lives an apologetic life, the national spirit is almost not alive in its organic form, and halakhic authority is absent. Therefore, the wellspring of creativity was blocked, the Torah ceased to develop as it had in the past, and the wellspring of *midrash* was almost sealed at the end of the Tannaic period. The boundaries of authority were tightened; no *beit din* could go against the ruling of an earlier *beit din*, except under special circumstances. Halakha began to focus on preserving itself, on solving practical problems, but the spirit grew continually weaker.

Here, we return to the problem that arose from the letter and which led us to this discussion: the Torah no longer responds to new moral winds. Innovations in all spheres arise in the world, reality is continually developing – but Halakha remains static, not breathing in any of this change. Where is the continuous revelation that R. Yehuda ha-Levi spoke about? Where is the flowing spring of the nation, renewing the Oral Law through rabbinical enactments, exegesis, and innovative interpretation? Solving problems ad hoc is not sufficient; surely, Halakha cannot be confined to responding only to those crises that cannot be ignored!

Rav Kook concludes that this is the sickness of exile. Not only *Am Yisrael* suffers exile; the Torah itself is exiled. Exile does not harm the Written Law, in its ideal sense; the Torah's principles remain valid. But the manifestations and revelations of Torah in the world and in history are indeed exiled. The imminent redemption of Israel, says Rav Kook, is also the redemption of the Torah from its exile. God's word will once again be fully revealed in reality, in the present; not just as a dry legal bottom line, but as creative, interpretive Torah, revealing the spirit of the nation and its holy aspirations.

**Custom as the Basis for Halakha**

This line of thought, connecting the Oral Law to *Knesset Yisrael* and understanding it as the revelation of the Divine will – God's voice within reality – is the basis for Rav Kook's exposition in Letter 90. *Knesset Yisrael* lives and acts within history. It breathes the development and morality of the world; it lives and breathes the changes in reality. In its innermost self, it seeks the Divine truth, and in its actions, it tries to realize that truth in reality. In its understanding and study, it seeks God's word in the Torah through *midrash*, exegesis, innovation – and all of these together are God's clear word. This is His ongoing revelation in history, the voice composed of the Divine letters inscribed in the Book of History, the letters of the soul of *Knesset Yisrael* and the actual letters of the Torah, each system separately and all of them together as a single, whole voice.

In his "*Eder Ha-yakar*," written in memory of his father-in-law, the Aderet, Rav Kook expounds at length on modern biblical criticism. Inter alia, he addresses a certain aspect of historical criticism that casts doubt on the greatness of the forefathers, or of *Chazal*, thereby undermining the authority of these great figures. Rav Kook responds as follows to such criticism:

This is but a small amount of the vast general heresy, which impacts even the nations of the world negatively regarding their relation to the Holy Scripture, and all the more so that there is no place for such heresy among Israel.

Heresy does not only entail violation of the commands of the Torah and our Sages and to breach boundaries by leaving the heritage of our forefathers; for this is not moral at all, and is not specifically tied to lofty ideas.[[19]](#footnote-19) Know this, for we fulfill the customs of Israel with love, although we know that they were not commanded through prophecy, simply because our nation’s love and respect – our love of the transcendent divine holiness.[[20]](#footnote-20) Similarly, any rabbinic command that we fulfill is essentially based in the acceptance of “the nation as a whole,”[[21]](#footnote-21) which is the honor of the nation and the eternal historical divine influence – in that the more ancient it is, the dearer it is and the more it reveals the will and desire of the nation as a whole within it.

And even though “the Rabbis attributed it to ‘Do not deviate,’”[[22]](#footnote-22) the clear foundation is nevertheless the acceptance of the nation. This is clear from the fact that we demand the acceptance of the “entire nation” – that the practice must be accepted by most of Israel. And according to the Ramban,[[23]](#footnote-23) the prohibition of “Do not deviate” does not relate primarily to the words of the Sages, but they are nevertheless dear to Israel, who fulfill them out of love.

Those who recognize this love with all of their heart are the eternal foundation of the nation, even when they are few in number – the “survivors that call upon God”…[[24]](#footnote-24)

Lack of recognition of the centrality of the nation’s acceptance of the Oral Law over the course of generations has caused many errors. Many have thought that the main basis of the Oral Law’s existence has been the nation’s acceptance of our Sage’s greatness and holiness. Therefore, many have begun to be brazen and criticize, in a disrespectful and extreme manner, those great leader and fathers of the world, thinking that they will thus weaken the necessity to abide by their words in practice.[[25]](#footnote-25) They do not realize that while the great level of our Sages, their divine status, is true, and that gives spice and makes it more pleasant to follow in their ways, the eternal basis of our commitment is only the acceptance of the nation throughout the generations of its way of life. We see, for example, that the “*Cherem*” of Rabbenu Gershom is very strong in the hearts of the nation, like the other prohibitions of the Torah, wherever it was accepted – even though he was not a *Tanna* or an *Amora*. Rather, the nation agreed with him throughout the generations, “And anyone who removes himself from the group, it is as if he denies the existence of God.”[[26]](#footnote-26)

It is certain that the practical fulfillment of the Written Law requires no less, in terms of its national basis, than the Oral Law and rabbinic enactments, about which it was said, “God did not make a covenant with Yisrael except for the matters of the Oral Law.” For its basis is the divine importance found in this nation, which is unique and more glorious than any other nation. This includes the oral side of the written – that is, the acceptance of the nation as a whole and its divine benefit that it is evident to all. And this shuts the mouth of every heretic and destroyer, even the greatest advancers of biblical criticism. (*Eder Ha-yakar*, pp. 38-39)

Rav Kook's argument here is directed against the criticism that had taken root among certain Jewish intellectual circles, eventually leading to the Conservative and Reform movements, among others. Rav Kook explains that the source of the binding validity of Halakha is its acceptance by the nation.

In the realm of custom (*minhag*) this is clear, and R. Hai Gaon indeed concludes that "custom takes preference over Halakha."[[27]](#footnote-27) If a certain custom has taken root in the nation –it has passed through the sieve of religious and national sentiment and has been integrated into the entirety of tradition, daily norms, and healthy outlook – then this is a sign that it has substance. Other philosophers, including R. Chaim Hirschenson and R. Yitzchak Breuer, explained that the source of the validity of custom lies in popular acceptance in the formal sense –the commitment, or undertaking, which is through the covenant. To this, Rav Kook adds that popular acceptance verifies the Divine content of the custom since, as explained above, *Knesset Yisrael*, in its ideal manifestation, reveals God's voice in reality. A custom that has been accepted by *Knesset Yisrael* is therefore unquestionably God's actual will.

Rav Kook adds that the same is true of the enactments and rulings of the Sages of all generations. While *Chazal* base their authority on the commandment of "You shall not deviate…,” the Ramban explains that according to the plain meaning of the text, this mitzva actually concerns only the juridical authority of the Sages, not their authority to enact laws. To put it in halakhic language, the command "You shall not deviate…" concerns only exegesis or extracting lessons through the 13 methods for deducing from the text the answer to a specific problem.

The Ramban bases the Sages' authority to enact laws on the song of *Haazinu*, "Ask your father and he shall tell you; your elders – and they shall say to you," even though this verse is certainly not referring to instruction in matters of Halakha, but rather guidance to learn from previous generations. Rav Kook explains that what Ramban means is that the acceptance by the future generations is what lends validity to the rulings of *Chazal*. The Torah instructs us to anchor ourselves in this tradition of the forefathers, not because it was revealed to Moshe at Sinai, but rather because that which the nation has accepted upon itself if as beloved in the eyes of God as that which He Himself commanded. Proof of this is the limitation imposed by *Chazal* on their own powers, stipulating that an enactment that had not spread throughout Israel is not valid and is automatically annulled. Thus, a ruling of *Chazal* or the Sages of later generations might be regarded as a sort of "trial balloon" that lacks final confirmation until it becomes entrenched in national tradition and custom, becoming an integral, interwoven element of halakhic life.

The transfer of the weight of halakhic authority to the nation has preservative power as well as rejuvenating power. On the one hand, through its spirit and its feelings, the nation may – through its Sages – arrive at new decisions. On the other hand, the force of tradition and continuity serves to preserve that which exists and to overcome that which is temporary.

The final stage in Rav Kook's essay here concerns the attitude towards the Written Law. Just as the validity of custom and rabbinical enactment comes through acceptance on the part of the nation, so – even more so – the acceptance by the nation lends validity to the Written Law. Acceptance of Torah is not merely a heteronomous revelation (determined by an outside force). Rather, the Torah is given to *Am Yisrael* because the nation is worthy of and suited to it; this is the source of agreement to observe and fulfill it.[[28]](#footnote-28)

In this section, as in the preceding ones, we gain insight into the essence of Torah – especially the Oral Law – as expressing the national character of *Knesset Yisrael*. It is an creation that the nation brings into existence through its inner strengths and qualities – but this creation is like an actual revelation of God's word, since God's word in the literal sense, revealed to Israel in the wilderness, was also given to us only by virtue of the nation's unique essence.

As an afterword, we might add that they are connected also in Rav Kook's understanding of prophecy. According to Rav Kook, prophecy is not an external revelation that comes upon a person or a nation by force, seizing control of his speech or mind. Rather, prophecy is an internal, inner revelation of the prophet who succeeds in listening to God's voice from within the recesses of his own soul – each according to his own level. [[29]](#footnote-29) Therefore, the Torah should not be viewed as the revelation of God's word against our will, severed from the nation's spiritual existence. Rather, the Torah is an exalted, ideal revelation of the aspirations and ways of life that the nation itself seeks.

**For Further Thought**:

The following is an excerpt from Rav Kook's writings which was published in the *Orot Ha-emuna* collection (p. 25). In it, Rav Kook expresses some surprising ideas concerning the concept of the Divinely-given Torah. Try to understand it against the background of what we have covered in this *shiur*.

There is heresy that is comparable to faith and faith that is actually heresy.

In what way? A person may admit that the Torah is from heaven, but the heaven that he imagines are so strange that there is no element of true faith in him.

And what is heresy that is like faith? A person can deny that the Torah is from heaven, but his heresy is based only on what he absorbed from the description of the heavens of those whose minds are filled with empty and vain thoughts, and he assumes that the Torah must have a higher source than this. And he begins to find its root in the great spirit of man steeped in morality and of great wisdom. Even though he did not reach the truth, his heresy is considered belief and it becomes increasingly similar to true faith. In an upside down generation such as this, this must also be raised. And Torah from heaven is but an example of all elements of faith regarding their outward appearance and their inner essence, which is the essential desired part.

Translated by Kaeren Fish

1. In other words, it does not stem from man or his will, but is rather an ideal that is like an all-encompassing light; it touches upon the human essence, but is greater than it. [↑](#footnote-ref-1)
2. The “Written Law” is one of the terms used to refer to the *sefira* of *Tiferet* in kabbalistic thought. *Tiferet* represents the full and ideal expression of God’s universal revelation, before its final constriction in the world in the *sefira* of *Malkhut*. [↑](#footnote-ref-2)
3. This statement addresses the Romantic conception of Ahad Ha-Am and others like him. [↑](#footnote-ref-3)
4. The “Oral Law” parallels the *sefira* of *Malkhut*, the practical *sefira* of revelation in the world. The second channel of the soul represents this *sefira*. The Oral Law is the Torah of man, as the Halakah is an expression of the world of human intellect, will, and emotion, even as it is a collective and higher expression. [↑](#footnote-ref-4)
5. *Kenesset Yisrael* is influenced, on the one hand, by the encompassing light of the Written Law, and on the other hand, it generates the Oral Law through its inner channels. Thus, the Oral Law is not essentially disconnected. It is a revelation of the transcendent Torah through imminent functions. [↑](#footnote-ref-5)
6. This is a reference to Moshe Rabbenu, to whom God revealed Himself through a “clear lens.” In other words, the Torah was revealed to him in a super-human manner, without any other medium. [↑](#footnote-ref-6)
7. In other words, the seeds of the innovations of *Kenesset Yisrael* throughout the generations, which are themselves the word of God, are planted within the Written Law itself. The sight of Moshe and the “clear lens” incorporates all of the different possibilities, although in concealment. [↑](#footnote-ref-7)
8. Heaven and earth = *Tiferet* and *Malkhut* = Moshe and *Kenesset Yisrael* = the Written Law and the Oral Law. [↑](#footnote-ref-8)
9. *Kenesset Yisrael* and the Oral Law are revelations of the same metaphysical essence – the *sefira* of *Malkhut*/*Shekhina*. [↑](#footnote-ref-9)
10. Regarding the *pasuk*, “And god blessed Avraham with everything (*ba-kol*)” (*Bereishit* 24:1), *Chazal* write that Avraham had a daughter name Ba-Kol (*Bava Batra* 16b). The Sefer Ha-Bahir explains that the “daughter” refers to *Malkhut*. The daughter is blessed through the divine revelation of the Written Law, which makes an imprint on the nature of the nation. [↑](#footnote-ref-10)
11. In other words, from the perspective of legal hierarchy, the Written Law is the source on which the Oral Law is entirely based and which the Sages of the Oral Law interpret and explain. Its status is therefore higher than that of the Oral Law. This is because the Written Law is ideal revelation – it is *Netzach* and *Hod*, the two “legs” of Divine revelation, the two *sefirot* alongside *Tiferet*, which, as we said, is the source of the Written Law. [↑](#footnote-ref-11)
12. In other words, the Written Law cannot be revealed in reality without *Kenesset Yisrael*, and is therefore dependent upon her. How is it possible for a divine essence to be dependent on a lower essence, which in fact derives from it? *Kenesset Yisrael* may be lower in its level of revelation, but its source is in the higher *sefirot* – in *Bina*, which is called “the mother of children” – and she draws wisdom from it through direct influence. *Kenesset Yisrael* is thus an expression of the divine that is independent of the revelation of the Written Torah, although she is obviously lacking without that revelation. [↑](#footnote-ref-12)
13. As noted above, the Oral Law is considered greater than the Written Law. [↑](#footnote-ref-13)
14. In other words, the Oral Law was removed from the ideal spirit of the Written Law and became part of the reality of legal, pragmatic logic, disconnected from the ideal at its root. [↑](#footnote-ref-14)
15. The “Lover” and “Beloved” represent *Kenesset Yisrael* and *Ha-Kadosh Barukh Hu*, as well as the Oral Law, which belongs to *Kenesset Yisrael*, and the Written Law, which derives from the Divine – *Tiferet*. [↑](#footnote-ref-15)
16. This is a Kabbalistic term for divinity revealed in this world, the immanent aspect of God (as represented by *Malkhut/Shekhina*). [↑](#footnote-ref-16)
17. Each one of the original seven days corresponds to one of the *sefirot*, as well as to each historical era until the kingdom of Israel is once again revealed in its land (represented by David, the King Messiah/*Malkhut*/*Shekhina*). [↑](#footnote-ref-17)
18. The sun represents *Tiferet*, the transcendent Divine, while the moon represents *Kenesset Yisrael*, the Divine that illuminates from within reality (*Malkhut*). [↑](#footnote-ref-18)
19. As will be explained below, we fulfill the Torah, first and foremost, due to the power of the tradition based on the nation’s acceptance. Our fulfillment is not dependent on the greatness of any one great sage or leader. [↑](#footnote-ref-19)
20. Custom reflects immanent national will; although the nation is not obligated by any halakhic reasoning, the nation adopts customs that faithfully reflect its nature and will. [↑](#footnote-ref-20)
21. “R. Mesharshia says: What is the reason? Because the prohibition was accepted by the majority of Israel. [The prohibition against] oil was not accepted by the majority of Israel. As R. Shmuel bar Abba said in the name of R. Yochanan: Our Sages sat and found that the prohibition against oil had not been accepted by the majority of Israel, and our Sages relied on the words of R. Shimon ben Gamliel and on the words of R. Eliezer bar Tzadok, who said: We do not make a decree upon the congregation unless most of the congregation can fulfill it. As R. ada bar Ahava said: What is the biblical source? ‘You are afflicted with a curse; yet Me you still rob, the entire nation’ (*Malachi* 3:9) – If there is an entire nation, yes, but if not, not” (*Avoda Zara* 36a-b). Rav Kook interprets this generally – *Kenesset Yisrael* is the source of the power of the creation of Halakha. [↑](#footnote-ref-21)
22. *Berakhot* 19b; see also *Shabbat* 23a and below. [↑](#footnote-ref-22)
23. Ramban, comments on the Rambam’s *Sefer Ha-mitzvot*, end of the first *shoresh*. [↑](#footnote-ref-23)
24. *Yoel* 3:5. Rav Kook interprets the verse: “And those of the survivors who call in the name of God.” [↑](#footnote-ref-24)
25. This appears to refer to the attempts of the “Wissenschaft” (“*Chochmat Yisrael*”) school of the 19th century. [↑](#footnote-ref-25)
26. Paraphrase of the Passover Haggada. The comparison between these words and that of the Chatam Sofer in his Drashot for Shabbat Ha-gadol is interesting. [↑](#footnote-ref-26)
27. See D. Sperber, Minhagei Yisrael I, Introduction. [↑](#footnote-ref-27)
28. See *Bavli*, *Avoda Zara* 2b. [↑](#footnote-ref-28)
29. Of course, Rav Kook's teachings about prophecy represent a broad area of study in their own right, beyond the scope of this *shiur*. [↑](#footnote-ref-29)