

Jewish Contemporary Ethics Part 13: The Written and Oral Torah V

by Rabbi Dr Moshe Freedman, New West End Synagogue



The last article introduced the fact that the Oral Torah was given by God to Moshe at Mount Sinai, together with part of the Written Torah. This however, raises four interconnected questions.

First, to avoid doubt, why couldn't God spell out His requirements of mankind with absolute clarity in the Written Torah itself? Second, as discussed in previous articles, if the ethical advantage of God's Divine law is that it is objective, why involve mankind at all in the development of Torah, which seemingly risks contaminating Divine objectivity with human bias? Third, if the Oral Law is Divine and is merely transmitted from teacher to student, what room is there for genuine innovation? And fourth, if God ultimately knows which choices are preferable, how can He have allowed a system which allows for *machloket* (disagreement) among the Talmudic sages and later halachic authorities?

To address the first point, every legal system needs to contain the agreed principles and method by which the law is to be interpreted and applied. Secular democracies have a system of courts known as the judiciary, which interprets and applies the law in the name of the state. When dealing with criminal law, for example, it determines the guilt or innocence of individuals who have been accused of flouting the law and administers appropriate punishments and consequences. The Written Torah also includes the concept of a judiciary, which must interpret and establish Jewish law (see Shemot 18:14-26 and Devarim 17:9-11).

This is a fundamental tenet in jurisprudence, as no legal system can *a priori* develop explicit laws that cover every possible scenario. General principles are therefore more powerful, as they can be applied to evolving societal and technological needs.

God therefore bestowed His authority on outstanding and pious sages throughout the generations to rule on applying His laws to their context. This is stated in parashat Shofetim: "According to the teaching that they will teach you and according to the judgement that they will say to you, shall you do; you shall not deviate from the word that they will tell you, right or left" (Devarim 17:10-11 – see Rashi's commentary and Talmud Berachot 19b).

The sages' role as emissaries of God is also seen in the phraseology used for the blessings over rabbinic mitzvot, such as Chanukah candles: "Blessed are You, Lord our God, King of the Universe, Who has made us holy through His Divine commandments **and commanded us** to light Chanukah candles". Clearly God did not command us to light Chanukah candles, the Talmudic sages did. Yet our blessing recognises them as His ambassadors (Talmud Shabbat 22b).

Nevertheless, this authority is limited. An English court must decide if a particular law has been broken, but they do not have the power to arbitrarily abolish or suspend such a law. Similarly, the sages apply God's laws, may innovate new mitzvot in response to our collective experiences (such as Chanukah lights) or impose greater restrictions to protect Torah precepts, but they do not have the right to abolish Divine law.

Nonetheless, the Oral Law does more than merely allow halacha to be applied to contemporary times. As we shall see in the next article, the organic, evolving nature of halacha, with mankind as God's partner, allows mankind to take ownership of Jewish law with far-reaching spiritual and moral benefits.