

# Jewish Contemporary Ethics Part 16: The Written and Oral Torah VIII

by Rabbi Dr Moshe Freedman, New West End Synagogue



Previous articles have noted that both the Written and Oral Torah were revealed by God to Moshe at Mount Sinai. While the Written Torah is fixed, the Oral Torah offers the opportunity for human innovation. However,

these two statements seemingly conflict with one another; if the Oral Torah was revealed to Moshe at Sinai, implying that it is hermetically sealed from human interference, what room is left for innovation? Furthermore, Talmudic Sages often disagree in matters of Jewish law. How could this have happened if their role was to faithfully transmit God's Torah from generation to generation?

In his work *People of the Book*, Israeli philosopher Moshe Halbertal summarises three positions which address these questions:

The Spanish philosopher Rabbi Avraham ibn Daud (d. 1180) states that rabbinic innovation is merely an act of uncovering the pre-existing truths of Torah, hidden by God. This is similar to the view of Rabbi Yeshayahu Horowitz (known as the *Shelah HaKadosh*, d. 1630) mentioned in the previous article. Yet one of the challenges to this perspective is the existence of *machloket* – rabbinic disagreement, which implies a breakdown in the retrieval process of this hidden Oral Torah. Indeed this is the reason given by the Talmud for the disputes between Hillel and Shammai (Sanhedrin 88b).

Opposing this position, the Rambam (Maimonides d. 1204) states that the sages legitimately innovated novel interpretations of Torah, in addition to those given to Moshe at Sinai. Controversy only developed as a result of these new interpretations. As Halbertal puts it: “controversy arises out of the process of derivation rather than through a crisis of transmission”.

A third view however, turns the issue of halachic controversy on its head. Based on the writings of the Ramban (Nachmanides d. 1270), this approach views the Talmudic Sages as the constitutive decisors of Jewish law. This means that rabbinic disagreement is merely part of the process of ascertaining what the law should be, based on the biblical dictum of majority rule (see Shemot 23:2). Ostensibly, this position may risk undermining the idea of a fundamental halachic status. Some objects have qualities which are unnegotiable, such as being kosher or not kosher. The power of the Talmudic Sages extends to being able to render something impure (*tamei*) as pure (*tahor*) and vice versa.

Rabbi Yair Chaim Bacharach (known as the *Chavat Yair* d. 1702) scrutinises each approach and exposes the tension within the fundamental principles of the transmission of Torah. We must either assert that the Oral Torah is all Divine (Rabbi ibn Daud and the *Shelah HaKadosh*) and exclude dissenting views from the Sinai revelation or alternatively embrace rabbinic disagreement at the cost of an absolute halachic truth, leaving us with a more open-ended Torah (in line with the Rambam and Ramban, albeit they had differing approaches).

The next two articles will further examine each side of this debate, after which we will embark on the next stage of our journey, which will look at the mechanisms of how Jewish law is decided in the modern world.



Answer: Moshe was 80, Aharon was 83