

Origins of the Oral Torah Part I

Introduction and What Chazal Thought about the Oral Torah

I. Did the Oral Torah “evolve”?

1) Rabbi Joseph Elias, “Popularizing the Talmud” (Jewish Observer, Jan. 1990)

(1) **The Oral Law:**

The inseparable oneness of the Written Law and the Oral Law, *given at the same time at Sinai*, is the indisputable foundation of Torah Judaism. In fact our Sages stress that G-d only concluded His covenant with Israel on the basis of the Oral Law (*Gittin* 60b), and that the denial of the Divinity of the Torah, on account of which a person loses his share in the World-to-Come, includes the denial of even one *kal vachomer* or *gezera shava*—both expressions of the Oral Law (*Sanhedrin* 99); while the actual *kal vachomer* may have been enunciated by a Talmudic sage, the method used was taught at Sinai and produced conclusions already part of the Sinaitic legislation.

What was given at Sinai was a complete, specific and binding oral law code, explaining, in full and beyond possibility of misunderstandings, the teachings of the Written Law. In the course of the generations, much was added to this law code: further clarifications, in response to new circumstances, or to misunderstandings that arose, based on the rules of interpretation given at Sinai, and Rabbinic elaborations and ordinances (clearly labelled as such). But this is certain—the Oral Law was not a set of vague traditions from ancient times that slowly evolved into the law we know.

2) Nechemiah 8:14-17

(יד) וַיִּמְצְאוּ כְּתוּב בַּתּוֹרָה אֲשֶׁר צִוָּה ה' בְּיַד־מֹשֶׁה אֲשֶׁר יָשְׁבוּ בְּנֵי־יִשְׂרָאֵל בְּסֻכּוֹת בְּחָג בַּחֲדָשׁ הַשְּׂבִיעִי:
(טו) וְאֲשֶׁר יִשְׁמִיעוּ וַיַּעֲבִירוּ קוֹל בְּכָל־עֲרֵיקָתָם וּבִירוּשָׁלַם לֵאמֹר צֵאוּ הָהָר וְהִבִּיאוּ עֲלֵינוּ זֵית וְעֲלֵי־עֵץ שֶׁמֶן וְעֲלֵי הַדָּס
וְעֲלֵי תְמָרִים וְעֲלֵי עֵץ עֵבֶת לַעֲשׂוֹת סֻכּוֹת כַּכְּתוּב:

(טז) וַיֵּצְאוּ הָעָם וַיָּבִיאוּ וַיַּעֲשׂוּ לָהֶם סֹכוֹת אִישׁ עַל-גֹּגֹו וּבִחְצוֹתֵיהֶם וּבִחְצוֹת בַּיִת הָאֱלֹקִים וּבְרַחֲבוֹ שַׁעַר הַמַּיִם וּבְרַחֲבוֹ שַׁעַר אֶפְרַיִם:
 (יז) וַיַּעֲשׂוּ כָּל-הַקְּהָל הַשָּׁבִים מִן-הַשָּׁבִי סֹכוֹת וַיֵּשְׁבוּ בַסֹּכוֹת כִּי לֹא-עָשׂוּ מִימֵי יִשׁוּעַ בְּיַד-נֹון בֶּן-בְּנֵי יִשְׂרָאֵל עַד הַיּוֹם הַזֶּה וַתְּהִי שִׂמְחָה גְדוֹלָה מְאֹד:

14. They found written in the Teaching that the LORD had commanded Moses that the Israelites must dwell in booths during the festival of the seventh month,
15. and that they must announce and proclaim throughout all their towns and Jerusalem as follows, “Go out to the mountains and bring leafy branches of olive trees, pine trees, myrtles, palms and [other] leafy-a trees to make booths, as it is written.”
 16. So the people went out and brought them, and made themselves booths on their roofs, in their courtyards, in the courtyards of the House of God, in the square of the Water Gate and in the square of the Ephraim Gate.
 17. The whole community that returned from the captivity made booths and dwelt in the booths—the Israelites had not done so from the days of Joshua son of Nun to that day—and there was very great rejoicing.

3) Vayikra 23:40

וּלְקַחְתֶּם לָכֶם בַּיּוֹם הָרִאשׁוֹן פְּרִי עֵץ הַדֶּרֶךְ כַּפֹּת תְּמָרִים וְעֵנָף עֵץ-עֵבֶת וְעַרְבֵי-נַחַל וּשְׂמַחְתֶּם לִפְנֵי יְהוָה אֱלֹהֵיכֶם שִׁבְעַת יָמִים:

On the first day you shall take a beautiful tree fruit, branches of palm trees, boughs of leafy trees, and willows of the brook, and you shall rejoice before the Lord your God seven days.

II. What did the Sages think was given at Sinai?

4) Berachot 5a

ואמר רבי לוי בר חמא אמר רבי שמעון בן לקיש: מאי דכתיב ואתנה לך את לחת האבן והתורה והמצוה אשר כתבתי להורותם, לחות - אלו עשרת הדברות, תורה - זה מקרא, והמצוה - זו משנה, אשר כתבתי - אלו נביאים וכתובים, להורותם - זה תלמוד; מלמד שכולם נתנו למשה מסיני

R. Levi bar Chama said in the name of R. Shimon b. Lakish: What is the meaning of that which is written: “[Ascend to me on the mountain and be there,] and I will give you the stone tablets and the Torah and the mitzva that I have written that you may teach them” (Exodus 24:12)? The “tablets” are the Ten Commandments, the “Torah” is the five books of Moses, The “mitzva” is the Mishna, “That I have written” refers to the Prophets and Writings, “That you may teach them” refers to the Talmud. This teaches that all of them were given to Moses at Sinai.

5) Megillah 19b

ואמר רבי חייא בר אבא אמר רבי יוחנן: מאי דכתיב ועליהם ככל הדברים אשר דבר ה' עמכם בהר - מלמד שהראהו הקדוש ברוך הוא למשה דקדוקי תורה וקדוקי סופרים, ומה שהסופרים עתידין לחדש

Rami bar Chama said in the name of R. Yochanan: What is the meaning of that which is written: “[And the Lord delivered to me two tablets of stone written with the finger of God;] and on them was written according to all the words which the Lord spoke with you in the mountain” (Deuteronomy 9:10)? This teaches that the Holy One, Blessed be He, showed Moshe all the inferences that can be derived from the words of the Torah; and all the inferences that can be derived from the words of the Scribes, and also all that the Scribes were destined to introduce.

6) Tosfot Yom Tov (17th century), Introduction to Commentary on the Mishna

אבל תועלת חבור המשנה וסיבתה היתה לפי שתורה שבע"פ שמסרה משה ליהושע. ויהושע לזקנים וכו' אע"פ שהיתה ביאור התורה ומצותיה ביאור שלם. אין לך זמן ודור שלא יתחדש בהכרח ויפלא למשפט. ואל תשיבני דבר ממה שאמרו בפ"ב דמגילה (יט ב) מאי ועליהם ככל הדברים וכו'. מלמד שהראהו הקב"ה למשה דקדוקי תורה וקדוקי סופרים ע"כ. שאני אומר שזוה לא היה מוסר משה לאחרים כלל. וקדוק לשונם כך הוא שאמרו מלמד שהראהו ולא אמר שמסר לו או שלמדו . . . אבל אמרו שהראהו. וזה בדרך ראייה בלבד. לא בדרך מסירה. כאדם המראה דבר לחבירו לראותו ואינו נותנו לו

Even though the Oral Torah that Moshe transmitted to Yehoshua and Yehoshua to the Elders, etc. was explained completely in all its details, there is no age and no generation that lacks new situations and novel discoveries within the Torah's laws. Do not object to this idea based on the Talmud in tractate Megillah (p. 19b): “What does the verse ‘...and upon [the tablets, write] all these things that G-d spoke with you on the mountain’ mean? It teaches that the Holy One, blessed be He, showed Moshe subtleties of the Torah and subtle inferences of the Scribes.” **For I contend that Moshe did not transmit any of these subtleties to others. The wording of the Talmud indicates this, because it says that G-d “showed” Moshe and not that he “transmitted” to him or that he “taught” him. ... However, when the Torah wrote “showed,” it meant that G-d merely allowed Moshe a glimpse of this knowledge, just as someone shows an object to his friend but does not give it to him.**

7) Shemot Rabbah 41:6

וכי כל התורה למד משה כתיב בתורה (איוב יא) ארוכה מארץ מדה ורחבה מגי ים ולארבעים יום למדה משה אלא כללים למדהו הקב"ה למשה

Could Moshe have learned the entire Torah? It says (Iyov 11:9), “Its measure is longer than the land and wider than the sea”; could Moshe have learned it all in 40 days? Rather, God taught him general principles.

8) Temurah 16a

שלשת אלפים הלכות נשתכחו בימי אבלו של משה. אמרו לו ליהושע: שאל! א"ל: לא בשמים היא . . . במתניתין תנא: אלף ושבע מאות קלין וחמורין, וגזירות שוות, וקדוקי סופרים נשתכחו בימי אבלו של משה. אמר רבי אבהו: אעפ"כ החזירן עתניאל בן קנז מתוך פלפולו

3,000 halachot were forgotten during the mourning period for Moshe. They said to Yehoshua: ask [God]! He told them: it's not in heaven. ... In a Beraita we learned: 1,700 a fortiori inferences, verbal analogies, and minutiae of the scribes, were forgotten during the mourning

period for Moshe. Rabbi Abahu said: even so, Otniel the son Kenaz restored them through his sharp analysis.

9) Menachot 29b

אמר רב יהודה אמר רב: בשעה שעלה משה למרום, מצאו להקב"ה שיושב וקושר כתרים לאותיות, אמר לפניו: רבש"ע, מי מעכב על ידך? אמר לו: אדם אחד יש שעתידי להיות בסוף כמה דורות ועקיבא בן יוסף שמו, שעתידי לדרוש על כל קוץ וקוץ תילין תילין של הלכות. אמר לפניו: רבש"ע, הראהו לי, אמר לו: חזור לאחורך. הלך וישב בסוף שמונה שורות, ולא היה יודע מה הן אומרים, תשש כחו; כיון שהגיע לדבר אחד, אמרו לו תלמידיו: רבי, מנין לך? אמר להן: הלכה למשה מסיני, נתיישרה דעתו

Rav Yehuda says that Rav says: When Moses ascended on High, he found the Holy One, Blessed be He, sitting and tying crowns on the letters of the Torah. Moses said before God: Master of the Universe, who is preventing You from giving the Torah without these additions? God said to him: There is a man who is destined to be born after several generations, and Akiva ben Yosef is his name; he is destined to derive from each and every thorn of these crowns mounds upon mounds of halakhot. Moses said before Him: Master of the Universe, show him to me. God said to him: Look behind you. Moshe went and sat at the end of the eighth row in Rabbi Akiva's study hall and did not understand what they were saying. Moshe's strength waned. When Rabbi Akiva arrived at the discussion of one matter, his students said to him: My teacher, from where do you derive this? He said to them: It is a halakha transmitted to Moshe from Sinai. When Moshe heard this, his mind was put at ease.

10) Rashi on Menachot

נתיישרה דעתו - של משה הואיל ומשמו אומר אע"פ שעדיין לא קיבלה

His mind was put at ease - [the mind] of Moshe; since he spoke in his name even though he had not yet received it.

III. Does Midrash create new law?

11) Mishnah Berachot 1:5 / Passover Haggadah

אמר רבי אלעזר בן-עזריה הרי אני כבן שבעים שנה ולא זכיתי שתאמר יציאת מצרים בלילות עד שדךשה בן זומא, שנאמר, למען תזכר את יום צאתך מארץ מצרים כל ימי חייך. ימי חייך הימים. כל ימי חייך הלילות. נחמכים אומרים ימי חייך העולם הזה. כל ימי חייך להביא לימות המשיח

Rabbi Elazar ben Azariah said, "Behold I am like a man of seventy years and I have not merited [to understand why] the exodus from Egypt should be said at night until Ben Zoma explicated it, as it is stated (Deuteronomy 16:3), 'In order that you remember the day of your going out from the land of Egypt all the days of your life;' 'the days of your life' [indicates that the remembrance be invoked during] the days, 'all the days of your life' [indicates that the remembrance be invoked also during] the nights." But the Sages say, "'the days of your life' [indicates that the remembrance be invoked in] this world, 'all the days of your life' [indicates that the remembrance be invoked also] in the days of the Messiah."

12) Rambam on Mishnah Berachot

ואמר בענין תמיהה הרי אני אע"פ שהשתדלתי והתחברתי עם אנשי החכמה לא זכיתי לדעת הרמז שנרמז בכתוב בחיוב קריאת פרשת ציצית בלילה עד שדרשה בן זומא

And he said “behold I am” with astonishment – even though I tried and got together with men of wisdom, I did not merit to know the hint in the verse that hints regarding the obligation to say *parshat tzitzit* at night until Ben Zoma expounded it.

13) Vayikra 21:9

ויבת איש פהון כי תחל לזנות את־אביהּ היא מחללת באש תשרף:

When the daughter of a priest defiles herself through harlotry, it is her father whom she defiles; she shall be put to the fire.

14) Sanhedrin 51b

אמר ליה רבי עקיבא: ישמעאל אחי בת ובת אני דורש. – אמר ליה: וכי מפני שאתה דורש בת ובת נוציא זו לשריפה

Rabbi Akiva said to him: Yishmael, my brother, I derive it from the fact that the verse could have stated: “The daughter of a priest,” but instead states: “And the daughter of a priest,” [with an extra vav]. Rabbi Yishmael replied: And because of this derivation from an extra *vav* we should take out this woman for burning?