YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PRINCIPLES OF FAITH**

**By Rav Joshua Amaru**

The htm version of this shiur is available at:

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**DAYS OF DELIVERANCE: ESSAYS ON PURIM AND HANUKKAH

by Rabbi Joseph B. Soloveitchik**

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Shiur #17: Torah She-be'al Peh, part II

**1. Introduction**

Last week I focused on the Rambam's understanding of *Torah she-be'al Peh*, elaborating his notion of a core content that includes all the *mitzvot* and their explanations that was given at Sinai. All further rabbinic activity, though licensed by the Torah, is of a fundamentally human nature. According to the Rambam, *machloket* only appears in the human part of *Torah she-be'al Peh,* while the core was never in dispute. At the end of last week's *shiur* we saw how difficult it is to accept this claim given the pervasiveness of *machloket* throughout *Torah she-be'al Peh,* including disputes about the basic form of *mitzvot*. This week I am going to explore an alternative.

**2. The Ramban's Interpretive Understanding of Torah She-be'al Peh.**

The Ramban was one of the most important critics of the Rambam's systematic, positivist understanding of *Torah she-be'al Peh*. He does not offer us a systematic, or even a fully articulated, alternative, but by collating from various sources we can draw a picture of how he understood the basic workings of the Oral Torah.

In his comments on Rambam's *Sefer Ha-mitzvot*[[1]](#footnote-1) Ramban objects to the Rambam's dual insistence that all the content of Torah, anything that is "*mi-de’orayta*," was explicitly revealed to Moshe, and that such content was not subject to future dispute. According to the Ramban, the question of what was actually part of the original revelation (besides the Written Torah) is not important. *Torah she-be'al Peh*, at least in its original incarnation, was dynamic, in which part of the role of the Sanhedrin was to interpret the Torah with the help of the 13 *middot*, and thus determine the content of the Torah. This process is far from being some sort of algorithmic application of formal rules but rather involves the creation and formulation of new *halakhot* based upon how one seeks to read the verses of the Torah. For the Ramban, the Torah itself granted the Sages the authority to do this.

The Ramban was well aware that such a process will naturally lead to interpretive disputes and he does not find the presence of *machloket* threatening, even though he understands it to be possible for it to occur at the most basic level. The reason for this is that alongside the right to interpret the Torah and extract from it new *halakhot*, the Torah authorized the Sanhedrin to *determine* the final meaning of the Torah. Commenting on the prohibition to diverge from the instruction of the Sanhedrin "either to the right or to the left" (*Devarim* 16:11), the Ramban writes:

"Right or left" – even if it says to you about right that it is left or about left that it is right – so says Rashi. What he means is that even if you believe that they [the *beit din*] are mistaken, to the extent that it is clear to you like you know the difference between your right and your left, act according to their instruction; do not say [to yourself]: "how can I eat full-fledged *chelev*, or how can I execute this innocent man?" Rather, say: "so has the Master commanded – that I perform all his mitzvot in accordance with however they [the Sanhedrin] who stand before Him in the place that He will select (i.e. the Temple in Jerusalem) because in accordance to their understanding He gave them the Torah, even if they are mistaken…

This mitzva is very necessary because the Torah was given to us in writing, and it is known that [people's] understandings will differ with regard to new developments, and [there is a danger] that disputes will proliferate and the Torah will become many [different] torahs. Therefore the text [of the Torah] instructs us to listen to the Great Court that stands before God in the place that will be chosen [i.e., Jerusalem] with regard to everything that they say in interpretation of the Torah. [There is no difference in this matter] between the case in which they received this interpretation in a chain of witnesses going back to Moshe *Rabbeinu* [who received it] from the mouth of the Almighty, or when they say so based upon the meaning of the text or its intention. [The reason for this is] because He [God] gave then the Torah with this in mind, even if you perceive [their interpretation] to be confusing right and left, and all the more so you should accept it when they say that the right is the right, for the spirit of God is on the servants of his Temple and He will not abandon his righteous ones who are always protected from error...[[2]](#footnote-2)

For the Ramban, as opposed to the Rambam, the important distinction is not between the explicit content of the revelation to Moshe and the laws and content of Torah that came to light through the human activity of interpretation. For the Ramban, interpretation, understood in the broadest sense as including the derivation of new laws through the 13 *middot*, is part of the process of revealing the content of the Torah. Though he does not make reference to it here, the Ramban's position is presumably connected to his mystical understanding of the Written Torah in which the text is omnisignificant – it contains countless meanings beyond the simple meaning of the words.[[3]](#footnote-3) The danger of halakhic diffusion, of the *Halakha* disintegrating into many different bodies of law, is avoided, according to the Ramban, by the fact that the Sanhedrin has interpretative *authority*. This is not only institutional authority – that the Sanhedrin must be followed, right or wrong. Rather it is supported by two factors (it appears that the Ramban has a certain ambivalence here as to which factor is central). First of all, in cases in which the interpretation of the Torah is unclear, the Sanhedrin *determine* the meaning – "in accordance to their understanding He gave them the Torah, even if they are mistaken…" Furthermore, mistakes, if they happen at all, will be exceedingly rare – "for the spirit of God is on the servants of his Temple and He will not abandon His righteous ones who are always protected from error."

What this amounts to is a radically different understanding of *Torah she-be'al Peh* from that of the Rambam. The Rambam understands the Torah to be, at its core, a set of *mitzvot*, with the central role of the oral tradition to preserve the meaning of those *mitzvot* as they were given at Sinai. In order to preserve the integrity of this core, the Rambam commits himself to the almost impossible claim that there is no *machloket* with regard to it. This core body of law then licenses rabbinic activity, be it the derivation of law through the 13 *middot* or the creation of *takkanot* and *gezeirot*, but these laws are not divine commandments except insofar as they are the products of institutions licensed by the Torah.

The Ramban, on the other hand, has a much more expansive notion of what constitutes the content of the divine revelation. The core is not some abstract set of *mitzvot* but the text of the Written Torah. As a matter of historical fact, he agrees that Moshe received more than just the Written Torah at Sinai, and that he also received explanations that became part of the Oral tradition. However the tradition that counts as "revealed" is far greater than that; the content of the Written Torah also contains all that was extrapolated through the medium of rabbinic interpretation. These interpreters reveal the meaning of the Torah in an ongoing process of interpretation, with only explicit decrees (*takkanot* and *gezeirot*) counting as *de-rabbanan*.[[4]](#footnote-4) The Ramban is well aware of the danger that lurks in giving over the content of the Torah into human hands. But this danger is limited: the central *beit din* in Jerusalem (Sanhedrin) has the final word as to the content of the Torah, and they receive special divine protection from error. It is not entirely clear what the Ramban thinks of the status of rabbinic interpretation once there is no longer such a *beit din* (as there has not been for 2000 years). I will return to this question in the next *shiur*.

The great advantage of the Ramban's approach is that it matches the phenomenology of the texts of *Torah she-be'al Peh* that we have. The Talmud and Midrashim are full of *machloket* about almost everything and there does not seem to be any attempt to isolate a core of halakhic content about which there can be no dispute. Moreover, there is a great deal of effort put into extracting laws from verses of the Torah and when this is accomplished the result is usually regarded as *de-orayta*. Some of the time, these extractions appear to be post facto – the Rabbis know the law and the discussion is of the location of its ground in the text. But at other times, the activity of interpretation seems to be with the goal of discovering a new law.[[5]](#footnote-5) [[6]](#footnote-6)

The Ramban offers us a different kind of challenge than the Rambam. The Rambam was concerned to maintain a clear distinction between divine revelation and human activity, even at the expense of phenomenological faithfulness. The Ramban, on the other hand, muddies the waters: the gap between the human and divine content of the Torah is much smaller. Part of the giving of the Torah to the Jewish people, he claims, involved giving them some control of the very content of the revealed law. One way to think about the difference between these two approaches is as follows.[[7]](#footnote-7) For the Rambam, there are two Torahs – the divine Torah which contains both written and oral elements, which is pristine and perfect, and the human Torah, which is entirely oral (at least originally) and full of dispute and disagreement, reflecting the human capacities for such. Both are necessary parts of the way that God wants us to order our lives – the divine Torah sanctions the human Torah. For the Ramban, on the other hand, there is only one Torah, the content of which is revealed through a partnership of God and the Jewish people. It is complex, and full of *machloket*, yet contains the resources to hold itself together in order to guide human life and decide how we should behave despite the *machloket*. It is unsurprising that these two different conceptions of the Torah match their respective authors’ theologies. The Rambam always emphasizes God's perfection and transcendence and the part of the Torah that comes from God reflects that. The Ramban, the mystical Kabbalist, understands God to be much more immanently connected to the world and to human beings, as is reflected in his conception of *Torah she-be'al peh.*

**3. Emunat Chakhamim**

Despite their great differences, the approaches of both the Rambam and the Ramban have some things in common that cannot be underemphasized. Though they justify it in different ways, both thinkers give tremendous authority to the Sages as the propounders of the Oral Torah. Most of what we understand the Torah to be today, both in its halakhic and its *aggadic* aspects, is the product of our Sages throughout the generations. In a sense, there is an implicit principle of faith to be found here, which may be more crucial then the details of how we understand *Torah min ha-Shamayim* of both the Written and the Oral Torah. That principle is the idea of *emunat Chakhamim*, or faith in the Sages. Faith, in this context, is not so much the assertion of some belief but an attitude of trust. The Torah, and Judaism in general, utterly depends on the Sages who carry the tradition from generation to generation. If we do not trust the authenticity of that activity, however we conceptualize it (more on that next week), we call into question the very idea of the *mesora*, of an authentic tradition, and we lose our connection to the 3000 year old revelation. Whether our conception of *Torah she-be'al Peh* is closer to that of the Rambam or to that of the Ramban (I imagine it is clear where my sympathies lie), the most important aspect of *Torah she-be'al Peh* does not lie in such conceptions of its content but in its embodiment in the Sages of the *mesora*. This notion that the Torah is embodied in Torah scholars is beautifully encapsulated by the Amora Rava:

Rava observed: How stupid are those other people who stand up [in deference] to the Scroll of the Torah but do not stand up [in deference] to a great scholar: while in the Torah Scroll, forty lashes are prescribed [as punishment for a sin], the Rabbis came and [by interpretation] reduced them by one [to 39 as is the *halakha*].[[8]](#footnote-8)

The content of the Torah depends upon the Rabbis and our ability to keep the Torah requires a fundamental trust in them.

1. *Hasaga* to the second *shoresh*. [↑](#footnote-ref-1)
2. Ramban's *Commentary to the Torah*, Devarim 16:11. My translation. [↑](#footnote-ref-2)
3. I cannot go into this point here. See the introduction to his *Commentary to the Torah* where he elaborates on this theme. [↑](#footnote-ref-3)
4. Strikingly, for the Ramban, the validity of *de-rabbanan* laws is *not* based on the prohibition of *lo tasur* or on any other verse in the Torah. For the Ramban, any law whose validity is derived from the Torah must be *de-orayta*. See the Ramban's comment on the second *shoresh* in the Rambam's *Sefer Ha-mitzvot.* [↑](#footnote-ref-4)
5. This distinction, between *midrash* as proof-text and *midrash* as a creative source of law evokes 19th century debates about *Torah she-be'al Peh*, though such a distinction is already explicit in both the Rambam and the Ramban. Many scholars have claimed that the degree of willingness to create new law through *midrash* is one of the central features that distinguish the school of Rabbi Akiva from the school of Rabbi Yishmael. [↑](#footnote-ref-5)
6. The Rambam is if course just as aware of these phenomena. According to his account, though, any creative law is necessarily *de-rabbanan*, making it very difficult to understand how the Rabbis treat it as *de-orayta*. It is in this context that the famous discussion of the notion of “*divrei soferim*” in the Rambam arises, the *locus classicus* of which is in the Rambam's claim that *kiddushei kesef*, betrothal money, is effective “*mi-divrei soferim*” (see *Hilkhot Ishut* 1:2). [↑](#footnote-ref-6)
7. A conversation with my friend Rabbi Dr. Eliezer Hadad gave me this idea. [↑](#footnote-ref-7)
8. *Makkot* 22b. [↑](#footnote-ref-8)