

Class 3 – Divisions of the Tradition
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Class Outline

- Review
- 5 divisions of the Oral Law

I. Review

- The integrity of the bearers of the tradition is very important
- The oral *mesorah* is the choice means of passing on the tradition
- The mechanisms of the oral transmission began developing at the time of Moshe
- The Anshei Knesset HaGedolah were the first bearers of the tradition after prophecy ended, but we don't know much about them (which sets the stage for things to come...)
- The Pharisees/Zugot upheld the tradition at the end of the second Temple period
- The authority of the rabbis is granted to them from the Torah (*lo tasur*)

Whenever there is major upset in leadership, location or liberty, a tradition becomes at risk – and to survive must become oral. It is thus very meaningful that the chief mode of the transmission of Torah has always been oral, in both good times and bad. It is a well oiled machine.

II. Peirush HaMekubal Mehar Sinai

Rambam (Spain 1135 – Egypt 1204), Introduction to Mishnah

Know that all the commandments given by G-d to Moshe our Master were given with explanation. G-d would dictate to Moshe the verses and then He would tell Moshe their meaning and explanation, and G-d would tell Moshe all that pertained to the verses that he was writing.

Devarim 1:5

On the other side of the Jordan in the land of Moab, Moshe began explaining this Torah, saying.

Characteristics of this category

- Fully received and developed at Sinai, never to change thereafter
- According to Rambam, never subject to debate.
- Provides a non-literal read of the Torah (sets a precedent for things to come...)

What purpose does this category of the Oral Tradition serve?

- Necessitates a mesorah
- Accentuates parts of the Torah
- Provides a double/deeper meaning to sets of law (similar to a *kri u'ketiv*)
- Sets a precedent for non literal read of the Torah

III. Halacha LeMoshe MiSinai

Minimalist Approach

Rambam

1. Half a lug of oil for a Todah sacrifice
2. One fourth oil for Nazir
3. 11 days between Nidah cycle
4. Gud Asik
5. Levud
6. Dofen Akumah
7. Shiurin
8. Chatitzah
9. Mechitzah
10. Parchment for Tefillin
11. Parchment for Mezuzah
12. Parchment for Torah scroll
13. Shin of Tefillin
14. Knot of the Tefillin
15. Black Tefillin straps
16. Square Tefillin
17. Hollow part of Arm Tefillin
18. Connected hairs in animal
19. Sinews sewn together
20. Ink and reed for Torah scroll
21. Status of three year old girl
22. Two types of wheat in field
23. Peah collection for one silo

24. Peah collection for two silos
25. One in 24 ration for seeds
26. Plowing ten spread out plantings
27. Terumah from partially tameh figs
28. Orlah from any place
29. Chazan follows children's read
30. Petticoat of a woman
31. Wine for eiruv
32. Maaser of Amon and Moav

Expansive Approach

Rashi (France 1040 – 1105), Rabbi Yosef Rosen (Rogachev 1858 – 1936)

"Amar rashmana" indicates Halacha LeMoshe MiSinai

Rabbi Yair Chayim Bacharach (Moravia 1639 – 1702)

"Hilchata gemirah lei" indicates Halacha LeMoshe MiSinai

Characteristics of this category

- Fully received and developed at Sinai, never to change thereafter
- According to Rambam, never subject to debate.
- No scriptural source, only *asmachta* at times.
- No known reason

What purpose does this category of the Oral Tradition serve?

- Necessitates a mesorah
- Removes complex detail from written law
- Facilitates better comprehension of information that is hard to clearly write down

IV. Derashot

Talmud Bavli, Sanhedrin 99a

One who maintains that the entire Torah is from Heaven with the exception of a particular vocalized spelling or a particular argument from major to minor or a particular textual analogy – he is included among those who have “despised the word of G-d. (Devarim 15:31)”

Two mechanisms by which Non-Sanaitic law is deduced:

- **Reason/Logic**

Examples

1. Chazakah
2. Rov
3. Miggo
4. "...Is your blood reader than your friends?" (Sanhedrin 74a)
5. "...Do not benefit from this world without first thanking G-d" (Berachot 35a)

- **Drash**

Two Types

1. Creative
Rabbi Meir Leibush Wesier [Malbim] (Russia 1809 – 1879) – Most of Drash is creative
Rabbi Isaac Halevy (Poland 1847 – Germany 1914) – Most of Drash is not creative
2. Connect a preexisting oral law to written law (Berachot 21b, Shabbat 82b)

Two broad approaches to Drash

Rabbi Akiva – More focused on grammar and specific choice of word/letter

Rabbi Yishmael - More focused on logical rational

Example: *Yesh Em LeMikgra, Yesh Em LeMesoret*

Principles of Drash

1. Seven rules of Hillel
2. 12 rules of Rabbi Yishmael
3. 32 rules of Rabbi Eliezer (many of which apply to non-legal interpretation)

From the Introduction to Sifra

13 Principles of Rabbi Yishmael

1. Kal veChomer
2. Gezerah Shavah
3. Binyan av: Rules deduced from a single passage of Scripture and rules deduced from two passages.
4. Kelal uPerat: The general and the particular.
5. Perat ukelal: The particular and the general.
6. Kelal uPerat ukelal: The general, the particular, and the general.
7. The general which requires elucidation by the particular, and the particular which requires elucidation by the general.
8. The particular implied in the general and excepted from it for pedagogic purposes elucidates the general as well as the particular.

9. The particular implied in the general and excepted from it on account of the special regulation which corresponds in concept to the general, is thus isolated to decrease rather than to increase the rigidity of its application.
10. The particular implied in the general and excepted from it on account of some other special regulation which does not correspond in concept to the general, is thus isolated either to decrease or to increase the rigidity of its application.
11. The particular implied in the general and excepted from it on account of a new and reversed decision can be referred to the general only in case the passage under consideration makes an explicit reference to it.
12. Deduction from the context.
13. When two Biblical passages contradict each other the contradiction in question must be solved by reference to a third passage.

Characteristics of this category

- General guidelines given at Sinai, details later developed
- Subject to debate
- Connected to verses in the Torah
- Have reasons
- Can be either biblical or rabbinic

What purpose does this category of the Oral Tradition serve?

- Allows human input to Torah law
- Demonstrates connection of Oral Law to Written Law
- Mnemonic to memorize Torah
- Provides support for rabbinic enactments
- Creates vibrancy of Torah study

V. Gezeirot/Takkanot

What is the difference between a Gezeirah and a Takkanah?

- **Takkanot of Moshe** – Sheva Berachot, Shiva, First blessing of Birkat HaMazon, learn the laws of a festival 30 days prior to the festival (Shabbat 30a)
- **Takkanot of Yehoshua** – Small cattle may pasture on private property, Natural springs on private property may be used by all, Everyone may fish in Kinneret, Paths that cut through private land may be used by all until the first rain. (Eiruvin 17a)
- **Gezeirah of Yehoshua** – Do not marry the netinim (Yevamot 79a)
- **Gezeirah of King David** – Yichud with an unmarried woman is prohibited (Avodah Zarah 36b)

- **Takkanah of King Solomon** – Constructing an eiruv for Shabbat (Shabbat 14b)
- **Gezeirah of King Solomon** – Person’s hands are *tameh* for touching holy things (Shabbat 14b)
- **Takkanah of Ezra** – Torah is read on Shabbat afternoon (Bava Kama 82a)

Rabbi Nachman Shlomo Greenspan (London 1878 – 1961) on Takkanot

1. Religion – Food consumption, Shabbat
2. Family – Welfare of women, inheritance of young girls, rights in divorce, duties of children to parents and vice versa
3. National Consciousness – Chanukah Purim, Commemorate destruction of Temple
4. Society – Collection of debts, gambling, animal laws

Rabbi Tzvi Hirsch Chajes (Russia 1805 – 1855)

Positive versus Negative

Restrictions of Rabbinic Legislation

Cannot be masked as prophetic or Biblical law

Horaat Shaah – (1) Non permanent, (2) To strengthen Torah law

Will of G-d, Will of Beit Din, Will of people

Characteristics of this category

- Authority given at Sinai, details later developed
- Can be revised or reversed
- Have reasons
- Rabbinic, though there are some biblical ones as well

What purpose does this category of the Oral Tradition serve?

- Keeps Torah timely
- Protects integrity of the law
- Prevents violation of Torah law
- Allows law to take into consideration socioeconomic change