

Class 8 – Sealing of the Gemara
Rabbi Moshe Davis

Class Outline

- **Review**
- **The completion of the Talmud**
- **Is the Talmud a closed book?**
- **Innovation in Jewish Law**

I. Review

The teaching of Torah from one generation to the next is not just the mechanism by which the Oral Tradition was transmitted but rather was the reason that the Oral Tradition was created – i.e. G-d favors an oral tradition.

Talmud can be understood as the in depth understanding of Torah, commentary to the mishnah, or just simply the discussions of the amoraim (200 CE – 500 CE). It is a 'layered' work – the result of hundreds of years of Jewish tradition.

II. The Completion of the Talmud

A History of the Jews, pg. 220-221

Solomon Grayzel

Around the year 400, however, it was realized that a change was necessary. The difficulty was that so many discussions of importance had taken place, so many good ideas had been expressed, that confusion was bound to result unless it could be decided what was to be remembered and what forgotten... Here was a situation very much like the one which had prompted Judah the Prince to compile the Mishnah so as to organize the discussion of the preceding centuries. For generations the tree of Jewish knowledge had been growing luxuriantly; the time had come for a discriminating scholar to harvest its fruit. Such a scholar was Rav Ashi...

It was fortunate that this process was near completion by the year 470. For at about that time a new wave of persecution swept over the Persian Empire and deeply affected the Jewish community of Babylonia. Mazdaism, a movement toward social and economic radicalism, temporarily gained control over the Zoroastrian religion. The radicals directed their hostility against all – Christians, Conservative Persians, as well as Jews – who disagreed with them... Like everyone else, the Jews were impoverished. But in addition they were subjected to restrictions which forced them to close the academies and discontinue their studies. Even their private religious practices were interfered with, among these the reciting of Shema Yisrael, since that implied the denial of the two rival gods in which the Zoroastrians believed.

For some 30 years the Persian empire suffered terrible misfortune and its Jewish population harsh persecutions. A number of teachers were executed and, what was worse from the Jewish point of view, the dominant sect of priests attempted to force immorality upon the entire population. As a result the Jews rebelled. The Exilarch, at that time a young man by the name of Mar Zutra, gathered a small army of Jews and succeeded in establishing himself as an independent ruler over a tiny Jewish kingdom. For seven years he maintained himself in power, he was then defeated and publically executed.

About the year 500, quit returned to the Persian Empire; the Zoroastrian priests lost their influence, and the spirit of persecution abated...

- **Two opinions on who ‘wrote’ the Talmud**

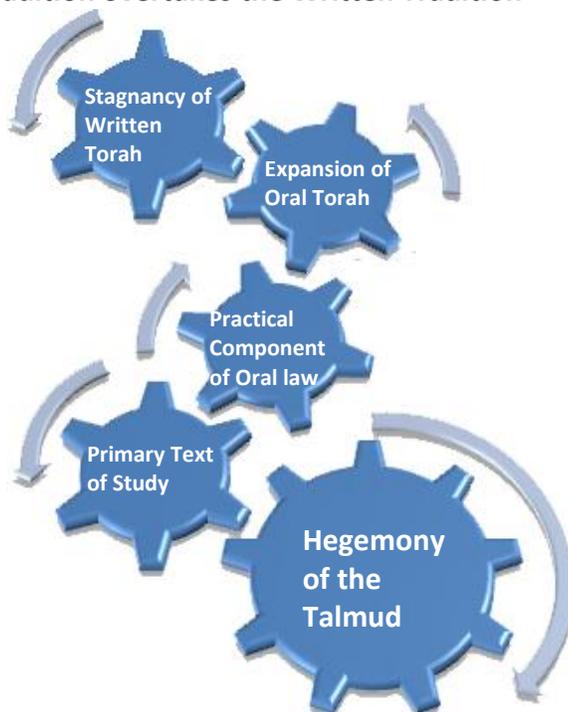
Rabbi Y.E. Halevi, Dorot HaRishonim

Based on the information provided by Rabbi Shlira Gaon, the seder Tannaim ve’amoraim and the Sefer Hakaballah of the Ravad, the Talmud was written by Ravina and Rav Ashi in about 500 CE. [Paraphrased]

Professor David Halivni, Aspects of the Formation of the Talmud, Sidra 20

After the period of the Amoraim, which concluded with Ravina and Rav Ashi, the “Stamaim” wrote the discussions of the Gemara. At the time of Ravina and Rav Ashi the gemara looked very similar to the mishnah – rulings with little discussion. The names of the Stamaim are not known and they lived between 550 CE and 750 CE. The Savoraim lived from 750 CE to 800 CE, and then were succeeded by the Geonim. [Paraphrased]

- **Oral Tradition overtakes the Written Tradition**



III. Is the Talmud a closed book?

Rambam, Laws of Mamrim Chapter 2

Halacha 1: When, using one of the principles of exegesis, the Supreme *Sanhedrin* derived a law through their perception of the matter and adjudicated a case accordingly, and afterwards, another court arose and they perceived another rationale on which basis, they would revoke the previous ruling, they may revoke it and rule according to their perception. This is reflected by Deuteronomy 17:9: "To the judge who will be in that age." This indicates that a person is obligated to follow only the court in his own generation.

Halacha 2: The following rules apply when a court issued a decree, instituted an edict, or established a custom and this practice spread throughout the Jewish people and another court arose and sought to nullify the original order and eliminate the original edict, decree, or custom. The later court does not have this authority unless it surpasses the original court in wisdom and in its number of adherents. If it surpasses the original court in wisdom, but not in the number of adherents, or in the number of adherents, but not in wisdom, it cannot nullify its statements. Even if the rationale for which the original court instituted the decree or the edict is nullified, the later court does not have the authority to negate their statements unless they are greater.

How is it possible that the later court will surpass the original court in number? For every Supreme *Sanhedrin* consists of 71 judges. The intent is the number of sages in the generation who consent and accept the matter stated by the Supreme *Sanhedrin* without opposing it.

Halacha 3: When does the above apply? With regard to matters that were not forbidden to create a safeguard for the words of the Torah, but rather resemble other Torah laws. A different principle applies, by contrast, with regard to matters which the court sought necessary to issue a decree and create a prohibition as a safeguard. If the prohibition spread throughout the Jewish people, another Supreme *Sanhedrin* does not have the authority to uproot the decree and grant license even if it was of greater stature than the original court.

A review:

- There are five types of Oral Tradition; (1) Peirush HaMekubal Mehar Sinai, (2) Halachah LeMoshe MiSinai, (3) Derashot, (4) Gezeirot, (5) Takanot
- While all five were given at Sinai, the later 3 continued to develop throughout history.
- The bulk of the Oral Tradition is the Derashot category.

- **Can an Amora argue with a Tanna? ...Can we disagree with the Talmud?**

כסף משנה הלכות ממרים פרק ב הלכה א

בית דין הגדול שדרשו וכו'. למד כן רבינו ממאי דאשכחן תנאי בתראי דפליגי אקמאי וכן אמוראי בתראי פליגי אקמאי והא דתנן בפ"ק דעדיות (משנה ה') שאם יראה ב"ד את דברי היחיד ויסמוך עליו שאין ב"ד יכול לבטל דברי ב"ד חבירו עד שיהא גדול ממנו בחכמה ובמנין מוקי לה רבינו בשארות יחיד ואותם רבים נחלקו בגזירה או תקנה כלומר שאם ב"ד פסק כדעת היחיד אין ב"ד אחר יכול לחלוק ולפסוק כדעת הרבים אלא אם היה גדול וכו' וכמו שיתבאר בסמוך אבל אם נחלקו בשזה דורש באחת מן המדות וזה באחרת אה"נ שיכול לבטל דבריו אפילו שאינו גדול כמוהו בחכמה ובמנין. ואם תאמר אם כן אמאי לא פליגי אמוראי אתנאי דהא בכל

דוכתא מקשינן לאמורא ממתניתין או מברייתא וצ"ל אנא דאמרי כי האי תנא ואם לא יאמר כן קשיא ליה וכפי דברי רבינו הרשות נתונה להם לחלוק על דברי התנאים. ואפשר לומר שמיום חתימת המשנה קיימו וקבלו שדורות האחרונים לא יחלקו על הראשונים וכן עשו גם בחתימת הגמ' שמיום שנחתמה לא ניתן רשות לשום אדם לחלוק עליה:

תוספות יומא ג: ד"ה דרביה

...וא"ת ור' יוחנן היכי פליג על ר' ישמעאל שהוא תנא...

IV. Innovation in Jewish Law

Innovation in Jewish Law, A Case Study of *Chiddush* in *Havineinu*

Rabbi Michael Broyde

Pg. 133

Though Torah is God-given, halacha is neither static nor stagnant; rather, it demands human involvement. Active study and participation in deriving the halacha from the Rabbinic sources are fundamental components of the halachik process. These endeavors often produce unexpected conclusions – this is the essence of *chiddush*. As we have seen throughout this book, halacha largely changes through *chiddush* – the innovative interpretation of sources.

A variety of factors, both internal and external to halachik texts, drive intellectual innovation. Every legal system inherently requires study and interpretation, which lead to incremental changes within the law. As more study occurs, further understandings of and approaches to the law are developed and ultimately, the law undergoes more change. Partly as a result of the religious responsibility to study and understand Jewish law that is embraced by its adherents, Jewish law has undergone an intensely deep and broad investigation and exploration. Jewish law contains a large corpus of complex laws, including ambiguous and inconclusive primary texts, and a multiplicity of approaches to understanding its concepts. Against the backdrop of these and many other factors, the *posek* (decisor) seeks to understand and apply the law. New ideas often result in modification – by way of expansion or limitation – of a concept. External factors that drive *chiddush* include changes in society, technology, and economic conditions. As reality changes, the principles of a particular halacha must be analyzed again and appropriately applied to the new situation.