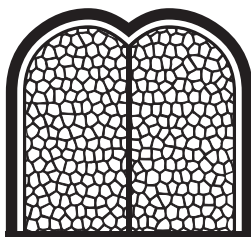
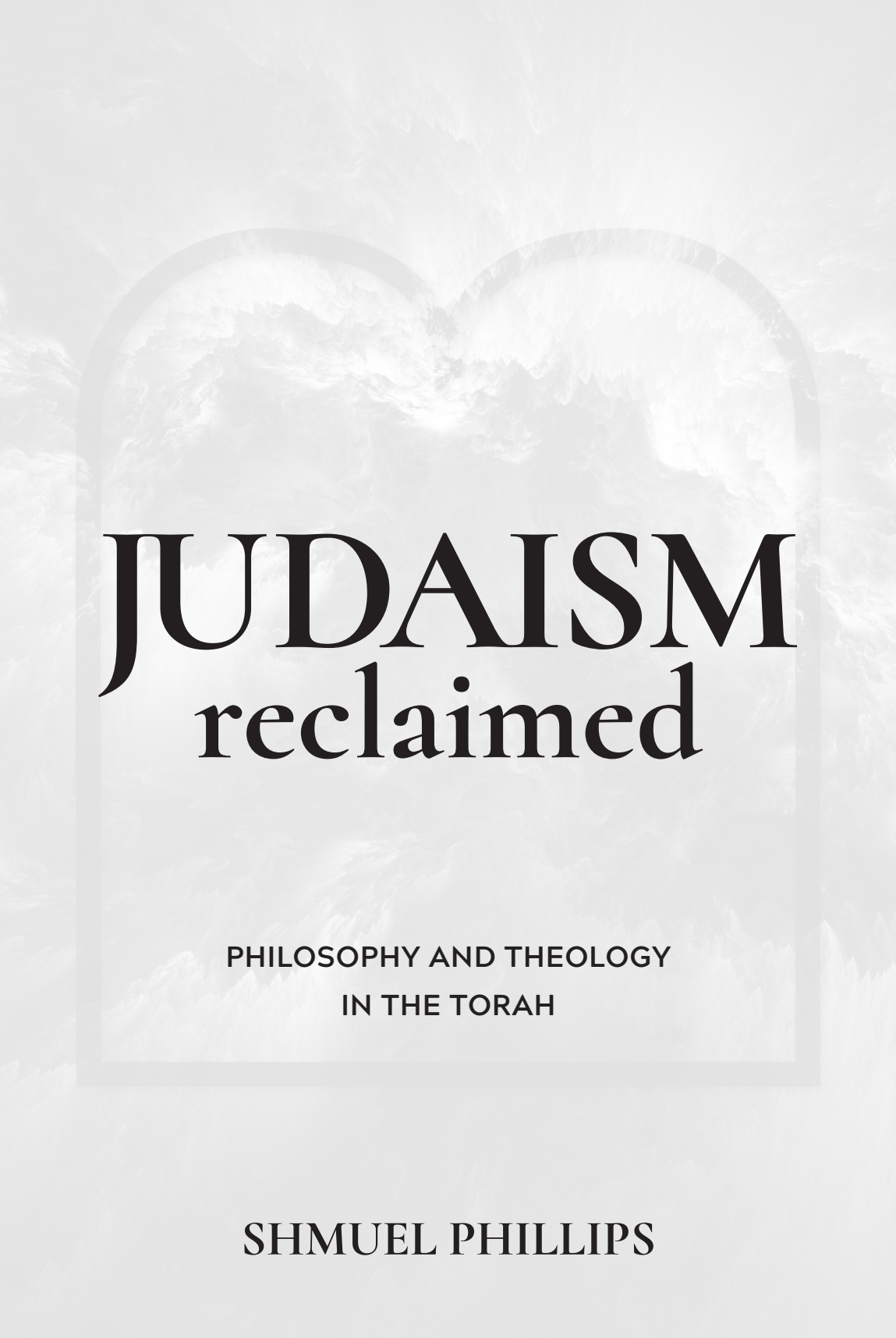


JUDAISM

reclaimed



MOSAICA PRESS



JUDAISM reclaimed

PHILOSOPHY AND THEOLOGY
IN THE TORAH

SHMUEL PHILLIPS

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This edition of *Judaism Reclaimed*
is lovingly dedicated by
MRS. GITTEL ESTHER
ZOLTY-CHAINERE
in memory of her beloved sisters.

האשה

מרת **הדסה שלומית סלסיק** ע"ה

בת ר' ישראל הלוי שליט"א

אשה יראת ה'

קידשה שמים בכל הלכותיה

וחינכה את ילדיה במסירות נפש בדרך ה'

קיבלה את יסוריה באהבה ובדומיה

באמונה זכה ותמימה

נלב"ע ביום ה' תמוז תשע"ז

ת.נ.צ.ב.ה.

האשה

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בת ר' ישראל הלוי שליט"א

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קיבלה כל אדם בסבר פנים יפות

נלב"ע ביום א' אלול תשע"ה

ת.נ.צ.ב.ה.

Dedicated by
SARA PHILLIPS
לעילוי נשמת
her dear parents

SAUL AND JUDITH ROTHSTEIN

שלמה בן שמעון ע"ה
יהודית נעמי בת יעקב הכהן ע"ה

May the fruits of the labor of their grandson
be a *zechus* for their *neshamos*.

Rabbi Zev Leff

*Rabbi of Moshav Matityahu
Rosh HaYeshiva—Yeshiva Gedola Matityahu*

הרב זאב לף

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Dear Friends,

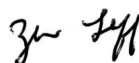
I have read many portions of the manuscript, *Judaism Reclaimed*, by Rabbi Shmuel Phillips. The author presents a very thorough and sophisticated discussion of many controversial, philosophical, and theological topics related to the various weekly Torah portions. The material is impressive in its scope and depth and the sheer volume of both Torah and academic sources quoted.

I found the discussions fascinating and a source of solid Torah *hashkafah*. The presentation is many times on a high academic level, yet lucid and easily understood. I feel that this work can serve as an effective tool to counter the claims of both those that scoff at our *mesorah* and those that think they can present the *mesorah* in a distorted and false manner.

Although I am not acquainted with Rabbi Phillips personally, he is highly praised by his mentor, HaRav Moshe Rabinowitz, Rosh Kollel of Ohel Esther in Shaarei Chesed, as a serious *talmid chacham* and *yerei Shamayim*. I commend the author for an important contribution to the strengthening of *emunah* and *mesorah*, sorely needed in this generation. May Hashem Yisborach grant him and his family life and health and the wherewithal to continue to benefit the community.

Sincerely,

With Torah blessings,



Rabbi Zev Leff

Rabbi Moshe Rabinowitz
Rosh-Kollel "Ohel Esther"
Sha'arei Chessed
Yerushalayim

הרב משה רבינוביץ
ראש כולל "אהל אסתר"
שערי חסד
ירושלים

א' אייר תשע"ח

בס"ד

I have known R' Shmuel Phillips for almost two decades and have witnessed him grow in תורה and יראת שמים. He has spent most of this period between the walls of the המדרש בית, immersed in the סוגיות of ש"ס. Throughout these years he has studied with me regularly both in חבורה and חבורתא format.

R' Shmuel has been blessed by Heaven with an unusual gift of communication via the written word. He has put this talent to good use in composing this compendium of essays, whose common theme can be summarized as "דע מה שתשיב לאפיקורס".

In an age where even the most basic tenets of Yiddishkeit are subject to so much confusion - often spread virally by means of modern technology — R' Shmuel's scholarship remains firmly embedded in the bedrock of מסורה. He uses his extensive knowledge of the writings of the Rambam to dispel many common misconceptions of both the Rambam's own opinions as well as those which relate to broader questions of hashkafa. R' Shmuel has taken strong guidance from the גדולי אחרונים, who deal specifically with issues of אמונה and מסורה. In particular he marshals the wisdom of R' Meir Simcha of Dvinsk, Malbim, Netziv of Volozhyn and R' Shimshon Refoel Hirsch זצוק"ל.

Having read the majority of the book, including all of the chapters which examine sensitive matters of אמונה and מסורה, I have seen how the opinions of the critics are quoted and subsequently countered in the spirit expected from someone sustained by these holy sources. On numerous occasions, R' Shmuel exposes the naivety and superficiality of claims made by the scoffers of תורה and those who parrot their views.

I can confirm that the author's agenda in his writings is to expose the weakness of the arguments of those who seek to undermine the credibility of the תורה and חז"ל. Unfortunately, these opinions and theories have proliferated largely unchecked in the modern era, claiming countless victims in the process. Those reading this book will acquire a line of defense, and degree of immunity, against attacks on אמונה, to which this generation is being increasingly exposed.

The letters of the word שלום may be rearranged as an acronym for the phrase "דע מה שתשיב" ודע. May R' Shmuel merit to continue to learn and write in peace, and bring "peace of mind" to those whose faith is under attack.



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תשס"ח

Shmuel Philips has provided us with a remarkable new philosophical approach to Torah and Jewish faith, outstanding in its erudition, impressive in its ability to link ancient, medieval and modern approaches, and thoroughly engaging in inviting us to see, through biblical narrative and law, ultimate truths about the human condition as we strive to understand the Divine.

This is the work of a major new talent in Jewish thought.



Rabbi Lord Jonathan Sacks

November 2018
Marcheshvan 5779

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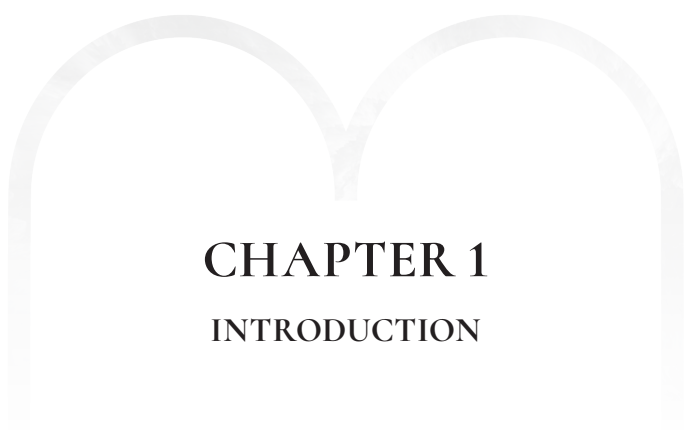
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CHAPTER 1

INTRODUCTION

The Legitimacy of Philosophical Investigation

Quests and Questions

The story of Jewish philosophy, and perhaps even of Judaism itself, can be traced back to the midrashic account of a youthful Avraham gazing with wonder at the starry skies of ancient Mesopotamia, seeking an answer to the great question which has forever troubled and fascinated humanity: the origin of the universe. Avraham's quest for the origin and implications of existence has been intensified by his modern-day spiritual heirs, who contemplate the universe through telescopes and microscopes, aware of further layers of complexity that must be tackled when seeking to answer this question.

Avraham's heirs now recognize the extent to which the universe bears apparent signs of careful design. How among all of the billions of observable galaxies and stars there exists just one small planet, delicately though securely locked into a perpetual orbit which ensures its consistent distance from the Sun—any slight deviation from which would

instantly devastate its life forms. They observe its unique atmosphere and magnetic core, which enable life to survive by filtering out dangerous rays from the Sun. They may contemplate, too, the bewildering array of complexities involved in even the most basic life form, let alone the human nervous system, reproductive system, senses, and intellect. Every sub-particle of the universe echoes Avraham's basic question, but provides no simple answer.¹

The response received by Avraham is related by midrashic tradition. Avraham asked: "Is it possible that the world² is devoid of a responsible Overseer?" God looked out at him and responded: "I am the Master of the world."³ For Avraham's descendants attempting to tread his path of curious contemplation, this personal revelation is replaced by the Jewish national revelation at Sinai, which transmitted Judaism's response to these cosmic questions throughout the generations.

Resolution and Reconciliation

Avraham's first revelation included a seemingly inexplicable instruction to leave the familiarity and comfort zone of his father's house and birthplace in order to travel to the distant Land of Canaan. For us, too, the national revelation at Sinai represents only the start of our journey of discovery and the forging of our relationship with God. And just as we can imagine the bewilderment felt by Avraham upon receiving the unfathomable command to sacrifice his son Yitzchak, so too the content and commands of our Torah can at times seem to pose greater challenges than they offer to resolve. It is these challenges—which assail those attempting to use the Torah and Jewish tradition to understand the relationship between God and man, the Torah and the world—that I grapple with in the upcoming chapters.

1 For an impressive restatement of this question in the technical terms of modern science and mathematics, see the discussion on anthropic fine-tuning in Appendix A of John Polkinghorne and Nicholas Beale, *Questions of Truth* (Westminster: John Knox Press, 2009).

2 Literally, "building."

3 *Bereishit Rabbah* 39:1, on the verse at the start of *parashat Lech Lecha*, which signals God's first revelation to Avraham.

Among the questions confronting the modern student of Torah are those of how to approach a text and tradition which can appear cryptic and sometimes contradictory. Is it possible to reconcile the principles of the three-thousand-year-old Torah transmitted in the Sinai wilderness with today's moral sensibilities and scientific knowledge—and is such a project plausible, advisable, or even necessary? Several chapters discuss the idea of a chosen nation, a challenging notion in an era when the world at large has come to favor the principles of pluralism and equality. A broad examination is made of the structure and process of interpreting the written and oral content of the Torah and the scope and function of Rabbinic law; all this in the context of understanding how the Torah's text and transmission is still relevant and applicable today. We also probe the elusive fault-line between the conflicting principles of the Torah's immutability on the one hand, and its proven ability to respond dynamically to the challenges of each generation on the other.

Particular attention is paid to Judaism's great philosopher, Rambam, as we undertake the daunting task of identifying and then extracting the fundamental principles of his understanding of Judaism from the obsolete Aristotelian system on which they were seemingly based. We examine approaches adopted by other thinkers in Torah philosophy, including Ramban, Rabbeinu Nissim (Ran), Rabbi Yehudah HaLevi, Ralbag, Maharal, Rabbi Tzvi Hirsch Chajes, Rabbi S.R. Hirsch, Rav Meir Simchah HaKohen, and Rabbi Joseph B. Soloveitchik. These rabbis rose to the philosophical and theological challenges that they faced in their respective eras; we seek to identify their key ideas and apply them to the challenges that Judaism and Torah scholarship face in today's world.

Many chapters focus on the sharp differences between the relatively rationalist approach taken by Rambam, and those such as Ramban who opt for a more mystical understanding of the Torah. All of this is undertaken within the framework of analysis of the weekly *parashah*, passing the illuminating thoughts of our Sages through the prism of a particular philosophical theme or question which emerges from each Torah portion.

One Destination, Many Paths

While it will be apparent to the reader that this book concentrates primarily on the more “rationalist” approaches to the topics being discussed, I would like to make it clear that there is no intention to denigrate or downplay the mystical dimension of the Jewish tradition. In reference to these radically diverging ways of understanding Judaism, it is important to bear in mind a teaching of Rav Shalom Mordechai Schwadron in his *Techeilet Mordechai*.⁴ Rav Schwadron cites a passage from *Bereishit Rabbah* regarding the first revelation received by Avraham. In comparing the Jewish nation to a dove, the midrash states:

*All other birds rest on a rock or a tree when they tire, but when the dove tires, she pushes off the ground with one wing and flies with the other.*⁵

This passage contains a profound message regarding the proper manner through which one should relate to God. The wings of the dove represent the two ways through which a Jew can legitimately approach and form a connection with God: intellectual cognition, and an “experience” of God which can either be personal or by means of tradition. Rav Schwadron explains the midrash to be advising the need to relate to God through both a rational-intellectual understanding and the spiritual-experiential dimension, meaning an awareness, experience, and interaction with a Presence and Being whose essence lies beyond the grasp of the human mind. By developing these complementary aspects of religious endeavor, a person who runs into difficulty with one approach can fall back and rely upon the other (when either wing is “tired,” the dove can “fly” with the other). Both intellectual and spiritual-experiential approaches are thus of crucial

4 Rav Shalom Mordechai Shwadron (also known as “Maharsham”), *Techeilet Mordechai, Lech Lecha* #32. For a discussion of how to approach and reconcile such divergent dimensions of Jewish tradition, see the end of Chapter 44, particularly n. 36.

5 *Bereishit Rabbah* 39:8.

relevance in every individual's religious quest, even though the extent to which each of these two approaches is drawn upon will necessarily vary from person to person.

The reason that I have predominantly dwelt upon those authorities who adopt a relatively more rationalist approach to Judaism is that proponents of the more mystical paths typically accord primary importance to "experiencing God" rather than to attaining a detailed rational understanding of Him.⁶ In addition, the religious worldview of the latter authorities is often based on a received Kabbalistic understanding of the interaction of various spiritual phenomena—a received tradition which bypasses rational analysis.

One consequence of this is that those who take a more mystical stance will tend to feel less troubled by and less obliged to offer rational responses to the challenges which are posed to Judaism specifically, and religion in general.⁷ Those for whom the significance of the performance of mitzvot lies primarily in their effect on the celestial spheres may see little point in debating the morality or practical worldly functions of the Torah's commands.⁸ And those who teach that the Torah's passages and words consist of variously arranged names of God⁹ may find it repugnant to suggest that there is any similarity between the words of the Torah and earlier ancient texts. Rambam's response to this phenomenon,¹⁰ by contrast, positively embraces such comparisons as part of his broader explanation of the way in which the Torah's timeless truths were tailored specifically to suit the early generations of Jews.

6 This is further elaborated on in Chapter 7.

7 A notable exception to this is Rav Avraham Yitzchak Kook. See the discussion in Rabbi Chaim Navon, *Genesis and Jewish Thought* (Ktav, 2008), pp. 64–65.

8 For a discussion of the impact of the performance of mitzvot in above worlds, see *Nefesh HaChaim* 1:13.

9 See Ramban's introduction to his Commentary on the Torah.

10 See the discussion in Chapter 29, which explains that this is a function of God's kindness and grace.

Unknowable Knowledge, Thorny Theology

The contrasting approaches of the rationalist and mystical schools of Jewish thought to the importance of providing rational responses to key theological and philosophical questions are neatly encapsulated by a debate between Rambam and Ra'avad regarding the nature of God's knowledge.¹¹ Grappling with the thorny theological conundrum of how to reconcile God's absolute and unchanging knowledge with human free will, Rambam probes the extent of God's knowledge and the limited ability of the human mind to comprehend it. He concludes that we must acknowledge that our minds are not equipped fully to fathom the nature of God's mind. Commenting on Rambam's analysis, Ra'avad strongly rejects Rambam's entire approach, stating that since we cannot reach a decisive conclusion, "it would have been preferable to leave it as a matter of simple faith," rather than to open people's minds to such troubling questions. Rambam, however, finds value in pushing the limits of human comprehension to the greatest possible extent,¹² delineating and explaining exactly what can and cannot be understood by the human mind. Rambam still seeks to describe concepts which lie beyond the grasp of the human intellect to the greatest possible extent and to explain why they cannot be understood. Such persistence in probing the inexplicable is consistent with Rambam's fundamental theological axiom: that connection to God (and with it *hashgachah* and *Olam Haba*) is achieved by attaining the greatest possible comprehension of Divine matters, including clearly defined parameters of what lies beyond the scope of human understanding.¹³

11 *Hilchot Teshuvah* 5:5. This topic is discussed in greater detail in Chapter 18.

12 Rabbeinu Bachye ibn Paquda (in the third chapter of *Sha'ar Yichud* of his *Chovot HaLevavot*) also urges a person who is intellectually capable to probe theological questions such as the existence and nature of God and the authenticity of the Torah. For a more recent endorsement of these sentiments, see the opinion of Rav Meir Simchah HaKohen in *Meshech Chochmah*, *Shemot* 12:21.

13 This idea is discussed in greater detail in Chapter 16 in connection to the attributes of God.

When Silence Is Not an Option

It is evident, therefore, that two legitimate schools of thought subsist within Jewish tradition with regard to dealing with difficult theological matters. Nevertheless, it can be argued that, in a modern era of widespread, uncontrollable, and often anonymized discussion of Torah fundamentals through blogs, internet forums, and other social media, the option of secluding oneself from troubling questions and viewpoints has become increasingly difficult to maintain, and may itself come to represent a greater danger to the faith of those secluded.¹⁴ It is notable that such concerns prompted Rav Shimon Schwab to draw a similar conclusion, even in an earlier, pre-internet generation.¹⁵

In this atmosphere of open debate and inquiry, refusal to engage with such issues is liable to be interpreted by the perplexed of today's online generation as a sign of weakness—or worse, as a concession that one has nothing to say and that those who propound views that are hostile to the received Jewish tradition are right. I have therefore been guided by the Tannaic statement: “Know what to respond to the heretic,”¹⁶ which advises familiarity with such questions and possible modes of response. As Rabbeinu Yonah comments on that Mishnah:

If his [the heretic's] false claims are not responded to, many will learn from them and will drink evil waters after perceiving that [his claims] were victorious.

14 See the analysis of Rav Hirsch, discussed at the end of Chapter 47.

15 *Eilu Vo'Eilu* (Feldheim, 1966), p. 26:

One of the main differences is that the temptations of heresy and agnosticism are not lurking mainly inside the colleges. Every library, every bookstore (including Hebrew bookstores!) contains as much Apikursus as the lecture halls of a university. There are newspapers and magazines...obtainable everywhere which are filled with anti-religious, anti-Torah dynamite. The forbidden fruits sprout everywhere...[T]he bright-eyed student is confronted with overt and covert Kefirah wherever he turns. To ignore this shocking state of affairs does not minimize the acute danger. On the other hand the Torah im Derech Eretz education may forge the intellectual armour to beat the rebellious ideas into submission.

16 Avot 2:14.

Rational Responses to Rational Challenges

It is with this in mind that I embark in trepidation and humility upon this attempt to clarify and lend a helpful perspective to some of the more difficult questions posed to Orthodox Judaism in the modern era. I have particularly focused on understanding and developing the thoughts of Rambam and Rav Hirsch, since each of these giants took up the challenge of responding openly and rationally to the challenges faced by Orthodox Judaism in their respective eras. I also believe that their willingness to embrace the disciplines of logic and science, seeking to avoid clashes between them and the Torah without reducing the significance of either, will strike a common chord with those who attempt to understand the Torah's timeless truths within the context of a modern era.

Risks and Pitfalls with No Easy Fix

It should be recognized at the outset, and borne in mind throughout the reading of this book, that this open, rationalist approach to Jewish philosophy and theology is certainly not without its risks and pitfalls, as one is not guaranteed to discover resolutions which instantly and satisfactorily dispel all doubts and difficulties. For this reason, it is crucial that we recall Rav Schwadron's explanation of the midrashic metaphor of the dove cited above, that both "wings" of our relationship with God must be operative: the experiential "spiritual" dimension as well as the intellectual pursuit of Divine truths. In that way, if one avenue of human connection to God is temporarily impassable, he is still able to rely on the other wing in the meantime.

As Rabbi Joseph B. Soloveitchik attests, the intellectual search for meaning and understanding can be lonely and troubling, but also exhilarating and ultimately extremely rewarding. In a footnote toward the opening of his classic work, *Halakhic Man*, Rav Soloveitchik writes:

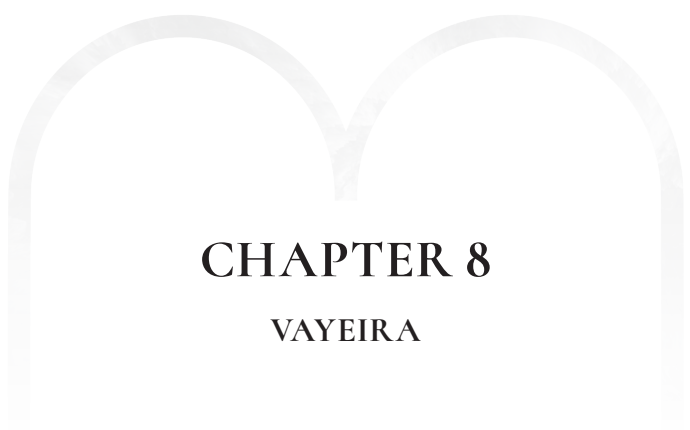
And when the Torah testified that Israel, in the end, would repent out of anguish and agony (Hilchot Teshuvah 7:5): "In your distress when all these things are come upon you...and you will

return unto the Lord your God” (Devarim 4:30), it had in mind not only physical pain but also spiritual suffering. The pangs of searching and groping, the tortures of spiritual crises and exhausting treks of the soul purify and sanctify man, cleanse his thoughts and purge them of the husks of superficiality and the dross of vulgarity. Out of these torments there emerges a new understanding of the world, a powerful spiritual enthusiasm that shakes the very foundations of man’s existence. He arises from the agonies, purged and refined, possessed of a new heart and spirit. “It is a time of agony unto Jacob, but out of it he shall be saved” (Yirmiyah 30:7)—i.e., from out of the very midst of the agony itself he will attain eternal salvation and redemption. The spiritual stature and countenance of the man of God are chiseled and formed by the pangs of redemption themselves.

It is my sincere wish that, with the concrete confidence and faith provided by the “experienced” spiritual dimension of the Jewish tradition, the open intellectual approach pursued in this book will allow readers to make use of both “wings” of the dove in order to propel them to great heights of religious understanding and accomplishment.

It would be arrogant to imagine that I have fully resolved any of the profound and complex questions which will be discussed in the upcoming pages, many of which are deserving of a whole book in their own right. My hope is that some of the ideas presented and developed here will provide the reader with a new angle or clearer perspective when approaching difficult philosophical and theological aspects of Judaism. Furthermore, this is not a book seeking to provide absolute proofs of Jewish truths, but rather to uncover and highlight profound questions of Jewish thought which are addressed, sometimes indirectly, by traditional commentators.

I am aware that there are sometimes alternative and even contradictory approaches to the ones that I have adopted in the upcoming pages, and perhaps questions that I have failed to examine. I hope at the very least not to have misrepresented any of the commentaries and topics under discussion, and to have added new dimensions to readers’ contemplation of Jewish thought.



CHAPTER 8

VAYEIRA

Rambam, Ramban, and an Angelic Controversy

The Angels Who May Have Come to Tea

The opening verse of *parashat Vayeira* tells of God appearing to Avraham in the Plains of Mamre.¹ The purpose of this appearance is not readily apparent, with the Divine encounter seemingly cut short by the arrival of three unexpected guests. Rambam² controversially explains that in truth there is no interruption since there was no arrival: the entire episode of the guests is a prophetic vision visited upon Avraham by God.

The primary reason for Rambam's explanation of the passage as a vision is that the three guests are angels, spiritual and metaphysical entities which can neither be seen by humans nor engage in physical activities. Rather than being a simple dream or message, the interactive

1 *Bereishit* 18:1.

2 *Moreh Nevuchim* 2:42.

prophecy experienced here by Avraham is one of the highest levels of prophecy, involving Avraham thinking, speaking, and responding to apparent events.³ Rambam cites a midrashic teaching of Rabbi Chiya as a source for his interpretation of the episode as a vision.⁴

One question that Rambam's concise explanation does not discuss, however, is at what point this prophetic vision ends and "real life" continues. The Torah's narrative of the guests' departure is immediately followed by Avraham's negotiation with God over Sodom, which is presumably also part of the prophecy. Then the narrative takes the angels to Sodom, where they appear to Lot. This appearance to Lot must also, according to Rambam's position on angels, be a prophetic encounter, leaving us with two possible approaches.

Visions and Awakenings

In the first possibility, which is adopted by Abarbanel in his commentary to *Moreh Nevuchim*, the angels' mission in Sodom was still part of Avraham's vision. Abarbanel notes that this understanding of the angelic episode is supported by several indications from the Torah's text. First, at the conclusion of the angels' visit, Avraham is described as "still standing before God,"⁵ from which the narrative moves seamlessly to Avraham's petitioning on behalf of the population of Sodom. The Torah then inexplicably interrupts its description of Lot's escape from Sodom to tell us "*vayashkem Avraham baboker*"—that Avraham is awakening.⁶ The choice of this phrase appears to indicate that this awakening is from the prophetic vision that has spanned the entire *parashah* so far.⁷

3 See, *ibid.* 2:45, that this form of prophecy is second only to Moshe's unique level.

4 *Bereishit Rabbah* 48:10. See Abarbanel's commentary to *Moreh Nevuchim* for an explanation of Rambam's understanding of this midrash.

5 *Bereishit* 18:22.

6 *Ibid.* 19:27. According to this understanding, Avraham emerges from the interactive prophetic vision and witnesses the smoke rising from Sodom, the destruction of which he saw only in his prophecy. The narrative then proceeds to describe the events which took place involving Lot and his daughters.

7 It is notable that the phrase "*vayashkem...baboker*" is used on three other occasions in this *parashah* (20:8, 21:14, and 22:3), each of them marking the conclusion of a Divine encounter.

Alternatively, one might explain that the episode of the angels in Sodom is a distinct vision experienced by Lot. This explanation is somewhat troubling in view of Rambam's principle that prophecy rests only upon someone of highly developed character and intellect,⁸ qualities which the Sages do not lead us to believe that Lot possessed. Lot's suitability to receive prophecy does, however, receive some support from Netziv,⁹ who suggests that Lot was initially a righteous disciple of Avraham, with the two parting company only to avoid the desecration of God's name generated by their shepherds' arguments.

According to this approach, Lot's decision to reside in Sodom and attempt to influence its residents can be viewed as a failed attempt to emulate Avraham's life mission of spreading God's word among those ignorant of Him. This suggestion is consistent with the more positive view of Lot which emerges from the commentary of Radak,¹⁰ who suggests that Lot was so confident in his faith that he believed he could reside among the inhabitants of Sodom without being deleteriously affected by its sinful environment.

This second interpretation, that Lot saw the angels prophetically, appears to be the understanding of Rambam adopted by Ritva.¹¹ Ritva adduces further midrashic support¹² for Rambam in the discrepancy between the description of the angels' appearance ("*nidmu*") as people to Avraham but as angels to Lot. The midrash attributes this discrepancy to the differential in (prophetic) "power" between the two—a comment which is far easier to understand if each of these appearances was manifested within the context of a distinct prophetic vision.

8 *Hilchot Yesodei HaTorah*, chap. 7.

9 Rabbi Naftali Tzvi Yehudah Berlin, *Ha'amek Davar*, *Bereishit* 13:5. Abarbanel, in his commentary on the Torah, suggests that Lot received a "quasi-prophetic" impression of the angels.

10 Rabbi David Kimche, commentary to *Bereishit* 13:11.

11 Rabbi Yom Tov Asevilli in the section of his *Sefer HaZikaron* that deals with *parashat Vayeira*.

12 *Bereishit Rabbah* 50:2.

Kabbalah and Conundrums

Ramban is fiercely critical of Rambam's interpretation of the *parashah*, saying that it contradicts the plain meaning of the Torah. Most significantly, Ramban insists that angels, while being spiritual creatures, can also "don physical attire" and enter the physical domain, although he concedes that he cannot explain the nature of this angelic attire.¹³

This position of Ramban is built upon his mystical worldview, in which the physical and spiritual spheres coalesce in ways that we cannot fully describe or understand. Kabbalah teaches that there are multiple worlds ranging from the Divine and entirely spiritual *atzilut* through to our fully physical world of action (*Olam Asiyah*), with the upper worlds strongly influencing their more physical counterparts.¹⁴ It is apparent from this interpretation that there is no friction between the physical and spiritual realms, and that there exists a conceptual framework for angels "donning physical attire" and entering the physical world.¹⁵

Within the worldview of Rambam, by contrast, a spiritual entity donning a physical form is absolute anathema.¹⁶ There are two strictly distinct modes of existence—metaphysical spirituality and the physical realm—with neither possessing the ability to trespass into the domain of the other. Humans are comprised of separate physical and spiritual elements. The five senses can register only physicality, whereas spiritual *sichli* entities such as angels must be perceived by the *sechel*

13 See commentary of Ramban to the opening passage of the *parashah*. The difficulties posed by both Rambam and Ramban's explanations prompt Ibn Ezra (18:13) and Ralbag to suggest that "*malachim*" in this passage be understood to mean prophets rather than angels.

14 This is the mystical interpretation of Yaakov's dream of the angels ascending and descending the ladder (*Bereishit* 28:12), with the lower rungs of the ladder representing spheres of greater physicality; see Chapter 13. While Ramban does not explicitly employ the "four world" structure, his understanding of a range of existence between the physical and spiritual can be found in his commentary to *Bereishit* 2:7 and *Vayikra* 17:11.

15 While this conceptual framework can facilitate the angels' ability to travel between relatively physical and spiritual worlds, it falls short of explaining the precise nature of them "donning physical attire."

16 See *Moreh Nevuchim* 2:24 and commentaries of Abarbanel and Shem Tov there.

in a prophetic encounter.¹⁷ It necessarily follows that any episode in which an angel is described as having been “seen” must be interpreted as a prophetic vision, since it is an absurdity to use the term “sight” in reference to the perception of an object that is devoid of physical form.¹⁸

Understanding Rambam: “Do Angels Really Exist?”

A common misconception arises from Rambam’s interpretation of angelic encounters as prophetic visions: the conclusion that he does not really believe in angels. While Rambam’s description of angels as purely metaphysical “*sechalim nivdalim*” (minds without physical attachments)¹⁹ is distant from the images of naked winged cherubim and putti so prevalent in Western art galleries, their status bears great significance within his worldview, which deems the spiritual metaphysical realm to be the only true form of existence.

This idea is most vividly portrayed in Rambam’s teachings regarding the status and potential of the human being: a unique creature that fully inhabits the physical world, yet is endowed with a “*tzelem Elokim*” intellect which can connect to the metaphysical domain.²⁰ The “righteous,” explains Rambam in his closing comments to his *Commentary on the Mishnah*, can earn true eternal existence²¹ by developing their metaphysical minds to attain the equivalent of the highest angelic

17 Separate intellects which, being unattached to any physical being, exist in a purely metaphysical sphere.

18 In the same chapter, and based upon the same principle, Rambam writes that Yaakov’s wrestling with Eisav’s angel and Bilaam’s confrontation with the angel must also have been prophetic visions. Simply hearing an angel or “*bat kol*” (heavenly voice), though, is not necessarily evidence of a prophetic encounter. We discuss this further in Chapter 20.

19 A precise definition of Rambam’s understanding of angels is difficult. See Menachem Kellner’s discussion in chapter 8 of *Maimonides’ Confrontation with Mysticism*, Littman Library 2011, and Rabbi Joseph B. Soloveitchik (in Lawrence Kaplan, ed., *Maimonides: Between Halakhah and Philosophy* (Jerusalem: Urim Publications, 2016), pp. 161–62 for further analysis.

20 This concept is discussed in Chapter 2.

21 “To cause those who love Me to inherit great treasure...” (*Mishlei* 8:21), the word *yesh* being interpreted here as “eternal existence.” The implication is that “*yesh*”—literally “there is”—means that anything else is “not” eternal reality but merely temporary physical existence.

rank of “*chayot hakodesh*.”²² In contrast to this, the greatest tragedy and punishment that can befall a human is *karet*,²³ spiritual excision. This means that the person in question has failed to rise above the temporal and ephemeral existence of the physical world to achieve true existence, and will simply “cease to exist, like an animal” when his physical body expires.²⁴

It is apparent therefore that, according to Rambam’s scale of priorities, a prophecy involving a metaphysical angelic experience represents a far more profound concept of existence than the sequence of events depicted by a literal rendering of the Torah’s narrative.²⁵ This is noted by Abarbanel in his commentary on *Moreh Nevuchim*, where he declares himself “astonished” at Rambam’s opposition to Rambam’s explanation of angelic encounters in the Torah.

Perceptively, Rambam anticipates the difficulty which people might have with his teachings on the subject of angels, writing:

*Now you already know that it is very hard for man to apprehend, except after strenuous effort, that which is pure of matter and absolutely devoid of corporeality...that which lies beyond the scope of the imagination is in his opinion non-existent and incapable of existing [emphasis mine].*²⁶

This being the case, the Torah’s text refers to angels using language:

*The external implication of which can be understood to signify that the angels are corporeal...so as to guide the mind to a knowledge of their existence...as we have explained with regard to God.*²⁷

22 See Introduction to *Chelek*.

23 See Chapter 68.

24 *Hilchot Teshuvah* 8:1.

25 In his recent book, *Maimonides and The Book which Changed Judaism* (JPS, 2015), p. 33, Dr. Micah Goodman writes that “turning story into allegory by placing it in the category of prophetic vision strengthens its meaning and transforms it from an isolated event into a universal truth.”

26 *Moreh Nevuchim* 1:49.

27 Ibid.

The literal meaning of the opening passage of *Vayeira*, which Ramban accuses Rambam of contradicting, is to be understood therefore as an example of “*dibrah Torah kelashon bnei adam*.”²⁸ That the Torah, the purpose of which is to educate and relate to humans, deliberately employs terms and phrases which makes its text accessible to all of its readers.

Divine Corporeality: Rambam vs. Mystics

Our discussion of how Rambam and Ramban understand angels in the Torah sheds light on another dispute, this time between Rambam and Ra'avad, over the correct approach to relating to God's essence, and the implications of error in this complex and sensitive area.

In the third chapter of *Hilchot Teshuvah*,²⁹ Rambam defines and explains various categories of beliefs which are to be regarded as heretical. Those who hold such beliefs are automatically barred from entering *Olam Haba*. Included within the category of “*min*,” writes Rambam, is “one who says that there is one Lord, but that He possesses a body or form.”

Reacting strongly to this claim, Ra'avad responds in his gloss on Rambam's text:

And why does he [Rambam] label such a person a “min”; many [or several] who were greater and better than him went along with this understanding because of what they saw in the verses, and even more so because of what they saw in Aggadic sources which can corrupt beliefs.

Does Physicality Imply Limitation?

On the basis of our analysis of Rambam's position regarding angels and how it differs from those of his disputants, we can explain that his disagreement with Ra'avad may not be as severe and dramatic as first appears. For Rambam and his binary system of physicality and

28 This concept is discussed at greater length in Chapter 49.

29 3:7.

metaphysicality, the concepts of substance and form relate specifically to the physical realm. To apply such terms to God, therefore, would be to subject Him to the limitations of time, space, decay, and all other laws of nature to which physicality necessarily submits. As Rambam himself makes clear in his opening chapter of *Mishneh Torah*:

*If the Creator were a physical body, He would have bounds and limits, for it is impossible for a physical body to be without limits.*³⁰

The entire monotheistic edifice, however, is premised on the principle that God acts freely and independently, transcending all of the limitations that hold sway in the physical domain.³¹ By denying God's non-corporeality, and by extension His absolute freedom, one is replacing the providential God of the Torah who freely communicates and performs miracles with a deity dictated to by deterministic natural forces. On this basis, we can understand why Rambam places the belief that God possesses a body or form in the category of "*min*" together with belief in multiple gods or prayer to an alternative power. In all of these cases, one is effectively denying the existence of a single omniscient and omnipotent Deity in favor of multiple, limited, competing forces in the world, and thereby rejecting a basic tenet of monotheistic religion.

Within Ra'avad's system of thought, however, the causal link between an incorrect belief in God's physicality and the suggestion of a limitation of His power is far weaker.³² In contrast to the stark binary system of Rambam, in which all of existence falls neatly into either the physical or the spiritual realm, Ra'avad's mystical view of the universe is premised upon a complex and interconnected range of quasi-physical spheres of

30 *Hilchot Yesodei HaTorah* 1:7.

31 This is examined in detail in Chapters 18 and 19. In *Moreh Nevuchim* (1:35), Rambam writes: "Just as one is required to raise children in the faith, and to proclaim to the multitude that God, may He be magnified and honored, is One and that none but He ought to be worshipped, so too they should be made to accept on traditional authority the belief that God is not a body..."

32 Ra'avad agrees that such a belief is incorrect, referring to the notion that God has a body as a "corrupt" belief, but he disputes Rambam's categorization of those who hold such a belief as heretical "*minim*."

existence which occupy the conceptual expanse between absolute physicality and pure metaphysicality.³³ Whereas for Rambam, therefore, the suggestion that God possesses a form is tantamount to an assertion of His limited and fully-physical status, such a deduction is considerably more delicate and demanding from the perspective of the mystic, for whom “form” need not relate to physicality or physical matter.

It should be noted further that not only is making such a deduction more complex within Ra’avad’s worldview, it is also discouraged. In a separate debate between Rambam and Ra’avad,³⁴ Ra’avad is highly critical of Rambam’s exploration of the nature and scope of Divine knowledge. Since, argues Ra’avad, the extent and nature of God’s knowledge lie well beyond the scope of human comprehension, it is far better for such matters to be left to simple faith than for them to be probed incompletely. The nature and quality of God’s existence is highly likely to be considered similarly opaque, and Ra’avad would therefore discourage attempts to overanalyze this elusive subject.

The combination of these two points makes it very possible that the “*rabim vetovim*” (greater and better)³⁵ people cited by Ra’avad had not realized the full implication of their belief that God has a form. This would appear to be the understanding of Chazon Ish, who writes regarding Ra’avad’s opinion:

This applies specifically to one who has not analyzed the matter or is of limited intelligence. But one who understands that all that we have received in our tradition concerning the true Creator cannot coexist with a physical body...or form...Ra’avad would agree that he is a “min” for he is denying the core belief.³⁶

The crux of the dispute between Rambam and Ra’avad therefore appears to revolve around whether a belief whose fullest implications,

33 See our next chapter for discussion of the nature of the ten *Sefirot*.

34 *Hilchot Teshuvah* 5:5; also discussed in Chapters 1 and 7.

35 See, however, the *Kessef Mishnah* of Rabbi Yosef Karo, who rejects this version of Ra’avad’s comment in favor of the text found in Rabbi Yosef Albo’s *Sefer Ha’ikkarim*, which regards those who hold such a belief as unfortunate rather than greater and better.

36 *Yoreh De’ah*; *Hilchot Avodat Kochavim* 62:21.

when thoroughly analyzed and profoundly understood, represent heresy should be categorized as heresy even in its simple non-deduced state.³⁷ This in turn may rest upon their understanding of the process of achieving or forfeiting *Olam Haba*.

In his *Introduction to Chelek*, Rambam writes that reward in *Olam Haba* consists of the soul's great pleasure in comprehending and connecting with the Divine Intellect.³⁸ The degree to which such a connection is possible is directly dependent on the extent to which the person's mind was correctly trained while alive. A heretical belief represents such a severe falsehood that it precludes any possible connection and comprehension of God. Since this process of comprehension and connection is a natural consequence rather than a miraculously granted reward,³⁹ it matters little whether the false belief which is preventing the connection was generated deliberately or inadvertently—or even not fully understood.⁴⁰

Ra'avad, by contrast, would appear to subscribe to the more classical understanding of *Olam Haba* as a form of created reward and punishment to match the conduct of a person in his lifetime. This allows for far greater flexibility regarding beliefs which have been incorrectly accumulated through no fault of the person.

The dispute over how to understand and interpret the appearance of angels at the start of our *parashah* can thus be seen to have profound and far-reaching repercussions in broader questions of Jewish philosophy and theology.

37 Thus, according to Rambam, children must be taught that God has no body in the same manner as one teaches them not to serve idols, as failure to do so is a manifestation of the same incorrect belief. It should be pointed out, however, that even Rambam would appear to concede that matters which are so complex that they belong to the area of "*sitrei Torah*" need not be understood—even if an imprecise conception could have heretical implications. See Rambam's discussion of belief in Divine attributes, *Moreh Nevuchim* 1:35 and 1:50—a belief which does not feature in his principles of faith.

38 See Chapter 3 regarding the identification of the Active or Divine intellect, and Chapter 59 for further discussion of *Olam Haba*.

39 See Chapter 67, in which we also examine whether the concept of *techiyah* can serve to mitigate the apparent injustice inherent within Rambam's system.

40 Rav Chaim Soloveitchik is reported to have declared that an unfortunate heretic is nevertheless a heretic; cited in Rav Elchanan Wasserman's *Kovetz Ma'amarim*, p. 19; see also Marc Shapiro (*Limits of Orthodox Theology*, Littman Library, 2004, p. 12).



CHAPTER 61

SHOFETIM

The Rabbinic Role in Torah Law

Desert Transmission, *Derash* Transition

While the Divine origin of the Torah is a unanimously accepted tenet of Orthodox Jewish belief, there remains significant scope for investigating the precise relationship between what was taught at Sinai and the detailed body of Torah law with which we find ourselves three-thousand years later.

In his *Ha'amek Davar* commentary to the Torah,¹ Netziv presents a fascinating explanation of the way in which the Jews received and integrated the written and oral components of the Torah. Citing an array of verses, Gemaras, and Aggadic sources, he explains how initially, in the first year after leaving Egypt, Moshe taught simple halachot (such as the Ten Commandments), which was all that the nation emerging from slavery was then able to absorb. Only forty years later, on the Plains of Moav, did the nation receive the Torah's final text. It was at this crucial

1 *Ha'amek Davar* of Rav Naftali Tzvi Yehudah Berlin, *Devarim* 1:3.

juncture, continues Netziv, that Moshe explained the complex methodology of how to synthesize the Torah's oral and written components. This included the thirteen principal categories of hermeneutical derivation (*derash*²) that he had received at Sinai.

The purpose of this hermeneutical methodology was twofold: to demonstrate how the body of halachah is connected to the text of the Written Torah, and to allow for new applications of existing halachic principles. These new applications would be crucial in addressing any subsequent doubts over how to apply halachah to the fresh circumstances which would inevitably arise in the wake of societal development and technological advancement.³

Once the Jewish People entered the land, they would no longer be able to avail themselves of Moshe as a means of ascertaining God's direct response to every halachic query. That being the case, this *parashah's* instruction is crucial:

*If a matter of judgment is hidden from you...you shall come to...the judge who will be in those days, you shall inquire and they will tell you the word of judgment. You shall do according to the word that they tell you...and you shall be careful to do according to everything that they shall teach you.*⁴

Every halachic doubt was to be referred to and ruled upon by the Sanhedrin, who would resolve it according to those principles which

2 The concept and function of *derash*, as well as its antiquity and interplay with the Torah's written text, is discussed in more detail in Chapter 11. Malbim's introduction to the book of *Vayikra* lists several hundreds of rules of *derash* based upon the unique syntax, grammar, and linguistic nuances of biblical Hebrew. The academic claim that the hermeneutical rules were invented by Tannaic Sages is examined in Chapter 46.

3 See the principle of the *Meshech Chochmah*, explained in Chapter 44 above, that the Sanhedrin must utilize the tools at their disposal—in accordance with the tradition they received from Moshe—to ensure that the Torah's application is suited to meet the needs of each generation.

4 17:8-10. Rambam, *Hilchot Mamrim* 1:1, summarizes:

The Great Beit Din in Jerusalem (Sanhedrin) is the primary body of the Oral Law, and the pillar of legal ruling, and from them statute and judgment emanate to all of Israel. Upon them does the Torah trust, as it says: "according to the law that they will teach you." And all who believe in Moshe our Master and his Law are obligated to rely on their religious matters as a primary basis.

Moshe taught on the Moabite Plains. But in which ways and to what extent were the Sanhedrin and Rabbinic authorities empowered to formulate and interpret Torah law?

Received Rules, Derived Details

In the introduction to his *Commentary on the Mishnah*, Rambam distinguishes two categories of Torah law and uses this distinction to clarify and limit the scope for Rabbinic influence over Torah law.⁵ The first category consists of *ikkarim mekubalim*—received mitzvot and their primary details, all of which were communicated in a clear and unambiguous manner to Moshe who in turn taught them to the nation. The Jewish People preserved and transmitted these *ikkarim* faithfully until they were eventually recorded in the Mishnah.⁶ Concerning these *ikkarim*, Rambam continues, there is room for neither innovation nor dispute.

As a prime example, Rambam brings the retributory principle of “an eye for an eye”; it is an *ikkar* that this law demands monetary compensation and not punitive amputation.⁷ The Gemara’s apparent attempt to prove this interpretation is therefore to be understood as an exercise in identifying its source in the Written Torah.⁸ Another example cited by Rambam is the Gemara’s attempt to prove that the *pri eitz hadar* (fruit of a beautiful tree) described in the verse should be identified as the *etrog* (citron). The meaning of the verse, and the central detail of this mitzvah, would certainly have been transmitted by Moshe. The Gemara’s objective therefore, explains Rambam, is to explain how this identification can be

5 This principle is repeated in *Shoreshe Sheini* to his *Sefer HaMitzvot* and the first chapter of *Hilchot Mamrim* and is analyzed by Rabbi David Nieto in the third section of his *Matteh Dan*. A lengthy critique of Rambam’s theory can be found in *Teshuvot Chavot Yair* #192, and powerful response to this critique in Rav Tvi Hirsch Chajes’ *Ma’amar Torah Shel Ba’al Peh*. See also the introduction to *Aruch HaShulchan*.

6 We offer several examples to support this assertion in Chapter 11. See Chapter 65 concerning the transmission of Torah during the sinful periods of the First Mikdash era. See also Rabbeinu Chananel’s commentary to *Pesachim* 38b that all unanimous, unattributed Tannaic statements were received directly from Sinai.

7 See the first chapter of *Hilchot Chovel Umazik* and our analysis in Chapter 64 as to why the Torah frames the principle in this way.

8 *Baba Kama* 83b.

understood from the Torah's text. The scope for Rabbinical creation and manipulation within these core principles is thus extremely limited.

Rambam's assertion that the use of hermeneutical rules does not necessarily signal the creation of a new law, but may instead involve consolidation of a principle received through the transmitted tradition, is supported by Rabbi Yose ben Bun in the Talmud Yerushalmi.⁹ Rabbi Yose states that even though the application of a *gezeirah shavah*¹⁰ cannot normally be innovated, this is only the case when the goal is to create a *new* law. When, however, one is merely attempting to consolidate a teaching which has been transmitted through tradition, this restriction does not apply.

In contrast to these primary components of the mitzvot, Rambam explains, the finer details and minutiae of the mitzvot were not explicitly communicated to Moshe, as a midrash teaches:

[D]id Moshe really learn all of the Torah? It is written of the Torah, "it is longer than the Earth, and wider than the sea,"¹¹ and Moshe learned it all in forty days? Rather, it was the general categories that God taught to Moshe.¹²

Instead, these details were to be hermeneutically derived from the Torah's text by the Sages, who were entrusted with the task of deriving them by means of the thirteen hermeneutical principles and the other rules of *derash*.¹³ These finer details therefore allow for genuine dispute wherever Sages disagree on how to expound the principles of *derash*.¹⁴

9 *Pesachim* 6:1. See also *Yad Ramah* commentary to *Baba Batra* 111b.

10 One of the hermeneutical rules involving similarity of words used in different areas of law.

11 *Iyov* 11:9.

12 *Shemot Rabbah* 41:6. According to *Chatam Sofer*, this distinction applies even to the teachings of Moshe; what he received directly from God was immutable, but what he understood or derived by means of logic could be disputed (See *Chatam Sofer* commentary to *Chullin* 124a).

13 This category of hermeneutically derived details of halachah is considered fully binding Torah law; see *Kessef Mishnah*, commentary to *Hilchot Ishut* 1:2 and *Megillat Esther*, commentary to Rambam's *Sefer HaMitzvot*, *Shores Sheini*.

14 In his introduction to *Commentary on the Mishnah*, however, Rambam writes how even these disputes were minimal and only increased as a result of persecution and the loss of the Sanhedrin's authority and expertise. This assertion helps to explain why Talmudic Sages typically seek to interpret Tannaic debates in a manner which minimizes the extent of dispute

This distinction is illustrated by a Tannaic exchange in which Rabbi Shimon's colleagues respond to his statement of law by saying:

*If what you say is a received tradition, we accept it. (But) if you have derived it logically then we have a response.*¹⁵

Subtle distinctions in the Gemara's presentation of *derashot* can inform the sensitive reader as to whether its agenda is to derive a new law via *derash* or merely to consolidate a teaching which has been transmitted through tradition.¹⁶

Devolution of Halachah

There is another way in which the Torah empowers the Sages to contribute to Torah law. In certain specific areas of halachah, the Torah creates a general framework of law and then delegates the details to the Sages, allowing them to create secondary legislation which has *de'oraita* status. Explicit examples of this include aspects of "affliction" on Yom Kippur¹⁷ and the rules relating to permitted and prohibited activities on Chol Hamoed.¹⁸

(see Tosefot, *Niddah* 8b and *Baba Metzia* 74b; Ritva, *Niddah* 21b; regarding loss of knowledge as a result of persecution, see Chapter 44).

15 *Yevamot* 8:3.

16 The phrase "*Mai kerah*"—what is the verse? is understood to indicate the Gemara's consolidation of a known Torah or Rabbinic law, whereas "from where does he know it" and "from where are these words said" indicate a genuine derivation from the Written Torah. Similarly, "*shene'emar*"—as it says—is indicative of a derivation, while "*mishum shene'emar*" is consolidation of a known law. See Ramban's commentary to *Sefer HaMitzvot*, *Shores Alef*, *Ot Gimmel*; *Torah Temimah* to *Vayikra* 11:39; *She'erit Yosef* (cited in the "Rules of Talmud" at the back of many editions of tractate *Berachot*).

17 Ran, commenting on *Yoma* 1:1. A further example is to be found in *Bechorot* 26b, where the Sages determine the extent to which Torah law requires that a firstborn animal must be cared for before being transferred to a *Kohen*. *Chazon Ish* (*Ishut* 22:3) writes that this phenomenon is widespread and unanimously accepted. He understands that it forms the basis of the Talmudic dictum, "*Yesh ko'ach beyad chachamim le'akor et HaTorah*" (There is power in the hands of the Sages to uproot Torah law), and suggests that it governs further laws including *tza'ar ba'alei chaim* and *meit mitzvah*. See *Yad Malachi* for further examples. In *Ma'amar Torah Shel Ba'al Peh*, Rav Tzvi Hirsch Chajes suggests that this form of devolution of halachic details occurs regularly in *Halachah LeMoshe MiSinai* laws; see for example the discussion of *shiurim* (halachic quantifications) in *Yoma* 80a.

18 The intermediate days of festivals; *Chagigah* 18a.

A particularly noteworthy example of this delegated legislation is found in the commentary of Ritva regarding a Mishnah's leniencies in allowing a woman to remarry even where the normal quota of two witnesses cannot be found to establish proof of her husband's death.¹⁹ Ritva explains that the Torah never fixed the level of proof required; rather, the Sages were vested with the power to declare what constitutes "proof" and used this power to reduce the level of required proof for the benefit of the *agunah* (chained wife).

While the immediate context of Ritva's discussion concerns the case of *agunah*, his analysis discloses a broad and fundamental principle—that even though basic Torah law requires two witnesses to constitute "certain proof":

Anan sahade bemilta [a body of evidence]...can be considered in all places as full testimony, even in Torah law, and the Torah delegates [the matter] to the Sages [emphasis mine] to ascertain which widely recognized truth should be considered full testimony...and that which we say "because of agunah the Rabbis were lenient," this means to say that the Sages, who generally were stringent [regarding the level of testimony required], were lenient here [emphasis mine] [to consider a lower grade of evidence as full testimony].

Ritva appears to understand that the Torah's requirement of "two witnesses to establish a matter"²⁰ is only a default position; the power is delegated to the Sages to evaluate and establish necessary exceptions in cases of strong bodies of evidence.

19 Yevamot 88a, where Ritva expresses this idea in the name of his teacher, Re'ah; see also Chazon Ish *ibid*. This empowering of the Sanhedrin over evidential and procedural aspects of the judicial process is consistent with the discretion vested in the judges of capital cases—a matter we discussed in our previous chapter.

20 Devarim 19:15.

The Distinct Nature of Rabbinic Law

The final way in which the Torah empowers the Sages to legislate derives from the instruction in this *parashah* of “*lo tasur*”²¹—do not deviate from the Sanhedrin’s *takanot* and *gezeirot* (mandatory and prohibitory edicts).

This form of Rabbinic decree is distinct from the two categories discussed above, both of which produce fully-fledged Torah law. The Rabbinic edicts which form this third section, however, despite being underpinned by the Torah command of “*lo tasur*,” remain separate from the main corpus of Torah law with several important legal ramifications.

In his *Meshech Chochmah* commentary on the Torah, Rav Meir Simchah of Dvinsk raises the question as to why an inadvertent breach of Rabbinic law is not subject to the same laws of doubts, punishment, and atonement as an inadvertent breach of Torah law. After all, the authority of Rabbinic law is premised upon a clear statement of the Torah (*lo tasur*). In the process of answering this question, Rav Meir Simchah establishes the principle that God designed Torah law to contain two very different modes of legislation: eternal, immutable Torah law, and revocable Rabbinic law:

The Torah wanted that, aside from its eternal matters, new matters should arise...which would be temporary, which the Sages should have the power to add in accordance with the guidance that had been provided for them.

Bearing in mind this specific and limited function of Rabbinic law, Rav Meir Simchah resolves his initial question of the legal differences between Rabbinic and Torah law.

Torah law, writes Rav Meir Simchah, is the revealed will of God. Any breach of Torah Law, therefore, regardless of the level of intent involved, is a direct contravention of God’s will for which atonement is required. Rabbinic decrees and edicts, by contrast, are independent pieces of legislation which the Torah authorizes the Sages to issue. The content

21 Ibid. 17:11.

of these decrees does not necessarily accord with God's will, and their binding status does not rely on such a supposition. Rather, the Torah declares—meaning it is God's will—that the Sanhedrin and the Sages be obeyed and their authority upheld.²² One who breaches Rabbinic law is guilty of rebelling against God's general wish that the authority of Sanhedrin be upheld, regardless of the content of the specific decree.

This being so, we can understand that an inadvertent breach of Rabbinic law does not require any form of atonement, despite such law being underpinned by the Torah command of "*lo tasur*"; a non-intended act simply cannot be viewed as an "act of rebellion" against the authority of the Sages. In a similar vein, where one is in doubt regarding a halachah or its application, if the halachah is legislated by the Torah and therefore represents God's direct will, the rule of "*safek de'oraita lechumrah*" requires one to act stringently on account of the doubt. If the halachic doubt involves a Rabbinic law, however, the rule is "*safek deRabanan lekula*" and one need not act stringently. This is because the concept of rebellion requires the rebel to know both what has been legislated and that his action contravenes the decree.

Sanhedrin and Rabbinic Authority

A simple reading of this passage of "*lo tasur*" limits its scope to rebellion against rulings of the Sanhedrin. Rav Elchonon Wasserman, in his analysis of the authority of the Sanhedrin and Rabbinic assemblies,²³ argues that the essential characteristic of the Sanhedrin is that it embodies the "national authority" of the Sages. Since this is the case, he continues, some of the functions and laws regarding the Sanhedrin can apply even in a post-Sanhedrin era, if such a "national authority" can be

22 The *Meshech Chochmah* brings precedent for his suggestion from the Torah's command to obey the king. Regardless of the content of the king's commands, the Torah seeks to uphold the authority and office of the monarchy by requiring obedience. (The *Meshech Chochmah* cites Talmudic sources that equate the requirements of obedience to Sages and kings.)

23 *Kuntrus Divrei Sofrim* (§2) contained within vol. 2 of *Kovetz Shiurim*. Rav Wasserman's analysis is primarily concerned with the position of Rambam. A similar position is taken by Rav Tzvi Hirsch Chajes, discussed in the next chapter.

identified. Thus, even after the dissolution of the Sanhedrin, if a clear majority of Sages combine to agree on a point of *derash* or Rabbinic law, this consensus will engage the *de'oraita* principle of “*lo tasur*,” since this majority can represent what might be termed today as a “National Rabbinic Authority.”²⁴

Rav Wasserman uses this principle to explain the authority by which the conclusions of the Mishnah and Gemara can be considered to bind subsequent generations, a phenomenon which is difficult to reconcile with Rambam’s position that a Sanhedrin can overturn a ruling of an earlier Sanhedrin.²⁵ Citing the *Kesef Mishneh* commentary of Rav Yosef Karo,²⁶ Rav Wasserman suggests that a clear consensus of Sages at the culmination of the Tannaic and Talmudic periods agreed that the teachings and conclusions of the Mishnah and Gemara were to be regarded as binding. Such a consensus therefore meant that these conclusions bear the full force of the Torah’s “*lo tasur*” command not to rebel against the authority of the Sanhedrin. Accordingly, it would now require a new Rabbinic consensus to reverse the binding authority of the Mishnah and Gemara.

The principle that a Rabbinic consensus can represent the national authority of the Sages in the absence of a Sanhedrin is used by Rav Wasserman to explain a further novel ruling of Rambam. In *Hilchot*

24 Rav Wasserman writes that the special status accorded to the Sanhedrin means that they are regarded as a “National Rabbinic Authority,” even if they represent only a minority of national scholarly opinion.

Rabbeinu Gershom, known as the *Me’or Hagolah* (Light of the Exile), is famous for his enactments for which he was able to secure the support of hundreds of Rabbinic leaders of his day in order to confirm these bans as Rabbinic proclamations. The most famous of these “*Charamim DeRabbeinu Gershom*,” which include the ban on polygamy, the ban on divorcing one’s wife without her consent, and the ban on reading private correspondence, were instituted at a synod around the year 1000 CE. It can be argued that these widely accepted *charamim*, as well as the subsequent broad Rabbinic acceptance of the *Shulchan Aruch*, may also attract the prohibition on “*lo tasur*” on this basis. See further *Hilchot Ishut* 16:7–9, where Rambam writes that certain decrees, which were made “at the time of the Geonim” in order to strengthen the application of the *ketubah*, were now fully binding, as they had become widely accepted.

25 *Hilchot Mamrim* 2:1. See further Chapter 44 above.

26 In Chapter 44 we examine the motive for this agreement.

Sanhedrin,²⁷ Rambam writes that although the original and authentic *semichah* ceased along with the Sanhedrin in exile, “the matter appears to me that if all the Sages residing in the land of Israel were to agree to appoint judges and grant them the status of *semichah*, this would be a valid *semichah*.”

Since the granting of *semichah* belongs to the “National Rabbinic Authority” function of the Sanhedrin, a contemporary agreement of Rabbis could once again vest a Rabbinic body with the authority of a “Sanhedrin” which could legislate and interpret the Torah with full *de’oraita* force.²⁸

27 *Hilchot Sanhedrin* 4:11.

28 The practicality of such a development is investigated in Chapter 44.