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Introduction

One Talmud, Many Approaches

The very thought of writing a new book about Talmud seems as futile as it is daunting. Accomplished Talmudic scholars have produced an ever-increasing supply of weighty tomes aimed at explaining and interpreting Talmudic passages. These commentaries have themselves spawned super-commentaries which plumb the infinite depths and delicate intricacies of Talmudic deliberations. Meanwhile the burgeoning field of academic Talmud study, with its emphasis on historical detail, textual accuracy, and reconstructing the chronological development of Talmudic discussions, has produced its own stream of thought-provoking and sometimes challenging material.

These streams of Talmud-related literature flow into a turbulent sea of modern Jewish learning. On the one hand, Talmud study is enjoying unprecedented popularity. Aided by more accessible translations and commentaries, participation in the *Daf Yomi* program grows steadily—not just among Torah scholars, but increasingly among members of the wider Jewish community too. Each day, innumerable lectures, podcasts, and blogs educate and inspire a wide range of devotees, who engage with texts that were formerly inaccessible to them, having been reserved for elite circles of Rabbinic students alone. On the other hand, this resurgence in the popularity of Talmudic study comes in an era in which not only technological advances, but also social and

cultural developments have created an apparently unbridgeable gulf between the world of the Talmud and the realities and sensitivities of many of its readers.

The Amoraim (sages of the Talmudic era) themselves recognized that whole swathes of Talmudic terrain—such as the tractates teaching laws of sacrifices and ritual purity—are “laws for the Messianic era.”¹ However, today’s students of these sacred texts are additionally challenged by formerly uncontroversial content, such as its civil law codes. For example, these students study *Nashim*, a collection of Talmudic tractates that focus on laws surrounding marriage, yet live in a world in which the significance, definitions, and even very existence of traditional gender delineations are increasingly disputed. Laws of damages and those detailing the minutiae of forbidden activities on Shabbat are typically debated and formulated in the context of ancient agricultural societies, and their conclusions are not always consistent with current scientific knowledge. The task of seeking to apply these legal principles to contemporary halachic scenarios involving electricity, cars, and the internet lies well beyond the standard Talmudic curriculum and is therefore left largely to specialist Rabbinic decisors.

Reactions to this ever-widening chasm between Talmudic and contemporary values vary even among its devoted students. Talmudists emanating from more traditional quarters of Orthodox Judaism will tend to interpret this phenomenon as a reflection of the moral and spiritual decadence of modern society. The presentation of religious law in the context of ancient agricultural life reinforces their perception of the distant past as a materialistically austere yet religiously superior existence.

At the other end of the spectrum, many less traditional students of the Talmud are also untroubled by the irreconcilable disparity between what they view as the often-primitive ancient values promoted by the Talmud and those cherished by twenty-first-century Western society. Those identifying, for example, with non-Orthodox streams of Judaism

1 Albeit they are still worthy of study; see *Zevachim* 45a.

place primary value on the broader, humanistic teachings found in the Talmud and are generally confident of their ability to determine how these teachings can alter its presumptively outmoded legal rulings.

Morality and Middle Ground, Commandments and Context

This book will be of most value to those who find themselves occupying the vast and nuanced grey area between these two uncompromising positions. Many traditional students of the Talmud, despite their great reverence for its Sages and their teachings, do not relinquish their independent moral and legal judgment when scrutinizing its texts. While such students accept as a religious prerequisite that their own subjective assessment must be set aside when it conflicts with God's explicit command, they will also note that the Torah does appear to endorse certain principles—moral principles on which the Talmudic Sages themselves sometimes rely when critiquing the statements and rulings of their colleagues.² Furthermore, these students may appreciate and praise many of the technological and societal developments that so greatly distinguish the twenty-first-century Western world from the Middle East of two millennia ago.

This group of students is therefore likely to be weighed down by the following fundamental questions which explore the basic structure of the Talmud and probe its broader status as a body of religious law:

- How much of the Talmud is understood to represent a direct representation of God's immutable word?
- To what extent should we study and interpret Talmudic legislation and statements by placing them in the context of the social, cultural, and political realities of the ancient Middle East?
- If we are to acknowledge that certain Talmudic laws should be placed in such a context, what if anything is the value of our studying them today?

2 A full treatment of this matter can be found in chapter 50 of *Judaism Reclaimed*.

- Which categories of Talmudic law have the potential to be amended by a future Sanhedrin—or even, perhaps, by rabbis and scholars of our own era?
- How are we to regard the vastly different methodologies that traditional Talmudic commentaries and authorities have adopted through the generations? Is there an ideal approach to analyzing the Talmud? What, if any, consideration should a traditional student of the Talmud give to the findings and methods of academic Talmudic scholars?

Even though these questions bear the potential to clarify legal and theological concerns that lie at the heart of Talmud study, scarcely any traditional literature has attempted to address them in any sort of comprehensive manner. This dearth of Rabbinic responses may be partially attributable to an increasing tendency to divorce lofty Talmudic deliberations from what is perceived to be the mundane and monotonous routines of regular life. Such a tendency finds its most radical expression in the *Halakhic Man* ideal of Rabbi Joseph B. Soloveitchik, for whom the Talmud seeks primarily to construct theoretical religious ideals rather than provide practical religious pronouncements.

As modernity continues to propel society ever further from the world of the Talmudic Sages, it becomes increasingly difficult for their intellectual successors in today's world to compartmentalize its challenging teachings and relate to them purely in the realm of halachic theory. The concerns of these students may not be expressed openly, out of reverence for the sacred texts and veneration for millennia of sages. They do, however, trouble those who straddle the divide, seeking some way of reconciling religious teachings with the realities of everyday life.

Methodology and Maimonides

Drawing on a range of traditional as well as academic sources, *Talmud Reclaimed* attempts to provide for this group of modern Talmudic students in their struggle to relate to the teachings of the Sages. In doing so, it seeks to construct a comprehensive framework which sheds light upon the various elements of Talmudic law and the way in which they

interact with each other. This framework relies strongly upon the writings of Rambam (Maimonides)—the great organizer in Jewish legal and philosophical tradition. After identifying and developing Rambam’s systematic explanation of the Oral Tradition’s legal processes and dynamics, as well as his broader perspective regarding the function of the commandments, we set out to clarify various Talmudic fundamentals.

Reading the pages that lay open before him, Rambam perceived a Talmud that contained a number of principles that were self-evident and beyond challenge. One was the existence of an authentic Oral Tradition of the law in an unbroken chain from Sinai, accompanied by a set of hermeneutical rules through which this tradition could be connected to the Torah’s written words and its details thereby clarified and expanded. Another was that there existed a functioning Sanhedrin that was responsible for defining and explaining these laws, a task that began in Biblical times and continued through the Second Temple era. A third principle was that the entire Babylonian Talmud was invested with binding authority on account of it having been compiled by Rav Ashi and Ravina—two Sages whose scholarship and authority were universally accepted.

Not every scholar accepted these foundational principles in the way Rambam did. Rabbinic authorities as well as less traditional sources have challenged some of the presumptions which he regarded as axiomatic; this book acknowledges these challenges and addresses them in a set of appendices, so as not to interrupt the flow of argument and distract the reader from the theories it proposes. Two of these appendices also feature extended case studies and analyses that support the original theories put forward elsewhere in this book.

At the heart of this book lies a key distinction between two categories of law found in the Oral Tradition, a distinction which Rambam emphasizes in the introduction to his Commentary on the Mishnah: *ikarim mekubalim*,³ the primary aspects of each commandment that Moshe taught and were then transmitted through the Oral Tradition, and *peratim*, the finer details of the commandments whose scope and content were

3 Also called the *perush mekubal*, or “received explanation.” In chapter 2, we contrast Rambam’s minimalist understanding of revelation with other models.

delegated to the sages and Sanhedrin of each generation to determine. For Rambam,⁴ only the *ikarim mekubalim* represent immutable and indisputable laws. The *peratim*, by contrast, are not immutable. Rather, they are created by the court's legislation and can similarly be amended on the basis of *sevara* (Talmudic logic) and a hermeneutical system which is traditionally traced back to Moshe.

This book sets out to demonstrate that this crucial distinction between integral *ikarim* and peripheral *peratim* is not limited to the sphere of practical legislation. It also provides a system for separating those areas of each commandment which Rambam understood to relate to its Divinely intended function from those that did not. After investigating Rambam's categorization of hermeneutically derived Torah law as Rabbinically sourced *divrei soferim*, we extensively examine Rambam's suggested functions for each commandment in *Moreh Nevuchim*, showing that none of the details drawn upon when discussing hundreds of mitzvot are the result of Rabbinic hermeneutics.

If the *peratim* are not integral to the Divinely intended function of the commandments of which they are part, what, then, is their purpose?

Talmud Reclaimed argues that *peratim*, far from being peripheral and unimportant, represent the beating heart of the Oral Tradition. Indeed, Rambam considers that a majority of a person's allotted time for Torah study should be dedicated to the hermeneutical process of deriving details of law, a process which can be achieved either through a particular methodology for interpreting the Torah's text or from the utilization of prescribed logical methods of comparing and contrasting the commandments.⁵ The latter logical method requires a student to first gain a deep insight into the internal structure and dynamic of each law as a prerequisite for determining which features can legitimately distinguish it from other seemingly similar laws. This delicate hermeneutical process, coupled with the intricate "investigations of Abaye and Rava,"⁶

4 Toward the end of chapter 2, we explore the implications of various minimalist and maximalist approaches to revelation.

5 *Hilchot Talmud Torah* 1:11–12. Quoted on p. 68.

6 *Hilchot Yesodei HaTorah* 4:13. See further on p. 69.

embodies the Oral Tradition's profound wisdom—a discipline which can take a lifetime for the student to master. We explore numerous different aspects of this Talmudic wisdom and consider how, in the process of grappling with these finer *peratim*, the student's mind is refined and trained. This process can pave the way for them to start viewing the world from the Divine perspective.

Additionally, given the fact that no Sanhedrin is bound by the rulings of its predecessors, the inbuilt flexibility which governs the system for determining *peratim* enables Torah law to meet the realities and unique challenges of each era.⁷ These two features of the Oral Torah, integral *ikarim* and peripheral *peratim*, can thus be seen to form a perfect partnership within the Talmudic system. The core, immutable *ikarim*, transmitted intact from Sinai, are understood to contain the primary Divine function and intention of each commandment. Meanwhile the flexible *peratim*, and the system through which they are applied in each generation, require Talmudic students to be highly trained and constantly engaged with a range of profound wisdom. The *ikarim* retain a crucial role as a buffer against the Sanhedrin's legislative innovations, ensuring that their hermeneutical creativity never overreaches or comes into conflict with the basic Divine intent behind the commandments.

Ideals and Interpretations

This description of a flexible halachic process driven by Talmudic wisdom and sensitivity to the generation's needs represents the system as it should function in its ideal state. Persecution and exile, however, sealed the fate of the national Sanhedrin close to two thousand years ago. The hemorrhaging of Torah knowledge and expertise, coupled with the devastating loss of national autonomy, resulted in a multiplication of differences of halachic understanding within the Jewish Nation, with no court available to resolve them.

However, not all was lost. A little over a century after the destruction of the Second Temple and not much more than half a century after

7 See the opening chapters of *Hilchot Mamrim*.

the failure of Bar Kochba's revolt, the court of Rabbi Yehudah HaNasi⁸ redacted and compiled the Mishnah. During the fifth century CE, a further significant salvage job was completed when the academy of Ravina and Rav Ashi redacted the Babylonian Talmud,⁹ capturing and preserving many teachings, traditions, and interpretations that had not been included in the Mishnah. While Ravina and Rav Ashi thereby succeeded in temporarily arresting this decline of Torah knowledge and expertise, the closing of the Talmudic era was accompanied by additional cycles of exile and dispersal, leading to a further diminution of Torah scholarship.¹⁰ The dispersal also led to an increased fragmentation of the nation, a situation which precluded any form of universally accepted national body that could rule upon Jewish law. With the culmination of the Talmudic era, therefore, new halachic interpretations and amendments were no longer to be permitted: "Ravina and Rav Ashi are the end of [authoritative] legal rulings."¹¹ But how is this statement to be understood? While it is often cited as the basis for the principle that post-Talmudic sages are not qualified to legislate or create new binding law, do we not find tens of thousands of halachic tomes and novel interpretations that were written long after the Talmud was sealed?

In investigating these questions, *Talmud Reclaimed* explores the deep distinctions between the halachic methodology of the classical Sephardic school of thought championed by Rambam and the more innovative interpretations of the Talmud adopted by the Tosafists. We show how such distinctions caused these great schools of Jewish tradition to differ profoundly in their approaches to resolving conflicting Talmudic sources when determining Jewish law. We then argue that their respective interpretations of the Talmud are guided by contrasting jurisprudential conceptions of law and its proper process of application.

8 Around 180–200 BCE.

9 Around 420–500 BCE.

10 See Rambam's introduction to *Mishneh Torah*.

11 *Baba Metzia* 86a. The term "*hora'ah*" literally means "instruction" or "ruling." We analyze the legal and historical complexities involved in how Ravina and Rav Ashi came to be regarded as the final generation of Talmudic Sages who possessed authority to issue binding rulings in Appendix C to this book.

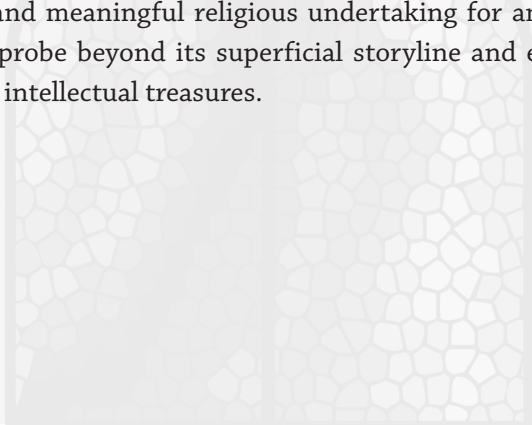
Different scholars and students approach the Talmud with contrasting purposes and goals. For some, Talmud is primarily a resource from which to ascertain correct legal practice. Others seek to submerge themselves in the wisdom of the Talmud, absorbing and internalizing its ideas and modes of analysis. Tracing the dynamic historical relationship between these two goals, we seek to identify the ideal balance between these two approaches, each of which has its own powerful advocates and preferred methodologies for probing the Talmudic text. Also considered is the potential contribution that academic Talmud study can make to this process and the extent to which traditional students of the Talmud ought to embrace or reject it.

Aggadah and Theology

It is not only the legal sections of the Talmud which must be analyzed by way of distinguishing between primary principles and finer details. Whole swathes of the Talmudic landscape are filled by what at first sight seem to be obscure and idiosyncratic passages of Aggadah. These passages include homiletical readings of Biblical verses, ethical fables, ancient medical advice and cryptic esoteric teachings; they also contain broader moral teachings as well as profound wisdom which is deliberately couched in cryptic catchphrases and peculiar parables. We draw upon numerous sources which indicate that the aspects of Aggadah on which we should focus are the central moral and religious teachings that have been transmitted through the tradition. The particular details of each Aggadic teaching are often included for didactic or memory-enhancement reasons and do not always add to the primary message which is being conveyed.

This formula is also applied to areas of theology. We probe the Talmudic sources for Rambam's Thirteen Principles of Belief, noting in the process how Rambam's legal work—*Hilchot Teshuvah*—presents the required beliefs in a more basic and limited form. A contrast may be drawn here with the more expansive (and less Talmudically based) litmus test for heresy found elsewhere in his writings, which are more reflective of his own personal interpretation of these required beliefs.

In short, this book is aimed at assisting the modern student who may be intimidated by the apparent chaos of the Talmudic texts, offended by what he or she considers to be its outmoded social values, and deterred by the intense study of antiquated and inapplicable laws. We offer no master key with which the reader can unlock all Talmudic peculiarities or decipher all of its mysteries. Nevertheless, we do suggest techniques that can enable the careful reader to distinguish between laws which are understood to embody God's immutable will, and those finer details which are to be viewed in the context of the ancient Middle Eastern societies which drafted them. Our demonstration of the Talmudic wisdom contained within deliberations of ancient and sometimes obsolete laws illustrates how Talmud study in the twenty-first century remains a profound and meaningful religious undertaking for anyone who is prepared to probe beyond its superficial storyline and encounter its spiritual and intellectual treasures.



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