From Moshe’s Torah to Moshe’s Mishneh Torah: Maintaining the Integrity of Law in Exile

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The process of law-making in any nation is a complex task. In most legal systems, the creation of law usually involves a structured process anchored in the nation’s foundational legal documents, or constitution. For example, in the United States, the process of lawmaking involves both the legislative [1] and judicial[2] branches of government, each playing distinct but complementary roles.[3]

However, this process presupposes the physical and institutional integrity of a nation. For example, if we were to imagine a hypothetical scenario where a nation such as America is forced into exile with the doors of the Congress and Supreme Court shut, the standard legislative and judicial processes would be disrupted. Such a situation poses a significant question: How does a nation uphold the integrity of its legal system when the required mechanisms of law-making are rendered inoperative? The journey of the Nation of Israel through its period of exile offers a unique perspective on such a scenario.

In Jerusalem, the Sanhedrin functioned similarly to a combination of the U.S. Congress and the Supreme Court. As an assembly of Sages (comparable to Supreme Court judges), it interpreted the Torah (akin to the U.S. Constitution), shaping the laws and setting legal precedents. Members of the Sanhedrin were instrumental in transmitting and shaping the Oral Law. However, the destruction of the Second Temple marked a profound transition in Jewish history, leading eventually to the cessation of the Sanhedrin’s activities.[4] The Jewish community faced a crisis with this loss of this central institution.[5]

In response, the Bet Din HaGadol (Great Court)[6] was established in Yavne, functioning as a new type of Supreme Court. This period marked a significant shift from a Temple-centered worship to a rabbinic and textual tradition. This decentralization was a direct consequence of the Jewish people’s geographical dispersion and the ensuing fragmentation of their society, leading to the closure of the

oral tradition.

The Formulation of the Mishna

The monumental shift toward writing down the oral tradition[7] and publishing it in oral texts begins with the formulation of the Mishna, primarily spearheaded by Rabbi Aqiba, and completed by Rabbi Yehuda HaNasi in the second century ce. This transformation was necessitated by the precarious situation of the Jewish people following the destruction of the Second Temple and subsequent Roman persecution. The dispersal of Jewish communities and the erosion of traditional learning centers heightened the risk of losing the rich oral traditions that had been meticulously preserved and transmitted through generations.

Recognizing the urgency to safeguard these traditions, Rabbi Yehuda HaNasi embarked on the formidable task of compiling, editing, and organizing the Oral Law. This was not simply a work of transcription, but rather a selective process that involved synthesising various oral teachings, laws, debates, and interpretations that our Sages had been discussing for centuries. The Mishna emerged as a strategic effort to retain Jewish oral tradition captured across six orders (*sedarim*), and it laid the foundation for subsequent rabbinic discussions and commentaries, leading to the creation of the Talmud.

The Formulation of the Talmud

In the aftermath of the Mishna's completion around 200 ce, our Sages recognized the need for further elucidation. The Mishna was often succinct and enigmatic, calling for extensive interpretation and clarification. This necessity was heightened by the diverse living conditions and challenges faced by Jewish communities dispersed after the Second Temple's destruction, as well as the emergence of varied practices and interpretations within these dispersed communities.

Babylonia, now modern-day Iraq, emerged as a key center for Jewish learning. It was mainly here that the Jewish legal scholars of the era, known as the *Amoraim*, engaged in rigorous oral discussions and debates, delving into the Mishna.[8] As these oral deliberations evolved, they were gradually recorded, forming what is known as the Gemara. This crucial addition to the Mishna offered not only interpretations but also legal precedents, ethical teachings, and historical narratives. This period of intensive scholarship led to the creation of the Babylonian Talmud (Talmud Babli),[9] which came to represent a significant link in the chain of nationally recognized rabbinic scholarship and authority.

The End of New Rulings

There are two key figures of this period that are traditionally credited with the final editing and organizing of the Talmud Babli: Ravina and Rav Ashi.[10] Their contributions to the compilation and codification of the Talmud were instrumental in preserving and transmitting our authorized legal tradition. This newly compiled Talmud thus came to represent a culmination of centuries of authoritative rabbinic scholarship, including decrees, customs, and judicial decisions derived through the application of authorized Torah exegesis. In other words, this Babylonian Talmud contained the last agreed-upon rulings of our last-sitting national and authorized legal bodies (the Sanhedrin and Bet Din HaGadol). The doors of Israel's Supreme Court were now shut. With this compilation of Ravina and Rav Ashi, we arrive in the era of *"sof hora'a"* (end of ruling),[11] marking the end of new law creation.

Recommended or Binding?

Given the reality of an exilic existence without a Sanhedrin or Bet Din HaGadol, our dispersed legal decisors (*posekim)* have since turned to the Babylonian Talmud in order to analyze and apply its laws in the context of new challenges arising in exile. However—and this is key—without a Sanhedrin or Bet Din HaGadol, the *posek's* role is limited to offering **legal recommendations** based on their analysis of talmudic law. These post-talmudic *posekim* lack the authority to create new laws or customs that are legally **binding**.[12] This remains a key point of contention between the Geonic-Sephardic tradition and the Ashkenazic-Tosafist tradition.[13]

Ultimately, this inability of post-talmudic *posekim* to establish new binding laws (or annul earlier ones) in the absence of the national and authorized legal processes and institutions ensures the very continuity and integrity of our legal system.[14] It underlines the need for a formal and national legal body to create binding laws, and such limitations serve as a motivation to rebuild our nation and our legal institutions.

The *Mishneh Torah*: Restatement of National Law

With the lack of national and authoritative legal structures and the ensuing diasporic dispersion, the Jewish people encountered a void, necessitating a unifying judicial anchor. The Rambam's

Mishneh Torah emerged as this anchor, offering a comprehensive presentation of the entirety of talmudic law and, therefore, of the Oral Law. Rambam meticulously examined the Talmud and the juridical traditions of the Geonim (who were both the students of the Talmud and the predecessors to the Sephardic tradition[15]). His work not only collated the legal rulings of Talmud, it also engaged in a critical analysis, addressing the gaps and ambiguities left by its dialectical style and the whimsical alterations introduced by generations of scribes.[16]

Rabbi Yosef Karo, in his *Kesef Mishneh*, notes that "Rambam's practice is known, in that he simply records the law as it emerges from the Talmud."[17] Therefore, the *Mishneh Torah* is essentially the restatement of the Law of Israel. No other project of such magnitude existed then or now. This body of work remains our prime portal to access an unadulterated and concise version of our people's National Law.[18] Further, its accessibility in Hebrew, as opposed to the Aramaic of the Talmud, democratised legal knowledge for Jews around the world.

However, the *Mishneh Torah*, with its exceptional clarity and transparency of Israel's national law, was bound to challenge entrenched customs and opinions formed in exile. Indeed, many in the Ashkenazic community, which constituted merely ~10 percent of the global Jewish population at the time, viewed the *Mishneh Torah* as a potential disruption to their worldview. In the words Rabbi Ratson Arussi, the foremost rabbinic authority of the Yemenite Jewish community today:

> Opponents rose up against the *Mishneh Torah,* whether against his teachings or against Rambam himself. Amongst the circles of Ashkenaz…there were those who perceived his halakhic writings as challenging their world of Torah. For their world of Torah was characterized by *pilpulic* talmudic study, digging deep, inquiring—[but] not halakhic. The legal component was very heavy among Ashkenaz Jewry. It rested upon customs (*minhagim*). It rested upon various approaches. It rested upon stringencies (*humrot*). For this reason, when they saw Rambam's halakhic work [*Mishneh Torah*], first they were worried that his work may shove aside their halakhic tradition. For this reason, from the Bet Midrash of MaHaRa"M of Rottenburg, who is one of the great early scholars of Ashkenaz, one of his students, Hagahot Maimoniyyot, immediately wrote an amendatory commentary to Rambam's *Mishneh Torah*, i.e. to indicate the positions of the sages of Ashkenaz and the customs (*minhagim*) of Ashkenaz, in order to show, "we are on the map!"[19]

A How-To Guide to Post-Talmudic Opinions

Thus far, we have presented the following chain of logic: the Sanhedrin/Bet Din HaGadol shaped the Oral Law, and the primary method of preserving and transmitting their rulings was through oral tradition. This body of knowledge was eventually compiled into a structured written form known as the Mishna. The Talmud subsequently emerged as a detailed analysis and expansion of the Mishna. The *Mishneh Torah*, produced by Rambam, distills the Talmud's broad discussions into clear conclusions and practical applications, thereby serving as a concise restatement of the Oral Law.

So, what are we missing? After all, when we have clear guidance from the *Mishneh Torah* on a particular law, managing our diasporic existence seems feasible. But what happens when new questions arise that the Talmud (and therefore the *Mishneh Torah*) did not specifically address, and there is no Sanhedrin or Bet Din HaGadol around for us to call upon?

The answer lies in a pivotal talmudic rule,[20] incorporated into the *Mishneh Torah*.[21] It dictates that where the law is uncertain in Scriptural Law (*de'oraita*) matters, we should adhere to the more stringent post-talmudic view. On the other hand, where the law is uncertain for Rabbinic Law (*derabbanan*) issues, the more lenient post-talmudic stance is advisable. This approach implies that in the post-talmudic era, decision-making is not as straightforward as simply siding with the majority or minority opinion. After all, the principle of "majority rule" is legally relevant only in the context of judges sitting on an authoritative legal body, such as a Sanhedrin or Bet Din HaGadol.[22]

Deviating from Due Legal Process

The principle of updating and adapting Jewish law to contemporary life is not just a desirable goal but a biblically mandated one, as evidenced in Deuteronomy 17:9: "And you shall come to the Kohanim, the Levi'im, and to the Judge **that will be in those days.**" This verse highlights the necessity of seeking guidance from the legally authorized representatives of our era, emphasising the interpretation of God's law in a manner relevant to the current context. The evolution and application of God's eternal law, adapted to contemporary life, is the very essence of the Oral Law and the Rabbinic enterprise.

Therefore, the problem with various reformist Jewish movements that emerged during exile is not their intention to evolve and update talmudic law. Rather, the issue lies in their *approach* to it, which attempts to implement changes without the rigorous legal scholarship and national authoritative bodies like a Sanhedrin or Bet Din HaGadol.[23]

Indeed, the absence of authoritative institutions in our times makes many of our talmudic laws appear outdated or less relevant.[24] Just imagine living in the United States in the year 2024 and adhering to legal rulings from a Supreme Court that last convened in the year 1924…let alone following rulings from the year 500 in exile! Yet, our commitment to the Talmud—our most recent nationally recognized legal rulebook—has been crucial in preserving the integrity of our legal system across generations. Ultimately, however, this unmoving commitment represents more than just legal adherence. It symbolizes an aspiration to rebuild our land, reconvene our assembly of Sages, and govern according to our days, in Covenant with God.

May we witness this realisation in our times.

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[1] The legislative branch of a government is responsible for making laws, often consisting of elected representatives who debate and vote on new laws and policies.

[2] The judicial branch interprets and applies the law, handling disputes and ensuring justice is served according to the constitution of the nation.

[3] For an overview of the various legal systems around the world, see *Legal Rules in Practice* by Max Travers.

[4] For a detailed presentation of these developments in the Jewish legal tradition, see Rabbi Dr. Jose Faur's, *Horizontal Society*.

[5] For a traditional presentation of these events, see Introduction, *Mishneh Torah*.

[6] The Bet Din HaGadol, established by Rabban Yohanan ben Zakkai in circa 70 ce, filled the judicial gap left by the Sanhedrin's dissolution post-Temple destruction. The Bet Din HaGadol continued the judicial and legislative functions of the Sanhedrin, playing a critical role in the preservation and interpretation of Jewish law. The Bet Din HaGadol was intertwined with the *Yeshibot*, more accurately "plenary sessions" rather than mere "academies." These sessions, presided over by the 'Nasi' (Prince), were unique in structure, and engaged the general public in legal and theological discourse. The *Yeshiba's* role as a national institution was crucial in collecting, authenticating, and cataloguing Jewish tradition. For a detailed analysis of this, see Section IV of Rabbi Dr. Jose Faur's *Horizontal Society*.

[7] There were always written notes and archives of the oral tradition, but they were not published officially until the compilation of the Mishna. In the words of Rabbi Dr. Jose Faur, "Originally, the doctrines and minutes of the Supreme Court of Israel, beginning with Moses, were not published. Although basic legal instruction was offered to all, the archival material of the Court was unavailable to the general public" (*Horizontal Society,* p. 262).

[8] This scholarly endeavour also took place in the Land of Israel, where the local *Amoraim* were also delving into and expanding the Mishna. This ultimately led to the formulation of the Jerusalem Talmud (Talmud Yerushalmi).

[9]The Talmud Babli emerged not merely as a book but as a virtual society, encapsulating the collective wisdom and deliberations of a multitude of Jewish scholars in Babylonia. It was during the *Kalla* gatherings in Babylonia that the Talmud was meticulously compiled. These assemblies, where sages and disciples came together, were pivotal in studying, finalising, and revising the Talmud's content. The authority of the Babylonian Talmud derived from the fact that it was crafted and approved by a broad consensus of the nation's sages, making it an essential and binding legal framework for Jewish communities around the world. For a detailed analysis of this, see Section IV of Rabbi Dr. Jose Faur's *Horizontal Society*.

[10] See Introduction, *Mishneh Torah*.

[11] *Baba Metzia 86a*.

[12] Further evidenced by the fact that there is not a single unified legal code (or its accompanying gloss) that is followed by all practicing Jews.

[13] In the post-talmudic era, divergent approaches emerged regarding the role and authority of legal decisors (*posekim*). The Sephardic approach, as exemplified by Rambam and Rif as a continuation of the Geonic tradition, posited that post-talmudic rabbis should primarily clarify and restate the conclusions of the Talmud, leaving limited scope for Rabbinic authority and novel rulings. In contrast, the later Ashkenazic-Tosafist approach granted decisors greater autonomy, allowing for creative interpretations of talmudic passages in response to evolving social and religious contexts. This led to a transformation in the concept of binding legal authority and precedent, with the Tosafist era seeing legal decisors increasingly regarding themselves as "bound by Rishonim," effectively conferring a new form of legal authority akin to that of the Sanhedrin. The codification of rulings, notably in the *Tur* and *Shulhan Arukh*, further cemented this authoritative status of medieval scholars. Culturally, this divergence manifested in different practices between Ashkenazic and Sephardic communities, with Ashkenazim showing a greater tendency to revere medieval Rabbinic customs/*minhagim* as legally binding, a trend less pronounced among Sephardaim. This period also marked an increased role of creativity and novel solutions in legal rulings, particularly under the Ashkenazic/Tosafist approach, contrasting with the Sephardic framework's emphasis on adherence to talmudic conclusions. For more on this often-overlooked area, see *Talmud Reclaimed* by Rabbi Shmuel Phillips.

[14] However, beyond a National Bet Din, a Local Bet Din can also possess its own power to implement *gezerot* (decrees), *takanot* (enactments), and establish *minhagim* (customs). The jurisdiction and authority of a Local Bet Din are confined to its specific geographical location. The legitimacy and authorisation of a Local Bet Din are derived from its recognition and acceptance by the community within its locale. However, the primary function of a Local Bet Din is to adjudicate civil or criminal cases.

[15] The Talmud Babli was compiled in the halls of the Babylonian *Yeshibot* of the Geonim. The deep connections between these academies of the Geonim in Babylonia and the academies of the Sepharadim in southern Spain/Andalusia (and the resultant conveyance of tradition and methodology between them) has been examined and established in numerous places. For a foundational presentation

of this topic, see *Sefer HaQabbala* by Abraham ibn Daud. For a more recent and general presentation, see Chapter 6 of *Talmud Reclaimed* by Rabbi Shmuel Phillips. For an Ashkenazic perspective on this, we can turn to Rabbi Naftali Tzvi Yehuda Berlin (the Netziv), who notes that the Rambam followed the Geonic methodology for determining law from the Talmud. He goes on to state that the Tosafists lacked this Geonic tradition, and therefore had to fill resultant gaps in tradition with “analogies, reconciliations, and logical deductions.” (*Hakdamot Kidmat Ha’Emek* 1:12–16).

[16] As an example, see *Hilkhot Gerushin, Mishneh Torah,* 9:31:

> When [a man] tells two [colleagues]: "Write [a *get*], sign it and give it to so and so to bring to my wife," or "...give it to [my] agent to bring to her," one of them should write it, and they should both sign it and give it to the agent. If they bring it to the woman themselves, the divorce is not effective, for they were not appointed as agents to effect the divorce. What should they do [if in error they gave it to the woman]? They should take it back from her and give it to the agent, who should in turn give it back to the woman in their presence or in the presence of other [witnesses]. **My teachers issued a ruling with regard to such a get that does not appear to be appropriate, because of a flaw that existed in the versions [of the Talmud] that they possessed.**

[17] *Hilkhot Keriat Shema* 4:7

[18] Or as close as we can get to such a place, given (1) the shared methodology of Rambam and the students of the Talmud (the Geonim), and (2) that all other legal compilations contain many post-talmudic influences and opinions.

[19] English translation of a Hebrew clip from Rabbi Ratson Arussi’s class to TheHabura.com, available in full on YouTube at: https://youtu.be/RdrBK45raaE?si=w6S9mrl3Twbaj8MZ.

[20] *Betzah* 3b.

[21] *Hilkhot Mamrim, Mishneh Torah,* Chapter 4.

[22] For a thorough analysis of the legal parameters of “following the majority”, see Freddie Grunsfeld’s essay in *Shabuot: Insights from the Past, Present, and Future,* published by TheHabura.com

[23] For the laws relating to the scope, limitations, and processes of developing Jewish law, see *Hilkhot Mamrim, Mishneh Torah*.

[24] We can take a moment to explore an example, such as the observance of a second day of Yom Tov. This practice was initially instituted by our Sages due to uncertainties in calendar calculations in ancient times. While this observance has been maintained in the Diaspora, it raises questions about its relevance in the modern era, where calendar precision is no longer a concern. However, this issue cannot be addressed without a legal authoritative body (i.e., Sanhedrin or Bet Din HaGadol) to re-evaluate and potentially update such laws. This is, unfortunately, a reality of an exile that our people were warned about repeatedly and brought upon ourselves. In the wise words of an early Duke of Norfolk, “a man cannot have his cake and eat it too.”