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On Power and Authority: Five Radical Rabbinic Ideas

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1. Power and Authority by Myth of Origins: How do we tell our story?

a. Avot 1:1

משה קבל תורה מסיני ומסרה ליהושע ויהושע לזקנים וזקנים לנביאים ונביאים מסרו לאנשי
כנסת הגדולה הם אמרו שלשה דברים הוו מתונים בדין והעמידו תלמידים הרבה ועשו סייג
לתורה

Moses received the Torah from Sinai and transmitted it Joshua. Joshua transmitted it to the Elders, the Elders to the Prophets, and the Prophets transmitted it to the Men of the Great Assembly. They [the Men of the Great Assembly] said three things: Be deliberate in judgment, raise many students, and make a protective fence for the Torah.

Chain of Tradition

2. Mishnah Avot 1:1

This is the opening statement of tractate Avot, "The Fathers," which consists of ethical aphorisms by many of the key figures of the Rabbinic tradition. The first mishnah depicts these teachers of the Oral Law—and by extension the Mishnah itself—as the authentic carriers of the Torah. The omission of priests from this account of the chain of tradition lends it a polemical edge, presumably directed against other Second Commonwealth parties such as the Sadducees or Essenes. The subsequent aphorisms (continuing with the formula "A and B received from them") proceed in chronological order through the traditions of Hillel's descendants and the students of Yohanan ben Zakkai.

Moses received Torah from Sinai and passed it on to Joshua, and Joshua to the elders, and the elders to the prophets, and the prophets passed it on to the Men of the Great Assembly [*anshe kneset ha-gedolah*].

*The Oral Law: From Sinai to the Talmud*3. Maimonides, Introduction to the *Mishneh Torah*

Translated by Bernard Septimus, forthcoming in the Yale Judaica Series (Yale University Press).

Maimonides' great legal work, the Mishneh Torah, aims to codify talmudic law. In the introduction, Maimonides sets forth his own historical account of talmudic and rabbinic authority.

All the commandments given to Moses at Sinai were given along with their explanations, as it is said, "and I will give you the tablets of stone, the *torah* and the *mitzvah*"¹ (Exod. 24:12): *torah* refers to the Written Torah—while *mitzvah* refers to its explanation. [Moses] commanded us to carry out the *torah* in accordance with the *mitzvah*. This *mitzvah* is what goes by the name "Oral Torah."

1. New JPS: "teachings and commandments".

Moses, our master, wrote down the entire *torah* before he died in his own hand and gave a scroll to each tribe. One additional scroll, he deposited in the Ark to serve as a witness [to the true text], as it is said: "Take this scroll of the *torah*, and place it along the [inner] side of the ark of the covenant of the Lord your God that it may be there for a witness . . ." (Deut 31:26).

But the *mitzvah*, which is the explanation of the *torah*, he did not write down; he rather commanded it [orally] to the elders, Joshua and all the rest of Israel, as it is said: "Everything which I commanded you, that you shall observe to do; do not add to it or diminish from it" (Deut. 13:1)—which is why it is called the Oral Torah.

[Maimonides here enumerates the leading sages over the generations.]

All the above-mentioned sages were the great men of [their] generations. Some were academy heads; some were exilarchs; some were members of the Great Sanhedrin. Together with them, in each generation, were thousands and tens of thousands [of others] who heard [the tradition] from them and with them. Ravina and Rav Ashi were the last of the sages of the Talmud. It was Rav Ashi who compiled the Babylonian Talmud in the land of Shin'ar [Babylonia], some one hundred years after Rabbi Yohanan compiled the Jerusalem Talmud.

The purpose of the two Talmuds is [to provide] explanation of the words of the Mishnah; explication of its profundities; and the innovations introduced in all the various courts from the days of Our Saintly Master through the compilation of the Talmud. From the two Talmuds, the Tosefta, Sifra, Sifrei and the [other] supplements [to the Mishnah]—from all these [sources] emerge what is prohibited and what permitted, what is impure and what pure, what is liable and what exempt, what is fit and what unfit, as transmitted in direct succession from Moses, [who received it] from [God at] Sinai.

From these [sources] also emerge the measures that the sages and prophets of each generation decreed to make a hedge round the Torah, in accordance with [the charge] they heard on the authority of Moses, who—in explaining [the verse] "you shall preserve my charge" (Lev. 18:30)—said: "Establish a safeguard for my charge." In addition, there emerge from [these

sources] the customs and ordinances, ordained or practiced in each generation, as the court of that generation saw fit. For it is forbidden to deviate from them, as it is said, "You shall not deviate from anything they tell you, to the right or to the left" (Deut. 17:11).

In addition, legal judgments, [once] obscure, that were not received [on tradition] from Moses. [Rather] the Great Court of a particular generation deliberated on them, using the canons whereby the Torah is expounded, and its elders [then] decided them, concluding that the law is such and such. All such [rulings made] from the days of Moses up until his own, Rav Ashi compiled in the Talmud. The sages of the Mishnah compiled other works to interpret the words of the Torah. . . . Other sages, after them, compiled collections of midrashim. All [of these works] were compiled prior to the Babylonian Talmud.

Thus, Ravina, Rav Ashi, and their colleagues were the last of Israel's great sages who transmitted the Oral Torah, who issued decrees, ordained ordinances, and instituted customs, and whose decrees, ordinances and customs gained acceptance among all [the people of] Israel, wherever they dwelt.

After [the term of] the court of Rav Ashi, who compiled and completed the Talmud in the days of his son, Israel was scattered still further, through all the lands of the earth, reaching the ends [of the inhabited world] and its remote regions. [Armed] conflict increased in the world and travel routes were disrupted by marauding troops. Study of the Torah diminished; and Israel no longer gathered to study at their academies by the thousands and tens of thousands as they had in times past.

Rather, individuals, the remnants whom the Lord called, would gather in every city and province, engage in [study of the] Torah, reflect upon all the compilations of the sages, and discern, from them, what course [the principles] of legal judgment [mandate].

Of all the post-talmudic courts that arose in the various provinces and established decrees, ordinances, or customs for the inhabitants of its province or [a group of] provinces, there was none whose enactments gained the acceptance of all Israel, because their settlements were scattered, travel routes were disrupted, and the provincial court in question consisted of [mere] individuals [lacking ecumenical authority], whereas the Great Court

of Seventy [wherein such authority did reside] had been defunct for many years prior to the compilation of the Talmud.

Therefore, the inhabitants of one province are not compelled to follow the custom of another province; nor is one court told to uphold a decree that another court enacted in its province. Similarly, if one of the Geonim taught that [on a certain issue] the course [mandated by the principles] of legal judgment is such and such and it becomes clear to another, subsequent court that such is not, in fact, the course [mandated by the principles] of legal judgment inscribed in the Talmud, one heeds not the earlier [authority] but the one to whose view reason inclines, be he the earlier or the later. The above applies [only] to inferences, decrees, ordinances, and customs introduced after the compilation of the Talmud; but whatever is included in the Babylonian Talmud, the whole House of Israel is duty-bound to follow. Every city and province is compelled to follow all customs followed by the sages of the Talmud, to uphold their decrees and to follow their ordinances.

For all the aforementioned things included in the Talmud have been accepted by all Israel. Moreover, the sages who established [those] ordinances, decrees, or customs, or who drew [those] inferences and taught that the law is such and such, were the entirety or majority of the sages of Israel, and the ones who heard the tradition on the rudiments of the entire Torah [i.e., the 613 commandments] in direct transmission extending back to Moses.

Beyond Prophecy

Decline of Prophecy

4. Tosefta Sotah 13:3-4

This chapter of the Tosefta is part of a narrative of catastrophes connected with the decline of the Second Commonwealth. One of the chief among them is the end of prophetic inspiration. All that remains are echoes, and reports of outstanding individuals who should have attained prophecy, or perhaps did attain it just before death.

c. Babylonian Talmud, Tractate Menachot 29b

אמר רב יהודה אמר רב : בשעה שעלה משה למרום, מצאו להקב"ה שיושב וקושר כתרים לאותיות, אמר לפניו : רבש"ע, מי מעכב על ידך? אמר לו : אדם אחד יש שעתידי להיות בסוף כמה דורות ועקיבא בן יוסף שמו, שעתידי לדרוש על כל קוץ וקוץ תילין תילין של הלכות. אמר לפניו : רבש"ע, הראהו לי, אמר לו : חזור לאחורך. הלך וישב בסוף שמונה שורות, ולא היה יודע מה הן אומרים, תשש כחו ; כיון שהגיע לדבר אחד, אמרו לו תלמידיו : רבי, מנין לך? אמר להן : הלכה למשה מסיני, נתיישבה דעתו. חזר ובא לפני הקדוש ברוך הוא, אמר לפניו : רבונו של עולם, יש לך אדם כזה ואתה נותן תורה ע"י? אמר לו : שתוק, כך עלה במחשבה לפני. אמר לפניו : רבונו של עולם, הראיתני תורתו, הראני שכרו, אמר לו : חזור [לאחורך]. חזר לאחוריו, ראה ששוקלין בשרו במקולין, אמר לפניו : רבש"ע, זו תורה וזו שכרה? א"ל : שתוק, כך עלה במחשבה לפני

Rab Judah said in the name of Rab, When Moses ascended on high he found the Holy One, blessed be He, engaged in affixing coronets to the letters. Said Moses, 'Lord of the Universe, Who stays Thy hand?' He answered, 'There will arise a man, at the end of many generations, Akiba b. Joseph by name, who will expound upon each tittle heaps and heaps of laws'. 'Lord of the Universe', said Moses; 'permit me to see him'. He replied, 'Turn thee round'. Moses went and sat down behind eight rows [and listened to the discourses upon the law]. Not being able to follow their arguments he was ill at ease, but when they came to a certain subject and the disciples said to the master 'Whence do you know it?' and the latter replied 'It is a law given unto Moses at Sinai' he was comforted. Thereupon he returned to the Holy One, blessed be He, and said, 'Lord of the Universe, Thou hast such a man and Thou givest the Torah by me!' He replied, 'Be silent, for such is My decree'. Then said Moses, 'Lord of the Universe, Thou hast shown me his Torah, show me his reward'. 'Turn thee round', said He; and Moses turned round and saw them weighing out his flesh at the market-stalls. 'Lord of the Universe', cried Moses, 'such Torah, and such a reward!' He replied, 'Be silent, for such is My decree'.

2. Power and Authority by Position (and Consensus): What do we do with our power and how do we exercise it ethically?

a. Babylonian Talmud, Tractate Berakhot 27b-28a

ת"ר מעשה בתלמיד אחד שבא לפני ר' יהושע א"ל תפלת ערבית רשות או חובה אמר ליה רשות בא לפני רבן גמליאל א"ל תפלת ערבית רשות או חובה א"ל חובה א"ל והלא ר' יהושע אמר לי רשות א"ל המתן עד שיכנסו בעלי תריסין לבית המדרש כשנכנסו בעלי תריסין עמד השואל ושאל תפלת ערבית רשות או חובה א"ל רבן גמליאל חובה אמר להם רבן גמליאל לחכמים כלום יש אדם שחולק בדבר זה אמר ליה ר' יהושע לאו א"ל והלא משמך אמרו לי רשות אמר ליה יהושע עמוד על רגליך ויעידו בך עמד רבי יהושע על רגליו ואמר אלמלא אני חי והוא מת יכול החי להכחיש את המת ועכשיו שאני חי והוא חי היאך יכול החי להכחיש את החי היה רבן גמליאל יושב ודורש ור' יהושע עומד על רגליו עד שרננו כל העם ואמרו לחוצפית התורגמן עמוד ועמד אמרי עד כמה נצעריה וניזיל ברי"ה אשתקד צעריה בבכורות במעשה דר' צדוק צעריה הכא נמי צעריה תא ונעבריה מאן נוקים ליה נוקמיה לרבי יהושע בעל מעשה הוא נוקמיה לר' עקיבא דילמא עניש ליה דלית ליה זכות אבות אלא נוקמיה לר' אלעזר בן עזריה דהוא חכם והוא עשיר והוא עשירי לעזרא הוא חכם דאי מקשי ליה מפרק ליה והוא עשיר דאי אית ליה לפלוחי לבי קיסר אף הוא אזל ופלח והוא עשירי לעזרא דאית ליה זכות אבות ולא מצי עניש ליה

It is told that a certain disciple came before R. Joshua and asked him: "Is the evening prayer compulsory or optional?" He replied: "It is optional." He then presented himself before Rabban Gamaliel and asked him: "Is the evening prayer compulsory or optional?" He replied: "It is compulsory."

He said, "But did not R. Joshua tell me that it is optional?" He said: "Wait till the champions enter the Bet Midrash."

When the champions came in, someone rose and inquired, 'Is the evening prayer compulsory or optional?' Rabban Gamaliel replied: It is compulsory. Said Rabban Gamaliel to the Sages: "Is there anyone who disputes this?" R. Joshua replied to him: "No." He said to him: "Did they not report you to me as saying that it is optional?" He then went on: "Joshua, stand up and let them testify against you!" R. Joshua stood up and said: "Were I alive and he [the witness] dead, the living could contradict the dead. But now that he is alive and I am alive, how can the living contradict the living?"

Rabban Gamaliel remained sitting and expounding and R. Joshua remained standing, until all the people there began to shout and say to Huzpith the interpreter, "Stop!" And he stopped. They then said: "How long is he [Rabban Gamaliel] to go on insulting him [R. Joshua]? On New Year last year he insulted him; he insulted him in the matter of the firstborn in the affair of R. Zadok; now he insults him again! Come, let us depose him! Whom shall we appoint instead? We can hardly appoint R. Joshua, because he is one of the parties involved. We can hardly appoint R. Akiva because perhaps Rabban Gamaliel will bring a curse on him because he

has no ancestral merit. Let us then appoint R. Eleazar b. Azariah, who is wise and rich and the tenth in descent from Ezra. He is wise, so that if anyone puts a question to him he will be able to answer it. He is rich, so that if occasion arises for paying court to Caesar he will be able to do so. He is tenth in descent from Ezra, so that he has ancestral merit and he [Rabban Gamaliel] cannot bring a curse on him.”

3. Power and Authority by Restraint: When does “not doing” amount to leading?

a. Jerusalem Talmud Tractate Avodah Zarah 3:3

ביומוי דרבי יוחנן שרון ציירין על כותלא ולא מחי בידייהו.

In the days of R. Yohanan they permitted (or began to make) images on the walls, and he did not stop them. In the days of R. Abun they permitted (or began to make) images on mosaics, and he did not stop them.

4. Power and Authority by Innovative Precedent: How do we make change?

a. Mishnah Rosh Hashanah 4:1

יום טוב של ר"ה שחל להיות בשבת במקדש היו תוקעין אבל לא במדינה משחרב בהמ"ק התקין רבן יוחנן בן זכאי שיהו תוקעין בכל מקום שיש בו ב"ד אמר רבי אלעזר לא התקין רבן יוחנן בן זכאי אלא ביבנה בלבד אמרו לו אחד יבנה ואחד כל מקום שיש בו בית דין ועוד זאת היתה ירושלים יתירה על יבנה שכל עיר שהיא רואה ושומעת וקרובה ויכולה לבוא תוקעין וביבנה לא היו תוקעין אלא בב"ד בלבד :

If the holiday of Rosh HaShanah falls out on Shabbat – in the Temple, they would blow the shofar, but not in the provinces. When the Temple was destroyed, Rabban Yohanan ben Zakkai decreed that they would blow shofar in any place where there was a court. Rabbi Eliezer said, "Rabban Yohanan ben Zakkai only made this decree for Yavneh;" but they said to him, "Both Yavneh and anywhere there is a bet din."

b. Babylonian Talmud, Tractate Rosh Hashanah 29b

תנו רבנן פעם אחת חל ראש השנה להיות בשבת [והיו כל הערים מתכנסין] אמר להם רבן יוחנן בן זכאי לבני בתירה נתקע אמרו לו נדון אמר להם נתקע ואחר כך נדון לאחר שתקעו אמרו לו נדון אמר להם כבר נשמעה קרן ביבנה ואין משיבין לאחר מעשה :

Our Rabbis taught: Once Rosh HaShanah fell out on Shabbat [and all the cities were gathering together.] Rabban Yohanan ben Zakkai said to the Bathyrians – "Let's blow shofar!" They said to him: "Let's discuss it first." He said to them, "Let's blow shofar first, and then we'll discuss it." After they blew, they said to him, "Let's discuss it now!" He said to them: "The horn has already been sounded in Yavneh, and we don't reverse what the precedent after the deed is done."

5. Power and Authority by External Fiat: How is our authority created and constrained by external conditions?

a. Codex Theodosianus 16:8:13

The same Augusti to Caesarius, Praefectus Praetorio

The Jews shall be bound to their rites; while we shall imitate the ancients in conserving their privileges, for it was established in their laws and confirmed by our divinity, that those who are subject to the rule of the Illustrious Patriarchs, that is the Archsynagogues, the patriarchs, the presbyters, and the others who are occupied in the rite of that religion, shall persevere in keeping the same privileges that are reverently bestowed on the first clerics of the venerable Christian law. For this was decreed in divine order also by the divine Emperors Constantine and Constantius, Valentinian and Valens, Let them therefore be exempt even from the curial liturgies, and obey their laws.

Given on the Calends of July in the consulate of Caesarius and Atticus