

# "ACCORDING TO THE LAWS OF MOSES"

JACOB MILGROM

When the scroll of the Torah is raised during the synagogue service, the congregation recites the words, *Vezot haTorah asher sam Moshe lifne bene Yisroel al pi Adonai beyad Moshe* [This is Torah that Moses set before the Israelites by the command of the Lord through Moses] (a paraphrase of Deuteronomy 4:44 and Numbers 4:37). Is it possible to affirm the Mosaic origin of the text of the entire Torah, not as blind faith but with conviction, rationally, critically?

Anyone who reads the law codes of the Torah carefully will realize that they are rife with apparent inconsistencies and contradictions. I cite one example: The tithe is prescribed in three major codes. The recipient, however, differs in all three. In Leviticus 27:30, the recipient is the sanctuary; in Numbers 18:26, the Levites; in Deuteronomy 26:12, 12:17, 14:26, the farmer. Moreover, the crops subject to the tithes also differ. Numbers and Deuteronomy legislate that they are the grain, the wine from grapes, and the olive; but Leviticus rules that all crops are subject to the tithe, as well as animals. The rabbis, being jurists not exegetes, harmonize the differences: the Numbers text is maintained – the tithe is given to the Levites. On the other hand, the rabbis ruled that the texts in Leviticus and Deuteronomy refer to a second tithe entirely.

How, then, are we to believe that these are laws promulgated by Moses, if we need the rabbis to gloss over contradictions and inconsistencies?

There is an *aggada*, a rabbinic story, that Moses asked God for permission to visit Akiba's academy on earth. Permission was granted. Moses sat in the back and listened to Akiba expound a law presumably based on the Torah. Moses did not understand a word – *tasas koho* [his energy was drained]. At the end of the lesson, the students challenged Akiba, "*M'nayin lakh* [What is your source?]." Akiba replied, "*Halakha leMoshe miSinai* [(It is) an oral law from Moses at Sinai]." The end of the story relates that "the mind of Moses was put at ease [*nityasseba dato*]" (T. Menakhot 29b).

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Two obvious deductions can be derived from this story. First, between the time of Moses and Akiba, the laws of the Torah had undergone vast changes, reflecting problems faced by Akiba's generation. Second, Moses was pacified when he realized that Akiba was not creating a "new" Torah, but had traced his teaching back to the revelation at Sinai.

David Weiss Halivni offers a systematized perspective on Divine revelation in rabbinic literature.<sup>1</sup> There are two positions: "minimalist" and "maximalist." Halivni refers to the story of Moses and Akiba as the minimalist position, that God revealed to Moses general principles of the codes of the laws, from which each successive generation would derive its relative applications. Thus, while Moses formulated these laws in the Torah, he did not author Akiba's decisions, though he might have intended them, and, had he lived in Akiba's generation, concurred with his conclusions.

The maximalist position "dogmatically asserts that the entire written and oral Torah [including] whatever novelum an earnest scholar [*talmid vatik*] will someday teach has already been declared to Moses at Sinai" (P. Pe'ah 17a). I recall a quintessential maximalist announcing on radio that for Jewish law the word "history" has no meaning. For him, time, as it were, stood still since Sinai, when both the written law and the entire compendium of the oral law were given. Anything else, in his view, should be thrown out of court.<sup>2</sup>

That subsequent generations attributed their legal decisions to Moses is actually confirmed in Scripture, however. For example, II Chronicles 30:16 relates that: [The priests and the Levites] *took their accustomed stations according to the laws of Moses, the man of God* [ketorat Moshe ish-Elohim]. But, no such stations are attributed to the priests and Levites in the Torah! Nevertheless, the priests and Levites did have their stations in the Tabernacle, albeit different ones. This suffices for the Chronicler to declare that the clerical stations in his own time were of Mosaic origin.

A more impressive example, perhaps, is Nehemiah's *amana* (Neh. 10:1ff.); the covenant agreement subscribed to by Israel's leaders and accepted on oath by the people *to follow the Teaching of God, given through Moses the servant of God* [b'yad Moshe eved Elohim] (v. 30). None of the 10 or 18 laws in the legal roster of the *amana* was prescribed precisely this way in the Torah. Nonetheless, each law can be derived from a pentateuchal source. Nehemiah

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evidently understood that *the Teaching of God* was formulated by *Moses His servant* when he formulated the *amana* laws on Mosaic foundations.

The question, however, still remains: What were the Mosaic principles underlying the formulation of legal traditions in the Torah? It could well be that they derive from the Decalogue (or possibly some equivalent formulation that never made it into the canon). The Decalogue, however, is but a terse core. Without penalties, it reads more like guiding principles than laws. No wonder that later traditions, based on the Torah text but by different authors and in different times, might in fact differ from one another in form and content.

In this regard, Halivni cites an ancillary minimalist position:

Rabbi Yannai said: The words of the Torah were not given as clear-cut decisions . . . . When Moses asked, 'Master of the universe, in what way shall we know the true sense of the law?' God replied, 'The majority is to be followed, [a play on the words in Ex. 23.2] – when the majority declares it is impure, it is impure; when the majority says it is pure, it is pure.' (Midrash Tehillim 12.4; cf. B. Hag. 3b).<sup>3</sup>

As Halivni perceptively concludes:

Contradictions are thus built into revelation. Revelation was formulated within the framework of contradiction in the form of argumentation pro and con. No legitimate argument or solution can be in conflict with the divine opinion, for all such arguments and solutions constitute a part of God's opinion.

Revelation is not a one-time Sinaitic event. Thus, it behooves us humans – indeed, compels us – to be an active partner of God in determining and implementing the Divine Will.

The ostensible contradictions among the tithe laws, I suggest, represent an example of the Halivni's principle of "contradictions built into revelation," and the argumentation that went into the rabbis' reconciliation of the biblical contradictions are traceable back to the same Sinaitic source (*halakha l'Moshe miSinai*). Talmudic legal formulations may properly presume Sinaitic precedents (Moses in Akiba's academy). Conflicting laws, as well, may each be justifiable claimants to Sinaitic origin (Moses in Yannai's midrash). All in a sense are *according to the laws of Moses*.

A few more words concerning the remaining phrase of the pledge to the Torah, *by the command of the Lord through Moses*; or, in the Torah's own words, *the Lord spoke to Moses*. That God spoke to Moses is not difficult to accept on rational grounds. Major scientific discoveries are often not the result of logical deductions. Some are by chance, like Hertz's discovery of wireless waves, or Fleming's of penicillius notatum. Others originate in what scientists call flashes of intuition. In religion, we call these flashes of intuition the revelations of the moral God.

Let us then acknowledge that all the principles, traditions, and formulations that are represented in the composition of the Torah and continue to enrich "global Torah" have a valid claim to the conviction that its laws are traceable to Mosaic origins. As for their divergences, we might adopt the words coined by a later generation of rabbis concerning the differences in the schools of Hillel and Shammai: "Both are the words of the living God [*elu v'elu divre Elohim hayyim*] (T. Gittin 6b). The result? I am able to recite the words *zot haTorah asher sam Moshe* in total faith and conviction.

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<sup>1</sup>. "On Man's Role in Revelation," *From Ancient Israel to Modern Judaism*, Vol. II, [Fest. M.V.Fox], ed. J.Neusner, et al. (Atlanta: Scholars Press, 1989) p. 30.

2. The legal language is apt: In America, federal and state statutes are theoretically derived from the Constitution. The Supreme Court is the ultimate authority interpreting the letter and spirit of the Constitution, but the nine members of the Court in any given period of time may be minimalists or maximalists, answering the question, "If the writers of the Constitution were living in the present time, how would they have judged?" This process is analogous to Halivni's concept of the development of the oral law in Judaic jurisprudence.

3. See also T. Baba Metzia 59b: During a controversy about what is the *halakha* in a certain case, a *bat kol* from heaven intervened. Cried Rabbi Joshua, אָיִן מִן־שָׁמַיִם אֵל (playing on Deuteronomy 30.12) – that is to say, it is not for heaven to determine *halakhot*, but men.