

Today I will discuss one scholar's perspective on the development of the Jewish Oral Tradition (the Mishnah and Gemara, together the Talmud). That scholar was Rabbi Yitzhak Isaac Halevy (1847-1914), one of the twentieth century's primary architects of contemporary Orthodoxy. Halevy was mostly a self-taught scholar who led a colorful and diverse life with many scholarly and political achievements. He came to author *Dorot ha-Rishonim* (The First Generations), the most comprehensive history of the twentieth century written from an Orthodox perspective. He also went on to help found Agudath Israel, an international Orthodox Jewish body that aimed—and ultimately succeeded at—centralizing the leadership of the various Orthodox and traditionalist communities worldwide.

Halevy was born into a prominent traditional family in Russia in 1847 and was raised and educated in *yeshivot* in eastern Europe, especially in the famous yeshiva in Volozhin where he was later appointed to the administrative role of *gabbai*. He soon developed a reputation as a prodigy in Talmud and came to represent a *talmid chacham* (traditional talmudic scholar). Indeed, the first book Halevy wrote was a collection of novellae (new legal insights, called *chiddushim*) in the traditional rabbinical analytical style entitled *Batim la-Badim* (a reference to the carrying of the Tabernacle's table in the desert). The book engaged with complex issues of *hazakah*, a halakhic concept entailing a factual-legal presumption (*praesumptio juris*) based on previous behavior.

But his life took a significant turn when, upon his arrival in Germany around the turn of the twentieth century, he decided to pursue a scholarly career at a key point in the history of Jewish scholarship. This was not long after Jewish academics had begun to explore the question of the formation of the Talmud, the foundational text of the Jewish

Oral Tradition. Despite its length of nearly 2,000 folio pages, divided into 63 tractates, the Talmud contains few clues to its origins. Since its final editing in the eighth century CE, the traditional rabbinic view had been the following: God gave the “Oral Torah” to Moses on Mount Sinai at the same time as the “Written Torah,” the Scriptures. Moses then passed down the Oral Torah to the leader of the next generation, who passed it down to the next, and so on, until persecution of the Jews following the destruction of the Second Temple in 70 CE had forced it to be committed to writing. Under the leadership of its redactor, Rabbi Judah the Prince, this tradition was compiled by rabbis called *Tannaim* as the “Mishnah,” or “teaching,” by about 200 CE. Then various generations of rabbis, called *Amoraim*, commented orally on the Mishnah in academies called *yeshivot*, of which the two major ones were Sura and Pumbedita, with each generation building on the comments of the last. These comments, collectively called the “Gemara,” were ultimately redacted, and together with the Mishnah, they were written down to form the Talmud. The Talmud became the major guide to Jewish life and law (*halakhah*), certainly by the time Jewish communities formed in Western Europe starting in the eleventh century.

Before the nineteenth century, Jews not only did not really question this master narrative—they felt no particular urgency to identify a master narrative at all. As the renowned historian Yosef Yosef Hayim Yerushalmi notes in *Zakhor*, his influential work on Jews’ relationship to the practice of history, for the rabbis, what counted was the meaning of the Jewish people’s history, not a precise, event-by-event timeline of what had happened. So what changed in the nineteenth century?

There were three related developments, all of which Halevy found himself confronting in Germany: *Wissenschaft des Judentums*, the Reform movement in Judaism, and the effect of *Wissenschaft* on the Orthodox world at the time. *Wissenschaft des Judentums* (literally, “the science of Judaism”) had emerged in the 1820s out of the German scholarly effort, called *Wissenschaft*, to study and teach history in a new way in universities. One of the principle aims of *Wissenschaft* was Jewish religious reform. Many *Wissenschaftlers* became leaders of the Reform movement in Judaism, which originated in the late 1840’s, also in Germany. *Wissenschaftlers* and Reformers worked to demonstrate that Jewish law had always evolved, and to find past precedents for reform and change. They viewed this as related to their goal of searching for an essence of Judaism compatible with emancipation and integration within European society. *Wissenschaft des Judentums* had made significant inroads into both the Orthodox community in Germany and the traditional community in Eastern Europe by the end of the nineteenth century. (In this talk, I use “Orthodox” to refer to communities in central Europe, mostly in Germany, that had consciously expressed certain separatist, anti-assimilationist ideologies and had formed institutions to support them by Halevy’s time; for communities, mostly in Eastern Europe, in which these developments had not yet occurred, I follow current scholarship in preferring the term “traditional.”) Even yeshiva students in eastern Europe were reading books influenced by *Wissenschaft*, making it much harder for leading eastern European rabbis to condemn these trends without offering any alternative. The time was ripe for the development of an Orthodox *Wissenschaft* that could be used to advance and validate Orthodox and traditionalist ideology. Thus, Halevy’s arrival in Germany inaugurated a new era in the Orthodox

community and paved the way for a novel reconciliation between the values of the Torah and *Wissenschaft des Judentums*.

Halevy's Orthodox approach to *Wissenschaft* combined some of the scholarly sensibilities of the central European form while retaining the perspective of his eastern European background and, with its largely apologetic tone, aiming primarily at an eastern European audience. He eventually came to be one of the greatest exponents of this newly developed Orthodox *Wissenschaft*. What were its characteristics? Its scholars sought to respond to *Wissenschaft des Judentums* by claiming a similar search for objectivity. In writing Jewish history, however, they preferred Jewish sources to the exclusion of most others, and they believed in the continuity of Jewish history from the days of the Bible until their own time. Halevy's writings similarly extolled objectivity in the finest *Wissenschaft* tradition, but he also much preferred consulting Jewish sources to any alternatives, and he repeatedly argued that Jewish practice had not changed much between the biblical period and his time.

For example, in contrast to most practitioners of *Wissenschaft des Judentums*, who worked to show that both ancient rabbinic law and more modern *halakhah* were the products of historical development, Halevy argued that the history of the Talmud lacked dynamism and creativity. Instead, he argued that the Talmud's tradition was mostly a static one, in which the earliest texts were definitive, and any later interventions by the rabbis were fairly insignificant.

Halevy often expressed this opinion in *Dorot ha-Rishonim*, as can be seen in this excerpt: "The Jews, however, have no new Torah and no new Judaism. What was from the earliest times is what we see in the latest times, and what is

found in Scripture is what is found in later homiletics, and the behavior of Elkana, Samuel and David was no different from the behavior of all Israel, until the end of the Second Temple Period and is identical with what we have inherited in the tradition and what was recorded in the Mishnah.” In Halevy’s view, it was of paramount importance to establish the antiquity and the integrity of tradition because they could validate the Orthodox claim against reform in the broad sense—not only the Reform movement but also the positive-historical school of Zacharias Frankel, the forerunner to American Conservative Judaism. To support this framework, he argued that the Oral Law was transmitted without any creative development or human input.

To this point, Halevy argued that even rabbinic practices like prayer and the study of text were the same in First Temple times as they were in rabbinic times. He went so far as to claim that synagogue practices such as the repetition of the *amidah* prayer were performed in the First Temple period—and the repetition of prayers by the cantor [*chazan*] dated from the earliest biblical times. Although the Talmud, in b. Yoma 28b, quotes as *aggadah* (narrative) a similar concept on the subject of Abraham’s observance of later rabbinic edicts, Halevy was unique in taking this idea as historical truth. He also saw continuity between this First Temple period observance and the halakhah of his own time.

Halevy went on to establish himself as the representative of Orthodox *Wissenschaft*, particularly through his writing and publication of *Dorot ha-Rishonim*. At the same time, Halevy also applied his political acumen in order to first envision and then bring to fruition the greatest political achievement of Orthodoxy at that time: the

founding of the Orthodox political body Agudath Israel. His theory about the formation of the Talmud, laid out in *Dorot ha-Rishonim*, masterfully combined his scholarship, political vision, and apologetic agenda in defense of Orthodox and traditional Judaism.

Yet I do not wish to create the impression that every Orthodox and traditionally minded contemporary of Halevy agreed with him that the Oral Tradition was largely static. This position of Halevy's was one among several in the Orthodox/traditional world in the early twentieth century. The debate in Halevy's time about the Talmud's formation among traditionally oriented scholars was inextricably bound up with other issues of the day, including the extent of rabbinic power and the relevance of rabbinic law in the modern world. Thus it was contentious in more ways than one. Here are two other opinions about the Talmud's formation that existed among respected traditional contemporaries of Halevy: The first was that of the PhD and Jewish legal decisor (or *posek*) David Zvi Hoffmann (1843-1921), whose ability to move between the scholarly and Orthodox worlds is reminiscent of Halevy's. Hoffmann accepted the traditional Jewish view that Scripture was of divine origin and thus could not be studied using unrestrained scientific scholarship. But he argued that the Oral Law was a human creation, which allowed for full scientific inquiry—though he still believed Jews were bound to observance of *halakhah*. Some Orthodox and traditional rabbis sought to invalidate Hoffmann's Jewish legal decisions because of his views on the Oral Law, for example by revoking their permissions for his books of responsa. However, Hoffmann continued to serve as a legal decisor, often to Jews who were not aware of his "scientific" scholarship on the Talmud.

The second was that of the Zionist Rabbi Abraham Isaac Kook, the first Chief Rabbi of British Mandate Palestine, known as “Rav Kook” (1865-1935), with whom Halevy had an extensive, decades-long correspondence. Rav Kook believed that historiography alone was not an effective means of buttressing Jewish tradition or protecting it from its critics. In Rav Kook’s view, tradition could be far more effectively validated via a sound philosophical and theological framework that could move Jews to continue to observe it. Further, to Rav Kook, the authority and validity of rabbinic law did not depend on whether it had been directly transmitted from Sinai or had later been creatively established by the rabbis. Instead, communal acceptance had been the key factor in establishing the law’s authority. And the community still had the power to canonize the law. Therefore, nothing was at stake if halakhah had evolved over time, as Rav Kook said: “[I]t does not matter for our sacred belief in the Oral Torah whether the Mishnah was sealed in earlier or later generations, and similarly for the Talmud.” In other words, Rav Kook argued that once the community had decided to crystallize a body of laws like the Talmud, those laws became canonical and immutable.

This idea was not new; Maimonides had made the same point in the introduction to his *Mishneh Torah*: “Whatever is already mentioned in the Babylonian Talmud is binding on all Israel. And every city and country is bound to observe all the customs observed by the sages of the Gemara, promulgate their decrees, and uphold their institutions, on the ground that all the customs, decrees, and institutions mentioned in the Talmud received assent of all Israel, and those sages who instituted the ordinances, issued the decrees, introduced the customs, gave the decisions, and taught that a certain rule was correct, constituted the total body or the majority of Israel’s men.”

All three of these men—Halevy, Hoffmann, and Kook—recognized that they had to address the emergence of scholarship that seemed to question thousands of years of Jewish consensus, as well as some of their Jewish contemporaries’ deep skepticism of the relevance of traditional Judaism in the modern world. But each chose to do so in his own way, depending on his religious and educational background, theology, and ideas on how traditional Judaism could continue to remain relevant. Within their communities, however, Hoffmann and Rav Kook were in the minority. At that time, many Orthodox and traditionalist rabbis believed that the written Torah and Oral Law were of Sinaitic origin (*Torah mi-Sinai*) and were thus unchangeable. They also saw a need to counter those who pushed for reform on the grounds that laws changed over time. Halevy belonged squarely to that camp.

Even with such a rigid model of the transmission of halakhah, Halevy had to formulate a more nuanced explanation regarding the development of rabbinic midrash halakhah, which derived halakhah from biblical sources. One example of such rabbinic exegesis is the midrash addressing the repetition of the verse “You shall not boil a kid in its mother’s milk” three times in the Torah. The midrash explains that the apparently superfluous second and third verses were meant to add the prohibition of consuming and deriving any benefit from a kid cooked in its mother’s milk to the initial prohibition of cooking a kid in it. Halevy conceded that midrashic exegesis was a later development, and that its purpose was to provide scriptural proof for laws received at Sinai—but not to derive new laws. This more nuanced view was still at odds with those of medieval rabbinic authorities, such as Maimonides, who clearly believed that there was a creative midrashic process. According to Maimonides, the rabbis derived a substantial portion,



and possibly the majority, of the law by creatively employing exegetical devices such as the 13 *middot* (exegetical rules) of Rabbi Yishmael. In claiming that the law should thus be defined as rabbinic, and not from Sinai, Maimonides departed from the earlier rabbinic conception of a static halakhah (termed the “retrieval model” by Moshe Halbertal), which depicts the entire body of Oral Law as having been received by Moses and transmitted through a continuous chain of scholars. Maimonides, by contrast, was the first to claim that the sages introduced novel interpretations of the Torah and made creatively derived contributions to the halakhic process. As Halbertal explains, “he views the halakhic process as cumulative, each generation adding substantive norms derived by their own reasoning to the given, revealed body of knowledge.” Halevy, in his relentless attempt to create the illusion of a rabbinic consensus that aligned with his view of an unchangeable tradition, forcibly reinterpreted even Maimonides’s view as agreeing with the statement of Nachmanides (*Rabbi Moses ben Nachman*, the RaMBaN, 1194-1270) that all Jewish law is biblical and transmitted from Sinai. In Halevy’s *Weltanschauung*, there was no room for a perspective that allowed for innovation. In his view, the rabbis never created law. Their role was limited to transmitting traditions taught at Sinai and applying exegesis to find allusions to the tradition in verses of Scripture.

Given Halevy’s insistence on the antiquity and immutability of the Oral Law, it is striking that, in *Dorot ha-Rishonim*, Halevy sometimes criticized traditional rabbinic sources when he thought they had reached erroneous conclusions. He justified this criticism by explaining that since the sages’ priority was searching for halakhic truth, they may have occasionally erred in the matter of historical accuracy. While Halevy often softened his criticism with wording such as “his meaning is obscure” or “with all due

respect,” he did not always proceed so gently. Regarding the high-medieval Tosafists (*Tosafot*), who often used creative, dialectical arguments to explain apparently contradictory early rabbinic opinions, Halevy said they “explained nothing” and “made up new homilies which have no basis.”

The contradictions in Halevy’s work—and our resulting inability to characterize it merely as apologetics—demonstrate the difficulties Halevy faced as an historian of the Oral Tradition in the late-nineteenth and early-twentieth centuries who also considered himself an extremely dedicated advocate for Orthodoxy. He could not abide the idea of innovation in halakhah (though at times his writing seemed at least to imply that it had happened), but he also lionized objectivity and analysis of (mostly Jewish) primary sources, which sometimes led him to criticize accepted rabbinic authorities for arriving at conclusions he deemed incorrect.

One of Halevy’s other central theories regarded how the Talmud had achieved its absolute legal authority. This issue had special relevance to him, since at the time he was writing *Dorot ha-Rishonim*, Halevy was also laying the groundwork for a central rabbinic organization in his own time: Agudath Israel, of which he was a co-founder. With the Agudah, Halevy and his colleagues sought to unify the various Orthodox (largely Western/Central European) and traditional (largely Eastern European) Jewish communities to combat the modernizing efforts of the rest of the Jewish community, and particularly Reform Judaism and *Wissenschaft des Judentums*. While composing *Dorot ha-Rishonim*, Halevy was thus interested in the specific role and authority of rabbis, not only at the time of the Talmud’s formation but also in his own time.

So what was Halevy’s theory of the role of the rabbis in forming the Talmud? He

posited that a central academy was formed with the intent of redacting and editing the Talmud; it was responsible for every step of the process of the Talmud's formation. This centralized academy, which Halevy termed the "*metivta kolelet*" (lit., "general academy") or "*beit ha-va'ad*" (literally, "house of meeting," perhaps a reference to m. Avot 1:4), was, in his view, universally recognized as supreme and authoritative. Such authority accrued to it because it consisted of a *va'ad* (literally, "college" or "council"), a collection of all the major rabbinical scholars of the time, including sages from both Palestine and Babylonia. He argued that it was universally recognized as supreme and authoritative, even though other schools existed at the same time.

Halevy's historical conception of a unified and orderly formation of the Talmud by an international body was an effective tool for substantiating his ideological agenda, as it presented the Talmud as Judaism's supreme and unassailable legislative work. In his view, the authority of the Talmud rested on its promulgation by a centralized, universal *beit ha-va'ad*, just as Rabbi Judah the Prince's court had redacted the Mishnah in the beginning of the third century. Rabbi Elhanan B. Wasserman (1874-1941), who established his yeshiva, which became one of the most famous in eastern Europe, in Baranowicze after World War I, took a similar view. Wasserman argued that the canonicity and authority of the Mishnah and Talmud rested upon the fact that they were promulgated by a central, authoritative body. In his view, such a conclave had equivalent halakhic authority to that of the Great Sanhedrin in Jerusalem. The Sanhedrin was composed by 71 judges and was located in the Temple in Jerusalem before it was destroyed. They were the Supreme Court of the Jewish nation, and according to the Talmud, their authority was unassailable. But their role ceased upon the destruction of the

Temple, since the Talmud required them to be located in the Temple, so as to draw Divine inspiration. Wasserman wrote that the Sanhedrin had to be located at the Temple because, if its 71 rabbis were going to represent all of Israel, they needed special divine inspiration that only that physical place could provide (a principle known as *ha-makom gorem*). He added, however, that a central, universally recognized, conclave of rabbis would have the same power as the Sanhedrin no matter where it was located. The legal authority of the Talmud, in his view, was thus promulgated top-down by a supreme legal court, the Sanhedrin.

In a similar fashion to their disagreement regarding the immutability of the Oral law, other great rabbinic authorities of Halevy's time argued vehemently with Halevy and Wasserman's conclusions. Rav Kook and others claimed that neither theory was valid: an international rabbinical conclave would not have had authority similar to the Sanhedrin's, nor was such a body necessary for the validation of the Mishnah and Talmud. Since, as was previously mentioned, Rav Kook, in particular, thought that these texts' validity and canonicity rested upon universal communal acceptance, he did not accept that the Talmud's authority derived from its promulgation by a specific court. Rav Kook's approach to the legal authority of the Oral Law thus allowed for a creative development over time.

Unlike some of his other insights, for example the role of Abbaye and Rava in creating the communal approach to Jewish legal study that made the Talmud possible, Halevy's concept of the *beit ha-va'ad* was less a useful contribution to Jewish legal history than it was a tool to validate Halevy's apologetic agenda—and his political model. If he could argue that even the Talmud had to be redacted by a universal rabbinic

council, he could make an incontrovertible case for the creation of an international organization of worldwide Orthodox Jewry. Such an organization, as I have already stated, was his political ambition for his own time, in the form of Agudath Israel and its *Mo'etses Gedolei Hatorah*, or Council of Torah Sages, whose role echoed the council Halevy envisioned as having edited the Talmud almost 1500 years before.

Halevy's conception of the *beit ha-va'ad* provided historical precedent for precisely the kind of unified body he wanted to create in his own day. It is not possible to know whether his political model for Agudath Israel was the determining factor informing his theory about the role of the *beit ha-va'ad* in the formation of the Talmud, or whether his theory of the *beit ha-va'ad* drove his desire for the Agudah's top-down structure. Yet it is clear that both were part of a common vision and ideology. The Talmud thus served, among its other roles, as Halevy's political manifesto.

It is not surprising, therefore, that although Halevy repeats his theory about the *beit ha-va'ad* numerous times in *Dorot ha-Rishonim*, nowhere does he provide adequate proof for its existence. The only evidence Halevy cites are the instances in the Talmud that seem to indicate redactional activity. More recent critical scholarship on the history of the Talmud has soundly rejected Halevy's view that, as early as the beginning of the Amoraic period in the fourth century CE, the central academies of Sura and Pumbedita had already been formed. Halevy's theory cannot stand without central academies, which he viewed as having hosted, as it were, the *beit ha-va'ad* in times of rabbinic unity.

Notably, although his apologetic view of the immutability of the Oral Law failed to convince anyone not already sympathetic to his cause, Halevy's political dream and institutional structure bore fruit. The nascent Agudath Israel and the ensuing *Mo'etses*

*Gedolei Hatorah*—his, as it were, twentieth-century *beit h-ava'ad*—became reality in 1912 at an international conference in Kattowitz in what is today Poland. The formation of the Agudah happened neither smoothly nor immediately, particularly because of World War I and its aftermath. In fact, the *Mo'etses Gedolei Hatorah* met for the first time in January 1922, and the Agudah gathered in a “Great Congress” (*kenesiyah gedolah*) for the first time in 1923. Though Halevy had died in 1914, he had always argued that the supreme authority of *Mo'etses Gedolei Hatorah* was well-grounded in theory and tradition. More specifically, the talmudic *beit ha-va'ad* imagined by Halevy was the ideal historical precedent for a rabbinic conclave modeled after the Sanhedrin. The Sanhedrin's authority had extended beyond halakhic rulings to include such communal decisions as the appointment of the king, the choice to go to war, and the expansion of the city of Jerusalem. According to Halevy, the *beit ha-va'ad* and the *Mo'etses Gedolei Hatorah* possessed similar authority. In addition, just as the decisions of the Sanhedrin could not be contradicted, and any elder who did so would be deemed a rebellious elder (*zaken mamrei*), the Agudah-affiliated *Mo'etses Gedolei Hatorah* held ultimate sway. Logically, Rabbi Wasserman, who explained the authority of the Babylonian Talmud in precisely such terms, was one of the main proponents of *Mo'etses Gedolei Hatorah* and was perhaps the most articulate spokesman for the Agudah ideology of the interwar period. Halevy's international conclave of rabbinic authorities thus came to be the centerpiece of Agudath Israel. The *Mo'etses Gedolei Hatorah* conferred upon the organization authority and pedigree; it remains a staple of the Orthodox institutional rabbinic structure, in Haredi communities in Israel and the Diaspora, up to our own time.

From his positions on the development of the Oral Tradition, then, we can see how Halevy's scholarship pressed certain views on Jewish legal history into the service of validating Orthodox beliefs and ideology, as well as the new political and institutional structures he envisioned. Halevy's claim that the Oral Tradition, including the Talmud, underwent little change from the time of the Holy Temples in Jerusalem until his own time, almost 2,000 years later, was in some sense a response to efforts by *Wissenschaftlers* and Reformers to find support in the Jewish tradition for major changes in religious practice—and to some young Orthodox and traditional Jews' at least preliminary interest in their ideas. His emphasis, even in opposition to Maimonides, on lack of creativity in the midrashic tradition had a similar effect. Furthermore, his argument that a centralized rabbinic council, which he called the *beit ha-va'ad*, had meticulously edited the entire Talmud, thus lending it its absolute authority, provided textual and historical support for his plans to form a centralized rabbinic organization in the twentieth century to counter threats to Orthodoxy and traditionalism. And the fact that even some of his traditional contemporaries, such as Hoffmann and Kook, disagreed with his positions, shows us that his way was not the only possible one for someone in his situation.

Despite the often-apologetic tone of *Dorot ha-Rishonim*, the work still contains some valuable historical and legal insights about the formation of the Talmud. In addition, Halevy's life and work more generally illustrate that questions about the origin of the Oral Tradition are inextricably connected to the roles of rabbinic authority and institutional power in Jewish life and law. Those issues, so contested in Halevy's time, are still debated in ours.