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By Paul Forgasz

During the past twenty years I have had the opportunity of speaking to many Christian groups about the Jewish religious tradition. When I have asked them if they can identify the sacred texts of Judaism, most have been able to identify to the Torah. Further probing as to what they understood by this word has revealed a general tendency to think of Torah as the scroll which is housed in the ark of a synagogue. The better informed have been able to identify this scroll as containing the Pentateuch or the first five books of the Bible. None of this is wrong, but it

does represent a very limited understanding of how Judaism, at least since post-biblical times, has understood the concept of Torah.

A Written Oral Torah

From antiquity until the present day, Judaism has looked to not only the Pentateuch nor even to the entire body of the Hebrew Bible. Its canon encompasses a wide range of sacred texts that refer to the Pentateuch as the Written Torah (*Torah She"Bichtav*) and also speak of a Torah that is not written but formulated and preserved in memory. This latter Torah is known as the “Oral Torah” (*Torah She"b"Alpeh*). Put simply, traditional Judaism maintains that the Torah was revealed to Moses at Mount Sinai in two ways, one written the other oral transmitted through the prophets and the sages (hence the reference to a dual Torah in the title of this essay).

In his investigation

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of the many rabbinic sources that relate to the origin and development of the Oral Torah, Schimmel (1971:21) suggests

"that the written law could never have stood alone and that at the same time as the written law was given at Sinai, it must have been accompanied by an oral tradition."

In fact, it can be easily argued that such a view inheres in the very character of the Written Torah itself. Thus, there are many terms and instructions in the Torah that are undefined or remain obscure. In prohibiting work on the Sabbath, the Torah does not define what work is forbidden; however, the term is elaborated upon in the Oral Torah. Read without an accompanying oral tradition, there are also passages in the Bible which appear to be contradictory: in Exodus (12:15) the number of days during which unleavened bread must be eaten amounts to seven, whereas in Deuteronomy (16:8) it is six. It is left to the Oral Torah to

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account for this discrepancy. The Oral Torah also elaborates in cases where laws are not explicitly stated but to which mere passing reference is made. Where missing gaps are in evidence, it fills them in. For example, the law of divorce is mentioned only in passing with regard to the instruction that a man may not remarry his divorced wife after she has remarried and become divorced again (Deuteronomy 24:1-4). One who has been sentenced to flogging, may not have more than the fixed number of lashes inflicted (Deuteronomy. 25:1-3) but nowhere does it specify which transgressions involve the punishment of flogging. It seems clear that the very character of the Written Torah is such that it would have been impossible for life to be regulated without an accompanying oral tradition from the outset. It would be equally true to say that the Oral Torah did not come to full expression in Jewish life until after the period following the destruction of

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the Second Temple by the Romans in 70C.E., an event which precipitated a crisis of major proportions in Jewish life.

The historical Background

The Jerusalem Temple, together with its sacrificial system, had for centuries constituted the focal point of Judaism. In commenting on the centrality of the sacrificial cult in Jewish life, Neusner observes (1995:320-321) that

“the cycle of holy time was marked by sacrifice ... What made Israel Israel (sic) was the center, the altar; the life of Israel flowed from the altar.”

With the destruction of Jerusalem and the Temple, however, the existing focus of Jewish holy life disappeared. For the Jews, the prospect of religion without sacrifice would have been hard to imagine. They had lost their Temple once before (in 586 C.E.) but then they only had to wait some seventy years before it was rebuilt.

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This time, however, considering the power of Rome and its determination not to allow the Temple to stand again, the Jews could easily have decided that Judaism had come to an end with the destruction of the Temple. That they did not do so is largely due to the genius of Rabbi Yochanan ben Zakkai and the sages who gathered at Yavneh, a town to the west of Jerusalem which was to become the new centre of Jewish religious life.

Yochanan ben Zakkai was not only concerned for the survival of Judaism inside Palestine but also in the Diaspora. If the Jews, dispersed as they were throughout the Roman Empire, were isolated for too long from the mainspring of religious centres in Palestine, they might well have forsaken their Jewish heritage. The question that faced Yochanan ben Zakkai and his sages at Yavneh was how to devise a framework within which the religious identity of the Jews could be preserved without the Temple

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and sacrificial cult. The dilemma that confronted ben Zakkai is graphically formulated by Max Dimont (1971:141) as follows:

“What workable measures could he invent, devise, or enact to preserve the identity of the Jews under these circumstances? And even if he were successful, how could he enforce them without a police, without an army, without a political organisation? How much could he rely on the charismatic dynamo implanted in the Jews by canonised Scriptures? Would they heed the message inculcated in them by the Prophets? Would the nationalism preached by Ezra disintegrate or hold up in exile? What catalytic agent would be needed to fuse these ephemeral ideologies into a stable Jewish society in a chaotic gentile world?”

In the face of such questions rabbinic views came to regard the revelation of an Oral Torah alongside that of the Written Torah. Indeed, the

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importance of this idea for the development of post-70 C.E. Judaism cannot be overestimated. Neusner (1995:322) thus notes that with the destruction of the Temple as the locus of holiness within Jewish society,

“the Judaism of the dual Torah set forth a twin ideal: *sanctification of the everyday life* [my emphasis] in the here and now, which when fully realized would lead to the salvation of all Israel in the age to come. But what remained to be sanctified, as the Temple had been sanctified through its cult, now that the Temple was gone? One locus of sanctification endured beyond 70: the holy people itself.”

Thus, whereas in Temple times worship was centered on the sacrificial cult, now life itself was to become an act of worshipping God through the application of the Oral Torah and its teachings to the daily life of the Jew.

These developments did

not occur in a theological or historical vacuum, in fact, they have their roots in the reforms introduced into Jewish life by Ezra during the early Second Temple period. It was he who began the task of organising the Jewish community in Judah around the requirements of the Torah and laid the foundations for the development of Judaism as a religion of scripture. Ezra is often referred to as the father of Judaism because his efforts to popularise the teaching and interpretation of the Torah started a trend in Jewish life that produced a new class of religious leaders known as soferim (scribes). Taking their lead from Ezra, they dedicated themselves to the correct interpretation of the Torah to ensure that it could be properly applied to the daily life of the people and their changing circumstances. The soferim have consequently come to be seen as having laid the foundations within Judaism for the Oral Torah. Like the soferim, the Pharisees regarded

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themselves as the traditional followers of Ezra; their belief in the existence of and adherence to the Oral Torah is clearly attested to in the writings of Josephus. Nevertheless, it was the destruction of the Second Temple that provided the impetus for the Oral Torah to occupy the definitive role in the development of Jewish life post-70C.E.

The literature of the Oral Torah

Although we speak of an Oral Torah, this tradition finds expression in a vast array of rabbinic writings. Moreover, this body of literature can be divided into two broad categories. The first comprises what we know as the halachic or legal tradition of Judaism. The foundation text and starting point of this tradition is the Mishna, a work compiled around the year 200 C.E. in the land of Israel. In the Mishna, says Neusner (1995:328).

“we hear a single strong message. It is the message of a Judaism that answered one

encompassing question concerning the enduring sanctification of Israel, the people, the Land, the way of life. What, in the aftermath of the destruction of the holy place and holy cult remained of the sanctity of the ... Holy Land, and, above all, the holy people and its holy way of life? The answer: Sanctity persists, indelibly, in Israel, the people, in its way of life, in its Land, in its priesthood, in its food, in its mode of sustaining life, in its manner of procreating and so sustaining the nation. That holiness would endure. And the Mishna then laid out the structures of sanctification. It detailed what it means to live a holy life."

Upon being recorded the Mishna became the object of further study, commentary and amplification; a process which gave birth to two Talmuds. The Jerusalem Talmud (Talmud Yerushalmi) was a product of the land of Israel ca. 400 C.E. About two hundred years later the Babylonian

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Talmud (Talmud Babli), came into being. In describing its impact on Jewish life, Neusner observes (1995:328) that this latter Talmud,

“together with its commentaries, codes of law deriving from it, and institutions of autonomous administration resting on it, has defined the life of most Jews and the Judaic system that prevailed as normative. Its successful definition of the essentials of Judaism ... depends on the compelling power of its account of who is a Jew, what it means to be Israel, and how the holy people must work out its life in the here and now so as to attain salvation at the end of time.”

The halachic tradition did not end with the Talmud, commentaries or the legal codes to which it gave rise. Out of the need to address new issues and situations there emerged another body of Jewish law that also forms part of the Oral Torah - the literature of the Responsa. As the name suggests, it consists of replies to

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specific questions addressed to rabbinic authorities that became a major source of halachic precedent. Within the Responsa literature one also finds references to matters of theology, historical movements and religious controversies. The Responsa began after the compilation of the Babylonian Talmud when the sages received written requests for explanations of obscure talmudic passages and for rulings on matters of practical significance. Today, Orthodox rabbis working in much the same tradition, address questions about a wide range of contemporary issues including surrogate motherhood, euthanasia in the case of someone on a life support machine, genetic engineering, transplants and transsexual surgery. The Responsa has, therefore, become the definitive approach to rabbinic decision making as well as the medium through which the halachic tradition of the Oral Torah continues to find expression within

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contemporary Jewish life.

The Oral Torah also consists of an expansive collection of non-halachic literature referred to as aggada. This aggadic tradition is made up of non-legal rabbinic writings which include biblical commentary, parables, anecdotes, legends, folklore, ethical teachings, aphorisms and theological speculation. The major repository of the aggadic tradition is the Midrash literature, compiled largely in Palestine over a number of centuries. This material derives from homilies and sermons delivered by the sages in synagogues and academies. The term midrash (literally: to search) refers to the eliciting from biblical verses of meanings beyond the literal. Typically, then, midrash interprets a biblical text or group of texts according to their contemporary relevance or meaning. In passing it should be noted that midrash literature which deals with legal verses from the Bible belongs to that

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part of the Oral Torah that comprises the halachic tradition of Judaism.

The authority of the Oral Torah

Given the centrality of the Oral Torah in Judaism, it remains, finally, to inquire as to the source of its authority within the framework of Jewish religious life and tradition. It could be argued that belief in the Sinaitic origin of the Oral Torah would be sufficient to establish its authoritative role. This belief, however, is not entirely unproblematic. When various sources dealing with the nature of the Sinaitic revelation are set alongside each other one is confronted with points of view that appear to be in direct contradiction with each other.

The Jerusalem Talmud (tractate Peah 2:4), for example, makes the claim that what was revealed to Moses at Sinai was not only the Pentateuch but also the Mishna, the talmudic discussions, the aggadic tradition

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and “even what a mature student might expound before his teacher *in the future*” [my emphasis]. This suggests that the authority of the oral tradition derives from the belief that a direct and unmediated line can be drawn from the entire body of Oral Torah (including all future knowledge) back to the original revelation at Sinai. This, however, leads Schimmel to ask (1971:27) “did the Sages make no contribution to the Oral Law? And was everything they said a mere echo of the traditiitiehey had received at Sinai?” The precise intent of the Talmudic statement is not entirely clear nor is it self-evident.

Moreover, the radical statement in the Jerusalem Talmud seems to contradict a famous story in the Babylonian Talmud (tractate Baba Metzia 59b). Here we read of a rabbinic dispute concerning a particular point of Jewish law. In order to prove that he was right, one of the protagonists, Rabbi Eliezer, called upon divine intervention and it is reported

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that a carob tree uprooted itself and a stream flowed backwards. However, when this failed to move his opponent Rabbi Joshua, Rabbi Eliezer called on Heaven to testify that his was the correct view, at which point a voice from Heaven cried out siding with Rabbi Eliezer. Whereupon Rabbi Joshua proclaimed “it is not in heaven!” The Talmud explains this to mean that the Torah had already been given over at Sinai and that from this point on, halachic decisions would be based on majority opinions of the sages. In this story, then, there is an insistence on the human factor in the interpretation and development of the Oral Torah.

On the face of it, it would appear that this story contradicts the earlier-quoted statement from the Jerusalem Talmud. However, another story told in the Babylonian Talmud (tractate Menachot 29) represents something of a harmonising attitude that brings these two apparently conflicting

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approaches together. for his case we read of Moses being transported to the future where he finds himself sitting in the academy of the great Rabbi Akiva. Unable to follow the discussion he became saddened. At one point Akiva"s disciples asked him: “Rabbi, from where do you derive this teaching?” In reply, he answered: “This is a ruling handed down by Moses from Sinai”. Hearing this, Moses became comforted. This paradoxical story shows how aware the rabbis were of the nature of the halachic process; they knew laws attributed to Moses would in fact be unrecognisable to him. However, this does not detract from the authenticity of the laws nor the correctness of their attribution. in other words, the Oral Torah is regarded as a continuous, internally consistent process stretching from Sinai to the present.

This then, remains the defining position of Orthodox Judaism to the present day; Oral Torah forms an integral part of

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God’s revelation and is, therefore, regarded as normatively binding. Nevertheless, the authority of the oral tradition, particularly the halachic tradition, is the single greatest issue that divides the various denominational groups within the Jewish religious world today.

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