

The Second Dialogue

The following will demonstrate that it is impossible that the Sages composed an explanation of Torah and the commandments on their own.

On the second day, before midday, the King sent a number of highly appointed nobles to call the scholar to a feast prepared that day for all his princes and servants. The scholar came and prostrated before the King and the King inquired of his welfare. The King commanded that a table be set separately for himself and for the scholar and for the princes and highly appointed ministers. They ate and drank and praised God. And it was after the meal. . . .

THE SAGES DID NOT CREATE THE TRADITIONS

All those who disbelieve tradition, doubt in their hearts those who bear and transmit it. Every Jewish heretical movement—from Christianity to Karaism to modern day heterodox movements—put criticism of the Sages in the center of their ideological agenda. Sometimes bitter and reviling, at other times condescending and dismissive, hereticism attacks the tradition of the Law through the person of the Sages. If the bearers of tradition can be discredited, their claims do not have to be honestly confronted.¹ The Midrash relates that

1. The arguments to this effect were standard among Christians and Karaites. They were revived by Uriel Acosta (publicized along with a response by R. Aryeh Di Modena in *Kol Sachal*) and were drawn upon by R. Nieto's near contemporaries, such as Spinoza.

Korach, the first heretic, enticed the masses with the slander that Moses and Aaron invented laws that make life unnecessarily harder.² It is for this reason that R. Nieto now proceeds to demonstrate that the Sages could not possibly have had ulterior motives in formulating laws that they did not receive by tradition.

The scholar turns around the demagogical complaints that the Sages made life difficult for an average person. He asks his listener to stop and realize that the Sages were not part of some privileged class, but arose and lived among the common folk, and that they shared their difficulties and challenges. "Why," asks the scholar, "would they have wanted to heap extra burdens on themselves, had they not wholeheartedly believed that they were divinely revealed?" After discussing specific examples, R. Nieto invokes the argument found in many medieval works—the Sages' willingness to be martyred for their beliefs makes it highly unlikely that they upheld the tradition solely to gain power and enrich themselves at the expense of their gullible followers.³

In our own day, the argument that the Sages deliberately invented religious laws in order to lord it over the population no longer rings true, even to the most inveterate Marxists. Serious thinkers now hold conspiracy theories to be the refuge of weak minds, and accusing sages of any nation is no longer methodologically acceptable. What took the place of bold-faced allegations is the insinuation that the Sages were well meaning but misguided and that they deceived their followers because they were themselves deceived, or that they were culturally limited, merely the product of their overly credulous time and place. This allows modern deniers to pay lip service to the exceptional morality and high caliber of Jewish Sages, while at the same time dismissing them as irrelevant when compared to their own broad-minded and sophisticated station in life.

2. *Numbers Rabbah* 18:4, *Shochar Tov* 1:15, *Exodus Rabbah* 51:6.

3. Such an argument was made by Spinoza in *Tractatus*, whose theoretical basis was derived from earlier heretical works. It was then picked up by French *philosophes* and subsequently gained wide currency via the writings of Marx.

How would R. Nieto respond to this development? While we do not know for sure, I think that he would point out that the Sages possessed a mature understanding of the classical sciences⁴ and a profound grasp of human nature and its foibles. He would list for us wise and penetrating Talmudic statements, one after another, and note that they leave us moved and inspired. He would point to the rigor of their reasoning and to the wide range of their learning, and he would ask whether the skeptics have truly earned a right to so easily dismiss the teachings of such great men.

1. The Khazar said: I heard that the deniers claim the Sages invented laws and statutes which God has not commanded and, therefore, caused us to transgress the warning, "Do not add unto the word which I command you, neither detract from it." (Deuteronomy 4:2)

A) They argue: It is written in the Torah, "Flesh in the field that is torn do not eat." (Exodus 22:30) The apparent meaning of this verse is the prohibition of eating an animal torn apart by another animal. The Sages, however, drew analogies⁵ and concluded that not only a torn carcass is literally prohibited but also an animal that suffers from various sicknesses or injuries, whether by mishap (such as one that fell and broke its ribs, or a hip bone that dislocated from its place, or whose sinews were worn away) or by falling from a height. They made the word "torn" into a category⁶ and incorporated

4. The fourth and fifth dialogues of *Matteh Dan* are devoted to this topic.

5. Following the language used by Maimonides, *Mishneh Torah*, Laws of Slaughter, 5:1.

6. Maimonides in *Sefer Hamitzvot* (Negative Commandments, #181) seems to hold a view that these laws are of Rabbinic origin. This statement occasioned much comment in subsequent literature (see notes to R. Chaim Heller's edition), since in *Chullin* 42a they are presented as being of Sinaitic origin. Maimonides seems to have subsequently corrected himself in *Mishneh Torah*, Laws of Slaughter 5:1, where he clearly states that they are of Sinaitic origin as handed down by Moses.

within it eight types of injuries—mnemonically: D'N CH'N''K, N'F'SH⁷—and below them arranged 70 individual sub-types, calling them 70 *treifot*.⁸

B) God commanded that we not perform work on the Sabbath, for “all who do work on Sabbath shall be put to death.” (Exodus 31:14) He did not provide a definition of labor or specification of its classes. The Sages, however, divided work into thirty-nine main labors and subdivided these into many, many particulars that they called secondary labors, or “offsprings.” The only difference between the main and secondary labors is that he who unwittingly performs several main labors is bound to bring that many sin-offerings, one for each labor; for instance, if he performed eight or ten main labors, he brings eight or ten sin-offerings. But if he performed only one main labor and all of its associated secondaries, he is culpable only once.⁹ Here then they presented us with 70 ways¹⁰ to cause us financial loss and innumerable occasions to ruin our lives with indignities.¹¹ What will you say to that, my dear scholar?

7. See *Tiferet Yisrael*, introduction to Chapter 3 of *Chullin*, for an explanation of this mnemonic.

8. The deniers were as upset about the extension of the concept through analogy as the complexity of the final result. The tenor of this accusation resembles those of Uriel Acosta, whose recurring complaint in *Kol Sachal* is the complexity of Rabbinic Law, to which he proposed ways to reform and simplify the legal corpus.

9. Babylonian Talmud, *Shabbat* 73b.

10. This is an expression that denotes “many ways”, not literally seventy.

11. This kind of frontal attack, with an accusation that the Rabbis caused the Jewish people untold misery through their interpretation, is common both in the Karaite works and in the writings of Spinoza, Uriel Acosta, and other heretical authors of this period.

2. The scholar said: If God, Blessed be He, commanded: "When a matter will become perplexing for you . . . you shall arise and go up to the place . . . according to the law that they will teach you shall do . . . and the man who refuses . . . he shall be put to death" (Deuteronomy 17:8), how dare they open their mouths to prattle against such a clear commandment of God.

3. The Khazar said: Because they say that the Sages made obscure what was clear and perverted the obvious meaning of lucid verses in order to allow themselves to interpret as they wished.¹² They did this with Sabbath labors, *treifot*, and almost every other commandment.

4. The scholar said: A King or a governor or an assembly of representatives has authority to pass laws and enactments. If the government is a good and righteous one and has the welfare of its people at heart, it will direct its legislative activity solely to the people's benefit, in order to preserve its physical and material well being. If it is greedy, such a ruling body will place a heavy yoke upon the people in order to fill its storehouses with silver and gold. The despoiling of the poor and the cries of the destitute will not arouse its mercies. However, if it is of a middling moral character, it will tax each man appropriate to his wealth but also keep itself comfortable.

Thus, you find three types of lawgivers: one who does good for his people but not for himself; a second, who benefits himself but not his people; and a third, who gains a lot for himself but also benefits his people, albeit only a little. You would not reasonably imagine or expect to find a King or governor anywhere in the world who purposefully legislates bad laws or

12. In other words, they may have had the license to interpret with care and in a limited way, but they abused their obligation and did not appropriately discharge their responsibility for private reasons, thereby nullifying their authority to interpret the Law.

enactments that destroy both his and his subjects' economy and health.

5. The Khazar said: It makes sense what you say.

6. The scholar said: Had the Sages themselves made up and developed the laws of Sabbath labors and *treifot*, this would have resulted in laws and statutes that were bad for themselves and for the people. In the same way, if an animal or fowl becomes *tereifa*, it becomes prohibited to a rabbi no less than to a layman. A person who transgresses one of the main laws of Sabbath labors in ignorance must bring a sin-offering. If his transgression was performed with full knowledge, he is culpable of death by stoning. A rabbi has no advantage over a commoner in this regard.

Is it at all believable that the Sages made laws and innovated regulations that hurt themselves as well as the rest of Israel in body and property?¹³ There is no gain in such conduct either for a rabbi or for a layman.

7. The Khazar said: No one would imagine such a thing to be reasonable.

8. Said the scholar: You added water, now bring flour. Behold, Sages interpreted many other commandments besides these. Their explanations result in substantial losses to the interpreters and to their followers.

9. The Khazar said: Tell me some of them.

13. One can restate this argument in contemporary terms by pointing out that a *de novo* development of such an onerous code is without precedent in history. There is no other example of a complex and highly restrictive system of communal and personal obligation even remotely similar to Oral Law, arising in any people or religion. This in itself serves as an argument for divine origin and popular acceptance of Oral Law.

10. The scholar responded:

A) It is written: “Do not destroy the corner of your beard.” (Leviticus 19:27) From what is written it seems that the prohibition is for destroying one corner: it is not specified in the Torah which one. In the same manner, it is not clarified if “destruction” is with a particular type of instrument, of whatever kind, or only with a certain specific kind of tool. The Sages in interpreting this law went easy on the instruments but were strict about “corners.” They said: “Destruction is only with a razor.”¹⁴ A scissor that is used to do what a razor usually does is permitted, even though the meaning of the verse seems to be that the prohibition to destroy corners is with any kind of tool or balm. Regarding corners, they said that there are five of them; therefore, they enacted that he who shaves his entire beard receives lashes five times.

B) The verse says: “Do not cook a goat-kid in his mother’s milk.” (Exodus 23:19) If you interpret these words as they are read, the prohibition is only to cook a kid. The only activity that is prohibited is cooking. It is only prohibited when performed in his mother’s milk, not that of another animal, not even of the same species, as long as it is not the mother of the kid. The Sages, however, said that it is not specifically a goat: even a cow or a sheep is included. It matters not whether it is cooked in its mother’s milk or that of another animal—all of these are Biblically forbidden.¹⁵

Similarly, they said that “do not cook” is mentioned three times¹⁶—one to prohibit to eat the mixture of meat

14. Babylonian Talmud, *Makkot* 20a.

15. Babylonian Talmud, *Chullin* 114a.

16. Exodus 23:19, Exodus 34:26, Deuteronomy 14:21.

and milk, one to derive benefit from it, and one to cook it.¹⁷ See, the verse apparently required one set of lashes for this sin, but the Sages mandated three.

C) They enunciated the principle, “the piece itself becomes a prohibited entity.” What this means is that, if an olive-sized quantity of forbidden fat fell into a piece of meat which is not 60 times the amount of the fat, so as to nullify it, the piece of meat itself becomes prohibited as if it itself was forbidden fat. From now on, in order to permit the meat, it must be mixed into kosher food 60 times the amount of that entire piece of meat. In such a case, if you can identify that piece of meat, you will need to remove and dispose of it, and the rest of the mixture will be permitted. If you cannot identify the piece, all the pieces¹⁸ remain prohibited, assuming that the piece is of quality and size that will bring you honor when served to guests.¹⁹ Here you have quite a few strictures that are not alluded to in a verse but cause great financial losses.

17. Babylonian Talmud, *Chullin* 115b.

18. But not the soup in which they are cooked.

19. The reasoning for this restriction is as follows: if the piece can be immediately removed, before it shared its taste with the rest of the stew, the stew remains permitted. With the passage of time, the newly forbidden piece of meat is presumed to share its “taste” with the rest of the mixture. This “taste” requires nullification, or else it will render the entire mixture forbidden. How do we measure how much of the “taste” had left the forbidden piece and permeated the surrounding mixture? We don’t really know. Even though we take out and dispose of this piece of meat, we must assume the upper limit—in other words, we assume that the amount of taste equal to the volume of the piece has now been dissolved in the surrounding mixture. We thus require 60 times the amount of the piece (Y. D. 92:3).

Even if the mixture contains 60 times the amount of the now forbidden piece, it does not become nullified if it is the kind of piece that possesses unique value by virtue of being served to honor oneself through serving it to guests. Therefore, if the piece can be identified, it should be removed. If it cannot be identified, no nullification is possible.

D) It is written: “Do not sow your field with mixed seeds.” (Leviticus 19:19)—the size of the field is not specified. Therefore, it would seem that the plain meaning requires that if a man has a recognizable field, even 20 by 20 miles, even 100, or 1000, or even 10,000,00—even a whole province—it is prohibited to sow in it more than one species of seeds.²⁰ The Sages, however, said that an owner must leave empty a space of *beit rova*, that is an area of 10.2 elbows squared, and then he can sow two different species with no problem. If he sows within a field without leaving that space, he is not culpable to receive lashes until he has planted two species within six hand-breadths squared.

This is a major restriction. Behold, a man has a field. He and his family barely and with difficulty sustain themselves from it, just enough for the number of people in his family. He now must leave the space of 10.2 squared elbows uncultivated. Is there a greater cause for injury? Even if he left only six handbreadths by six handbreadths, that is an area of 36 square cubits. Why were

20. The plain meaning of the verse defines a field purely by appearance and not based on size. A field of wheat and a field of barley could, according to the plain meaning, border upon one another without being separated by additional space. The Rabbis, however, created a concept of separation by an empty border, but at the same time allowed two to six different species to be planted together within a patch of six square cubits. The requirement to separate fields by an empty strip of land and, at the same time, acceptance of different species mixed together within a small, discreet patch, is an offense against the plain meaning of the verses.

The response, of course, is that these buffer spaces prevent the appearances of wrongdoing. The Sages understood that, without a separation, adjacent fields ultimately overgrow one into another. Therefore, they required a border. The same understanding of the facts operated in a case of different plantings within one patch. They allowed up to six different single plants to grow together on a small patch, because single plants, unlike fields, remain distinct and easily identifiable up to this number within a plot. (Maimonides, *Mishneh Torah*, Laws of Mixtures, Ch. 3).

they obligated to limit it to this degree, when we had already learned that “a person can plant cucumbers and pumpkins in the same ditch, provided that he turns their leaves in opposite directions”?²¹

E) The Blessed God commanded us to put phylacteries on the hand and head, as it says, “you shall tie it as a sign on your hand and to be frontlets in between your eyes.” (Deuteronomy 6:8) The plain meaning seems to be that Scripture did not care about the material, shape, or color of the phylacteries. The Sages, however, insisted on defining all of these and changed the location on which they are to be placed, for they interpreted “on your hand” as meaning on the left upper arm; and that “between your eyes” means, not between the eyes, but between the hairline and where the fontanelle of the infant is located, at a site corresponding to “between the eyes.” Regarding its material, they said that it must be fashioned from the leather of a kosher animal, domesticated or wild. Of the shape they said that the phylacteries and their stitching must be square; that the phylactery of the head must have a three-headed *shin* on the right and a four-headed one on the left; that the Biblical passages must be wrapped in parchment inside and with hair around it, be sown with sinews over a base; and that they have black straps and a tie in the shape of a *dalet*. Making it differently than any of these invalidates the phylacteries.

All these we received from the Sages by tradition, in addition to many details, limitations and strictures that apply to writing them and putting them together. All this

21. Mishnah, *Kilaim* 3, 5. The argument here is apparently that this Mishnah represents the true original interpretation of the law of mixed seeds, whereas other restrictions are purely Rabbinic inventions, and injurious ones at that.

cannot be done except at great expense, application of a great deal of time and much trouble. Had they left things according to the simple meaning— that is, to write them on a paper or parchment and to tie them with a string or a strip around the hand or in between the eyes, I would have stayed quiet.²² Instead they put on themselves and on us these costs, difficulties and strictures at great expense, and obtained for themselves and us no pleasure or gain from it.

F) About the feast of Tabernacles, the verse says: “You shall take for yourselves on the first day the fruit of a handsome tree. . . .” (Leviticus 23:40) Perhaps the intent is for a nice pomegranate, a quince, an apple, or a cluster of grapes. The Sages interpreted that it means specifically a citron fruit, and they invalidated all fruits other than a pure citron, that is, one that has all the signs of a citron that they transmitted to us. Without these it is not valid, even if it looks like a citron or is from the general species of citron. This brings a great expense and distress to the dwellers of non-temperate lands and climates. Such people need to import citrons at great expense from far away, in order to celebrate the Festival of Tabernacles.

It is not that I complain because the community cannot afford it.²³ Rather, sometimes they spend money

22. In other words, the unnamed heretic appears willing to accept that the verses require some kind of text to be worn between eyes and on the hand. He would not argue that the meaning of the passage in Deuteronomy is allegorical. Now, however, that the Sages made this commandment so difficult to fulfill, he is inclined to question the basis of the entire Rabbinic interpretation and would argue that the verse intends allegory. R. Nieto, of course, turns the whole argument around. He demonstrates that the Rabbis would have never innovated this level of detail with the attendant difficulties that they engender, were they not received Law.

23. The custom in most of Europe has long been that one set of the four species is purchased by the community, which then makes it available for everyone’s use. As such, the complaint is not that the community cannot

but do not gain thereby, for the set of four species does not arrive until midway through the holiday or after it is over.

Can you, my master the King, believe that wise and trustworthy men made the whole thing up based on no foundation and reason but solely to lord it over the people?

11. The Khazar said: Your arguments are powerful and strong; yet how do you answer the skeptics?²⁴

12. The scholar said: I ask just one question of the deniers and then I can respond to them.

13. The Khazar said: Ask and I will answer on their behalf as far as their answers would stretch.

14. The scholar said: Yes, do as you wish. I will ask you: Do they consider the Sages to have been righteous or not?

15. The Khazar said: Had they thought them to be righteous, they would not have disparaged them.

16. The scholar said: Had they not been righteous, how did they sacrifice themselves to sanctify God's name as R. Akiva had done? The Romans combed his body with forks of iron as he slowly pronounced *echad*, the "One," in the *Shema*.²⁵ They

afford it but that it sometimes causes it to lose an opportunity to fulfill the commandment.

24. In other words, you have succeeded in demonstrating that the Rabbis could not have legislated such difficult laws that bind them as much as anyone else. However, the deniers have made some good points about the innovations that the Sages apparently did introduce. How do you address them?

²⁵ *Berakhot* 61a.

pierced the body of R. Yehuda ben Bava until it looked like a sieve, because he ordained five elder students against the decree of the government.²⁶ R. Chanina ben Tradyon was burnt together with a scroll of Law.²⁷ R. Shimon ben Gamliel, R. Yishmael, and other martyrs, ten in total, died by the hand of Roman government.²⁸ Does a man hand himself over for a terrible death on behalf of a Law in which he does not believe?

17. The Khazar said: It may be that they sacrificed themselves in order to be thought saintly and to be remembered with a blessing.

18. The scholar said: Can anyone presume to claim with certainty that they sacrificed themselves with such a motivation and not to sanctify God's name?

19. The Khazar said: Surely no one will manage to bring himself to do so.

20. The scholar said: Tell me, my master, the King: what is more natural and logical— that a person will sacrifice himself to sanctify God's name or to gain posthumous glory for himself, without personal benefit or gratification? This they did, when they could have saved themselves from sword or flames with but a few words. The ten martyrs could have saved themselves by yielding to the wicked and would have gained great station and honor thereby.

21. The Khazar said: No question, anyone who sacrifices himself when he could have easily saved himself, does so for God's sake.

26. *Avodah Zarah* 8b.

27. *ibid.*, 18b.

28. *S'machot* 8.

22. The scholar said: Granted that, the ten martyrs, being great, scholars masters of the Mishnah, were righteous, saintly, holy, straight, and sincere.

23. The Khazar said: Maybe they were such as you describe at the moment of their deaths, but before that they made up all kinds of things to lord it over the community.

24. The scholar said: If they repented wholeheartedly at the moment of death, why did they not advise all Jews or at least their students who were nearby—and especially the common folk—that everything they taught them was of their own imagining and not God's word from Sinai?

25. The Khazar said: Maybe they had no chance. Maybe there were no Jews around when they died or, perhaps, even though they did confess, the students hid it from the common folk in order that they could lord and rule over them.

26. The scholar said: Please, my master, the King, you are wise. Reflect upon what you have argued on the behalf of the deniers—all this is conjecture. Can such weak arguments be enough to induce us to do away with the obligation of "do not turn away from all that they command?"

RABBINIC DERIVATIONS ARE EMINENTLY REASONABLE

The meaning of Biblical verses is often elusive and obscure. This fact is borne out by the number of divergent commentaries and explanations that one finds on almost every word and verse of Scripture. Why this is so is an important question that until recently has been left relatively unexplored.

The science of hermeneutics, or Biblical interpretation, has of late been extensively cultivated, both in Academia and by products of