

**The 2003 Hashivenu Forum**  
**Messianic Judaism and Jewish Tradition in the 21<sup>st</sup> Century:**  
**A Biblical Defense of “Oral Torah”**

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Our current Forum has taken up the topic of “Jewish Tradition.” This term is deliberately broad in scope, including in its domain the entire way of life and thought transmitted to Jews of the present from Jews of the past. While some Messianic Jews dispute the value of Jewish tradition in this sense, most recognize that we cannot construct a viable Messianic Jewish way of life without drawing at least minimally on the heritage received from our ancestors. We would narrow our sights substantially if we defined our topic as “Rabbinic Tradition.” This would focus our attention on the Mishnaic, Midrashic, and Talmudic writings, and on the exegetical, halakhic, theological, liturgical, and ethical traditions that they spawned. This would take us into more adventurous terrain – for Messianic Jews disagree passionately about the value of all things “Rabbinic.” However, even this way of defining our topic seems uncontroversial in comparison with the term I have chosen to work with: Oral Torah. Messianic Jews might question the merits of Rabbinic tradition, but we all agree that it exists. But the term “Oral Torah” contains a claim of divine sanction that few Messianic Jews have been willing to accept. Thus, most Messianic Jews deny that there is such a thing as Oral Torah.

As the discussion that follows will demonstrate, I would not argue on behalf of all that Rabbinic authorities have asserted about Oral Torah. For example, I would not advocate the view that the teaching now found in the vast Rabbinic corpus was revealed to Moses at Sinai. Still, I would contend that the term is useful, for it rivets our attention on the central issues we must confront: Does the Written Torah require an ongoing tradition of interpretation and application in order to become a concrete reality in daily Jewish life? Does the tradition of interpretation and application of the Written Torah developed and transmitted by the Sages have any kind of divine

sanction?

The question of Oral Torah has particular importance in the realm of Halakhah. Most Messianic Jews in the diaspora accept the traditional view that Jewish identity and existence should be rooted in the Torah (i.e., the Pentateuch) – though, for us, as interpreted and embodied in Messiah Yeshua. Most diaspora Messianic Jews likewise acknowledge that the Torah contains authoritative practical instruction for the people of Israel as it seeks to fulfill its covenantal vocation as a *goy kadosh* (a holy nation). But once we affirm these propositions, we face a challenge: how to understand the Torah and live according to it as Messianic Jews in the 21<sup>st</sup> Century. This brings us immediately into the realm of the Oral Torah: “How to face the confrontation between the text and the actual life situation, how to resolve the problems arising of this confrontation, is the task of the *Torah she’baal’Peh*, the Oral Law.”<sup>1</sup>

Why is the notion of Oral Torah so repugnant to Messianic Jews? Some of the suspicion derives from proper concern for the primacy and unique authority of the Written Torah. Thus, some argue that the Written Torah is sufficient, and neither requires nor permits any supplement. It is further argued that the Rabbinic doctrine of the Oral Torah was invented not just to supplement the Written Torah but to supplant it. Some of the suspicion derives from the Apostolic Writings and their treatment of the Pharisees (rightfully assumed to be the Second Temple precursors to the post-70 Rabbinic movement). Yeshua’s apparent reservations about the Pharisaic “Tradition of the Elders” are read as a direct rejection of any notion of the Oral Torah. Yeshua’s bestowal of halakhic authority on his *shelichim* (apostles) likewise seems to preclude Pharisaic-Rabbinic claims to such authority. Finally, Messianic Jewish suspicion regarding the Oral Torah derives also from the Pharisaic-Rabbinic rejection of the Messianic claims for Yeshua made by his followers, and from their subsequent treatment of those followers. In order to uphold any notion of Oral Torah for Messianic Jews, these objections must be addressed.

In this paper I will attempt just this task. I will not have adequate opportunity to deal with all

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<sup>1</sup> Eliezer Berkovits, *Not in Heaven: The Nature and Function of Halakha* (Hoboken, N.J.: Ktav, 1983), 1.

the objections in a manner that they deserve. However, I hope at least to point in the direction that such answers might take. If I am successful, the notion of Oral Torah will no longer be off limits for us as Messianic Jews.

### **Oral Torah in the Pentateuch**

Is the Written Torah sufficient, without any supplementary instruction? In order to answer this question, we must first ask, “sufficient for what?” In evangelical discussions of the meaning of *sola scriptura*, the issue is always soteriological: sufficient for instruction in what we must believe in order to go to heaven after we die.<sup>2</sup> However, within a Jewish context, the Torah is not primarily a document containing truths that we must believe in order to attain the afterlife. Instead, it is primarily Israel’s national constitution, the foundational text shaping its practical communal life. Thus, the issue is not, “what shall we believe in order to be saved?” but “how shall we live if we are to be faithful Israel?”

Is the Written Torah sufficient for instructing the Jewish people in how we should live as individuals, families, and local communities? While it is certainly foundational and indispensable, it is not sufficient. The Torah requires a living tradition of interpretation and application if it is to be practiced in daily life. This is due in part to the lack of detail in its legislation. As Michael Fishbane notes, “frequent lacunae or ambiguities in their legal formulation tend to render [biblical]...laws exceedingly problematic – if not functionally inoperative – *without interpretation*.”<sup>3</sup> Thus, the Torah forbids all work (*melachah*) on Shabbat, but it nowhere defines the meaning of *melachah*.<sup>4</sup> Similarly, it commands that we “afflict ourselves” on Yom Kippur, but it does not tell us what this means in practice.<sup>5</sup> When the Torah

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<sup>2</sup> This is not to detract from the importance of soteriological questions. It is simply to note that the Pentateuch, when read in a Jewish context, is not primarily seeking to answer such questions.

<sup>3</sup> Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Oxford University Press, 1985), 92. Italics in the quote are from Fishbane.

<sup>4</sup> Exodus 20:10; Deuteronomy 5:14. See Nathan T. Lopes Cardozo, *The Written and Oral Torah* (Northvale, N.J.: Jason Aronson, 1997), 66, and Samuel N. Hoenig, *The Essence of Talmudic Law and Thought* (Northvale, N.J.: Jason Aronson, 1993), 15.

<sup>5</sup> Leviticus 16:31. See Cardozo, 67.

teaches about unclean birds, it does not provide any criteria for distinguishing the clean from unclean (as it does for mammals and for fish), but only lists examples.<sup>6</sup> Is this a complete list? What about birds of prey that are not listed?<sup>7</sup>

But lack of practical legislative detail is not the only problem. There are also numerous inconsistencies and even apparent contradictions. Numbers 18:21-32 commands that Israelites give their tithe to the Levites, who then offer a tithe of the tithe to the *Kohanim*. However, Deuteronomy 12:22-29 instructs Israelites to eat their own tithe at the central sanctuary, and to give it to the poor every three years. Exodus 21:7 indicates that a female slave is not freed in her seventh year as is the male slave, whereas Deuteronomy 15:17 appears to treat the female and male slave alike.<sup>8</sup> Exodus 12:1-13 seems to presume that Pesach will be observed in the home, whereas Deuteronomy 16:2 requires that it be observed in the central sanctuary.<sup>9</sup> Exodus 12:5 says that the Pesach offering can be a sheep or a goat, whereas Deuteronomy 16:2 permits it also to be a bull.<sup>10</sup>

If Jews of the Second Temple period were to keep these laws, they would need to have an interpretive tradition that would allow them to address the apparent discrepancies. We can see evidence of such a tradition in Chronicles. Exodus 12:9 indicates that the Pesach offering is to be roasted in fire, whereas Deuteronomy 16:7 says “*u-vi-shal-ta*” (which usually means “you shall boil”). The two passages are brought together in 2 Chronicles 35:13, which states that the Pesach is to be “cooked (*b-sh-l*) in fire.” Thus, the word *b-sh-l* is understood to mean “cooked” rather than “boiled.”<sup>11</sup>

David Weiss Halivni concludes from such tensions in the Pentateuch that an oral interpretive

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<sup>6</sup> Leviticus 11:13-19; Deuteronomy 14:11-18).

<sup>7</sup> “The Sages, generalizing from this list of kosher fowl, established four criteria for a kosher fowl, including that it not be a bird of prey” (*Etz Hayim: Torah and Commentary* [Philadelphia: Jewish Publication Society, 2001], 1073).

<sup>8</sup> David Weiss Halivni, *Revelation Restored* (Boulder: Westview, 1997), 24.

<sup>9</sup> Halivni, 24; Fishbane, 137.

<sup>10</sup> Halivni, 25-26; Fishbane, 136-37.

<sup>11</sup> Halivni, 25; Fishbane, 135-36.

tradition must have existed, at least by the time when the people as a whole accepted the text in its current form as authoritative:

Both modern and traditional scholarship have noted in their respective ways that the text of the Pentateuch contains apparent inconsistencies, gaps, and even contradictions, sometimes in the most essential matters of observance... The problem is not only that the laws of the festivals and Sabbaths are nowhere detailed enough that they might immediately be put into practice... without extensive guidance beyond the written word. Even more challenging than the frequent lack of detail is the fact that those details that are spelled out are not always congruous from one part of the Pentateuch to the other... *coherent observance at the time of canonization cannot have been based on the scriptures alone. Some oral guidance must have accompanied the text as soon as observance was instituted.*<sup>12</sup>

Michael Fishbane goes further, arguing that an oral legal tradition must have originated much earlier:

...there need be no reasonable doubt that the preserved written law of the Hebrew Bible is but an expression of a much more comprehensive oral law. Such an oral legal tradition would have both augmented the cases of our collections and clarified their formulations to the scope and precision necessary for viable juridical decisions. Accordingly, the biblical law collections may best be considered as prototypical compendia of legal and ethical norms rather than as comprehensive codes... The received legal codes are thus a literary expression of ancient Israelite legal wisdom: exemplifications of the ‘righteous’ laws upon which the covenant was based.<sup>13</sup>

Neither Halivni nor Fishbane contend that this oral legal tradition was identical to what is later found in the Rabbinic corpus. However, they both rightly recognize that the Written Torah not only permits supplemental instruction – it requires it.

Does the Torah establish or envision an institutional framework for providing such necessary supplemental instruction? There are good reasons for thinking that it does. In a text set at a key juncture in the narrative of Exodus – at “the mountain of God” just before the Sinai theophany – Jethro visits Moses and offers him important advice.<sup>14</sup> The people of Israel have been coming to Moses with their disputes, and he has been inquiring of God, deciding (*shafat*) the disputes, and making known the relevant statutes (*chukkim*) and laws (*torot*). However, this activity is exhausting both Moses and the people. Therefore, Jethro recommends that Moses establish tribal

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<sup>12</sup> Halivni, 23-4; italics mine.

<sup>13</sup> Fishbane, 95.

<sup>14</sup> Exodus 18:5, 13-27.

judges to handle the day-to-day disputes of the people. Only the major cases, too difficult for them to decide, should be brought to Moses. Moses accepts the advice of his father-in-law, and a new institution of subordinate and higher courts is born.

The significance of this incident is underlined by the position it occupies in the Deuteronomic retelling of the Exodus-Sinai-Wilderness narrative. It is the first event reported by Moses.<sup>15</sup> There the subordinate leaders are called “officials (*shotrim*) for your tribes” and “magistrates” (*shoftim*).<sup>16</sup> The wilderness judicial system serves as key background for the section of the Deuteronomic code that establishes the fundamental institutions of Israel’s future government.<sup>17</sup> This section begins with the command to appoint “magistrates (*shoftim*) and officials (*shotrim*)” in every town, who shall “judge the people with righteous judgment.”<sup>18</sup> Thus, the local judges of the future are identified with the tribal magistrates of the desert past. Deuteronomy then proceeds to institute a central judiciary in “the place that HaShem your God will have chosen” that is to hear every case too difficult for the local courts.<sup>19</sup> In light of the prominent placement of Deuteronomy 1:9-18, and its verbal resemblance to Deuteronomy 16:18-20, it is evident that the central judiciary carries on Moses’ function just as the local courts carry on the function of the tribal courts of the wilderness period.

The importance of this central judiciary and its role as the latter day expression of the Mosaic office becomes clearer with a careful study of the pericope. The passage begins by directing that certain types of cases should be brought from the local courts to the central court. These are cases that are “too difficult for you (*yipalay mi-mecha*),” and that involve homicide (*beyn dam le-dam*), personal injury (*nega*), or disputes over the appropriate law (*din*) to apply.<sup>20</sup> The meaning of this last type of case (*beyn din le-din*) will become clear in a moment. The

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<sup>15</sup> Deuteronomy 1:9-18.

<sup>16</sup> Deuteronomy 1:15-16.

<sup>17</sup> Deuteronomy 16:18 – 18:22.

<sup>18</sup> Deuteronomy 16:18-20.

<sup>19</sup> Deuteronomy 17:8-13.

<sup>20</sup> Deuteronomy 17:8.

central court shall hear the case, and render a decision. The persons involved are not free to disregard this decision, but “must carefully observe all that they instruct you to do” (*ve-shamarta la’asot ke-chol asher yorucha*).<sup>21</sup> The words “carefully observe” (*shamarta la’asot*) appear frequently in various forms in Deuteronomy, always enjoining obedience to the words of the Torah itself. Here they enjoin obedience to the high court. The verb used to characterize the decision of the judges is also significant: *yoru* (“they will instruct”) shares the same consonantal root as *Torah*. This is no accident, as becomes evident in the subsequent verse commanding the concerned parties to “act according to the word of *Torah* that they teach you (*yorucha*).”<sup>22</sup> As if these exhortations to obedience were not enough, the passage proceeds to urge that the parties “not turn aside from the decision that they declare to you, neither to the right nor to the left,” and warns that those who arrogantly disobey the central court shall be put to death, so that evil might be purged from Israel, and so that all the people might hear and fear and not act in a similar manner.<sup>23</sup> Once again, such warnings appear frequently in Deuteronomy, but usually as a way of urging compliance with the Torah itself (rather than with those who administer it).<sup>24</sup>

Thus, the judgment of the central court is described in a manner that implies a scope beyond that of merely rendering verdicts in particular cases. In addressing difficult cases they are *teaching Torah*. They are functioning in the role that Moses occupied during the wilderness wandering, and their words have an authority analogous to that of the Mosaic Torah itself.

Frank Crusemann makes this point without equivocation:

*The conclusion we must draw from this is absolutely clear: The decisions of the court have the same significance and the same rank as the things that Moses himself said – which means Deuteronomy itself. The Jerusalem high court rendered decisions with the authority of Moses and it had his jurisdiction. It spoke in the name of Moses and extrapolated forward the will of YHWH.”*

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<sup>21</sup> Deuteronomy 17:10.

<sup>22</sup> Deuteronomy 17:11.

<sup>23</sup> Deuteronomy 17:11-13.

<sup>24</sup> Deuteronomy 13:6; 17:7; 19:19; 21:21; 22:21; 24:7.

The development and structure of deuteronomic law cannot be separated from the institution of the Jerusalem central court...According to Deut 17:8f. this court speaks with the same authority as Deuteronomy itself – the authority of Moses.<sup>25</sup>

Perhaps Crusemann overstates his conclusion. Nevertheless, his essential thesis remains valid.

Deuteronomy establishes an institution that carries on the Mosaic role of interpreting and applying the Torah in new and unforeseen circumstances.

According to 2 Chronicles 19, such an institution actually existed in ancient Israel. This chapter describes how King Jehoshafat appointed “magistrates” (*shoftim*) in all the fortified cities of Judah, and then established a high court in Jerusalem.<sup>26</sup> The high court would hear cases sent to them “from your brothers living in their cities.”<sup>27</sup> As in Deuteronomy 17:8, prominent among these would be cases of homicide (*beyn dam le-dam*). The identical wording demonstrates that the author of 2 Chronicles 19 sees the action of King Jehoshafat as the realization of the intent of Deuteronomy 17. In addition to difficult cases of homicide, the high court should render judgment in disputes *beyn Torah le-mitzvah le-chukim ul-mishpatim* (“between Torah and commandment, statutes and ordinances”). This phrase corresponds to *beyn din le-din* in Deuteronomy 17:8, and helps to explain that enigmatic formulation. Crusemann interprets the expanded version of 2 Chronicles 19:10 as referring to “cases that involve a ‘collision of norms’ and thus automatically involve something like precedents.”<sup>28</sup> Sometimes compliance with one law may lead one to disobey another. In such cases one encounters a “collision of norms” – and an authorized interpretive agency is required in order to clarify what is permissible and what is required. Such clarification involves more than just rendering a verdict in a particular dispute. Such precedent setting cases also provide new instruction on how the Torah is to be lived out. Thus, the high court teaches, interprets, and establishes Torah.

The role of the central judiciary, patterned on the role of Moses during the wilderness

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<sup>25</sup> Frank Crusemann, *The Torah* (Edinburgh: T&T Clark, 1996), 97, 269. Italics are from Crusemann.

<sup>26</sup> 2 Chronicles 19:5, 8.

<sup>27</sup> 2 Chronicles 19:10.

<sup>28</sup> Crusemann, 94.



wandering, may be illustrated by the five instances in the Torah where new laws are given in response to unforeseen legal questions posed by the people.<sup>29</sup> These laws are unusual in the Torah. Normally, the Torah's narrative presents legal material as rooted solely in the divine initiative. God summons Moses, and gives him laws. No human circumstances on the ground provide a context to which God responds. However, in these five instances the initiative comes from the people, and the result is not merely the resolution of particular cases but the promulgation of new legislation.<sup>30</sup> These five narratives thus provide the Mosaic paradigm for the interpretive work of the central court in Jerusalem.<sup>31</sup> The central court will not derive its rulings in oracular fashion (as does Moses), and this distinction preserves the primary and unique status of the Mosaic legislation. However, apart from this fact the central court will function as did Moses, and its authority to clarify and interpret the Torah derives from Moses himself.

The relationship between the future high court and Moses may also be implicit in Numbers 11. In this chapter, as in Exodus 18 and Deuteronomy 1, Moses is burdened by his task of leading the people of Israel, and, as in those other chapters, his burden is relieved by the appointment of other leaders to assist him.<sup>32</sup> However, there are also differences between the Exodus/Deuteronomy helpers and those described in Numbers 11. First, the leaders of Numbers 11 are not explicitly assigned responsibility for subordinate groupings (thousands, hundreds, fifties, tens), nor is their role restricted to local judgment. Second, their number is given, and that number is "seventy." They are thus identified with the seventy elders who ascended Sinai with Moses and "saw the God of Israel."<sup>33</sup> In this way they are more closely associated with Moses

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<sup>29</sup> Leviticus 24:10-23 – blasphemy by the son of an Egyptian man and an Israelite woman; Numbers 9:6-14 – Pesach Sheni; Numbers 15:32-36 – gathering wood on Shabbat; Numbers 27 & 36 – the daughters of Zelophehad and the inheritance rights of women.

<sup>30</sup> See Crusemann, 100-1, and Fishbane, 99. Fishbane notes that "...in all cases but that of the wood-gatherer, the oracular *responsum* is formulated in the precise casuistic style of the Pentateuchal priestly ordinances ('if a man') and presents a law *more comprehensive than* the situation called for by the original oracular situation" (103).

<sup>31</sup> "The preceding five legal pericopae explicitly acknowledge instances when the covenantal law required supplementary clarifications or amendments" (Fishbane, 106).

<sup>32</sup> Numbers 11:11-15, 16-17, 24-25.

<sup>33</sup> Exodus 24:9-11.

than are the subordinate judges of Exodus 18 and Deuteronomy 1. Third, just as they ascended Sinai with Moses, so their appointment occurs at the Tent of Meeting (*Ohel Moed*), corresponding to the future temple in Jerusalem.<sup>34</sup> Fourth and finally, they receive a measure of the prophetic spirit that Moses possesses.<sup>35</sup> This also associates the seventy elders closely with Moses himself. Just as Elisha will receive the spirit that is upon Elijah, so the seventy receive the spirit of Moses.<sup>36</sup>

All of these factors indicate that the seventy elders of Numbers 11 prefigure the central court of Deuteronomy 17 and 2 Chronicles 19 rather than the subordinate courts of the cities of Judah. The connection with Elijah and Elisha offers especially strong support for this thesis. Just as Elisha received Elijah's spirit and succeeded him in his role of prophet, so the seventy elders receive Moses' spirit and prefigure the institution that will succeed Moses in his role as teacher of the Torah. When the Sanhedrin of seventy elders was established in post-exilic Jerusalem as the high court of the Jewish people, it was claiming to be the divinely sanctioned successor to Moses, extending the Mosaic office of interpreting and applying the Torah just as the seventy elders did in Numbers 11, and just as Jehoshapat's high court did in 2 Chronicles 19.

Numbers 11 also points to the basis of authority for the Jerusalem high court. The seventy are empowered by God to act in the role of Moses, but before their official appointment and empowerment they were already "elders (*z'kenim*) and officials (*shotrim*) of the people."<sup>37</sup> As we have seen, a group of seventy elders represented the people earlier at Sinai.<sup>38</sup> Thus, in a sense authority is vested in the people of Israel as a whole. This view draws further support from the Deuteronomic instructions regarding Israel's governmental institutions.<sup>39</sup> Deuteronomy 16:18 begins this section with the foundational law of government: "You shall appoint magistrates

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<sup>34</sup> Numbers 11:16, 24.

<sup>35</sup> Numbers 11:17, 25-30.

<sup>36</sup> 2 Kings 2:9-10, 15.

<sup>37</sup> Numbers 11:16, 24.

<sup>38</sup> Exodus 24:9-11.

<sup>39</sup> Deuteronomy 16:18 – 18:22.

(*shoftim*) and officials (*shotrim*).” Who is the singular “you” of this verse? It evidently stands for the hearers of Deuteronomy – the people as a whole. Similarly, the hearers of Deuteronomy are also told that they are permitted to have a king, if they so decide (17:14-15). That king must fit certain criteria (including a conviction among the people that God himself has chosen the man), but it is the people themselves who decide whether to have a king and who that king should be.<sup>40</sup>

The authority vested in the people of Israel as a whole to act as Moses’ successor can also be seen in the book of Esther. After the Jewish people escape the destruction plotted by Haman, Mordechai and Esther urge them to celebrate an annual feast (Purim) to commemorate the event. The book – which never mentions the name of God – then describes the people’s response:

The Jews established (*kyyemu*) and accepted as a custom (*kibbelu*) for themselves and their descendants and all who joined them, that without fail they would continue to observe these two days every year, as it was written and at the time appointed.<sup>41</sup>

One talmudic interpretation of *kyyemu ve-kibbelu* understands it to mean, “they [i.e., the heavenly court] upheld above what they [i.e., the Jewish people] had accepted below.”<sup>42</sup> Or, in David Novak’s paraphrase, “God confirmed what the Jewish authorities on earth had themselves decreed for the people.”<sup>43</sup> This is probably not so far removed from the intent of the author. Just as the Book of Esther depicts the providential power of God at work in the world through human action, without ever mentioning the divine Name, so it presents a divinely ordained institution established apparently by human authority. And that authority is not merely invested in the leaders, as Novak’s paraphrase might suggest. Instead, it is the people as a whole who “established and accepted as a custom for themselves and their descendants and all who joined them” the celebration of Purim. And, by incorporating the book of Esther into the Biblical canon, the Jewish people made clear their determination that in fact God had confirmed in heaven what the Jewish people had decreed and accepted on earth.

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<sup>40</sup> Crusemann, 238, 247.

<sup>41</sup> Esther 9:27.

<sup>42</sup> B. Megillah 7a.

<sup>43</sup> David Novak, *The Election of Israel* (Cambridge: Cambridge University Press, 1995), 169-70.

We thus may conclude that (1) because of its lack of legal detail and its abundance of apparent legal inconsistency, the Torah requires supplemental legal instruction; (2) the Torah itself recognizes this fact, and envisions a Mosaic teaching office whose role is to interpret and apply the Torah's regulations to new circumstances; and (3) this Mosaic teaching office, while having its ultimate authority from God, receives its immediate sanction from the affirmation of the Jewish people as a whole. While the Torah itself nowhere uses the term, there is no reason why the tradition of supplemental instruction in the Mosaic succession should not be called "Oral Torah." It is thereby both distinguished from the Written Torah, and identified with it – just as the high court of Deuteronomy 17 and the seventy elders of Numbers 11 are both distinguished from Moses and identified with him.

### **Oral Torah in Rabbinic Tradition**

We have seen that it is possible to find in the Written Torah a justification for a certain kind of Oral Torah. How does this biblically rooted doctrine compare with the traditional Rabbinic understanding? What, in fact, is the Rabbinic doctrine of the Oral Torah?

The naive version of the doctrine has little grounding in the tradition itself. According to this way of construing the Oral Torah, God gave to Moses on Sinai two separate and complementary Torahs – one to be conveyed in Written form, the other to be transmitted orally. The Written Torah is the Pentateuch; the Oral Torah was passed on by word of mouth from one generation to the next, and was ultimately written down in the Talmud. Thus, the Talmud, like the Pentateuch, consists of words of God spoken to Moses on Sinai. The only differences between the Pentateuch and the Talmud are that the latter contains additional explanatory material required for understanding and keeping the former, and that the two were transmitted through different media.

While the Talmud does refer to a few non-Pentateuchal rules as *halakhot le-Moshe mi-Sinai* (oral laws of Moses received on Sinai), this term is never applied to the Mishnah as a whole or to the legal decisions of the Talmud in general. Anyone who has ever read the Talmud recognizes

the absurdity of the notion that in its totality it embodies the words of God to Moses on Sinai. The Talmud consists primarily of Rabbinic discussions and arguments. Did God argue with himself on Sinai, and then assign various sides of His inner debate to future Rabbis, who were not truly arguing but merely acting out an oral script passed down from the time of Moses? We may safely reject such a doctrine as ridiculous. However, when we do so we are not rejecting the Rabbinic understanding of the Oral Torah.

A second way of construing the Rabbinic doctrine of the Oral Torah has firmer grounds in the tradition. According to this view, not only the Pentateuch, but also the words of all the prophets and sages were revealed to Moses on Sinai. However, they were not then transmitted orally by Moses to the future generations of prophets and sages, but were received by the prophets through fresh inspiration, and developed by the sages as their own creative interpretation. This view is put forward by a contemporary orthodox scholar:

Were the visions of the prophets and the praises of the psalmists really no more than a reiteration of what had already been said? Are the thousands of pages of Talmudic discussions only a re-recording of what God taught Moshe? In *Tiferet Israel*, Maharal (R. Judah Loew b. Bezalel, 1525-1609) explains that though the entire Torah – from the Chumash to the debates in the Talmud – was taught to Moshe, God concealed many parts of it from the nation as a whole. Each generation was allowed to reproduce the exegesis so as to strengthen its bond with the Torah.<sup>44</sup>

Thus, the Oral Torah was both given to Moses on Sinai and discovered anew in every generation. It is both entirely divine, and at the same time something that requires active human participation (beyond merely repeating what has been heard).

While such a view of the Oral Torah can be found in the Talmud, it is not the dominant perspective. David Weiss Halivni argues that the doctrine of the Oral Torah “is hardly mentioned at all in Tannaitic literature.”<sup>45</sup> Halivni contends that it likewise exercised little influence among the Babylonian Amoraim, but that it first gained prominence among the Amoraim of the land of Israel. Even when the notion of *halakhot le-Moshe mi-Sinai* was introduced in the Talmud, it was

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<sup>44</sup> Cardozo, 8-9.

<sup>45</sup> Halivni, 54.

not always understood to imply that the halakhah in question had literally been taught to Moses. This is evident in the famous story of how Moses is transported to the future in order to hear Rabbi Akiba's exposition of the Torah, and is unable to comprehend a single word of Akiba's teaching.<sup>46</sup> Nevertheless, Moses is comforted (and we are entertained) when, in response to the question, "Master, how do you know this?" Rabbi Akiba answers, "It is a *halakhah le-Moshe mi-Sinai*." Here it is evident that Akiba's teaching is based on creative exegesis of the Written Torah, rather than on a halakhic tradition received from previous generations, and that the claim to Mosaic authority did not necessarily entail a literal assertion of Mosaic foreknowledge.

However, matters changed in the post-Talmudic period. The view that the entire tradition had been revealed to Moses at Sinai attained general acceptance. Halivni regrets this development, and sees it as a reflection of a medieval "obsession with divine perfection":

The religious sensibilities of the Middle Ages required a belief in eternal and unchanging laws, not tainted by the human involvement that inheres in exegesis... The very notion that human beings had been required to mine and quarry for God's law... became religiously intolerable. Religiosity, in the Middle Ages, was an obsession with divine perfection... the notion of a Torah requiring human involvement was precluded on principle alone.<sup>47</sup>

Though the medieval doctrine goes beyond the general talmudic sobriety over the nature of Rabbinic authority, it should still be distinguished from the naive fantasy of a tradition mechanically transmitted by rote repetition from Moses to the present day.

The dominant view in the Talmud is quite different from both of these versions of the Oral Torah. The sages think less in terms of two Torahs given to Moses at Sinai, and more in terms of two types of law – which they call *d'oraita* (Written Torah law) and *d'rabbanan* (Oral Rabbinic law). The latter is also divinely authorized, so that Rabbinic commandments can be treated as commandments of God. Why is this the case? Not because the Rabbis are simply repeating laws received through a chain of tradents, but because the Written Torah in Deuteronomy 17 gives them the authority to act on behalf of God. This is clearly stated in the midst of a discussion

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<sup>46</sup> B. Menahot 29b.

<sup>47</sup> Halivni, 78.

concerning the lighting of Chanukkah candles – a custom commemorating a victory that occurred more than a thousand years after the giving of the Torah at Sinai:

What blessing is recited? “Who sanctified us by His *mitzvot* and commanded us to kindle the light of Chanukkah.” And where [in the Torah] did He so command us? Rav Avi’a said: [It follows] from, “You shall not turn aside [from the ruling that they declare to you, to the right or to the left]” (Deuteronomy 17:11).<sup>48</sup>

Thus, the fundamental talmudic claim for the authority of its teaching is not based on a myth of origins but on a text in the Pentateuch that, as we have already seen, had as its purpose the sanctioning of an ongoing Mosaic office of interpretation and application of the Torah.

However, some contend that the sages saw their own authority as far greater than any reading of Deuteronomy 17 would allow. Daniel Gruber has argued that the Tannaim and Amoraim explicitly placed their own authority over that of Scripture, so that their decrees took precedence over those of the Written Torah.<sup>49</sup> Lawrence Schiffman is more cautious, recognizing that the Tannaim prohibited the writing down of their teaching “in order to highlight the greater authority of the written word.”<sup>50</sup> But Schiffman then states that “by the amoraic period, the rabbis were openly asserting the superiority of the oral law,” and that “when the amoraic commentary in the form of the Talmuds became available, this material became the new scripture of Judaism...Scripture had been displaced by Talmud.”<sup>51</sup>

It must be acknowledged that certain Amoraic sayings could be read in a way that supports Schiffman’s thesis. It should be further acknowledged that post-Talmudic Judaism often did give primacy to the Talmud, functionally if not theoretically. However, a careful study of the Talmudic approach to the Written Torah and Rabbinic Law does not sustain Gruber’s claims, nor even the more moderate views of Schiffman. The Talmud consistently distinguishes between obligations that are *d’oraita* and those that are *d’rabbanan*, and treats the former as taking

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<sup>48</sup> B. Shabbat 23a.

<sup>49</sup> Daniel Gruber, *Rabbi Akiba’s Messiah: The Origins of Rabbinic Authority* (Hanover, N.H.: Elijah, 1999), 80-84.

<sup>50</sup> Lawrence H. Schiffman, *From Text to Tradition* (Hoboken, N.J.: Ktav, 1991), 266.

<sup>51</sup> *Ibid.*, 287.

precedence over the latter. As Halivni notes, “There are differences with respect to severity of observance between a law which is biblically commanded and a law which is rabbinically ordained.”<sup>52</sup> Thus, a *kal va-chomer* (from the greater to the lesser) argument is employed to demonstrate that one may interrupt one’s recitation of the Hallel (Psalms 113-118) in order to greet someone in authority -- for if one may interrupt one’s recital of the Shema, which is *d’oraita*, one may surely interrupt the Hallel, which is merely *d’rabbanan*<sup>53</sup>. It is likewise decreed that in order to show respect for those in authority it is generally permitted to set aside Rabbinic decrees – but not commandments that are *d’oraita*.<sup>54</sup> These are not exceptions to the Talmudic approach, but typical.<sup>55</sup>

This Talmudic principle of subordinating Rabbinic Law to Biblical Law is pointed out by David Novak, who sees it as fundamental to Judaism:

And by reading *davar* in Deuteronomy 17:11 as a general term rather than a specific term, one is mandated by the Torah not only to heed rabbinic adjudication of individual cases, but to heed rabbinic legislation in general [b. Berachot 19b]....The only proviso is that the formal distinction between Scriptural law (*d’oraita*) and rabbinic law (*de-rabbanan*) be kept in view, and that the normative priority of Scriptural law over rabbinic law be consistently maintained [b. Betsah 3b].

Of course, this power given to the Rabbis is not unqualified. First and foremost, it must function for the sake of the covenant. Their law stems from a covenant made between the people and their leaders before God. This means that rabbinic law is designed either to protect specific Scriptural laws that comprise the basic substance of the covenant [*gezerot*] or to enhance the covenant by the inclusion of new celebrations in it [*taqqanot*].<sup>56</sup>

Michael Wyschogrod likewise underlines the importance of this principle:

...the oral Torah is dependent on and is inconceivable without the written Torah. It is the written Torah that is the primary document of revelation. Only in the case of the written Torah is there an authorized text, which, when written as specified, brings into being a physical object – the Torah scroll – that is holy.<sup>57</sup>

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<sup>52</sup> David Weiss Halivni, *Peshat and Derash* (Oxford: Oxford University Press, 1991), 14.

<sup>53</sup> B. Berachot 14a.

<sup>54</sup> B. Berachot 19b.

<sup>55</sup> See b. Berachot 15a, 16b, 20b, 21a; b. Nidah 4b; b. Sukkah 44a; b. Bava Kama 114b. See also Rashi’s commentary on b. Berachot 17b and 20b.

<sup>56</sup> Novak, 172-73.

<sup>57</sup> Michael Wyschogrod, *The Body of Faith* (Northvale, N.J.: Jason Aronson, 1996), xxxii.



Thus, the view that the Sages placed their authority over that of the Written Torah should be discarded.

But what about those instances where the Rabbis devised a way around Biblical law, such as Hillel's *prosbul*, or those cases where a sage claims the authority to "uproot" a Biblical commandment? As it turns out, such cases do not involve an arbitrary assertion of power over the Torah, but instead address situations where there is a "collision" of Biblical norms, as enunciated in Deuteronomy 17:8 (*beyn din le-din*) and 2 Chronicles 19:10 (*beyn Torah le-mitzvah le-chukim ul-mishpatim*). Thus, Eliezer Berkovits shows how the Talmud deals with what was considered a Biblical law stipulating a husband's right to invalidate a divorce document (*get*), when rigid adherence to that law damaged a fellow human being:

However, if we look at it carefully, we shall find that the legal philosophy behind the principle may reveal that the word 'uprooting' is not to be taken too literally...One is not really 'uprooting' a law of the Torah but is limiting its application with the authority of the Torah itself. The more comprehensive biblical command – in this case we refer to, 'thou shalt love thy neighbor as thyself'—teaches how and when to use the specific law regarding the husband's right to invalidate a *Get*.<sup>58</sup>

This approach to the Torah resembles that of Yeshua, who used the love-commandment to shed light on Sabbath and purity laws. As Berkovits notes, such resolution of conflicts among Biblical norms does not really involve an "uprooting" of a Biblical command. "Our discussion brings to mind a saying of Resh Lakish: 'At times, the abolition of the Torah is its founding.'"<sup>59</sup>

In what sense, then, are the Rabbinic decisions, authorized by the Written Torah in Deuteronomy 17, themselves based on oral instruction given to Moses at Sinai? According to the fifteenth-century scholar Joseph Albo, only a very general connection exists between the two: "Therefore Moses was given orally certain general principles, only briefly alluded to in the Torah, by means of which the Sages may work out the newly emerging particulars in every generation."<sup>60</sup> Many modern Jewish theologians pass over even such a minimal link, and stress

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<sup>58</sup> Berkovits, 77.

<sup>59</sup> *Ibid.*, 69.

<sup>60</sup> Cited in Rabbi Dr. Moshe Zemer, *Evolving Halakhah* (Woodstock: Jewish Lights, 1999), 43.

instead the practical, concrete, and contingent quality of the Oral Torah. The Written Torah stands as an unchanging norm, but the Oral Torah is dynamic, flexible, reflecting the infinite diversity of circumstances that face the Jewish people in the course of its journey through history. According to Eliezer Berkovits (as already quoted above), this is the heart of the Oral Torah's job description.<sup>61</sup>

In fact, both Berkovits and Michael Wyschogrod stress the essential *oral* dimension of the Oral Torah. Berkovits mourns over the fact that the Oral Torah was ever consigned to written form, calling this development “the exile of the *Torah she'baal Peh* into literature.”

The main body of the Oral Torah, which was never meant to become a text, had thus been transformed into another kind of *Torah she'be'Ketav*. This result was not due to developments from the within the Oral Tradition, but – contrary to its essential nature – was forced upon it by the power of the extrinsic circumstances of an inimical reality.<sup>62</sup>

The appearance of the Oral Torah in written form could easily lead to a misunderstanding of its essential nature as the flexible, contingent application of the Written Torah to new situations.

Michael Wyschogrod goes so far as to describe the Oral Torah as the Torah's power to enter into Jewish life and shape it from the inside – so that Israel becomes “the incarnation of the Torah”:

...in spite of the writing down of the oral law, it would be a grave mistake to erase the distinction between the written and oral law. Theologically speaking, the oral law can never be written down. The oral law is that part of the law carried in the Jewish people. The law does not only remain a normative domain that hovers over the people of Israel and judges this people. It does that, too, of course. But the Torah enters the being of the people of Israel. It is absorbed into their existence and they therefore become the carriers or the incarnation of the Torah. The oral law reflects this fact.<sup>63</sup>

Such a description of the Oral Torah approximates what we as Messianic Jews might say of the Ruach HaKodesh, the aspect of the Torah that acts upon the people of God from the inside out.

This view of the Oral Torah does not see it as a solidified code, given once for all to Moses on

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<sup>61</sup> “How to face the confrontation between the text and the actual life situation, how to resolve the problems arising of this confrontation, is the task of the *Torah she'baal'Peh*, the Oral Law” (Berkovits, 1).

<sup>62</sup> *Ibid.*, 88.

<sup>63</sup> Wyschogrod, 210.

Sinai, and differing from the Written Torah only in its mode of transmission.<sup>64</sup> Instead, it sees the Oral Torah as the divinely guided process by which the Jewish people seeks to make the Written Torah a living reality, in continuity with the accumulated wisdom of generations past and in creative encounter with the challenges and opportunities of the present. It thus presumes that the covenantal promises of Sinai – both God’s promise to Israel and Israel’s promise in return – remain eternally valid, and that the God of the covenant will ever protect that covenant by guiding His people in its historical journey through the wilderness.

Thinkers who adopt such a perspective on the Oral Torah often emphasize the traditional role played by the Jewish people as a whole in the halakhic process. Thus, David Novak argues that the Jewish people have a more active part to play in the development of Oral Law (“rabbinic law”) than in the development of the Written Torah (“Scriptural law”):

Finally, there is the factor of popular consent. In the area of Scriptural law, this factor does not seem to be at work. Although it is assumed that the law of God is for the good of man, nevertheless, its authority is assumed whether one sees the good the law is intending or not... With rabbinic law, on the other hand, popular consent is indeed a major factor *ab initio*. Thus the Talmud assumes that ‘a decree (*gezerah*) cannot be decreed unless it is obvious that the majority of the community will abide by it’ (b. Avodah Zarah 36a). In other words, not only the Rabbis but the ordinary people too have more power in the area of man-made law than they do in the area of God-made law. Nevertheless, the fact that this power is not construed to be for the sake of autonomy *from* the covenant but to be more like autonomy *for* the covenant enables one to look to the Jewish people themselves as a source of revelation... In cases of doubt about what the actual law is, where there are good theoretical arguments by Rabbis on both sides of the issue, one is to ‘go out and look at what the people are doing’ [b. Berachot 45a].<sup>65</sup>

This brings us back to what we saw earlier in the book of Deuteronomy. Biblical law is rooted in divine revelation, but it must be administered, interpreted, and applied by human authorities, and those authorities gain their legitimacy through being chosen by the covenant people. Thus, once again we find that the view of the Oral Torah seen in at least one important strand of Rabbinic tradition has much in common with the basic premises inherent in the Written Torah.

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<sup>64</sup> For those who see the writing down of the Oral Torah as a necessary evil that threatens the very nature of Oral Torah, the codification of the Oral Torah is seen as posing an even greater danger: “The very idea of codification violates the essence of the *Torah she’baal’Peh*” (Berkovits, 88-89). See also Elliot Dorff in *Etz Haim*, 1474-75.

<sup>65</sup> Novak, 174-75.

Just as Scripture has more to say than we might expect in support of an ongoing halakhic process and its necessary institutional form, so we also find that Jewish tradition has a more nuanced view of the Oral Torah and its relationship to the Written Torah than is commonly represented in the Messianic Jewish movement. It remains for us to examine the Apostolic Writings, to see if they can possibly be read in a way that permits us as Messianic Jews to adopt some version of the traditional doctrine of the Oral Torah as our own.

### **Oral Torah in the Apostolic Writings**

It is generally recognized that Rabbinic Judaism after 70 C.E. owes a great deal to the Pharisaic movement of the Second Temple period. Therefore, if we are to draw any conclusions from the Apostolic Writings in regards to what will become Rabbinic tradition, we must pay close attention to the way those Writings treat the Pharisees and their teaching.

The authors of the *Besorot* (Gospels), like Josephus, note that the Pharisees possessed a distinctive halakhic tradition (*paradosis*):

For the present I wish merely to explain that the Pharisees had passed on to the people certain regulations handed down by former generations and not recorded in the Laws of Moses, for which reason they are rejected by the Sadducaean group, who hold that only those regulations should be considered valid which were written down (in Scripture), and that those which had been handed down by former generations need not be observed.<sup>66</sup>

It is important to note that neither Josephus nor the *Besorot* imply that the Pharisees saw their traditions as Mosaic in origin. Instead, they are “the tradition of the elders.”<sup>67</sup> The mature doctrine of the Oral Torah emerges much later in Jewish history. Nevertheless, the Pharisaic traditions lay the groundwork for the later Rabbinic emphasis on the oral transmission of halakhic precedent.

What is the attitude of the Apostolic Writings in regards to the Pharisaic *paradosis*? We should begin with the discussion between Yeshua and the Pharisees on the topic of hand

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<sup>66</sup> *Jewish Antiquities*, 13:297.

<sup>67</sup> Matthew 15:2. See also Galatians 1:14.

washing.<sup>68</sup> The practice of washing hands before eating became a standard practice in Rabbinic Judaism, and is treated in Mark 7 and Matthew 15 as a characteristic Pharisaic custom.<sup>69</sup> According to Mark, it was observed also outside Pharisaic circles, but most scholars consider Mark's comment that it was done by "all the Jews" as a simplified generalization for the sake of his non-Jewish readers, and not to be taken literally. Matthew 15 and Mark 7 describe how a group of Pharisees criticizes some of Yeshua's disciples because they do not wash their hands before eating. Before proceeding further, three observations are noteworthy. First, these Pharisees do not criticize Yeshua himself. Why do they criticize the students and not the teacher? Perhaps they seek to show him respect as an esteemed holy man, miracle worker, and sage, and thus they criticize his personal practice indirectly rather than directly. More likely, in this instance the author wants us to assume that Yeshua did wash his hands, but some of his followers did not. This would mean that Yeshua honors this particular tradition, but does not see it as mandatory.<sup>70</sup> Second, the criticism is leveled only at "some of his students" (Mark 7:2). This seems to imply that the offending behavior was not universal even among his followers. Third, why find fault with Yeshua in regard to a custom that was distinctively Pharisaic, and not universally accepted and practiced by his Jewish contemporaries?<sup>71</sup> The most reasonable explanation would be that Yeshua's message and way of life led these Pharisees to consider him as one of their own; only so would the failure of his students to conform to normal Pharisaic custom in this matter of hand washing evoke surprise and rebuke. One cannot imagine a Pharisee saying to a Sadducean teacher, "Why do your students not observe the tradition of the elders?"

Yeshua's response to the question demonstrates the two features of the Pharisaic tradition that

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<sup>68</sup> Matthew 15:1-20; Mark 7:1-23.

<sup>69</sup> Many scholars argue that hand washing was not even universal among Pharisees. See E. P. Sanders, *Jewish Law from Jesus to the Mishnah* (Philadelphia: Trinity, 1990), 39-40, 228-31, and Daniel J. Harrington, S.J., *The Gospel of Matthew* (Collegeville, MN: Liturgical Press, 1991), 232.

<sup>70</sup> Luke 11:38 speaks of Yeshua's not "washing" before eating. This is usually understood to refer to the washing of hands. However, the verb is *baptizo* (immerse), and the text may actually be speaking about a full body immersion. See Steve Mason, "Chief Priests, Sadducees, Pharisees and Sanhedrin in Acts," in *The Book of Acts in Its First Century Setting* (ed. Richard Baukham; Grand Rapids: Eerdmans, 1995), 137.

<sup>71</sup> This question would not arise for the Gentile reader of Mark; but it would arise for the educated first-century Jewish reader of Matthew.

he considers potentially problematic. First, Yeshua sees the Pharisaic preoccupation with the fine detail of ritual practice as at times obscuring the Torah's central concern for love and righteousness in human relationships. Thus, he both cites a case in which a man devotes property to sacred use and thereby evades or neglects his obligation to care for his parents, and also states the general principle that true defilement comes from what exits the mouth, not what enters it. This prophetic emphasis pervades Yeshua's teaching on observance of the Torah, and is summed up effectively by the verse he quotes from Hosea, "I desire mercy and not sacrifice" (meaning, for both Hosea and Yeshua, "Mercy is more important than sacrifice").<sup>72</sup> Second, Yeshua sees the Pharisaic preoccupation with "the tradition of the elders" as at times obscuring the primary authority of the biblical text. "Why do you transgress the commandment of God for the sake of your tradition?" Whatever value "the tradition of the elders" may have, it must always be ordered properly in relation to the Biblical commands. The tradition must serve those commands, rather than undermine or replace them.

These concerns attributed to Yeshua by Mark and Matthew do not necessarily constitute a frontal assault on the Pharisaic tradition as a whole. They can be construed as prophetic correctives, issued by one who shares many of the same commitments and convictions as those being admonished. The Rabbinic tradition that emerges in the post-70 period demonstrates some of the same concerns, even if it also at times succumbs to the excesses that Yeshua warned of.

The attitude of Yeshua towards Pharisaic tradition, according to the synoptic *Besorot*, is clarified greatly by Matthew 23:23-24 (Luke 11:42):

Woe to you, Pharisaic Scribes, hypocrites! For you tithe mint and dill and cummin, and have neglected the weightier matters of the Torah, justice and mercy and faithfulness; these you ought to have done, without neglecting the others. You blind guides, straining out a gnat and swallowing a camel!

Once again, we see Yeshua's prophetic emphasis on love and righteousness in human relationships ("justice and mercy and faithfulness") as the central thrust of the Torah, over against

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<sup>72</sup> Hosea 6:6; Matthew 9:13; 12:7.

fine details of ritual observance (in this case, tithing). Yet, what often goes unnoticed is his unequivocal affirmation of even these fine details (“these you ought to have done, without neglecting the others”).<sup>73</sup> In other words, Yeshua provides guidance in dealing with situations in which norms collide, as alluded to in Deuteronomy 17 and similarly addressed in later Rabbinic halakhah. He does not show contempt for detailed ritual norms, but he does subordinate them to what he considers “weightier matters of the Torah.”

Even less often noticed is the fact that the ritual norms that Yeshua upholds in this text are not found in the Written Torah, but instead derive from *Pharisaic tradition!*<sup>74</sup> The tithing of small herbs such as mint, dill, and cummin was a Pharisaic extension of the Written Torah. Yet, according to Matthew, Yeshua not only urges compliance with this practice – he treats it as *a matter of the Torah* (though of lesser weight than the injunctions to love, justice, and faithfulness). This supports our earlier inference that Yeshua’s teaching and practice encourage the Pharisees to think of him as one of their own. His criticism of the Pharisees (or, to be more precise, some of the Pharisees) is a prophetic critique offered by one whose commitments and convictions position him as an insider rather than an outsider.

This perspective is reinforced by the verses that follow:

“Woe to you, Pharisaic Scribes, hypocrites! For you purify the outside of the cup and of the plate, but inside are full of extortion and rapacity. You blind Pharisees! First purify the inside of the cup and of the plate, that the outside also may be clean.”<sup>75</sup>

According to some scholars, Yeshua’s prophetic critique here demonstrates a knowledge of inner Pharisaic disputes between the Shammaites and Hillelites over the purity status of the outside and inside of vessels, and also reveals an affinity for the Hillelite position.<sup>76</sup> Most likely the

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<sup>73</sup> A scholar who does note this affirmation of the “less weighty” commandments is David Sim, *The Gospel of Matthew and Christian Judaism* (Edinburgh: T&T Clark, 1998) 131-32.

<sup>74</sup> See W. D. Davies and Dale C. Allison, *The Gospel According to Saint Matthew, Volume 3* (Edinburgh: T&T Clark, 1997), 295.

<sup>75</sup> Matthew 23:25-26.

<sup>76</sup> Anthony J. Saldarini, *Matthew’s Christian-Jewish Community* (Chicago: University of Chicago Press, 1994), 139-40.

Shammaite party was dominant among the Pharisees of Yeshua's time, though the Hillelite party gained the upper hand in the post-70 period in which the Rabbinic movement was born.<sup>77</sup> Thus, it is possible that Yeshua's criticism was especially focused on the leading wing of the Pharisaic movement, and should not be universalized to the Pharisees as a whole (though we need not go so far as Harvey Falk in claiming that Yeshua was a Hillelite Pharisee himself).<sup>78</sup>

It thus appears that according to the *Besorot* Yeshua's attitude toward the Pharisaic tradition is more complex than an initial reading of Mark 7 and Matthew 15 might suggest. He had his concerns about some of the tendencies he saw among the Pharisees, but he did not reject their tradition in itself as much as he rejected a particular way in which their tradition was being interpreted and applied. We must be even more careful when attempting to assess the implications of Yeshua's perspective on Pharisaic tradition for our evaluation of later *Rabbinic* tradition. As already noted, Yeshua was probably responding to a Shammaite dominated movement, whereas the Hillelites shaped Rabbinic Judaism. Still more important is the fact that the Pharisaic *paradosis* represented only one stream of Jewish interpretive tradition in Yeshua's day. It was very influential, and it was in all likelihood the stream with which Yeshua most identified. However, it was not acknowledged as authoritative by the Jewish people as a whole. In keeping with the later Rabbinic valuation of the authority of universal Jewish opinion and practice, Yeshua seems to have embraced post-biblical traditions without qualification when those traditions were undisputed. Thus, he customarily attended synagogue for the Shabbat service, used reverent circumlocutions to speak of the action of God, and (according to John) portrayed his own identity in terms drawn from the water and light ceremonies of Sukkot.<sup>79</sup> Therefore, we cannot presume that Yeshua would treat the later Rabbinic tradition (which was

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<sup>77</sup> George Foot Moore, *Judaism, Volume 1* (Peabody, MA: Hendrickson, 1997; orig. pub. 1927), 81; Anthony J. Saldarini, *Pharisees, Scribes and Sadducees in Palestinian Society* (Wilmington: Michael Glazier, 1988), 205.

<sup>78</sup> Harvey Falk, *Jesus the Pharisee* (Mahwah, N.J.: Paulist, 1984).

<sup>79</sup> Luke 4:16; John 7:37-39, 8:12. On Yeshua's use of circumlocutions, see Joachim Jeremias, *New Testament Theology* (New York: Charles Scribner's Sons, 1971), 9-14.



acknowledged as authoritative by the Jewish people as a whole) in exactly the same way as he treated the Pharisaic tradition, even though the one grew out of the other.

To this point we have been looking at Yeshua's view of Pharisaic tradition. But another question must also be raised that is just as significant for our purposes: according to Yeshua, who now had authority to interpret the Torah's provisions for Israel's national life? Yeshua could have been positively disposed to the Pharisaic halakhic tradition in part or as a whole, and still have determined that the Pharisaic opposition to his mission and message meant that they had no continuing legitimacy as halakhic authorities. What does Yeshua's teaching state or imply about the ongoing halakhic institutions of Jewish life?

To answer this question, we will begin by examining Yeshua's parable of the vineyard.<sup>80</sup> In all three synoptics, this parable follows Yeshua's prophetic action of ejecting merchants from the Temple and confrontation in the Temple with the "Chief Priests, Scribes, and Elders" over the question of authority.<sup>81</sup> This latter group represents the Jerusalem Sanhedrin, the official council governing the Temple and Jerusalem under Roman oversight. As is clear from the Book of Acts, the High Priest and his Sadducean allies controlled the Sanhedrin.<sup>82</sup> There were prominent Pharisees (such as Gamaliel) on the council, but they were a minority and often a dissenting voice.<sup>83</sup> In all of the accounts of Yeshua's arrest and execution, and of the Jerusalem persecution of his followers, it is the Sanhedrin that bears responsibility for the actions.

The parable of the vineyard functions as a prophetic rebuke of the Temple authorities, who are the wicked tenants of whom Yeshua speaks.<sup>84</sup> They have persecuted the prophets, and now they

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<sup>80</sup> Mark 12:1-12; Luke 20:9-19; Matthew 21:33-46.

<sup>81</sup> Yeshua's prophetic action in the temple: Mark 11:15-19; Luke 19:45-48; Matthew 21:10-17. Confrontation with the temple authorities: Mark 11:27-33; Luke 20:1-8; Matthew 21:23-27.

<sup>82</sup> Acts 4:1-6; 5:17-18, 21, 27-28.

<sup>83</sup> On Gamaliel, see Acts 5:33-39. Pharisees again exercise a restraining influence in the Sanhedrin in Acts 23:6-10. In describing Yeshua's conflict with the Jerusalem authorities, only Matthew (among the synoptics) depicts the Sanhedrin as "Chief Priests and Pharisees" [Matthew 21:45]. His highlighting of the role of Pharisees on the council reflects his general polemic against the Pharisees. We will speak of this later.

<sup>84</sup> Yeshua's parable is an expanded and modified version of Isaiah's "Song of the Vineyard" (Isaiah 5:1-7). Davies and Allison (3:180) cite early parallels from Jewish literature showing a similar application of Isaiah 5 to the Jerusalem Temple.

are about to arrest the Messiah and send him to his death. Therefore, God – the owner of the vineyard (which symbolizes at the same time the Temple, the city of Jerusalem, the land of Israel, and their inhabitants) – will punish those tenants and give the vineyard to others. This is a prophetic announcement of the coming judgment on the Temple, the city, and the land that will be realized four decades later. In Mark and Luke, one would presume that the “others” to whom the vineyard will be given are the Romans, who will execute the divine anger by overthrowing the city. However, in Matthew’s version the “others” are understood to be a newly constituted Sanhedrin, that will give the owner of the vineyard “the fruits in their seasons.”<sup>85</sup>

We may conclude that Yeshua does pronounce judgment on the priestly Sanhedrin of his day. They have forfeited their legitimate right to govern, and their authority will be taken from them. However, this does not say anything about the Pharisees as a distinct organized movement. In fact, an adherent of Rabbinic Judaism today might agree with the parable – even in its Matthean form. Where he or she would differ from Matthew’s ecclesiastical interpreters (and probably Matthew himself) would be in proceeding to assert that the “others” to whom the vineyard is given are the Sages of the Rabbinic movement!

Matthew’s own approach to this question of legitimate authority – especially in the halakhic sphere – is complex. On the one hand, Matthew provides us with two accounts in which Yeshua gives his students the authority to “bind and loose.”<sup>86</sup> In accord with later Rabbinic usage, these terms probably refer to the authority to render halakhic decisions.<sup>87</sup> Thus, it is reasonable to conclude that Matthew sees the leaders of the Messianic community as the newly constituted Sanhedrin that replaces the wicked tenants.

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<sup>85</sup> Matthew 21:41, 43. Matthew 21:43 states that “the Kingdom of God will be taken away from you and given to an *ethnos* producing the fruits of it.” This use of *ethnos* (usually translated “nation”) has commonly been understood in a supersessionist manner as referring to a “New Israel.” However, Saldarini (*Matthew*, 59-61) has argued persuasively that “the ordinary meaning of *ethnos* that fits Matthew’s usage is of a voluntary organization or small social group... The vineyard, Israel, remains the same; subgroups within Israel are blamed or praised. The *ethnos* thus is a group of leaders, with their devoted followers, that can lead Israel well.”

<sup>86</sup> Matthew 16:19; 18:18.

<sup>87</sup> Davies and Allison, 2:787; Sim, 197; Saldarini (*Matthew*), 119.

On the other hand, we must deal with Matthew 23:1-3:

Then Yeshua said to the crowds and to his students: “The Pharisaic Scribes sit on Moses seat; so carefully observe (*poiesate kai tereite*) all that they say to you (*panta hosa ean eiposin humin*).”

Samuel Lachs is one of the few exegetes who has recognized the biblical allusion that is central to the meaning and importance of this text: “This is based on Deut. 17:10, which is the biblical basis for rabbinic authority replacing that of the priests.”<sup>88</sup> Whatever synagogue architecture was like in Yeshua’s day, the “seat of Moses” in this verse refers primarily to the correspondence between the high court of Deuteronomy 17 and the role of Moses during Israel’s time in the wilderness.<sup>89</sup> Thus, Yeshua is stating that the Pharisaic teachers occupy the position of the judges in Deuteronomy 17 – they are the legitimate heirs of Moses, and have authority to interpret and apply the Torah for their generation as Moses did in his. This way of reading Matthew 23:1-3 is confirmed by what Yeshua says about how their words are to be received: “carefully observe all that they say to you.” This is a paraphrase of Deuteronomy 17:10: “carefully observe all that they instruct you to do” (*ve-shamarta la’asot ke-chol asher yorucha*).

The importance of this text for our purpose cannot be underestimated. Yeshua here employs the same verse to justify the halakhic legitimacy of the Pharisaic teachers as is later used in Rabbinic tradition to justify the halakhic legitimacy of the Rabbis. As we have seen, such a reading of Deuteronomy 17:10 suits well its original function within the Pentateuch. Though Matthew 23 proceeds to castigate those very same Pharisees for their unworthy conduct, this fact only throws the initial verses into bolder relief. In effect, the Pharisaic teachers have authority to bind and loose – even as the students of Yeshua have authority to bind and loose. The Book of

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<sup>88</sup> Samuel Tobias Lachs, *A Rabbinic Commentary on the New Testament* (Hoboken: Ktav, 1987), 366.

<sup>89</sup> “We must remember here to see the people’s representatives and especially the elders as we find them in the exilic/postexilic variants of the story from Ex 18 in Deut 1 and Num 11 as functioning in the line of Moses, as established and imbued with his spirit. The pronouncement and interpretation (or application) of law made by them is thus a part of a comprehensively interpreted Mosaic office. *When, in Matt 23:2, the Pharisees and the Scribes sit on the seat of Moses, this goes far beyond the question of the existence of a seat of Moses in the synagogue – an actual piece of furniture – and it refers to the same phenomenon*” (Crusemann, 103; italics mine).

Matthew does not tell us how these two authorities coexist or interrelate.

This picture of Pharisaic leadership as possessing some kind of divine sanction finds further support in the Lukan writings (Luke and Acts). Luke's *Besorah* depicts the Pharisees in a more careful and moderate manner than does Matthew. Thus, many Pharisees invite Yeshua to their homes – even though he regularly uses such occasions to admonish them.<sup>90</sup> Some Pharisees warn Yeshua that Herod Antipas wants to arrest him and have him executed; thus, they evidently seek to protect him from harm.<sup>91</sup> Yeshua tells some Pharisees that “the Reign of God is among you” – and this may imply that God is especially among them *because* they are Pharisees.<sup>92</sup> Luke's account of the early Messianic community in Acts depicts the Pharisees in an even more favorable light. Gamaliel speaks in the Sanhedrin on their behalf, and succeeds in winning the release of the imprisoned *shelichim*.<sup>93</sup> Many Pharisees become members of the Messianic community in Jerusalem.<sup>94</sup> Luke's Paul proudly identifies himself as a Pharisee, and does so in the present rather than the past tense.<sup>95</sup> When Paul appears before the Sanhedrin, the Pharisaic members of the council come to his defense, even as Gamaliel earlier defended the *shelichim*.<sup>96</sup> Thus, the Pharisees are not, as in Matthew, the enemies of Yeshua, of his followers, or of the good news. Instead, Luke presents them as the group most open and sympathetic to the new movement.<sup>97</sup>

Why does Matthew treat the Pharisees more harshly than Luke does? The answer to this

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<sup>90</sup> Luke 7:36-50; 11:37-52; 14:1-24. “Jesus will criticize the Pharisees at every opportunity, but they nonetheless continue to treat him as a respected colleague” (Mason, 135).

<sup>91</sup> Luke 13:31-33.

<sup>92</sup> Luke 17:20-22. “Jesus' most compassionate statement to the Pharisees comes when they inquire of him, still the respected teacher, ‘when the kingdom of God comes’ (17:20). In responding that ‘the kingdom of God is *within you*’ (17:22), Jesus is declaring that the Pharisees have the kingdom in themselves, as the ‘older brother’ [Luke 15: 25-32] with heaven's resources at their disposal, as the righteous and healthy of society; but as we have seen time and again, they squander their potential” (mason, 142).

<sup>93</sup> Acts 5:34-40.

<sup>94</sup> Acts 15:5.

<sup>95</sup> Acts 23:6. See also Acts 26:4-8.

<sup>96</sup> Acts 23:9.

<sup>97</sup> Though he uses anachronistic and misleading terminology, Robert Brawley nonetheless accurately perceives Luke's attitude toward the Pharisees: “Luke ushers the Pharisees right up to the portals of the Christian faith... Paul himself then becomes the example of a Pharisee most faithful to the hopes of Israel” (Robert L. Brawley, *Luke-Acts and the Jews* [Atlanta: Scholars Press, 1987], 158).

question is simple yet paradoxical: Matthew is the most *polemically anti-Pharisaic* book in the Apostolic Writings because it is also the most *substantively Pharisaic* book in the Apostolic Writings. The polemic intensity derives not from distance but from proximity. David Sim has noted this aspect of Matthew:

It is now well recognized that polemical and stereotypical language such as we find in Matthew does not reflect the distance between the two parties. On the contrary, it indicates both physical and ideological proximity between the disputing groups, since its very purpose is to distance one party from the other. A general sociological rule of thumb is that the closer the relationship between dissenting groups, the more intense the conflict and the sharper the resultant polemic.<sup>98</sup> (121)

In fact, Matthew shares many features characteristic of the later Rabbinic movement and its literature. First, the leadership of his community is scribal – its legitimacy is not only charismatic but also derives from the authenticity and erudition of its teaching on the Torah.<sup>99</sup> Second, its leadership is halakhic. It claims the authority to bind and loose, offers halakhic principles for resolving apparent conflicts between *mitzvot*, and even seems to be aware of inner Pharisaic halakhic controversies.<sup>100</sup> Third, it shows religious sensibilities characteristic of the later Rabbinic movement, such as the use of circumlocutions (such as “Heaven”) in place of the word “God.” Fourth, it follows a topical method of organization (like that in the Mishnah) rather than the more dramatic narrative form found in Mark and Luke. Fifth, it shows a fondness for numerical patterning (five discourses, ten mighty deeds, seven petitions, seven parables, seven woes), gematriya (fourteen generations and the name “David”), and mnemonic devices. Sixth, in its version of the Lord’s Prayer it resembles later synagogue liturgy (“on earth as in heaven” and the *Kedushah*). Seventh, as we have already seen, Matthew cites words from Yeshua that uphold Pharisaic halakhic authority, alluding to the same verses in Deuteronomy later employed by the Rabbis to undergird their right to issue binding halakhic decrees. He also presents Yeshua as referring to distinctive Pharisaic traditions of tithing as “matters of Torah.”<sup>101</sup> All of these

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<sup>98</sup> Sim, 121.

<sup>99</sup> Matthew 13:51-52; 23:34.

<sup>100</sup> Matthew 16:19, 18:18; 9:13, 12:7, 7:12, 22:40, 15:18-20; 19:3, 9.

elements point to a close relationship between Matthew and the Pharisees. It is the closeness of this relationship that explains the bitter polemic that characterizes this book.

This perspective on Matthew has significant implications for us as 21<sup>st</sup> century Messianic Jews. Just as Matthew develops a first-century form of Messianic faith that builds upon the distinctive traditions of the Pharisaic movement, and even (though perhaps grudgingly) acknowledges their ongoing role as halakhic authorities, so we can develop a 21<sup>st</sup> century form of Messianic faith that builds upon the distinctive traditions of the Rabbinic movement that emerged out of Pharisaism, and acknowledge its ongoing role in halakhic development. However, in a new pluralistic religious world, where Jews and Christians are for the first time formally seeking to build a relationship of mutual understanding and friendship, and where Judaism permits a greater breadth of expression, we need not imitate Matthew's polemical orientation. Instead, Luke's irenic attitude suits our circumstances better.

In conclusion, it appears that many common assumptions regarding the Pharisees in the Apostolic Writings are unfounded. According to those Writings Yeshua and his followers do not reject the Pharisaic tradition or movement as a whole. In fact, the Yeshua of the *Besorot* offers a qualified endorsement of the Pharisees. Texts that reflect this fact are even found in Matthew, a book that simultaneously castigates the Pharisees and adopts many of their distinctive positions. Thus, the Apostolic Writings need not prevent us as Messianic Jews from accepting some version of the doctrine of the Oral Torah.

### **Oral Torah in Theological-Historical Perspective**

Before proceeding further, we should summarize what we have learned to this point. If the Pentateuch is to serve as the basis for the Jewish way of life, then it must be accompanied by a tradition of interpretation and application. The Pentateuch itself takes account of this fact, and establishes a central court that is authorized to develop such a tradition of interpretation and

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<sup>101</sup> Matthew 23:23.

application. This court carries on the work of Moses and functions in the ongoing life of the Jewish people in a manner analogous to the way Moses himself functioned as he governed the people in the wilderness. The central court derives its legitimacy through the consent of the covenant people that it governs.

Rabbinic tradition builds upon this biblical foundation a doctrine of Oral Torah. In its Talmudic form, this doctrine presents the Sages of Yavneh and their Rabbinic successors as the true Sanhedrin, the central court authorized to act in the spirit and power of Moses. They transmit a tradition of interpretation that fills in Biblical lacunae, reconciles apparently incompatible legal texts, and provides halakhic precedents for the future by addressing new and unforeseen situations. Their decrees are carefully distinguished from Biblical law, and subordinated to it. However, as the leaders of their generation they are at times called upon to “uproot” a Biblical law for the sake of upholding a more fundamental Biblical principle. Their authority must be (and is) confirmed by the people as a whole, and the legitimacy of any Rabbinic decree depends upon its acceptance by the community.

The Apostolic Writings present Yeshua as standing in an ambivalent relation to the Pharisaic predecessors of the Rabbinic tradition. On the one hand, he offers prophetic criticism of Pharisaic practice, finding fault with what he saw as their privileging of ritual minutiae over relational obligation, and their preoccupation with their tradition at the expense of the Biblical witness. Close reading of the relevant texts shows this criticism to be a correction of emphasis rather than a rejection of basic convictions. But it nonetheless demonstrates a tension between Yeshua and his followers and the Pharisaic movement. On the other hand, Matthew and Luke-Acts present a picture of Yeshua and his followers that implicitly and at times explicitly expresses their affinity for the Pharisees.

The true opponents of the earliest Messianic movement were the priestly rulers of the Jerusalem temple. They were the ones who had Yeshua arrested, and who persecuted the

*shelichim*. In the parable of the vineyard, Yeshua denounces them and prophecies their destruction. This was realized when Jerusalem was destroyed by the Romans in 70 C.E. While foretelling the imminent end of the Priestly Sanhedrin, Yeshua also (according to Matthew) affirmed that the Pharisaic Scribes “sit on Moses’ seat,” and thus their position as heirs of Moses is reinforced. At the same time, Yeshua exercises his unique authority as the Messiah and grants halakhic authority to his closest followers. Thus, the old Sanhedrin loses its power, to be replaced by two institutions in tension with one another.

What do we as 21<sup>st</sup> century Messianic Jews make of all this? In order to form theological judgments based on this Biblical analysis, we must go beyond mere Biblical analysis and examine the historical developments of the past two millennia. Is it really possible for us to acknowledge the authority of a tradition that has emphatically denied the Messiahship of Yeshua? Can we see this tradition as embodying “Oral Torah,” carrying on the work of Moses from one generation to the next?

The halakhic authority given to Yeshua’s followers encourages us in our efforts to develop a distinctively Messianic Jewish way of life. However, it is not sufficient to enable us to accomplish that task. This is the case for three important reasons. First, according to Matthew the halakhic authority of the Messianic community operates within the context of the halakhic authority of the Pharisaic scribes. Each is apparently incomplete without the other. Second, because the Torah-observant Jewish Yeshua movement faded away in the early centuries of the Common Era, no continuous tradition of Messianic Jewish halakhah exists. We do not know in any detail how the early Jewish Yeshua-movement kept Shabbat, *kashrut*, or the laws of family purity. However, even if we did, we would still not have the living memory of an ongoing community’s attempt through the changing circumstances of the past twenty centuries to live out the Torah and pass it on to their children. Such a living memory is essential to the Jewish people’s observance of the Torah. Third, the Jewish community as a whole decided to accept the halakhic authority of the Rabbinic movement. Given the divinely appointed role of the



community in establishing and confirming the legitimate successors to Moses, we cannot ignore Rabbinic tradition, even if we believe that we also have a crucial contribution to make to the halakhic process.

The emergence of Rabbinic Judaism is remarkable, especially in light of the Apostolic Writings. While the Jewish world as a whole did not accept Yeshua as the Messiah, it did accept as the successors to Moses those who Yeshua said “sit in Moses seat.” Other movements could have won the day – but they did not. Furthermore, the Shammaite school of Pharisaism, dominant during Yeshua’s era and probably the object of most of his ire, lost control of nascent Rabbinism to the Hillelites – who seem closer in spirit to Yeshua. While from our perspective the failure of the Jewish people to accept Yeshua as Messiah adds a tragic dimension to Jewish history, it is nonetheless true that our people could not have chosen better, given this failure, than to recognize the halakhic authority of the Rabbinic movement.<sup>102</sup> The wisdom of this choice was confirmed by the success of Rabbinic Judaism in preserving the Jewish people, the Torah, and the Jewish way of life for two millennia.

If, with Michael Wyschogrod, we understand the Oral Torah to be “that part of the law carried in the Jewish people,” then we are compelled to see the Rabbis of the Talmud and their successors as its official custodians.<sup>103</sup> In their role as halakhic authorities, interpreting and applying the Torah to ever-changing circumstances, they continued the work of Moses in Israel. These conclusions are justified by the biblical sources and by a biblically informed theological assessment of the history of the Jewish people. Therefore, as Messianic Jews we should not hesitate to say, “Blessed are You, LORD our God, King of the Universe, who has sanctified us with His commandments, and commanded us to...” before lighting Shabbat and Chanukah

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<sup>102</sup> I have argued elsewhere that our people’s culpability for its failure to accept Yeshua is mitigated by a variety of important factors. See *The Nature of Messianic Judaism* (West Hartford: Hashivenu Archives, 2000), 21-25, and “On the Nature of Messianic Judaism: Replying to My Respondents,” in *Kesher* (Summer, 2001; Issue 13), 56-61.

<sup>103</sup> Wyschogrod, 210.

candles, chanting Hallel, waving the lulav, or laying Tefillin.

It is not inconsistent for us to respect the authority of the Rabbinic tradition while rejecting its judgment concerning Yeshua. This is the case for two reasons. First, we should be open to the possibility that halakhic prohibitions of acts of faith in Yeshua might have been appropriate in certain situations in the past. For example, if a public act of faith in Yeshua necessarily includes renunciation of the Torah and the people of Israel, then halakhic disincentives to such action would be essential to the preservation of the covenant. Second, any Messianic Jewish version of the Oral Torah must recognize two legitimate halakhic authorities in tension – those recognized by the Jewish community as a whole, and those presiding over its Messianic sub-community. Our halakhic authority to bind and loose is prophetic in nature, just as Yeshua's own authority derived not from institutional office but from Messianic empowerment. When the requirements inherent in the faith of Yeshua conflict with the norms of Rabbinic tradition and the institutions of the wider Jewish community, then we must find a way to be true to Yeshua while maintaining respect for the community and its tradition. This is often an excruciatingly difficult task; but Yeshua never said that our way would be easy.

I have devoted much time and effort to argue for a conclusion that would be the starting point for other forms of Judaism. I am not here advocating any particular perspective on what the Oral Torah says to us today. Taking my conclusion as a premise, one could develop an Orthodox, Conservative, Reform, or Reconstructionist Messianic approach to Jewish tradition. This further discussion is essential, and I hope that other presenters in this Forum lead us into it. However, we cannot expect to engage in such a discussion fruitfully if we do not begin where all other modern Judaisms begin – with explicit acknowledgement of the validity of Rabbinic tradition, the Oral Torah, as providing the necessary context for all practical interpretation and application of the Written Torah to contemporary Jewish life.