

LETTERS TO THE EDITOR

What Was Revealed at Sinai?

Micah Segelman writes:

I read Rabbi Aryeh Leibowitz's excellent article (*Hakirah* 32/ Fall 2022) titled "Matan Torah: What Was Revealed to Moshe at Sinai?" with great interest. I was particularly interested in what he wrote about the statements of Rambam in *Sefer HaMitzvos, Shoresh 2*. I wanted to respond to one of his points in detail, and then share a few other brief thoughts in response to a few of his other points.

Rabbi Leibowitz (p. 229) notes that the status of *halachos* derived from *derashos* is unclear according to Rambam. He writes that although Rambam in *Sefer HaMitzvos, Shoresh 2* states that *halachos* derived from *derashos* are rabbinic, "there are strong indications that Rambam agrees that they are biblical in nature." Rabbi Leibowitz appears to consider only two possible readings of Rambam: that *halachos* derived from *derashos* are "fully" rabbinic (on par with *takanos* or *gezeiros* and the *passuk* is a mere *asmachta*), or they are "fully" biblical (and just not counted in the list of the 613 mitzvos). Ramban in his commentary on Rambam's *Sefer HaMitzvos* in fact understands Rambam that *halachos* derived from *derashos* are "fully" rabbinic, and this prompts Ramban to object to Rambam in the strongest of terms. I would point out that

if this is what Rambam intended, it is difficult to understand what he means when he says that *derashos* are "true," because this indicates that Rambam accepts that *derashos* are part of the intended meaning of the Written Torah (Ramban notes this difficulty). Other commentators (such as the *Zohar HaRakia*) interpret Rambam that *halachos* derived from *derashos* are "fully" biblical.

There is an alternative reading of Rambam, that *halachos* derived from *derashos* are not the same as how we typically understand either rabbinic or biblical *halachos*. The *Lev Sameach* commentary suggests that Rambam accepts that *derashos* are part of the intended meaning of the Torah. However, the intent of the Torah was that Chazal should derive *halachos* based on *derashos*, and that these *halachos* should not take on the same status as Torah laws. They were intended to assume a lower status.

Lev Sameach proves his point by pointing to examples of *halachos* from *derashos* which according to Rambam do not fully have the status of biblical law. These include the status of testimony of maternal as opposed to paternal relatives, *aveilus* for a wife, and the invalidation of *mayim she'uvim* in a *mikveh*. Maharitz Chajes (*Maamar Torah Shebe'al Peh*) even points to a *halachah* stated in a *gemara* that when a slave goes free based on an injury, whether or not he requires a document to set him free depends on whether the type of

injury is explicit in the Torah or derived from a *derashah* (*Kiddushin* 24b). On the other hand, there are other *halachos* derived from *derashos* which Rambam counts as biblical laws, and in some cases even counts in the list of 613 mitzvos. Rambam even goes so far as to say that over 20 mitzvos which Rambam himself counts in his list of the 613 mitzvos are from *derashos*. Examples of *halachos* which are based on *derashos* and are considered by Rambam to be biblical laws are the invalidation of the testimony of paternal relatives, that one must prioritize a *meis mitzvah* even over biblical commandments including bringing the *korban pesach*, and that *kiddushin* can be performed with *kesef*. While these appear to indicate that all *halachos* from *derashos* are biblical, they are explained by the *Lev Sameach* as exceptions to the rule. Rambam himself notes there are exceptions to the rule—that some *derashos* are actually *peirushim mekubalim*, where the content of the *halachah* was explicitly given to Moshe on Sinai. *Lev Sameach* describes another major category of exception as well—when the *halachah* is explicit in the Written Torah, but the details of the *halachah* are from *derashos*, this *halachah* is considered biblical.

Rabbi Leibowitz (p. 226) states that according to Rambam, *Halachos LeMoshe MiSinai* are considered biblical. This point is actually controversial. Rambam states that according to Rambam these are considered rabbinic, and the *Lev Sameach* actually proves this is the case from a comment of the Rambam in his

Peirush HaMishnah (*Keilim* 17:12). In fact, the *Lev Sameach* explains Rambam as saying that those *treifos* which are explicit in the Torah are treated in *halachah* with more severity than those *treifos* based on *Halachab LeMoshe MiSinai*.

Rabbi Leibowitz (p. 230, footnote 44) lists authorities who unlike Rambam maintain that all the details of mitzvos were given to Moshe at Sinai. I wanted to add that Rambam mentions this possibility as well, although he also considers the possibility that only the methods to derive the *halachos* but not the *halachos* themselves were transmitted. Finally, on p. 226, Rabbi Leibowitz says that there are no debates about *peirushim mekubalim*. Based on objections raised by the *Chavos Yair* (192), who demonstrates that we do find disputes about *peirushim mekubalim*, Maharitz Chajes qualifies this statement of Rambam. He says while there is consensus on the big picture, there can be debates about details. He also says there can be a debate whether something is actually a *peirush mekubal* or is a lower-level commandment (such as a *minhag*).

Aryeh Leibowitz responds:

I thank Rabbi Segelman for his careful reading of my article and his erudite comments. I will respond briefly to his four points.

R. Segelman's first comment addresses how the Rambam viewed laws derived via the *middos* of *derashah*. In truth, this question is subject to a debate among the Rambam's commentators. I thank Rabbi

Segelman for sharing the view of the *Lev Sameach*. It is another interesting perspective on this question.

R. Segelman's second comment notes that the *Lev Sameach* argues—against the traditional interpretation of the Rambam—that the Rambam viewed *Halachah LeMoshe MiSinai* laws as “rabbinic.” It might, however, be more precise to not say “rabbinic,” but rather “*divrei sofrim*,” which is the term used by the *Lev Sameach* (*Shoresh 2, s.v. bein emes*).

Indeed, both of R. Segelman's initial comments underscore the need to contend with the ambiguous terms utilized by the Rambam. The Rambam's term, “*divrei sofrim*,” which appears in discussions about both the laws learned from the *middos* of *derashah* and the *Halachos LeMoshe MiSinai*, is an ambiguous term, and its definition might even vary based on context. But it would seemingly be imprecise to simply call it “rabbinic.”

The terms “*deoraisa*” or “*min ha-Torah*” are also ambiguous when used regarding a law, be it one derived via the *middos* of *derashah* or a *Halachah LeMoshe MiSinai*. Certainly, the fact that such a law might be called *deoraisa* does not mean that it will necessarily be counted on the list of *taryag mitzvos*, as the Rambam himself discusses in *Shoresh 2*. Moreover, several *halachos* are not necessarily applied equally to all biblical laws. This includes: the question of how to rule in a case of doubt (*safek deoraisa le-chumra*), the prohibition to commit the law to writing, the obligation of rebuke (*tochachah*) when it is known the transgressor will not

comply, the type of ruling that is subject to the law of *zaken mamre* or the requirement to bring a *par he-elam davar shel tzibbur* for an errant ruling of the *Beis Din HaGadol*, amongst others. The fact that certain laws derived from the *middos* of *derashah* or laws called *Halachah LeMoshe MiSinai* are treated differently than other biblical laws, especially those that appear explicitly in the text of the Torah, is not proof that these former laws are not also considered “*dinei deoraisa*.”

R. Segelman's third comment adds the Ramban as another possible voice who argues that all the mitzvos, with all their details, were given at Sinai. As no source was provided, it is hard for me to respond. But I will note that the Ramban throughout his commentary on the Torah presents the view that many of the mitzvos themselves, and especially the details of the mitzvos, were not given on Har Sinai.

R. Segelman's final comment notes that the *Chavos Yair* qualified the Rambam's claim that there are no disputes regarding *peirushim mekubalim*. This is indeed correct, and I would add that it seems likely that the Rambam undoubtedly knew that at a certain point in history disputes emerged regarding *Halachah LeMoshe MiSinai* laws and *peirushim mekubalim* due to a breakdown in the transmission of the *masorah*. Perhaps, when the Rambam makes his claim that there was no breakdown in the transmission of the *masorah*, he was referring to the early stages of the transmission.

Note, *Moreh Nevuchim* 1:71 where the Rambam suggests that errors in transmission proliferated when the Oral Law was committed to writing. This, he claims, is because textual study, in place of oral instruction, is more subject to inaccuracies and leads to greater errors in transmission.

I thank R. Segelman for his important additions. They help provide for a more robust discussion of this important topic.

Missed Parshiyot

Yaakov Jaffe writes:

Rabbi Adam Ariel's detailed essay in *Hakirah* vol. 31 investigates how to make up for missed *parshiyot* due to shuls being closed, such as following the early days of the COVID pandemic. After a summary of much of the earlier discussion, Rabbi Ariel's unique insight and contribution to the discussion is his suggestion to make up for the missed COVID readings without adding any additional *aliyot*. Some congregations—including our congregation, the Maimonides Kehillah in Brookline, Mass—followed the view of Rabbi Hershel Schachter and read the missing *parshiyot* as a *hosafah/maftir aliyah* after shuls reopened in the summer of 2020. *Tosafot, Megillah* 23a (*had*) clearly rule that every *maftir* is an optional *hosafah aliyah* and not part of the core weekly obligation; we made up the missed weekly readings through this additional *aliyah*. R. Ariel is reluctant to do so and as a result searches for

other alternatives.

R. Ariel's reluctance to make up missed readings as the *maftir aliyah* is hard to understand, as he expresses concern that using these *aliyot* for the makeup outside the weekly portion might be a *berakhab levatalah*. However, virtually every *maftir* of the year is an *aliyah* which is outside the weekly obligation and it is never considered a *berakhab levatalah*. *Maftir* (a) is not needed to meet the required number of *aliyot* (as seven have already been read), and (b) is not needed to complete reading the weekly portion (as the weekly portion has already been finished). Why would it not be a *berakhab levatalah* for the *maftir* to reread three verses from *Parshat Ki Teitzei* but be a *berakhab levatalah* for the *maftir* to read *Parshat Behar* instead? R. Ariel is concerned that perhaps a *maftir* cannot be added from non-consecutive verses or from other books of the Torah, but the *maftir aliyah* on every Yom Tov of the year does so, and we find no problem to take a second Torah and read verses that are optional and post-Talmudic in origin (*Tosafot, Megillah* 30b).

If the missed *parshiyot* cannot be made up on Shabbat, when should they be made up? Rabbi Ariel suggests adding to Yom Tov readings, although this solution creates more problems than it solves. The objection to adding *hosafot* from other books of the Torah is a novelty, but the objection to adding to Yom Tov readings is firmly established. *Poskim* permit additions to the weekly *Shabbat* reading to make up

lost *parshiot*, but it is clear that halakhah forbids adding to *holiday* readings beyond what relates to the day, as is evidenced by the Torah reading on Shabbat, Purim, and Rosh Hodesh (See end of *Tosafot, Megillah* 23a, *s.v. einavn* = SA OH 283; *Tosafot* and Rashba *Megillah* 21b, *s.v. ein*]; Rashba, *Megillah* 22a, *s.v. Likru*. See also *Ran, Megillah* 11a (Rif pages *Kol Ha-Bekhor*). Indeed, the reading of Hōl Ha-Moed Sukkot involves significant repetition of verses to avoid reading beyond the topic of the day (*Tosafot, Megillah* 22a, *s.v. Shan*). R. Ariel cites the reading of Simhat Torah as a proof for this theory, although many have given alternative accounts for the practice to explain how it relates to the day. For example, the Rav זצ"ל (in “*Kriyat HaTorah Be-Moadim*”) connects it to the Mitzvah of *Birkat Ha-Melekh* on Shemini Atzeret. Other commentators connect it to the custom of *hakbel* on Sukkot. We should not add to Yom Tov readings outside the themes of the day, beyond what we have a tradition to add. One should not add chapters of Torah contact not related to the *hag* on the *hag*.

R. Ariel rejects making up the *parshiot* on weekdays, which would be permitted under the view of Rebbi Meir in *Megillah* 31b. Rabbi Ariel understands the view of Rebbi Yehudah, who disagrees, as *requiring* us to read all the *parshiot* on Shabbat, in what appears to be the view of the *Arukh Ha-Shulhan* 135:6. Yet, many *Aharonim* understand Rebbi Yehudah as ruling that the *practice* is

to read all the *parshiot* on Shabbat, although there is no absolute requirement to do so. *Dagul Mervava* says the only reason not to make up readings on weekdays is that people are in a rush to go to work; he does not say that the mitzvah to read the entire Torah each year must take place only on Shabbat. Others say the reason is the low attendance on weekdays. Under this view, though there is a *custom* not to use weekday readings towards the annual Torah reading requirement, there is no absolute exclusion from doing so, and in a time of duress, this might be the best solution.

R. Ariel’s suggestion that the *parshiot* can be made up on fast days is equally hard to justify. Why are fast days different from other weekdays? *Megillah* 22b notes that one should not extend the Torah reading on fast days. If one objects to making up Torah readings on weekdays then fasts days should be no different.

R. Ariel’s article was valuable and the bulk of the presentation was a significant addition to the topic. The suggested alternatives to make up for missed *aliyot* on Yom Tov or fast days, however, seem to be more problematic than making up for them on Shabbat.

Adam Ariel Responds:

Thank you for taking the time to read my essay. I must introduce this reply by emphasizing the reluctance to add *aliyot* was not my own. My discussion of how to make up the

readings without extra *aliyot* was explicitly not presented as my preferred practice and was included only to round out the discussion according to those who fear adding an *aliyah*. Indeed, I not only argued that the extra *aliyah* is permitted, I preferred it to be at the beginning of the reading in its proper place, and not relegated to a secondary *maftir aliyah*. However, while I am partial to some of the arguments R. Jaffe presented, I will respond here in a traditional argumentative spirit to better elucidate the other position, as I understand it.

R. Jaffe's main proof for the permissibility to add extra new verses for a *maftir aliyah* is from Yom Tov. (He states "every Yom Tov" but this is not precise, as the *maftir* reading on Yom Kippur is mentioned in *Tosefta*, as well as, depending on the version, Shmini Atzeret. See *Magen Avraham* 137. But I will certainly concede some days of Yom Tov.) Yet, in his next paragraph, he argues that additions on Yom Tov are not allowed. It seems he holds content that relates to the holidays may be added, though I am not sure how he then uses that to prove one can read from any section on any Shabbat. (I note it was a very common practice to read various additional sections, besides Deuteronomy 33-34, on Simhat Torah night.) Let us accept that every individual *aliyah* needs to contain holiday themed material (a non-trivial claim, since there does not appear to be any obvious holiday material in, say, the first *aliyah* of the fifth day of Pesach).

Under the scenario I suggested,

every *aliyah* contains baseline holiday material in addition to [a very large amount of] "extraneous" material (e.g., the last *aliyah* contains some content about Sukkot as well as Leviticus 24-27). I do not understand how anyone would construe such an *aliyah* as technically invalid. The sources he cited discuss establishing a holiday reading ab initio with no relevant content; I do not believe any of them would contend that if a reader did "run a stop sign" and read some extra verses the blessings would be declared in vain. We obviously do not recommend doing so under normal circumstances but here there is a bona fide halakhic need since there was no other option. Repeating verses does not solve anything here. By way of analogy, on the last day of Pesach we omit 28:16-18 because we can, but on the first day of Pesach we read Numbers 28:24-25, even though we clearly would not have chosen to, because we need to.

By way of another analogy, we repeat the verses for *maftir* on an ordinary Shabbat instead of reading on precisely because those same sources he cited indicate it is better to stick with the scheduled material, just like repetition on the intermediate days of Sukkot. It is not that reading into the next section is literally impossible, since we see (*Megilla* 30a) Abaye was willing to read past the end of *Tetzaveh* in order to deal with a local halakhic issue. Accordingly, adding an unscheduled unrelated Shabbat *maftir* is not a better solution than extending a Yom Tov *aliyah*.

Regarding weekdays, I am not sure what he hopes to gain. I accept that such understandings of Rabbi Yehuda exist but even so, they would all agree that it is better to read it on Shabbat. Had there been a weekday reading from Leviticus perhaps, but surely someone who fears adding *aliyot* on Shabbat will not feel better adding them on weekdays on the chance the explanations he brought are correct.

Regarding fast days, I mentioned in the article the Talmudic description of fast days as ones of **כינופיה** “a gathering” which may alleviate the concerns mentioned about regular weekdays, e.g., being insufficiently crowded at the synagogue. Surely, we would ordinarily want fast days to be full of repentance and rebuke, instead of random Torah readings, but if that is the only way to fulfill our obligations then so be it. The readings on fast days, like weekdays, are usually kept short; it is part of the general question of a burden on the congregation’s time. We are assuming either that they have waived their honor or that the need to hear the lost sections overrides that.

I personally agree that reading on Shabbat is the better choice (especially since it came first) but for those who did not want to add *aliyot*, reading on Yom Tov it was the only other option and I still see no reason why not to do so.

Checking for Bugs

Shlomie Dickman writes:

I enjoyed Rabbi Adams’ article in *Hakirah*, vol. 22 about bugs. I would like to comment on a few points that troubled me.

1. On p. 116, he compares bugs to *esrog*. Just as is the case of *esrog* the blemish must be easily visible, so too bugs must be easily visible. The *poskim* by *esrog* (e.g., Rabbi Akiva Eiger in a *teshuvah*) explain that the reason for the rule is that by *esrog* there is a *din* of *haddar*, which is in the eyes of the beholder. Other halachos, such as *chaser*, which are not connected to beauty, do require close examination. Of course, bugs have nothing to do with beauty, so his application is incorrect.

I assume the same could be said for a comparison the author makes to a *Sefer Torah*. The purpose of a Torah is to read from it. So long as the letters are seen from a normal distance as whole letters, careful examination for a break is unnecessary. (The same could be said for *tefillin*, even though its function is not for reading.) Again, no connection to bugs.

2. On p. 117, he quotes a Bach that he claims is consistent with his view. Here is a full quote of the Bach without skipping vital parts that change the meaning. I am adding brackets to highlight the skipped words:

וכ"כ בתשובת הרא"ש כלל כ' דין ג'
לאסור הקמה והמלח שנמצא בהם
תולעים שקורין מילווין משום
דחיישינן שמא פירשו וחזרו ונ"ל
דדוקא כשהמילווין גדלו קצת שרואין
אותן רוחשין בכד ושורצין אנה ואנה
אבל במילווין קטנים שלא נראים אלא
ע"י בדיקה בחום השמש ובחום האש
[ואין ספק שלא פירשו] לא חיישינן
[לדילמא פירשו וחזרו כיון שאין הדבר
מצוי שיהיו נפרשין כלל]

Bach is quite clear that even small bugs are *assur* if they fulfill all the conditions of bugs, meaning they left their place of birth. Not only is the Bach not a proof to Rabbi Adams, he is a proof for the opposite view.

3. The author ignores the *sugya* of *avruma* in *Sukkah* 18, where Rashi seems to state clearly against the whole theory of this article. I assume he knows of the *sugya* and feels that it is not a proof against his theory. I would like to understand his reasoning.

There is much to debate regarding other points in the article. For example, the theory he quotes in FN 76 is absurd. Can we compare the situation to earlier times when they were presumably unaware of the small bugs and therefore were *misasek*?¹ Now, however, we are aware of the bugs. (See Endnote 1 provided by Shlomie Dickman for some *poskim* who discuss *misasek* regarding *tola'im*)

Steven Adams Responds:

I Thank Rabbi Dickman, for reading my article, "The Scientific Revolution and Modern *Bedikat Tola'im* Trends," *Hakirab*, vol. 22, (2017), pp. 93–124. I would like to respond to the points he made.

1. Dickman makes sound arguments to differentiate the laws of *tola'im* from those of *esrog* and *Sefer Torah/tefillin*. The latter were brought as supportive but not definitive evidence. However, even the disqualifying *כל שהוא חסר* has limitations: Certainly, a microscope is unnecessary to ascertain the wholesomeness of an *esrog*; even a magnifying glass is arguably not needed by Chazal's standards.

2. Sirkis is cited for his interpretation that Rosh referred only to large clearly visible insects and not the tiny *Acarus siro* (article, p. 117). Indeed, Sirkis himself is not in agreement with the paper's thesis, as I noted on p. 118, fn. 66: "Bach himself surely disagrees with my suggested halachic conclusion, as he does not suggest that the miniscule size and indiscernibility of the mites is sufficient reason to allow them to be eaten." Sirkis's words were abridged in my article for simplicity. I apologize if the manner in which Sirkis is cited in the main text is misleading.

3. I do not know to which *Rashi* in *Sukkah* 18 R. Dickman is referring.

Fn. 76 (p. 123) contains several possible explanations as to why the community became more stringent in performing careful inspections for insects in recent times. Which one is absurd and why? One more explanation which was not included in the article is the following: As Kabbalistic-spiritual thought became more influential in mainstream Judaism over recent centuries (slowly beginning in the 12th century), fear of *"timum hallev"* טמטום הלב from eating forbidden foods clouded rational halachic thinking in how many rabbis viewed the status of minute insects in food. The concept of טמטום הלב from forbidden foods certainly exists in Chazal (e.g., *Yoma* 39a), however, merely as *aggadah* (אין מביאים ראיה) (מאגדה).

Endnote

1. Following are some *poskim* who discuss the topic of *misasek* regarding *tola'im*.

בספר אמרי בינה (בב"ח סוף ס"ד) כתב בשם גאון אחד ללמד זכות שאפילו בלי ביטול ליכא איסור תורה, כיון שאינו מכויין לאכול השרץ רק ההיתר, ולגבי השרץ הוא כמתעסק, וכיון דליכא שום הנאה מאכילת השרץ, לא דמי להא דמתעסק בחלבים חייב, ששם נהנה, וכן כתב בשו"ת צפנת פענח (מהדורת ורשה ח"א סי' לג). גם בחידושי האדר"ת (תשובה מאהבה, הג"ה לאות קפד) ושו"ת הריב"ד (יו"ד ס"ו) כתבו ללמד זכות משום שאינו אלא מתעסק ופסיק רישיה דלא ניחא

ליה (עיי"ש). וכן כתב בתשובות והנהגות (ח"ד סי' קצ), ובלבד שלא עלה על דעתו שיש לחוש לתולעים, דאי לאו הכי אינו בכלל מתעסק כלל.

באמרי בינה עצמו חולק על סברת הגאון הנ"ל, וס"ל שכל שאכל האיסור הרי זה בכלל הנאה שחייב עליו וליכא פטור מתעסק.

בשו"ת שיבת ציון (סי' כה ד"ה וליישב) ג"כ מצדד להקל כיון שהוא פגום ואינו נהנה מהשרץ ואינו מכויין אליו, אבל כתב שכל ששכח תולעים בפירות ולא בדק להסירם, הוי כמכויין על האיסור. גם בהתעוררות תשובה (יו"ד סי' לו ד"ה ומהגאון) כתב להקל מטעם מתעסק בשם הגר"ש סופר אב"ד קראקא, אבל כתב ש"ל כן רק באינו ודאי שאוכל אותם, כגון שהוא מיעוט המצוי, אבל לא במוחזק שיש שם תולעים.

ובשו"ת ארץ צבי (ח"א סי' פח) האריך לבאר וליישב דברי השיבת ציון, ומ"מ כתב שחייב לבדוק עד שידו מגעת משום מצות עשה של "והבדלתם", עיי"ש, ושוב כתב (ח"ב סי' מא) דכיון שיש מצות עשה לבדוק, אולי אין שייך מתעסק לגבי הלאוין. ובשו"ת אמרי יושר (ח"ב סי' ה אות ב) חולק על הבנין ציון משום שבשו"ת רע"א כתב שמתעסק הוא פטור רק מקרבן, אבל עדיין יש איסור תורה [ובהגהות אחיזת העקב על שו"ת רע"א (ס"ח אות ד) כתב שבאמת רע"א כתב דבריו שם ליישב למה צריכים לבדוק פירות מתולעים]. ובשו"ת מנחת שלמה (ח"א סי' ו ד"ה ועיין) סובר, שהאוכל פרי עם תולעת, הוי כמכויין לאכול כל מה שאוכל, ולא נחשב למתעסק. [וראה מקואות פ"ב מ"ו ודו"ק], וכן כתבו בשו"ת להורות נתן (ח' יב סי' סא אות ט) ובספר מנחת אשר (ויקרא עמ' צט ד"ה). [אבל במנחת שלמה במקום אחר (תנינא סוף סי' סג) מצדד שיש כאן היתר מתעסק].