

דברי סופרים
Divrei Soferim
The Transmission of *Torah Shebe'al Peh*



Michael Scharf
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Yeshiva University Press



MAGGID

Rabbi Hershel Schachter

לברי

DIVREI SOFERIM

סופרים

THE TRANSMISSION OF TORAH SHEBE'AL PEH

The RIETS Hashkafah Series

Rabbi Daniel Z. Feldman, Series Editor

Rabbi Isaac Rice, Co-Editor

The Michael Scharf Publication Trust of Yeshiva University Press
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עמודי תורה

לזכר נשמת

הרב חיים בן רב אברהם ז"ל

By his loving wife and family

Mrs. Ann Arbesfeld

Dr. Benjamin and Sara Arbesfeld and family

Mr. Eli and Michelle Salig and family

Dr. David Arbesfeld



לכבוד מרן ומאורו של ישראל

הגאון האדיר הרב צבי שכטר שליט"א

"בְּצֵלוֹ חֲמַדְתִּי וַיִּשְׁבַּתִּי וּפְרִיּוֹ מִתּוֹק לְחֶפְזִי" (שיר השירים ב, ג)

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הר"ר אברהם יוסף געלב ומשפחתו

Tommy & Perrie Gelb

לזכר נשמת בנינו, אחינו, ודודנו היקר משה יהודה ז"ל בן מאיר אליהו, ועם המון תודה לרב שכטר שליט"א על כל התורה ודרך ארץ שהוא מפיץ ומרבה בכלל ישראל.

משפחת פרנקל

Mark & Judy Frankel



This is dedicated in honor of Rav Hershel Schachter *shlit"a* and his whole family. It is but a small token of gratitude in appreciation of all of the great Torah knowledge, advice, support, and kindness that Rav Schachter has bestowed upon me in the past twenty-five years. I know as well that the greatest thanks that Rav Schachter will most appreciate is that I continue to learn his Torah and proudly teach it to my children and community as is the message of this *sefer*.

B'birkas hatorah,

David, Aaron, Isaac, Lauren & Eric Siskind



L'Ilui Nishmas HaRav Zecharia Senter zt"l.

In acknowledgment of all that Rav Schachter shlit"a does for the Kashrus world and for all of Klal Yisroel.

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In Honor of

Rabbi Hershel Schachter

Halachic Consultant for the OU Kosher

His extraordinary Torah scholarship, integrity, and humility
have inspired generations of *talmidim*.

As the one of the primary *talmidim* of The Rav *zt"l*, Rabbi Joseph
B. Soloveichick, Rabbi Schachter has played a pivotal role in
perpetuating our *mesorah*.

As this *sefer*, *Divrei Soferim*, presents, the traditions of our forebears
are the chain that link us back to Sinai, and Rabbi Schachter has
connected so many of us to the glorious tradition of our Rabbis.

OU Kosher is eternally grateful for Rabbi Schachter's leadership and
halachic direction over his decades of service and wishes a hearty
Mazel Tov on the occasion of this important publication.

Rabbi Menachem Genack
CEO OU Kosher

Rabbi Moshe Elefant
COO OU Kosher

תומכי תורה

לכבוד מורנו ורבנו שליט"א
מחכמי המסורה של דורנו

כשלושים שנה זכינו לשמוע שיעוריו הנפלאים
המסורים בשפה ברורה ובנעימה
ומתוקים מדבש ונופת צופים.

יברכהו ויחזקהו השי"ת ויזכהו להמשיך להרביץ תורה ברבים
מתוך נחת והרחבה לאורך ימים ושנים טובות.

תלמידי בית המדרש ד'פלטבוש

Talmidei Flatbush Bais Medrash

In Rebbe's *shiurim* the *Torah Shebe'al Peh* transforms from mere words on a page into a rich and living tradition, elevating passive bystanders to active participants in the link of the *Mesorah*. It is our privilege and responsibility to pass on that unique torch to future generations.

Thank you Rebbe for all that you do for your *talmidim*.

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Editors' Preface

It is a profound privilege for our yeshivah, the Rabbi Isaac Elchanan Theological Seminary of Yeshiva University, to bring to publication this volume, which presents the teachings of our revered rebbe, Rav Hershel Schachter, *shlit"a*, on a topic central to his life's vision and mission.

Rav Schachter is, for tens of thousands of Jews worldwide, the living link in the transmission of the *Torah SheBe'al Peh*, the Oral Torah. His teachings, writings, rulings, and personal model together manifest the faithful and flourishing continuation of the Torah's tradition in this generation.

Fundamentally, Rav Schachter's capacity to fill this role rests upon his mastery of the corpus of Torah. As crucially, it draws upon his complete commitment to the ethos of the rabbinic tradition, and his constant awareness that the Master of the Universe bestowed His wisdom on the Jewish people, and tasked them with the active guardianship of that treasure and with partnership in its development.

These components are interdependent; this partnership can only be with those both impeccably fluent in the pathways of Torah and unfailingly loyal to its protocols and parameters. Rav Schachter's extraordinary *hasmadah* and erudition is inseparable from his philosophical identification with the principles of the Oral Torah's transmission. Likewise, his lectures constantly embed these principles among the jewels of the

myriad details and overviews he presents from the vast sea of the Talmud and its commentaries.

It is thus a natural progression that Rav Schachter is able to serve as the emissary of the *Ribbono shel Olam* in applying the continuation, in practical terms, of the *Torah SheBe'al Peh* to the global community of Jews seeking to follow in its path. Whether he is assuring the spiritual health of worldwide Jewish households and institutions as the *posek* of OU Kosher; providing relief to the suffering as the fearless champion of *agunos*; guiding an anxious and grieving nation through the religious and moral challenges of the COVID pandemic; standing with, and in front of, citizens and supporters of the modern State of Israel through all its peaks and valleys; serving as the rabbi behind the rabbis of America and beyond; teaching hundreds of students within the classrooms of Yeshiva University and its rabbinical seminary; or patiently answering the questions of a young public school student or NCSY Kollel participant first finding the beauty of learning, the tradition of the living Torah lives within our great rebbe.

It is awe inspiring that one individual is capable of acting, so magnificently, in all of these roles; it is astounding that this individual is ready and willing to put in the hours and the years to selflessly do so without pause over so many decades, devoting himself with humility and unbounded *chesed* past the age of *gevuros*.

This volume represents the distillation of the principles so dear to Rav Schachter's personal ethic that they have been the most frequent themes of his voluminous teachings, often as the focus and always as the foundation.

We are grateful to the Orthodox Union, which provided the original venue for Rav Schachter to teach these principles collectively in the format of a lecture series. Yeshiva University, where Rav Schachter has been a pillar and a beacon since his high school years, has served as the home for his teachings now for close to six decades, and we owe deep gratitude to its leadership. President Rabbi Dr. Ari Berman, and RIETS dean Rabbi Menachem Penner, following Rabbi Yonah Reiss, who continues in the role of Director of RIETS Press, have been crucial sources of support in all ways and to RIETS Press in particular.

Editors' Preface

Within RIETS Press and the efforts toward this project, we thank Rabbi Ari Rockoff for his countless contributions, and associate editor Rabbi Josh Flug for his many helpful comments. Dr. Alan Weissman, a valued student of Rav Schachter who has brought many volumes of his teachings to print with great success, went through the entire manuscript and made many invaluable edits.

We are grateful to publisher Matthew Miller and the entire team at Koren/Maggid for their wonderful work, including Rabbi Reuven Ziegler, Ita Olesker, Tani Bayer, Tomi Mager, Debbie Ismailoff, and Esther Shafier.

All of us are indebted to Rav Schachter's family, beginning with his renowned Rebbetzin Shoshanah, for enabling *Klal Yisrael* to be the beneficiary of Rav Schachter's leadership. Rabbi Shay Schachter made several helpful contributions along the long history of this work, and all of Rav Schachter's children, children-in-law, grandchildren, and now great-grandchildren are a contributing testament to his legacy and the totality of his service to the Jewish people.

We pray that the *Ribbono shel Olam* will continue to bestow upon Rav Schachter many years of health and strength to continue his holy work, and that this volume will serve as a fitting representation of the values and the tradition that he has given so much to embody.

Rabbi Daniel Z. Feldman
Rabbi Isaac Rice
Kislev, 5784
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Introduction

The *Chumash* several times refers to *torosai*, my Torahs, in the plural: the *Torah Shebikhsav* (the Written Torah) and the *Torah Shebe'al Peh* (the Oral Torah). In fact, the Gemara¹ teaches that the essence of the *bris* (covenant) between *Hashem* and the Jewish people is because of the *Torah Shebe'al Peh*. The significance of the oral component of the Torah is highlighted throughout the halakhic literature.

For example, when one seeks to nullify a *neder*, as is done on *erev Rosh HaShanah*, he stands before a *beis din*, which performs *hataras nedarim* (annulment of vows). The *beis din* then declares, “*mutar lakh* – It is permitted to you,” three times, and the *neder* is annulled.² The institution of *hataras nedarim* is not mentioned in the *Torah Shebikhsav*; it is only known through the *Torah Shebe'al Peh*. As the Mishnah³ states, “The laws regarding annulment of vows hover in the air and have no [scriptural] support.” That is, *hataras nedarim* is purely an oral tradition, with no way to use the *middos shehaTorah nidreshes bahen* (exegetical principles through which the Torah is expounded) to have this *din* read “between the lines” of the *Torah Shebikhsav*. As a result, the

1. *Gittin* 6ob.

2. *YD* 228:3.

3. *Chagigah* 10a.

Kara'im (Karaites) never practiced *hataras nedarim*, only *hafaras nedarim* (revoking vows), since they only followed “*Mikra*” and their own interpretations of the Tanakh, not the traditions of the *Torah Shebe'al Peh*.

The *Tzedukim* (Sadducees) and *Beisusim* (Boethusians), groups which repudiated the *Torah Shebe'al Peh* and rabbinic expositions of *pesukim*, were the forerunners of the *Kara'im*, and there were many areas of conflict between them and the *Perushim* (Pharisees) during the period of the Second *Beis HaMikdash*. The *Beitusim* held that the proper time for the offering of the *omer*, described as “*mimacharas haShabbos* – on the morrow of the Rest Day,”⁴ was literally “the morrow of the Shabbos,” or Sunday.

The Gemara⁵ tells of a debate between R. Yochanan ben Zakai and the *Beitusim*, who contended, “Moshe our Teacher loved the Jews, and knowing that Shavuot is only one day, arose and fixed it [and the offering of the *omer* seven weeks earlier] to always fall after the Shabbos, so that the Jewish people would enjoy two days [of leisure].” There were many years that the *Beitusim* were in control of the *Beis HaMikdash*, offering the *omer* and *korbanos* of Shavuot in this improper fashion. In fact, *Megillas Ta'anis* records that a minor festival was enacted once the *Chakhamim* defeated the *Beitusi* challenge and the proper date of Shavuot was reaffirmed.

The Mishnah⁶ describes that when the *Chakhamim* were observing this aspect of halakhah that is known only through the *Torah Shebe'al Peh*, the harvesting of the *omer* on a night other than Motza'ei Shabbos, they would make a large convocation. The Mishnah poignantly details the interplay between the reaper and the people assembled at the time of the harvesting of the *omer*, in which every step of the process was reviewed three times in a question-and-answer fashion in order to emphasize the validity of the oral tradition.

The Vilna Gaon⁷ explains that we recite “*mutar lakh*” three times at *hataras nedarim* for a similar reason to the three-fold repetition at the

4. *Vayikra* 23:15.

5. *Menachos* 65a–b.

6. *Ibid.* 65a. [See *Ma'asas Kapai*, I, p. 138 – ed.]

7. *Biur HaGr"a* to YD 228:3; see also Mordekhai, *Yoma*, 726.

harvesting of the *omer*. We seek to highlight the fact that we **do** approve of the traditions of the *Torah Shebe'al Peh*.

There was a similar public assembly at the *Simchas Beis HaShoevah*, so prominently celebrated in the *Bayis Sheini* period, because the *Beis HaMikdash avodah* of *nisuch hamayim* was also known only through the *Torah Shebe'al Peh*⁸ and was denied by the *Tzedukim*.⁹ Accordingly, the great celebration was an enthusiastic endorsement of the *Torah Shebe'al Peh*.¹⁰ In fact, it was at this celebration that Hillel made the enigmatic statement “*Im ani kan, hakol kan* – If I am here, everyone is here.”¹¹ Hillel said this not to praise himself, but because he represented the rabbinic tradition; and if that tradition is honored at the *Simchas Beis HaShoevah*, its purpose is fulfilled.

The Rambam often made comments in his writings that emphasized the importance of the *Torah Shebe'al Peh* through halakhic practice. In his *Mishneh Torah*¹² he rules that it is permissible to slaughter a pregnant animal, without explaining why this needs to be taught. It has been suggested¹³ that he wrote this in refutation of the Karaite view, which considered this to be a violation of “*oso v'es bno*,” slaughtering a mother and her child on the same day.¹⁴

The Rambam¹⁵ records a related practice with respect to *kiddushin*. Although *kiddushin* can be accomplished with the use of a document, the Rambam writes that “*kvar nahagu kol Yisrael* – all the Jews already have the custom” to use *kessef* or its equivalent. In the previous halakhah, the Rambam¹⁶ labeled *kiddushei kessef* as *divrei Soferim*,

8. Yerushalmi, *Rosh HaShanah* 1:3.

9. *Sukkah* 4:9.

10. In fact, the Mishnah indicates that a *Tzeduki* who denied the tradition was pelted (*urgamuhu*) with *esrogim*, and the *darshanim* explain that the *esrog* represents the fact that they debated (another understanding of *urgamuhu*) with the *Tzedukim* regarding the interpretation of *pri etz hadar*.

11. *Sukkah* 53a.

12. *Hilkhos Shechitah* 12:10.

13. See *Ginas Egoz*, p. 56, quoting Professor Simcha Assaf. [See also *Resp. Beis Yitzchak*, EH 57:7; the R. Kappach edition of the Rambam; and the *Ohr Same'ach* – ed.]

14. *Vayikra* 22:28.

15. *Hilkhos Ishus* 3:21.

16. *Ibid.*, 3:20.

“words of the Scribes,” which connotes a *din* that is not explicit in the *Torah Shebikhsav*, but rather requires the *Torah Shebe'al Peh* for its derivation. For this reason, the *Kara'im* did not accept *kiddushei kesef*, and it would seem that the Rambam teaches that we **specifically** use this method of *kiddushin* to demonstrate that Orthodox Jews **do** subscribe to the *Torah Shebe'al Peh*.

The Rambam¹⁷ uses the same expression regarding the instrument to be used for a *bris milah*. Although any metal instrument, including scissors, could be used, the Rambam writes, “All the Jews have the custom to use a knife.” The *Kara'im* approved only the use of scissors when performing a *bris milah*, because of the description “*aseh lecha charvos tzurim*¹⁸ – Make sharp **knives** for yourself [and circumcise the *Bnei Yisrael* again],” implying that a “pair of knives” must be used.

A further example of anti-Karaite practice is the insistence of partaking of hot food, such as *cholent*, on Shabbos. The *Ba'al HaMa'or*¹⁹ writes that one who does not partake of “*chamin*” on Shabbos needs to be investigated to determine if he is a *min* (heretic) who denies *Torah Shebe'al Peh*. By contrast, one who does delight in the Shabbos by preparing warm food is a *ma'amin* (believer) who will merit the End of Days. This is, of course, in opposition to the well-known teaching of the *Kara'im* on the *pasuk*²⁰ “*lo seva'aru esh b'khol moshvoseikhem b'iom haShabbos* – You shall not kindle fire in any of your dwellings on the Shabbos day,” which they misinterpreted to refer to **all** use of fire – that one may not leave on any light or fire, thus requiring the eating of only cold food on Shabbos.

This discussion is relevant to *hadlakas neiros* before Shabbos as well. One opinion brought in *Tosafos*²¹ holds that no *berakhah* is recited on *hadlakas neiros*, just as no *berakhah* is recited for other preparations done in honor of the Shabbos, like vacuuming the rug, setting the table, or taking a shower. We, of course, do recite a *berakhah*, following the

17. *Hilkhos Milah* 2:1.

18. *Yehoshua* 5:2.

19. *Shabbos* 16b in *dapei haRif*; Rema OC 257:8.

20. *Shemos* 35:3.

21. *Shabbos* 25b, s.v. *chovah*.

other opinion in *Tosafos*, brought from the *Seder* of Rav Amram Gaon. Historians claim that this *berakhah* may actually have been introduced in the days of the *Geonim* as part of their battle with the *Kara'im*, who forbade such lighting. The *berakhah* was enacted to show that not only is it not prohibited to have kindled lights on the Shabbos, it is a **mitzvah**, worthy of a *berakhah*, to kindle these lights before the Shabbos. In fact, R. Ovadia Yosef²² cites a custom to recite a *berakhah* only prior to *hadlakas neiros* on *erev Shabbos*, not *erev Yom Tov*; this may stem from the fact that there was never a dispute with the *Kara'im* regarding Yom Tov lights.

We have an old *minhag* to recite *Kol Nidrei* on the night of Yom Kippur, which is really a public *hataras nedarim*, annulling the *nedarim* we had taken during the course of the year since the last Yom Kippur. [Rabbenu Tam, quoted in Ran,²³ emended the text to serve as a declaration in advance, that any future *nedarim* should be null and void.] The standard explanation of this *minhag* is based on the following comparison of the *Zohar*. Just as in the case of *hataras nedarim*, the *beis din* serves to uproot the *neder* retroactively, making it into something that was never binding at all, so too, with sincere *teshuvah*, the *aveiros* will be uprooted from their source, as if they never occurred.

However, there may be an additional reason that relates to the centrality of *Torah Shebe'al Peh*. Historians record that at the height of the Jewish community in Alexandria, Egypt, Orthodox Jews had the practice, in opposition to the many *Kara'im* there, to hold an annual parade on Yom Kippur in support of *Torah Shebe'al Peh*. Because we seek to emphasize our commitment to *Torah Shebe'al Peh* on Yom Kippur, we begin the day with *hataras nedarim*, which is **pure** *Torah Shebe'al Peh*, not rooted at all in the *Torah Shebikhsav*.

We can understand the connection between Yom Kippur and *Torah Shebe'al Peh* in the following way. The Gemara²⁴ tells us, “*Yisrael* had no days as festive as the fifteenth of *Av* and Yom Kippur.... *Yom Kippur* [is considered an especially festive day] because... it was the day on

22. *Yechaveh Da'as* 1:27.

23. *Nedarim* 23b.

24. *Ta'anis* 30b.

which the second *luchos* were given.” The Beis HaLevi²⁵ demonstrates based on many sources in *Chazal* that it was *Hashem*’s original plan to have the entire Torah miraculously written on the first *luchos*. According to this plan, there would be no need for any *Torah Shebe’al Peh*. After the Jewish people sinned with the *egel*, they were weakened to the point that now it would be possible for other nations to dominate over them, and those nations might also claim that they are “the Chosen Nation,” since they have the Torah. For this reason, *Hashem* introduced the *Torah Shebe’al Peh*, which would be transmitted only among the Jews. In this way, the Jewish people would maintain their uniqueness and their chosenness, by virtue of the fact that they alone have this oral component of the Torah.

That is why the second *luchos* contained only the *Aseres HaDibros*; an Oral Torah would now be necessary to elucidate the *Torah Shebikhsav*. Thus, the giving of the second *luchos* on Yom Kippur is synonymous with the giving of the *Torah Shebe’al Peh*, and it is the receiving of this particular aspect of Torah that we celebrate on this day. Thus, we celebrate two separate Yomim Tovim commemorating *Matan Torah*, Shavuot and Yom Kippur. Shavuot commemorates the giving of the *Torah Shebikhsav*, whereas Yom Kippur celebrates the giving of the *Torah Shebe’al Peh*.

R. Soloveitchik used this connection between Yom Kippur and *Torah Shebe’al Peh* to explain an enigmatic teaching quoted by Rashi²⁶ on the *pasuk* “*uva Aharon el Ohel Moed – Aharon shall come to the Ohel Moed*,” which describes his removal of the coal-pan and ladle from the *Kodesh HaKodashim*: “The entire *parashah* is stated according to the order [in which the Yom Kippur service was performed] except for this ‘coming.’” The Gemara proves this from the fact that there is a *halakhah l’Moshe miSinai* requiring that the *kohen gadol* immerse himself five times on Yom Kippur, once for each change of garments, and that each *tevilah* involves two sanctifications of hands and feet. If the “coming” in this *pasuk* were indeed stated in order, there would be only three changes of garments, not the requisite five.

25. *Teshuvos*, II, *drush* 18.

26. *Vayikra* 16:23, citing *Yoma* 32a.

The question is obvious. Why didn't the Torah write this *pasuk* in its rightful location, teaching the entire *sefer avodah* in the correct sequence? The Rav explained the significance of the *avodah* of *Yom HaKippurim* being taught in this fashion. It is specifically because *Yom Kippur* is the day of the celebration of the giving of the *Torah Shebe'al Peh* that the *Torah Shebikhsav* was purposely vague here regarding the precise order of the *avodah* of this day. It required the Oral Torah's *halakhah l'Moshe miSinai* to properly elucidate the correct order of the *avodah*. Indeed, the lesson taught in this *parashah* is that we cannot accurately understand the cryptic *Torah Shebikhsav* without the *Torah Shebe'al Peh*. In this way, the Torah emphasizes the validity and the primacy of the *Torah Shebe'al Peh*.²⁷

It is our goal, in the chapters that follow, to explore the various categories of the *Torah Shebe'al Peh* and to attempt to elucidate some of its principles and methods.

27. See *Nefesh HaRav*, p. 293, and *Divrei HaRav*, pp. 119–125. See also *Yemei Zikaron*, p. 245.

Chapter 1

Defining *Torah Shebe'al Peh*

1. The Categories of *Torah Shebe'al Peh*

The Gemara¹ poses a fundamental question regarding the relationship between the *Torah Shebikhsav* and the *Torah Shebe'al Peh*. R. Elazar cites the *pasuk*,² “*Echtov lo rubei torasi* – Though I write for him **most of My Torah**,” which implies that most of the Torah is in written form, to support his position that the Written Torah is the majority of the Torah. However, his *rebbe*, R. Yochanan, differs, maintaining that the *pasuk* contains a rhetorical question: “*Should I have written most of My Torah?*” In his view, the Torah has been conveyed mostly in oral form. Thus, there emerges a basic *machlokes* as to the structure of the Torah itself, as comprised of the *Torah Shebikhsav* and the *Torah Shebe'al Peh*: which of the two represents the majority of the Torah?

On the surface, this question is difficult to understand. Any well-stocked Jewish library should immediately answer the question. There are twenty-four books of Tanakh that constitute the Written Torah, and if one were to measure these against an endlessly growing number of *sefarim* that comprise the *Torah Shebe'al Peh*, it is obvious that the *Torah Shebe'al Peh* is clearly the larger section of Torah.

1. *Gittin* 60b.

2. *Hoshea* 8:12.

Among the many to discuss this issue was the *Be'er Sheva*.³ Understanding his explanation requires a look at the Rambam's introduction to his *Peirush HaMishnayos*, which actually serves as an introduction to all of *Torah Shebe'al Peh*. In this introduction, the Rambam delineates five sections to the *Torah Shebe'al Peh*:

a) *Peirushim HaMekubalim MiPi Moshe Rabbenu* (Interpretations received through Moshe): this refers to halakhic interpretations of *pesukim* in the Torah that are not explicitly obvious from the text, but were transmitted from Moshe directly. One example of this is the interpretation of "*ayin tachas ayin*" ("an eye for an eye"),⁴ which is understood to refer not to the actual removal of the offender's eye, but to the obligation to pay for the value of the eye.⁵ Another example is the identification of "*pri etz hadar*"⁶ as an *esrog*, whereas the phrase's literal translation is simply "the fruit of a beautiful tree."⁷

b) *Halakhos L'Moshe MiSinai* (Laws taught to Moshe at Sinai): this refers to oral traditions that have no source at all in the *Chumash*. Examples of this include the halakhah that tefillin have to be square, which is not based on any *pasuk* or rabbinic interpretation, but, as the Gemara states, is an oral tradition; the halakhah that the *retzuos* of the tefillin have to be painted black;⁸ and many halakhos regarding the walls of a *sukkah*.

In the context of this section, it is worth noting that the *Chavos Ya'ir* published a lengthy essay⁹ in which he challenges the Rambam's claim that he has listed all of the *halakhos l'Moshe miSinai*, noting many that are identified by the Gemara and omitted by the Rambam. The Netziv, in the introduction to his commentary to the *She'iltos D'Rav Achai Gaon*, the *Ha'amek She'alah*, provides an explanation for the

3. *Horayos* 4a, s.v. *b'davar*.

4. *Shemos* 21:24.

5. *Bava Kamma* 83b–84a.

6. *Vayikra* 23:40.

7. *Sukkah* 35a.

8. *Menachos* 35a.

9. No. 192.

Rambam.¹⁰ He asserts that the Rambam's shorter list is the result of a difference in interpretation between the Rambam and other *Rishonim*.

The Gemara¹¹ frequently identifies the source of a *din* by stating, "*hilkhesa gemiri lah*" (literally, "it is a law received from tradition"). According to many *Rishonim*, such as Rashi,¹² *Tosafos*,¹³ and the Rosh,¹⁴ this phrase is identical to *halakhah l'Moshe miSinai*. However, when the Rambam cites one of these *dinim* in his *Mishneh Torah*, he is careful to use a different phrase, writing "*mipi hashmuah lamdu*" ("we have learned from oral tradition"). As the Netziv explains, this represents something different than "*halakhah l'Moshe miSinai*." It means that in contrast to a *halakhah l'Moshe miSinai*, there is a source for this *din* in a *derashah* of a *pasuk*, but at the time of the writing of the Gemara the derivation of this *din* was no longer known. The Rambam's shorter list of *halakhos l'Moshe miSinai* includes only those *dinim* that cannot be derived from *pesukim*, and are known only by means of an oral tradition transmitted to Moshe at Sinai.¹⁵

c) **Middos ShehaTorah Nidreshes Bahen:** R. Yishmael, in a passage well-known through its appearance in the *siddur*, lists thirteen principles for deriving *dinim* that are not explicit in the Torah. Not all of the items on R. Yishmael's list are unanimously accepted; R. Akiva disputes some points.¹⁶ Also, there are other principles found in the Gemara that are missing from this list. These *middos* are rules which may be used to "read between the lines" of the *pesukim* in the *Chumash* to derive the many *halakhos* of the *Torah Shebe'al Peh*.

d) **Gezeiros D'Rabbanan:** Rabbinic safeguards.

e) **Takanos D'Rabbanan:** Rabbinic enactments.¹⁷

10. *Kidmas HaEmek*, 2.

11. For example, *Shabbos* 97a; *Sukkah* 5b and 34a; *Moed Katan* 4a; *Bava Kamma* 17b and 110b; *Chullin* 43b.

12. *Yayikra* 16:23; *Sukkah* 5b, s.v. *l'R. Yehudah* and 34a, s.v. *eser netios*; *Ta'anis* 17b, s.v. *hilkhisia*.

13. *Yoma* 32a, s.v. *gemiri*.

14. See Rosh, *Bava Kamma*, ch. 2, no. 2.

15. [For further discussion of the significance of the word "*gemiri*," see *Teshuvos Lehoros Natan*, II, 30:1-2 – ed.]

16. *Shevuos* 26a.

17. The difference between these two categories, *gezeiros* and *takanos*, will be discussed

The *Be'er Sheva* utilizes the third category, the *dinim* that the *Chakhamim* developed based on the *middos shehaTorah nidreshes bahen*, to account for the *machlokes* in the Gemara between R. Yochanan and R. Elazar regarding the majority of the Torah. Clearly, this third category represents the bulk of the *Torah Shebe'al Peh*. Thus, the *machlokes* revolves around the status of these *dinim*: Should they be labeled as *Torah Shebikhsav*, because they are sourced in *pesukim*, or should they be regarded as *Torah Shebe'al Peh*, since their derivation requires the *middos shehaTorah nidreshes bahen*?

The *Pri Megadim*, just as the Rambam before him and the Netziv after him, authored an introduction to his *sefer* that is actually an introduction to the development of *Torah Shebe'al Peh* in general. In his *Pesichah HaKolleles*, he begins his discussion with the *machlokes* regarding whether the majority of the Torah is *Torah Shebikhsav* or the majority is *Torah Shebe'al Peh*, and quotes the explanation of the *Be'er Sheva*. He notes that a practical application of the *machlokes* between R. Elazar and R. Yochanan pertains to the halakhah that restricts the writing down of *Torah Shebe'al Peh*. If we view the *dinim* derived through the *middos shehaTorah nidreshes bahen* as *Torah Shebe'al Peh*, then there would be a restriction regarding the writing of these *dinim* as well, whereas if they are viewed as *Torah Shebikhsav*, it would be permissible to write them down.¹⁸ The *Pri Megadim* continues to cite a few more practical applications of the *Be'er Sheva*'s discussion.¹⁹

at length in chapter 4.

18. See, however, R. Chaim Zimmerman, *Binyan Halakhah*, “*Hakdamas HaRambam*,” pp. 5–6, who asserts that the prohibition is directed toward changing the manner in which the relevant portion of the Torah was originally transmitted; consequently, the classification of “*Torah Shebikhsav*” would only be applied to that which was actually transmitted in written form, and not to *dinim* derived through the *middos shehaTorah nidreshes bahen*.
19. Another important practical application may emerge from the *Kesef Mishneh*, (*Hilkhos Ishus* 1:2), who addresses a statement in the Gemara (*Kesubos* 3a) that implies that it would be possible for the *Chakhamim* to annul a marriage if it was effected through giving something of monetary value (*kesef*) to the bride, but not if it was effected through other methods. The *Kesef Mishneh* (as understood by R. Ahron Soloveichik) suggests that the statement of the Gemara that the *Chakhamim* have the authority to permit the violation of a Torah law when there is great need,

2. Ein HaMikra Yotze Midei Peshuto

A question is often raised that appears to challenge this entire third section of the *Torah Shebe'al Peh*. The Gemara teaches a rule: “*ein hamikra yotze midei peshuto*” – the *pasuk* does not depart from its literal meaning.²⁰ If so, how do the *Chakhamim* have the right to read in-between the lines of the *pesukim*, thereby ascribing interpretations of the text that deviate from the literal reading? The Rambam’s first two categories do not necessarily conflict with this principle; the third, however – the major portion of the *Torah Shebe'al Peh* – does seem to.

if it involves only a passive violation (*shev v'al ta'aseh*), is only true regarding the Written Torah. The Oral Torah can be violated even actively (*kum v'aseh*). Thus, since the *kinyan kesef* method of *kiddushin* is derived from the *Torah Shebe'al Peh*, the *Chakhamim*, if necessary, can annul a marriage and instruct a person to violate it even actively.

20. *Shabbos* 63a, *Yevamos* 24a. The Gemara notes that there is only one exception to this rule – the *pasuk*, “*vehaya habechor asher teileid yakum al shem achiv hameis*” (*Devarim* 25:6). The literal translation is: “It shall be that the firstborn that she [the *yevamah*] bears shall succeed to the name of his [the *yavam*’s] deceased brother,” implying that the child must be named after the deceased. However, *Chazal* had a tradition that *yakum al shem achiv hameis* means instead that the *yavam* inherits all the property of the deceased, and that, here, the literal meaning is disregarded; the parents may name the firstborn as they choose.

The Gemara understands that the *pasuk* is not to be understood as a sentence, but rather each phrase in the *pasuk* is a heading (or subtitle) to allude to a variety of *halakhos*: “It shall be that the firstborn.” From here we derive that the mitzvah of *yivum* is upon the eldest. “That she bears,” to exclude *yivum* in the case of a widow who is an *aylonis*, who cannot bear children. “Shall succeed to the name of his deceased brother,” the same brother who performs the mitzvah of *yivum* inherits his brother’s property. “And his name will not be blotted out of Israel,” this excludes the case where the deceased was a eunuch, since it is impossible for him to have children.

There is a Mishnah like this in *Bava Kamma* 14b that is structured the same way, where each phrase in the Mishnah comes to teach a different *halakhah*. When discussing how to determine the payment of damages, the Mishnah teaches that: (1) it is made by monetary appraisal, (2) one pays with items worth money, (3) this *halakhah* applies before a court, (4) it is based upon the testimony of witnesses who are free men, (5) and who are members of the covenant. The Gemara goes on to explain how each of these individual phrases are there to teach us many more *halakhos*. Again, we see that each phrase is alluding to a different *halakhah*, and not as a sentence or a paragraph.

The Ramban, in his commentary to the Rambam's *Sefer HaMitzvos*, addresses this issue. A number of medieval commentators took up the task of counting the 613 mitzvos that the Gemara teaches Moshe received at Sinai. The Ramban, in the beginning of his *Sefer HaMitzvos*, presents fourteen principles – “*shorashim*” – to determine what should and should not be included in this list. For example, in opposition to the view of the *Ba'al Halakhos Gedolos*, the Ramban in the first *shoresh* argues that *mitzvos d'Rabbanan* should not be included in the count of 613.

In the second *shoresh*, the Ramban postulates a very surprising principle, which the Ramban disagrees with. In the Rambam's view, we only include in the *minyana hamitzvos* those mitzvos that are found in *Torah Shebikhsav*, not those derived through the *middos shehaTorah nidreshes bahen* in the *Torah Shebe'al Peh*. The Ramban challenges this: doesn't the Rambam believe that *Torah Shebe'al Peh* is *min haShamayim*? In the context of a lengthy discussion on this point, the Ramban addresses the question of how deriving *Torah Shebe'al Peh* from “in-between the lines” of the *Torah Shebikhsav* can be reconciled with “*ein hamikra yotze midei peshuto*.”

The Ramban asserts that studying the rule of “*ein hamikra yotze midei peshuto*” in its context in the Gemara shows it should be understood in a different manner. The Gemara recounts that R. Kahana had learned the entire Talmud by the age of eighteen. He had focused exclusively on studying the many *derashos* of the *pesukim* that the *Chakhamim* developed, through which they derived a myriad of halakhos. He states that it was at that point that he finally learned the important lesson of “*ein hamikra yotze midei peshuto*.” Although there may be additional levels of interpretation of a *pasuk*, the simple meaning of the words of the *pasuk* may not be disregarded.

The Ramban notes that the Rabbis of the Talmud never said “*ein bamikra ela peshuto*,” that the **only** true reading of the *Chumash* is the simple translation of the words of the text. Such an expression would certainly contradict the Rambam's third section of the *Torah Shebe'al Peh* and the derivation of halakhos through the *middos shehaTorah nidreshes bahen*. Rather, *Chazal* said the following: when there is an interpretation of a *pasuk* using the *middos shehaTorah nidreshes bahen*, this does not alter the fact that we must **also** *pasken* in accordance with the text, and

not ignore the text. Thus, concludes the Ramban, the principle of *ein hamikra yotze midei peshuto* does not present any difficulty with the additional meanings taught by *Torah Shebe'al Peh*.

This approach is indicated by the *pasuk*,²¹ “*achas diber Elokim shtayim zu shamati* – One thing has G-d spoken, these two have I heard.” Hashem dictated the Torah to Moshe Rabbeinu in such a way that the *pesukim* contain multiple levels of meaning. Such an idea should not be difficult to understand; even the writings of human authors often include secondary or tertiary connotations.

For example, the Torah teaches²² that a father has a right to sell his daughter as an *amah ivriyah* (Jewish maidservant) to another Jewish person provided that she is younger than the age of twelve, and when she reaches *bas mitzvah*, she goes free. The *Chumash* then says: “*lo seitze k'tzeis ha'avadim*,” she should not go out like the “*avadim*” go out. How is that *pasuk* to be translated? Rashi cites the Gemara's teaching that there are certain “*yetziyos*,” related in another *pasuk*.²³ If one has an *eved Cana'ani*, and he knocks out the *eved's* tooth, or blinds the *eved*, or breaks off one of his fingers, the *eved* goes free. This is the principle that an *eved Cana'ani* is “*yotze*,” or goes free, “*b'shen v'ayin*.” Accordingly, Rashi quotes from *Chazal* that “*lo seitze k'tzeis ha'avadim*” means that this type of *yetziah* (going free) does not apply to the *amah ivriyah*. It would be difficult to believe, though, that this is the entire intent of the *pasuk*.

Indeed, the *Tur*, in the *Peirush HaTur al HaTorah*, states that Rashi's citation from the Gemara represents an additional level of interpretation. However, the *peshuto shel mikra*, the **simple** translation of the *pasuk*, means the following: one who has a male servant has the right to ask him to perform duties that involve traveling outside. By contrast, one who has an *amah ivriyah*, for the sake of her *tznius*, should not send her on errands outside of the house. This is the simple meaning of the *pasuk*, and it must be adhered to along with the additional interpretation that Rashi cites.

21. *Tehillim* 62:12.

22. *Shemos* 21:7.

23. *Ibid.* 21:26–27.

A further example is the *pasuk*,²⁴ “*chag haSukkos ta’aseh lekha shivas yamim b’aspekha migarnekha u’miyikvekha* – You shall celebrate the Festival of Sukkos for a seven-day period, at the season of the year that you gather in from your threshing floor and from your wine vat.” The simple understanding of the *pasuk* is that it refers to the Yom Tov of Sukkos in general. The *Torah SheBe’al Peh*, however, applies an additional level of interpretation to the *pasuk*, expounding every phrase to derive halakhos with regard to the construction of a *sukkah*.

Chazal teach that the *sukkah* is compared to *chag*, a *Korban Chagigah*, such that the *sukkah* is *huktzah l’mitzvasah* (set aside for its mitzvah) for the duration of the Yom Tov.²⁵ Furthermore, the *sukkah* must conform to the *din* of *ta’aseh v’lo min he’asui* – “You shall make [the *sukkah*], and not use that which was already made,”²⁶ and the *sukkah* must be sturdy enough that it is fit to be used for *shivas yamim*.²⁷ Finally, the *sechach* should consist of *pesoles goren v’yekev*, the refuse of the threshing floor and the wine vat, which are not susceptible to *tumah*, grow from the ground, and are detached from the ground.²⁸

Interestingly, every so often, the *derashah* of the *Torah SheBe’al Peh* actually interprets the *pasuk* in a manner that is just the reverse of the *pehuto shel mikra*. One example is the halakhah that *Kohanim* are obligated to *duchen* only when a *tzibbur* requests it of them.²⁹ This is learned from the *pasuk*,³⁰ “*ko sevarkhu es Bnei Yisrael amor lahem* – So you shall bless the Children of Israel, saying to them.” The simple meaning of *amor lahem* is that the *Kohanim* should say the *berakhos* to the *tzibbur*. However, the *Torah SheBe’al Peh* adds an additional level of interpretation, such that the phrase has an opposite connotation: When the *tzibbur* requests of the *Kohanim* to administer a *berakhah*, the *Kohanim* are obligated to bless them.³¹ Of note, the *Targum’s* translation of *amor*

24. *Devarim* 16:13.

25. *Sukkah* 9a.

26. *Ibid.* 11b.

27. *Ibid.* 23a.

28. *Ibid.* 12a.

29. *Sotah* 38a.

30. *Bemidbar* 6:23.

31. We fulfill the requirement of *amor lahem* when the *chazan*, representing the *tzibbur*,

lahem, as “*kad teimrun lehon* – When you [the *tzibbur*] say to them [the *Kohanim*],” is in line with the *derashah* of Chazal.³²

Another such example is the *pasuk*,³³ “*lo sireh es shor achikha o es sayo nidachim v’hisalamta meihem hasheiv teshiveim le’achikha* – You shall not see the ox of your brother or his sheep wandering and hide from them; rather, you shall return them to your brother.” In its simple explanation, the *pasuk* means that one must **not** ignore the lost object one has seen, and refrain from picking it up and returning it. The interpretation of the *Torah SheBe’al Peh* is that *v’hisalamta* conveys the opposite notion, that “you **may** hide from them.” Thus, the *Beraisa*³⁴ teaches that there are times in which one may indeed ignore a lost object. If the finder is a *talmid chakham* and it is not befitting his honor to pick up this particular object and return it, he is not required to do so.

calls upon the *Kohanim* by declaring the word *kohanim* aloud in the *Elokeinu v’Elokei Avoseinu tefillah* recited prior to *birkas kohanim*. The *chazan* announces “*kohanim*” in this way, since stating the word *kohanim* alone, not as part of this introductory *tefillah*, may be considered an unwarranted *hefsek* (interruption) in the middle of *chazaras hashatz* (*Tosfos, Berakchos* 34a, s.v. *lo*).

32. Rav Soloveitchik explained that Unkelos was a *geir* who attended “*cheder*” as an adult along with young children, and he recorded in his *Targum* the simple translation of the *pesukim* that he was taught. Therefore, the Rav was troubled by the *Targum*’s translation of *amor lahem* as *kad teimrun lehon*. Since the purpose of *Targum Unkelos* is to provide the simple meaning of a *pasuk*, not secondary interpretations, the *Targum* should have been “*teimrun lehon* – They [the *Kohanim*] should say to them [the *tzibbur*]” (see *Divrei HaRav*, p. 154).

Rav Zelmane Volozhiner (see also *Igeres Bikores*, by Mahari”tz Chayes, *hagah* 6; *Sheim Efrayim, Bemidbar* 6:23) offered an interesting answer. The subsequent *pasuk*, after the words *teimrun lehon*, happens to be *pasuk* 24 (24). It may be that during the typesetting process, the heading of the next *pasuk*, 24, mistakenly made its way into the preceding *pasuk*, resulting in the phrase *kad teimrun lehon*. The original translation of *amor lahem* was, in fact, *teimrun lehon*, without the word *kad*, in line with the *pasuk*’s simple meaning.

33. *Devarim* 22:1.

34. *Bava Metzia* 30a.