

# Rav Kook Torah

by Rabbi

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## The High Court in Jerusalem

### The Jurisdiction of the Sanhedrin

What happens if a local court is unable to decide a case? In such situations, the Torah gives ultimate authority to the Sanhedrin, the High Court of 71 elders in Jerusalem:

“If you are unable to reach a decision in a case... then you should set out and ascend to the place that God will choose. You must approach the Levitical Kohein and the judge... and you must do as they tell you. You must keep the Torah as they interpret it for you, and follow the laws that they legislate for you.” (D'varim 17:8-11)

In what areas did the High Court have jurisdiction? Was it only in legal/halachic matters, or also in matters of faith?

In other words: does Judaism permit intellectual freedom in thought and beliefs, as long as one follows the codes of halachic conduct? Or are there principles of faith which all must accept?

## The Clarity of the Torah of Eretz Yisrael

The Babylonian and Jerusalem Talmuds appear to disagree over this issue. The Babylonian Talmud in Sanhedrin 87a states that the cases brought to the High Court were legal in nature. It explains that the term DAVAR (‘matter’ or ‘case’) mentioned in the verse refers to a halachic dispute. The Jerusalem Talmud, on the other hand, holds that DAVAR also includes Aggada or non-legal disputes. What is the crux of this disagreement?

Rav Kook explained that this dispute is a result of the essential difference between the Torah of Eretz Yisrael, as represented by the Jerusalem Talmud, and the Torah from outside the Land of Israel, as represented by the Babylonian Talmud.

The different approaches of the two Talmuds originate in the limitation of prophecy to the Land of Israel. *See Mo'ed Katan 25a; Kuzari II:14.*

The Torah of Eretz Yisrael benefits from prophetic influence, and this affects its style and fundamental nature.

Since the Torah of the Land of Israel is rooted in prophetic knowledge and insight, elaborate discussions are superfluous. The scholars of Eretz Yisrael arrive at legal decisions through an intuitive insight into the

underlying principles. This explains the terse style of the Jerusalem Talmud, where subtle hints are often sufficient in order to reach the final Halachic decision.

The Babylonian Talmud, however, lacked this prophetic input. The Babylonian scholars engaged in intricate discussions, using complex legal reasoning to clarify the halacha. Thus, unlike the expression commonly found in the Jerusalem Talmud, TA CHAZI or TA CHAMI (“Come and see”), the Babylonian Talmud uses the expression TA SH'MA (“Come and hear”). TA SH'MA indicates a greater distance from the source, analogous to the difference between the clarity of that which is seen as opposed to that which is only heard.

### **Halacha and Aggada**

The difference between the two Talmuds is not limited to style. The author of Chovot HaLevavot (*R' Bahya ibn Paquda, 11-century scholar and philosopher*) wrote in his introduction that matters of faith and belief, which are the foundations of Aggadic material, do not fall under the jurisdiction of the High Court. This, he explained, is because these teachings are not a matter of received traditions, but rather the fruit of our intellectual efforts.

This position, however, is not univer-

sal. Other scholars, such as Rav Hai Gaon (*the head of the Talmudic academy at Pumbedita in Babylonia (modern-day Iraq) (939-1038)*), held that also Aggadic teachings are binding.

The opinion of the Chovot HaLevavot is suitable to the Torah as it manifests itself outside the Land of Israel. There, without prophetic influence, beliefs are based solely on our powers of logic and reason. Since interpretation of Torah principles is a matter of intellectual effort, it is natural to distinguish between the detailed study of halacha, which requires meticulous legal analysis, and the less rigorous study of Aggada. For this reason the Babylonian Talmud distinguishes between Aggada and Halacha, ruling that the prohibition of LO TASUR (defying the rulings of the High Court) only applies to legal matters.

In Eretz Yisrael, however, where Torah is rooted in prophecy, the legal and non-legal areas of Torah share a common foundation. Beliefs, just as much as practical deeds, are grounded in received tradition and prophetic inspiration. Therefore the Jerusalem Talmud rules that the High Court's authority also extends to Aggada.

### **The Kohen and the Judge**

This distinction allows us to understand the Torah's command, “You

must approach the Levitical Kohein and the judge who will be at that time.” Why mention both the kohen and the judge?

These two officials represent two forms of Torah authority. The kohen represents Torah that utilizes prophetic means in order to ascertain the Halacha. The kohen’s Torah comes from his position as God’s emissary: “From the kohen’s lips they will guard knowledge... because he is an angel of the God of Hosts” (Malachi 2:7). This is particularly true of the Kohein Gadol, who required Divine inspiration in order to consult with the Urim and Tumim (Yoma 73).

The judge, on the other hand, represents Torah adjudicated according to logic and legal reasoning. By mentioning both the kohen and the judge, the Torah indicates that both approaches are valid, and both are binding. If the Torah had only mentioned the kohen, one might think that only Torah based on prophetic inspiration would retain this authority. And if the Torah had only mentioned the judge, one might have thought that there is no place for Divine inspiration in the Halachic process, as might be understood from the verse, “[The Torah] is not in Heaven” (D'varim 30:12).

*The Talmud in Baba Metzia 59b records a disagreement regarding the status of an oven made from coils of clay (TANUR ACHNAI). Rabbi Eliezer*

*supported his position with miracles and even a Heavenly Voice (Bat Kol). But the Sages still ruled against Rabbi Eliezer, insisting that decisions are reached by majority rule; miracles and Heavenly Voices are not part of the decision process, as “The Torah is not in Heaven.”*

## **The Future Unity of Aggada and Halacha**

It is natural to differentiate between the expansive study of Aggada and the technical mindset required for intricate halachic analysis. In the depths of the soul, however, there lies an inner aspiration to unite these two areas.

With the illuminating light of the era of redemption, the differences between these two areas of Torah will become less clear-cut. The esoteric part of Torah will become more revealed, and the exoteric part of Torah will become more transcendent and closer to the mystical side. The Zohar expresses the special connection of the Torah of Eretz Yisrael to the Messianic Era by characterizing the Babylonian Talmud as the T'MURA, the “substitute”, while the Jerusalem Talmud is the G'ULA – the redemption itself (Zohar Chadash, Ruth).

*Sapphire from the Land of Israel.*

*Adapted from Igrot HaRe'iyah vol. I pp. 123-124, letter 103 (Tevet 5668); Orot pp. 89-90*