

## Section 1

### *The Adderet's Introduction*

Rav Bashyatzi's introduction explains how the *Tanach* is organized and how halakha is determined. Prof. Leon Nemoj provides a translation of most of Rav Bashyatzi's introduction in *The Karaite Anthology*. I highly recommend reading it. Although Nemoj provides a direct translation, I have included the summary below for the sake of completeness and to elaborate on some ambiguities in Rav Bashyatzi's text. The topics covered in the *Adderet's Introduction* consist of:

1. Ethical character traits and the narrative portions of Tanach
2. Practical vs. Rational *Mitzvoth*
3. Positive vs. Negative *Mitzvoth*
4. The pillars of Mosaic Law and the *Katuv*
5. *Hekeish*
6. Sevel Hayerusha
7. The split between Karaite and Rabbanites

*“The Torah of Hashem is perfect restoring the soul’ to the most high place from which it was hewn to be brought into the palace so that the knowledge of God could fill the earth and the glory of God fill the world. And this is done [i.e., the Torah’s restoration of the soul] in three ways: through the teaching of ethical character traits, through practical mitzvoth, and through rational mitzvoth.” – Introduction to Adderet Eliyahu*

#### **§1.1 Ethical character traits and the narrative portions of Tanach**

The ethical character traits are taught to us through the narrative portions of Tanach including the stories of the patriarchs, of the kings, and of the prophets. Unlike the *mitzvoth*, these character traits are not legally required of us but rather are learned from reading about the lives of these biblical figures. There are several reasons why the character traits are taught to us in this fashion instead of being commanded as law.

First, if they were explicitly commanded as are the *mitzvoth*, we would find ourselves in a state of constant sin. This is because these character traits would impose primarily emotional requirements over us. Not only do emotions tend to change rapidly and unpredictably, but they are also affected by the state of our physical body so that our mind does not have perfect control over them. For example, let us say that we were commanded to become angry only at the right time, in the right place, and for the right reasons. Surely this would be impossible as we cannot perfectly control our emotions which change from instant to instant.

Second, having seen that we were doomed to a state of sin due to our limited ability to control our emotions, we would become likely to give up following the other *mitzvoth*. Often, when man sees he cannot achieve something entirely, he decides that it is not worthwhile to attempt any of it. Thus, the

adoption of ethical character traits was not explicitly commanded lest Jews despair and give up on keeping the entire torah.

It is for this same reason that the sages said that the *mitzvot* were given according to our abilities. God expects from us only what is achievable and thus when we cannot achieve a mitzvah in its ideal form, we should strive to achieve it as best we can.<sup>1</sup>

Third, recounting the ethical character traits by means of stories allows us to more easily remember them and take them to heart. When we hear of a specific person acting in such and such a way and thus producing some explicit positive result we are more likely to follow their footsteps than if we were abstractly commanded to adopt an ethical character trait without any proof of its goodness. It is for this same reason that some of the *mitzvot* are also attributed to a particular narrative. For example, Shabbat is linked to God creating the world and to God taking us out of Egypt.

#### Notes on §1.1

Although Rav Bashyatzi believes the primary purpose of the narrative portions of Tanach is to teach character traits and not to establish laws, he does also use narratives as legal material. Namely, the actions of the post-sinai biblical figures are understood to be consistent with *halakha* unless explicitly stated otherwise by the Tanach's narrator. They therefore are used to clarify the proper *halakha*.

For example, Rav Bashyatzi holds that one may benefit from animals cross-bred by non-Jews even though the act of cross-breeding animals is explicitly forbidden.<sup>2</sup> How can he know this? Because King Solomon rode a mule<sup>3</sup> (a crossbreed) and the narrator does not decry him for doing so.

#### §1.2 Practical and Rational *Mitzvot*

Some examples of practical *mitzvot* include: keeping Shabbat, keeping Succot, the Passover sacrifice, and wearing *tzitzit*. Obeying these *mitzvot* lead us to more faithfully obey the rational *mitzvot* which are the more essential *mitzvot*. Although all of the practical mitzvot have a logical purpose (ie: seeing our *tzitzit* is meant to remind us to keep the other *mitzvot*), these *mitzvot* cannot be derived through human reason alone.

The rational *mitzvot* are ordinances that we could derive on our own through rational thought. For this reason, most of them were known pre-sinai. Examples of rational *mitzvot* include ordinances such as “do not murder” or “do not steal”. Indeed, all the ten commandments are rational *mitzvot* except the one to keep Shabbat.<sup>4</sup>

<sup>1</sup> For example, if we are unable to witness the moon due to cloudy skies, we may declare the new month based on astronomical calculations that allow us to know the moon would be visible were the sky not cloudy. Another example: although we cannot be perfectly pure today with the absence of a red heifer we can still practice the laws of ritual purity as best we can.

<sup>2</sup> Leviticus 19:19

<sup>3</sup> 1 Kings 1:33

<sup>4</sup> The sages believed that God's existence and oneness may be proved through philosophy and are not simply a matter of faith. It is for this reason that the first two of the ten commandments are understood by Rav Bashyatzi as being “rational *mitzvot*”.

Although in some cases the mechanism by which the practical *mitzvot* lead us to better obey the rational *mitzvot* may be hidden from us, they nevertheless have a reason behind them. Our limited human intellect is simply unable to grasp that reason. For example, the laws of purity and impurity may at first glance appear to have no benefit, but we can be certain that God has a reason for commanding them. Indeed, the sages have said “The excellence of the rational *mitzvot* requires their being obligatory and the fact that the practical *mitzvot* are obligatory requires their being excellent.”

### §1.3 Positive vs. Negative *mitzvot*

Positive *mitzvot* are commands to do something. Negative *mitzvot* are commands to avoid doing something. An example of a positive mitzvah is the Passover sacrifice. An example of a negative mitzvah is to refrain from eating *chametz* on Chag Hamatzot.

Sometimes, negative *mitzvot* will be given to us in positive language. For instance, we are told to “guard the Sabbath” but this entails the negative command not to work. Conversely, positive *mitzvot* are sometimes given in negative language. For instance, we were told “not to let live any soul” (*Deuteronomy* 20:16) but this is really a positive command to kill.

Negative *mitzvot* are more severe than positive ones. Violating a negative mitzvah requires willful and conscious rebellion against God’s law. By contrast, one may violate a positive mitzvah for many less serious reasons. For instance, one might forget to fulfill a command at its appointed time or be unable to fulfill it due to circumstances outside one’s control. It is for this reason that the severe punishment of *karet* (spiritual excommunication) is found primarily for the violation of negative commandments. The only positive commandments requiring *karet* are those of circumcision and the Passover sacrifice. This is because these two commandments are the fundamental *mitzvot* of Judaism.<sup>5</sup>

However, general rejection of all the positive ordinances as a whole is also punishable by *karet*, as it is written: “cursed be he who does not uphold the words of this torah to do them” (*Deuteronomy* 27:26). The term “cursed” here refers to the punishment of *karet* because from context we see that this passage (*Deuteronomy* 27:14-26) deals with sins done in secret requiring the death penalty. For instance, “cursed be he who slays his neighbor in secret” (*Deuteronomy* 27:24). Further, it is known that *karet*

<sup>5</sup> Rav Bashyatzi does not explain why he considers these two *mitzvot* fundamental, but I believe the following to be likely reasons he thinks so. *First*, Circumcision is the mark of the covenant with God and a prerequisite of converting to the Jewish faith (*Genesis* 17:10). *Next*, the Passover sacrifice is directly associated with circumcision: “And when a stranger shall sojourn with thee, and will keep the Passover sacrifice to the LORD, let all his males be circumcised, and then let him come near and keep it; and he shall be as a citizen of the land.” (*Exodus* 12:48) This verse may be read in at least two ways. Either it means “he shall both be circumcised and keep the sacrifice then after completing both these tasks he will be as a citizen” or it means “he shall be circumcised then he shall be allowed to keep the sacrifice and also be like a citizen in every other way”. The former reading suggests that the Passover sacrifice is a prerequisite to converting to the Jewish faith and thus just as fundamental as circumcision.

Rav Bashyatzi does not list the Passover sacrifice when discussing requirements for conversion suggesting he may subscribe to the latter reading. However, he discusses conversion only in passing (in the section on marriage) and it is possible he omits it simply because the Passover sacrifice is no longer possible today.

applies to crimes that would require the death penalty were these crimes not done in secret<sup>6</sup> so the term “cursed” in these verses refers to *karet*.

#### §1.4 The Pillars of Mosaic law and the *Katuv*

The *halakha* is based on three pillars of law:

1. The *katuv* (Lit. “What is written”). This is the *peshat* (plain meaning) of the biblical text.
2. *Hekeish* (rational inference), these are laws not explicitly found in the text but which may be logically derived from other *mizvot*.
3. *Sevel Hayerusha* (lit. “the yoke of inheritance”). This is legally binding information passed down orally since the time of Moshe. It is significantly different from the concept of both Oral torah and tradition as explained below.

#### Notes on §1.4

##### *Meaning of “peshat”*

The *katuv* is the text of *Tanakh* according to its *peshat* (plain meaning). Rav Bashyatzi says little about the first pillar in his introduction. Perhaps this is because on the surface it appears to be the simplest of the three pillars. Nonetheless, some readers may benefit from further clarification.

First, it should be noted that the *peshat* of the text is its “plain meaning” as opposed to its “literal meaning.” An English example of the difference between the two: If I say, “he fell for it hook line and sinker” a literalist would assume the presence of an actual fishing apparatus. By contrast, a *peshatist* would understand this expression to be a figure of speech.

Almost all written materials (novels, news reports, scientific papers, secular legal codes, *etc.*) are meant to be read according to their *peshat*. The concept of *peshat* is thus intuitive to anyone who has ever learned to read (or speak) a language. I only elaborate because Karaites are sometimes misunderstood as being literalists. For instance, Rabbanites wear *tefillin* (phylacteries) on their foreheads. Some of these same Rabbanites believe Karaites to wear *tefillin* between their eyes (*i.e.*, on the bridge of their noses) in accordance with the most literal reading of the verse “and it shall be as a sign on your hand and as a remembrance between your eyes.” (*Exodus* 13:9.)

In reality, however, Karaites do not wear any *tefillin* because they understand the relevant verses to be using a figure of speech. This demonstrates that Karaite law is derived from the *peshat* not from the literal meaning of Tanach. In fact, Karaite interpretation is sometimes less literal than its Rabbanite counterpart.

Second, it must be understood why Karaites historically have made a point of reading the *peshat*. The answer is that Rabbanites believe the meaning of the text to be derived in many different ways many of which defy the plain meaning. Let us consider a classic example.

<sup>6</sup> See *Leviticus* 20:4-5. In these verses we see that *karet* is a punishment inflicted by God when a human court fails to give the death penalty. Further, we find written that crimes committed in secret fall under God's jurisdiction whereas we are responsible for crimes committed in public. (*Deuteronomy* 29:28). *Karet* is the only divine punishment regularly prescribed, so we may suspect that *karet* is God's spiritual equivalent of the death penalty.

The phrase “do not boil a kid in its mother’s milk” is repeated three times in the torah (*Exodus* 23:19, *Exodus* 34:26, *Deuteronomy* 14:21). The Rabbanities hold that there are no superfluous words in the *Torah*; every word must teach us something.<sup>7</sup> Thus, the Rabbanites conclude that each of these repetitions teaches a slightly different law (see *Talmud Bavli Chullin* 113b-115b). First, the cooking of meat and milk together is prohibited. Next, the eating of milk and meat together is prohibited. Finally, deriving any benefit from this forbidden mixture is forbidden.

Nothing in the text or context of these verses suggests that they are referring to different laws. In fact, Talmud itself makes no appeal to textual or contextual differences. Each of these verse have identical wording to the others and the two in *Exodus* have similar contexts (they are both included in the compilation of commandments that some secular scholars call “The Ritual Decalogue”). Thus, a *peshat* reading suggests that these verses all refer to the same commandment.

Further, the Rabbanites utilize many other non-*peshat* principles other than divine economy of speech (the principle in the above example). If this topic is of interest to the reader, I recommend researching the term *Pardes* (from the four principles of Rabbinic interpretation: *Peshat*, *Remez*, *Derash*, and *Sod*) as well as the hermeneutic rules of Rabbi Akiva and Rabbi Ishmael.

### *Torah vs Nach*

Karaites accept the entire *Tanach* as divine revelation. However, it must be clarified as to whether *halakha* is derived from the prophets and the writings (“nach”) in the same way that it is from the first 5 books given at Sinai (Torah). A full explication of this issue is beyond the scope of this work. I simply outline some contours of the issue below.

The sages approach the derivation of *halakha* in different ways. In *From Judah Hadassi to Elijah Bashyatzi*, Prof. Daniel Lasker claims that the earlier sages derived *halakha* in the same way from nach as from chumash. I have limited access to earlier Karaite works so it is difficult for me to confirm this generalization. I will, however, provide one example. In his opposition to Karaite Judaism, the Rabbanite Rav Sa’adiah Gaon claimed that there is no way for Karaites to derive a commandment to pray. In response, the Karaite sage Salmon ben Yeruhim (10<sup>th</sup> century) brings only verses from nach to show that prayer has been commanded.<sup>8</sup>

The later sages, including Rav Bashyatzi, held that “every commandment that is clarified in the prophets has its basis and its essence in the Torah, from which that commandment is derived.”<sup>9</sup> Thus the prophets may clarify the proper interpretation of a law, but their interpretation must have a clear basis in *Torah*.

Many of the later sages still held that holidays such as Purim (see Esther 9) or the four fasts of mourning for Jerusalem (e.g., *II Kings* 25) were mandatory even though they have no basis in the Torah. Both *Adderet Eliyahu* and *Gan Eden* use the verb “lechayev” (“to make mandatory”) or the term “chiyuv”

<sup>7</sup> A principle my high school teacher dubbed “Divine Economy of Speech”

<sup>8</sup> *Milhamot Hashem* Sha’ar 3 lines 74-77 (in the 2000 Ramla edition prepared by Israel Davidson and Edited by Rabbi Yoseph El-Gamil)

<sup>9</sup> *Adderet Eliyahu* Inyan Shabat Ch 14. I should note that Rav Bashyatzi uses this exact phrasing to describe the opinion of only some of the sages. However, based on his discussion of certain laws it is clear that he and many other later sages thought this way.

("obligation") to describe these holidays<sup>10</sup>. Thus, their claim that every commandment has a basis in the Torah is better understood to mean that the prophets did not add new information to Torah laws. However, *nach* does in limited cases include new laws and would more frequently records incidences of the prophepts giving temporary commands to the people (for example *Shmuel* begins a war with Amalek in *1 Samuel* 15 ).

I hope to cover this issue in some more depth when discussing the laws of Shabat. This is a very interesting issue that requires more research. I encourage others to research the aforementioned topics and publish their findings.

### §1.5 Hekeish

The second pillar of Karaite law is *Hekeish* (logical derivation). *Mitzvoth* classified as *hekeish* are not explicitly referred to in the *katuv*, but rather follow logically from those commandments or statements that are explicitly found in the *katuv*.

Rav Bashyatzi provides a list of the 7 forms of *hekeish*:

- 1) When a commandment is ambiguous or obscure in one verse it can be clarified by using another. For instance, we find that a man must marry his deceased "brother's" former wife if his brother has no children (*Deuteronomy* 25:5). Yet "brother" can mean either one's literal brother or one's kinsman. However, we know from elsewhere in the Torah that in this verse "brother" must take on the latter meaning, *i.e.*, it must mean kinsman. First, one is prohibited to marry the wife of a literal brother (*Leviticus* 18:16) so in *Deuteronomy* 25 "brother" must mean "kinsman." Second, it is clear from the story of Ruth the Moabite marrying Boaz that a kinsman is eligible to fulfill this commandment (*Ruth* Ch. 3 and 4).<sup>11</sup>
- 2) From the particular we may derive the general. For example,<sup>12</sup> we find written: "when a bull or sheep or goat is born it shall be seven days under its mother and on the eighth day and thenceforth it may be accepted as an offering by fire to Hashem" (*Leviticus* 22:27). This commandment is done for the sake of mercy so we may conclude that it applies also to slaughtering for purposes other than sacrifices. Furthermore, we may generalize from the particular species listed to all other species because this commandment is done for the sake of mercy and should logically apply to all species equally.
- 3) When two scenarios are equal in nature we may apply to them equal rulings. For instance, we are forbidden from the text to uncover the nakedness of our father's brother (*Leviticus* 18:14). We can conclude that similarly we may not uncover the nakedness of our mother's brother.
- 4) If something is true for the minor case it is true for the major case.<sup>13</sup> For instance, the text does not explicitly forbid marrying one's own daughter. It does, however, forbid taking one's

<sup>10</sup> *Adderet Eliyahu* Inyan Yom Kippur Ch 4 and *Gan Eden* Inyan Yom Kippur Ch 5

<sup>11</sup> One might argue that the story of Onan and Tamar indicates that the term "brother" does in fact include the literal brother. However, the sages reject this position because this story occurred pre-Sinai, before the laws of incest had been given.

<sup>12</sup> This example is actually taken from *Yeriot Shlomo* (1860) not from *Adderet Eliyahu*

<sup>13</sup> Known in secular studies as an "A fortiori" argument

granddaughter. Therefore, if the granddaughter is forbidden to us we may conclude that all the more so our own daughter is forbidden to us.

- 5) Linguistic analysis. By analyzing the text linguistically we may reach conclusions that are not explicitly stated. For instance, one of the many reasons we can determine that the month is based on the new moon is that the month is called “chodesh” from the root “chadash” meaning to renew. This suggests that the month is based on the renewal of something. Further, because the month is sometimes referred to as “moon” (I Kings 6:37) we see that it is the renewal of the moon that defines the month. The fact that the start of the month is the new moon, however, is also known from *sevel hayerusha*.
- 6) It is possible to broaden the application of a law using reason alone without any textual support. For instance,<sup>14</sup> we are forbidden only to boil a kid in its mother's milk. Yet one may conclude that we are also forbidden to eat a kid that has been boiled in its mother's milk by someone else because generally when one forbids an act it is to forbid its end result.<sup>15,16</sup>
- 7) That which is forbidden to its counterpart is also forbidden to itself. For instance, the biblical text forbids one to marry his step-sister (Leviticus 18:11). This is an instance of two close relatives (members of a nuclear family) marrying two other close relatives.<sup>17</sup> From this *hekeish* we may also forbid any marriage where two close relatives marry two other close relatives. For example, two brothers may not marry two sisters.

#### Notes on §1.5:

##### *Inferring new Laws vs Textual Analysis*

*Hekeish* as explained in the *Adderet* seems to serve two related but distinct purposes. First, it serves to infer laws not explicitly written. For example, no verse can be understood to directly claim that one may not marry his own daughter. This is inferred through a Form 5 *hekeish*.

Second, *hekeish* serves to clarify the meaning of what is actually written. This is especially true for linguistic analysis (Form 6), which is usually used to clarify what a word means in the text but not to make any logical inferences distinct from what is already commanded in the text. A Form 1 *hekeish* (cross referencing different texts) can also serve this purpose. For example, we see that the meaning of the word “*shatnez*” in *Leviticus* 19:19 is “a mixture of wool and linen” by comparing it with *Deuteronomy* 22:11.<sup>18</sup>

Even when used to infer laws not expressly written, *hekeish* is intimately tied with the *peshat*. In such circumstances, *hekeish* is usually a formal way of determining the intent of the text. For example, it is difficult to believe that the Torah intends to forbid plowing with a donkey and a bull together

<sup>14</sup> Example taken from Yeriot Shlomo

<sup>15</sup> Although the Karaite sages expand the prohibition somewhat, the general consumption of milk with meat is still permitted.

<sup>16</sup> The reader may have noticed that in the case of benefiting from a cross-breed (discussed on P. 2 of this section) Rav Bashyatzi permits benefiting from a forbidden act. However, in this case, both the act (boiling) and the result (eating the food) are forbidden. This apparent contradiction is not one that escaped the sages. There are many different opinions regarding when the result is forbidden along with the deed and when it is not. It is one of the more challenging issues in Karaite law. I hope to cover this issue in the section on forbidden mixtures.

<sup>17</sup> You and your father are one pair of close relatives. Your step-mom and her daughter (your step-daughter) are another pair.

<sup>18</sup> Arguably this could also be considered linguistic analysis.

(*Deuteronomy 22:10*) but permit pairing a mule and a bull, especially if the commandment was given for the sake of mercy (since one animal is stronger than the other). Someone plowing with a mule and bull would seem to be getting away on a technicality while violating the intent of the text. A Form 2 *hekeish* is thus used to formally define the intent of the text.

### *Redundant forms*

The reader may have noted that the *hekeish* Forms 2, 3, and 7 of appear to be logically equivalent. Let us consider the example given in the elaboration of a Form 2 *hekeish*. Rav Bashyatzi argues that we may generalize from the biblically specified species, *i.e.*, bull, goat or sheep, to a law forbidding slaughtering any animal less than eight days of age. This is apparently an application of the second form. Yet the reader can easily verify that this same generalization can be reached using any one of the second, third, or seventh forms.

I have found some potential distinctions between these three forms but never a case where the exegete may apply one but definitely not apply the other two to reach a given conclusion. Rather, these three forms are best understood as slightly different ways of explaining the same logical argument.

It is possible that the original compiler of this list, be it Rav Bashyatzi or an older source, included these redundant forms so that the list would come out to exactly seven forms of *hekeish*. Indeed, Rav Bashyatzi does not appear to believe that the exegete need remain loyal exclusively to this particular list of *hekeish* which indicates that the list is more symbolic than practical. In the section on incest, Rav Bashyatzi cites an alternative list by Rav Yeshua that uses nine forms of *hekeish* (*Adderet Eliyahu*, Laws of Incest Ch. 5). He does so without attempting to reconcile Rav Yeshua's list with the list of seven given above.

### *2<sup>nd</sup> Degree Hekeish*

It should be noted that many Karaite scholars, Rav Bashyatzi among them, rejected the notion of making a 2<sup>nd</sup> degree *hekeish* (see *Adderet Eliyahu*, Laws of Incest Ch. 5). That is, a logical deduction is valid law only if it can be made from a law expressly found in the written text. A logical deduction made from a law that is itself a logical deduction is invalid.

This principal no doubt warrants further discussion. For one thing, it is not entirely clear to me how Karaite scholars justified this restriction. For the sake of brevity, I will refrain from further elaboration here. Perhaps I shall discuss this matter further in the section on incest (where Rav Bashyatzi introduces this principle).

### *External Assumptions*

*Hekeish* is usually understood as logical deductions made from the biblical text. In many cases, however, it is more accurately described as logical deductions made from the biblical text *and* certain external assumptions. Whenever applying an *a fortiori* (Form 5) argument the assumption as to what is the major case and what is the minor case is often grounded in extra-biblical information. Similarly, a form 3 argument is dependent on an assumption that two given scenarios are indeed "equal in nature". This assumption is often extra-biblical, based in secular knowledge.

Let us consider an example. Unlike their Rabbanite counterparts, classical Karaite sages held that women had the right to directly petition for divorce. Yet, the text of the bible mentions only that a man may initiate divorce (*Deuteronomy 24:1*). However, the sages argued that just as a man may initiate divorce so too may a woman (a Form-3 *hekeish*).

This argument, however, is dependent on the assumption that men and women are equal in all qualities relevant to the laws of divorce. To the modern reader, this may seem self-evident, but in certain times and places this assumption may have been questioned.

In any case, the biblical text itself is ambiguous as to whether this assumption of equality is valid. In many instances, the biblical law is different for men and women. This is even true for certain marital laws (the laws of dowry or of Sotah water are some examples). The assumption that men and women are equal in the qualities needed to sue for divorce is thus an extra-biblical assumption supported more by independent knowledge of the nature of the sexes than by the biblical text.

Were the sages troubled by using extra-biblical information when making logical deductions? To the best of my knowledge, no Karaite sage challenged or even discussed this aspect of *hekeish* as a potential problem. To the classical sages Karaite Judaism was just as much grounded in science and reason as it was in the *peshat* of the biblical text. If the Torah truly was a revelation of the truth then certainly it should be consistent with the observed scientific truth. For the Karaite sages, philosophy, science, and divine revelation were all parts of the same truth. Thus, the extra-biblical assumptions frequently used in *hekeish* posed no problem so long as they were grounded in reason.

Karaite Judaism's adherence to reason in addition to revelation is made evident by Rav Bashyatzi's heavy emphasis on secular knowledge in his recommended curriculum for Karaite students. Rav Bashyatzi expects the Karaite scholar to know mathematics, biology, astronomy, and formal logic among other secular skills.<sup>19</sup> Indeed, counting the *Tanach* as a single work, Rav Bashyatzi's curriculum contains more secular works than religious ones. Furthermore, as noted above, Rav Bashyatzi believes that it is the rational commandments that are of central importance. The practical commandments, though certainly not optional, are merely means to achieve adherence to the rational commandments.

Rav Shlomo ben Afidah Hakohen exemplifies the Karaite reverence for reason when he notes that one must interpret a text using methods other than *peshat*<sup>20</sup> if the text's *peshat* "overturns or contradicts what is felt with the senses or what is determined through reason, or if a contradiction with it is found elsewhere [in Tanach]."<sup>21</sup> Rav Bashyatzi too notes that one does not use the *peshat* when it would contradict "the foundations of reason"<sup>22</sup> and the sages in general were willing to interpret the text in other ways when the *peshat* did not make sense.<sup>23</sup>

Today religion and science are often seen as separate entities. Perhaps the progress made in the sciences has rendered this dichotomy a necessity. Or perhaps it is still possible to synthesize the two.

<sup>19</sup> Adderet Eliyahu Sixth Principle of Faith Part II

<sup>20</sup> For instance, metaphorically, allegorically, or poetically.

<sup>21</sup> Yeri'ot Shlomo Part II Yeriah 3

<sup>22</sup> Adderet Eliyahu Sixth Principle of Faith Part II

<sup>23</sup> Indeed, there are many prophetic visions which are clearly allegorical. Also, there are many songs in Tanach that are clearly poetic.

## §1.6 Sevel Hayerusha

There are also laws that like those derived from *hekeish* are not included in the text of Tanach. Unlike those derived from *hekeish*, they are known to us from tradition and not from logical deductions. This pillar of law is called *Sevel Hayerusha* (“the yolk of inheritance”) and also *ha’atoka*.<sup>24</sup>

*Sevel Hayerusha* is different from the Rabbanite concept of Oral Torah because it never contradicts the *katuv*. By contrast, the Rabbanites use the authority granted to them by their oral torah to subjugate the *katuv* and interpret it in ways that do not make sense. Furthermore, *sevel hayerusha* always has a basis in the *katuv* and contains information that all Israel (Karaites and Rabbanites) accept.

### Notes on §1.6:

#### *Sevel Hayerusha vs. Tradition*

*Sevel hayerusha* is often misunderstood to incorporate any tradition. In the parlance of the sages, however, it incorporates only legally binding traditions. Legally binding traditions are exclusively those that are needed to properly follow the laws that have explicitly been written down in the biblical text. It is in part for this reason that Rav Bashyatzi stipulates that *sevel hayerusha* always “has a basis in the *katuv*”.

An example of true *sevel hayerusha* are the laws of engagement and dowry. There are numerous references in the text to engagement (see *Deuteronomy* 22:23-24) and dowry (see *Exodus* 22:15) but neither are defined legally anywhere in the Tanach. There must exist a well defined legal process for becoming formally engaged, however, because sleeping with a betrothed woman requires the death penalty (*Deuteronomy* 22:23-24).

The classical Karaite solution to this problem is that in referencing engagement and dowry the torah implicitly sanctions the legal definitions of engagement and dowry that existed amongst the Israelites at the time the Torah was given. These definitions are not repeated in the text because they were already well known to the Israelites. They were certainly not omitted because they were revealed at Sinai in a separate oral torah.

In any case, they are known in post-biblical times primarily through tradition (although even with the text alone we may reconstruct some idea of what the practice was). This tradition is true *sevel hayerusha* and is legally binding; it is neither arbitrary nor a matter of preference. The authoritativeness of these traditions are particularly clear because, as we have already noted, the application of the death penalty in some cases rests on the precise definition of engagement. One can now see why Rav Bashyatzi emphasizes that *sevel hayerusha* “has a basis in the *katuv*.” It is the references in the biblical text to engagement that give this particular tradition its legally binding status.

Another example of *sevel hayerusha* is the setting of the month. Nowhere does the text of the Torah explicitly define the beginning of the month. However, it is clear that it must have a legal definition because the biblical holidays are dependent on the proper setting of the month. The Karaite sages argue that in referencing the month, the Torah was implicitly requiring the use of whatever

<sup>24</sup> The terms *kibutz* and *da’at hashliach* are also used

calendar was in place at the time the Torah was given. Because the observation of the moon was already known to the Israelites, it was not explicitly re-commanded.

An example of a non-binding tradition is the specific text used in Karaite prayers, the placing of a newborn on a velvet pillow during the *brit milah*, or the wearing of a *kippah*. These traditions cannot be classified as *sevel hayerusha* and are not legally binding. The fact that they have been faithfully adhered to for hundreds of years is insufficient to grant them any sort of legal status. They have no true basis in the *katuv* and are not an integral part of the biblical legal code. Of course, they may still be worthy of great respect.

I have noticed that some modern Karaites doubt the validity of *sevel hayerusha*. Perhaps in some cases it is because they do not understand that only those traditions that are an integral part of the biblical legal code are considered to be legally binding. Nowhere does Rav Bashyatzki or any other sage I am familiar with describe a tradition not integral to the biblical legal code as being *sevel hayerusha*. Furthermore, in nearly all cases where laws are based in *sevel hayerusha*, the sages argue that these laws were not explicitly written in the Torah because they were already practiced before the giving of the Torah and were known to the Israelites.<sup>25</sup> In these cases, *sevel hayerusha* amounts to contextual information that seemed obvious to the Israelites at Sinai but no longer seems obvious today.

Since many of these Karaites who are reluctant to accept *sevel hayerusha* accept that the ideal Karaite should strive to understand the bible as an ancient Israelite would have, it seems that they should accept *sevel hayerusha* at least in the cases where it is manifested as mere contextual information that would have been available to ancient Israelites. There may be room for debate as to which traditions truly are pre-Sinai legal structures that were upheld by the Torah. Surely, however, the idea of *sevel hayerusha* (which is in essence equivalent the idea of contextual information) should not be categorically rejected.

As with *hekeish*, the concept of *sevel hayerusha* is intimately tied with the *peshat*. When reading any text according to its plain meaning, one automatically assumes that the text will reference contextual information. This is true even if the information referenced is rather specific (as with legal information). For instance, I might read a history book that discusses the United States role in Middle Eastern politics. This book might not include any explicit, ground level explanation as to what the United States is, where it is located, when it was founded, or what sort of government it has. I could then conclude either that the missing explanation was included in a secret oral publication, or that it is readily available as contextual information. The Karaite sages choose the latter approach.<sup>26</sup>

### *Sevel Hayerusha vs. Rabbinic Ordinances*

<sup>25</sup> Some major examples include the setting of the month according to the moon (although this is also known through *hekeish* as explained above), the laws of inheritance, and the proper method for shechita

<sup>26</sup> My example above is meant to poignantly illustrate the difference between *sevel hayerusha* and the oral torah since Karaites are often accused of having invented their own oral torah. It is also meant to demonstrate that the Karaite position is very intuitive. I use this example in the hopes of giving a brief and memorable understanding of the Karaite position. That being said, I realize that my example does not do justice to the Rabbanite position. I refer the reader to the subsection entitled "Mikdash Me'at" in my introduction to this work for more information on my policy on mentioning Rabbanite positions without fully discussing them.

*Sevel Hayerusha* is also a separate concept from new laws enacted by rabbis or other religious and communal leaders. A man-made law invented post-sinai is certainly not *sevel hayerusha*. That being said, there is a Karaite argument to be made for the legitimacy of certain man made laws. It is clear that certain leaders (kings and judges for instance, *see Devarim 17*) could give pronouncements and it is possible that some biblical holidays are man-made and obligatory (Purim and the four fasts of mourning for Jerusalem). I will discuss the issue of man-made laws elsewhere, most likely in the section on oaths.

### **§1.7 The split between Karaites and Rabbanites**

Rav Bashyatzi dates the origin of the Rabbanites to the time of King Alexander Jannaeus. I will not cover what Rav Bashyatzi says here as it is not relevant to understanding Karaite law and thus outside the scope of this work. For those interested in how the sages understood the origins of the split between Karaites and Rabbanites I recommend Fred Astren's *Karaite Judaism and Historical Understanding*.