

Robert Klapper is the Orthodox advisor at the Harvard-Radcliffe Hillel, and instructor at the Maimonides School in Boston. He also serves as Rosh Bet Midrash of the Summer Bet Midrash.

Review Essay

META-HALAKHAH

by **MOSHE KOPPEL**

(Jason Aronson, Northville, NJ, 1997, 160pp.)

Does all of what we call halakha actually derive from principles given at Mount Sinai? How does our religious practice relate to the halakha practiced in the authoritative Masoretic past? Moshe Koppel's *Meta-Halakhah* asks these and similar questions with clearheaded common sense and answers them with impressive ingenuity. In 106 compact but readily comprehensible pages, Koppel identifies the central metahalakhic issues, formulates them crisply, develops a sophisticated metaphor for dealing with them, applies that metaphor to generate meaningful approaches and solutions, and grounds those approaches and solutions in talmudic sources. Much is said about many issues in few words. The arguments are always clear, consistently stimulating, and occasionally convincing.

Does halakha have a defining purpose, and if yes, what is that purpose? The final 25 pages of *Meta-Halakhah* tackle this question, with less success. Here the arguments often seem fragmentary rather than brief. The overall thesis is much too ambitious for the scope of discussion and the evidence adduced, although the section is worth reading for the interesting contributions it makes to narrower issues such as the nature of belief.

The heart of *Meta-Halakhah* is the contention that certain elements of mathematical theory, applied as metaphor to halakha, allow the evasion or acceptance of otherwise troubling philosophic paradoxes or dilemmas.¹ For example, the "infinite unmodelable string" provides an example of a sequence that is patterned rather than random but whose patterns do not determine the next step in the sequence, or whose patterns can be legitimately continued in a variety of ways.² Similarly, various halakhic decisors can arrive at different results in new cases, and yet

each result can be legitimately viewed as a continuation of the existing body of precedent.

Viewing halakha in this light resolves the tension between creativity and tradition in Masoretic sources,³ most clearly expressed in the statement⁴ that “whatever a veteran student will originate in the future was already shown by God to Moshe at Sinai.” Does all of what we call halakha actually derive from principles given at Mount Sinai? In a sense yes, but in a sense no. The content of all halakha was implicit in the Mosaic Revelation at Sinai, but not specifically derivable from rules embedded in the details given at Sinai. Formally, new decisions are made under the authority of Sinai; the reader’s intuition must decide whether this theoretical structure is adequate to ground halakha in tradition.⁵

The claim that not all of halakha was literally revealed to Moshe Rabbenu at Sinai implies that halakha changes over time, that it has a history. This implication generates two serious philosophic difficulties. First, how can legitimate disputes have arisen as to details of halakhic observance of laws that have been practiced continuously since the time of Moshe? Second, what is the fate of those who practice positions that are eventually rejected? Is it possible, for example, that Rabbenu Tam never fulfilled the mitsva of *tefillin*?⁶

To answer these questions, Koppel distinguishes between formal halakha, i.e. halakha deducible from rules, and informal halakha, i.e. halakha discoverable only through creative imagination or intuition. Informal halakha deals with individual cases in all their individuality rather than as examples subject to general principles, and thus has no interest in establishing rules. Accordingly, informal halakha can generate results that a formalist would view as incoherent or even contradictory.

Koppel suggests that halakha was almost completely informal at its start, when prophetic intuition was the major source of *pesak*, but grew progressively more formal over time as the prophetic input into law diminished and eventually ceased.⁷

As part of the progressive formalization of halakha, previous intuitive and case-based decisions were generalized into rules, and these rules often yielded contradictory results in new cases. Each rule, however, congrued with the overall pattern and remained good law until a formal mechanism, such as a decision by the *Sanhedrin*, made its continued practice unacceptable. Thus all intellectually legitimate halakhic positions are initially legally legitimate, and their later formal delegitimation casts no aspersions on those who have meanwhile followed them.

Similarly, controversy about matters continuously practiced does not contravene the existence of a continuous tradition; the various positions reflect different tentative crystallizations of the decisions of a pre-formal era. The legitimate content of halakha does not change, increase, or decrease over time, although the formal content and the legitimate range of practice do.

Koppel concedes in his Preface that this portrait of the history of halakha is highly idealized. Furthermore, the only data he considers relevant are programmatic Rabbinic texts. "Whether the historical content of these statements is meant to be, or can be, taken seriously as history, concerns me less than how the Rabbis understood the development of halakha." Legitimately so, but there should be a strong bias in favor of interpreting Rabbinic statements about history in such a way that they can be taken seriously as history.⁸ Such a bias would, of course, affect our opinion as to whether Koppel's theory is the best available explanation of those texts.

Here we must note that the book's clarity and concision come at a price. Koppel sacrifices comprehensiveness to comprehensibility, saying what he has to say without addressing the question of whether what he says is correct. He offers little to no discussion of or response to alternative ways of interpreting the texts he uses as evidence. And alternatives are available on every axis: textual, historical, and ideological.

Let's begin with the textual axis. *Meta-Halakhah* cites the following famous *aggada* as proof that R. Akiva derived laws by methods unknown to Moshe Rabbeinu.

When Moshe went up on high [to receive the Torah] he found the Holy One putting crowns on the letters. [Moshe] said: Who is restraining you? [God] responded: There is going to be a person in later generations by the name of Akiva b. Yosef who is going to expound piles of law from each tittle.

[Moshe] said: Show him to me. [God] responded: Turn around. [Moshe] sat down in the eighth row [of] R. Akiva's study hall] but could not follow the conversation. He felt faint. At one point in the conversation, R. Akiva's students said to [R. Akiva]: Master, from where did you derive that? He responded: It is a law [transmitted] to Moshe at Sinai. [Moshe] was placated. (*Menahot* 29b. Translation from *Meta-Halakhah*, p. 7)

The seeming paradox at the heart of the story is that "on the one hand, R. Akiva attributes the law in question to Moshe, suggesting that

Moshe prefigures the future halakha. On the other hand, Moshe is completely unfamiliar with that very law.”⁹ A footnote states that “Rashi has a straightforward explanation, namely, that when the story takes place, Moshe has not yet received the whole Torah,” but gives no reason for differing with it. Rashi’s explanation is well-grounded in the text, as the dialogue begins with Moshe asking Hashem why He has not yet given the Torah.¹⁰ Perhaps Koppel feels that Rashi’s explanation does not satisfactorily explain why Hashem justifies the crowns on the basis of R. Akiva’s future exegesis rather than Moshe’s, but he should tell us so.

Turning to the historical axis, perhaps textual ambiguity is sufficient to explain the prevalence of multiple positions with regard to matters continuously practiced. In insecure halakhic cultures, such as contemporary Orthodoxy, new disputes often arise about old issues, because a lack of confidence in the practical tradition leads to a use of text as a primary halakhic source even where it contradicts practice.¹¹ The prophetic literature *prima facie* supports the thesis¹² that much of halakha was not practiced during the First Temple, so it seems entirely likely that the practical tradition was at least shaky in pre-Mishnaic times. Accordingly, Koppel’s thesis that divergent opinions on old issues must have arisen out of originally legitimate divergent practices seems unnecessary. Any number of understandings of the rabbinic dictum “These and those are the words of the living God”¹³ would suffice to justify those who follow halakhic positions later rejected.¹⁴

Furthermore, while Koppel properly acknowledges his debt to recent metahalakhists such as the Nazir and R. Tsadok haKohen mi-Lublin,¹⁵ he unaccountably fails to relate to the theory Netsiv sets out in his magisterial introduction to the *She’iltot*. This is a serious error of omission, as Netsiv offers a very similar but more nuanced thesis which provides a better picture of halakha as law.

Netsiv suggests that formal and informal law relate dialectically. *Pesak* is always immediately generalized by academicians, whose generalizations are then used by *posekim* to generate new specific decisions, and the cycle continues. Progressive formalization occurs not because the methodology of halakha changes but rather because more and more data is available.

This account is easier to take seriously as history than Koppel’s. *Meta-Halakhah* postulates that for many hundreds of years a culture centered around law functioned with no system of precedent, and, indeed, no rules other than the skeleton set out by the Torah. Administering a civil law under such constraints would be remarkably difficult,

as predictability is key to the effectiveness of any civil law, and even on purely ritual issues people need the confidence that what they did last time will work again. Rules and generalizations would have grown up inevitably.

A *beraita* cited on BT *Sanhedrin* 88b, however, offers a history of halakhic disagreement that seems to support Koppel's claim of a methodological shift.

R. Yosi said: Initially there were not many¹⁶ disputes in Israel. Rather, a court of seventy one members sat in the [compartment of the Temple known as the] *lishkat ha-gazit*, and two courts of twenty-three sat, one at the entrance of the Temple Mount and one at the door of the [Temple] courtyard, and other courts of twenty-three sat in all Jewish cities. If a question arose, the local court was asked. If they had a tradition [relating to it], they stated it; if not . . . they went [ultimately] to the *lishkat ha-gazit*. The question was put before them; if they had a tradition [relating to it], they stated it, if not, they took a vote. If the majority voted unclean they declared it unclean; if the majority voted clean, then it was declared clean. But when the disciples of Hillel and Shammai, who had not apprenticed adequately, became numerous, disputes increased in Israel and the Torah became as two Torahs. (Translation from *Meta-Halakhah*, p. 74)

The *beraita* clearly attributes the rise of enduring halakhic disputes to the inadequate apprenticeships of the students of Hillel and Shammai. Indeed, Yerushalmi *Haggiga* 2:2 claims that only one lasting dispute, about whether to lay hands on sacrifices (*semikha*) on festivals, occurred prior to the time of Hillel and Shammai, and only three more while they remained alive. Why did the previously effective consensus-establishing methods break down after their deaths?¹⁷ Koppel suggests, on the basis of Yerushalmi *Pesahim* 6:1's account of Hillel's accession to the *nesiut*,¹⁸ that Hillel was responsible for a major formalization of halakha. Prior to Yosie ben Yoezer, almost all halakha was informal,¹⁹ and since informal halakha deals only with ephemeral combinations of circumstances, it does not generate lasting disputes. The *semikha* dispute was the first about how to formalize. Perhaps if one begins with the assumption that all possibilities are legitimate, consensus is fairly easy to achieve, as the positions which aren't adopted are not actually declared wrong. Hillel's innovations, however, greatly increased the possibility of formalization by providing a mechanism for induction, and the failure of his students to properly apprentice necessitated the

actualization of that potential. As more issues were formalized, inevitably more disputes occurred.

This reading, however, inserts a causal step absent from the *beraita*. The *beraita* seems to believe that the lack of apprenticeship directly caused the disputes, whereas *Meta-Halakhah* suggests that it caused formalization, which caused disputes. This reading also fails to fully account for the term “two Torahs”, as in this scheme there had been greater practical diversity beforehand. It also fails to explain why the new disputes were not resolved by majority vote. Finally, it does not credibly explain why opinion within Beit Shammai and Beit Hillel homogenized.

Here I would like to offer a possibly original explanation, which I think accounts better for the causal scheme of the *beraita* and the term “two Torahs,” and also explains several other difficult talmudic passages well.

Hullin 43b states that “one who wishes to practice in accordance with either Bet Shammai or Bet Hillel, [so long as he practices both] their stringencies and leniencies, may do so.” Ramban notes that this appears to contradict the general principle that “doubts regarding biblical law are resolved in favor of the stringent position, doubts regarding Rabbinic law are resolved in favor of the lenient position;” if we had no other way of determining who was right, should we not be required to follow whichever has the more stringent position in biblical cases and the more lenient in Rabbinic cases? He responds that “One can say that because the dispute between the students of Hillel and those of Shammai was great, and all the sages of Israel were included within it (on one side or the other), and the Torah became for them as two Torahs, each had the right to behave in accordance with his own position.”

This explanation itself requires explanation. Why should the extent of the dispute create new rights? Indeed, that these disputes made the Torah into two Torahs seems more of a reason to delegitimize than to perpetuate them! Nonetheless, Ramban’s use of the phrase “into two Torahs” seems a clear attempt to connect this *sugya* to the *beraita* in *Sanhedrin*, which deprecates such an occurrence.

I suggest that Ramban is not endorsing the division of Torah, but rather acknowledging that under some circumstances it is pointless not to recognize that such a division has occurred. Ramban is forced by the *beraita* in *Sanhedrin* to conclude that some disputes cannot be resolved by the *Sanhedrin*, as otherwise even the disputes between Bet Hillel and Bet Shammai would have been ended by judicial fiat. He thus

argues that those disputes were unique in that they involved all rabbis. But this in and of itself would not be sufficient, as in principle every halakhic dispute involves all rabbis, as they must rule on it one way or the other. So Ramban notes that this was not a dispute on specific issues, but rather a split of schools—all rabbis were included in the dispute between the Houses. Accordingly, there was no one capable of deciding the disputed issues objectively, as every rabbi had a prior commitment to the ideology or community he belonged to. Majority votes are decisive only when they occur at the end of a deliberative process—the disputes between the House of Hillel and the House of Shammai arose from a priori commitments and thus were not amenable to deliberation.²⁰

Ramban's thesis that judicial bodies must be deliberative, and that judicial majorities are therefore incompetent to resolve ideological disputes, can be demonstrated from a perplexing passage on *Yevamot* 14a. The Talmud there seeks to delimit the scope of the prohibition "*lo tit-godedu*," translated as "do not form into groups."²¹ Rava closes the sugya by declaring that "*lo tit-godedu*" forbids only the establishment of a court "half of whose members rule in accordance with Bet Shammai and half in accordance with Bet Hillel." This claim is highly problematic, as Rava is seemingly forbidding any difference of opinion among the judges; yet courts are supposed to rule on the basis of majority vote! Ramban's idea, however, explains it simply. Rava forbids a court to be composed of judges with differing prior ideological commitments, as such a court will simply vote along party lines rather than deliberating about individual cases.

This explanation also accounts well for an anomaly noted by *Tosafot* to *Yevamot* 88a. *Tosafot* note that our practice to follow Bet Hillel whenever they dispute with Bet Shammai stems from a heavenly voice, but that we simultaneously adhere to the ruling of R. Yehoshua²² that "the Torah is not in Heaven," and that accordingly heavenly voices are not relevant to halakhic determination. Perhaps halakha recognizes divine intervention as legally significant when, and only when, the human legal process is structurally incapable of preventing schism. This occurs when legal disputes are generated by broader prior commitments.²³

This brings us to the ideological axis. Koppel assumes that it is only common sense to believe that God did not literally tell Moshe all future halakha at Sinai. This assumption is factually and textually grounded, but it also stems from a philosophic commitment to the substantive significance of human creativity. Indeed, *Meta-Halakhah's* last section

places the capacity for eternal self-recreation at the heart of halakha. Readers more focused on the value of intellectual submission to tradition would likely find belief in a comprehensive Sinaitic Revelation entirely plausible, and make the necessary interpretational moves.

Believers in the substantive significance of human creativity are likely to be less fearful of error and less needful of authoritative corroboration. Thus *Meta-Halakhah's* failure to discuss opposing viewpoints may reflect an ideological attitude rather than a pedagogical choice. Also, Koppel mocks the practice of seeking rabbinic approbation for scholarly works by including an uproariously funny fake *haskama* at the end of the book. Such mockery is fully justified by the absurdity of the *haskamot* printed with many contemporary works, but nonetheless also reflects an ideological attitude.

My sympathies are generally with Koppel's irreverence, and my assumptions and common sense are in line with his. Accordingly, I found *Meta-Halakhah* an enjoyable and enlightening read, a serious contribution to Centrist Orthodox thought refreshingly lacking in defensiveness. But while thinking metahalakhically, I found myself wondering whether it would be considered *talmud Torah* only by part of the Orthodox community, whether the Torah has again become two Torahs.

Koppel cites only three twentieth century thinkers—R. Kook, the Nazir, and the Rav. This is presumably not because Centrist Orthodox books work on the principle that any contemporary whom ArtScroll quotes cannot be quoted, simply because ArtScroll seems to use that principle in reverse. Rather, it is because the opinions of many if not most regular ArtScroll citees are based on assumptions so different from his as to be substantially irrelevant. Would *Meta-Halakhah* have been enhanced by an extensive discussion of whether it is or isn't common sense to believe that the Sinaitic Revelation was utterly comprehensive? According to R. Abba bar Shmuel in *Eruvin* 13b, the halakha follows Bet Hillel because they continued to cite Bet Shammai's opinions along with their own, because they at least tried to maintain real halakhic dialogue, tried to keep the Torah unified.

Yet there are at least seeming advantages to accepting the division. For one thing, doing so would allow us to adopt halakhic policies we consider morally necessary without considering the opinions of the full halakhic community. What effect would this have in Israel, where halakha in some areas has mandatory jurisdiction? What effect would this have on Centrist Orthodoxy's ritual practices? *Meta-Halakhah* should stimulate our community's thinking about this and other critical issues.

NOTES

1. In this regard, as he acknowledges in the Preface, Koppel stands on the shoulders of Douglas Hofstadter and Roger Penrose. His contribution is to draw the analogy within a specifically Jewish context. I should note my partiality to such applications; my own "*HaZaken haMamrei keGibbor haMasoret*," *Beit Yitzchak* 26 (5754), pp. 697-703 was partially inspired by Hofstadter's *Godel, Escher, Bach*.

However, such analogies should be used with caution. Metaphors never provide rigorous proof, only intuitive evidence, and it is important to understand that the application of models from other disciplines in philosophy is almost always just prettified metaphor. For instance, Penrose justifies belief in free will on the basis of an analogy to quantum mechanics. A basic objection to the possibility of free will is that we have only two intellectual models for understanding the physical world, randomness and determinism, and neither of these is compatible with free will, or at least with the kind of free will which generates responsibility. Quantum mechanics seems to provide a third model. However, the analogy doesn't really aid comprehension, as quantum mechanics is also incomprehensible. Furthermore, the existence of such a model in the physical world implies nothing about the "spiritual," nor is it clear what the factors analogous to pairing would be. Similarly, Koppel's model tells us that what we perceive as paradoxical statements may in fact be reconcilable, but it does not prove that the reconciliation he offers is correct. The analogy to data strings serves only to enable acceptance of what we would otherwise describe with despair as irresolvable contradiction, or with pride as eternal dialectic.

2. The question of whether the mathematical analogues are correct is beyond the scope of the book and certainly of the lay reviewer. Koppel refers the reader to Moshe Koppel and Henri Atlan, "An Almost Machine-Independent Theory of Program-Length Complexity, Sophistication, and Induction," *Information Sciences* 56 (1991), pp. 23-33.
3. On this topic generally see R. Michael Rosensweig's "Personal Creativity and the Individual's *Avodat HaShem*" in *Torah U-Madda Journal* 1 (1989), pp. 72-90.
4. I cite this source with considerable ambivalence. In *ibid.*, note 22, R. Rosensweig ascribes this formulation to Netsiv in his introduction to the *She'iltot*. See there section 1:3. Netsiv ascribes this formulation to "*midrashim*," whereas he specifically cites *Kohelet Rabba* 1:2 as having the text "*le-horot*" instead of "*le-hadesh*," which R. Rosensweig notes is also the version found in Yerushalmi *Haggiga* 1:8 and *Pea* 2:4. Add to that Yerushalmi *Megilla* 4:1. Add also *Tanhuma Buber Ki Tisa* 17, which has the line "even what a veteran student will ask" ("*yi-sh'al le-rabbo*"). R. Rosensweig adds *Megilla* 19b, which has the line "even what the *soferim* will originate," but note that the Talmud there explicitly identifies "what the *soferim* will originate" with the institution of *megilla* reading for *Purim*.

Note also that Netsiv identifies the veteran student's contribution as "establishing a law which cannot be swerved from" in explicit opposition

- to “questions and *pilpulim*” with no practical ramifications.
5. Koppel suggests that differing sensibilities on this issue generated the controversy between R. Eliezer and R. Yehoshua. For a fascinating alternative explanation see Avraham Korman, *Pianuah Aggadot* (Tel-Aviv: Re'em, 1991, Hebrew), p. 48-76.
 6. In his unpublished lecture “*Torat Chessed V'Torat Emet*” (English), R. Aharon Lichtenstein describes this as inconceivable. See, however, Mishna *Sukka* 2:7, in which Bet Shammai contends that R. Yohanan ben haHorani was told by his colleagues: “If you have always practiced thus, you have never in your life fulfilled the mitsva of *sukka*.”
 7. His claim that prophetic inspiration played any role in the legal process is initially startling in light of R. Yehuda's quote of Rav in *Temura* 16a, which shows Elazar ben Aharon and Yehoshua bin Nun refusing to use prophecy to recover laws forgotten after Moshe's death on the respective grounds that “the Torah is not in Heaven” and “a prophet may not originate anything now.” R. Abbahu similarly comments there that those laws were recovered only by the intellectual effort of Otniel ben Kenaz. Koppel suggests that these statements and stories should not be read as completely excluding prophecy from the legal process.

It is universally agreed that prophets can impose requirements or justify anomalous behavior as *horaot sha'a*, “rulings for the time,” even when these requirements contravene the formal law, as for example when Eliyahu brought sacrifices outside the Temple during the confrontation at Har haCarmel. Koppel suggests that since informal law is case-specific, it is nothing but a series of *horaot sha'a*. Accordingly, in an era in which specific rulings were not automatically transformed into general rules, there would be no barrier to prophets in their prophetic roles serving as halakhic decisors.

8. Especially when they provide the theory legitimating our religious practice and intellectual tradition.
9. Note that the story is highly unclear as to what Moshe is unfamiliar with. Is it the law or the method of derivation? It is also unclear whether the law whose provenance placates Moshe is the same law that R. Akiva has previously been deriving midrashically, in which case the story tells us that the derashot are *post facto* justifications of the law, or whether it is a different law, in which case Moshe remains unfamiliar with the law and is not even the explicit ground of the earlier discussion.
10. It also ties in well with *midrashim* that show Moshe as intellectually incapable of receiving the entire Torah, but eventually doing so with miraculous divine assistance. See for example *Shemot Rabba* 41:6.
11. See Dr. Haym Soloveitchik's article “Rupture and Reconstruction in Contemporary Orthodoxy” in these pages. Dr. Soloveitchik is commonly understood to be arguing that this loss of confidence arose from a felt lack of spirituality rather than from the rapid pace of technological change and a realistic appraisal of the level of observance in prior American generations, but he has stated that he intended to draw no causal connection between the spiritual condition and the development of a more text-centered halakha.
12. See, however, Yitzchak Isaac Halevy's *Dorot haRishonim* for a different perspective.

13. Or “the living words of God”.
14. For a survey of the various options see R. Michael Rosensweig’s “*Eilu V’Eilu*” article in these pages. See also R. Lichtenstein op cit.
15. The quotes he offers from those two thinkers are tantalizing and seem to fit well with his thesis, although I would have liked fuller treatments.
16. In Maimonides, Laws of Rebels 1:4, the text reads “there were no disputes,” and in Ms. Munich of the Talmud it reads “there was no dispute”.
17. In Maimonides op cit. it is the end of the *Sanhedrin* which causes the breakdown, which is problematic textually since the *Sanhedrin* was maintained long after the Houses of Hillel and Shammai ended.
18. Specifically, Koppel suggests that Hillel was responsible for the formalization of *midrash halakha* as rules of interpretation. In his account, the Torah had previously been interpreted intuitively, but Hillel generalized the intuitive methods. I am not at all convinced that this is a plausible account of the rise of *midrash halakha*, as its rules frequently do not seem to correspond to those used in interpreting other texts. For example, Koppel suggests (p. 68) that the *gezeira shava* developed out of the intuitive principle that “if the same word appearing in two different places has certain connotations in one place, it is natural to conclude that it has similar connotations in another place.” But *gezeirot shava* rarely relate to connotation—rather, they transfer their entire context. On this issue, too, Netsiv has an intriguing suggestion. He suggests that the rabbis sought textual justifications for traditionally received laws, and, if a method worked to justify a large number of such laws, it would then be applied to generate new laws.
19. Koppel backs this up with an interesting interpretation of *Temura* 15b. The Talmud there, in an attempt to mediate conflicting statements as to whether Torah could be learned “as Moshe Rabbenu did” after his death, concludes that between the time of Moshe Rabbenu and Yosie ben Yoezer halakhic intuition lessened, but what was learned was learned as Moshe had learned it. Koppel correctly notes that the Talmud offers the distinction between intuition (*libba*) and content (*gemiri*) rather than the readily available distinction between consensus learning and learning subject to dispute. He argues that this suggests that the Talmud is stating that the decline in intuitive learning causes the breakdown of consensus.
20. See also *Sota* 47b and *Tosefta Sota* 14:9, which state that disputes multiplied in Israel before the Students of Shammai and Hillel, but that the Torah did not become two Torahs until their time. Note that *Hiddushei ha.Ran* ad loc. understands Ramban as saying something completely different, but that his text of Ramban lacked the crucial phrase “and the Torah became two Torahs.”
21. Rashi ad loc. says that the ultimate issue is avoiding having the Torah become two Torahs. Rashi’s overall position deserves greater explanation, as his identification of the issue varies through the Talmud. I hope to publish soon a full analysis of his position.
22. *Bava Metsia* 59b
23. For an illustration of other ways in which halakha confronts metahalakhic difficulties see Klapper op cit.