

I pose this issue, first, not simply in regard to halakhah (though I will have a good deal to say about that issue shortly), but rather much more broadly in relation to the entire content of Jewish religion. If what we have in Torah is our ancestors' midrashim on God's revelation, we have to assume that from the beginning there were in fact multiple such understandings of Sinai. Who, then, determined which of these multiple hearings of God's revelation were preserved, and which dropped? Which were left on the cutting-room floor? What was the process whereby these decisions were reached? What criteria were used in making these determinations?

For example, in my *Sacred Fragments* I had espoused what I then thought was the radical view that surely the notion of *brit* and of "a" halakhah (in contrast to any notion of "the" halakhah) were unassailable in any formulation of the contents of Judaism, though I wasn't as sure about the unassailability of any other form of Jewish religious expression. That's where the parameters lie, I claimed. But in her *Standing Again at Sinai*, Judith Plaskow claims that all of her female ancestors' metaphors, myths, or hearings of Sinai were excluded from the canon, that had they been included, it is conceivable that halakhah might not have become the central form of religious expression that it did. In the light of Plaskow's statement, isn't my claim of the indispensability of *brit* and of a halakhah a totally subjective decision? Why do I assume that there can be no Judaism without *brit* and a halakhah?

On the issue of authority, then, let us begin by dismissing some possibilities.

First, the ultimate authority is clearly no longer God, simply because we no longer believe that what we have in Torah is God's explicit will. Nor, for that matter, does the authority rest in the text of Torah, for that too is no longer understood as a precise record of God's will.

We must conclude, then, that the ultimate authority has always been, and continues to be, vested in a human community.

In rabbis or in rabbinic authorities? But then, as the late Wolfe Kelman used to ask, "Who is a rabbi?"

It seems to me that it is the concerned community that makes a rabbi, simply by the process of accepting him or her as teacher and authority in matters of Torah. The ultimate authority, then, is the concerned lay community acting in concert with its chosen rabbinic authorities.

That's what Solomon Schechter meant in that classic statement, "Historical Judaism," the introduction to his first series of essays in Judaism (and reprinted in *Tradition and Change*). Schechter is uninterested in revelation, in what happened at Sinai, as a theological issue, because to him it is irrelevant. The issue is not what Scripture records but how it was read by the later generations, that is, by the Oral Torah or, as he calls it, by the synagogue, which, clearly, to Schechter, is a thoroughly human body. In other words, Scripture means whatever the later community says it means. Or, to use Schechter's typically whimsical formulation, "God's choice invariably coincides with the wishes of Israel."

Israel, here, is what Schechter calls "Catholic Israel," that consensus of caring, committed, learning Jews who have a stake in the process. That is our community. There lies the ultimate authority for the shaping of Judaism. They will want to turn to rabbis for guidance in that process, but then it is their decision, not that of the Seminary or of any other authority-making body, whom they turn to for that guidance and on what issues.

But then we must ask: Where is our community? Or, more generally, is there such a community within our movement? Does Catholic Israel exist today? From what my colleagues tell me, we are really talking about roughly 10 percent of the Jews affiliated with our Conservative synagogues. I use admittedly informal criteria: a kosher home, regular Shabbat synagogue attendance, adult education participation, children at Camp Ramah and Solomon Schechter Day School.

I recall David Hartman's claim in a conversation with some of us at the Seminary a few years ago. "You people (the

Conservative movement) could have captured the heart of American religious Jewry. But you failed. You have not created an observant community. You have not created a davening community. You have not created a learning community. You were far too interested in critical editions.”

This is the fruit of a century of Jewish education in our movement. That statistic sharpens the issue of authority for all of us here.

THE DILEMMA OF PARAMETERS

The dilemma regarding parameters flows directly from the problem surrounding authority. For if the community, not God or Scripture itself, is truly the authority, then what are the limits within which that community can exercise its authority? If Torah means whatever the community decides it means, then is everything up for grabs, all the time? I believe that the question can only be answered inductively. There are parameters, but no intrinsic parameters. The parameters are set wherever the community wants to set them, that is, set when the community is acting seriously, committedly, in fear and trembling, not casually or capriciously.

Despite *Emet Ve-Emunah's* claim to the contrary here, my sense is that the Conservative community cannot escape the potential for relativization that is inherent in the process. We fear the slippery slope. But we also fear its obverse, what the late Gerson Cohen used to call the “frumometer” approach. But isn't it clearly the case that both of these impulses implicitly concede that there are no intrinsic parameters, that the parameters are set inductively by each community, depending on its own personal reading of God's will? Note well: We do not for a moment believe that we alone introduce a subjective element into the process. The ultra-Orthodox are equally subjective. There is no more subjective dimension in Jewish decision making than the concept of *daas Torah*, that is, that whatever the supreme rab-

binic authority rules is by definition God's word and must not be challenged. They are as subjective as we are. The only difference is that we acknowledge our subjectivity; they don't.

And if we take Deuteronomy 17:8ff and the Akhnai story (Baba Metzia 59b) seriously, it seems to me that there is absolutely no heresy in the claim that God has surrendered God's authority to human authorities. I have suggested as an analogy the “best interest of baseball” clause in the rules of Major League Baseball. The system itself gives the authority the right even to subvert the system's own regulations, if that authority deems it to be in the best interest of the system. The only question is: Who is that authority? And here again, it seems to me that the community chooses its authority and grants him or her the right to act in its best interest.

The problem with our Conservative system is that we have multiple communities, multiple versions of the rules of the game, and multiple views of who is the authority, which makes our situation infinitely more complicated than that of Major League Baseball. We have no alternative, then, but to live with the imminent danger of relativism. There are no absolutes, no blacks and whites, no clear-cut immediate decisions, no divine voices. Rather, we must live with pluralistic responses, prolonged periods of indecision, considerable tension and pain as the process works itself out, and a seemingly perpetual threat of divisiveness and fragmentation.

But how else to characterize a movement that says yes on feminist issues, says no on patrilineality, and is willing to debate homosexuality; that claims that we can marry a *kohen* to a divorcee but insists that oysters are still *treif*? We make these decisions because although we clearly do include the notions of a revealing, commanding God, of *brit*, and at least of a halakhah within the parameters of what we understand Jewish religion to stand for, we do not believe that we know beyond question what God wants. We do believe that God wants what we, in utter seriousness, perceive God as wanting: God's will is to be discerned by consensual decision making based on a host of factors:

halakhic precedents, educational strategies, changing value systems, socioeconomic and demographic forces, our moral intuition, the politics of the movement, and, above all, our own subjective experience of God's command directed to *us* in the here and now—all extrinsic, not intrinsic factors. We also believe that multiple varying decisions on any one issue may all be equally legitimate at the same time. The system is undeniably messy and anxiety making.

Equally subjective are the criteria that go into determining who is an arbiter on halakhic issues. We would agree on learning and piety, for example, but how do we measure these? Even more subjective would be the imposition of some sort of theological test regarding the roots of the halakhic system itself. Here again, we can only stipulate extrinsic criteria, not intrinsic ones.

These dilemmas emerge most sharply on halakhic issues, but our theological commitments are not entirely immune. It is clear to me, for example, that my conversions would not be accepted in some circles, not because I didn't do them the right way, but because the theology that underlies the way I do a conversion is not acceptable. That is, I obey the mitzvot about halakhic conversions but not as commanded explicitly by God. That theology effectively subverts the legitimacy of what I do, rendering it invalid for some. That posture is relatively rare, but it has been advanced in some traditionalist circles.

The issue of halakhic parameters, however, is more critical. I have claimed, as noted earlier, that my theology has led me to affirm the legitimacy of multiple halakhic systems, each defined by parameters established consensually by multiple halakhic systems, ranging from Satmar Hasidism on the right to Reform and UJA-type civic religious groups on the left. So far, so good.

Where I drew the line, however, was at a form of Judaism that denies the legitimacy of some forms of obligated behavior as an expression of one's Jewishness. Thus I affirmed the indispensability of a halakhic system, without prejudging the validity of any one specific halakhic system. I made the same claim in regard

to what is called "halakhic process." I took a radically pluralistic view of that enterprise as well, claiming that a halakhic process is whatever process a *posek* uses to reach a halakhic decision. Here, as in the former case, there are no intrinsic parameters for defining what is halakhic process. It is rather to be established inductively by looking at what any one *posek* actually does.

What I failed to see, however, was that in insisting on the indispensability of a halakhic system I was simply setting my own subjective parameters, that the decision was as subjective as any other, and that it therefore lacked prescriptive validity. I could retain it, even advocate it, but I could not insist on its totally objective validity or in an a priori way dismiss the validity of other positions.

That claim was shaken when I encountered the writings of other liberal Jewish theologians who questioned even that set of parameters as well. Judith Plaskow, for example, insists that if her female ancestors' hearings of Sinai had been accepted and canonized, it is conceivable that what would have emerged is a Jewish religion that did not place such an emphasis on law as a form of religious expression, but rather espoused much more fluid and relational forms of expression.

In fact, Plaskow raises an even stronger question. She suggests that underlying every legal system is a community's social construction of reality; as that community's taxonomy of reality changes, its legal system becomes ever more discordant. What seems to be a halakhic dilemma, then, is in actuality a totally different construction of reality that the halakhic system can never hope to resolve without being stretched beyond recognition.

Take a relatively simple example. I'm told that a majority of Conservative families who light candles Friday evening do so not before sunset but rather when the family assembles around the table for its Shabbat meal. Now it seems to me that the issue here is not purely halakhic. In fact, I doubt whether it is even conceivable for the halakhah to legitimize this practice. What is at issue here is the social construction of time. The family whose parent figure is still working at sunset simply does not view that

Elliot Duff,
the unfolding Tradition
p. 513

EPILOGUE

The Unity within the Diverse Conservative Theories of Jewish Law



THIS BOOK HAS PRESENTED a variety of theories of Jewish law within the Conservative movement. The diversity within the movement in its approaches to Jewish law should therefore not be in doubt. At the same time, it is important not to exaggerate that diversity, for much unites the movement as well in its approach to Jewish law. Here, at the end of a book that presents the diversity within the movement, then, it is important to remind readers of the *unity* within Conservative Judaism in its approach to Jewish law so that people “do not lose the forest for the trees.” Some of these unifying factors include the following: a strong interest in Jewish law as a central feature of what it means to be Jewish; a sense that Jewish law makes an important claim on us (most would say it is “binding” or “authoritative”); a recognition that Jewish law has changed in substance throughout history and therefore must be studied and applied with that historical development in mind; a clear rooting of Jewish law in Judaism’s larger context, including its views of God and humanity (its theology and anthropology), its stories, prayers, economic and social conditions, and its sense of morality; and a deep commitment to make Jewish law articulate how a good and just God would have us act in our time and place.

As the chapter comparing Conservative theories to other theories demonstrates, other Jews share some but not all of these commitments. Moreover, even the elements they share with the Conservative movement they often interpret and apply differently.

What is clear, then, is that quite apart from our differences with the other movements, the Conservative movement asserts some important convictions about the nature of Jewish law as articulated in the unity and variety that characterizes the theories presented in this volume. Its ultimate commitment is to learn Jewish law, to make it a vital part of our own lives, to enrich it by judiciously applying it to modern times,