

Controversy and Dialogue in the Jewish Tradition

A Reader

Edited by

**Hanina Ben-Menahem,
Neil S. Hecht and Shai Wosner**

With an interpretive essay by
Hanina Ben-Menahem



CONTROVERSY AND DIALOGUE IN THE JEWISH TRADITION

Controversy is the main instrument by which Judaism develops and shapes its philosophy, theology, and law. The rabbinical literature speaks with many voices, debating virtually every subject, and failing to reach a consensus on many. However, this willingness to condone controversy is accompanied by much deliberation. Controversy, and its legal, philosophical, and social ramifications, was and remains of unparalleled concern to the rabbis. Today, we are also witness to a burgeoning academic interest in controversy and pluralism in Jewish law.

Controversy and Dialogue in the Jewish Tradition: A Reader is an anthology of passages from the rabbinical literature that address the phenomenon of controversy in Jewish law, affording the English-speaking reader the opportunity for a first-hand encounter with this fascinating material. An extensive analytic introduction contextualizes the material from a philosophical perspective.

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CONTROVERSY AND DIALOGUE IN THE JEWISH TRADITION: AN INTERPRETIVE ESSAY

HANINA BEN-MENACHEM

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1. The pervasiveness of controversy

The halakhic discourse documented in both the Rabbinic literature, that is, the Mishna, the Midreshei Halakha, and the Talmud, and the post-talmudic literature, is characterized by diversity of opinion, and frequent agreement to disagree. Some of these controversies are resolved, others consensually left unresolved. This diversity of opinion is one of the salient differences between the biblical outlook and the talmudic. While the Bible always speaks with one voice, and suppresses internal disputes – the few that do emerge address external challenges – the talmudic literature speaks with many voices, and is replete with debate on virtually every subject that comes up for discussion. The transition from the monolithic biblical outlook to the pluralistic orientation of the Talmud was not unconscious, but accompanied by much soul-searching and deliberation, as is evidenced by the very large number of talmudic sources in *Controversy and Dialogue in the Halakhic Sources*.¹ This anthology, a collection of passages from the entire range of rabbinical literature, focuses on rabbinical awareness of the centrality of controversy in halakhic discourse. The present work, *Controversy and Dialogue in the Jewish Tradition: An English Reader*, affords the English-speaking reader the opportunity for a first-hand encounter with this fascinating material, by presenting a significant selection of passages from the first part of *Controversy and Dialogue*, vol. 1. Readers should take into account that while the arrangement of the passages serves a methodological purpose, it is not categorical, and some passages can also be classed under different headings, and are of relevance to the material in other chapters.

The halakhic endeavor in which the rabbinical authorities have engaged throughout the generations can be characterized as the intellectual effort to interpret the divine will, and translate it into daily conduct. As we said, this enterprise has often been accompanied by vigorous debate and divergence of opinion. This phenomenon – the inability to reach a consensus on a matter of law – is of unparalleled concern to the rabbis, in every generation, and throughout the Jewish world. Undoubtedly, there is no aspect of their endeavor that engages the rabbis as does the problem of controversy and its myriad legal and philosophical ramifications. The attention accorded controversy far exceeds that paid to basic jurisprudential questions such as what constitutes the basic norm, or rule of recognition, in Jewish law; how we determine if a given norm is a halakhic norm; the nature of the law–morality nexus; and the taxonomy and individuation of laws. Moreover, several foundational issues in the philosophy of

¹ Hanina Ben-Menahem, Neil Hecht, and Shai Wosner (eds.), *Controversy and Dialogue in the Halakhic Sources* (Hebrew), vols. 1–2, Boston and Jerusalem: 1991; vol. 3, Commentary, Jerusalem: 2002.

halakha, and in particular, questions of authority and interpretation, and of the validity, flexibility and authenticity of the halakhic tradition, that are almost never dealt with directly in the talmudic literature, are nonetheless addressed in the course of grappling with the question of controversy.

It seems that the pervasiveness of controversy, and its connection to these fundamental philosophical questions, may explain the intensity of the passions it generated, and the Sages' willingness to delve into sensitive and hitherto unaddressed issues. Indeed, the questions that controversy brings to the fore are of such consequence that the analysis of controversy is, from early on, often imbued with ideological bias, as a result of which scholarly positions on historical and interpretive questions are determined by ideological considerations. In addition to the jurisprudential creativity mandated by the phenomenon of controversy and the difficulties to which it gave rise, the rabbinical authorities were also called upon to respond to another challenge. External elements used the existence of controversy as a pretext for attacks on the authenticity of the rabbinical tradition, attacks that were in truth motivated by other agendas. In such cases, the Sages' engagement with the phenomenon of controversy was reactive, arising out of a need to protect the law from those who sought to impugn it. And indeed, the pervasiveness of controversy, of failure to reach agreement on legal questions, and the religious implications of this phenomenon, did not go unnoticed outside the world of Jewish law. Controversy was constantly adduced by the Karaites, for example, in their fight against the hegemony of Rabbinic Judaism. And during the Haskalah, there was a great deal of discussion of the famous Mishna in Eduyot that explains the perpetuation of dissenting views for future reference.² Today too, we are witness to a burgeoning interest in halakhic pluralism,³ interest that is reflected in the proliferating contemporary literature on halakhic controversy.

The purpose of this introductory essay is to give the reader a conceptual handle on the material, by calling attention to the different themes

² mEduyot 1:5.

³ Since the publication of *Controversy and Dialogue* in 1991, the following works have appeared: Z. Lampel, *The Dynamics of Dispute*, New York: 1992; M. Sokol (ed.), *Rabbinic Authority and Personal Autonomy*, London: 1995; M. Kellner, *Maimonides on the 'Decline of the Generations' and the Nature of Rabbinic Authority*, Albany, NY: 1996; A. Sagi, 'Elu va-Elu': *A Study on the Meaning of Halakhic Discourse* (Hebrew), Tel Aviv: 1996; M. Fisch, *Rational Rabbis: Science and Talmudic Culture*, Bloomington, IN: 1997; S. Rosenberg, *Not in Heaven* (Hebrew), Alon Shvut: 1997; Y. Silman, *The Voice Heard at Sinai: Once or Ongoing?* (Hebrew), Jerusalem: 1999; M. Walzer et al., *The Jewish Political Tradition*, vol. 1, New Haven, CT: 2000. Prior to publication of *Controversy and Dialogue*, the following had appeared: Jeffrey I. Roth, "Responding to dissent in Jewish law: suppression versus self-restraint," 40 *Rutgers L. Rev.*, 31–99 (1987) and "The justification for controversy in Jewish law," 76 *California Law Review* (1988); D. Weiss Halivni, *Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis*, London: 1990.

that run through the book, and suggesting parameters that may be useful in thinking about controversy in the halakhic context. The axes around which the material presented in this book is organized are conceptual and thematic. The discussion does not seek to anchor the ideas of the rabbis in their social milieu, or to contextualize their halakhic worldviews. That, I leave to the historians. My goal is to offer a synoptic conceptualization of the ideas themselves, that is, the rabbinical reflections on controversy and its ramifications, as they are expressed in the halakhic literature. In this introduction, I will also attempt to formulate, on the basis of these documents, some conjectures as to the halakhic authorities' underlying motivations.

2. The meaning of *mahloket*

There is a range of meanings associated with the term “controversy” (*mahloket*). Let us start by considering two distinct senses found in the talmudic literature. In one of them – perhaps the primary, though not necessarily the original sense – *mahloket* signifies the existence of an unresolved conflict between different opinions, that is, a stalemated debate over the law. In addition, the term *mahloket* also has another, pejorative, sense, that of an altercation or rift within a group. The fact that the same term is used for both contexts is telling, and suggests a critical attitude toward halakhic controversy. The negative connotation of social discord does carry over, to some extent, to the semantic field of halakhic discourse.

A third, less common meaning of the term *mahloket* is group or sect, both at the level of social organization, and in the halakhic context. An example of the former usage is Numbers Rabbah 3:12: “The tribe of Levi became four divisions (*mahloket*) to circumscribe the four sides [of the Tabernacle].” And the latter usage is exemplified in the following talmudic passage:

R. Joshua was asked, What is the law regarding the rival [wife] of one's daughter? He answered them, It is a [matter of] controversy (*mahloket*) between the house of Shammai and the house of Hillel. But, [he was asked,] in accordance with whose ruling is the established law? Why should you, he said to them, put my head between two great mountains, between groups (*mahloket*) of disputants, between the house of Shammai and the house of Hillel?
 bJebamot 15b

Sometimes it is hard to determine which of the three senses is intended. Consider the following Mishna:

Every controversy that is for the sake of heaven, its end is to be sustained. And every controversy that is not for the sake of

heaven, its end is not to be sustained. What controversy is for the sake of heaven? The controversy between Hillel and Shammai. And that which is not for the sake of heaven? The controversy of Korah and all his congregation.⁴

Here, all three senses may be in evidence. The house of Hillel–house of Shammai controversy may be intended in the first sense we spoke of, the Korah controversy, in the second. However, some have construed both cases to refer to controversy in the second sense, namely, that of a social rift,⁵ and others have argued that controversy in the house of Hillel–house of Shammai case is intended in the third sense.⁶

Let us now clarify the concept of controversy in the first sense, namely, failure to reach agreement on a legal question. A distinction must be drawn between a discussion wherein the disputants have not yet reached a decision about some halakhic question, but are in the process of doing so, and a situation where, because the process of attempting to clarify a certain question was unsuccessful, the parties have adopted contrary positions, which they are intent on defending.

Now debate and dialogue with a study partner or group is the recommended approach to Torah study, and the technique most suitable for clarifying legal points. A classic passage that refers to this methodology describes the study habits of R. Johanan and Resh Lakish:

R. Shimon b. Lakish's soul expired, and R. Johanan was greatly saddened on account of his death. Our Rabbis said: Who will go to ease his mind? Let R. Eleazar b. Pedat, whose legal teachings are very subtle, go. So he went and sat before him; and upon every dictum uttered by R. Johanan, he said: There is a baraita that supports you. He said, [Do you think] you are, then, like the son of Lakisha? When I stated the law, the son of Lakisha would raise twenty-four separate objections, to which I gave twenty-four answers, which led to a fuller understanding of the law. And [all] you say is: There is a baraita that supports you. Do I not know that my opinions are well-grounded?

bBaba Metzia 84a

⁴ mAvot 5:17.

⁵ Shlomo Naeh, "Compartmentalize your heart: additional reflections on controversy in the teachings of the Sages" (Hebrew) in A. Sagi and Z. Zohar (eds.), *Renewing Jewish Commitment: The Work and Thought of David Hartman*, Tel Aviv: 2001, p. 851.

⁶ E.Z. Melamed, "On the language of the *Ethics of the Fathers*" (Hebrew), *Leshonenu* 20 (1957), p. 107. This interpretation was already suggested by R. Nathan, 'father of the yeshiva' (d. before 1102).

This process of debate and dialogue must not be confused with controversy, which is a possible, but not inevitable, outcome of the process. For the debate may well end in agreement between the study partners that one of their positions is in fact correct or more persuasive. But if it does not, that is, if neither side is able to convince the other of the correctness of its view, or if both views seem equally acceptable, the outcome of the study process is a state of dilemma, a state of unresolved controversy between the views. This outcome is known as *mahluket*, literally, division. Since there is an intimate connection between the process and any resulting controversy, both the debate and the stalemate are discussed in the sources, which sometimes deal explicitly with only one of the two, but often shift rapidly from one to the other and back again.

Note that *mahluket* in the sense of a stalemated legal debate can also have a slightly different meaning: it can refer to scholarly critique in general, that is, to a disagreement that is not the outcome of actual dialogue and debate in the course of group Torah study. Such a difference of opinion may be generated by the juxtaposition of the views of individuals who never debated the issue together – and may be separated by centuries or millennia – but merely voiced contrary opinions on a given question. It should be noted, however, that a controversy where one side has not had the opportunity to appeal to, and perhaps convince, the other, is usually regarded as a defective sort of controversy. Here, the classical method for resolving controversies – application of the ‘follow the majority’ rule – is not helpful. For there is always the chance that a seeming controversy of this type would not have proven a genuine controversy at all had the proponents of the minority view been able to discuss the matter directly, either face to face or through correspondence, with the proponents of the majority view, as they might have found a way to resolve the apparent difference of opinion. One of the earliest formulations of this sentiment, which later gained currency, is found in a responsum pertaining to the famous debate over the renewal of ordination (*semikha*):

But when the consensus of the majority is established without deliberation in which all the parties are involved, it is not considered consensus at all, since perhaps had the majority heard the arguments of the minority, they might have conceded to them, and retracted their opinion.

Ralbah,⁷ *Responsa Kuntres Hasemikha*

Implicit in this assumption that only controversies generated in direct discussion are genuine, and all others essentially pseudo-controversies, is

7 R. Levi b. Jacob b. Haviv, Spain–Jerusalem, 16th c.

a very optimistic evaluation of the halakhic system's capacity for resolving disputes between different views.

3. Controversy is the way of the Torah

In the sources, controversy is frequently characterized as “the way of the Torah.” This self-awareness encompasses both the diachronic and the synchronic dimensions of the halakhic enterprise. Whether we look at the rabbinical literature over time, or consider a cross-section at any given moment, in either case lack of a consensus will be the principal characteristic manifested. As we will see, overall, a positive attitude to controversy undoubtedly prevails in halakhic reflection on the subject. But alongside acceptance of the reality of controversy as positive, we also find, though to a far lesser degree, the opposite attitude, that is, a tendency to present halakhic activity as cohesive and free of disagreement, a tendency that can only be accommodated by disregarding evidence to the contrary. Such aversion to controversy is clearly evident in the passages in chapter 1 classed under the heading “Controversy is not to be multiplied,” which we discuss in section (8) below, ‘Opposition to controversy.’

The title of the first chapter, “Controversy is the way of the Torah,” was chosen because the phrase is used very often in the rabbinical sources, and captures, we believe, the essence and conceptual complexity of the pluralistic approach. The first to use this phrase is R. Israel Isserlein,⁸ author of *Trumat Hadeshen*, who states:

With regard to your question about whether a student is permitted to disagree with his teacher over a given ruling, and – if he can support his view on the basis of the Talmud or the rulings of the Geonim – rule contrary to his teacher's opinion. It seems evident to me that if the rulings are reasonably clear, and the logical sequence of the talmudic passages appears to support the student, there is no reason why he should not disagree. This has been the way of the Torah from the days of the Tannaim. On a number of points, our holy R. Judah the Prince disagreed with his father and with his teacher R. Shimon b. Gamaliel. Among the Amoraim, in a number of places Rava disagrees with Rabbah, who was his teacher, as it says in the *Mordekhai*.⁹ Among the great halakhic authorities, Asheri disagrees with R. Meir of Rothenburg, who was his mentor. I do not wish to enlarge on this further, as these things need to be discussed face to face.

Thus spoke the youngest and most junior in Israel

⁸ Ashkenaz, 1390–1460.

⁹ *Mordekhai* commentary on bBaba Kama, chapter 3, section 15.

The context here is a dispute between a student and his teacher, but subsequently the phrase was applied to controversy in general.

The source of the phrase “the way of the Torah” is mAvot 6:4: “This is the way of the Torah: a morsel of bread with salt thou shalt eat, and rationed-out water thou shalt drink, and upon the ground thou shalt sleep, and a life of trouble thou shalt live, while thou toilest in [study of] the law.” It is possible that the choice of this locution to describe controversy is influenced by the Mishna that follows almost immediately, mAvot 6:6, which states: “The Torah is acquired by forty-eight means,” one of which is “discussion with students,” which might be a reference to controversy. It should also be kept in mind that the Hebrew term “*derekh*,” way, has another equally important meaning, namely, nature or essence. In saying that controversy is the way of the Torah, the Sages are really saying that controversy is a characteristic feature of the Torah – it is of the very nature of the Torah.

The assertion that controversy is the way of the Torah can be taken as either a descriptive or a normative statement. Let us first consider the former. As a descriptive statement, it can be interpreted as describing three different things. (1) It can be read as describing Torah study, as it actually took place in given historical contexts, as a learning experience characterized by numerous controversies. (2) It can be read as describing human nature, which, in pursuing the truth, is inherently questioning and argumentative, and therefore subjects teachings to intellectual scrutiny prior to accepting them. (3) Finally, it can also be read, not as a historical or psychological observation, but as describing the essence and substance of the Torah: the Torah, in and of itself, induces those who study it to engage in controversy.

Let us now consider ‘controversy is an inherent characteristic of the Torah’ as a normative statement. With respect to its deontic status, there are three possibilities: engaging in controversy can be either permitted, obligatory, or somewhere in between, for example, recommended. In terms of scope, controversy can be defined along three axes: the temporal, the institutional, and the functional. The location of rabbinical authorities on the temporal axis may determine whether one is permitted (obliged) to disagree with them. The body that issues an opinion may be similarly positioned on an institutional axis, so to speak, determining whether one is permitted (obliged) to dispute its view. Similarly, the functional status of the law under discussion – theoretical law or law intended for implementation – may be a determining factor with regard to whether dissenting views are permitted (obliged) to be voiced. Essentially, these three axes circumscribe the discussion of controversy in the halakhic literature.

Different arguments can be invoked to justify the assertion that controversy is the way of the Torah, taken as a normative statement. On the one hand, it can be justified by citing the empirical claim, mentioned above,

that in point of fact, controversy has almost always been an integral part of Torah study, along with the principle that the Sages are role models whose conduct should be emulated. It can, however, also be justified by citing methodological principles, particularly the idea that controversy contributes to discovery of the truth, discussed below in (5a).

4. “The war of the Torah”

In many Tannaitic and Amoraic sources,¹⁰ Torah study is described as “the war of the Torah”:

And Scripture states, “All of them valiant, wagers of war” (II Kings 24:16). Now what valor can people who are going into exile display? And what war can people wage when they are fettered in shackles and bound by chains? Rather, “valiant” refers to those who are valiant in Torah study. This is like the thrust of the verse, “Bless the Lord, O you his angels, valiant and mighty, who do His word . . .” (Ps. 103:20); “wagers of war” – who engaged in dialogue and debate [lit., give and take] in the war of the Torah, as it is said, “Wherefore it is said in the book of the Wars of the Lord” (Num. 21:14).

Sifre Deuteronomy, Haazinu 321 (Finkelstein edition, p. 370)

This metaphor highlights the competitive aspect of Torah study, expressing a decidedly ‘Darwinian’ conception of it, on which controversy is a central means of identifying the correct interpretation of the Torah, much as physical competition serves to identify the stronger species.¹¹

The war metaphor is suitable primarily for describing group rather than individual study of the Torah, and further, it is more appropriate for describing the synchronic aspect of Torah study than the diachronic. The metaphor also alludes to the idea that those who study the Torah safeguard the community from outside attack.¹² In marked contrast to the war metaphor, however, is another, much later metaphor, which compares the study of the Torah to an orchestral performance, the disparate opinions being analogized to different instruments that together generate a beautiful melody:

Truly, for one who understands things properly, all the controversies among the Tannaim, Amoraim, the Geonim and the decisors, are the words of the living God, and all are grounded in the law. And furthermore, this is the glory of our pure and holy Torah, all

10 Sifre Deuteronomy, Haazinu 321; jTaanit 4:5 (69b); Numbers Rabbah 11:3; bMegila 15b; bHagiga 14a; bSanhedrin 93b.

11 See, e.g., the quotation from Maharal at note 40 below.

12 jHagiga 1:7 (76c).

of which is called a melody. And the glory of the melody, the essence of its delight, is that the tones differ from each other. And one who sails the sea of the Talmud will experience the diverse delights of all these distinct voices.

Arukh Hashulhan, HM, preface¹³

Unlike the war metaphor, this metaphor emphasizes peace and harmony. It may well have been put forward as a reaction to the bellicosity of the notion of “the war of the Torah,” which was viewed, even as a metaphor, as harmful.

Indeed, the war metaphor implies rejection of the values of cooperation, collaborative effort, and harmony, suggesting in their stead that elimination of the opposed opinion is a worthy goal. Now metaphors not only give expression to our worldviews, but also help shape them.¹⁴ Frequent reference to the war metaphor might have had a negative cumulative pedagogic impact, engendering violent power struggles rather than healthy, constructive competition. In extreme cases, upholding war as a model could have led to physical confrontations, and perhaps one such episode is related in the tradition about the violent exchange between the house of Shammai and the house of Hillel, which led to bloodshed.¹⁵ However, the use of bellicose rhetoric may also have had a positive effect, in serving to safely release pent-up anger and animosity generated by heated study-hall debates, without any actual acting out.

Alongside the war analogy, the sources attest to the emergence of a highly sensitive code of conduct detailing specific rules of etiquette governing halakhic debate and disputation. This will be taken up in (7a) below.

5. Problematics ensuing from controversy, and rabbinical reflections thereon

Controversy gives rise to various kinds of difficulties, among them conceptual, pragmatic and social difficulties. Analysis of the sources suggests that these difficulties aroused much concern on the part of the halakhic authorities. Examination of the problems in question may shed light on the broader phenomenon of controversy.

Conceptual questions The primary conceptual difficulty raised by controversy is undoubtedly alethic: what is the relation between the different opinions that have been expressed on a particular halakhic

13 R. Jehiel Mechal b. Aaron Isaac Halevi Epstein, Russia, 1829–1908.

14 See G. Lakoff and M. Johnson, *Metaphors We Live By*, Chicago: 1980.

15 See jShabat 1:4 (3:3); bShabat 17a; Megilat Taanit at the end.

question, and ‘the truth’? On the face of it, it would seem that only one opinion can be true, and thus the others must be false. A very clear expression of this attitude is the following statement:

The commentators were faced with a problem that warrants examination: the two opposed views, granted their pious intent, nevertheless contradict each other, and have opposite truth values. It necessarily follows that if one of them is true, the other must be false.

*Midrash Shmuel*¹⁶

This conclusion, however, seems problematic, in that the traditional view is that all opinions of Torah scholars have some merit.

Pragmatic difficulties Quite apart from the question of their truth values, the existence of conflicting halakhic opinions presents pragmatic difficulties. According to which opinion should one act? Furthermore, what constitutes fulfilment of the obligation to study the Torah? Does study of any opinion suffice, or must the material studied be the opinion accepted as the law? This dilemma is already articulated in the Talmud:

“Masters of assemblies” – these are the scholars (*talmidei hakhamim*) who sit in various assemblies and apply themselves to the Torah; some deem a matter impure, others deem it pure, some prohibit, others permit, some disqualify, others declare fit. Lest you say: Under these circumstances, how can I learn the Torah?, therefore Scripture says: All “were given from one shepherd” (Eccles. 12:11). One God gave them, one leader¹⁷ uttered them from the mouth of the Master of all deeds, blessed be He, as it is written, “And God spake all these words” (Exod. 20:1). So let your ears be as funnels, and cultivate an understanding heart, to hear the words of those who deem a matter impure and those who deem it pure, those who prohibit and those who permit, those who disqualify and those who declare fit.

bHagiga 3b

The question raised in this passage is “Under these circumstances, how can I learn the Torah?” In a parallel passage, the emphasis is on knowing which view is to be followed, and how one is to conduct himself:

“Masters of assemblies” (Eccles. 12:11) are the Sanhedrin. Should one say: some permit and some forbid, some disqualify and others

16 R. Samuel Di Uzida, Safed, b. 1540.

17 I.e., Moses. The term ‘shepherd’ is applied in the Bible both to God (e.g., Gen. 48:15; Ps. 80:2) and to Moses (e.g., Isa. 63: 11) – Maharsha.

declare fit, some deem a matter impure and others deem it pure; R. Eliezer deems the action liable, R. Joshua deems it exempt; the house of Shammai forbid and the house of Hillel permit; whom shall I heed?

Tanhuma, Behaalotkha 15

Social impact Other difficulties pertain to the social impact of controversy. If controversies proliferate, each individual, or even every community, following the opinion of its own choice, the Torah will become tantamount to many sets of laws. This will have deleterious results with respect to the cohesiveness of the social fibre. It is against the background of this apprehension that the prohibition against forming factions, discussed below, is raised.

Conflicting moral imperatives Though controversy may foster the search for truth, it may also be said to impede the pursuit of another cardinal moral imperative, namely, peace. Zeal and partisanship in the study-hall are likely to engender divisiveness and animosity. This apprehension is a central theme in the writings of R. Isaac Hakohen Kook¹⁸:

Some people erroneously think that universal peace can only be achieved by a uniform hue of opinions and qualities. Consequently, upon beholding scholars investigating the wisdom of the Torah, and by their study generating a multiplicity of perspectives and approaches, they imagine that these scholars are thereby engendering controversy and subverting peace.

Olat Reiya, part 1, p. 330

The authenticity of the tradition The existence of controversy might be thought to undermine the authenticity of the tradition and corroborate the claim, voiced from the outside, that the true tradition has been lost. Maimonides, in restricting the number of laws that were transmitted by tradition, is addressing this concern. The original tradition, he explains, includes only laws that have never been the subject of controversy:

But the view of one who thinks that laws that are subject to controversy are traditions originating from Moses, and they engendered controversy due to error in the tradition, or its having been forgotten, so that one side is right with regard to its tradition, and the other errs with regard to its tradition, or forgot it, or did not hear from his teacher all that he should have heard . . . as God lives, he presents a contemptible and very bizarre argument.

¹⁸ Latvia–Israel, 1865–1935.

And it is not correct and does not conform to the [foregoing] principles, for it expresses misgivings about the individuals in the masoretic chain from whom we received the Torah, and is completely invalid.

Commentary on the Mishna, Introduction

Theological difficulties The proliferation of opinions ascribed to God could be thought of as undermining the uniqueness of the divine voice, and calling into question His unity. This concern is reflected in the following interpretation offered by the eminent Spanish halakhist and philosopher R. Yomtov of Seville (Ritba)¹⁹:

“Ye are the children of the Lord your God” (Deut. 14:1); since you are the children of one father and one God, it is proper that you not form factions, as if there were two Torahs and two deities.

Hidushei Haritba, bJebamot 13b

The talmudic Sages and the scholars who followed them struggled, to varying degrees, with these diverse problems. It is impossible to identify a single, universal approach to the matter, but rather, a broad range of ideas, sentiments and perspectives, differing greatly in their comprehensiveness, were aired. The prevailing tendency was, however, almost always to defend the legitimacy of controversy, and uphold its ultimate contribution to the halakhic enterprise, despite the problems involved, though it cannot be denied that there were indeed some who thought the problems so weighty as to render controversy objectionable. These negative voices will be discussed in (8) below. In the next three sections (sec. 5a–c), however, we will take a closer look at some of the rabbinical reflections on several of the difficulties just outlined.

a. Alethic-interpretive

For the most part, the controversies discussed in this collection are not over existential questions, on the one hand, or issues of community policy, on the other, but over the meanings of specific texts. Hence the intimate connection between different accounts of controversy, and theories of meaning, interpretation and truth, which often focus on the role of the interpreter. The passages in Chapter 3 address hermeneutical issues, though readers should bear in mind that the concepts of text, author, interpreter, and meaning, are not referred to explicitly. Nevertheless, they clearly underlie the halakhic discussions in question. These concepts can be construed as related in many different ways. Consider the following

¹⁹ Spain, c.1250–1330.

schematic outline of four distinct theories of interpretation germane to the halakhic context:

- 1 The interpreter discovers the meaning of the text by trying to establish the author's intent. Here, the assumption is that the text is a vehicle for conveying the author's ideas, and plays no independent role. It is assumed that, ordinarily, the text mirrors the author's intent. Should external evidence indicate that the intent of the author is not in line with what the text suggests, that is, should there be a discrepancy between the plain meaning of the text and the external evidence, the external evidence prevails, and the text is read accordingly.
- 2 The meaning is in the text; the interpreter derives the meaning from the text by employing a given set of rules of interpretation. On this theory, the author is indeed the creator of the text, but the meaning of the text is not equivalent to the author's intent. The role of the interpreter is to establish the independent meaning of the text.
- 3 The text has no meaning prior to the act of interpretation. The interpreter examines the text and creates its meaning through his own reasoning. On this theory, the interpreter, and not the text itself, is the creator of the text's meaning. The act of interpretation generates an account of how the text affects a given interpreter. The meaning is generated from the text, but not via a well-defined set of rules of interpretation. On this theory, the crucial question is not the identity of the author, but the identity of the interpreter.
- 4 The text, or rather, the text as formulated, is regarded as normative. The interpreter imposes a meaning on the text by imputing to the text his own ideas, independently arrived at, motivated by awareness that only if his ideas are presented as grounded in the text will they be given credence. On this theory, neither the author nor the text plays a role in arriving at the ideas ascribed to it. At most, the text serves as a filter constraining the ascription to it of specific content. Though presented as such, the product of this endeavor is not, strictly speaking, an interpretation of the text. In fact, this theory scarcely describes an act of interpretation. Generally speaking, those who engage in this quasi interpretation are reluctant to admit that they are indeed imposing their own ideas on the text. Nevertheless, most Amoraic interpretations of the Mishna seem to reflect this model of interpretation.

There is a clear connection between the interpretive theory one adopts, and the account one provides of how a particular halakhic ruling comes to be championed. When we try to determine under which of the aforementioned theories halakhic interpretation should be subsumed, we are immediately confronted by the question of which theory of the four is compatible

with, or entails, the thesis that there is always one uniquely-correct answer to a halakhic question. The first two theories square with the notion that the text has one uniquely-correct reading, and hence every halakhic question has one uniquely-correct answer. On either of the first two theories, the existence of an unresolved dispute over a legal question means that we have missed something. The matter could have been resolved, had we had the necessary legal knowledge or acumen. The last two theories deny that every text has one uniquely-correct reading, and can, therefore, anchor halakhic pluralism. The existence of a controversy does not, on these theories, signify that we missed something, that we could have resolved the matter conclusively had we studied the matter more assiduously.

In the case of texts of divine authorship, the intent of the author may not be constrained by human limitations, such as the law of contradiction, and consequently, contradictory statements, or statements otherwise unfathomable to human intelligence, may be assertable in this context. Even if we postulate that divine intention is coherent, though not necessarily accessible to us, some commentators take the position that the text has two meanings – an objective, divine meaning, and a meaning that can be established by human understanding. This two-tiered vision of meaning is only relevant on the last three theories of interpretation outlined above (that is, theories (2)–(4)). Once a distinction between divine meaning and meaning that can be established by human reason is introduced, we face a divide. There is no necessary correspondence between correctness and validity, and questions as to the correct interpretation of divinely-authored texts are not to be conflated with those that address the validity of a given interpretation.²⁰

Some halakhic authorities maintain that validity is determined by following a specific set of rules of interpretation or decision rules; others, that it is a matter of convention, namely, of what is accepted by the majority of the sages of a given generation. On the conventionalist account, the validity of halakhic statements is time-dependent.

This analysis suggests that we must distinguish between three different modalities of halakhic statements: true halakhic statements, valid halakhic statements, and halakhic statements that are neither true nor valid (*divrei tora*, lit., Torah views). The truth conditions of a halakhic statement obviously depend on which theory of interpretation is adopted. Validity is determined using the criteria just mentioned. As for the third modality – *divrei tora* – here, the criterion is the interpreter's motivation. When one is seriously engaged in the study of the Torah, with no personal interests at

20 For a comprehensive discussion of the criterion of truth for legal statements, see A. Pintore, *Law without Truth*, Liverpool: 2000.

stake, his conclusions, even if untrue and invalid, are deemed *divrei tora*, and anyone who studies them fulfills the obligation to study the Torah.

When one is engaged in coming up with novel ideas about the Torah, it should be without any desire for self-interest or self-glorification, or merely for argument's sake, and so on, but rather, it should be out of great passion for the truth. And in that case, even if one errs, his novel views will nevertheless be considered words of Torah and the words of the living God. For the Talmud mentions erroneous words and those that were rejected from the law. Because even flawed premises are considered to be words of the Torah. For God, may He be blessed, has set down that even an initial, as-yet imperfect conception is a precursor to true knowledge, and even such an early conception is divinely inspired, and constitutes the words of the living God.

Tzidkat Hatzadik, 115²¹

One of the classic texts that deal with the conceptual issues pertaining to truth and controversy is bEruvin 13b, much cited and discussed in the literature.

R. Abba stated in the name of Samuel: For three years there was a controversy between the house of Shammai and the house of Hillel, the former asserting: The law is in accordance with our views, and the latter asserting: The law is in accordance with our views. A heavenly voice (*bat kol*) went forth, announcing: Both [lit., 'these and those'] are the words of the living God, but the law is in accordance with the view of the house of Hillel. Since, however, both are the words of the living God, for what reason did the house of Hillel merit the law's being decided in accordance with their view? Because they were kindly and modest, they studied their own views and those of the house of Shammai, and not only that, but they quoted the words of the house of Shammai before their own.

The assertion made here, that both sides to a controversy are "the words of the living God," plainly calls for clarification. In rabbinical treatments of this passage, many different opinions are expressed. Upon analysis, they can be seen to reflect six basic claims, which in turn appear to be variants of two polar positions: at one extreme, the position, which we will refer to as the monolithic position, that God did not utter contradictory statements, and that therefore the dictum "both are the words of the living God" cannot mean what it seems to mean; and at the other, the position that the contradictory statements were indeed actually uttered by God, a position we will refer to as the pluralistic position. Let us begin with the former.

21 R. Tzadok Hakohen of Lublin, Poland, 1823–1900.

One such claim asserts that what the dictum really means is that both views are interpreting the words of the living God, but not that both views themselves are the word of God.²² A second claim in this same vein is that the word of God is open-textured, and therefore, any interpretation of it, if based on the prescribed set of interpretive rules, is deemed “the words of the living God,” even though it was not actually spoken by God. There is no fact of the matter as to what God really meant.²³ (A variant of this argument suggests that there is a fact of the matter regarding what God meant, but since it is not readily accessible, that is, since no suggested intent can be demonstrated to be correct, every interpretation is, if based on the prescribed set of interpretive rules, deemed “the words of the living God.”²⁴) Another claim suggests that the “both are the words” dictum merely asserts that each of the contradictory opinions is a sincere effort to discover the one and unique voice of God.²⁵ These three attempts to explain the problematic dictum, then, all reject the premise that contradictory statements can be attributed to God.

At the other end of the spectrum, as we said, is the position that contradictory statements can indeed be attributed to God. One variant of this approach straightforwardly claims that God is above consistency.²⁶ This solution is often put forward by Kabbalists, who claim that esoteric knowledge is implied here: the sublime transcends logic. A second variant argues that both views were actually uttered by God, but refer to different sets of circumstances. Since the same event can be described in many different ways, with different legal rules being suitable for the different characterizations, more than one view will be applicable to any event.²⁷ A third variant of this approach suggests that both contradictory statements were actually uttered by God, though only one of them is correct, the other having been provided by God to serve as a foil for the true view, given that truth can only, or best, be discovered by being juxtaposed to falsehood.²⁸

b. Theological

In that the subject matter of halakhic controversy is the divine word, the notion of controversy in this context is particularly problematic. Controversy raises concerns not only from the external point of view, as, for example, when the Sages are criticized for their numerous disputes and

22 R. Solomon b. Abraham ibn Parhon, Spain–Italy, 12th c., *Mahberet Hearukh*, helek hadikduk 5:4.

23 R. Yomtov Lippmann Mühlhausen, Prague, 14–15th c., *Sefer Hanitzahon*, section 321.

24 R. Moses Feinstein, Lithuania–US, 1895–1986, *Responsa Igrot Moshe*, OH, 1, foreword.

25 bGitin 6b.

26 R. Yomtov of Seville, *Hidushei Haritba*, bEruvin 13b s.v. *eilu veeilu*.

27 R. Solomon b. Isaac (Rashi), France, 1040–1105, bKetubot 57a s.v. *ha ka mashma lan*.

28 *Meharerei Nemeirim* 17a, quoted below at note 34.

controversies by outside circles, such as the Sadducees, and later, the Karaites – the critique being that controversy is an indication that the true tradition has been lost – but from the internal perspective as well. From the internal perspective, there is always the fear that social cohesion will be adversely affected, as we will see below, but the impact of controversy on the community is not the sole concern. Controversy also brings to the fore such theological issues as the singularity of the Torah and the uniqueness of the divine voice.

This concern finds its expression in bHagiga 3b,²⁹ which succinctly encapsulates the tension between the static and the dynamic aspects of the law, a tension that can also be seen as reflecting the divine law/human understanding dichotomy. For the phenomenon of controversy poses a profound question. How can it be that the word of God, which is supposed to be clear-cut and unambiguous, is so contentious and so manifold in its interpretations? Can it be that there is no one uniquely-correct answer to any given halakhic question? The divine will was indeed initially expressed in unequivocal dicta, first via prophecy, and later, via the Sanhedrin, the high court. However, the literature on controversy was generated, and developed, in a reality in which there was neither prophecy nor a Sanhedrin. While it is understandably difficult to conceive of a substitute for the institution of prophecy, this is not so with regard to the Sanhedrin, an institution for which it is entirely plausible to devise various kinds of functional substitutes. The fact that throughout Jewish history there was no real attempt to establish such a surrogate institution is instructive, I would argue. It suggests that the lack of a single authoritative voice was not considered a liability, despite rhetoric expressing great longing for the re-establishment of the high court. However, it did mean that the rabbinical authorities had to cultivate the sentiment that God Himself was the source of all the controversies that would occupy them. Indeed, even God Himself is portrayed as engaged in controversy. The portrayal of God as taking part in halakhic controversy implies that controversy is an immanent aspect of the Torah, allaying any qualms that the existence of controversy might be evidence of some inadequacy or failing.

29 And he too began to expound: “The words of the wise are as goads, and as nails well planted are those of masters of assemblies; they were given from one shepherd” (Eccles. 12:11). Why are the words of the Torah likened to a goad? To teach that just as a goad directs the cow along the furrow in order to bring life to the world, so the words of the Torah direct those who study them from the paths of death to the paths of life. But [should you think] that just as a goad is movable, so the words of the Torah are movable, therefore Scripture says: “nails.” But [should you think] that just as a nail diminishes by being driven in, and does not increase, so too the words of the Torah diminish, and do not increase, therefore Scripture says: “well planted”; just as a plant grows and increases, so the words of the Torah grow and increase.

Now they were debating in the heavenly academy thus: If the spot preceded the white hair, he is impure; if the reverse, he is pure.³⁰ If [the order is] in doubt, the Holy One, blessed be He, ruled, he is pure, whereas the entire heavenly academy maintained, he is impure. Who shall decide it?, they asked. Rabbah bar Nahmani will decide, for he has declared, I am pre-eminent in the laws of leprosy. . . . A messenger was sent for him, but the Angel of Death could not approach him, because he did not interrupt his study. In the meantime, a wind blew and caused a rustling in the bushes, which he imagined to be a troop of soldiers. Let me die, he said, rather than be delivered into the hands of the state. As he was dying, he said: Pure, pure! A heavenly voice went forth and said, Happy art thou, O Rabbah bar Nahmani, whose body is pure and whose soul hath departed in purity.

bBaba Metzia 86a

The depiction of God as engaged in controversy also has pragmatic value. If the law is decided in accordance with the Sages' view when they are clearly in disagreement with God's own position – as, for instance, Maimonides decides it in the *Code*³¹ – there need be no fear of following them with respect to questions on which God's position is not known!

c. Social

In many discussions, we find controversy over theoretical issues contrasted with controversy over practice, that is, controversy as to how individuals, groups and communities are to conduct themselves. It can be said that while the rabbinical authorities are tolerant of theoretical pluralism – the notion of dogma is indeed generally absent from the Jewish tradition – this is by no means the case at the level of practice, where total subjection to rabbinical authority is required. The most pronounced expression of the fact that conduct based on non-standard understandings of the law is discouraged is the prohibition against forming factions – “do not form factions” (*lo titgodedu*). At its core, this anti-factionalism principle is a halakic device that impacts social behavior. Though clothed in halakic language, it is essentially motivated by social concerns, principally, the desire to maximize social cohesiveness.

In line with the rabbis' approaches to the alethic and interpretive issues raised by the phenomenon of controversy, the “do not form factions” principle can be regarded as rooted in either the monolithic or the pluralistic worldview.

30 The reference here is to the laws of leprosy, see Leviticus 13:10.

31 *Code*, Laws concerning the Uncleaness of Leprosy 2:9.

On the monolithic worldview, according to which there is but a single truth, it stands to reason that in the realm of conduct, too, there must be but a single correct mode of behavior, which all must follow. From the monolithic perspective, then, the anti-factionalism principle is merely a reflection of the claim that there is but a single correct divine voice.

On the other hand, from the pluralistic perspective, the anti-factionalism principle appears to constitute a very significant qualification of the “both are the words” principle, to the effect that it is valid in the realm of halakhic speculation, but not in that of practice. This duality between speculative law and law intended for implementation is also found in the case of the rebellious elder.³² Here, the law is that if the elder taught his dissenting view, he is exempt, but if he acted or handed down a ruling in accordance with it, he is liable.

Whether considered from the monolithic or the pluralistic perspective, however, the anti-factionalism principle can be regarded either as laying the foundation for all the other decision-making rules, by establishing cohesiveness and uniformity as paramount concerns, or, as itself a decision-making rule, a rule of last resort should the others fail to yield a decision.

In what follows, we will analyze the anti-factionalism principle from the pluralistic perspective, that is, reading it as conflicting with the “both are the words” principle, and attempt to gain insight into the balance between the principles that nonetheless emerges from the sources. For if we assume that halakhic truth is non-monolithic, and on a given question both positions can be correct, the determination of the law in accordance with one particular view requires justification. From a purely halakhic standpoint, all positions are equally valid, and no particular view can claim precedence. And indeed, the various justifications for the anti-factionalism principle, and the corollary it entails, namely, that decision-making rules are necessary, are consequential rather than substantive. This thus constitutes a good illustration of an element of the halakha that is motivated by sociological considerations, though formulated and presented in terms of halakhic prohibitions (*isur veheter*).

Let us enumerate some of the principal justifications for the principle found in the sources. First, there is the concern that incorrect theological conclusions will be drawn from the existence of controversy. Controversy, it is feared, could give rise to a situation where the Torah is regarded by the people as two sets of laws, that is, as the law of any given faction within the community. Here, the concern is the image of the Torah and the image of the Deity in the eyes of the multitude, who might find it difficult to fathom why God would speak in multiple voices, and drawn the erroneous conclusion that the law is not universal. There is also the jurisprudential consideration of the law’s image in the eyes of the people: the law ought

32 mSanhedrin 11:2.

not appear inconsistent, with one court affirming something, and a second denying it. Thirdly, there is the straightforwardly social consideration that dissent and factionalism within and between communities should be avoided. There is, of course, also an institutional consideration: the court's institutional efficacy must be secured by solidifying its authority and standing, to which end it must speak with a single voice. The court ought not affirm something in one case, and deny it in another case. And finally, there is a consideration having to do with maintaining the sovereignty of the halakha: provision must be made for invalidating aberrant customs and behaviors that cannot be uprooted by legal means. This last consideration is of paramount importance, in that it makes it possible for the courts to act where they would otherwise be unable to do so. This consideration thus legitimizes a broadening of the scope of actions available to the rabbis to combat the divisive impact of halakhic dissent, as opposed to the other considerations we mentioned, which limited the courts' ability to act by demanding of them inter- and intra-court consistency.

A second point about which there is much discussion is the question of who the prohibition against factionalism addresses. One possibility is that it addresses the rabbinical authorities as legislators. On this understanding, it regulates the Sages' legislative activities, charging them to create a unified legal system that ignores conditions peculiar to specific times and locales, on the assumption that uniformity is more important than taking into account any contingencies that might beset the various communities. The criticism leveled at the practice of permitting the reading of the Megilla at different times in different places should be seen as arising from this idea that uniformity is to be preferred to accommodating contingent differences. A more plausible approach sees the prohibition as addressing the judiciary, imposing upon it the obligation to be consistent in its rulings. A judiciary that generates different rulings on the same issue would be perceived as not having arrived at its decisions on the basis of the same sources, and this, in turn, would, over time, undermine the cohesiveness of the legal system. Yet another understanding of the prohibition views it as directed at individuals, requiring them to follow the practices accepted in their respective communities. Underlying the prohibition is the concern that idiosyncratic conduct with respect to matters regulated by the law will trigger conflict within and between communities. It should be noted that there is considerable discussion in the literature about the criteria in terms of which communities are defined. Is a community constituted by individuals or families who reside in the same town? Is it generated by being under the jurisdiction of the same court of law, membership in an ethnic community (*kahal*), or membership in a synagogue? These questions are addressed and returned to in the literature as demographic developments within the ever-widening Diaspora unfold, with the criteria proposed clearly mirroring these developments.

Yet another axis around which the discussion revolves is the nature of the excluded conduct: does the prohibition apply to conduct grounded in custom, or to conduct grounded in law? There are opposing considerations in favor of each possibility. On the one hand, it could be argued that the prohibition against factionalism applies only in the realm of custom. Here, the desideratum of uniformity takes precedence over that of allowing individuals to follow their own customs, since the violation of customs is not as serious a matter as violation of the law. With regard to law, uniformity can be achieved only at the cost of requiring those who believe that the law calls for a certain mode of conduct to act in a manner contrary to their convictions. On the other hand, it could be argued that since fragmentation with respect to legal questions is far more dangerous than that arising from diversity of customs, the prohibition applies to the legal sphere. Custom, by its very nature, embraces diversity, but law mandates universality.

In general, an examination of the various sources points to the conclusion that the prohibition against factionalism expresses an ideal to be aspired to, rather than a binding legal principle. In the entire corpus of the Babylonian and Jerusalem Talmuds, it is found in just one discussion. Given that controversies abound in the Talmud, the prohibition appears to be relatively peripheral. It is hardly found in the Geonic literature, and rarely mentioned in the works of the Early Authorities. Maimonides' *Code* does bring the injunction, but circumspectly, in the Laws concerning Idolatry. It is not found at all in the *Tur* or the *Shulhan Arukh*, and is cited by the Rema only with regard to the marginal question of shaving during the period of the Counting of the Omer. In the responsa literature, too, the prohibition is little discussed. It would seem that the halakhic authorities did not view the "do not form factions" injunction as amenable to implementation, but rather solely as a desideratum.

As a careful examination of the sources reveals, the prohibition against factionalism becomes relevant at a rather late stage in the history of the halakha. Only after the expulsion from Spain, when Iberian exiles began to build new communities in the towns of Turkey and the Balkans, and disputes arose between the newcomers and the established communities, does mention of the prohibition increase. In the context of these disputes, the argument began to be voiced that, on the strength of the prohibition against factionalism, communities were forbidden to act in a manner counter to that agreed upon by the other communities in the town. As a rule, the argument was put forward in a very partisan way when this was conducive to the interests of one or the other side to a dispute. But while the prohibition is indeed raised in the halakhic deliberations that these disputes engendered, it is usually dismissed as irrelevant to the issue at hand. In the responsa literature, there are almost no cases in which decisors based their rulings on the prohibition.

6. Controversy: epistemic justifications and pragmatic considerations

As a rule, those engaged in study of the law are encouraged to speak their mind and not repress their true convictions. As a result, controversies abound. The presence of controversy in the halakhic enterprise engaged many, if not most, of the rabbinical authorities, as we have said. Given that so many different individuals have voiced their views on the matter, the ongoing dialogue about controversy is rich and multi-faceted. We must therefore be very cautious not to present an overly schematic and one-dimensional account of the rabbinical views on controversy. For even among those who were receptive to controversy, many different shades of opinion were expressed with respect to the justification for controversy.

Now the approbation of controversy can reflect either toleration or halakhic pluralism. Toleration allows a proponent of a given view not only to express himself, but also to teach his view, even though it might be deemed erroneous from the perspective of the ‘tolerator.’ Halakhic pluralism, on the other hand, at its most extreme, sincerely regards all opposed views as equally true, although for practical purposes, only one of them is adopted.³³ Now there may well be certain halakhic pluralists who adopt a less extreme view, conceding that all the views may not be equally true, but insisting nevertheless that they are all true to some degree. Thus, the approbation of controversy on the part of the rabbinical authorities is sometimes limited, sometimes comprehensive, as is manifest in the range of interpretations offered for the dictum “both are the words of the living God,” as we saw above. And there are those, of course, who take a mixed approach: with regard to some controversies, a tolerant approach is adopted, whereas with regard to others, a pluralistic attitude is taken.

Be that as it may, the positive attitude on the part of the rabbinical authorities calls for an explanation, especially in light of the aforementioned deleterious effects of controversy. What were the underlying reasons for their willingness to adopt a positive attitude nonetheless? When the rabbis address this specific issue – namely, the rationale for this positive attitude toward controversy – although not when they deal with the etiology of controversy, their argument is basically epistemic: controversy enhances the discovery of the truth. The classic formulation of this argument is found in a Spanish methodological treatise:

They were all spoken by one shepherd, which means that most times we gain a good understanding of something by considering its negation, and we cannot understand the matter on its own so

³³ On the distinction between toleration and pluralism generally, see, e.g., J. Raz, *The Morality of Freedom*, Oxford: 1986.

well as by considering its negation. Therefore the Holy One, blessed be He, sought to endow us with dissenting opinions, in order that when we arrive at the true opinion, we will understand it thoroughly.

*Meharerei Nemeirim*³⁴ 17a

Sometimes the rationale is couched in terms of the pluralistic approach, on which all opinions are manifestations of the multi-faceted nature of halakhic truth. This attitude is to some extent rooted in the Talmud, but far more frequently expressed by the Kabbalists. The following passage is a good illustration:

Attend well to how the three [pairs of] rankings³⁵ are to be understood. The Sages said: Seventy facets to the Torah, and these facets fluctuate from one to the other; to deem it impure, to deem it pure, to prohibit, to permit, as one of the colleagues said: I can bring forty nine arguments to purify a creeping thing.³⁶ All these different interpretations were included in a single utterance, as it is written, “with a great voice, and it went on no more” (Deut. 5:19). It included all the aspects, their various changing configurations and their opposites: to render impure and render pure, to prohibit and to permit, to disqualify and to declare fit, because it could not be believed that that voice lacked anything. And therefore, in that voice everything was constantly turning over on all sides, one thing opposite the other. And every one of the future Sages who might arise in each and every generation received his portion, as it is said, “not only did all the prophets receive their prophecy from Sinai, but also each of the Sages who arise in each and every generation – each and every one received his portion, as it is said, “These words the Lord spoke unto all your assembly” (Deut. 5:19).”³⁷ Hence their dictum: “both are the words of the living God,”³⁸ as it is said, “One God gave them all.”

Peirushei Haagadot Lerabi Azriel, bHagiga 3b

What is the experiential context in which acquiescence in the likelihood of controversy emerges? The notion that truth is many-faceted arises out of encounters between individuals who are engaged in dialogue and discussion. It could hardly have developed from the lone individual’s

34 R. Abraham Akra, *Meharerei Nemeirim*, Venice: 1599.

35 I.e., impure/pure, prohibited/permited, disqualified/made fit.

36 bSanhedrin 17a.

37 Exodus Rabbah 28:6.

38 bEruvin 13b.

encounter with the world, for the world around us, and the experiences of the individual who confronts it, do not suggest the idea of truth as many-faceted. The pluralistic approach reflects a reality that emerges only in the context of dialogue between a number of individuals. In the course of such dialogue, different – and often incompatible – views and perspectives will be voiced. The question of how individuals arrive at their different views is important, but must be referred to psychologists and anthropologists. From our perspective, the fact that individuals hold different views is a given.

One way to deal with this situation is to claim that the truth is but one, and that the opinions held by most people are therefore false. Another, of course, is to cultivate a pluralistic theory of truth. Both responses are found in the rabbinical tradition, but we will be concerned mainly with the latter.

The positive attitude to controversy so evident in the halakhic sources is, it appears, a response to the meeting of ideas that arises out of the very nature of Torah study, as opposed to an a priori approach to truth, though a pluralistic conception might nonetheless be construed by those who have internalized it as true a priori.³⁹

I want to argue that the pluralistic approach to truth, and the epistemic considerations in favor of controversy, were indeed invoked by the rabbis as rationales for permitting controversy, but the primary factor in the crystallization of this attitude lies in pragmatic considerations that were not fully articulated in the rabbinical writings. My contention is that the positive attitude was determined by, among other things, the rabbis' estimation of the danger controversy posed to both the community as a whole, and the authority of the rabbinical establishment itself. Now ensuring the preservation and strength of the juridical establishment is a legitimate and appropriate desideratum in any legal system, and Jewish law is by no means exceptional in this matter. Awareness of these pragmatic considerations is repeatedly expressed in the rabbinical literature. As we are about to see, although controversy indeed poses a threat to rabbinical authority, the adoption of a positive attitude to controversy may have served, paradoxically, to ensure that the threat did not become a reality, and perhaps even to strengthen the rabbis' authority.

In suggesting these pragmatic considerations, I do not wish to argue that the rabbis were constantly aware of them, but rather to point out different trends that inform the thinking of the rabbis, ultimately sculpting the contours of the halakhic discourse. These trends crystallized out of awareness of the role played by controversy in building up the authority and standing of participants in the halakhic dialogue. We now turn to a more detailed examination of these trends.

39 See David Stern, "Midrash and indeterminacy," *Critical Inquiry* 15 (1988), 132–61; Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture*, Berkeley and Los Angeles: 1993.

a. The paradox of controversy

Reflecting on what I call ‘the paradox of controversy’ is helpful in clarifying the halakhic attitude to controversy. The extensive discussion of controversy in the sources is, by and large, an elaboration of, and struggle with, two seemingly antithetical consequences of controversy. The countenancing of dissenting views both challenges authority, and reinforces it. Indeed, in some circumstances the countenancing of dissenting views may even generate authority. Controversy challenges authority, in that one who engages in controversy challenges received opinions, and thereby endangers the authority of the halakhic establishment. For when dissenting opinions are voiced, the outcome – quite apart from the fact that we may now be closer to the truth – could be that the authority of one side to the dispute, possibly that of the establishment, is called into question or eroded. But at the same time, I would argue, the fact that controversy is legitimate, encouraging individuals to voice dissenting opinions, results, paradoxically, in the enhancement of the establishment’s authority, regardless of whether it wins the argument. If the challengers are defeated, the standing of the establishment is obviously reinforced. Even if they win, however, the establishment, by having allowed itself to be challenged, has displayed confidence that it is sufficiently powerful and secure to share its jurisdiction with others. This display of authority itself generates authority, and indeed, more than counter-balances any inroads made by the challenger.

Consciousness of these pragmatic considerations is expressed in the following passage from the Maharal of Prague.⁴⁰ The Maharal wrote extensively on the phenomenon of controversy, focusing on its metaphysical dimension. On his view, all divergent opinions display different aspects of the divine truth. In the following passage, however, which deals with theological polemics with Gentile scholars, whose views cannot, in his opinion, represent divine truth, he stresses the pragmatic dimension of acceptance of controversy, an important element of which is the contribution made by the challenging of one’s opinions to strengthening the rabbinical position vis-a-vis its opponents in the disputations.

Therefore it is improper, on the grounds of love of inquiry and knowledge, to dismiss anything that contradicts your view, and in particular, if that idea was not meant as a provocation, but merely to convey [its utterer’s] belief, even if these words run counter to your beliefs and your religion. One should not say to him, ‘Do not speak; shut your mouth!’ For otherwise, the true religion would be not be clarified. . . . for any fighter who wants to overcome another, in order to demonstrate his might, greatly desires that the person whom he challenges will fight to his utmost, so that if he does

40 R. Judah Loew b. Bezalel, Austria–Poland, c.1525–1609.

overcome him, he will have overcome a worthy opponent. But what might does one display if that person against whom he fights is not allowed to resist and fight back? And therefore one should not silence someone who speaks against [the true] religion, saying to him, ‘Do not speak this way’; on the contrary, if one does so, he is displaying weakness.

Beer Hagola, end of well 7

Cultivation of a positive attitude to controversy involves a certain element of risk, but also an element of reward: while there is undoubtedly some risk to the authority of the establishment, the possibility of its being strengthened appears to have outweighed this concern. As we have said, the dominant attitude to controversy in the rabbinical mind is positive, which seems to indicate the rabbis believed that, on balance, it would enhance their authority. This is not to say, however, that they ignored the risks inherent in controversy. Indeed, in response to their perception of the risks, they developed mechanisms for monitoring expression of dissenting opinion. These will be discussed in (7) below.

b. Domestication of subversive forces

In addition to the challenge inherent in controversy, which could pose a threat to the rabbinical establishment, as we just explained, controversy also gives rise to another concern: the fear that it could adversely affect the stability and vigor of the halakhic community. For a controversy that leads to a bitter dispute could end up with one camp leaving or being expelled from the halakhic community. Since an overly-sharp response, silencing the dissenter, might drive him away, a cautious response to the dissenting side is always desirable.

Indeed, much of the reflection about controversy in the halakhic sources seems to be a post factum justification for a given human reality, confrontation with which the Sages perceive as far more dangerous than accepting controversy. Explicit encouragement of freedom of expression might have served, or even been intended, to neutralize forces that would otherwise have been propelled outward. By legitimizing controversy, we enable those who challenge and dispute received opinions to remain within the camp. It appears that the Sages’ main motivation for adopting a tolerant approach to controversy is recognition of the aspect of human nature that is inclined to subject received views to scrutiny before endorsing them, to seek convincing arguments where they are lacking, to press ever further in the search for knowledge, and if need be, to challenge accepted teachings. The toleration of controversy is, I submit, more an attempt to domesticate this potentially subversive, though perfectly natural, inclination, than a pragmatic harnessing of the epistemic advantages of intellectual pluralism.

This strategy transcends the domain of the interpretation of the law proper, and is also adopted with respect to questions of theology and philosophy. The rationale underlying the decision to include Ecclesiastes in the biblical canon, for instance, reflects this same strategy. The qualms of Kohelet are unsettling, and yet there is no denying they might indeed be felt by many, leading to heretical thoughts, and consequently, to guilt and alienation from the community. Including the book in the canon legitimizes such qualms, and, while allowing him to contemplate his scruples, assures the individual who has entertained them that he has not thereby distanced himself from the community of believers.

c. Striving for excellence

The endorsement of controversy could also stem from the perspective of the dissenting scholar himself, which is a perspective shared by all members of the community. Excellence in one's studies is a central theme in the world of the halakha. The community, by legitimizing expression of views that take issue with those of accepted authorities, on the one hand, and insisting that the dissenting scholar make a sufficiently sound case for his own view, on the other, helps to establish the scholarly credibility of the young challenger, and encourages the development of original critical thought. "Scholars (*talmidei hakhamim*) engaged in debating the law with one another"⁴¹ are, in fact, on the traditional path to participation in the halakhic discourse, and on their way to establishing an authoritative standing within the halakhic community. Striving for excellence, so understood, is also in the interest of the community at large, for it ensures the continuity of high-calibre, intellectually independent halakhic leadership that can meet the challenges of new realities, and hence, ensure the community's survival.

That establishing one's authority by way of argumentation and dissent indeed serves to motivate members of the halakhic community can be inferred from the numerous admonitions that restrict this activity on ethical grounds, and warn against engaging in controversy for the sake of enhancing one's personal status and status within the scholarly community. It is repeatedly asserted that those who are engaged in disputation "for the sake of heaven," are not motivated by the desire for personal aggrandizement. The following passage illustrates this sentiment:

"Every controversy that is for the sake of heaven, its end is to be sustained." This is a controversy between scholars over matters of wisdom. It does not seek to establish which of them is greater, or to misdirect a colleague from truth to falsehood. They turn to the same path and follow it until they reach the truth, which is their

41 See., e.g., bBaba Metzia 59b.

objective. Truth cannot be found in two directions, only in one. Therefore, neither is jealous of his fellow or wishes him harm because a controversy has arisen between them, for this controversy is for the sake of heaven and not to gratify material needs, but to know wisdom and achieve truth.

Peirushei Mishnat Avot (Sefer Hamusar),⁴² mAvot 5:17

d. Involvement in the ongoing evolution of the halakha

By making provision for the expression of dissenting views, we allow individuals to be part of the evolution of the law. Such participation, though limited to those actually engaged in Torah study, has a ripple effect, generating a sense in the community that the law is democratic, so to speak, being an ongoing enterprise rather than dictated from above.

Such a spirit is manifest in R. Haim of Volozhin's⁴³ description of the experience of group Torah study, in which fathers and sons, great and small in learning, participate on an equal footing, and halakhic creativity is found not necessarily in the academy, but also in the private dwelling:

Now learning is called war, as in the dictum, "the war of the Torah"; students, then, are warriors. And as our Sages of blessed memory said: "‘They shall not be ashamed when they speak with their enemies at the gate,’ even father and son, teacher and student, who apply themselves to the Torah at the same gate, become enemies of each other, yet do not budge," and so on.⁴⁴ A student must not accept his teacher's words if he has any objection to them. Sometimes the student will be right, just as a small piece of wood can set a large one aflame. As it is stated, "Let your home be a meeting place for the wise and you shall wrestle,"⁴⁵ from the verse "and there wrestled a man with him" (Gen. 32:25), an allusion to struggle, for this is indeed a holy struggle (*milhemet mitzva*). We likewise grapple with our holy teachers, whose renowned works we study. Their bodies are interred, while their souls dwell above. By the presence of their books in our homes, our homes become meeting places for encounters with these wise scholars. We have also been admonished and given permission to wrestle and do battle with their words, and to resolve problems they raised. And not to adulate anyone, but to love only the truth.

Ruah Haim, mAvot 1:4

42 R. Joseph b. Judah, Maimonides' student.

43 Lithuania, 1749–1821.

44 bKidushin 30b.

45 The verb can also mean "gather dust."

7. Controversy regulated

Above, we saw that as well as being an opportunity to enhance the establishment's authority, controversy also has the potential to endanger it. To lessen this risk, two main devices are in place: on the one hand, rules that limit the range of legitimate controversies, and on the other, rules intended to neutralize the negative impact of controversy in those cases where it is allowed. The rules that limit the range of legitimate controversies apply primarily to disputes with scholars of past generations – “The views of the earlier authorities are not to be disputed”; “The earlier authorities are not to be defamed”; “The view of a great authority is not to be invalidated after his death,” and so on. These rules seek to preserve the standing of a halakhic authority when he is unable to do so himself. But it seems that they have been used much more broadly, as, for example, when one of the disputants relies on a particular earlier authority, and argues that his opponent may not attack this position, citing one of the aforementioned rules. The second set of rules, those intended to neutralize the negative impact of controversy, seek to make a sharp demarcation between the substance of an argument, and its mode of presentation, in order to prevent a substantively acceptable argument from being put forward in a manner that undermines the standing of a halakhic authority. The apologetic rhetoric and demonstrative humility expressed by the disputants reduce the tension that would otherwise be associated with engaging in controversy. The emphasis on expressions of the amity and friendship that must obtain between the parties to the controversy is intended to ensure that the friendly relations between them will not be adversely impacted by the heated debate. We now turn to an elaboration of these rules.

a. The code of conduct

The rabbis' approbation of – or at least acquiescence in – controversy should not be understood as willingness to sanction any and all expressions of disagreement with the views of rabbinical authorities. On the contrary, the rabbis instituted a system of checks and balances to regulate the manner in which controversy was conducted. These regulatory mechanisms are not articulated in terms of restrictions on the content of the dissenting opinions: no principles, texts or issues were impervious to scholarly scrutiny and critique. Rather, procedural limitations – both general principles and highly specific rules of etiquette – are imposed. Just as wars are governed by formal and informal codes of conduct, so the war of the Torah is strictly regulated by a partly explicit, partly implicit, code of conduct. The code of conduct is designed to allow for controversy and the voicing of dissenting opinions, while at the same time safeguarding the legal system against chaos and disintegration. It thus represents a delicate balance between two

opposed interests: the short-term interest of allowing individuals to speak their mind, and the long-term interest of preserving the system's integrity and overall stability.

The code of conduct for those engaged in the study of the Torah is formulated partly in terms of general principles, and partly in terms of specific rules of etiquette. The latter are mainly the work of the Later Authorities, who composed manuals for halakhic discourse, with lists of permissible and impermissible locutions. These principles and rules address two spheres – external behavior, which is readily observable, and mental disposition, which has no direct external manifestations. In the former sphere, the code of conduct sets out the modes of expression deemed legitimate, while in the latter, the focus is the motivation of the disputants. The end to which they should aspire is the discovery of truth, and not the furtherance of personal agendas and gratification of material needs.

The code of conduct has two distinct sources, intuition and convention. Rules that originate in an intuitive sense of respect follow naturally from the feelings of high regard and affection of students for their teachers, and teachers for their colleagues and predecessors. Such rules come naturally to the individuals involved in halakhic debate, and need not be imposed formally other than in the exceptional case of individuals who do not share these sentiments. Conventional rules, however, follow only from a common perception that it is advisable to have an agreed-upon framework for expressing this respect for the halakhic authorities. Hence they are, by consensus, explicitly imposed, and adopted, as a condition for participation in the halakhic dialogue.

Underlying the code of conduct are two major considerations, one moral, the other institutional. The moral consideration, the need to avoid offending one's interlocutor, is a concern that is operative generally, and is not peculiar to halakhic discourse. The institutional consideration is preservation of the status and standing of the rabbinical authorities, despite the fact that their views are being challenged. With respect to controversies over the views of earlier authorities, the institutional consideration is paramount, for the obvious reason that the departed cannot be offended. The two considerations may overlap, but there could be cases where one consideration is operative and the other is not, for instance, should a party to a scholarly dispute forgo the honor due him. The tension between the two considerations is well brought out in the Talmud's discussion of the validity of a Sage's renunciation of his honor (bKidushin 32a).

The importance and impact of this code of conduct should not be underestimated. By delimiting with great specificity rules that govern the expression of dissent and disagreement, a psychological barrier against more dramatic challenges to received opinions is created. This barrier, though occasionally broken, does serve to contain potentially divisive confrontations. It appears that the legitimacy of a dissenting opinion is

not generally a function of its content, but a function of its mode of presentation, that is, of the degree to which its proponent observes the code of conduct. Failure to abide by the code may deprive the dissenter of his status as a legitimate member of the halakhic community, and in extreme cases, bring about his expulsion. Surprising though this may sound, to a very great extent the code of conduct is actually constitutive of the halakhic community. The underlying assumption here is that there is an empirical association, though not a logical link, between observance of the code of conduct, and substantively correct halakhic content. That is, there is apparently a connection between form and substance: though there is no necessary connection between conduct and content, we do find that observance of the code's general principles, and specific rules of etiquette, virtually guarantees that the opinions generated are acceptable in terms of their content. And the reverse is also true: when the code of conduct is not observed, this is projected onto the product of the halakhic discourse, a phenomenon reflected in the talmudic dictum, "Regarding two scholars who live in the same town and are not amiable to each other in discussing the law, of them Scripture says, "I gave them also laws that were not good and ordinances by which they could not live" (Ezek. 20:25)."⁴⁶

With respect to the requirement that disputants have the correct mental disposition, the criterion that the controversy must be engaged in "for the sake of heaven" is frequently proposed. While it is easy to identify violations of well-defined rules of conduct, assessing whether the dispositional condition has been met is more problematic, leaving room for an additional means of suppressing opinions unacceptable to the rabbinical authorities – the claim that their proponent is not acting for the sake of heaven. Thus considerations of motivation can be used when focusing on procedural flaws is not an effective means of eliminating ideas deemed substantively threatening.

b. Benefits of properly-conducted controversy

The halakhic acceptance of controversy, properly conducted, as a positive phenomenon that does not adversely affect the integrity of the community and the halakhic system, reaches fruition in the idea that not only is ongoing controversy not harmful, but it is actually beneficial and desirable, inasmuch as it fosters harmonious intellectual creativity. This attitude is explored in Chapter 5, entitled "Controversy and Social Harmony." Indeed, this daring conception, articulated only by the Later Authorities, sees controversy as conducive to peace. In that it makes possible the clarification of an issue from every angle, taking into account the contribution of each side to the dispute, controversy, on this approach, actually

46 bMegila 32a.

promotes peace and amity. Theoretical clarity can emerge, it is argued, only by taking into account the input of the participants in the debate. The idea here is that of a harmony of opposites. Peace is not the culmination of unanimity and uniformity, but, on the contrary, results from dialogical juxtaposition of conflicting viewpoints. The conception that peace is achieved through controversy is also grounded in the notion that one is duty-bound to engage in controversy if doing so is conducive to arriving at the truth. Peace can only be built on a foundation of truth, and not the other way around. Avoiding controversy for the sake of peace is thus a grave error.

8. Opposition to controversy

To present the overall halakhic attitude to controversy as entirely positive would certainly be a distortion. There are rabbis who see failure to reach a consensus as a regrettable phenomenon, and voice qualms and reservations. These qualms are sometimes expressed directly, sometimes indirectly. In the Talmud itself, such qualms are indeed few, though they reverberate throughout the entire halakhic literature. An apt example is the following mishnaic passage:

If the house collapsed upon someone [an only son] and on his [widowed] mother, [the house of Shammai] and [the house of Hillel] agree that [their heirs] should share equally [in the estate]. R. Akiva said, I maintain that [the house Hillel hold that] the property should be left in the hands of its present possessors [i.e., that the house of Hillel disagree with the house of Shammai here too, as in a case discussed earlier in the Mishna]. Ben Azai said to him: We grieve over the [explicitly articulated] disagreement, and you seek to introduce a disagreement on a point on which they [can be construed as] agree[ing].

mBaba Batra 9:10

Similarly, another talmudic Sage, R. Jose, described the distant past as an ideal time free of controversy: “Said R. Jose: Initially there was no controversy in Israel.”⁴⁷ And a mishnaic passage expresses the longing for a return to this ideal state as a vision for the end of days:

R. Joshua said: I have received a tradition from Rabban Johanan b. Zakai, who heard it from his teacher, and his teacher from his teacher, as a law given to Moses at Sinai, that Elijah will not come

47 tSanhedrin 7:1.

to pronounce impure or to pronounce pure, to send away or to bring near. . . . R. Judah says: to bring near, but not to send away. R. Shimon says: to reconcile controversy.

mEduyot 8:7

In the same vein, the controversies between the house of Shammai and the house of Hillel are portrayed as a punishment, or at least as a historical contingency, being described as having been caused by students' failure to sufficiently attend their masters. And the talmudic prohibition against factionalism, discussed above in (5c), though, as we saw, of limited scope, also reflects a longing for consensus. Essentially, these are the only negative things the Talmud has to say about controversy. In the Geonic period, however, disapproval of controversy is far more pronounced. Indeed, in the Geonic writings, unlike the talmudic literature, there is no explicit endorsement of the possibly beneficial dimension of controversy.

The dictum "both are the words of the living God," which over the centuries became the classic expression of the positive attitude to controversy, is not found anywhere in the Geonic corpus. Moreover, the Geonim strive to present the halakha as being as free of controversy as possible. This agenda is readily understandable against the background of the struggle against the Karaite challenge to the primacy of Rabbinic Judaism. The following comment, made by R. Samuel b. Eli Gaon, a contemporary of Maimonides, should be understood in this context. Articulated at a time when the authority of the Geonim was challenged by the Karaites, it alludes to external rather than internal controversies.

The academy is the place of Moses our teacher, and in it the law of Israel is completed. And whoever disputes its rulings is like one who disputes the sovereign of the law, whose place it is, and one who disputes the rulings of Moses our teacher, of blessed memory, whose seat it is.⁴⁸

This Geonic attitude requires further explanation. The great contribution of the Geonim was undoubtedly the fact that they established the authority of the Babylonian Talmud as universally binding. Despite this Geonic attitude, we should not lose sight of the fact that the Geonim took an independent position toward the Talmud. There was thus a certain tension in their approach to the Talmud. On the one hand, the Geonim were the direct successors of the Amoraim. Due to both spatial and temporal contiguity, the Geonim perceived themselves as direct heirs to the Amoraic legacy. This would lead one to expect that they would uphold the

48 Simha Assaf, "Collected letters of R. Samuel b. Eli" (Hebrew), *Tarbiz* 1 (1930), 64–5.

predominantly positive talmudic attitude to controversy. On the other hand, the Geonic approach to the halakha was very different from that of the Amoraim: to entrench the principle that halakhic determinations would be based solely on the Talmud, they felt it was incumbent upon them to unequivocally resolve halakhic disputes in the Talmud – a policy that contravenes the spirit of the Talmud itself! To achieve this objective, they developed a sophisticated set of principles, and even took the liberty of deciding which passages in the Talmud should be considered authoritative. In other words, they adopted a selective attitude to the Talmud: the Talmud is binding, but not everything contained in it.

After the Geonic period, the most outspoken opponent of controversy is Maimonides, who in this regard follows the path of the Geonim. The main motivation behind his opposition to controversy is a desire to liberate Torah study from argumentation and polemics, by eliminating controversy and dissenting views. One formative source for this attitude was Maimonides' profound commitment to philosophy, and in particular, his notion of truth.

A separate issue altogether is the place of controversy in the Kabbala and the Zohar. The Kabbala's world of images and symbols cannot be covered in the framework of the present study, but the few Kabbalistic passages that have been presented in the volume attest to the intensive preoccupation of the Kabbalists with the problem of controversy. We will see that the Kabbalists' reservations about controversy echo their critique of traditional talmudic discourse. But at the same time, the opposite tendency is also pronounced – the Kabbalists emphasize the myriad facets of the Torah, and the role of the individual in making halakhic determinations. This aspect of their approach, it seems, is intended to pave the way for their own antinomian religious path.

Another context in which the expression of opposition to controversy appears to be present is that of the numerous comments found throughout the halakhic literature to the effect that “the views of the earlier authorities are not to be disputed.” However, such remarks do not negate the legitimacy of controversy itself, but rather, serve to establish a certain hierarchy among the generations. The objection to disagreeing with early authorities is not a matter of principle, but an *ad hominem* argument invoking the respective merits of different generations. Though subtle, this distinction between opposition to controversy that is a matter of principle, and opposition due to historical contingencies, must be kept in mind as we proceed with our analysis.

Let me mention one last area where opposition to controversy is discernable, namely, the interpretive principle that controversy is not to be multiplied. This rule directs the interpreter of texts to read them, where possible, not as contradicting each other, but rather, as compatible with each other. As such, it is not a rule of conduct prohibiting controversies.

Nevertheless, it clearly reflects a negative attitude to controversy. It is discussed in (8b) below.

a. The genealogy of controversy

The sources in chapter 6 deal with rabbinical attitudes to the emergence of controversy. Some attempt to anchor the emergence of controversy in the flow of historical events, linking it to specific past occurrences. Others explain the existence of controversy as inherent in the nature of law, or of man; see chapter 1. The importance of the different explanations for the emergence of controversy lies in the fact that they reflect different value judgments about controversy itself. The view that the emergence of controversy is related to the nature of the Torah reflects a positive attitude to controversy, seeing in it a fitting expression of the Torah's wisdom. Explanations that link the proliferation of controversy to human nature do not necessarily signal a positive attitude to controversy on the part of their proponents, but do imply some degree of tolerance and understanding. As opposed to these explanations, accounts of the emergence of controversy that cite such historical contingencies as the demise of the Sanhedrin,⁴⁹ the multiplication of "students of Shammai and Hillel who did not attend to their teachers sufficiently,"⁵⁰ Moses' striking the rock,⁵¹ and the cessation of prophecy,⁵² are indicative of reservations about controversy, as they contrast an ideal controversy-free past with the controversy-ridden present, and link the birth of controversy to these unfortunate events.

The line of thought that seeks historical explanations for the emergence of controversy merits our attention, since historical explanations are, as a rule, rare in the rabbinical tradition, which does not concern itself with historical reflection and speculation, an attitude manifested in the dictum – expressed apropos a different matter, but very apt here – "whatever was, was" (bKetubot 3a). It appears that recourse to historical conjecture in this particular context is motivated by a negative outlook on controversy.

The claim that controversy resulted from the demise of the Sanhedrin occupies a powerful place in the explanation of controversy. The decision of the high court in the Hall of Hewn Stone in Jerusalem is perceived as a decision that dissolves any controversy that comes before it, unlike a decision of any other court (including the high court in Yavne), which can determine the law, but can neither dissolve the controversy nor exclude any opinions from the tradition. Paradoxically, in linking the fact of controversy to the demise of a specific institution, which cannot be

49 Maimonides' *Code*, Laws concerning Rebels 1:3–4.

50 bSota 47b.

51 *Megale Amukot*, ofen 74.

52 *Beit Elohim*, Shaar hayesodot, chapter 36; *Beit Habehira*, mAvot, preface.

reconstituted, this explanation, though hostile to controversy, obviates any chance of its eradication, and guarantees its perpetuation.

We have already pointed out that in theory the integrity of the tradition can be achieved in two different ways: by including within the tradition all opinions that have been voiced, even if they were rejected, thereby preserving the notion of one Torah, but a Torah containing many voices; and by excluding the repudiated dissenting views, thereby preserving the notion of a coherent Torah that speaks in one voice. However, the latter approach risks the emergence of a new body of law – the rejected voices – paralleling the law of the establishment. The risk is that the Torah would then become, literally, “two sets of laws.” It stands to reason that the Sages preferred the former option, fearing that were there an institution in place that had the power to reject opinions and thereby create disgruntled halakhists, bifurcation would indeed be the outcome. Hence, they insisted on virtually impossible conditions for (re)convening the Sanhedrin, forestalling exclusion of dissenting views.

b. “Controversy is not to be multiplied”

The principle that controversy should not be multiplied is not a directive to rabbinical authorities to abstain from engaging in controversies, but rather, an interpretive principle stating that one should, as far as possible, attempt to harmonize apparently incompatible views that have already been expressed, and avoid, to the extent possible, interpreting the words of the halakhic authorities to the effect that they disagree with each other. This understanding of the principle can be inferred from the fact that its many different formulations all address the way in which one is to read accounts of existing controversies, as opposed to the way in which a participant in an ongoing debate is to conduct himself. Even within this limited sphere, however, it is not a categorical prohibition against ascribing controversies to the rabbis, but a desideratum directing the commentator faced with two interpretative options, to adopt, as far as possible, that which eliminates the controversy, or reduces its scope, even if this interpretation is forced. The principle is also cited as a rationale for the self-evident principle that new controversies are not to be instigated: those engaged in an ongoing dispute ought not ascribe a dissenting view to an authority who did not express himself on the issue.

Very different presuppositions may underlie the principle that controversy ought not be multiplied. On the one hand, there may be a presupposition that in most cases rabbinical controversies are pseudo-controversies, since it is not plausible that any of the dissenting authorities, who are well versed in the law, could be wrong. On this presupposition, the principle seeks to ascertain historical truth by removing the distorting veil of apparent controversy that cloaks the opinions in question, directing the

commentator to attempt to reveal their proponents' true intents. On the other hand, a contrary presupposition may be in place here, to the effect that the authorities do indeed disagree occasionally. Out of institutional considerations, namely, the desire to harmonize between the different sources of binding halakha, however, the principle stipulates that contradictory statements ought to be interpreted as compatible, even if this interpretation twists the original intents of their authors. It would seem that the fact that the principle is formulated as a directive aimed at the commentator, and not as a descriptive statement about the halakhic authorities, supports the latter presupposition.

What is the motivation underlying this ideal of harmonizing halakhic sources? Harmonization advances several important goals. First, given that the halakha is a normative system, and individuals have to conduct themselves according to its directives, it must be consistent. Thus the harmonization of various opinions advances an institutional goal, the smooth application of the law in daily life. Second, harmonization advances compliance with a formal desideratum: the cardinal methodological principle, known as the principle of charity, that any interpretive endeavor should seek to provide a contradiction-free exposition of the system being analyzed. Thirdly, harmonization serves a social goal, namely, the lessening of any societal tension that might arise as a result of the fact that controversy is sanctioned.

The principle that controversy should not be multiplied thus directs the commentator to eliminate controversies from the halakhic corpus by reconciling apparently incompatible views. In so doing, the corpus as a whole retains its coherence, and the various opinions are interpreted in a manner that allows them to remain within it. It should, however, be noted that this coherence could be achieved by means of the opposite strategy – recognition of the existence of a controversy, and repudiation of the dissenting view. This would maintain the controversy-free coherence of the corpus, but at the cost of rejecting one side to the dispute.

The principle of reconciling conflicting sources is already found in the Talmud, and might even be seen as one of the characteristic features of talmudic discourse. Attesting to this is the fact that there are very few cases in which the Talmud interprets contradictory statements as having been voiced by “two different authorities,” and hence, inherently resistant to harmonization, in contrast to endless attempts to harmonize apparently conflicting views and resolve the contradiction. Nevertheless, this principle, though implicit, is not articulated in the Talmud itself. Employed frequently in the post-talmudic literature, it is articulated for the first time only by the Spanish scholars of the Expulsion period. From then on it is cited constantly in works by both Ashkenazic and Sefardic scholars. More precisely, it seems that we can trace the crystallization of the principle to the circle of the students of R. Isaac Canpanton (Castile, d. 1463), one of