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Menachem Fisch

The Rationality of Religious Dispute

Edited by
Hava Tirosh-Samuelson and Aaron W. Hughes

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2016

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Cover Illustration: Courtesy of Uwe Dettmar.

The series *Library of Contemporary Jewish Philosophers* was generously supported by the Baron Foundation.

Library of Congress Cataloging-in-Publication Data

Names: Tirosh-Samuelson, Hava, 1950- editor. | Hughes, Aaron W., 1968- editor.
Title: Menachem Fisch : the rationality of religious dispute / edited by Hava Tirosh-Samuelson and Aaron W. Hughes.
Description: Leiden : Boston : Brill, 2016. | Series: Library of contemporary Jewish philosophers, ISSN 2213-6010 ; volume 18 | Includes bibliographical references.
Identifiers: LCCN 2016018305 (print) | LCCN 2016019799 (ebook) | ISBN 9789004323568 (hardback : alk. paper) | ISBN 9789004323582 (pbk. : alk. paper) | ISBN 9789004323575 (E-book)
Subjects: LCSH: Fisch, Menachem. | Science—Philosophy. | Jewish philosophy.
Classification: LCC B5800 .M46 2016 (print) | LCC B5800 (ebook) | DDC 181/.06—dc23
LC record available at https://lccn.loc.gov/2016018305

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISSN 2213-6010
ISBN 978-90-04-32358-2 (paperback)
ISBN 978-90-04-32357-5 (e-book)

This paperback is also published in hardback under ISBN 978-90-04-32356-8.

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This book is printed on acid-free paper and produced in a sustainable manner.

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satirize the class of *meitivi*-type, transgenerational negotiations. Viewed thus, *Berakhot* 19b is seen as an instructive, explanatory effort on behalf of one of the framers of the Bavli's many other *sugyot* of its kind, rather than that of an antagonistic critic. It is, I urge, the work of an antitraditionalist doing his best to *disclose* the Bavli's antitraditionalist project, rather than that of an antitraditionalist aspiring to ridicule a traditionalist one.

A MODEST PROPOSAL: TOWARD A RELIGIOUS POLITICS OF EPISTEMIC HUMILITY

Menachem Fisch

Preliminaries

Before applying ourselves to the task set to us by the editor of this volume—that of thinking through the prospects of developing a position of toleration that is articulable from within the assumptions of a revealed religion—it is wise, I think, to first define what we mean by tolerance, and what we think toleration per se is capable of providing. My reason for raising this question is not to bog us down with preliminaries, but, rather, to propose raising the ante. To put it simply, from the perspective from which I am writing—philosophical and religious—tolerance, desirable as it certainly is, will simply not suffice.

A few preliminaries. First, I shall be talking about tolerance in the strong sense of undertaking to put up with those with whom we disagree or find objectionable, to be willing to endure and to quietly suffer the discomfort of their presence—as opposed merely to the toleration of the foreign or the unfamiliar. It is the objectionable, rather than the simply different other on whom we should concentrate. To articulate a position of tolerance from within the assumptions of a revealed religion is, hence, minimally to find religiously meaningful ways to justify systematically turning a blind eye on systems of belief, forms of life and modes of conduct considered heretical or sinful by the religion in question.[1]

* This article was first published in: Menachem Fisch, "A Modest Proposal: Toward a Religious Politics of Epistemic Humility," *Journal of Human Rights* 2, no. 1 (March 2003), pp. 49–64. Reprinted with permission of Taylor & Francis LLC (http://www.tandfonline.com).

[1] The analytical framework of this paper owes much to the work of Israeli philosopher Avi Sagi. First, to the sharp distinction between tolerance and pluralism set forth (somewhat more stringently than here required) in his "The Jewish Religion: Tolerance and the Possibility of Pluralism" (Hebrew), *Iyyun*, 47 (1995), pp. 175–200, and developed further in *Elu va-Elu: A Study on the Meaning of Halakhic Discourse*, (Hebrew) Hakibbutz Hameuchad, 1996, especially pp. 194–7 and "Religious Pluralism Assessed", *Sophia*, 38 (2), 1999, pp. 93–115. (The notion of pluralism I adopt below partly coincides with a variant of the "weak" or "moderate" of the three forms of pluralism he discusses—see ftn. 17 below.) And second, to his "On Tensions Between the Orthodox and the Secular: Rights versus

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Second, to pose the problem even more pointedly, I suggest we avoid entirely the option of making more room for the other by lowering religious standards. In encountering modernity in its various forms and phases all religions have modified their notions of sinfulness and heresy in certain respects and to certain degrees. This is undoubtedly as fascinating a process as it is complex, but it is not our concern at present. The problem of tolerance with respect to revealed religions—religions with a clear and binding sense of inclusion and exclusion, right and wrong, proper and improper—is *not* that of them finding ways of *justifying* heretical and sinful conduct, but of them finding ways to justify *refraining from taking action* against such conduct *despite* it being heretical or sinful. What we are here to explore from the point of view of revealed religion, are the prospects not of rethinking sin, but of rethinking *reaction to* sin.

Third, the problem does not arise for all forms of life and modes of conduct held sinful by the religions in question. Those held in similar contempt by the rest of society, even if for other reasons, may still pose a problem to some, but cease to do so from the point of view of the concerns of the present volume. I take it that we are not seeking ways to render the religions more tolerant than the rest of the world. The problem arises not for the attitudes of revealed religions to sin in general, but to such forms of sinful conduct that are tolerated outside their communities. One can assume that these will normally include most violations of ritualistic religious norms—those to do with taboos and exclusions concerning foods, rites, prayer, and to an extent people. They will minimally exclude most acts of violence against members of other communities and violations of their private or communal property.

Neither, I think, should we be concerned in this particular context with intolerance expressed by religious communities towards their own heretic or sinful members—at least not directly. Assuming that such communities are autonomous, at least to some degree, and setting aside the very important question of determining how illiberal a liberal multi-cultural society can allow its communities to be with respect to their own members, I understand our interest to lie with the capacity of the religious to

Identity Discourses", in N. Ilan (ed.) *A Good Eye: Dialogue and Polemic in Jewish Culture*, Hakibbutz Hameuchad, 1999, pp. 408–30, and forthcoming "Israeli Law and Society: Rights versus Identity Discourses", *Mehkarei Mishpat* (2000), for the claim, argued for below, that liberal rights discourse is capable of sustaining only tolerance, but not pluralism. The present paper can be viewed as a friendly and critical engagement of his work with a view to raising and solving a problem he has not addressed by means of a position of which he is critical.

tolerate the heretical and sinful conduct of communities and individuals other than their own. The problem of religious toleration thus arises with respect to beliefs, actions, individuals and forms of life that are tolerated, and may even be valued beyond the confines of the religious community within which, and in the eyes of which they are deemed intolerable.

The Problem of Sovereignty—A Jewish Perspective

That being said, the first thing to notice is that from the point of view of revealed religion there are two, rather than one problem to consider: that of religious communities dealing with the objectionable behavior of *neighboring* communities and individuals, and the very different problem of religious individuals dealing with such behavior in the capacity of members of the governing body or ruling class responsible for the communities or individuals in question. For the former, tolerance, in the manner defined above, is all that is needed; for the latter, I shall argue, tolerance is not enough. And since it is the latter problem—that of religious sovereignty, as opposed to that of mere peaceful coexistence—that, in my view, presents the gravest challenge to observant members at least of my own religion, I shall devote the main bulk of my comments to explaining why this is so, and to exploring a possible way out from which, I shall suggest further, a wider lesson might be learned. But first a word about the problem and prospects of peaceful coexistence from a Jewish point of view.

Most existing ideas of tolerance, states Adam Seligman in his introductory remarks, come grounded either in considerations of Real Politik, or in those to do with liberal assumptions on the nature of humankind. We tolerate other people's beliefs according to the former because it is politically worth our while. We do so according to the latter, liberal, option, either because one's beliefs are regarded one's private business, or because individual autonomy is held sacred. In Judaism, belief per se poses no real problem. For Judaism, the need for tolerance asserts itself almost exclusively in the realm of the practical, the realm of improper conduct. With regard to sinful conduct (e.g. public 'desecration' of the Sabbath, public display by Jews of foods prohibited during the feast of Passover, open single-sex communions, idol-worship) only the former is applicable. Jewish law—halakha—contains, as it stands, nothing comparable to the sanctioning of individual autonomy in modern liberal thought. In halakhic discourse, freedom of choice, and the essentially voluntary basis of halakhic obedience that it entails, are of crucial theological importance. But it is the

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possibility, rather than a valued *right*, to chose evil that grounds ideas of personal halakhic accountability. For halakhic Judaism as it stands the only viable option with regard to the toleration of sinful conduct is Seligman's first, although 'Real Politik' is perhaps too harsh a term.[2] The halakhic principles used to justify slackening halakhic standards in order to avoid unnecessary social or political tension are: *mipnei darkei shalom* and *mishum eiva*—that is to say, for the sake of peace, or for fear of hostility, which, in the last analysis, boil down to rather crude, ad hoc, and wholly practical versions of Kant's categorical imperative—not: do not do to others what you would prefer others not to do to you, but rather: avoid from doing to others what the law would have otherwise required you to do to them for fear of them failing to appreciate your noble intentions, and retaliating by doing the same or worse to you. Such reasoning, as we shall see shortly, is not as morally coarse as it may sound. It is pragmatic for sure, though not in the worst sense of the term. For it presupposes a real acknowledgement of, and willingness to grudgingly accommodate, ethical diversity. It implies a real realization, to which many religious systems have proven themselves impervious, that what may be right according to my system may look exceedingly wrong from the perspective of another. It is sincere, and, most importantly, it works quite well.

Most Religions, Judaism in particular, discriminate in two different and largely independent ways. They discriminate, on the one hand, between prohibited and permitted conduct, and discriminate, on the other, between people: between members of the faith and those who are not, or even between members of a faith, any God-fearing faith, and those who are not.[3] (I am ignoring here such principles of exclusion that are applied within the community—e.g., between young and old, male and female, married and single, etc.) In a variety of situations, Jewish law discriminates against gentiles qua

[2] See also Sagi, "Jewish Religion", p. 198.

[3] Such, for instance, was the way in which the thirteenth-century Provencian halakhist and commentator on the Talmud, Menahem Ha-Meiri, intriguingly redefined idolatry. For all halakhic purposes, he rules, an idolater is not a worshiper of other gods, but a person "unbound by the practices of religion"—*any* God-fearing religion, that is. According to Meiri all forms of Islam and Christianity are thus ruled non-idolatrous. An important consequence of his bold move is a dramatic reduction, within the boundaries of religious restriction, of most forms of halakhical exclusion. Unfortunately his monumental work, *Beth Ha-Behira*, was lost during the crucial years in which the great halakhic systems of Maimonides, Joseph Karo and Moshe Isserlish became the norm. For clear statements of his position see *Bet Ha-Behira* to Bavli, Avoda Zara 15b, Bava Kama 112b and especially Bava Metzia 59a where he goes so far as to categorize a people bound by the ways of religion as "a people that is with you in Torah and commandments"—*am she-itkha be-Torah u-be-mitzvot*!

gentiles—sinful or not. Hence one may speak here of two separate forms of religious toleration: a willingness, in certain circumstances, to put up with forms of conduct otherwise deemed objectionable, and a willingness, in certain circumstances, to include those who would otherwise be excluded. Both are easily accommodated by the pragmatism of arguing "for the sake of peace", and, on occasion supplement each other. "In a city populated by Jews and gentiles, Jewish and gentile administrators are appointed", states the Jerusalem Talmud, "taxes are collected [equally] from Jew and gentile, [from which] the needs of the Jewish and gentile poor are [jointly] supplied." One does not discriminate between the Jewish and gentile sick, the Talmud goes on to rule, one attends equally to the dead of each community, and pays one's respects equally to their respective mourners—all in the interest of peace.[4] Concern "for the sake of peace" thus allows one to passively ignore sinful conduct and requires one actively to attend to the immediate needs of those engaging it. (As the Yerushalmi makes quite clear, the gentiles in question are active idolaters.) For the sake of peace sin can be ignored, and the needs of sinners attended to. One is supposed to attend, however, only to needs they share with the rest of humankind. They are not to be actively assisted *in their sinful ways*. There is no obligation to supply them with places and implements of worship, for example, in fact it is downright forbidden. Jewish law, one could say, fails to recognize a sinner's right to his or her sinful way of life.

When Jews find themselves sharing political space with gentiles, these early sources rule, they are indiscriminately obliged to share the responsibility for burying the dead, attending to the poor and the sick and condoling the mourners of the two communities (stopping short of heeding to their cultural and religious needs insofar as these violate halakha). But in post-talmudic halakhic texts, the extent even of this supposedly most humane of obligations is debated—a debate that has been made worryingly relevant to modern Israel. At one point in his monumental halakhic codex,[5] Maimonides explains that we are obliged to do so because it is our moral duty "The Lord is Good to all: and his tender mercies are over all his works" (Psalms 145: 9). Elsewhere, however, he insists, that the obligation applies only when and where Israel is "suppressed by the hand" of the gentiles. However, when Israel has the upper hand and is predominate in its land, not only are we no longer obliged to attend the needs of gentiles

[4] Talmud of the Land of Israel—Yerushalmi—*Gittin*, v, 47c, citing and modifying Tosefta, 3: 13–14.

[5] Maimonides, *Mishne Torah*, hilkhot melakhim 10: 12.

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in residence, but are forbidden by halakha to grant them temporary residence or even the right to enter the land. "The foregoing rules [of conduct toward gentiles for the sake of peace]," he writes,

> apply to the time when the people of Israel live exiled among the nations, or when the gentile's power is predominant. But when Israel is predominant over the nations of the world, we are forbidden to permit a gentile who is an idolater to dwell among us. He must not enter our land, even as a temporary resident; or even as a traveler, journeying with merchandise from place to place, till he has undertaken to keep the seven Noachian Laws.[6] (...) For those who accept the Seven Laws are regarded Resident Proselytes.[7]

However, Maimonides continues, Resident Proselytes are only accepted during such times in which the law of the Jubilee is in force (the fundamental fifty-year cycle (Lev. 25: 10–12) that Maimonides himself maintains has now been irretrievably lost).[8] Otherwise only full proselytes—full converts to Judaism—are accepted. Tolerance toward the gentiles with whom we share social and political space, is limited, according to Maimonides, to exilic conditions. Once fully sovereign in their land, halakha no longer allows Jews to tolerate even the mere existence of gentiles among them, let alone attend to their needy. Importantly, Maimonides's ruling applies to all gentiles as such, and is not limited to idolaters.

Needless to say, not all agree with Maimonides on this point, and among those who, in principle, do accept his ruling, fewer still regard the conditions of modern Israel as meeting the requirements of Maimonidean sovereignty. Some interpret him to mean that only idolaters should not be tolerated by a sovereign Israel, but contest his views on who is an idolater. Contrary to Maimonides, many follow Menahem Ha-Meiri in denying that Christianity constitutes a form of idolatry at all. (All agree, including Maimonides, that Islam is not a form of idolatry.) Since the "gentiles of our time" are not idolaters, they argue, Maimonides' ruling no longer applies. (He himself, however, drew the line, as we have seen, not between idolaters

[6] These are laws supposed by the rabbis to have been binding upon all of mankind prior to Sinai, and upon non-Jews thereafter. There is noticeable disagreement in the talmudic texts regarding the precise list of Noachian laws. Basing their exegesis on *Genesis* 2:16 and 9:4 some sources list the following: (1) not to worship idols; (2) not to blaspheme the name of God; (3) to establish courts of justice; (4) not to kill; (5) not to commit adultery; (6) not to rob; (7) not to eat the flesh cut from a living animal (*Genesis Rabba* 16:9, 24:5). Elsewhere (Talmud of Babylonia—Bavli—*Sanhedrin* 56b) blasphemy and the establishment of courts are dropped in favor of the emasculation of animals and the pairing of animals of different species. Elsewhere still (Bavli, *Hulin* 92a) the list is much extended.

[7] *Hilkhot Avodat Kokhavim* 10:5–6.

[8] *Hilkhot Shmita ve-Yovel* 10:3–7.

and the rest of humanity, but (given the fact that Resident Proselytes no longer exist) between Jews and the rest of mankind. From this perspective the definition of idolatry is irrelevant!)

Rather than contest his notion of idolatry or depiction of Israel's desired citizenry, others still have challenged the realizability of his very notion of sovereignty. No democratic government can, in principle, be ever fully sovereign in Maimonides' sense of the term, argued the late Chief Rabbi of Tel-Aviv, R. Haim David Halevi, for no such government is at liberty to do as it pleases. Democracy, by definition, is a form of government to which Maimonides's very concept of predominance is inapplicable. Hence, urges R. Halevi, even if one commits oneself to abiding by Maimonides's rulings on these matters (which he himself, in following Ha-Meiri, does not), they remain irrelevant to modern Israel.[9] The point, however, is not the extent of disagreement among halakhists with regard to the passive toleration of sin, so much as the impressive lack of it with regard to actively assisting the sinner. On this important issue all appear to agree. Idolaters or not, as noted above, halakha, firmly forbids attending to the *religious* needs of non-Jews (let alone actively supporting the anti-halakhic lifestyle of irreligious Jews!). R. Menahem Ha-Meiri, whose rulings regarding toleration are the most radically lenient, summarizes the point concisely in his commentary to Bavli, *Avoda Zara* 11b. Citing the Yerushalmi's ruling mentioned above, obligating the governors of mixed cities to tax Jews and gentiles indiscriminately, and to attend equally to their poor, sick and the dead, all for the sake of peace, he goes on to caution that "their religious feasts, on the other hand, are not allowed, even for the sake of peace, as is any action suspect of idolatry." Concern for peace has its limits: passive toleration, yes; attending to a sinners' human needs, yes; it stops, however, at actively supporting sinful conduct. On this, I believe, all agree.

There exist ample halakhic resources for toleration in the narrow sense of the term. In principle, at least, observant Jewish communities encounter no problem refraining from taking the offensive action otherwise required of them by halakha, whenever there is even the slightest chance of retaliation. The pragmatic meta-ethics that backs overriding halakhic prohibition by means of principles like "for the sake of peace" may not always be to everyone's taste (e.g. when looking for ways around the halakhic prohibition against desecrating the Sabbath to save the life of a non-Jew), but they

[9] R. Haim D. Halevi, "*Darkhei Shalom* in Relations between Jews and Non-Jews", *T'humin* 9 (1988) pp. 71–81.

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do supply all that is needed for halakhically committed Jews to live peacefully among the sinful, the heretic and the gentile. They do not suffice, however, to *rule* the sinful—as the example of the mixed city clearly implies. To this end, I submit, mere toleration along with the metahalakhic principles that ensure it are not nearly enough.

A simple example will suffice to make the point. Some years ago Rabbi Eliyahu Bakshi-Doron, Sephardic Chief Rabbi of Israel, was asked by an observant Jewish travel agent whether halakha permitted him to cater for non-Jewish pilgrims to the Holy Land, whose numbers, he believed at the time, were expected to rise dramatically in the wake of the Oslo agreements. I shall not burden you with the details of the Chief Rabbi's response, which is relatively short and decisive. He clearly sides with Maimonides's rather than with Ha-Meiri's ruling concerning Christians. "Christians believe in a shared Deity and they worship images", he submits,

> Hence, their faith contains an element of idolatry. He who promotes religious Christian tourism, is, in effect, promoting their rituals of idolatrous of worship (...) To assist them in actual idolatrous worship, by attending to their transportation to 'that forbidden place', and helping them gain entry to where those rituals are performed, seems to be not only a transgression of "Thou shalt not put a stumbling block before the blind" (Lev. 19:14), but a denial of our religious obligation to uproot all idolatry from our land, as stated by Maimonides (...) It is true that considerations of *eiva* and *darkhei shalom* prevent us from performing this halakhic duty [sic!], but it is certainly prohibited to help them to worship in a place, and thereby rendering it a house of idolatrous worship. It appears, therefore, that one should refrain from encouraging Christian religious tourists or assisting them in visiting and performing idolatry in the places sacred to them. However, it is of no concern to the travel agent if regular tourists [as opposed to pilgrims] decide, in the course of their visit, to take the opportunity to pray and perform idolatry.

Although one is not required to actively hinder Christians making their way to their places of worship, halakha clearly prohibits actively directly assisting them in doing so, let alone profiting from it in any way. "So" the rabbi concludes,

> Let the person who raised the question be rewarded twice, once for his obviously genuine concern for peace, and again for concentrating hereafter on encouraging and helping bring many, many Jews to The Holy Land.

With regard to private travel agencies Chief Rabbi Bakshi Doron's ruling poses no real problem. It sounds awful, and terribly impolitically correct, but, in principle, can be lived with. Every religion has certain areas of seclusion from which non-believers are barred. Such being the halakha

(and as far as I can tell, if Maimonides is to be followed on this, the Chief Rabbi's reasoning is halakhically sound), one can easily imagine separate travel agencies catering for orthodox communities to the ritual exclusion of others, just as they are catered for by special kosher restaurants, bakeries and wineries. Paradoxically, such exclusionary institutions function as social insulators who, by accentuating the community's particularity, render the resolve to live and let live all the more easier to justify, and certainly easier to maintain. But imagine for a moment that the person seeking the Rabbi's advice had not been a private entrepreneur but an orthodox member of the Israeli Cabinet.

The role of government in multicultural democracies differs decisively from that of communal leadership. While the latters' job, even when acting as representative of their home communities or cultures, is primarily to look out for their own, the former, regardless of personal conviction, assumes responsibility for the safekeeping and wellbeing of all. The Israeli Ministers of Education, Religious Affairs, The Interior, Tourism, etc., will not have performed their governmental duties if all they can boast is a willingness to turn a tolerating blind eye on forms of conduct their religion(s) consider sinful. It is their job, in their designated areas of responsibility, to actively ensure the security, the welfare and the capacity of each and every community to flourish according to its custom and conviction (insofar as, in doing so, none harm others, or prevent other communities from exercising their own, identical rights, of course). If halakha firmly forbids Jewish travel agents to actively assist or profit from Muslim and Christian pilgrims,[10] it similarly forbids Jewish governmental officials to do so. But to volunteer such active assistance is the very job of the Ministries of Religious Affairs, Finance, Tourism, and Education, to name but the most prominent. Not only are these ministries expected, for example, to assist Israel's Muslim and Christian communities in planning and funding their annual school trips to the places holy to their faiths, but, as a matter of course, are held responsible for them being able to do so most efficiently and effectively. It is their job, in other words, not merely to safeguard the religious freedom of those deemed idolaters by many halakhists, but to assist them any way they can. And the same goes for the gravely sinful lifestyles of unorthodox Jews. The very same ministries are responsible for the ongoing activities of

[10] Rabbi Bakshi Doron makes clear that his ruling equally applies to Muslims despite the fact that, following Maimonides, Islam is not considered idolatry. His reasoning there, however, has to do with their religious claims to the Temple Mount, and the halakhic problems to which their very presence there gives rise.

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the various Israeli youth movements—some of which are decidedly, even ideologically irreligious. Most of their out-of-town activity—field trips, camping outings, hikes—are scheduled for the days held most holy by halakha. And, again, personal convictions notwithstanding, it is the Minister's job not only to assist and fund such blatant and public desecration of the Sabbath and High Holidays, but to study it year by year, learn from past mistakes, and render it all the more enjoyable, efficient and effective for those involved! This is a far cry from undertaking grudgingly and silently to passively ignore sin for the sake of peace.

Needless to say, *because* of its built-in sensitivity to the right of all people to what *they* define as their own culture, lifestyle and religion, modern multicultural democracy is by far the form of host government best suited and most desired by orthodox Jewish communities. The autonomy granted by such states provides, prescribes, ensures and protects the cultural, educational and religious space needed for religious communities to live their lives as they see fit.[11] And yet, as things now stand halakhically, this is, at the same time, the form of government most awkward for observant Jews to adopt in order to rule others. What is required of halakhically committed members of such a government is much more than tolerance. In order to justify going out of their way to actively protect and assist what they consider to be gravely sinful forms of conduct, the halakhically committed Jew requires some form of religiously justified pluralism. But how is it possible to square pluralism with an exclusivist religious viewpoint advocating "a system of thought and action that offers a vision of ultimate Good based on transcendental truths", as Seligman aptly puts it? On what grounds can halakhically committed Jews view forms of conduct that are decidedly rejected within their religious communities as genuinely worthy of promotion outside them? As we have seen, none of the three philosophies of tolerance outlined by Seligman is capable of grounding the sort of double-standard, or, to borrow Yehuda Elkana's term, two-tier thinking that seems to be required here.

In remainder of this paper I shall propose a possible way out. My exposition will be sketchy, and hesitant. The theory of toleration I shall be opting for, while not new to political philosophy, has not gained the currency its

[11] On the question of one's right to the culture of one's choice in contemporary liberal philosophy see: W. Kymlicka, *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1989, Ch. 8; A. Margalit and M. Halbertal, "Liberalism and the Right to Culture" (Hebrew), in M. Mautner, A. Sagi and R. Shamir (eds.) *Multiculturalism in a Democratic and Jewish State*, Ramot, Tel-Aviv, 1998, pp. 93–105; A. Sagi, "Israeli Law and Society".

author, Sir Karl Popper, had hoped for. It remains, by any standard, a minority voice—unjustly so in my opinion, but a minority voice anyway. Hence, it is a position, for which a case needs to be made independently of its application to our present concerns. Needless to say, even if such an option is, in principle, deemed viable, its applicability to the specific context of religious commitment, requires separate justification. Finally, if and when that too is accomplished, it will still remain to be shown that halakhic Judaism, the specific perspective from which I am writing, possesses resources sufficient for accommodating such an approach. To set forth such a three-stage argument in acceptable detail would require at least a book. What follows, then, will not be a summary of work accomplished so much as an initial report on work still very much in the making. For lack of space, and in order to remain as fully focused as possible on the problem of *religious* toleration to which this volume is addressed, I shall skip the first stage of the argument completely, and assume that the general approach advocated is, at least from the point of view of political philosophy proper, a viable option. Thus equipped, I shall briefly explain why I think it is an attractive one for the task at hand, and go on to give my reasons for maintaining that halakhic Judaism is capable, in principle, of accommodating such an approach.

A Different Approach: Learning From the Other

Though a far cry from Real Politik, the approach to tolerance I have in mind does not require the apriori endorsement of what he dubs "liberal assumptions on the nature of man". It is not grounded in 'rights talk' to use Bruce Ackerman's coinage.[12] I am referring to the set of presuppositions on which Karl Popper bases the theory of toleration outlined in his *Open Society and its Enemies*.[13] These primarily are *not* to do with a moral duty to defend or

[12] Unlike Sagi, I use the terms 'rights talk' and 'rights discourse', as does Ackerman, to denote the philosophical discussion of rights as the basis of liberal theory. Sagi, in contrast, uses it to denote the practical negotiation of rights within society, typically arbitrated by the law. Cf. B. Ackerman, *Social Justice in the Liberal State*, Yale University Press, New Haven and London, 1980, p. 5. Ackerman is a case in point in likewise refusing to view rights as a primordial apriori given. For him too the notion of rights is a derivative of what he calls the principle Rationality. Here, however, is where we differ significantly. See next ftn.

[13] K. R. Popper, *The Open Society and its Enemies*, 2 Vol., Routledge & Keagan Paul, London, fifth edn. (revised), 1974. The book is devoted almost entirely to critical evaluations of the social and political philosophies of Plato, Marx and Hegel. Popper's own views are developed mostly in extended footnotes. See in particular Vol. I, p. 235 ftn. 6, pp. 237–9 ftn. 18, pp. 265–6 ftn. 5 and pp. 287–91 ftns. 6 and 7. For a brief yet useful overview of his

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respect individual autonomy, or with a moral obligation to keep out of one's neighbor's hair. Popperian tolerance, if I may call it so, *entails* such liberal presuppositions of individual autonomy (if, as we shall see, interestingly constrained), while *deriving* ultimately from epistemological, rather than moral or metaphysical arguments. Belief systems and lifestyles other than their own are given voice and allocated space by members of the open society primarily because they realize that a plurality of engaging, especially conflicting voices provides the best setting for most effectively articulating and developing one's own. The close presence of challenging, even disturbing and dissenting voices is welcomed, because the chances of one's awakening to error and oversight are exceedingly greater when faced with a variety of real and serious alternatives.[14]

The obvious advantage of grounding ideas of tolerance in this way is that the arguments for them involve far less by way of ontological, ideological, psychological, moral and metaphysical presupposition—all of which are fiercely debated. Most importantly it sidesteps the entire issue of fundamental rights, an idea halakhic Judaism for one has great difficulty accommodating as an apriori given. The acknowledgement of humankind's profound fallibilism especially in the public sphere, of the fundamental timeboundedness and context-dependence of all social planning, coupled to the almost built-in instability of those very contexts, premises little more than that life, especially social life, is exceedingly complex and unpredictable, and that the chances of us making a mess of things are enormous—with this few would disagree. The upshot is an epistemic hesitance, modesty and openness, an awareness that we are poor critics of our own plans and strategies, that things are best done piecemeal, and that other viewpoints are not merely to be tolerated, but to be highly valued, not for

position see his "Toleration and Intellectual Responsibility", in his *In Search of a Better World*, Routledge, London, 1984, pp. 188–203.

[14] For Bruce Ackerman, people's possession, or right to power rests on their ability to provide reasons that explains why they are entitled to the resource in question (*Social Justice in the Liberal State*, p. 4). "Rights", he argues, thus "have a reality only *after* people confront the fact of scarcity and begin to argue its normative implications." (p. 5) One employs rational argument, according to this view, in order to *resist* granting others a share of one's political and cultural space. Others are granted their share, exactly when and where rationality fails those in power. Following Popper's lead, the position I argue for also grounds rights in rationality, but quite differently. We grant others a right to power not because we are incapable of explaining why we shouldn't, but because we have a profoundly rational need for having them around, owing to their ability, by virtue of their very otherness, to question our own political and cultural choices.

their own intrinsic worth so much as for their capacity to challenge our own by helping highlight its flaws and shortcomings.

Let me remark in passing that the Popperian option offered here in order to counter the dogmatism of many religious systems, is equally effective in countering other forms of uncritical political discourse. By denying the self-correcting force of argument and criticism, modern (or rather post-modern) relativism denies multi-culturalism any epistemic value. According to Richard Rorty and his ilk, language is no longer allowed meaningfully to refer or to express, and reason, no longer to act as an interpersonal court of appeal.[15] Humans are described as accounting for their world and for themselves within it by means of 'vocabularies' of metaphors which they acquire, inherit or construct, without the benefit of rational procedures to criticize them, compare them or pit them against each other. As a result, the liberal societies envisaged by these thinkers lose their value as non-violent, non-manipulating forums for the critical exchange and amelioration of ideas. As Rorty's candid *Contingency, Irony, Solidarity* amply proves, the very idea of such a society is thrown into sharp relief with the extremely individualistic, self-centered, and unchecked egocentrism that is all but entailed by their flight from reason. (His recent *Achieving Our Country*[16] shows, in my opinion, the beginnings of an awakening to the dire political consequences of his earlier views, but that is the topic for an entirely different paper.) The Popperian option thus serves as a Janus-faced alternative jointly opposed to both uncritical extremes: uncritical dogmatism on the one hand, and the equally uncritical position of absolute relativism on the other.[17] For obvious reasons the present paper will concentrate on the former.

[15] Rorty's views on language and knowledge and their bearing on political theory acquire their fullest development to date in his *Contingency, Irony, Solidarity*, Cambridge University Press, Cambridge, 1989.

[16] R. Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America*, Harvard University Press, Cambridge Ma., 1998.

[17] This is the point at which my position diverges most significantly from Sagi's, whose recent work has come to favor an explicitly Rortian form of cultural and religious plurality. He advocates for religions a dynamic 'expressive pluralism' recognizing "the basic fact that an individual's attachment to a particular religion is not the result of a critical examination of this religion" ("Religious Pluralism", p. 106). In the context of discussing religious diversity (in which he correctly includes "the deniers of religion", *ibid.* p. 108) the Popperian option (he terms 'weak pluralism'—*e.g. Elu va-Elu*, pp. 192–3), discussed by him in other contexts (most significantly within the boundaries of halakhic discourse, on which more below), drops out of the discussion completely when talking of inter-religious pluralism, and is past over all too briefly in favor of a similar position in his more general treatment of multi-culturalism. For explicit allusions to Rorty see "The Orthodox and the Secular" pp. 424, 426.

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The great philosophical achievement of Popper and his school lies in their success in premising a genuine and perpetual skepticism (of the retail, rather than wholesale variety)[18] without allowing it to become destructive. On the contrary. Despite their insistence that the recognition of general truth is, in principle, beyond human ken, and that even the physical sciences, let alone social and political science, are wholly incapable of ever confirming their theories, they succeeded in formulating one of the most optimistic and constructive visions of science and society framed in this century. This they achieved by not defining progress (as opposed to mere change), even scientific progress, in cumulative terms, but in terms of a perpetual process of problem-seeking and -solving. Scientific progress, according to Popper, is not a matter of ever-increasing our stock of reliable, well-confirmed theories precisely because reliability cannot be humanly vouched for. Rather, one should view the growth of knowledge not in terms of anything 'growing' or increasing, but in terms similar to those used in industry and evolution theory: of the improvement, perfection, amelioration, adjustment of its explanatory systems and models. The key to scientific accomplishment is to be found not in the accumulation of evidence supportive of our efforts, but in our ability to keenly expose their shortcomings and propose better suited alternatives. I have shown elsewhere how Popper's vision of the growth and rationality of science, can be systematically generalized to include all manner of human endeavor by speaking in general of acting upon any goal-directed system.[19] A system is said to have been ameliorated or improved exactly if to the best of our knowledge problems it was known to harbor have been, at least, partly solved. To act rationally on a system, on any system, is to adopt a deliberately critical attitude towards it, to be constantly wary of its performance regardless of its apparent successes, and to be willing to modify it if it is ever found wanting. Once rationality is identified, as it is here, with perpetual self-doubt, with knowing one's limits, with systematic self-criticism and a constant and creative search for better-suited alternatives (rather than with focusing one's intelligence on justifying one's position a lá Ackerman, and defending

[18] See Michael Williams, *Unnatural Doubts: Epistemological Realism and the Basis of Skepticism*, Princeton University Press, Princeton, 1996), esp. Ch. 1.2. Although this is one of the most thorough discussions of skepticism and its modern responses, here too the Popperian option is hardly touched upon. For further details with reference to the distinction between casting total and piecemeal doubt, see M. Fisch, *Rational Rabbis: Science and Talmudic Culture*, Indiana University Press, Bloomington, 1997, pp. 5ff.

[19] M. Fisch, "Towards a Rational Theory of Progress", *Synthese*, 99, pp. 277–304, 1994; *Rational Rabbis*, pp. 3–39, and above pp. 35f.

the system in hand), it is easy to see how a healthy self-centered critical pluralism follows suit.[20] Other opinions are not merely tolerated. They are sought after and valued for their very otherness; for the way in which they challenge and exercise our own, help expose our mistakes and weaknesses and present, by virtue of their otherness, serious, often unthought, and certainly untried alternatives.

Grounding political philosophy in this manner does not entail *denying* the idea that people have a fundamental right to the belief system or inoffensive form of conduct of their choice. The liberal argument from rights and the argument from epistemic humility proposed here are independent of one another though by means mutually exclusive. The former, however, presupposes much, and, taken alone, promises very little. Even if we ignore the problems currently exercising liberal thought—such as the much-discussed question of how liberal a liberal government should be toward illiberal attitudes and practices within its autonomous communities—the argument from rights and the liberal theory it entails provides little incentive for building and maintaining a society transcending the boundaries of one's own community. A willingness to grant all people the right to the belief systems of their choice offers, in and of itself, no reason at all for wanting to share a multicultural framework with them to start with. It entails an obligation on behalf of governments to attend to all (non-violent) communities evenhandedly, but it is their *right* to their cultural choices that is valued not the cultural choices themselves; it affords people the rights of speech, belief and (non-violent) practice, but gives no reason for anyone to listen or engage. If the only principle doing social and political work is the acknowledgement of rights (by a leadership driven by "the anxiety of influence", the horror of inoriginality, as Rorty, following Harold Bloom, aptly puts it),[21] it comes at no surprise that Rorty encounters such enormous difficulties promoting "a genuine sense of human solidarity". But one doesn't have to buy into Rorty's entire critique of philosophical theorizing in order to realize this. Liberal rights talk provides sufficient grounds for unresentfully putting up with cultural and ethical diversity once it has developed, but gives no reason for desiring it in the first place. No intrinsic value is attached to otherness. To repeat, acknowledging a people's right to their beliefs and cultural choices entails an obligation to

[20] The term "critical pluralism" was introduced by Popper to distinguish it from relativist renderings of the term 'pluralism'. See Popper, "Toleration", p. 191, and ftn. 17 above.

[21] Rorty, *Contingency, Irony, Solidarity*, Chapter 2 refering to Harold Bloom, *The Anxiety of Influence*, Oxford University Press, Oxford, 1973.

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tolerate their holding to them, but not to take any interest in their content. Of itself, rights talk attaches no intrinsic value to beliefs and choices different from one's own.[22]

Premising no more than genuine epistemic humility, the Popperian option does. The pluralism to which it give rise is not a mere by-product. It lies at the very heart of the enterprise. The combination it premises of robust yet constructive skepticism promotes a cheerful acceptance and genuine curiosity towards other cultural choices. One wants to surround oneself with people who think and live differently in order to enrich one's own beliefs, moral standards and cultural choices. On this inherently pluralistic model the other is not merely tolerated, he is welcomed and valued for his otherness. Much more is achieved this way although much less is premised. Pluralism is achieved without fundamental rights having to be even premised, let alone negotiated. This in itself renders it an exceptionally attractive option for religious systems whose capacity for accommodating a rights-based liberalism is severely limited. Arguments from rights compel us to take seriously a person's freedom of choice, but, of themselves, attach no intrinsic value to the choices themselves. Arguments from epistemic modesty, by contrast, attach great value to the outcome of their choosing, but, of themselves, care little about their liberty to do so.

Furthermore, and perhaps most importantly for the particular problem I am raising, by allowing one to set aside the entire rights issue, the option I am proposing renders quite natural the sort of two-tier thinking we found so baffling in the previous section. Paradoxically enough, the seemingly impossible double-standard required is not merely justified, but is actually encouraged within such a critical plurality. To recall, the problem of religious sovereignty is that of religiously justifying governmental executives working actively to ensure the security and prosperity of forms of conduct considered sinful in the eyes of their own religion. From the critical perspective of the type of pluralism I am proposing it is far less paradoxical than it sounds to be able to view forms of conduct that are firmly condemned within one's own community, as genuinely worthy of active support outside it. The Open Society ideally comprises communities guided morally, spiritually and politically by epistemically humble learners, rather than systematic agnostics. They themselves realize that the learning process is greatly enhanced by them being made aware of workable

[22] For forceful presentations of this argument see Sagi "The Orthodox and the Secular" and "Israel Law and Society".

alternatives. If one is genuinely interested in effectively testing and improving one's own system, being able to compare it to other, real and seriously thought-through alternatives, is always an advantage. If, on the other hand, the communal leadership considers its main task to be not to test, but to sustain, protect or perpetuate their own system, the very proximity of challenging alternatives will usually be considered a threat. Community leaders of a Popperian bent seek to strengthen, defend and deepen the hold of their own systems no less and no less seriously than others. They are monists at rock bottom, but hesitantly so. Their firm belief is that the key to their system's survival, appeal, and vitality is its constant improvement; that one's way of life is best defended and perpetuated not by suppressing, or secluding oneself from other cultures, but by learning from their mistakes, and even more importantly, from their successes. Popperian reflexive skeptics are as serious about their cultures, their normative systems, and their communities as those inclined exclusively towards preservation. If not firmly coupled to constant testing and reassessment, preservation alone, they maintain, is a sure recipe for stagnation, which, in the realm of the social, political, cultural, and even the religious, leads, inevitably in their view, to irrelevance and decay.

On the other hand, keeping an open mind, taking a genuine interest in the ways in which other thoughtful communities conduct their social and spiritual lives, even when radically different from one's own, being willing, in advance, to treat learning *of* others as learning *from* others, should not be confused with taking one's own system lightly. The epistemic hesitance, self-doubt and self-criticism displayed by such communities are not signs of weakness or indifference towards their cultures and traditions. In a deep sense nonchalant unconcern is the enemy of effective criticism and self-criticism. The critical dynamic of Popperian enrichment is rendered all the more effective, the greater the contrast between the participating viewpoints, and the firmer they are initially held. Mutual criticism, and subsequently the learning process that may come in its wake, is more effective the more there is at stake: the more serious the problems can be shown to be, and the deeper the commitment is to the whatever is found wanting, the more pressing the need for a better alternative. The two uncritical extremes render the very process of learning highly unlikely. Dogmatic monists, who hold their views with excessive firmness, will be reluctant to reflect upon them regardless of the problems they may be shown to harbor. And those, equally uncritical relativists, whose views lack real conviction, usually couldn't care less anyway. Ideally, a person or community prudently motivated by Popperian considerations of epistemic humility will seek

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partners to debate whose views are as seriously held as they are significantly different from their own. And when such considerations are applied to state politics one, it seems, should regard as ideal a multicultural society comprising a plurality of relatively decided communities fairly confident in their views.

But of course all of this can be of no avail unless, to paraphrase Seligman, such a position is indeed articulable from within the assumptions of revealed religion. Epistemic modesty is clearly not a viable option for all religions. If what one believes is truly regarded the God-given truth, the option I am proposing can be of no relevance. Here I can only speak for Judaism, where, I believe, more than the beginnings of such an option are available, if not as readily as one would have liked.

Toward an Halakhically-Committed Pluralism: Principles, Promise and Prospects

It is my firm belief that the formative texts of halakhic Judaism contain clear evidence of a major school of thought whose self-conscious epistemic presuppositions closely resemble those of the Popperian school. The type of approach to which I am referring is aptly described, and, not unlike Popper's own writings, argued in analogy to the epistemic status and growth of scientific knowledge, by one of the most prominent rabbinical figures of the late nineteenth-Century, Rabbi Naftali Tzvi Yehuda Berlin, writing in 1865 or so, in the introduction to his monumental commentary on the Pentateuch: *Ha'amek Davar*.

> Just as it is not possible for the wise student of nature ever to boast knowledge of all of nature's secrets (...), and just as there is no guarantee that what he has accomplished in his investigations will not be invalidated by colleagues (...) who elect to study the same things differently, so it is not possible for the student of the Torah to claim that he has attended to each and every point that claims attention, *and even that which he does explain—there is never proof that he has ascertained the truth of the Torah*. (italics added)

Disappointingly, however, Rabbi Berlin intended his surprisingly Popperian analogy of Torah study to Science to apply only to Biblical exegesis, not to halakha. The model of development he attributes to halakha, offered by him elsewhere,[23] is cumulative rather than revolutionary (resembling

[23] See, for example, his commentaries to Exod. 34:1, 27 and Lev. 18:5, his preliminary remarks to Deuteronomy, and most importantly his introductory essay to *She'iltot de-Rav Ahai Gaon*, entitled "The Way of Torah", Mossad Harav Kook, Jerusalem, 1986, esp. pp. 5–12. See also Sagi *Elu va-Elu*, pp. 43–6.

mathematical, rather than scientific development). Unlike interpreters of Scripture, the halakhic authorities, he urges, do not seek to invalidate, and improve upon the efforts of his forbears, as does the exegete. In the world of halakha, urges Rabbi Berlin, former rulings are forever binding. Halakhic innovation is achieved not by questioning one's halakhic legacy, but by concentrating exclusively on, and constantly trouble-shooting for, halakhic lacunae.

Rabbi Berlin's two models of development differ in the treatment of their respective legacies. Halakhists, according to Berlin, are wholly bound and obligated by the body of law they inherit, and are, therefore, limited in their legislative efforts to questions on which no ruling had formerly been issued. Biblical exegetes, by contrast, humbled by a profound sense of human fallibility, are encouraged by the tradition itself to challenge and improve upon former interpretations. Owing to their different attitudes to tradition, I have dubbed the two approaches traditionalist and antitraditionalist respectively. Contrary to Rabbi Berlin's depiction—a view widely shared by halakhically committed Jews—I have argued, in a book-length study, for the presence, within the talmudic literature, of a reflective, and insistent antitraditionalist approach *to halakha*, or rather, for the existence of a clear and self-aware tradition of halakhic antitraditionalism.[24] The antitraditionalist voice to which I am referring is detailed and valorized in a variety of talmudic texts and genres. One example will suffice to make my point.

The controversy between the Houses of Hillel and Shammai—the schools of halakhic thought who, according to the talmudic literature, dominated the world of Jewish learning prior to the fall of Jerusalem in 70 AD—is regarded as the paradigm of halakhic disagreement. The talmudic literature contains much legal and legendary material concerning the Houses and the two sages to whom they owe their names. The dispute between the two Houses extends over three-hundred or so matters of halakha. In thirty-four cases, the texts record debates between them following the statement of their initial contrasting views. These allow the reader a glimpse of the different and the shared discursive practices attributed by the texts to the two Houses. One such difference is highly significant. In seven of the fifteen dialogues in which the Shammaites are accorded the last word, the Hillelites are on record as having changed their initial commitment and "admitting" to that

[24] Fisch, *Rational Rabbis*.

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of their adversaries. In none of the eighteen cases in which the Hillelites are accorded the last word do the Shammaites change their mind. A willingness to retract and modify a bona fide halakhic legacy in the face of counter-argument is the hallmark of antitraditionalism. Nothing better attests to such a view than evidence of actual replacement of a former ruling. Unlike traditionalists, who are obligated absolutely by their traditions (and are, therefore, unable to abandon a ruling even when faced with an argument for which they have no answer), antitraditionalists, motivated by perpetual self-doubt, are constantly on the lookout for possible flaws and problems in their own system. It is clear from this and a variety of other evidence,[25] that the talmudic redactors responsible for these texts envisaged the two Houses—whose disputes are formative of the talmudic enterprise—as apt representatives of the two approaches I have been discussing. It is also evident that major talmudic texts that comment on the Houses' controversy, viewed it in the same terms. One such text asserts that the reason we follow the House of Hillel in matters of halakha is because they were humble and accommodating, and would not only give the Shammaite view a hearing, but went out of their way to consider it before stating their own.[26]

The talmudic antitraditionalist is, what I have elsewhere termed a constructive skeptic. He is a critical pluralist who translates his personal intellectual modesty into a powerful method of reflexive critical reasoning. *As a result*, the Hillelites' attitude toward the Shammaites is more than mere toleration, much more. The Shammaites are far more than merely put up with. The Hillelites accord their adversaries more than the right to an opinion, and freedom of speech. No, their interest in *what* the opposition has to say is real. What the Shammaites have to offer *them* is something only a tough-minded adversary can offer: a real and seriously entertained alternative. They desperately need them around, for the keen challenge they afford their own hesitantly held views. They disagree with them bitterly, but value their presence not for the cozy security of agreement that they offer, but for the exciting, constructive effects of their criticism. They are valued for their profound otherness!

In the light of the problems discussed, talmudic antitraditionalism is clearly an important beginning. The epistemic humility it premises entails two powerful resources for solving the problem at hand: a legitimacy to

[25] For further details see H. Shapira & M. Fisch "The Debates between the Houses of Shammai and Hillel: The Meta-Halakhic Issue", (Hebrew) *Iyyunei Mishpat* (*The Tel-Aviv University Law Review*), 22 (3) 1999.

[26] Bavli, *Eruvin* 13b.

rethink halakha as it stands, and, even more importantly for the present context, a healthy, religiously meaningful critical pluralism that allows one to both keenly disagree with, and, at the same time, seriously value the existence of halakhic opinions opposed to one's own. As it stands at present, halakha, I have argued, forbids actively defending and assisting halakhically objectionable forms of conduct. Reclaiming the voice of halakhic antitraditionalism is to reclaim the license not merely to rethink former rulings, but to rethink them within the desired environment of a vigorous and authentic meta-halakhic pluralism—the very attitude we found so lacking in the current mindset of halakhic Judaism.

But let's not get carried away. Interesting as all this may be for the study of talmudic discourse and culture, the immediate resources it offers for the type of latter-day concern discussed in the present volume, remain, it would seem, very limited. For one thing, anything to do with meta-halakhic deliberation remains, by definition, an in-house affair. Tolerating diversity within the community is always a matter very different from the way the community as a whole faces the world without. Furthermore, the 'radius of toleration' within which the Hillelites' latitudinarianism in fact asserts itself in relation to the Shammaites is disappointingly narrow in comparison to the degree of ethical and cultural diversity latter-day halakhically committed Jews are challenged by. The immediate reaction of almost all the students of the talmudic literature to whom I have presented this argument has been little more than a polite dismissal.[27] Halakhic pluralism, they assert, is limited to, and wholly contained within the boundaries of

[27] Sagi's book-length study of post-Talmudic attitudes to halakhic disagreement shows awareness to the Popperian nature of the the position I term antitraditionalist, though almost as an afterthought. He distinguishes between monistic and pluralistic approaches to halakhic disagreement (the former treating their own positions as true and their adversaries as mistaken, the latter denying there being one solution to a given problem (pp. 88–9)) and goes on to classify the entire literature in terms of variants of the two positions—none of which premise the type of self-critical, modest monism I have been advocating. Then, in the last chapter but one, he does, introducing a 'weak pluralism' he associates with Popper, Mill and Voltaire, to which, he claims two authors previously classified differently, can be shown to ascribe (pp. 194–5). However, even here the entire discussion remains confined to halakhic disagreement, and is not extended to challenges from outside the fold. On this he is explicit elsewhere: because of its inherent self criticism the price a religious weak pluralist has to pay is high, for he runs the constant risk of his religious beliefs being refuted. "Furthermore", adds Sagi, "weak pluralism" does not sit comfortably with the language and practice of halakha" ("Jewish Religion", pp. 189–90). He is obviously right on both claims regarding the attitudes of latter-day halakhically committed Jews. With respect to the talmudic literature, however, I strongly disagree. For similarly disappointing conclusions also see A. Ravitzky, "The Question of Tolerance in the Jewish Tradition: Between Pluralism and Paternalism" (Hebrew), A. Sagi and Z. Safrai

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acceptable halakhic opinion. "These as these are the words of the living God", states the Talmud in summarizing the three-year controversy between the Houses, I am constantly reminded. To extrapolate from the contained and muted pluralism practiced by the Hillelites toward other God-fearing, equally observant communities of Jews, to modern multiculturalism, I am told, is not only wrong-headed but irresponsible.

Had I intended to argue apologetically that by listening carefully to the talmudic texts of late antiquity one could find a ready-made solution to a decisively latter-day problem, I would have well deserved all of that and more. What I am pointing to in this literature is not a prophetic premonition of current Western multiculturalism, but an epistemic attitude; not something the rabbis couldn't have been aware of (and had they been would have probably balked), but something of which they seem to have been perfectly aware, and totally at ease—namely, a profound sense of the limits of humankind's capacity to know, resulting in a genuine and proven epistemic modesty which they applied *even* in the realm of firmly held halakhic legacies! This is not to be taken lightly, especially if one recalls that, having at their disposal no procedure for deciding between conflicting halakhic legacies, traditionalists are obliged to either refrain from deciding altogether, and to leave the matter inevitably open (until the "return of Elijah"), or reluctantly to allow each member of the community to abide by his or her own tradition—in which case the school will irreversibly be split in two. "Thus," states the very traditionalist Tosefta, *Sanhedrin* 7:1 "as the disciples of Shammai and Hillel who had not attended upon their Masters sufficiently increased in number, so increased the number of halakhic disputes in Israel," and, adds the version cited in the Bavli, "the Torah is rendered (split into) two (separate) *Torot*."[28] What I urge we listen to and extrapolate from is the very principle of epistemic modesty operating at the heart of talmudic antitraditionalism, and the manner in which it provides the hard, normative core of halakhic Judaism—the halakhic system itself—with a powerful, decidedly open-ended self-correcting mechanism.

(eds.), *Between Authority and Autonomy in the Jewish Tradition*, Hakibbutz Hameuchad, Tel-Aviv, 1997, pp. 396–420.

[28] Tosefta, *Sanhedrin* 7:1 and *Hagiga* 2:4, cited Bavli, *Sanhedrin* 88b. See also Bavli, *Sotta* 47b and Yerushalmi, *Sanhedrin* i, 19a. Yerushalmi, *Hagiga* ii, 77d brings the point home the most forcefully of them all: "Thus, as the disciples of Shammai and Hillel who had not attended upon their Masters sufficiently increased in numbers, and the number of (halakhic) disputes in Israel increased, they became two (separate) sects—these would rule a thing unclean while these would rule it clean, and it will not be settled until the coming of The Son of David (i.e. the Messiah)!"

It is not a solution to the problem at hand. Much conceptual and halakhic work has yet to be done before a solution can be boasted. But in the antitraditionalist voice of talmudic Judaism the necessary conceptual and philosophical framework exists for the potential development of an original, halakhically-commited, Jewish version of the fourth, Popperian option for which this paper has been arguing. This is the important resource that the formative texts of rabbinic Judaism have to offer their latter-day heirs who, for the first time in history, face the great challenge of modern statehood.

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