

Class 7 – In Depth: A Good Debate
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Class Outline

- Review
- How did debate develop?
- Elu va-elu
- Halachik value of debate

I. Review

The teaching of Torah from one generation to the next is not just the mechanism by which the Oral Tradition was transmitted but rather was the reason that the Oral Tradition was created – i.e. G-d favors an oral tradition.

Talmud can be understood as the in depth understanding of Torah, commentary to the mishnah, or just simply the discussions of the amoraim (200 CE – 500 CE). It is a 'layered' work – the result of hundreds of years of Jewish tradition.

II. How did debate develop?

If both the written and the oral Torah are of divine origin, why is there so much machloket (debate) recorded in the Talmud?!?

An example:

Berachot 1:3

BETH SHAMMAI SAY: IN THE EVENING EVERY MAN SHOULD RECLINE AND RECITE [THE SHEMA'], AND IN THE MORNING HE SHOULD STAND, AS IT SAYS, AND WHEN THOU LIEST DOWN AND WHEN THOU RISEST UP.⁵² BETH HILLEL, HOWEVER, SAY THAT EVERY MAN SHOULD RECITE IN HIS OWN WAY, AS IT SAYS, AND WHEN THOU WALLEST BY THE WAY.⁵³ WHY THEN IS IT SAID, AND WHEN THOU LIEST DOWN AND WHEN THOU RISEST UP? [THIS MEANS], AT THE TIME WHEN PEOPLE LIE DOWN AND AT THE TIME WHEN PEOPLE RISE UP. R. TARFON SAID: I WAS ONCE WALKING BY THE WAY AND I RECLINED TO RECITE THE SHEMA' IN THE MANNER PRESCRIBED BY BETH SHAMMAI, AND I INCURRED DANGER FROM ROBBERS. THEY SAID TO HIM: YOU DESERVED TO COME TO HARM, BECAUSE YOU ACTED AGAINST THE OPINION OF BETH HILLEL.

How did people recite Shema for hundreds of years prior to this debate?!?

1. Only matters that arose *after* the time of Moshe are subject to debate

Rambam (Spain1135- Egypt1204)

Mishnah Torah, Shechita 4:17

When the Jews were journeying through the desert, they were not commanded to slaughter non-sacrificial animals. Instead, they would cut off their heads or slaughter them and eat as the other nations do. In the desert, they were commanded that everyone who desires to slaughter an animal [in the prescribed way] should slaughter only for the sake of a peace offering, as [Leviticus 17:3-5] states: "When a man from the house of Israel will slaughter an ox... and he will not bring it to the Tent of Meeting... [it will be considered as (spilled) blood]... so that the Children of Israel will bring their sacrifices... and slaughter these sacrifices as peace-offerings." If, however, a person desired to cut an animal's head off and partake [of the animal], in the desert, this was allowed.

2. Laws given to Moshe were forgotten

Babylonian Talmud, Nedarim 38a

R. Johanan also said: At first Moses used to study the Torah and forget it, until it was given to him as a gift, for it is said, And he gave unto Moses, when he had made an end of communing with him [. . . two tables of testimony].

Babylonian Talmud, Temurah 15b

Rabbi Judah reported in the name of Samuel: Three thousand halachot were forgotten during the period of mourning for Moses.

How can law be forgotten if it was being practiced?

Babylonian Talmud, Berachot 22b

Let's see: The amoraim and tannaim are all arguing over a decree of Ezra. Why not just see how Ezra decreed it should be done!

Commentary of Tosaphot, ibid.

In many other places, regarding other rabbinic enactments, the Gemara does not raise this problem [that no argument should exist]. However, this case is unique, since it concerns a constant occurrence. Therefore, we ought to remember how it was done.

3. 'Minor' details were forgotten

Mishnah, Edyot 8:7

Rabbi Joshua said: I have received a tradition from Rabban Yohanan ben Zakkai, who heard it from his teacher, and his teacher [heard it] from his teacher, as a halakhah [given] to Moses from Sinai, that Elijah will not come to pronounce unclean or to pronounce clean, to put away or to bring near, but to put away those brought near by force and to bring near those put away by force.

The family of Beth Tzriphah was on the other side of the Jordan and Ben Zion put it away by force; and yet another family was there, and Ben Zion brought it near by force.

It is such as these that Elijah will come to pronounce unclean or to pronounce clean, to put away or to bring near.

Rabbi Judah says: to bring near, but not to put away.

Rabbi Shimon says: to conciliate disputes.

And the Sages say: neither to put away nor to bring near, but to make peace in the world, for it is said, "Behold I send to you Elijah the prophet", etc., "and he shall turn the heart of the fathers to the children and the heart of the children to their fathers" (Malachi 3:23-24).

Commentary of the Rambam, ibid.

The wording was not heard from Moshe Rabbeinu, may his memory be blessed. But the subject was heard from him, since Moshe described the coming of the messiah, the fact that he shall remove evil from the world and that Elijah will proceed him to straighten the world for him... With this there is no debate or denial. But debate did arise over precisely what evils [Elijah] is going to eliminate.

4. Analytical Error

Babylonian Talmud, Chulin 110a

R. Joseph said: A priest in whose neighbourhood there lives a scholar who is in sore need, may assign to him the priestly dues even though they have not yet come into his hands; provided [the priest] is popular among the priests and Levites.

Raba and R. Safra once visited the house of Mar Yuhna the son of R. Hana b. Adda (others say, the house of Mar Yuhna the son of R. Hana b. Bizna), and he prepared for them a third-born calf. Thereupon Raba said to the attendant [who waited upon them]: 'Assign to me the dues, for I wish to eat the tongue with mustard'. He assigned them to him. Raba ate it, but R. Safra would not eat it. There came to R. Safra the following verse in a dream: As one that taketh off a garment in cold weather, and as vinegar upon nitre, so is he that singeth songs to a heavy heart. He then came before R. Joseph and said to him, 'Perhaps it was because I did not do in accordance with the Master's teaching that this verse came to me?' But he [R. Joseph] replied. 'I said it of a stranger only, but an attendant perforce must assign it; moreover I said it in respect of one who is needy, but here it was not a case of need'. 'Then why did this verse appear to me?' — 'It referred to Raba'. 'Then why did it not appear to Raba?' 'He was under Divine censure'.

5. Difference in original interpretation

Rambam

Mishnah Torah, Mamrim 2:1

When, using one of the principles of exegesis, the Supreme *Sanhedrin* derived a law through their perception of the matter and adjudicated a case accordingly, and afterwards, another court arose and they perceived another rationale on which basis, they would revoke the previous ruling, they may revoke it and rule according to their perception. This is reflected by Deuteronomy 17:9: "To the judge who will be in that age." This indicates that a person is obligated to follow only the court in his own generation.

6. Multiple practices were authentic, but standardization of practice was needed

Rabbeinu Nissim ben Reuven [Ran] (Spain 1320 – 1376)

Rosh Hashanah 34a

It was asked of Rabbi Hai Gaon, “is it possible that until Rabbi Avahu came, not all Jewry fulfilled the obligation to sound the shofar?” And he answered as follows: Do not imagine that in the days of Rabbi Avahu a new question arose about this. For the mishnayot are ancient, one of which state that the teruah sound si made up of three short blasts, and another which states that it is made up of three long blasts, and Abaye clearly said, “These are certainly at variance with each other.” What happened is this: From the earliest day, the practice of Jewry was that some formed the teruah by producing staccato-like blasts and some produced heavier sounds. And both groups of people fulfilled their obligation. Heavy, sh’varim sounds are valid teruahs, and light, staccato sounds are equally valid teruahs. However, the practices appeared to be the result of different opinions although there really was nothing at issue... [When it came to reporting in mishnayot the way to sound the teruah,] each sage merely reported his own practice.

This is all that Abaye meant when he said that the beraitot were different – but not that they were in dispute. Neither side attributed an error to the other. Each one merely reported the practice of his own community. And the sages of this community acknowledged that staccato sounds are valid teruahs, and the sages of the other community agreed that long sounds are valid teruahs.

When Rabbi Avahu came, he saw fit to decree that all Jewry act one way, to eliminate a situation which the unformed might see as a matter of discord.

Is the proliferation of debate and multiple opinions good or bad?

Recall what we established in the first class of the series: The teaching of Torah from one generation to the next is not just the mechanism by which the Oral Tradition was transmitted but rather was the reason that the Oral Tradition was created.

...and G-d chose this mechanism, despite its downfalls.

Deuteronomy 7:11

According to the law which they shall teach thee, and according to the judgment which they shall tell thee, thou shalt do; thou shalt not turn aside from the sentence which they shall declare unto thee, to the right hand, nor to the left.

III. Eilu v’Eilu

7. Different perceptions at Matan Torah

Rabbi Solomon Luria [Maharshal] (Poland 1510-1573)

Yam Shel Shlomo, Introduction to Bava Kama

One should not be astonished by the range of debate and argumentation in matters of Halakha.... All these views are in the category of *divre Elokim hayyim* as if each was received directly from Sinai through Moshe. This is so despite the fact that Moshe never projected

opposing perspectives with respect to any one issue. The kabbalists explained that the basis for this is that each individual soul was present at Sinai and received the Torah by means of the forty-nine paths (*zinorot*). Each perceived the Torah from his own perspective in accordance with his intellectual capacity as well as the stature and unique character of his particular soul. This accounts for the discrepancy in perception inasmuch as one concluded that an object was tame in the extreme, another perceived it to be absolutely *tahor*, and yet a third individual argues the ambivalent state of the object in question. All these are true and sensible views. Thus, the wise men declared that in a debate between true scholars, all positions articulated represent a form of truth

Babylonian Talmud, Sanhedrin 34a

Abaye answered: For Scripture saith, God hath spoken once, twice have I heard this, that strength belongeth unto God. One Biblical verse may convey several teachings, but a single teaching cannot be deduced from different Scriptural verses. In R. Ishmael's School it was taught: And like in hammer that breaketh the rock in pieces:26 i.e., just as [the rock] is split into many splinters, so also may one Biblical verse convey many teachings.

Elu va-elu Divre Elokim Hayyim: Halakhic Pluralism and Theories of Controversy Rabbi Michael Rosensweig, Tradition 26:3, 1992

In the realm of biblical exegesis (*parshanut*) and Jewish thought (*hashkafa*), diversity of opinion and interpretation is pervasive and the perception of its legitimacy is widely acknowledged. Pluralism in these contexts poses no real difficulty inasmuch as the fundamental guidelines which regulate these disciplines and provide their religious sanction are quite clear. Several additional factors contribute to this as well.

The primary focus of pluralism in these contexts is not contradictory views, but multiple layers of meaning since generally no absolute mutually, exclusive values or determinations are at stake. It is not only possible but even compellingly logical that events, institutions and *mizvot* which are perceived to be Divinely inspired and spiritually invested should have the capacity to accomplish many functions and to symbolically represent more than one single theme. Moreover, inasmuch as the primary sources of these enterprises are usually biblical-divine texts rather than human rabbinic texts, multiple meanings consequent on a divine text are possible. Even when relevant, rabbinic texts do not exert the same measure of binding authority in areas of *parshanut* and *hashkafa* as they do in halakhic discussions. The *midrash* and *aggadot* of the Talmud are open to allegorical interpretation and according to some halakhists even to rejection.³ While one must seriously consider the message of *aggadot*, they certainly do not have the force and normative weight of halakha.

On the social-communal level, too, there is not the same kind of urgency for uniformity in the sphere of *hashkafa* as there is in halakha, where concrete performances, mutual obligations and objective procedures are central. With respect to the notion of a subjective inner life of the spirit, a pluralistic ideology addressing itself to individual inclinations and intuitions potentially constitutes a more valuable and effective approach to religious life...

Halakhic controversy, though it too is obviously very prevalent, represents a different kind of problem. The ultimate goal of an halakhic analysis is to arrive at a specific, single solution and halakhic debates generally revolve around mutually exclusive responses, only one of which is purported to represent absolute truth...

...The Talmud (*Eruvin* 13b) relates the following: R. Abba stated in the name of Shmuel:

For three years there was a dispute between Bet Shammai and Bet Hillel, the former asserting, "The halakha is in agreement with our views," and the latter contending, "The halakha is in agreement with our views." Then a *bat kol* issued announcing, "The utterances of both are the words of the living God, but the halakha is in agreement with the ruling of Bet Hillel."

It is particularly noteworthy that this apparent advocacy of multiple truths appears in a context whose primary concern is to establish the halakhic decision according to one particular view.

Another Talmudic passage attributes the legitimate diversity of halakhic perspectives to a single act of revelation despite the obvious logical irony that this entails. The Talmud (*Hagiga* 3b) explains:

"The masters of assemblies": these are the disciples of the wise, who sit in manifold assemblies and occupy themselves with the Torah, some pronouncing unclean and others pronouncing clean, some prohibiting and others permitting, some disqualifying and others declaring fit.

Should a man say: How in these circumstances shall I learn Torah? Therefore the text says: "All of them are given from one Shepherd." One God gave them; one leader uttered them from the mouth of the Lord of all creation, blessed be He; for it is written: "And God spoke all these words." Also do thou make thine ear like the hopper and get thee a perceptive heart to understand the words of those who pronounce unclean and the words of those who pronounce clean, the words of those who prohibit and the words of those who permit, the words of those who disqualify and the words of those who declare fit.

... Ritva (*Eruvin* 13b) cites the inherent paradox of this theme as raised by the Tosafists: The Rabbis of France asked: How is it possible for conflicting views to both represent the truth? They responded as follows:

When Moshe ascended to receive the Torah, it was demonstrated to him that every matter was subject to forty-nine lenient and forty-nine stringent approaches. When he queried about this, God responded that the scholars of each generation were given the authority to decide among these perspectives in order to establish the normative halakha.

IV. Halachik value of debate

Mevoh HaTalmud, Shmuel HaNagid (Spain 993-1056)

Why did Rabbi Yehudah HaNasi record the rejected opinions in the Mishnah? So that if a person says that he has an alternate approach to the Law, we can respond that the alternate approach has been recorded in the Mishnah and has been rejected.

Rabbi Yaakov Lorberbaum (Poland 1760-1832)

Netivot haMishpat, Introduction to Choshen Mishpat

Though halakhic errors are inherently false, they nonetheless serve an important didactic function. Indeed, one cannot successfully establish halakhic truth without some measure of initial failure. The early stages of halakhic analysis bear a similarity to a diver who is not yet capable of distinguishing worthless stones from the treasure he wishes to retrieve. More often than not, he surfaces with the former rather than the latter. However, once he has analyzed his error he emerges with an enhanced capacity to discern. The very process of failure increases his sensitivity to the nuances that distinguish precious jewels from stones, enhancing his future prospects for success. When he dives again many of the worthless stones that were initially responsible for his confusion are no longer present, having already been discarded. Those that remain are unlikely to generate further confusion inasmuch as the diver has learned to identify the differences between precious and worthless stones. Thus his initial failure contributes to his ultimate success. As the

Rabbis indicate—if he had not drawn worthless objects, we would not have discovered the valuable item which they camouflaged. For this entire process there is a heavenly reward.