Truth, Tradition and Law in Contemporary Halakhic Judaism: Two Theological Models
-- Aryeh Klapper

The relationship between objective and systemic truth is critical for anyone self-consciously traditional. Being self-consciously traditional requires the difficult acknowledgement that one thinks differently and uses different truth-criteria in some areas than in others, that, for example, one sometimes makes decisions and reaches conclusions on the basis of received authority rather than reason or empirical evidence. This acknowledgement clearly requires justification - why should one think differently in some areas than others? This question is sharpened when the non-traditional epistemologies are broadly agreed to provide more accurate results.

Central to several of the challenges facing contemporary halakhic Judaism is the growing self-consciousness of the halakhic tradition. We have become increasingly aware, or at least of the opinion, that accepting tradition is not the same as following the intent of precedent, that the objective textual meaning and authorship of authoritative sources is occasionally or often not the same as the meaning and authorship those texts are assigned by the tradition. Critical/academic Talmud study has provided an alternate mode of reading more in keeping with the intellectual temper of the time.

I am aware that this statement of the problem assumes the existence and ascertainability of "objective textual meaning". I suggest that we sidestep the intellectual quicksand associated with that issue by defining "objective textual meaning" as the meaning readers would assign this text absent religious commitment. My point is that anyone, and any community, conscious that religious commitment by itself changes their truth-determination faces a potentially serious religious/intellectual crisis.

Self-conscious traditions occasionally respond to this problem by "circling the wagons", by asserting their own intellectual uniqueness and greater reliability. In some areas, and on some specific issues, such assertion may be essential for halakhic Judaism's intellectual survival until a cogent and convincing response can be developed. However, the scientific revolutions of the past several hundred years have relegated to fringe status the claim that tradition is adequate or superior to empiricism as a source of knowledge about the physical world. This has weakened the intellectual authority of Jewish tradition, and made assertions of epistemological superiority less attractive.

Halakhic Judaism furthermore faces a similar challenge from a purely internal phenomenon, the division of דרכי פסק from דרכי לימוד. In other words, the tradition itself, or at least some scholars working purely within the confines and according to the rules of the tradition, sometimes assign multiple meanings to a single text depending on whether the desired outcome is law or lecture. According to the rules we play by in all other intellectual fields, this is blatant self-contradiction.

A possible response to both the internal and external challenges is the development of a multiple truth model, of an intellectual system that accredits the results of both critical and traditional study and/or of both למדות and פסק הלכה. Such models have been offered recently both by Rabbi Aharon Lichtenstein[1] of Yeshivat Har Etzion and Dr. David Halivni[2] of Columbia University.   Both justify and advocate a method of studying Talmud that admittedly diverges from either textual or traditional truth.   Their theological justifications utilize the same resources and echo one another's terminology. Nonetheless, their methods and models are radically opposed.

Let's begin by pointing up the similarity. Here is Dr. Halivni's primary theological statement:

"But how can both be true? How can G-d's position be true only intellectually? What value is there to a verity that does not emanate from G-d? What kind of verity claim does it make? One is forced to acknowledge a divine truth and a human truth. Divine truth stems from the objective nature of things, the way G-d created them, whereas human

[1] R. Lichtenstein's major statement on this issue is a lecture titled "Torat Chessed and Torat Emet: Methodological Reflections", delivered circa 1990 at the Bernard Revel Graduate School of Jewish Studies". The lecture is unpublished, but audiotapes and transcripts are available. My exposition of R. Lichtenstein's position is based on this lecture, on my memories of his Talmud lectures at the Gruss Center 1990-91, on his answers to student questions at open forums that year, and on extended conversations with many of his students. All citations in the text are from a transcript of the lecture prepared by Eli Clark.

[2] Dr. Halivni's major statement on this subject is <u>Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis,</u> published by Oxford University Press in 1991. My exposition of his position is based on that book, on my memories of his graduate text course in 1988-9, and on private conversations. All quotes in the text are from the book.

truth is derived from צמצום, withdrawal. G-d relinquished some of this power to man, as it were, in a relinquishment similar to that associated with free will, with the profound difference that with respect to free will relinquishment is a means of enabling man to make his own decision of right and wrong, whereas with respect to human truth relinquishment is a means of enabling man to set down his own pattern of religious standards with G-d's endorsement." (119)

And here is Rabbi Lichtenstein's primary theological statement:

"I would prefer to speak in terms analogous to those employed by the medievals in dealing with the problem of faith and reason, to speak, that is, of a double truth . . . תורה is an expression of רצונו של הקב"ה, of the Divine Will . . . It exists, on the one hand, from eternity, adumbrated as a fact of absolute and immutable reason . . . But as part of the process of צמצום and ירידה, that antecedent Torah then accompanies the act of creation and enters upon the natural and historical scene . . . Between these two תורות there is ab initio presumed identity. However, insofar as communication entails two parties, the maintenance of that identity cannot be guaranteed . . . Such a conflict, however, between the two תורות is not to be regarded as an antithesis between a "true" תורה and ח"ו a "false" תורה, but rather as a conflict between two kinds, two aspects of truth - that of תורה as an absolute metaphysical system, and that of תורה as a revealed, normative order."

Both statements strikingly borrow the Lurianic concept of צמצום to describe G-d's willing abandonment of control over His own truth. In the supporting argumentation we find almost the identical sources and phrases cited - אלו ואלו דברי אלקים חיים, לא בשמים היא, et al.

However, these almost substantively identical theological models justify radically different intellectual procedures. This becomes clear if we focus on the role played by פסק הלכה in each. This requires careful attention, because here the similar vocabulary is deceptive. Let's look first at Dr. Halivni:

"Logical truth does not always determine the "correctness" of halakhic decisions. In other words, systemic halakhic guidelines may safeguard halakhic correctness, but not necessarily guarantee objective truth. In the pursuit of the understanding of objective reality, however, truth and logic cannot be compromised. Speculative differences need not be suppressed or stifled, for the demands of halakhic uniformity are not relevant in the realm of the intellect. Only the protection of the full range of speculative opinions (within recognized systemic boundaries which serve to distinguish classical rabbinic Judaism from Jewish sects and from other religions) can insure the vitality and future prosperity of the intellectual quest." (93)

"The dichotomy between the spheres of practice and intellect, between the realms of halakhah and hashkafah - philosophy, science, and theology - is most clearly evident when one realizes that halakhic determinations evolve through a process that must bear the burdens of time and space, while matters of hashkafah exist, theoretically at least, above and beyond the flux of time and the shifting of space." (94)

" To put it differently, halakhah strives to perfect a תורת חיים, a living Torah, whose dual purpose is to stimulate man's emotions to be more receptive of the divine, and to make society more equitable and just. Hashkafah, in contrast, strives to perfect a תורת אמת, a Torah of truth, whose purpose is to achieve an accurate determination of reality, the way things are and were objectively for the sake of contemplation and manipulation."

"Halakhic "truth" is imprecise and nonobjective from its very inception and can never, therefore, approach the exactitude of scientific truth. Scientific truth is unyielding, unchanging, coherent. Halakhic decision-making, in following the lead of the majority, struggles toward creating human clarity out of divine ambiguity."(97-98)

And now Rabbi Lichtenstein:

"There is a Torah - firm, sharp, its outlines single-mindedly defined, hewn from the rock of truth and limned in granite, its message emblazoned as the meridian sun and lucid as polar light. And there is a Torah - flexible and supple, its frontiers boundless and shifting, supple as an infant's flesh and luxuriant as an equatorial forest; that of unitary truth and that of variegated bounty.

תורת אמת denotes a definitive and static entity, an impenetrable fortress impervious to the vicissitudes of time, ante-historical and meta-historical. חסד, on the other hand, suggests dynamic centrifugal thrust . . ."

"Every possibility with which the fecund term is pregnant and which one of the חכמי מסורה, conscientiously and responsibly working with his best analytic, intellectual tools, could adopt is ipso facto one rendering of תורה and derives its primal legitimacy from the mere fact of reasonable possibility . . . Given this position, obviously several different and even conflicting views could be simultaneously entertained - even by the same person - as objective תורה . . . At the level of definitive פסק, confrontation is inevitable, and some tactical resolution is necessary. But even that does not invalidate the intrinsic legitimacy of even rejected שיטות, all of which retain their character as a חפצא of תורה."

Both Rabbi Lichtenstein and Dr. Halivni distinguish between a Torah in time and a Torah above time, and both describe halakhic decisionmaking as a tactical rather than intellectual necessity. But for Dr. Halivni the reason it is only tactically necessary is because objective truth is not systemically determinable, and hence פסק is an artificial and intellectually irrelevant truth-determination, while for R. Lichtenstein it is only tactically necessary because "objective truth" is not an intellectual desideratum. Put differently, for Dr. Halivni פסק chooses one option among many with equal potential for truth, whereas for R. Lichtenstein פסק chooses one option among many which are equally true.

Yet another, and I think the most powerful way, of expressing the difference is to say that for Dr. Halivni פסק is תורת אמת and his דרך לימוד is תורת אמת, while for R. Lichtenstein פסק is תורת אמת and his דרך לימוד is תורת חסד/חיים. This formulation accentuates the contrast with regard to דרך לימוד as well as that regarding פסק . This contrast, unlike the first, arises because the terms refer to different things. We turn now to briefly consider the role the דרך הלימוד of each plays in the other's system.

For Dr. Halivni, the raising of alternate Halakhic possibilities is useful only insofar as it adds practical legal options and/or aids the discovery of objective truth. R. Lichtenstein's argument for study that aims at neither practical nor intellectual resolution finds no echo, and indeed no independent room, in his system.

For R. Lichtenstein, the discovery of the objective meaning of texts, where that discovery has no impact on פסק, is trivial. At best it offers another possibility to add to the spectrum developed by conceptual analysis. Dr. Halvni's דרך לימוד finds no independent room in his system.

This, for lack of a better term, mutual trivialization is, לעניות דעתי, a weakness in both systems. An ideal model for contemporary halakhic theology would justify three epistemologies - פסק, למדות, and academic. However, I think an integrated model is feasible - nothing in Dr. Halivni's model precludes assigning value to a purely intellectual תורת חסד, and nothing in R. Lichtenstein's model precludes assigning value to a purely intellectual תורת אמת.

We turn now to evaluating these models in terms of their relationship to Jewish tradition. In this regard an irony becomes immediately apparent. Here is Rabbi Lichtenstein defining תורת חסד:

"The focus is upon content rather than intent, upon what can be interpreted, extracted from תורה, rather than upon what lies behind it . . . Would the Rambam have recognized his own recast handiwork? Probably not.. So what?"

And here is Dr. Halivni describing his theological method:

"The first method of theological extrapolation, of drawing justifiable, if perhaps unanticipated, inferences from rabbinic sources . . . The second method of extracting systematic theology from otherwise unyielding rabbinic sources is through the use of analogy . . . In such efforts at a modern recasting of rabbinic theology, the authorial intention of the original passages may occasionally be neglected or sidestepped . . . " (91)

Clearly Dr. Halivni's תורת אמת is being justified on the basis of R. Lichtenstein's תורת חסד. And while Dr. Halivni tries to separate sharply between the realms of theology and law, to claim that תורת חסד is legitimate with regard to the former but not with regard to the latter, the following passage shows that line to be at least subjectively unsustainable.

"The resolution of this issue has significance beyond the mere contrast between the rabbinic mode of interpretation and modern rules of exegesis. It accredits critical textual scholarship both of the Bible and the Talmud as a bona fide religious activity, the practitioner of which fulfills the commandment to study Torah . . . To practice according to critical norms is strictly forbidden, but to study critically as a religious activity, as part of the fulfillment of the command to study Torah, though presently not very encouraged and not very popular, is nevertheless a legitimate historical aspect of religious learning and one that requires the recitation of the blessing reserved for the commencement of Torah study. Indeed, it could be argued, as I have done elsewhere, "that when one studies the Bible critically, i.e., according to the Peshat, with no intention of changing practical Halakhah, one is fulfilling the commandment to study Torah to a higher degree than when one is studying the same law according to traditional interpretation. This is especially true if the peshat proves to be in contrast with traditional interpretations . . . This learning is fuller, purer, having no interest other than the welfare of learning."

Pronouncing a blessing is unquestionably considered a legal act in Jewish law. This serves to demonstrate the possibility of integrating the models, although I suspect such was not Dr. Halivni's intention.

The remaining question, however, is whether these double-truth theories are in fact compatible with Jewish tradition. The resort to תורת חסד on this issue is a cautionary signal, and indeed Dr. Halivni admits that

"Most likely, the rabbis would have at all costs looked for harmony between the mode of interpretation employed in the intellectual exercise of study and the mode of interpretation employed as the basis for practical behavior."(102)

Dr. Halivni offers three separate arguments for his double-truth theory. The first is that academic study of Torah law should be viewed as theology rather than law, and thus, so long as it doesn't transgress the "recognized systemic boundaries which serve to distinguish classical rabbinic Judaism from Jewish sects and from other religions"[3], it should not be censored or censured. This is true so long as the "so long as" clause is true - it does not help us decide whether claiming that an alternate epistemology is superior to halakhah as a mode of divining G-d's intent, albeit not His will, crosses those boundaries.

Dr. Halivni's second argument is that many medieval commentators, most notably Rashbam, develop double truth theories to justify learning פשט in biblical texts in ways contradicting the law derived from them via דרש. This argument has the advantage of explicitly addressing a conflict of epistemology rather than one of results. However, Rashbam believed that both פשט and דרש defined the intent of a deliberately multivocal text, and thus may not be a valid precedent for allowing a method that explicitly eschews intent. In other words, it might force Dr. Halivni to demand that his method be allowed to affect הלכה from now on, even if systemic principles justify not applying it to undo past decisions made using uncritical methods.

Dr. Halivni's third argument is shared with R. Lichtenstein. Both evoke the idea of תורה לשמה, the legal principle that one fulfills the commandment to study Torah even when one studies rejected or practically irrelevant positions. Prima facie, this argument suffers from the same weakness as the first - no rabbinic sources on the subject deal with an epistemology explicitly confronting that of halakhah.

However, R. Lichtenstein and Dr. Halivni do have ample post-Talmudic precedent for claiming that תורה לשמה can be applied even to competing epistemologies, and thus can be justified by תורת חסד. In this regard the famous story on מנחות כט: in which Mosheh Rabbeinu fails to understand R. Akiva's shiur is instructive. R. Lichtenstein, and many others, cite this as legitimating interpretations never imagined by the original transmitter. Yet a close reading of the story indicates that it said nothing of the sort - Moshe failed to follow because he had not yet received the Torah.

Overall, however, I think adequate basis and precedent can be found for either model, or for an integrated model. But each, I think, is itself only a foundation rather than a finished product. The claim of צמצום does not by itself explain why value should inhere in arguments that we are consciously aware were not previously part of the tradition, if they have no practical import, nor does it explain why an epistemology more accurate at obtaining objective truth than current halakhic methodology should not usurp that methodology's role.

---

[3] I am deliberately ignoring the question of how these borders are recognized, and who by.