

Conservative JUDAISM

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Positive-Historical Judaism Exhausted: Reflections on a Movement's Future

Daniel H. Gordis

Conservative Judaism is in crisis.¹ On the eve of the twenty-first century, our Movement has lost its sense of direction. There is, of course, nothing new in this claim. Many of us within the Movement have long feared a looming cataclysm. We have sensed a gradual erosion of the Movement's ability to lead and have watched with alarm as Conservative leaders have abdicated a responsibility to set an aggressive religious and spiritual agenda for the next millennium.

What may be new, however, is that this perception of Conservative Judaism adrift is spreading beyond the Movement itself. Take, for example, *The Jewish People in America*, a recently published five-volume social and cultural history of American Jews.² In the final volume of the series (a series with no particular denominational perspective), Edward Shapiro notes that in the years after World War II many observers believed that Conservative Judaism represented the wave of the future, but this optimism, he notes, gradually gave way to what he calls Conservative Judaism's enduring "plagu[e] of self-doubt, disquiet and gloom."³

¹ Though this paper focuses exclusively on the Conservative Movement, it should not be taken to imply that other movements are without their traumas and challenges. Reform, Reconstructionism, and Orthodoxy all face huge challenges as well.

² Edward S. Shapiro, ed., *The Jewish People in America* (Baltimore and London: Johns Hopkins University Press, 1992). The volume discussed below is Volume V, *A Time for Healing: American Jewry since World War II* and is authored by Shapiro. The project was sponsored by the American Jewish Historical Society.

³ Shapiro attributes that phrase to Lawrence J. Kaplan, a faculty member at McGill University.

Shapiro cites Marshall Sklare as a telling example of the gradual shift in how the Movement has been perceived. He notes that by the time the second edition of Sklare's study of the Movement was published in 1972,⁴ Sklare referred to a "crisis" in Conservative Judaism. Shapiro cites the following from Sklare's scathing critique: "The belief among Conservative leaders that the Movement's approach to halakhah had the power to maintain observance, as well as to inspire its renewal, . . . proved illusory."⁵ Indeed, Shapiro sees fit to quote Sklare's ultimate evaluation that in the arena of creating an observant laity, the Conservative Movement has been an "abysmal failure."⁶

Again, there is nothing new in this appraisal.⁷ But the fact that a major historical review of American Judaism virtually "codifies" Sklare's critique ought to prod us to ask some far-reaching questions. What is the cause of this malaise? Why has our halakhic message not been heard? Is there anything that we can or should do differently?

In this brief article, I will suggest that much of our problem stems from the central role that we have given to history in our Movement's ideology. The centrality of history in our theory of Conservative Judaism has had several pernicious effects. First, it has placed the laity at the helm of our halakhic odyssey; second, and perhaps more important, it has effectively precluded the possibility of our speaking with passion about an enduring mandate for halakhah. Something must change. Unless we can reconfigure the role that history plays in our identity and our description of Conservative Judaism's halakhic message, we will not recover our ability to speak with passion. And unless we begin to speak with passion, no one will listen.

Puk Hazei Run Amok: Who Sets our Agenda?

Before we turn to the underlying issue of the over-reliance on history in Conservative ideology, it behooves us to note one of the most glaring symptoms of the problem. That symptom is the Movement's tendency to let our laity determine our religious and halakhic agenda.

⁴ Marshall Sklare, *Conservative Judaism: An American Religious Movement* (Glencoe, IL: Free Press, 1955). Second edition published by Jewish Publication Society of America, 1972.

⁵ Cited in Shapiro, *ibid.*, p. 171.

⁶ Other movements share this problem, of course. Reconstructionism is still failing to grow, Reform cannot create Jewish behaviors, and even Orthodoxy, for all its successes and too frequent triumphalism, cannot ignore the reality that many of its adherents are effectively good Conservative Jews.

⁷ Not everyone, to be sure, shares this assessment of the Movement. Chancellor Ismar Schorsch, in a paper presented to the Rabbinical Assembly's National Convention in May 1992 and which we will discuss, articulates a very different sense of the Movement's condition. He notes that the recent CJF population study suggests that fully 40.4% of American Jewish households define themselves as "Conservative." He also points to the predominance of Conservative leaders in the Federations of cities such as Boston, Philadelphia, and Detroit. And though Dr. Schorsch does not explicitly make this point in his paper, there can be no doubt that the Conservative Movement, primarily but not exclusively through the faculty of the Jewish Theological Seminary, has had tremendous impact on Jewish scholarship in America.

The claim that both the halakhic agenda and the outcomes of halakhic discussions are now set by our laity requires little proof. For years, rather than simply acknowledging that our laity would fall short of the "halakhic mark" in some areas, we allowed their behavior to define our notion of what the halakhic mark should be. The Shabbat "driving responsum,"⁸ which did very little to change the Shabbat observance of Conservative Jews, was motivated by the perceived need to lend halakhic justification to a practice we believed we could not alter. The same was true for a variety of other responsa, such as those legitimating the eating of broiled fish in non-kosher restaurants and the use of swimming pools instead of *mikva'ot*. Ultimately, the Movement felt a need to conform its halakhah to the behavior of its laypeople.

But this preoccupation with the laity as a focus of halakhic deliberations received what is probably its clearest expression in the recent debate between Rabbis Harold Schulweis and Ismar Schorsch at the Rabbinical Assembly Convention in March 1993. Though their papers address substantive issues beyond that of what the laity wants on the issue of homosexuality, it is striking that both of these radically opposing views see the *laity's* interest as a crucial factor in the Movement's decision-making process.⁹

Note Harold Schulweis' call to arms at the start of his talk. His argument could not be clearer: if Conservative halakhah is to survive, we will have to make the halakhah reflect more where our potential congregants are. Schulweis writes:

Asked in the Lachman-Kosmin City University Study, "What is your religion, 1.1 million Jews answered: 'None.' These none-Jews are our constituency. . . . They are our sons and daughters. . . . They are our challenge. They must be won over. . . . [But t]hey will not be told what to eat, where to eat, when to eat; when to rest, where to rest; when to marry, whom to marry, where to marry; whom to mourn, how long to mourn, where to mourn."¹⁰

And what should be the primary pulse of the halakhah? Schulweis continues:

My thesis is that the healing of our institutional schisms depends upon our integration of halakhah as a holistic moral and spiritual expression.

⁸ The most commonly cited reference to the *teshuvah* is Mordecai Waxman, ed., *Tradition and Change: The Development of Conservative Judaism* (New York: Burning Bush Press, 1958), pp. 351-74.

⁹ Though these two men seem similar in their focus on the laity, we should note that their respective interests in the will of the people have very different sources. Schulweis, it seems, is most profoundly influenced by Mordecai Kaplan, for whom the will of the people was of tremendous importance. For Schorsch, however, a focus on the laity stems from Zechariah Frankel's work. Frankel, obviously, saw the Jewish world very differently than did Kaplan, though one could also argue that Kaplan was simply an accurate *talmid* of Frankel and took the latter's thought to its natural conclusion. Nonetheless, the fact that Schulweis and Schorsch both refer to the laity should in no way lead us to the conclusion that the roots of this concern are similar for the two.

¹⁰ Harold M. Schulweis, "The Character of Halakhah Entering the Twenty-First Century," p. 6.

For what we have in common, what unites us as a religious movement, is not our legal expertise but our moral sense.¹¹

Schulweis' contention is that since our laity are not legalists, we need to find something else to unite us. That something-else, he suggests, ought to be a "moral sense." Yet while no one could reasonably argue that a moral sense ought to be divorced from the halakhic process, Schulweis seems to be saying more. He is saying that since our laity is not fundamentally halakhically oriented, we need to reconceptualize the halakhic process to conform to their strengths and interests.

One might have expected that Rabbi Schorsch, in his heated disagreement with Rabbi Schulweis, would have taken exception to this focus on the laity. But precisely the opposite is the case. Schorsch effectively agrees that the laity is a prime consideration; his only contention, however, is that Schulweis is wrong about what the laity wants.

Schorsch opens his discussion of the homosexuality issue as follows:

Homosexuality is not the all-absorbing issue of Conservative laity. They did not rise in protest when the Committee on Jewish Law and Standards last year refused to redefine the basic Jewish institutions of marriage, the family and the rabbinate. They appear ready to heed the compassionate resolution of both the United Synagogue and the Rabbinical Assembly to fully welcome gays and lesbians into the local synagogue without sanctioning their lifestyle as equally normative. . . . And there is surely no ground swell to force us to bring Judaism into accord with the self-indulgence of American society on marital infidelity and pre-marital sex.¹²

What if there were such a ground swell? Would that change Rabbi Schorsch's view? Though one suspects not, it is instructive that his language gives such emphasis to the wishes of the laity that one might interpret the essay otherwise.

Schorsch's conclusion bolsters this point even further. He ends his entire discussion with the following warning:

Through the miasma of ideological bathos, we need once again to hear the voice of our laity. It is telling us that they want more Judaism, not less. They want higher standards and clearer boundaries. They want a larger dose of religious intensity. . . . Above all, they seek a rabbinic leadership marked by exemplars of piety, learning and love, not halakhic revolutionaries.

But does Rabbi Schorsch mean that this is what they want, or that this is what they need? Again, his language is not clear, but the use of the verb *want* is instructive. Schorsch and Schulweis, while obviously motivated primarily by

¹¹ *Ibid.*, p. 12.

¹² Ismar Schorsch, "Marching to the Wrong Drummer," *Conservative Judaism*, 45:4 (Summer 1993), p. 16.

principle, seem to pay an inordinate amount of attention to their perceived sense of what the laity wants.¹³

But that is not leadership. None of our classic models of leadership based their religious vision upon an expanded conception of *puk hazei mai ama debar*.¹⁴ That was certainly not the genius of the prophetic model, nor did the Rabbis—for all that we speak of their democratization of Jewish law—abdicate their responsibility to lead. And although modern scholarship has taken to illustrating the ways in which early modern *posekim* have taken a variety of sociological factors into consideration,¹⁵ that is a far cry from the suggestion that *pesak* has to provide the laity with what they want. The Conservative Movement allows its laity to set its religious agenda; but that means that we do not lead, do not enrich, and do not challenge. What mandate is left for us?

How did this state of affairs come to be? Are there distinct root causes of our preoccupation with what the laity wants? Of course, one could point to many contributing factors, some rather technical, some more general.¹⁶ Here, however, we will focus on one simple claim. We will suggest that our Movement's leadership allows the laity to shape our agenda because our attempts to shape the laity were doomed to failure and have in fact failed. Having found that we could not shape the laity, we have given them the helm.

If it is true that our attempts to shape a halakhic laity were misdirected from the outset, it is imperative that our Movement clarify precisely what was wrong with our message so that we can correct it. We need to find the courage to be honest about where we have gone wrong, and the creativity to chart a new course. The following discussion is intended as the beginning of such an ongoing conversation.

¹³ This point should not be taken out of context. Both Rabbis Schulweis and Schorsch see in the homosexuality issue matters of principle, both moral and legal. Each would undoubtedly maintain his position on the issue even if the feelings of the laity were to shift radically. I am in no way suggesting that their respective positions are born *exclusively* out of a sense that the laity's preferences need to be considered. Nonetheless, the fact that attention to the laity plays such a formidable role in their language seems worthy of both note and concern.

¹⁴ Cf. B. T. *Berakhot* 45a, *Eruvin*, 14b and *Menahot* 35a.

¹⁵ There is a growing body of work on this subject. Jacob Katz, David Ellenson, and Ira Robinson are among its most important representatives.

¹⁶ On the technical side, for example, one could point to Schechter's notion of Catholic Israel as one of the main causes of the problem. The subject is complicated and subtle but can be briefly stated here: though Schechter saw Catholic Israel as a repudiation of Reform's emphasis on personal autonomy, implicit in the notion of Catholic Israel was tremendous power—even halakhic authority—for the laity. While Schechter saw the notion that the standards of legitimate Jewish religious behavior would be set by a core, committed group of traditional—but not necessarily rabbinic—Jews as a distinctly traditional claim, other Conservative thinkers understood that the Schechterian conception of Catholic Israel would inevitably be subversive of tradition. Some of them, Robert Gordis paramount among them, sought to reconfigure Schechter's notion in order to limit the potential damage of the concept. But even those reconfigurations did not work. Catholic Israel undermines Conservative Judaism's attempts to create traditional, halakhah-based communities; it is time to jettison the concept entirely.

Positive-Historical Judaism: Exhausted Idiom

Many of Conservative Judaism's current difficulties may have been unavoidable, given the profound sociological and demographic changes in the American Jewish community. Nevertheless, we must admit that we have failed to make our case effectively.

Simply put, the problem is history. Conservative leadership for too long made its case for halakhah on the basis of a historical view of Jewish life deeply informed by a nineteenth-century German conception of history. The problem, however, is that this historical vocabulary no longer speaks with any substantive power to the Jews we wish to reach. History no longer motivates everyday Jews. Therefore, as long as Conservative rhetoric is framed in historical terms, our arguments will fall on deaf ears.

This is not to suggest that compelling historical arguments for Conservative Judaism have not been made. Conservative Judaism has rightfully claimed for itself the mantle of being the most historically conscious of the modern movements in American Judaism. That role is in many respects an important one. But we err—perhaps fatally—when we assume that our historical arguments will bring about changes in the lives of the Jews who are our constituency.

For an example of this sense that history will redeem Conservative Judaism we need only turn to Dr. Schorsch's Rabbinical Assembly address in 1991.¹⁷ In a magnificent ode to the centrality of the notion of *klal yisrael* in Conservative thought and life, he pays particular attention to the role of history in Conservatism. He argues that the Movement's two academic centers in Breslau and New York endowed Conservative Judaism with "a profound sense of historical consciousness," and he suggests (with obvious approval) that for that reason it is no accident that "[t]he chancellors of JTS, judged by their scholarship, have all been historians."¹⁸ He reminds us that the original name for the Movement was "not Conservative but Historical Judaism, implying an awareness of change as well as respect for the glory of past Jewish expressions."¹⁹

No one could reasonably argue with these assertions. But the problem is that Dr. Schorsch, like many Conservative theoreticians, expects these proclamations to shoulder more than mere historical weight. Indeed, Conservative Jewish historians have either implicitly or explicitly suggested that the historical roots of Conservative Judaism can—or will—provide the power behind our arguments for the future relevance of our brand of Jewish life. Thus Schorsch writes, "[I]f Reform rested its case on reason and Orthodoxy on revelation, Conservatism reconceptualized Judaism in terms of history"²⁰; he continues, "if the classical texts of Judaism were no longer seen as the prod-

¹⁷ Ismar Schorsch, "In Defense of the Common Good" (published as part of the Seminary's *Thoughts from 3080 Series*).

¹⁸ *Ibid.*, p. 4.

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 5.

uct of pure revelation, they surely remained sacred by virtue of their antiquity, power and communal acceptance."²¹

Schorsch believes that the experience of Judaism as a *historical* tradition has the capacity to move modern American Jews and concludes this section of his paper by asserting:

[I]t should be abundantly clear by now why the name of Conservative Judaism should have remained Historical Judaism. The German nomenclature gets much closer to the heart of its worldview. The discovery of the past elevated history to a countervailing force against the deleterious consequences of emancipation. It compelled a sense of awe and wonder for the ultimately inexplicable survival of the Jewish people. That record of fate and faithfulness, courage and creativity, suffering and sacredness denied any one generation or group the right to rupture the chain or rewrite the text. Continuity sanctified content; survival pointed to transcendence.²²

History, Schorsch believes, can serve as the basis of our traditions's sanctity as we seek to reach our constituency.

But modern Conservative experience belies that claim. History *has* relativized our world-view, and the deep-seated historical ethic of Conservative Judaism has *not* had the spiritual impact to which Schorsch refers.²³ Except, perhaps, in the elite, continuity has *not* sanctified content; survival has *not* pointed to transcendence. Conservative Jews know full well that Conservative Judaism has provided the scholars who most eloquently revealed the beauty of the historical in Jewish life; but Conservative Jews have never internalized the sense that history "compelled a sense of awe and wonder for the ultimately inexplicable survival of the Jewish people [which therefore] denie[s] any one generation or group the right to rupture the chain or rewrite the text." Conservative Jews both recognize the historical quality of Conservative Judaism *and* rupture the chain. They do not even insist upon rewriting the text; it is precisely because the text has been shown to be a *historical* product that it seems virtually irrelevant to life in modernity.

Conservative ideologues erred profoundly—and with destructive consequences—when they assumed that demonstrating the deeply historical roots of the Conservative Jewish commitment would produce a response in terms of behavior. Perhaps Conservative Jews do not know as much history as they ought to. Perhaps what history they do know was not taught appropriately. Perhaps. But more likely, the root of the problem lies in the fact that our culture is much less oriented to the sanctity of history than was the culture of Breslau. In our congregants' world, what is sacred is not the ancient, but the potential of the

²¹ *Ibid.*, p. 7.

²² *Ibid.*, p. 8.

²³ Elsewhere Dr. Schorsch makes clear that he recognizes the limitations of this approach. Cf., e.g., "The Limits of History" in *Proceedings of the 1989 Convention* (New York: Rabbinical Assembly of America, 1990), pp. 108–15.

new. They and their children are products of an academic enterprise which critiques the world of the traditional for the singleness of its voice and the absence of women in its chorus. Ours is a world in which the stamp of "tradition" can be an accusation rather than a support, and Jewish texts fall prey to precisely the same critique. Claims to sanctity in the world of modern American Conservative Jews will not emanate from historiography. History has lost its call upon them.²⁴

This view of the reduced impact of history in modernity is no *da'at yahid*. Even historians themselves are aware of the drastically reduced role of history in the consciousness of the modern Jew. Hans Meyerhoff, speaking not of Jewish history but of general historical consciousness, notes the following paradox:

The barriers of the past have been pushed back as never before; our knowledge of the history of man and the universe has been enlarged on a scale and to a degree not dreamed of by previous generations. At the same time, the sense of identity and continuity with the past, whether our own or history's, has gradually and steadily declined. Previous generations *knew* much less about the past than we do, but perhaps *felt* a much greater sense of identity and continuity with it.²⁵

And Yosef Yerushalmi, who quotes the above passage in his well-known *Zakhor*, echoes a similar sentiment:

The collective memories of the Jewish people were a function of the shared faith, cohesiveness and will of the group itself, transmitting and recreating its past through an entire complex of interlocking social and religious institutions that functioned organically to achieve this. The decline of Jewish collective memory in modern times is only a symptom of th[e] unraveling of that common network of belief and praxis through whose mechanisms . . . the past was once made present. Therein lies the root of the malady. Ultimately Jewish memory cannot be "healed" or rejuvenated. *But for the wounds inflicted upon Jewish life by the disintegrative blows of the last two hundred years the historian seems at best a pathologist, hardly a physician.*²⁶

He is even more brutal several paragraphs later:

Those Jews who are still within the enchanted circle of tradition, or those who have returned to it, find the work of the historian irrelevant. They seek, not the historicity of the past, but its eternal contemporaneity. Addressed directly by the text, the question of how it evolved must seem to them subsidiary, if not meaningless.²⁷

²⁴ This is not an argument that disparages history as an academic discipline or as an important contribution to the worldview of committed and knowledgeable Jews. This is an argument solely about the nineteenth-century uses of history that some Conservative ideologues believe still can serve as a *motivator* for Jewish commitment. It is *that* view and use of history that have outlived their usefulness.

²⁵ Hans Meyerhoff, *Time in Literature*, cited in Yosef Hayim Yerushalmi, *Zakhor* (Philadelphia: Jewish Publication Society, 1982), p. 79.

²⁶ Yosef Yerushalmi, *Zakhor*, p. 94. Emphasis added.

²⁷ *Ibid.*, p. 96.

For all its insight, history as the foundation of a Conservative sense of self cannot work.²⁸ Simply put, outside the world of academics, Historical Judaism has no constituency. Either we abandon it or we will sink with it.

Conservative Arguments Vitiating Conservative Claims

Perhaps because Conservative leadership has long recognized that history alone could not sustain the argument for a uniquely Conservative (read non-Orthodox) pattern of observance, we have tried to bolster history with a theology that endorses a historical view of Jewish life. But that, too, has failed.

Conservative publications have always been replete with references to a variety of rabbinic sources that seem to point to the very sort of halakhic enterprise Conservative Judaism claims to represent. We have expected, in what verges on magical thinking, that the constant references to aggadic material such as God's exclamation of *nizhuni banai, nizhuni banai*,²⁹ Moshe's ultimate sanguineness in Rabbi Akiva's house of study,³⁰ or the virtual incantation of halakhic material such as the ben *sorer u-moreh*³¹ and prozbul³² would do what history could not. We seem, as a Movement, to have believed that if only we could convince our congregants that *we* were the living incarnation of what the talmudic authorities were describing, our community would begin to take on the practices and commitments those rabbinic texts endorse.

But this tactic also has proved to be seriously flawed, for American Jews are no more motivated by classical theology than they are by history. If history will not engender commitment, "pure" theology will not either.³³ Theology as we normally construe it has always been a "second language" for Jews. We can learn the vocabulary of a second language and even the subtleties of some of the idioms, but we rarely think or dream in our second language. The same is true for Jews and theology. Most observant Jews live the way they do because halakhic living provides their lives with meaning. Patterns of Jewish life may be *justified* by theological arguments, but they are

²⁸ In fairness, we should note that not everyone agrees with Yerushalmi's perspective. Amos Funkenstein (*Perceptions of Jewish History*, Berkeley: University of California Press, 1993) disputes Yerushalmi's distinction between historical narrative and collective memory, and argues that while Judaism may not have consistently engaged in historiography, a sense of history always animated Jewish communities and contributed to their sense that they were part of something important and majestic. Ironically, even as he insists on the continuing importance of history and communal memory in the formation of Jewish identity, Funkenstein lends support to the underlying thesis of this article. He writes (p. 21): "[t]he distance between secular Jews (or secular Israeli culture) and traditional Judaism was created not by lack of historical knowledge and symbols, but by their alienation from texts and textual messages, the *halakha* and the *midrash* [italics original]."

²⁹ *Bava Mezi'a* 59b.

³⁰ *Mekahot* 29b.

³¹ *Sanhedrin* 71a-b is the most commonly cited reference.

³² The *locus classicus* for this discussion is the Mishnah on *Gittin* 34b and the ensuing discussion on *Gittin* 36a-37b.

³³ Below we will argue that theology remains important, though in a dramatically reconceptualized fashion.

rarely motivated by the abstract and hyper-intellectualized concepts inherent in serious philosophy and theology.

Yet the problem runs even deeper. Not only do the textually based theological arguments we have assembled not speak to today's potential Conservative Jews, those texts actually undermine our case. Conservative rhetoric as we have developed it thus far simply cannot do what we want it to, for it was designed for a generation that has come and gone, with agendas profoundly different from those of today's Jews.

A simple but important fact: even those Conservative ideologues who "created" these arguments were never personally swayed by them. Until relatively recently, the leadership and much of the laity of Conservative Judaism came from traditional backgrounds. They needed no arguments for personal observance; indeed, they could scarcely conceive of a Jewish life not centered around halakhah (in the case of the rabbinate) or serious Jewish observance (in the case of the laypeople). The arguments the Movement created using the *tanur shel akhnai* and similar texts served retroactively to buttress commitments the people had already made, and to justify the changes in halakhah that Conservative Judaism touted even in the face of halakhic seriousness. For that generation of Conservative leadership (and the elite of the laity), the theological subtleties implicit in these texts were a liberating, refreshing dimension of Jewish life long absent in the traditional world from which they hailed.

But today's rabbinic leadership and laity do not hail from those traditional communities. They did not grow up in homes in which a commitment to halakhic lifestyle was synonymous with Jewish identity; Conservative congregants—and indeed, much of the younger leadership—find that they have not consciously *choose* observance. At one time, Conservative arguments needed only to justify the "change" element in our "tradition and change" mantra, but today it is the commitment to "tradition" that demands articulation, and the various *sugyot* we have spoken of for so many years are entirely the wrong choice.

The classic "Conservative" *sugyot* make the wrong claim for our purposes. They stress not the immutability and sanctity of halakhah, but its historicity and malleability. The lesson we have been taught to derive from *tanur shel akhnai* is that halakhah is God's will as determined by human beings. The chutzpah implicit in Rabbi Yehoshua's not only telling God that human beings will determine God's will (i.e., halakhah) but in proving their right to do so by consciously omitting the words *lo ta'aneh al rov lintot* from the verse that includes the famous quote *aharei rabim le-hatot*³⁴ is a chutzpah that we can no longer afford. That *sugya* works well when our goal is to "prove" that the tradition legitimates human activism in guiding the halakhic system. But that is not what we need to prove. Today we need to stress the element of submission to a higher authority that is also unquestionably part of the halakhic tradition. *That* is what our laity does not understand, and *tanur shel akhnai* only undermines us.

³⁴ Cf. Exodus 23:2.

The same is true with Moses in Rabbi Akiva's *bet midrash*. We had every reason as a Movement to celebrate that *sugya* as long as what we needed to prove was that the halakhah could develop and still be considered part of one continuous, unfolding tradition. But again, our laypeople take that for granted. What they need to hear from us is not that humans can sometimes determine halakhah—for they assume that to be the case—but rather that the Jewish ethic underlying the halakhah is our submission to God's will. *That* is what is lacking from the *sugyot* that we commonly cite, *that* is what a historical approach to Jewish life can never passionately advocate, and *that* is what Conservative Judaism will have to begin to stress if it is to survive.

Where, then, do we go from here? If not history, what will be our unique construction of Jewish life? If not *tanur shel akhnai*, where in the rabbinic corpus will we find an effective *raison d'être*? If we begin to advocate halakhah as submission to God's will, what will be unique about the Conservative voice in the American Jewish chorus? Will we still have anything unique to say?

My sense is that we will have much to say. Our Movement's commitment to women's issues will set us apart from all other traditional voices for the foreseeable future. Similarly, our commitment to the critical study of sacred text cannot be confused with an Orthodox approach. But perhaps more important, we will now have the opportunity to make an argument for halakhah not on the basis of theology—which is, after all, what the “dox” in “Orthodoxy” means—but on the basis of what the halakhic experience actually does for the Jewish person who observes it. By downplaying theology³⁵ while at the same time insisting that halakhah remains vital, we may find our unique and passionate voices.

Such an orientation may mean giving up our mantra of *nizhuni banai*, *nizhuni banai*, but it does not keep us from finding important evidence in rabbinic sources to support our world-view. If we make this change in orientation and rhetoric, we will find our position supported by other, equally compelling texts. In the idiom of classic *sugyot*, we might call the necessary shift a move from *tanur shel akhnai* to *kafah aleihem et ha-har ke-gigit*.

In the famed *sugya* in which God suspends Mount Sinai over the heads of the Jews assembled around it,³⁶ the Gemara asserts that the original circumstances of the covenant at Sinai may well have been coercive, thus rendering the “contract” null and void. If that is the case, what authority does the Torah—and by implication, the entire halakhic system—have over us? Rava's celebrated response is crucial, not only for what it says, but for what it does not say and also for what it implies.

When R. Aha bar Ya'akov asserts that God's suspending the mountain over the Jews offers a legitimate reason to reject the halakhic contract (which could

³⁵ Moving away from “theology” need not mean moving away from God. I use the word “theology” here in a very narrow sense to mean a clean, rational argument based on some conception of revelation that seeks to demonstrate the authority of halakhah. That *God* has to remain crucial to our discussions of halakhah is clear and is addressed below.

³⁶ B. T. Shabbat 88a.

then have been accepted under duress), Rava responds that Sinai is not the enduring reason for the contract's validity. Rather, he asserts, the halakhic contract is still in force because in the days of Esther the Jews accepted the arrangement once again (*kiyyemu ve-kibbelu*).³⁷ On the surface, Rava's³⁸ response simply asserts that although the circumstances of Sinai *may* have been coercive, Jews subsequently invested the tradition with authority when they accepted it "anew" at the time of Ahaseurus. On that level alone, it is an interesting claim for the rabbinic tradition to make.

But Rava's proof-text is significant in additional ways which are easily overlooked, for what is most important is what he does not say. Within his response is the subtle claim that theological arguments for the authority of halakhah do not matter. What matters, he suggests, is the power of the tradition to make Jews Jewish—the unique power possessed only by halakhah to infuse the lives of Jews with Jewish resonance and passion. Although Rava does not use such language, the *sugya* contains a variety of subtle suggestions that this is the point he wishes to make.

The fact that the verse cited is from the book of Esther has profound implications. Not only does Rava himself not inject the issue of God into his discussion of the authority of the tradition, he selects a proof-text from a biblical book well-known for its glaring omission of God's name. Could the implication be that God's authority in the creation of the covenant is secondary to the spiritual needs and desires of the people?

If we are willing to hazard an affirmative answer to that question, other issues arise immediately. Just what are those needs and desires? Would it be pushing this *sugya* too far to remind ourselves that one of the central themes of the book of Esther is assimilation? The names of the two primary Jewish characters,³⁹ the fact that they hide their Jewishness,⁴⁰ and the fact that Esther "marries" a pagan king all attest to the centrality of this issue.

Could it therefore be that Rava was suggesting in part that the reason for our communal acceptance of the covenant must be not a theological argument, but the deep-seated sense that without a unique pattern of Jewish behavior we will ultimately blend into the larger culture that surrounds us? Could he similarly be arguing that Jewish life without a sense of partnership with God as expressed through command cannot arouse the *mesirut nefesh*—

³⁷ Cf. Esther 9:27.

³⁸ The Tosafot raise some question as to whether the authority was Rava or Rabbah. But that question, while interesting in its own right, has no bearing here. The point deserves attention, regardless of who made it.

³⁹ The names of the two primary Hebrew characters are taken from the names of pagan Babylonian gods. Mordecai, "is the hebraized form of *marduk*, whose theophorous element is *Marduk*" (Carey A. Moore, *Esther: Introduction, Translation and Notes*, The Anchor Bible, General Editors William Foxwell Albright and David Noel Freedman, p. 19). Similarly, Esther's name is commonly considered to be related to Ishtar, a Babylonian goddess of love (*ibid.*, p. 20). That Jews would take the names of pagan gods is a clear sign, in the mind of the biblical author, of serious assimilationist tendencies.

⁴⁰ The text is explicit in relating that Esther and Mordecai sought to keep their Jewishness secret. Verse 2:20 relates that even after being selected for a second inspection by the King "Esther still did not reveal her kindred or her people, as Mordecai had instructed her."

which we will here call devotion—necessary for sustaining proud, committed Jewish life?⁴¹ Is it possible that Rava chooses a book whose central theme is assimilation because he wants to argue that without halakhah at the core of its communal ethos, Judaism simply cannot survive?

We will never know how far Rava would have been willing to “push” the significance of his choice for a proof-text. But even if that argument is not Rava’s, it virtually beckons to the leadership of Conservative Judaism today. For it suggests that what effectively justifies the tradition and motivates our attachment to it is not “authority” in the sense that we have traditionally used the term, but “power” in the sense of the mystery, joy, and belonging that halakhic living adds to our lives. Ultimately, when we set aside *nizhuni banai* for *kafa aleihem et ha-har ke-gigit*, we move our arguments for halakhic commitment from claims of legitimacy to claims of relevance. It is a shift, in other words, from historico-theological arguments to personal, spiritual claims about the religious power of a traditional Jewish way of life and the unique ability of that way of life to perpetuate Judaism as we know it.

Such a shift would enable many of us as rabbis to be more personal about our own paths of Jewish growth, and most important, it would speak to people we desperately want to touch. We now have the opportunity to make an argument for halakhah that is more important in our modern societal setting than anything that “pure” theology can say. Our commitment to traditional Jewish observance can effectively convey to our laity that participation in the Jewish people means making commitments. It means being willing to say to oneself and to others, in no uncertain terms, that there are certain elements of our lives that are simply non-negotiable. If we happen to be in the Bahamas on Friday night, then it means that somehow or other we need to make sure that we have a Kiddush cup, wine, challah, and a place to be until sundown Saturday night. If we plan to eat a meal outside our home, then halakhah suggests that what we eat at that meal makes no less difference than what we eat at any other time inside our house. If we care about the survival of our people,⁴² halakhah suggests, then the decision of whom to marry is not entirely a personal one. Ultimately, halakhic Judaism conveys the sense that it is not antithetical to a religious, moral way of life to make demands.⁴³

To many American Jews, schooled in the social and political traditions of

⁴¹ The continuation of the *sugya*, in a beautiful midrash on Genesis 1:31 attributed to Resh Lakish, actually raises the possibility that without a devotion to law, life itself could not continue. The implications of that notion are astonishing but deserve a separate treatment.

⁴² Though we commonly assume the importance of the survival of the Jewish people in our teaching and our writing, this is a matter of concern and confusion for many laypeople. Without recourse to certain theological arguments that both we and they find not entirely satisfactory, the question “why should Judaism survive” is a profoundly difficult one to answer. While an exploration of that issue is clearly beyond the scope of this paper, it is a question to which our Movement ought to devote considerable energies.

⁴³ I have explored this issue in greater depth in two popular pieces. A discussion of “non-negotiability” as a fundamental element of halakhah is found in “Jewish Love, Jewish Law: Can Liberal Judaism Weather the Inter-marriage Crisis,” *The Jewish Spectator* (Winter 1992). The link between commandedness and Jewish continuity is explored in “The End of Survivalist Judaism? American Jews in Search of Direction,” *Sh'ma*, 24/466 (January 21, 1994).

individual choice and autonomy, the idea of a religious tradition that can make non-negotiable demands is strange at best, anathema at worst. To many, the concept of "law" in religion seems out of place, even inappropriate. But perhaps it is the word *law* that is the problem. Perhaps, as is suggested above, the issue ought to be defined not as the *authority* of the legal word, but as the *power* of our tradition's spiritual discipline.

While we rabbis are often uncomfortable being in the position of urging serious attention to the legal dimension of Jewish life, there is no reason for that discomfort. Our congregants surely take both spirituality and discipline seriously. Indeed, they recognize that those persons and causes in their lives to whom they are seriously committed *do* exert upon them non-negotiable demands. Who would expect a marriage to last without some non-negotiable commitments which two partners struggle to maintain? Children add to our lives yet another layer of commitment which (in functioning parental relationships) are never violated, no matter what. But our congregants do not resent the demands of marriage or of children, because those are relationships that they take seriously and that they often find extraordinarily nurturing.

But here we confront the "chicken and the egg" syndrome. Relationships with parents, spouse, and children are naturally committed ones *precisely because* they pervade every fiber of our being. In many cases, they provide warmth, comfort, nurturing, and a sense of context for our lives because there is little that goes on in our lives that does not revolve around them. We need to stress to our congregants that the genius of a halakhah that encompasses the way we dress, where we live, what we study, how we interact with our spouse and our children, our sexual behavior and our other moral commitments is that it creates a "relationship" with a God and a people which also pervades every fiber of our being.

To the extent that our congregants have experienced Jewish life as less spiritually fulfilling than they might have, we need to help them assign responsibility for that disappointment not to the Jewish tradition, but to themselves, and to us, their rabbis. They need to appreciate that their own consumer attitude to religious satisfaction—their sense that religious fulfillment can be had by "purchasing" a membership or a child's religious education without making the long-term palpable investments of time and emotion that any other satisfying dimension of life requires—is the root cause of the Jewish alienation for which they often blame us or their tradition. We need to teach and to reiterate that key to our Conservative sense of Jewish power and spirituality—and key to Rava's argument, I believe—is the sense that a necessary component of Jewish life is submission to God's command⁴⁴

⁴⁴ This certainly need not be blind submission. The genius of Conservative Judaism will remain our commitment to examining halakhah in partnership with the best that our moral senses can offer. Nor does this emphasis on command imply a repudiation of *ta'amei ha-mitzvot* along the lines of what one finds in the work of Yeshayahu Leibowitz. It is simply to suggest that one cannot claim to be part of the tradition of the Garden of Eden, the story of Noah (and God's command after the flood), Sinai, and the rabbinic tradition without taking submission to command, *qua* command, very seriously.

or submission to the will and the tradition of a community.⁴⁵

But we cannot lay all the blame at the feet of our congregants and students. We, too, need to recognize that we have been much too reticent to call these shortcomings to their attention. Our tradition suggests that prophecy, because it required the prophet to assume challenging and often unpopular positions, was never easy. There is no reason to assume that serious religious leadership today should be any easier.

To our credit, we have often tried to fill that prophetic role. For decades we have championed the view that even sophisticated, secularly educated and religiously skeptical Jews can take the halakhic system seriously. But by using history in our rhetoric, we have made the wrong arguments. The vocabulary of the theoretical authority of the halakhic tradition has not spoken to the people whose religious lives we hope to enrich. What *will* speak to our community is the tradition's power.

In the final analysis, *this* must be our theological claim. Conservative laypeople who commit themselves to halakhah will do so because they understand halakhah's capacity to touch them, to change them, and to invest their Jewish experience with meaning and with consequence. They will respond positively to Jewish observance when they begin to see it as our Jewish means of "hearing the music" in human life, of creating a sense of intimacy with the cosmic. For them to hear that message, however, we need to convey it regularly and unequivocally. We need to begin with the experiential, not the cerebral; we need to assure ourselves that the *experience* of Jewish life has the capacity to tell us that there is something divine about the mitzvot.

From Power to Passion

A Conservative message thus reformulated would permit the emergence of the passion in our collective message that is all too often missing. It has often been noted that in the American Jewish community it is Orthodoxy that by and large speaks with passion, and Conservative Judaism that "hems and haws." That appraisal is probably more true than we would like to believe,⁴⁶ but it is also understandable. Our theological arguments for the authority of halakhah, based as they are on talmudic selections such as those mentioned above, are subtle, elusive, and centrist positions. And it is notoriously difficult

⁴⁵ Here one might raise the legitimate question of why, in the absence of basic theological claims, one particular form of covenantal behavior should be chosen over other possibilities. The question deserves serious attention, but in this brief space it is important to point out that for ritual to have true power, it needs to be communal. In our age, it is highly unlikely that any new ritual could win a sufficient number of adherents to make it reflect the power of what we now call Jewish tradition. For that reason alone (and there are many others), we should be very suspect of claims that we can produce a new halakhah, some modern and innovative code of Jewish covenantal behavior.

⁴⁶ One key target of this accusation has, of course, been *Emet Ve-emunah*, whose critics contend that it seeks to reflect such a wide variety of positions that it fails to speak with passion about any of them. Whether such critiques are fair would require much more space than we have here.

to argue passionately for centrist positions. This is true in politics, and it is true with religious claims.

But passion is exactly what much of our populace desperately seeks as they search to provide more cosmic meaning—read “spirituality” for some—for themselves and their children. Until the Conservative Movement refashions the vocabulary of its claims, thus vitiating the “plagu[e] of self-doubt, disquiet and gloom” of which Shapiro speaks and replacing it with passion, we will concede much of the battle to the Orthodox establishment. That is not to suggest that Orthodoxy does not deserve some of these “victories”; it is only to suggest that if we are to remain in the fray, we need to recognize that we are losing badly; some strategy needs to change.

The change must impact the very way we think about ourselves, and maybe even the way we speak about ourselves. Following the lead of our Israeli colleagues, it is time to think of ourselves as representatives not necessarily of “Conservative Judaism,” but of “Traditional Judaism.” Rabbi Schorsch is correct that the appellation “Conservative Judaism” is an unfortunate one, but “Historical Judaism” is surely not the answer. We need to move from “tradition and change” to “in the face of all the change—tradition.” Our language needs to advocate not the notion of a changing tradition (though we will still be the group that represents that world-view), but the notion of tradition as the source of the energy and meaning of Jewish life. We need to become the representatives of America’s “traditional Judaism” without the baggage of so-called traditional theologies that our laypeople will not find plausible. This new vocabulary would reflect our most longstanding and deepest passions, and regardless of what our laypeople want, it is surely what they *need*.

Whether or not we are willing to refashion our most fundamental vocabulary will be the ultimate test of whether we are serious about playing a pivotal role in American Jewish life, or whether we will abdicate that role to other groups, many of whom predicted long ago that we were not a viable form of Jewish tradition.

My sense is that though we are deeply troubled, we are not so despondent as to give up trying. Because our task is so sacred, my prayer is that this appraisal is not unjustifiably optimistic.⁴⁷

⁴⁷ I would like to thank my teachers and colleagues who participated in the Annual Conference of the Pacific Southwest Region of the Rabbinical Assembly in January 1994, when this material was first presented. This paper has been vastly enriched by their questions and critiques, and I am deeply in their debt. My thanks as well to Rabbi Bradley Shavit Artson for his review of an earlier draft of this paper, and to Shawn and Tom Fields-Meyer for their valuable suggestions. Of course, responsibility for the abiding limitations of this paper rests exclusively with me.

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