

THREE Tradition: Continuity or Change - Two Religious Options

Vered Noam

With the onset of the enlightenment, Western thought has reflected frequently on the gap which exists between a traditional religious outlook and the modern sense of reality. One of the manifestations of this abyss pertains to the place and recognition of change and development within religious traditions, which I will refer to as a 'perspective of continuity' versus an 'acknowledgement of change'. The classical *posek* (adjudicator) and commentator, who operate within the defined boundaries of tradition and see themselves as a link in its chain, attempt to present all of tradition over the ages as one continuous unified body whose teachings are as uniform as possible. In this way they seek to maintain the authority and origins of this tradition from time immemorial. The contemporary observer viewing this process criticizes it for being either naive, lacking in intellectual integrity, or both. The latter seeks to separate the various historical levels of tradition and sources from one another with the scalpel of exegesis, to reveal their essence and development. This act of unravelling the colourful carpet of tradition into its various threads intentionally sets aside the 'religious' values of authority, precedence, continuity, and harmony in favour of two aspects of 'the truth': the historical truth as it relates to the evolution of tradition in general, and the exegetical truth of each separate text. The encounter between the sceptical, reflective consciousness of modern times, which reads tradition as developmental and breaks things down into their separate elements, and the tendency of more traditional rabbis and teachers to seek continuity and harmony often produces uneasiness (either covert or blatant) or outright distress. The question I seek to explore is whether this dissonance is necessary. Is it possible to maintain a commitment to religious tradition while at the same time recognizing the developmental dimension within tradition's discourse? This question, while more acute in the modern context, is not a new one. As the Jewish tradition has developed over the ages, it has had to continuously reflect on the way it perceives these developments. Are they viewed as innovations or are they understood as interpretive unfoldings of the inner meaning of traditional texts? Consequently, in exploring this question I propose to investigate the model set by the Talmudic sages, and particularly the Tannaim, who shaped a new religious-halakhic world for their generation and those that came after

them. In so doing, I will focus on the reflection of the gap between the Bible and halakhah in the consciousness of the sages and in their treatment of such. When a sage deals with rabbinic halakhah and what is supposed to be its biblical source, he has two basic approaches open to him. The first is to present continuity – that is, chart a path leading from the verse to the halakhah. This approach subordinates the verse to the halakhah in question and removes the biblical verse from its evident meaning. At the same time, however, it also regards halakhah as a product of interpretation and not as an outcome of independent innovation or separate transmission. The second approach is to acknowledge change – that is, present halakhah itself as an innovation of the sages or as an independent tradition transmitted across the ages, though not on the strength of biblical interpretation. In the case of this second approach, the biblical source is interpreted in its essence and with a view to its simple meaning.

'Continuity' and 'Change' in the Writings of the Talmudic Sages

We tend to automatically identify the rabbinic world, starting with the Talmudic sages, with the first approach, which I call the 'perspective of continuity', and to ascribe every modern observation to the second approach, which I term 'acknowledgment of change'. Furthermore, it is common to describe the 'perspective of continuity' as a conservative and frozen approach that discourages or even precludes creative and innovative human impulses, and to ascribe to the 'modern' outlook of 'acknowledgment of change' the dynamic optimism of an Enlightened era. The discussion below seeks to shed some light on this crossroads within the world of the sages. To what extent do our sages appear to have been aware of the gap between what they created and the biblical foundation upon which they declared they stood? To what extent were they willing to recognize their own creative independence? Did they pay tribute to this independence or did they seek to downplay it? Did they see themselves as committed to simple meanings on a biblical level, on the one hand, and to the independence of the later halakhah, on the other? Or were they perhaps seeking to subordinate one to the other, and even both to the consciousness of continuity and uniformity which they wanted to impart to students and future generations?

This investigation yields several surprises. It turns out that both approaches, the 'conservative' and the 'critical' – the latter being the ostensible product of modern reflection – are patently alive in the sages' world, as is a realization of the aims and obstacles of each. It thus becomes clear that the foregoing dichotomic description – distinguishing between the rigid and conservative 'perspective of continuity' and the historic, conscious

and realistic outlook of 'acknowledgement of change' – does a disservice to both approaches by stripping them of their complexity.

'All was Revealed to Moses at Sinai' – Continuity

The enormous body of literature known as the oral law, which sets down the basic foundations of Jewish life, philosophy, and intellectual discourse for generations, has been presented by our sages as well as by Jewish educators throughout the ages, as commentary and a direct continuation of the written law. This claim contains two highly significant axioms: (1) the oral law is merely a simplification and explanation of the written law; it is part and parcel of the written law and comprised in its words; and (2) the oral law stems from the same source as the written law and was given to Israel at the same time and at the same place; it too was revealed by God at Sinai at the same time that the Torah was revealed. 'These are the laws, rules, and instructions (*torot*) that the Lord established, through Moses on Mount Sinai, between himself and the Israelite people' (Lev. 26.46); '... and the use of the plural *torot* teaches us that both *torot* were given to Israel, one written and the other oral' (*Sifra Be-Hukkotai* 2.8). This idea is pointedly expressed in the following Midrash, which plants the roots of the entire range of oral law compositions, as well as any future halakhic innovations, in the revelation of the Torah at Sinai:

'And the Lord gave me the two tablets of stone inscribed by the finger of God, with the exact words that the Lord had addressed to you out of the fire on the day of the Assembly' (Deut. 9.10). Rabbi Joshua ben Levi said: *aleyhem* (on them) – *ve-aleyhem* (and on them); *kol* (all) – *ke-chol* (as all); *devarim* (words) – *ha-devarim* (the words); *mitzvah* (commandment) – *kol mitzvah* (all commandment[s]). '[You shall faithfully observe all the Instruction that I enjoin upon you today, that you may thrive and increase and be able to possess the land the Lord promised on oath to your fathers' (Deut. 8.1)]. *The Bible, the Mishnah, the Talmud, the Tosefta, Aggadah, and even what a veteran student would say in front of his teacher in the future, all was said to Moses at Sinai:* because it has been stated: 'Sometimes there is a phenomenon of which they say 'Look, this one is new!' – it occurred long since, in ages that went by before us'. (Eccl. 1.10)¹

The verse that opens the Midrash deals with the tablets of law given at Sinai. On the level of its simple meaning, the verse teaches us that all the *devarim* (words) that God spoke at Sinai were written on the tablets. However, Rabbi Joshua ben Levi infers that at the time the Torah was given, the

Mishnah, Talmud, Tosefta, and Aggadah were also given. Not only were these works given to Moses at Sinai, but the debate renewed every day in the bet midrash on the opinions of the sages and their students also originated with the revelation of the Torah. The verse selected to conclude the homily comes from Ecclesiastes and teaches that even what seems to be new ‘occurred long since, in ages that went by before us’; in other words: what appears to the observer in the bet midrash to be an ongoing process of inventive human creation is in reality ancient tradition – fixed, rigid, and complete – of divine origin.

This position is a sort of general, fundamental declaration on the authority and origins of the oral law; however, it clearly cannot exist in a literal sense in the everyday world of the Talmudic sages. This world, familiar to us from the rabbinic halakhah and Aggadah, is based entirely on vital human discourse, dialectical and renewing, and not on sacred and rigid tradition. The words of the sages are not portrayed as an anonymous monolith of divine origin. On the contrary, the Mishnaic and Talmudic sages are human beings, distinguished by name, whose identity is drawn from known circumstances of time and place. The oral culture of the sages takes pains to convey statements in the name of the person who says them. It attributes halakhic opinions and religious philosophy to those who propound them and not to an ancient tradition, making sure to differentiate between what is said by a sage himself and what he transmits in the name of his teacher.

The Talmudic sages do not deny innovation and change in the oral law. It is clear to the various speakers that they are creating a multi-layered, dynamic edifice, and they openly acknowledge the effects of circumstances of time and place on halakhah. Expressions such as ‘at first’, ‘the first elders’, ‘it was said’, ‘it was actually said’, indicate an earlier halakhic level that changed as the result of determinations made by later sages. *Takhanot* (ordinances), *gezeirot* (edicts), and determinations are ascribed to the various generations and institutions that created them, often in disagreement with prior rulings. The Talmudic sages distinguish between the halakhic practices of Palestine and those of Babylonia (‘this is for us and this is for them’); between ‘before the legislation of Ezra’ and thereafter, between ‘the days of the Temple’ and ‘contemporary times’, between the halakhot of ‘the first’ and those of ‘the last’. The law that emerges from the various Babylonian Talmudic academies is influenced by the collective attributes that characterize the sages of a particular place.²

And of course, the particular nature of the oral law also derives from its most obvious characteristic: debate. The many opinions and variety of voices cannot easily exist side by side with a belief in divine, uniform and eternal halakhah that is not subject to change. Indeed, Tannaitic literature

contains precepts that consider the historical moment of the birth of controversy, the inauguration of Bet Hillel and Bet Shammai, a moment of break-down and deviation from the process of the oral law as it ideally should be: 'Rabbi Jose said that in the beginning there was no debate in Israel. . . but when the students of Shammai and Hillel argued who did not serve to the fullest, controversy increased in Israel and two laws were made'³ (Tosefta Hagigah 2.9). Nevertheless, nobody would consider returning the bet midrash to the utopian era prior to debate, just as it is impossible to turn the pages of human history back to the Garden of Eden prior to sin. Hence a monolithic halakhic world will not exist in the future until the advent of the Messiah.

At first there was no debate in Israel. . . After the students of Bet Shammai and Bet Hillel fought and did not serve their rabbis to the fullest, and debate in Israel increased and was divided into two classes, one defiles and the other purifies and is no longer expected to return to its original state until the son of David arrives.⁴
(emphasis added)

In contrast to this approach that sees debate as a necessary evil resulting from the reality of human existence in the world, there are also those who believe that argument is the result of the *primaevial* nature of the divine law, and that it would be impossible to study and abide by such a body of law had it not been given to human hands with the understanding that it is open to interpretation:

Rabbi Yanni said if the Torah had been given 'incontrovertibly' it would not have had a leg to stand on. What does this mean? 'And God said to Moses'. (Moses) said to Him: 'God, tell me what is the halakhah'; he said to him, 'Rule in accordance with the majority. If those who exonerate are in the majority, exonerate. If those who ascribe guilt are in the majority, ascribe guilt. The Torah was given such that it could be interpreted with 49 arguments (lit. faces) to find something impure and 49 arguments to find it pure'.⁵

In this story, God refuses to reveal the Torah 'incontrovertibly', that is, with one explicit and unequivocal interpretation. Its interpretation is given over to sages who make determinations by majority rule, and from the outset it is intended to be understood in contradictory directions: '49 impure faces and 49 pure faces'.

The Torah unto Itself and the Sages to Themselves – The Gap

The general religious understanding of the continuum and connection between biblical and Talmudic literature appears to further break down when examined in light of the gulf between biblical law and its halakhic interpretation in the works of the Tannaim and Amoraim. How great is the gap between the nature, spirit, and even concise and decisive wording of biblical law, and the highly detailed, dialectical, and long-winded halakhic discourse conducted in the everyday language spoken by the sages (and even Gentile jargon when discussing the Talmuds – Galilean Aramaic in Palestine and Babylonian in Babylonia)? Moreover, it appears that the sages intentionally strive to emphasize the external gap between the language of the Bible and their form of expression. They resolutely refrain from writing down their theories in order to preserve the hierarchical differentiation between the written law and the human law, which is only conveyed orally. It would seem that from the outset they attempt to formulate their laws in ordinary, spoken language. This aspect becomes even more obvious when a comparison is made with the halakhot of the Qumran sect, which are composed in biblical language, written down, and integrated with the biblical verses to the point of being indistinguishable from them. Furthermore, the halakhic commentary of the sages is clearly differentiated from the words of the verse they seek to interpret, not only by means of employing a different register and writing nothing down, but also through an extensive system of terminology that mediates between the written word and the Tannaitic exegesis ('why was this stated', 'could be', 'I hear', 'I have nothing but', 'to show that', etc.). The external linguistic contrast between the language of the Bible and that of the sages embodies the profound differences of nuance between the supremacy of the Bible and the human, earthbound rabbinic experience. The fact that this linguistic differentiation exists is not denied by the sages, and is even articulated by them openly and simply: 'The language of the Torah is distinct and so is the language of the sages'.⁶

The linguistic plane is but one facet of the centuries-old cultural and historical distinction which lies between the biblical and rabbinic creation. Added to it is the fact that the world of the Bible is historic, vital, and colourful. It outlines the way of life and chronicles the history of an independent, mainly agricultural nation that lives in the land of Israel, while its religious life revolves in concentric circles around the Temple and its ritual. Biblical law addresses the individual Israelite farmer as well as biblical society and its institutions: judges and police, kings, prophets, and priests. The heroes of the biblical narrative are doers – forefathers, leaders, and prophets – who operate in the national arena (or, in Genesis, on the familial-

tribal plane); they shape a national reality out of a direct dialogue with God, who commands, supervises, rewards, and punishes. In contrast, the Talmudic sages operate in the closed world of the bet midrash and halakhah, whose heroes are religiously observant people whose only activity is the study and teaching of Torah. The sages see their role as one of shaping the details of the daily religious life of a closed and introspective Jewish community whose focal point is the synagogue and bet midrash, a community ruled by a more or less hostile foreign power. Their literature has no national connection; it is devoid of heroic narratives, and almost blind to historical reality and the panorama of its surroundings. It operates in an abstract spiritual, 'virtual' world. In this literature, the worship of God takes place within the sphere of human activity, not through channels of miraculous revelation.

The sages are well aware of the halakhically closed nature of their world. The following statement in Tractate Berakhot seems to be worded as a protest against the question that arises in regard to the limitations of the religious discourse that they develop: 'Since the day that the Temple was destroyed, the Holy One, blessed-be-He, has nothing in this world but the four cubits of halakhah alone'.⁷ Indeed, the sages do not ignore the differences between the atmosphere of the Bible and that of the rabbinic bet midrash, nor the contrast between the model of exemplary religious life in the Bible and that of their world. Many Aggadic Midrashim attempt to bridge this gap by 'rabbinizing' the biblical heroes. In other words, Talmudic Aggadah superimposes the shadow of the Jewish sage of Roman Palestine or Sassanid Babylonia on the biblical character, and the biblical scenery is replaced with that of the Talmudic sages' bet midrash.

For so said R. Aha ben Bizana in the name of R. Simeon the Pious: A harp was hanging above David's bed. As soon as midnight arrived, a North wind came and blew upon it and it played of itself. He arose immediately and studied the Torah till the break of dawn. After the break of dawn the wise men of Israel came in to see him. . . Levi and R. Isaac: The one says. . . The other one says: Thus spoke David before the Holy One, Blessed-be-He: 'Master of the world, am I not pious? All the kings of the East and the West sit with all their pomp among their company, whereas my hands are soiled with the blood [of menstruation], with the foetus and the placenta, in order to declare a woman clean for her husband. And what is more, in all that I do I consult my teacher, Mephibosheth, and I say to him: "My teacher Mephibosheth, is my decision right? Did I correctly convict,

correctly acquit, correctly declare clean, correctly declare unclean? And I am not ashamed [to ask]?”⁸

When confronting the subject of halakhah, the gap between the two constitutive foundations of the Jewish heritage – the Bible and rabbinic literature – is both much more difficult to obfuscate and more dangerous. Aside from the vast differences with regard to internal focus, linguistic and cultural characteristics, as well as historic circumstances in these two disparate literatures, their vast differences of halakhic content and scope are immediately and patently obvious. The enormous expansion of certain halakhic matters in relation to their circumscribed origins in the Bible, and the total invention of halakhot with no biblical source whatsoever bother the early sages in the last centuries of the Second Temple era, the period in which the following Mishnah is apparently composed:

The laws about the dissolving of vows hang in the air, and have no basis (in the Bible). The halakhot concerning Sabbath, feast-offerings, and trespasses are as mountains suspended by a hair, because the verses of the Bible concerning this are very few, and the halakhot are very many. The jurisprudence, the Temple services, and the purification, and uncleanness, and the cases of illegal unions, have a basis in the Bible, and they are the essential parts of the Law.⁹

In light of the landscape surrounding the deep channel that separates the Bible and the literature of the sages, let us return to the question we started with: How do the sages define their enterprise in relation to the Bible? Do they attempt to present it as deriving from the Bible or as a separate and independent creation? Do they seek to camouflage the gaps, or acknowledge and define them, and what are the spiritual-cultural ramifications of their choice?

The Sources for Halakhah: Midrash and Transmission, Continuity and Change

As is well-known, Tannaitic law is presented in two main genres: (1) the Mishnah and the Tosefta, worded as clear-cut halakhah, presented according to order of subject, and completely detached from the biblical level; and (2) halakhic midrashim, which construct halakhot from the words of biblical verses and are organized according to their order in the Bible. In some cases the very same laws are presented in different compositions within Tannaitic literature as both clear-cut determinations and the outcome of the exegetical process of the written law. Yet, it is clear that these two genres, halakhah

and Midrash, do not express world views that are divided with regard to the source from which halakhah is derived. Nevertheless, the very duplication of the Tannaitic literary system shows that the bodies of halakhah in general are perceived simultaneously as both an organized and independent collection that no longer needs its biblical roots, and detailed and dialectical interpretation that still clings to its lover, the Bible. In fact, in rabbinic literature the matter of which direction to choose is debated. Some see the primacy of continuity, and others believe that change must be recognized and admitted.

The main explanation voiced in support of the 'continuity position', that is, in favour of an interpretative process that sets forth, even artificially, a biblical verse as the source for a later halakhah, is authority. The early Mishnah refers to all areas of halakhah that do not have a source in the written law as laws that are 'hanging in the air'. Halakhot whose scope is very broad in relation to their biblical source are given the colourful metaphor of 'mountains suspended by a hair'. In the first metaphor, the biblical basis is presented as the grounding for the halakhah, whereas in the second metaphor, it is a hook on which halakhah is suspended. These descriptions plainly express the position that independent halakhot cannot exist on their own. Its *raison d'être* stems from the biblical foundation, which supports the full force of its weight. Put another way, *awareness of continuity is the key to the existence of a post-biblical halakhah and to its being accepted*. Several generations later, in the days of Rabbi Akiva's primacy, the connection to the written law is still perceived as the means for defending halakhah from being discarded or forgotten.

Thus we find the following discussion. R. Johanan ben Zakkai is concerned that a certain law pertaining to the transmission of impurity from one item to the next may be removed from the legal code because there is no biblical foundation to support it. As a result, R. Akiva, his student, identifies such a foundation:

On that day, R. Akiva expounded: 'And if any of those falls into an earthen vessel, everything inside it shall be unclean and [the vessel] itself you shall break' (Lev. 11.33; that is a vessel into which a dead insect (*sheretz*) has fallen, becomes unclean and makes whatever food is in it unclean.) It does not state '*tameh*' [is unclean] but '*yitma*', i.e. to make others unclean. (In other words, the fact that the word '*yitma*' and not '*tameh*' is written leads Rabbi Akiva to interpret the word '*yitma*' as if it is vowelized '*yitameh*' i.e. the food in the unclean vessel not only becomes unclean itself, but can also make other non-sacred foods unclean.)... R. Joshua said: Who will remove the dust from

thine eyes, R. Johanan ben Zakkai, since thou sayest that another generation is destined to pronounce clean a loaf which is unclean on the ground that there is no text in the Torah according to which it is unclean!? Is not R. Akiva thy pupil? He adduces a text in the Torah according to which it is unclean, viz. 'whatsoever is in it shall be unclean'.¹⁰

Rabbi Joshua is amazed at Rabbi Akiva's skill in anchoring the halakhah in the Bible. Even though he finds Rabbi Akiva's biblical basis far removed from the simple meaning of the text, Rabbi Joshua sees this homiletic creativity as a guarantee for the future existence of the halakhah. Now, the validity of Rabbi Akiva's move to create, seemingly out of thin air, biblical foundations for halakhic tradition is contested by R. Tarfon in a debate which took place dozens of years after the destruction of the Temple. The two argue about the suitability of priests with blemishes to blow the trumpet while sacrifices are being made in the Temple. According to Rabbi Tarfon, a priest with blemishes, who is disqualified from performing the sacrifice itself, is nonetheless fit to sound the trumpet. In Rabbi Akiva's opinion, what holds true for sounding the trumpet holds true for performing the sacrifice, and a priest with blemishes is disqualified from playing the trumpet, just as he is from performing the sacrifice. Rabbi Akiva brings as proof a *gzerah shava* (analogy), a homiletic interpretation that he makes between one verse that deals with burnt offerings and another that deals with the sounding of trumpets. Rabbi Tarfon, in contrast, cites solid, factual proof. He remembers that in his childhood, when the Temple was still standing, he actually saw his uncle, a priest with blemishes, sound the trumpet. Here a homiletic interpretation of the verse is pitted against contradicting evidence about a halakhah that was actually practiced in the Temple.

Rabbi Tarfon said to R. Akiva: How long will Akiva continue to bring a confusion of words? I cannot tolerate it. I swear by my son that I saw Simon the brother of my mother who would tie something to his leg who would stand and sound trumpets! Akiva said to Tarfon: Rabbi, perchance it was in a *hakhel* that you so saw for those with blemishes are fit for *hakhel* and on Yom Kippur and at the *Jubilee*. Tarfon said to Akiva: Worship, which you did not fabricate! Happy are you, Akiva, since you are the issue of our forefather Abraham! Tarfon said and forgot, Akiva interpreted on the basis of his own thought and agrees to the halakhah! Anyone who separates himself from you it is as if he separates himself from his own life.¹¹

In popular and coarse language, Rabbi Tarfon argues the preference for proof and tradition over homiletic interpretation. He swears on the lives of his children that his memory is reliable, and sees Rabbi Akiva's homiletic interpretations as a groundless and tiresome pile of words. In the end however, it becomes clear that human memory is fallible, and it is the halakhic exegesis that shows the way to the truth of the Torah. Anyone who separates himself from Rabbi Akiva, the great originator of such homiletic exegesis, 'separates himself from his own life'.

In both of the foregoing narratives, Rabbi Akiva is lavishly praised for his homiletic interpretations which formulate halakhah from the Bible. In the first example, homiletic interpretation helps save a halakhah from being discarded or forgotten, and in the second instance it reveals the original, correct halakhah. Nonetheless, a careful reading shows that couched in the words of praise is a criticism of the method of halakhic Midrash. Initially, Rabbi Tarfon's statements express genuine fear about the independence of homiletic interpretation, which is liable to get in the way of tradition. Only when this fear is removed and it becomes clear that Rabbi Akiva's halakhic Midrash reveals or confirms an existing tradition can it be accepted and admired: 'R. Akiva interpreted the basis of his own thought and agrees with halakhah'. That is to say, according to both sources, what makes the art of creating a connection between the Bible and halakhah significant is precisely its ability to reinforce an ancient halakhah! The message conveyed by these and similar narratives is this: At first we are concerned about the highly imaginative and bold homiletical interpretations that Rabbi Akiva originates (*doresh mi-atzmo*), which could undermine halakhic tradition. However, thanks to his greatness, and possible divine inspiration as well, it repeatedly turns out that Rabbi Akiva's independent halakhic midrashim coincide with the previously handed-down halakhic truth, confirming it and aiding in its preservation.

It is interesting to note, however, that the tension reflected in these two narratives overturns the dichotomy presented above. It is precisely the supposedly conservative attempt to ascribe halakhah to an earlier source – the Bible – thus endowing it with continuity, importance, and authority, presented here as an independent, creative process ('interpreting on the basis of his own thought'), that could jeopardize tradition. In reality, it is the opposing outlook, which does not rely on biblical verses and in this way purportedly declares the independence and differentiation of halakhah, that represents conservatism and adherence to ancient tradition, which it is forbidden to change. If we return to the contemporary confrontation between the traditional 'perspective of continuity' and the modern 'acknowledgement of change', we see that the 'modern' value of freedom and creative independence is actually found in the world of the traditional

'continuity position', in the system of halakhic Midrash. This system, though obligated to show that it is grounded in the Bible, comprises a tremendously broad exegetical space for the homiletic interpreter, and the external dependence is, in reality, what gives it internal freedom.

Recognition of the creative force of halakhic midrash which lies behind the continuity position engenders, for some, a lowering of its status.

The halakhah was not known to the children of Bathera; for it once happened that the 14th (Nisan) occurred on a Sabbath, and they did not know whether the Passover sacrifices superseded the due observance of the Sabbath or not. They said: There is a man here that came from Babylonia called Hillel who had learned under the two greatest men of that generation, namely, Shemaiah and Abtalion; he would probably know if the Passover sacrifices supersede the Sabbath or not. He could be of use to us. They sent for him and asked him: Have you heard whether the Passover sacrifice supersedes the Sabbath? And he answered: Have we only one Passover sacrifice that supersedes the Sabbath every year? Are there not several sacrifices that supersede the Sabbath every year? (i.e. the continual daily offerings, which are offered twice on the Sabbath and the additional two sacrifices which are brought especially on the Sabbath). . . They responded: Indeed, we have already stated that you will be of use to us. And he (Hillel) then began to interpret for them using analogy, *a fortiori* reasoning, and analogous deduction. . . But they said to him: Indeed, we have already questioned whether this Babylonian will be useful. The analogy that you pronounced may be refuted. . . the *a fortiori* you said, may be refuted. . . the analogous deduction you pronounced, a person can not make up an analogous deduction on his own. . . Even though he would sit and interpret for them all day, they did not accept what he said, until he said to them: This is the tradition which I have received from my masters Shemaiah and Abtalion. When they heard this, they immediately placed him at their head and made him a prince. He (Hillel) then proceeded to criticize them saying: Who made you have recourse to this Babylonian? Was it not that you did not appropriately serve the two great masters Shemaiah and Abtalion, who dwelled among you?¹²

The people of Bathera turn to Hillel because he is the student of Shemaiah and Abtalion rather than on his own merits, as is obvious from their denigration of 'this Babylonian' 'who may be of use to us'. This is why they ask him if he has 'heard' about the halakhah in regard to the Passover sacrifices on the Sabbath, that is, if he has received a halakhah from his

teachers Shemaiah and Abtalion about this tradition. Hillel does not answer this question but instead responds with homiletic interpretations of his own: analogy, *a fortiori* reasoning, and analogous deduction. But the people of Bathera reject his halakhic Midrashim, since they believe that homily, unlike tradition, is subject to deliberation and can be disproved just as easily as proved. From their perspective, Hillel is only qualified to ascend to leadership when he conveys the halakhah via tradition in the name of his masters.

One of the most strongly worded criticisms of the use of Midrash to establish halakhah and make a determination is found in the words that Rabbi Ishmael uses to malign his colleague Rabbi Akiva, the classic representative of the Midrashic method that ventures far a field from the *peshat* (simple meaning) of the verse. The two argue with regard to the form of death penalty to be used against the married daughter of a priest. At issue is whether the more stringent death penalty by fire is to be applied, similar to the law with regard to a betrothed daughter, or whether death by stoning is to be used. R. Ishmael argues that there is only an explicit obligation to resort to death by fire in the case of a betrothed woman, not a married one. Rabbi Akiva, in contrast, cites a midrashic reading of the biblical verse which supports expanding the ruling.

R. Akiva replied: My brother, I interpret 'daughter' and 'and the daughter' etc. [Rabbi Akiva interprets the word '*u-bat*' in the above passage (Lev. 21.9) that deals with the daughter of a priest. Since it is written '*u-bat*' and not '*bat*', he infers, in keeping with his homiletical interpretive method, that the additional '*vav*' means that the law must be broadened to apply to a married daughter of a priest as well.] R. Ishmael said to him: Since you interpret 'daughter' and 'and the daughter' shall we except this woman [i.e. married women] and impose [the severer penalty of] death by fire?¹³

Here Rabbi Ishmael's question is a moral one. Should a person's fate by means of a harsher form of capital punishment hinge on the mere presence of an additional *vav*? The interpretative freedom embedded in Midrash requires, according to Rabbi Ishmael, the adoption of greater care and limitations, as the consequences may be severe.

Rabbi Ishmael rejects overly-creative homiletic interpretations for fundamental-theoretical reasons and not just on practical halakhic grounds. The case of leprosy of clothing in the Torah begins with the verse: 'When an eruptive affection occurs in a cloth of wool or linen fabric' (Lev. 13.47). Rabbi Eliezer infers from the addition of the '*vav*' and the '*heh*' in the word '*ve-ha-beged*' (and the clothing) a whole series of halakhic extensions about

the types of clothing to which the rule of leprosy of clothing applies, until Rabbi Ishmael's patience gives out: 'Rabbi Ishmael said to Rabbi Eliezer: You say to Scriptures: "Silence until I create a halakhic midrash!"' Rabbi Eliezer said to him: 'Ishmael, you are a 'mountain palm!'¹⁴ Rabbi Ishmael's argument is a general one against all types of daring halakhic Midrash. The attempt to tie the verse to the relevant halakhah deviates from the original intention of the written text. The *darshan* (homiletic interpreter) professes to be a commentator whose task it is to serve the needs of the written law; but in point of fact he forcibly silences the original biblical dictum and subordinates it to his own needs. No modern scholar, I believe, would be able to word more vehemently the attack against the traditional bet midrash's search for unification and harmony: 'You say to Scriptures: Silence until I create a halakhic Midrash!'

Rabbi Eliezer, however, does not take this lying down. If we equate Rabbi Ishmael's position with the modern point of view, Rabbi Eliezer's response may be considered in keeping with the postmodern spirit. He calls Rabbi Ishmael a 'mountain palm' – a palm tree that does not bear fruit. Rabbi Eliezer accuses Rabbi Ishmael of not 'bearing fruit'; in other words, the latter's refusal to compose more unrestrained Midrashic interpretations makes him intellectually unproductive. The obvious tension emerging from this amusing discussion between the sages stems from the conflict between two fundamental and opposing principles: being faithful to the written text which is being interpreted, and being responsive to the internal creative force of the homiletic interpreter. Rabbi Eliezer openly prefers creativity to commitment. He may also firmly believe that such commitment does not exist: the halakhic *darshan* does not silence the primary voice of the written text, since it has no voice anyway! The verses are open and amenable to creative homiletic interpretation by the sages, and the *darshan* is under no obligation to be faithful to any voice other than his own and to the halakhah at hand.

In view of this insight, the sages' words with which we introduced this discussion, consigning all of the oral law to the handing down of the Torah at Mount Sinai, should perhaps be understood in the same light. They do not mean to imply that everything new conceived over time was already said at Mount Sinai, or that it constitutes the original interpretation given to the written law. On the contrary: the written law given at Mount Sinai is to be interpreted by succeeding generations, and from the outset its inherent meaning is subordinate to human creativity. In this sense, the authority of later interpretation derives from Sinai and, therefore, can be said to help shape the new simple meaning of the text, which is constantly being recreated over the generations.

Even though Rabbi Ishmael founds a Midrashic school of his own,

which utilizes creative techniques to support existing halakhah on the basis of biblical verses and distances itself from the simple meaning of the text, in these and similar stories he is presented as someone who prefers accepting the simple meaning of the Bible. In any case, this recognition demands acknowledgement of the separation of halakhah from the Bible or, in other words, awareness of the fact of change. Hence, it is not surprising that Rabbi Ishmael himself declares explicitly that in several matters, 'halakhah bypasses the Bible'.

[and his master shall pierce his ear] with an awl' (Exod. 21.6). I have but an awl [i.e. it is ostensibly permitted to pierce the ear of a slave who wishes to remain a slave, but only with an awl]. Wherefore even with a *sol* (=a sharpened piece of wood), or even a thorn, or a piece of glass? This teaches us: 've-ratza' (and he pierced) [i.e. the additional 'vav' makes it possible that other types of tools could have been used to pierce the ear], this is the opinion of Rabbi Akiva. Rabbi Ishmael said: In three places [halakhah] bypasses the Bible. The Torah states 'with an awl' and the halakhah states 'even with a *sol*, even with a thorn, or glass'.

Both rabbis agree that the halakhah allows the use of other instruments besides an awl. Whereas Rabbi Akiva finds a way to interpret the halakhah expanding the variety of tools that can be used on the basis of the verse, thereby anchoring the halakhah in the Bible, Rabbi Ishmael chooses to separate between homiletic interpretation faithful to the original written text, on the one hand, and halakhic details absent any biblical foundation, on the other.

Summary: Between Creator and Curator

It is common to attribute to the traditional religious world a tendency to harmonize between different and varying sources and thereby blur differences. The philosophical and scholarly research of the last two hundred years regard such a tendency as a naive denial of the existence of the dynamics of renewal and change within Judaism's 3000- year-old religious-cultural heritage. The modern critical outlook seeks to unravel the bonds between the levels of tradition, interpret their essential meaning, and reveal how they came into being. In essence, this dismantling effort seeks to undermine the religious aspiration toward union and fusion. Thus, when the modern religious person stands face to face with his spiritual heritage, he finds himself in an unavoidable conflict between satisfying his religious and intellectual drives. But this conflict is not new. The enterprise of the sages of the Mishnah and Talmud is drawn entirely from the empty spaces that

developed over the ages between different layers of religious heritage: between the Bible and the Tannaitic world; between Tannaitic halakhot and halakhic interpretations of the Amoraim; between the words of the early Amoraim and the interpretations of those who followed them.

The present chapter, which focuses on the gap between the two formative building blocks of Jewish heritage – the Bible and the Tannaitic halakhah – attempts to reveal the presence of a similar tension between preserving continuity and acknowledging change in the religious consciousness of the Tannaim themselves. Aside from the very existence of these two types of Tannaitic literature, one which closely adheres to the Bible and another which distinguishes itself from it, we can look to the candid statements made by various sages regarding the attitude that should be taken toward the chasm between the world of the Bible and their own world. It is clear that the two approaches of unifying and separating exist side by side in the work of the sages. Oddly enough the supposedly conservative approach, that seeks to camouflage what is being renewed and changed in the Tannaitic *oeuvre*, turns out to be the one that is, manifestly, the agent of creativity and change.

It seems that the choice faced by the sages of Israel during the first centuries CE is not so very far removed from the challenge facing contemporary Jews in confronting the heritage of our forebears. Two paths to our ancient inheritance with its multiple generations and levels are open to us, and neither is perfect. One is the traditional stance, which may be called, metaphorically, ‘the path of halakhic midrash’. Its appeal lies in the attempt to create one flowing and coherent meaning unifying the separate links through the participation and commitment of the student-homiletic interpreter. It is surprising that this seemingly conservative outlook, which is firmly planted within the boundaries of tradition and sees itself as a link in its chain, is the one that empowers human creativity and that enables ever-renewable senses of relevance, vitality and poetry. Nonetheless, this path has a cost: the blurring of the distinctions between various phenomena and levels of creation, and the subordination of their original content to the most recent layers of tradition, or worse, to the emotional needs of the *darshan*. Those who tread this path declare to the sacred texts, day after day, subconsciously: ‘Silence, until I have made my homiletic interpretation’. The other path is that of acknowledging change. It dismantles the structure and examines the essence of each source, every composition, and every phenomenon. This is the ostensibly ‘modern’ academic outlook, which is surprisingly committed to the preservation of the primordial meaning of the sources, that is, to a type of conservatism. It turns out that, in contrast to expectations, it is precisely this outlook that is characterized by caution and stagnation. Through its ideological detachment and academic quality of

preservation and restoration, it renounces its share in the creative process. It becomes a 'mountain palm tree', planted unwillingly among the well-preserved ruins of the bastion it has dismantled. In the struggle between the options of continuity and change we may be destined to choose between a vitality that contains a certain amount of academic distortion and a path of emasculated integrity, between the courage to innovate and the need to scrutinize.

Notes

- 1 Leviticus Rabbah 22.1 (emphasis added).
- 2 See for example, BT Metziah 38b and the name *hanifei de Pumbedita* (the bright ones of Pumbedita) which appears in several places in the Babylonian Talmud; for a series of controversies between various *yeshivot* see, for example, Ketubbot 55a.
- 3 Tosefta Hagigah 2.9.
- 4 Jerusalem Talmud Hagigah 2.1 (emphasis added).
- 5 Jerusalem Talmud, Sanhedrin 4.2, 22a.
- 6 Avodah Zarah 58b.
- 7 Berakhot 8a.
- 8 Berakhot 3b-4a.
- 9 Mishnah Hagigah 1.8.
- 10 Sotah 5b.
- 11 Sifre Bamidbar 75.
- 12 Jerusalem Talmud, Pesahim 86.1, 33a.
- 13 Sanhedrin 51b.
- 14 Sifra Tizrah, Parashat Nega'im, Ch. 13.
- 15 Jerusalem Talmud, Ch. 1 halakhah 2, 59.4.