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Rupture as Tikun or Anti-Traditionalism as Halakhic Salvation: A Response to Menachem Fisch's "Berakhot 19b, The Bavli's Paradigm of Confrontational Discourse"

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Menachem Fisch presents us with a rich and nuanced analysis of one *sugya* in the Babylonian Talmud, *Berakhot* 19b, arguing that it reveals an anti-traditionalist approach to legal theory even as it conceals the very traditional theory it advocates. There is much to talk about in this textured and complex argument, both in terms of the intricacies of the *sugya* in question and its implications in the larger meta-halakhic discourse that so dominates discussions on TR. I will focus on two theoretical issues that I believe lie just beneath the surface of the essay's textual analysis yet serve as its ideational core. The first is the notion of law as esoteric, a notion that is implied but in never made explicit in this essay. This includes (as a sub-category) what I see as the three audiences in the Talmud's study house

(*beit midrash*) according to Fisch: (1) the simple (the beginner), (2) the quick and indoctrinated (the traditional Talmudic student), and (3) the careful and skeptical (the scholarly and progressive Talmudic scholar). On this reading, the text is constructed for many audiences but its essential message is only intended for one audience, an audience that reads the text by implicitly rejecting the text's own methodological premises. This is the basis of its esotericism. The idea of the Talmud in particular and the project of halakhic adjudication more generally as esoteric is fascinating on many levels and openly challenges the late Professor Isadore Twersky's quip that "halakha is an exoteric discipline," a statement I always found problematic yet was never able to articulate why.[1] The second issue I will address is to question the constructiveness of dichotomization implied in this essay (arguably the foundation of this essay). I will suggest that the strict adherence to dichotomization prevents the reader from seeing the way in which the Talmud is both radical (that is, anti- traditional) and conservative (traditional), not by rejecting the opposite posture but through a dialectical relationship whereby the traditional is supported and dependant on the anti-traditional.

I am intrigued by the implied esotericism of the Talmudic project and the way the in which the text conceals its true intentions under a conservative guise, employed largely through a method it subsequently subverts. As I read Fisch's analysis, this doublespeak serves to communicate a subversive message in a way that does not threaten the *sugya* 's exoteric agenda but undermines it nonetheless. To illustrate my two points I will draw upon three non-Talmudic texts: Robert Cover's theory of law and antinomianism in his "Nomos and Narrative," Amos Funkenstein's essay of Maimonides' realistic messianism, and a short but potent comment on textual authority from Maimonides' discussion of creation in the *Guide to the Perplexed* II:25. These three texts, I argue, both support and also critique Fisch's portrayal of the rabbis in his essay.

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[1] See Isadore Twersky, *Rabad of Posquieres: A Twelfth Century Talmudist* (Cambridge MA, 1980), p. xxiii.

To begin, while Fisch's dichotomy of the traditional versus anti-traditional approaches to law in the Talmud is useful in that it creates a lens through which to view this *sugya*, such dichotomies are, by definition, unstable and often blur more than clarify matters. Often, the relationship and mutual dependence of each on the other is overlooked when the strict and mutual exclusivity of each is maintained. While on the surface each side excludes the other (this claim is made in numerous places in the essay) I will argue that these two categories are dialectally dependant upon one another and that the Talmud may surreptitiously (and perhaps unwittingly) be supporting both sides in order to bring about its own anti-traditional ends without crushing the foundation of its traditional project. This sounds quite close to Fisch's conclusion. However, while within the dichotomy Fisch has set up I agree that the sages of the Bavli are anti-traditional, I question this assessment. What I am suggesting is that the dichotomy is false and that they are actually anti-traditional in order to be traditional. Put another way, in order to save the law they are producing, the sages of the Bavli must subvert the very method of its production.

Let me begin with Fisch analysis of the *metivi/eitivi* rhetorical and legal device. Transgenerational disagreement is a fundamental part of Talmudic reasoning and this rhetorical device is the way the anonymous voice in the gemara (the *stam*) frames this almost ever-present problem. Fisch argues that in most cases, at least in its exoteric guise, the Babylonian Talmud answers the challenge of transgenerational disagreement either by refuting the amoraic position in light of tannaitic critique or by arguing that the tannaitic position is not correctly understood and thus does not challenge the amoraic stance. In all cases, or so it seems, the generational hierarchy is maintained and the tannaitic position is never overtly discarded for a later amoraic position.

Fisch argues that this *sugya* in essence undermines that program yet does so in a way that enables the uninitiated or careless (that is, the beginner or indoctrinated reader) to miss the point. Fisch argues that the *meitivi* device "[is] not about the *dynamics* of halakhic development. They function as rearguard mop-ups of transgenerational incongruities." Yet, as stated, it *is* certainly about halakhic development to the extent that it

points to a progressive agenda whereby a later authority can usurp a former one not only as a result of unprecedented circumstances but on equal grounds. In this sense, law is created by undermining the tradition. In opposition to the Yerushalmi that seems undisturbed by intergenerational disagreement, the Bavli seeks resolution at every instant because, perhaps, it views its job not only to smooth over confrontation but to set an agenda of legislation for the future.

Here I want to suggest that perhaps the Bavli is engaged in an esoteric game for the sake of the law— that is—to insure the survival of tradition. To protect the law it must destabilize it because authority must include its own demise in order to avoid the pitfalls of absolutist jurisprudence. Or, to use Robert Cover's terminology, antinomianism is a foundation of the law. This idea of law undermining itself is not limited to the legal tradition of the rabbis but goes back to the "narrative" of the Bible. Discussing the curious phenomenon of the Bible undermining its own implied rule of succession, Cover remarks, "[t]o be an inhabitant of the biblical narrative world is to understand, first, that the rule of succession can be overturned; second, that it takes a conviction of divine destiny to overturn it; third, that divine destiny is likely to manifest itself precisely in overturning this specific rule."[2] Cover's comment about the Bible can enlighten Fisch's analysis of the Bavli if we substitute "divine destiny" with "rabbinic authority"—authority not of the past but of any qualified jurist (here, Rav). Yet the Bible never overtly tells us that the rule is other than it is, even as it consistently shows us that it is, in fact, other than it is. The law remains and the Bible breaks it at almost every instant. In our case the *metivi* device of hierarchical stability is employed as a veil to conceal unorthodox jurisprudence.

Moreover, in the Bible it is the rupture of the law and the reversal of orthodox succession that creates the possibility and foundation of the covenant of law (the spiritual inheritance of Isaac and Jacob and the marriage of Jacob to Rachel all transgress the biblical law of sibling

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[2] Robert Cover, "Nomos and Narrative," in *Narrative, Violence and the Law: The Essays of Robert Cover*, Monow, Ryan, Sarat eds. (Ann Arbor, MI, 1995), p. 117.

succession). While Fisch calls this position "anti-traditional" I would suggest it conforms quite well with the biblical narrative constituting Cover's paideic (world-creating) versus his imperialistic (world-maintaining) model of law. While one may argue that the Talmud (or at least the Bavli) embodies an imperialistic model of jurisprudence, that is, it acts according to principles that maintain the status quo, be it in substance or method, I would claim that as a legal tradition it must contain both models, one esoteric and the other exoteric. That is, it must undermine its own exoteric project in order to survive as a vibrant legal system. Hence, there is no dichotomy of traditionalism verses anti-traditionalism because the very existence of each is constructed from, and dependant on, the other.

The notion of resistance of the covert message of the law (i.e, anti-traditionalism) through traditional discourse is a common trope in much of Jewish intellectual history. We needn't employ Leo Strauss's theory of reading to teach us that Jews often take positions against what they believe is true and against what they aspire to be true for all kinds of reasons. A case in point is Amos Funkenstein's reading of Maimonides realistic messianism.[3] Funkenstein addresses the obvious problem in any serious study of Maimonidean messianism, that is, to navigate Maimonides' contradictory positions in *Mishneh Torah, The Guide*, and his "Epistle to the Jews of Yemen" on the question of eschatology. Many interpreters try to explain the contradictions developmentally or the result of writing for different audiences. Funkenstein vehemently disagrees with that approach. He offers an alternative that I believe informs our present discussion. Responding to the deep skepticism Maimonides exhibits in Yeminite reports of a (false) messiah, Funkenstein comments:

> Skepticism is not a mark of disbelief in the coming of the Messiah, but rather the foremost duty of the learned. The rabbinical authority is, by nature, anticharismatic, both in *foro interno* and in *foro externo* , or at least opposed to any charisma which is not derived from law and learning.

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[3] Amos Funkenstein, "Maimonides: Political Theory and Realistic Messianism," in *Perceptions of Jewish History* (Berkeley, Los Angeles, Oxford, 1993), pp. 131-154.

> The critical duty of the learned legal expert is, paradoxically, his very eschatological function. Maimonides seriously believed that his age was close to redemption. By suppressing false messiahs, the rabbinical authorities perform, so to say, an eschatological function, their role at the end of tribulations.[4]

Rather than getting trapped in the dichotomies of pro- or anti-messianism Funkenstein argues that Maimonides anti-messianism is, in fact, passionately messianic in that he views skepticism and resistance as the path toward its opposite. Perhaps "true" messianism is, for Maimonides, a messianism that can survive his (or another's) anti-messianic challenge and break through the skepticism, not by proving it to be false, but by embracing it and absorbing it into its vision of a utopian future. Remember it is Maimonides who argues that neither the law nor rabbinic authority will change in the messianic future (a position that stands in stark opposition to Cover's antinomian legalism).[5] Perhaps this skepticism is not only a pre-messianic posture but one that holds that messianic resistance will exist even in the messianic age. The skeptic is not an anti-messianist but a messianist par excellence.

I want to take Funkenstein's observation about Maimonides' subtextual messianism enveloped in his alleged anti-messianism back to Fisch's reading of the *sugya* in *Berakhot* 19b and the dichotomy of traditionalism verses anti-traditionalism he suggests as a model to understand the dynamics of the *sugya*. As I suggested above, I think there is an inherent weakness in the very dichotomy Fisch suggests. Perhaps the sages believe that to keep the law they must undermine it yet to prevent the law from collapse they must veil the law's usurpation in the cloak of traditional hierarchies. Like Maimonides (according to Funkenstein) the sages believe that both postures are really one and that their own project of rabbinic authority must contain its own demise for it to stand the test of time. Perhaps this is not, as Fisch suggests, a battle of two "schools of thought" but one large project that understands the dialectal nature of its

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[4] Ibid., pp. 135 and 136.

[5] See Cover, "Folktales of Justice," in *Narrative, Violence, and the Law*, pp. 188-195.

own legal enterprise. If this were so we must ask why it trains its readers to see things otherwise, that is, why is it esoteric?

On the question of Mishnaic authority one could certainly employ postmodern theories of reading to challenge the claim of textual authority by challenging the claim of a text more generally. A similar claim, I suggest, can be made without making use of postmodern methods but by simply referring back to Maimonides' subversive comment about the biblical text in *Guide* II:25. Discussing the first verse in Genesis and its seeming alignment with the theory of *creatio ex nihilo* Maimonides states:

> Know that our shunning the affirmation of the eternity of the world is not *due to a text figuring in the Torah* according to which the world has been produced in time... Nor are the gates of figurative interpretation shut in our faces or impossible of access to us regarding the subject of creation of the world in time. *For we could interpret them as figurative*, as we have done when denying His corporeality. Perhaps this would even be much easier to do: we should be very well able to give a figurative interpretation of those texts and to affirm as true the eternity of the world, just as we have given a figurative interpretation of those other texts and have denied that He, may He be exalted, is a body.

In short, Maimonides challenges the very notion of a naked text as expressing anything other than what the authoritative reader has determined as true outside the text (whether it be through reason, tradition, or inspiration). The text remains authoritative in the sense that it stands to affirm a particular belief but the text can never be the sole vehicle of that belief since the text can be made to say many things, as Humpty Dumpty says to Alice in *Alice in Wonderland*, "When I use a word, it means just what I choose it to mean, nothing more and nothing less."

So, when we say that any Mishna says X we don't really mean the Mishna "says" X. What we mean is that the readers of the Mishna (that is, the *Amoraim*, since the voice of the Mishna is that of the *Tannaim*) say the Mishna says X, "nothing more and nothing less" and we believe this reading truly reflects what the naked text means. The authority is the Mishna but the substance of that authority is what the sages say the Mishna means. This may be likened to what the Torah means when it says

"an eye for an eye." What it "says" is what Hillel reads it to say (i.e., monetary compensation), "nothing more and nothing less." To read that biblical verse against Hillel is not just to usurp Hillel's reading but sacrilege to the biblical text, whose meaning, according to tradition, is accessible solely through its rabbinic reading.[6] And doesn't the rabbinic reader often tell us, through *midrash* or allegory, that when a text appears to say X it really says Y? Isn't arguing that the authority of the text originates with the reader a quintessential rabbinic move even as the rabbis would surely retreat from such a destabilizing notion? As I understand it that is part of the esotericism of the rabbinic project. When Alice responds to Humpty Dumpty by saying, "The question is, whether you can make words mean so many different things," Humpty Dumpty retorts, "The question is, which is to be master—that's all." I agree that there is "unharmony" between the Mishna and Tosefta and the position of Rav. But aren't the Mishna and Tosefta here only texts as read by Rav's fellow *amoraim*? While we do not know this, can we posit that Rav simply holds the Mishna to mean something other than what his colleagues say it means, even if he does not make that explicit? This is not necessarily to erase the tension between Rav's position and the Mishna (as understood, of course, by his colleagues who cite the discrepancy) but to say that the Mishna can mean "many things" one of which may be something that would enable Rav to hold what he holds without contradicting the Mishna. I know this sounds a bit farfetched but if we take Maimonides seriously, doesn't such a reading become possible? Maimonides implies that he can, in essence, make the first verse in Genesis support eternity (the opposite of what "In the beginning" *seems* to mean) in order to say that the naked Bible, that is, the unread text without the tools of reason or tradition, teaches us nothing! And when we have no tradition as to what

[6] On the interdiction of reading the Bible (Torah) without commentary, see Frank Talmage, "Keep Your Sons from Scripture: The Bible in Medieval Jewish Scholarship," in *Understanding Scripture: Explorations of Jewish and Christian Traditions of Interpretation* , Clemens Thoma and Michael Wyschogrod eds. (New York; Mahwah NJ: Paulist Press, 1987), pp. 81-101.

the text means, the only tool at our disposal is reason, nurtured and feed by external systems of thought.

Breaking down the objective authority of the naked text (be it the Bible or Mishna) problematizes the whole traditional versus anti-traditional dichotomy that serves as the foundation of this essay. This dichotomy is based on an objective notion of textual authority. Once that authority (the Mishna and Tosefta) is viewed as dependent on amoraic readers, the categories of traditional and anti-traditional, based on the tannaim as read through the Mishna, must be reviewed.

The final point I would like to raise is really a question for further discussion. It refers back to what I mentioned earlier about the three intended audiences of the *sugya*. Fisch states that there are two audiences, the beginner and the advanced, but I see three. The two that interest me are the "quick indoctrinated Torah scholar" and the "careful skeptical critical scholar" (see above). The quick scholars gloss this subversive move because they are indoctrinated into the very method the Talmud teaches while the critical scholars "get" the esoteric message precisely because they are skeptical of the way the Talmud teaches them to read. One of the more curious dimensions of reading Talmud is that the text one reads also teaches one how to read it. This creates an enclosed system whereby method and substance seem to collapse. Yet Fisch suggests that the method taught by the text lulls the reader into missing the subversive message the Talmud wants its close readers to learn. Is it that the method is a veil against the deep understanding of the text and, if so, what does that mean? Is Fisch saying that the text requires its reader to accept and then reject the method it teaches in order to understand the text's esoteric message? Or, more subtly, is the text requiring skepticism about its own method which sometimes (but not always) prevents the reader from understanding the text? Further, does a deep reading of the text require the deployment of another method—let us say a critical method—in order to decipher its anti- traditionalism?

If we assume that the redactors of the Talmud wanted its readers to use the Talmudic text as the foundation for legal reasoning, why would the text hide its true agenda instead of stating it overtly? I suppose this

question underscores Twersky's comment about the exoteric nature of law in general. One could offer as Straussean reading that it wanted to conceal its message for political reasons, but isn't the Talmud, in essence, constructing its own political reality, as mythic as it may be, in its claim of exclusive rights of interpretation and demand for absolute obedience? Who or what is the Talmud hiding from that would justify its esotericism? Although I have some thoughts on this matter, I will leave these questions for further discussion. Let me conclude by saying that Fisch's essay has given me a great deal to think about regarding what the Talmud says, what it doesn't say, and what it might be saying by not meaning what it does say.