Journal of Textual Reasoning 4:2 (March 2006)
ISSN: 1939-7518

CRITICISM, INTERPRETATION, AND CANON: A REPLY OF SORTS

MENACHEM FISCH
Tel Aviv University

1. Let me first take this opportunity to thank Peter Ochs, Steven Kepnes and the other Textual Reasoners for taking me in among them, and for giving my *Rational Rabbis* the best run for its money to date at first at the AAR 2002 TR session, and now in written form. In that work I discern and analyze two talmudic voices (which I persist in doing despite the good efforts of all my respondents), but make it no secret that my sympathies as well as my intellectual and religious commitments lie *davka* with the antitraditionalists. From that point of view, there is no greater gift of scholarship than the serious, knowledgeable, hard-hitting questioning of one's work. It is the greatest gift one can give to another, precisely because it is the one thing no one can really give oneself.

Commenting on Abot 1:6, *Abot de-Rabbi Nathan* A, 8 presents a touching account of true comradeship:

> *u-kne lekha haver*: acquire yourself a friend. How is one to go about this? It teaches us that one should acquire a friend with whom to eat and drink, with whom to read and reread, with whom to sleep, and with whom one can be candid with all one's hidden thoughts and secrets of Torah, as well as secrets of *derekh eretz*. When two such comrades study Torah together, if one of them should err regarding a halakha, or a premise; wrongly

> pronounce the pure impure, or the impure pure, permit the forbidden, or forbid the permitted, his comrade can mend his mistake. For it is said: Two are better than one. For if they fall the one will lift up his fellow. (*Qohelet* 4:9)

To which Version B adds:

> But a student who sits and studies alone, if he errs on a matter of halakha – wrongly pronouncing the pure impure, or the impure pure – if he has no friend to mend his mistake, of him it is said: Woe to him who is alone when he falls; for he has not another to help him up. (*Qohelet* 4:10)

True friendship, according to *Avot de-Rabbi Nathan*, is a tricky business. On the one hand, it involves a high level of intimacy and total trust, on the other, a candid willingness to criticize. The implication is that for criticism to be effective, a certain familiarity is required. And that intimacy without criticism is mere yes-manship, which cannot enhance Torah or serve any work of repair. Michael Walzer has made the idea of the member-critic the cornerstone to his theory of social criticism. When criticizing, one needs to be close, sympathetic and trusted in order to be heard. But as we all know, intimacy is spoiled by too much criticism, and *vice versa*: criticism is spoiled by too much intimacy. Perfect comradeship, then, is a delicate line to toe. (Version B, by the way, also mentions marriage in this context, and there is a strong talmudic tradition that views religiosity itself, that is to say, one's relationship with the Almighty – along similar lines.) But the point I wish to stress is less sociological or psychological, although both these aspects of critical discourse are paramount. As far as criticism goes, closeness is also a *philosophical* category.

2. As I mentioned briefly in my opening remarks, criticism – the attempt seriously to prove a person wrong, or a system faulty (as opposed to merely voicing a doubt) – requires the fashioning an argument. Criticism is a *reasoned* attempt to expose a problem. But it is never *merely* an argument, merely a series of propositions. Criticism is an argument leveled at someone with a view to drawing his or her attention to the real possibility of a mistake on their part or a problem in their domain. Criticism is what John Austin called a performative utterance, an addressed speech-act leveled at a concrete addressee. (Self-criticism is, of

course, self-addressed.) Criticism is an addressed accomplishment that cannot be adequately understood in terms merely of the analytical relations that obtain between the propositions of which it comprises. Two important points follow. First, although criticism is an act of reasoned questioning, all acts of criticism necessarily presuppose whole realms of *unquestioned* knowledge. Criticism is an act of reasoned doubting, and is therefore, *qua* being *reasoned*, always of the retail, rather than wholesale Humean or Cartesian variety. In order to criticize, one assumes much and much has to be taken for granted. The force of criticism is measured first by the validity of the argument and then, once accepted, by the severity of the problem argued for. But, and this my second point, in criticism (as opposed to proof theory) these notions of veracity, validity and weight are necessarily relative, that is, relative *to the addressee's world of discourse*. The easiest way to dismiss criticism is to deny its premise or the gravity of the problems to which it points. For criticism to be effective, for its addressee to acknowledge the existence, chance, or imminence of the problem pointed to, the premises of the argument have to be acceptable *from the addressee's point of view*. Criticism, in other words, by being in essence an addressed, directed act of reasoning, requires of the critic a level of empathy with his addressee's world of discourse and form of life. This is a purely philosophical point. The sociological, psychological and even ethical aspects of the situation come to light when one goes on to ask who is best placed to criticize, who is the most effective critic, who should criticize whom?

This relativist element necessarily involved in all meaningful acts of criticism goes to the heart of the brief, if heated exchange between Hyam Maccoby and Daniel Boyarin with reference to my work. Hyam Maccoby rightly points to Popper as the philosopher most centrally responsible for associating criticism with rationality and fallibilism with the growth of what Popper calls "objective knowledge." Hyam is also right in claiming that my book takes this notion of rationality (explicitly referred to Popper) as central to its understanding of the halakhic discourse of the Talmud. However, Boyarin is right in pointing out that there is nothing in what Popper has written to indicate that criticism as such is in any way capable

of overcoming the "constraints of context" – to use Boyarin's phrase. Unfortunately, Popper purposefully avoided all reference to the so-called linguistic turn, and all serious engagement with the constitutive role philosophers have granted to "forms of life" late of the later Wittgenstein. This cannot be brushed aside. As I try to show, criticism is always, to a significant extent, an inside job. It will motivate one to modify one's system only when leveled from within, premising only what one already holds as true. (Needless to say, the same goes for self-criticism.) There is nothing objective, in the common sense of the term, in Popperian "objective knowledge", even when subjected to the most stringent criticism, for the simple reason that in this context "stringent" can mean little more than "compelling from the critic's addressee's point of view"!

The truly interesting question lurking just below the surface of the Maccoby-Boyarin (all too impatient) exchange has to do with the critique of context itself. To my mind, this is the most important challenge that the latter-day neo-pragmatist, Anglo-American, philosophy late of Wittgenstein has posed itself in the last thirty years. Cultural contexts are constitutive of thought, of reasoning, of belief. On the other hand, they are not fixed for all time, as Kant imagined. But if such contexts fully condition criticism from within, then the frequent and occasionally significant changes they undergo must be deemed to be arbitrary. This, in a nutshell, is Davidson and Rorty's famous "caused not reasoned" argument. To what extent one can rationally reflect upon one's own context is a question Popper glibly assumed he had answered, but never seriously addressed. But then, neither is it raised in my book as such. It is the question I am working on at present, and hope to write about in the near future.

But back to the discussion of *Rational Rabbis*. There no better way to present a thesis to the learned public than by subjecting it to a sharp discussion that focuses on what is really important. So rather than commission three reviews of my book, Peter and Steven insisted that I first circulate a precis of its main argument in less than twenty pages, and then present my views at the AAR in the course of a study session of one manageable *sugya*. This forced me, and subsequently forced Shaul, Aryeh and Jacob to focus on *Rational Rabbis'* central argument – first in i.e., and

then in e.g. form, to borrow Avishai Margalit's neat typology. All three critics – Shaul, Aryeh and Jacob – have done wonderful jobs, and in turn, and from their different perspectives, all three come back to the same objection that goes to heart of the project, to the very dichotomy I propose between traditionalist and antitraditionalist attitudes to halakha. Let me briefly respond to each in turn.

3. Shaul raises three important points: two critical of my position, and one for future discussion. His two critical points challenge the sharp dichotomy I propose between traditionalist and antitraditionalist approaches to halakhah: the first, by suggesting that perhaps the two positions are better seen as intertwined dialectically rather than in strict opposition to one another, the second by proposing, in mild contradiction to the first, that if one takes rabbinic interpretation seriously, perhaps traditionalism is a not an option to begin with. Shaul's third point is to pose the obvious why-question: if the Bavli's halakhic discourse is indeed antitraditionalist, why does it train its readers to see things otherwise, that is, why is it esoteric?

Regarding Shaul's first point: I agree completely that antitraditionalist halakhists work in the service of the law, not against it. They do not oppose halakha. On the contrary, they are avid halakhists. They question and modify the law not to undermine, but to improve and strengthen it, just like Funkenstein's Maimonides, who works in the service of true messianism by being consistently suspicious of every would-be Messiah. But this by no means blurs the strict dichotomy I maintain between halakhic traditionalism and antitraditionalism. Nor does it establish a dialectic between the two. If there is a blurring here, it seems to be Shaul's rather than mine. For Shaul repeatedly clouds the difference between the halakhic tradition and halakha, that is between the tradition and the law. Traditionalists equate the law and the legal tradition. For them the law is the law *because* it is the tradition. For them, to be antitraditionalist is, by definition, to be against the law. Antitraditionalists, by contrast, take the tradition as their object of criticism, and equate the law with the fruits of their critique. This is a dichotomy that should not and, I believe, cannot be blurred. There is another sense, however, hinted to above, in which the

traditionalist and the antitraditionalist, the questioned and unquestioned, remain necessarily locked in a dialectical embrace. I shall return to this point in response to Jacob Meskin below.

Regarding Shaul's second point, again, I agree with his and Aryeh's analyses of rabbinic interpretation, according to which it is solely up to the authoritative reader of the text to determine its meaning. It is crucial, however, first to distinguish what Shaul terms "postmodern theories of reading," for whom all reading is *unwittingly* reading-in, from the radical self-consciously critical form of interpretation described in his wonderful quotation from Maimonides. Maimonides asserts that to take the Bible seriously is to *deliberately* interpret the plain meaning of its words out of existence whenever they appear to defy what the interpreter holds to be true. And what he holds to be true is *not* learnt from the Bible. This is a *contrived* form of midrashic reading-in that in my analysis stands in self-conscious opposition not to theories that support the *possibility* of prudent reading-out in principle, but to religious approaches, contrary to that of Maimonides, that take such reading to be their authoritative religious duty! There is something somewhat misleading, however, in Shaul's example. There is little trace of I would term a robust traditionalism in rabbinic approaches to *biblical exegesis*. Few are as outspoken about it as Maimonides, but few would hesitate to propose a far-fetched reading of a biblical verse or phrase when they see fit to do so. Aryeh, on the other hand, draws attention to midrashic interpretative techniques in amoraic treatments of tannaitic halakhic sources. Even so, the traditionalist-antitraditionalist dispute with which my book is concerned is about halakhic revision – as opposed to halakhic interpretation, to which I shall turn shortly. It is not about determining what a halakhic *source* means, but about whether, once its meaning has been determined, it can be deemed to be mistaken! This is a dispute to which, I insist, the texts bear clear witness, and one that cannot be collapsed easily into a dialectic. But if that is the case, the problem of explaining its veiling is intensified. So, while I agree with Shaul's characterization of antitraditionalism, I tend to resist his suggestion to blur the dichotomy.

4. And the same goes for Aryeh, who objects to the dichotomy on grounds different from Shaul, arguing that given the set of interpretative and editorial devices applied by the rabbis to biblical and tannaitic sources, it is impossible to carve up the discourse dichotomously as I suggest. This in itself is not to deconstruct the dichotomy as such, as Shaul aspires to do, but to point out, that even if it does exist, it is well disguised. I, therefore, find Aryeh's point supportive, rather than challenging to my claim. My arguments for the existence of the two opposing "schools" or approaches are not gleaned off amoraic discourse, but, as indicated in the beginning of section 2 of my opening remarks, from explicit and far more declarative sources. Rather than problematize the dichotomy in the light of the complexity of amoraic halakhic discourse, my project has, therefore, been to problematize that discourse in the light of the dichotomy. This renders the question implied by Aryeh's comment, which is also Shaul's third, all the more pertinent. What benefit could be gained by the Talmud's esotericism?

I devote the last and fourth part of *Rabbis* to answering this question. The answer proposed there is briefly this: The Bavli is an essentially didactic work. It reconstructs the dynamics of the study hall in order to initiate future students into the world of Torah-study by extended example. In good antitraditionalist centers of learning (as, for instance, in the physics department of a good research university) the curriculum is normally two-tiered. Undergraduates are normally set the task of studying, plainly and quite uncritically, the theories, techniques, tools and methods that will later be made the objects of reflection and revision. Only at the graduate or post-graduate levels do students normally begin the process of critically reflecting upon the knowledge they had formerly acquired. To a great extent the seriousness and effectiveness of this second stage of their studies will depend on the seriousness and single-mindedness with which the first phase was pursued. This dividing line manifests itself in the difference between the two kinds of publication that typically adorn the scientific bookshelf: the scientific textbook, and the scientific logbook or research report. While the textbook constitutes the main instrument for passing scientific knowledge on from one generation

to the next, the logbook and research paper document the processes of trial and revision *of* the knowledge thus received, as part of the debate that will in turn motivate the framing of the textbooks of tomorrow. In an ideal community of learners, one in which the rules of the game are known and understood, there will be little need for the textbooks to teach them. In my book I suggest that rather than produce *two texts*, one designed to present and articulate the current state of halakha for the beginners, the other, to document its questioning and subsequent modification, the redactors of the Bavli produced *one text with two readings* designed at once to cater for the beginners and the more advanced. The idea being that the latter would not be misled by the traditionalist rhetoric addressed to the former.

It was an answer I liked at the time (which also goes a long way to explaining the curious code-form of the Mishna, despite the fact that it is not treated at all as a code!), but about which I have become more skeptical in recent years. Mainly because I have come to realize that the so-called surface rhetoric of much of the Bavli's halakhic discourse, is simply not traditionalist!

Shaul's quote from Maimonides helps make this point by raising a question that neither Shaul nor Aryeh address, concerning the very notion of sacred canon. If the text is as plastic and as soft as Maimonides maintains, what notion of canonicity at all is at work, other than to bolster the very authority of the interpreter? Do our sacred texts possess any authority of their own according to this view? If the text, of itself, teaches us nothing, and can be made to say anything the authorities want it to say, why have a text in the first place? In a strictly antitraditionalist community the only texts that will be seriously preserved are the current uncontested ones. The very idea of a sacred halakhic text that requires reinterpretation, rather than revision, makes little sense from an antitraditionalist perspective. And yet talmudic halakhic discourse is inherently interpretivist and abounds with far-fetched halakhic interpretation, or *ukimtot*, as they are called. Why would an amora go to so much trouble to devise a wholly unconvincing reading of a Mishna, when, if he is an antitraditionalist he can simply set it aside?! But, and this is the crucial point, such far-fetched rendering makes even *less sense* from a

traditionalist perspective! If one sincerely undertakes to be truly obligated by authoritative former rulings, why not accept the Mishna as it is? *Ukimtot* are no more a reasonable traditionalist response than they are an antitraditionalist one! And if that is true, my two-tiered explanation is seriously challenged.

5. In work I have done since the publication of *Rabbis*, I have proposed a rather different approach to rabbinic interpretation, and subsequently to their notion of halakhic canonicity. Briefly it is this: the fact that a text is deemed canonical, and therefore in need of interpretation can be seen to perform an important antitraditionalist function. An amora working hard to devise a halakhic *ukimta* to a stubborn tannaitic source with which he disagrees completely will be performing an act of *self* -criticism on a level that would never be required of him in dispute with a peer. The following exchange between Rav and Rabba b. Bar Hanah presents the fashioning of an *ukimta* in "slow motion", as it were.

> Rabba b. Bar Hanah recited [the following *beraita*, tannaitic source] in the presence of Rab: [Where a plaintiff pleads] "You killed my ox, you cut my plants, [pay compensation", and the defendant responds:] "You asked me to kill it, you asked me to cut it down", [the defendant] would be exempt.
>
> He [Rab] said to him. If that be the law it would impossible for anyone to live! Are we to believe anything [a defendant claims]!?
>
> [Asked Rabba b, Bar Hanah] Shall I delete [the *beraita*]?
>
> No! [Rav replied], interpret your source!] [your teaching could hold good] in the case where the ox was marked [by the court] for slaughter and the tree, to be cut down.
>
> If so, what plea has [the plaintif] against him?
>
> He says to him: "I wanted to perform the mitzva of performing myself!"

Rav firmly disagrees with the *beraita*'s ruling that the Law of Torts should exempt a defendant from damages merely because he pleads to have acted on the request of the plaintiff. And yet he also firmly vetoes Rabba b. Bar Hanah's suggestion to "erase" it (i.e. to declare the source corrupt or inauthentic). One should interpret one sources rather than delete them! –

he instructs. Rav's clear objection to the *beraita* along with Rabba b. Bar Hanah's matter-of-fact willingness to erase it, attest to a robust antitraditionalism on their part. And yet Rav insists that they not put it aside, but rack their brains to think of an exception, of a limiting case in which even he would agree that the defendant should be believed when claiming "you asked me to!"

What I failed to realize until after *Rabbis* was published is that Rav's insistence on "saving" the *beraita* rather than declaring it corrupt can hardly be considered a traditionalist gesture! A prudent traditionalist, to repeat, simply would have adopted the beraita's general ruling or declared it corrupt. No traditionalist objective could be served by a far-fetched rendition of the beraita's meaning. On the other hand, an important antitraditionalist objective is served in the exchange.

Rav does not feel obliged to change his initial view on the judicial status of "you-asked-me-to" claims in the light of the tannaitic source. His "interpretation" is not performed grudgingly. The idea that the court should believe and accept such claims in cases in which by killing the plaintiff's beast or spoiling his crops the defendant knew that he would be causing no damage makes perfect sense to Rav. It is doubtful, however, if he would have ever thought of it, had he not been faced by a resilient *beraita*! Such a reading gives rise to a very different notion of canonicity in an antitraditionalist world. The canonical text is not meant to dictate the good or the true, or to cause its readers to repress their own heartfelt intuitions. Rather, canonical texts demand to be given life *within* their readers' worldviews. In doing so, their readers are urged to rethink the outer boundaries of their positions, searching for counter-examples and limiting cases in which even they admit the principle in question no longer holds. In this way, the canonical text enters the discussion as a Socratic "interrogator," rather than as a source of truth. This seems to be the rabbinical rule regarding Scripture, to which Shaul's quote from Maimonides clearly attests. But it requires something of a gestalt switch to apply it to the Talmud's halakhic discourse!

6. What to make of Aryeh's important philological critique? It certainly complicates my argument somewhat, but, it seems to me, does

not seriously undermine it. The *beraita*, as I argue in *Rabbis*, is itself is not a problem. The phrase about respect, *kavod*, attributed to Rav Yehuda in the original Tosefta and in many of the manuscript sources refers to self-honor. Rav Yehuda contrasts those who come to the funeral "on account of the mourner" and those who come "on account of *kavod"*, namely for the sake of self-promotion. In the book I suggest the term was dropped so as not to confuse it (as Aryeh appears to do) with the very different notion of respect for the dead and for others on which the *sugya* centers.

Nor, I think, is the Mishna rendered problematic from my perspective if it is taken to claim that respect for the dead only overrules or postpones tefilah and tefilin. Unless one qualifies RavÂ⍰s statement explicitly, as Aryeh suggests, the mishna remains in clear violation of it. The question should have at the very least been raised and answered as Aryeh proposes. But it isn't. The silence of the Stam hence remains glaring.

7. Jacob Meskin also accuses me of being overly dichotomous, but in a different and interesting way. My identification of rabbinic rationality with halakhic troubleshooting, he claims, ignores the rich "web of activities, attitudes, education, acquired skill sets, networks of social connection, relations of power and authority, and institutional affiliations within which and on account of which the rabbis actually functioned (and function today) *as* rabbis." Moreover, he argues, "this sort of rationality, and the salubrious effect it has on the rabbinic effort to interpret the word and the will of God, emerges *only within* that comprehensive web of situated rabbinic training and activity." I take Meskin to be making three valid points, two fairly straightforward, one profound. The two fairly straightforward points have to do with my unfortunate choice of title. "Rational Rabbis" is an oxymoron not merely as a joke, but in terms of the book's very philosophy. I work hard in the first part of *Rabbis* to establish the sense in which I use the term "rational", insisting on taking it exclusively to be an evaluative category of acts, or performance, rather than of objects or persons. Taken as shorthand for "performed while making good use of one's brains", it makes no sense at all to evaluate as rational people, but only particular actions. Neither is it a category of types, or classes, of specific actions. It is just as senseless to say in general

that it is rational to do P, or to do P in situation S, as it is senseless to categorize a person or an object as rational *per se*. So the very term "rational rabbis" is as misleading as it was meant to be catchy. My work has no intention (nay, *can* have no intention) of differentiating between rational and irrational, or a-rational rabbis as such. The dichotomy – the only dichotomy – it purports to establish is that between acting rationally and non-rationally *on* (and not as Meskin has it, *within*) a goal-directed system.

Meskin's second point, that being a rabbi involves much more than troubleshooting (or refraining from troubleshooting) halakha, is also plainly true. I had no intention of implying that evaluating the way rabbis conceive their role with regard to halakha, namely as including or excluding its critical review, is to pass judgment on their entire functioning as rabbis.

Meskin, however, makes a third observation, at least implicitly, that the critical attitude toward halakha characteristic of antitraditionalism, *necessarily presupposes* an entire web of stable, accepted and *uncriticized* knowledge, relations, practice, and skills. It is an entirely general point, not to do particularly with rabbis, but with the crucial difference between being idly skeptical and wisely critical. It is a point anticipated in *Rabbis*, but of which I have only become fully aware after the book's completion. It forms part of my complaint against Popper and followers which I outlined briefly in the first part of my opening piece of this discussion, and in somewhat more detail at the outset of these final remarks. It has to do with the training of experts (expert critics, that is). A trained critic is not merely someone trained in the logic of criticism, trained merely to form well-formed critical judgments. It is someone who is expertly knowledgeable of the system under scrutiny, who has a good sense of how it is supposed to perform and why, and who possesses competent mastery of the complex array of cognitive, perceptual, and practical skills and standards necessary for the job. It is in this unintended sense that the dichotomy between critical and uncritical, rational and a-rational, antitraditionalist and traditionalist obviously, yet interestingly, breaks down. As noted above, the very adoption of their critical stance

necessarily requires of antitraditionalists a large measure of uncritical, a-rational, (traditionalist, if you wish) reliance upon, and employment of, a thick belt of knowledge, practice and skill. In this sense I agree with Jacob Meskin that the dichotomy I propose breaks down. But I doubt this will satisfy the more avid TR deconstructivist.