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Richard Hidary. *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud.* Providence: Brown Judaic Studies, 2010. xii + 441 pp. \$65.95 (cloth), ISBN 978-1-930675-77-3.

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Particular Diversity

One of the celebrated characteristics of rabbinic discourse is its multivocality and diversity of opinion. As no two biblical prophets speak in the same vein, no two talmudic rabbis hesitate to take different sides of an issue. There is no domain of talmudic halakhah, no issue of rabbinic aggadah, that does not demonstrate this formative rhetorical and substantive inclination. Richard Hidary's *Dispute for the Sake of Heaven* focuses on an offshoot of this pervasive trait. Does talmudic legal thought extend this inclusiveness of diversity to the practical rulings of halakhah? Is *pesak* (legal ruling) or *halakhah lema'aseh* (the law as it is to be practiced) also permeated with this plurality? What are the different approaches in the literature to the need (or lack thereof) for uniformity of practice? "When two rabbis inherit different traditions ... or derive opposing rulings ... does the halakhic world view allow for both interpretations to be practiced or does it impose uniformity on its members?" (p. 369). Even though issues of Jewish society, its normative practices, and the nature of its rabbinic orientation are alluded to, this is a study of theoretical approaches to diversity of practice as exhibited in talmudic sources. The study meticulously documents the different tendencies in each Talmud regarding diversity in halakhic practice: "the Yerushalmi usually insists on uniformity of practice while the Bavli more often tolerates legal pluralism" (p. 41). This is the underlying thesis that the author establishes throughout the book, while examining a variety of sources. This variety includes explicit

traditions and sustained *sugyot* (pericopae) that deal with halakhic decision making and the implementation of *ke-lalei pesak* (rules for deriving the law); implicit preference for rules and the maximizing of their application; aggadic anecdotes and stories whose theme is diverse halakhic practice; and reinterpretations of earlier material that has bearing on the issue. There is rigorous analysis—throughout the strata of talmudic literature—of the rebellious elder and the rules of *horayot* forbidding a person to follow a mistaken court ruling, if that person is aware of the error.

One of the paraded disputes between the "houses" of Hillel and Shammai, concerns aspects of levirate marriage and certain dispensations of its implementation. The upshot of this dispute is that the two groups differ regarding personal status and eligibility for marriage under such circumstances. In these cases, the result was that Beit Shammai would permit a marriage and see its offspring as legitimate, while Beit Hillel would view it as forbidden and regulate the children to the status of *mamzerim* (illegitimate for marriage to a Jew of legitimate status), or vice versa. The Mishnah famously declares: "Even though these prohibit and these permit, Beit Shammai did not refrain from marrying women from Beit Hillel, nor did Beit Hillel from Beit Shammai" (Mishnah Yevamot 1:4). How are we to understand the Mishnah's assertion? The two Talmudim differ in approaching this question. The Yerushalmi hesitates to accept the pos-

sibility that Beit Shammai's opinion was implemented in practice, and limits this to a time before the general acceptance of Beit Hillel's authority. Whenever it can, this Talmud will interpret its sources so as to deny Beit Shammai practicing their own opinion and thus "promoting a unified halakhah following Beit Hillel" (p. 204). On the other hand, the Bavli solves the issue by positing that indeed each side practiced its own opinion, thus creating *mamzerim* according to the other side's view. Their ability to intermarry was facilitated by informing one another of debatable cases. The Bavli reinforces its position by the structure it creates for its analysis: "The editors place a good proof at the beginning in order to start with a bang and then save the best three proofs for the end to create a dramatic conclusion" (p. 215). This Talmud is comfortable with multiple opinions being practiced, while its Palestinian counterpart will minimize this eventuality as much as it possibly can. There are of course limits that are common to both: "The Bavli, like the Yerushalmi, is not willing to entertain the possibility that they would put tolerance above risking *mamzerut*" (p. 213).

One of the book's chapters (5) traces the narrative representation of this Bavel/Eretz Israel divide. Rabbinic figures are fashioned in order to convey propensities concerning the issue. The Yerushalmi presents "a consistent pattern ... to assume uniformity of practice among the Tannaim and question examples of dissent" (p. 264). However, the Bavli uses figures such as the deposed Rabbah Gamliel and even the excommunicated Rabbi Eliezer, to enhance the presence and assert the legitimacy of a plurality of opinion and practice. Though there are Palestinian parallels in both cases, they have other concerns and do not develop this theme. "[T]he Bavli admits that there was diversity of practice among the Tannaim and criticizes attempts to force unity while the Yerushalmi denies many instances of diversity and praises attempts at unification" (p. 281). The figure of Ya'akov of Nevoraia is fashioned in *Bereshit Rabba* so as to dissuade one from dissent, and even subsequent retraction does not shield one from punishment.

Chapter 6 examines the case of a *zaken mamre* (a rebellious elder). This section is a wonderful demonstration of the creativity and recontextualizing that rabbinic tradition applies to its biblical and second temple heritage. The institutional context, legal purview, and venue of the Deuteronomic verses (17:8-13) are all transferred from a national or temple setting to a rabbinic one. Especially telling is the broadening of the legal domains in which the recalcitrant rabbi is liable. Talmudic halakhah

tends to expand this liability for nonconformity, in one extreme view to the minutiae of rabbinic detail (p. 317). This kind of profound rabbinic reinterpretation is evident, of course, in many other conceptual and literary loci throughout the literature, yet a discerning analysis, such as Hidary's, can identify its mark in new and suggestive contexts. Here too, the two Talmudim are presented as divergent. The Yerushalmi follows tannaitic precedent desiring "a high degree of uniformity," while the Bavli "almost completely writes the law out of existence by ... confining its applicability to the Jerusalem court.... [T]he Bavli is not willing to uphold the model of a rebellious elder in which that authority [of the court] is forced on the individual sage" (p. 333).

This is a knowledgeable and broad-minded study, and Hidary brings a variety of skills to his research. Philological technique is coupled with literary sensitivity throughout the book, and textual analyses and their resultant conclusions are placed within theoretical considerations of legal pluralism. Historical contextualization plays a prominent role in the conclusion when explanations are considered for the differing approaches of the Talmudim. In the spirit of Hillel's *u'dela mosif yesuf* (Avot 1:13: "One who does not add, will meet his end"), I will offer a few thoughts and responses to some of the points made.

The book's central theme is the variance of the two Talmudim, and the Bavli's receptiveness to plurality of practice is pitted against the Yerushalmi's reservation time and again. However, when tannaitic material is presented as background and precedent, the Yerushalmi is alternately shown as continuing previous tradition or diverging from it (see pp. 204 or 250 for examples of divergence, and p. 333 for continuity). This juncture is important. Is the Yerushalmi's reluctance to accept practical diversity continuing a tannaitic tendency or is it this Talmud's own creation? Carrying a trend forward however altered is significantly different from engendering a new disposition. Which of these holds true for the Yerushalmi's discomfort with diverse halakhic observance? Though the author considers the issue of late second temple sectarianism, this is relegated to establishing that "statements reflecting pluralism of practice in Talmudic literature apply only within an already circumscribed group" (p. 36). The issue of earlier tannaitic perspective, a possible benchmark for the later talmudic divide, remains unclear.

The author is careful to distinguish between theoretical plurality, which encourages multiple opinions and

individual creativity, and practical diversity, which justifies alternate norms and behavior. The book deals with the latter. Nevertheless, when attempting to understand the Bavli's promotion of practical diversity, reference is made to the redactors of this Talmud (the *stamma'im*, in contemporary scholarly parlance) who, for various reasons, "valued argumentation above all, were loath to dismiss any received tradition, and therefore displayed tolerance for diversity of opinion, which promoted halakhic pluralism as well" (pp. 384-385). There is a jump in the line of reasoning here. If indeed theoretical plurality is prevalent throughout rabbinic literature, then the comfort with which practical diversity is regarded in the Bavli cannot be explained by it. Even though the intensity and sophistication of dialectics and argumentation in the later strata of the Bavli are impressive and establish a new level of halakhic thought, these are not newly discovered patterns that were created ex nihilo. If diversity in the academy is a key to enabling diversity in practice, it should come into play in other contexts as well. Moreover, I would hesitate in identifying practical repercussions in the Babylonian sugyot. These literary constructs are intended to preserve and interpret their variegated sources while employing dialectical form, and are geared to facilitate future study. This intellectual-literary habit is not necessarily taking a position on practical legal pluralism.

Hidary offers a suggestive context for assessing the divergences between the Yerushalmi of late Roman Palestine and the Bavli of Sasanian Persia. "[E]fforts at codifi-

cation in Roman law, and the dogmatic nature of fourth-century Christianity" would correspond with the Palestinian rabbinic preference for uniformity in halakhic practice; "tolerance and lack of codificatory projects in Sasanian/Zoroastrian law" accord with the Babylonian Talmud's receptivity to conflicting applications of the law. (I'll pass over the obvious that neither Talmud is a code in any sense of the word). A general observation regarding "influence" as a concept in historical interpretation is in order. As contemporaneity does necessarily imply correlation, and correlation does imply causation, it is not enough to demonstrate similar characteristics or trends in contemporaneous cultures and see this as a phenomenon of "influence." Does "influence" mean mechanical imitation; conscious adaptation of a cultural entity to a new context; reciprocal negotiation where all participants are affected and transformed; parallel reaction to common stimuli; or some other model? When using "influence" as an interpretive concept these permutations are to be taken into account. Recent essays by Moshe Rosman, David Myers, and Michael Satlow have offered critiques of "influence" as an interpretive category in Jewish history (the last, specifically dealing with ancient Judaism), and to my mind have floated serious issues which any subsequent appeal to "influence" must take into account. None of this detracts from the force of Richard Hidary's book, which is both grounded in textual acumen and conceptually sophisticated. His tools are the best that talmudic scholarship has to offer, his central thesis is methodically presented and convincing, and his suggestions are engaging and thought-provoking.

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